



AGENDA OF THE REGULAR MEETING OF
THE CITY COUNCIL
CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA
April 13, 2021
7:00 P.M.

NOTE: Due to Open Meeting Law restrictions, the City Council may be discussing agenda items for the first time. Your patience and understanding is appreciated during this process.

CALL TO ORDER

In light of the Governor’s Executive Order regarding social-distancing and restrictions on gatherings, the City of Birchwood Village City Council is conducting its April meeting using interactive web-based technology. Pursuant to Minnesota Statutes, Chapter 13D. 021 Subdivision 1(1) the City of Birchwood is declaring that, “an in-person meeting or a meeting conducted under section 13D.02 is not practical or prudent because of a health pandemic...”

The meeting will be conducted using the Zoom meeting platform and the details of that are directly below for participating. If you plan to attend it is suggested that you familiarize yourself with the technology in advance. If you plan to participate than you must either 1) send your name, topic you plan to speak on, and the phone number you will be calling from to City Hall by noon the day before the meeting; or 2) join the meeting no later than 6:45pm to coordinate with the Moderator.

The Moderator of the meeting shall be City Administrator Andy Gonyou and all participants, except Council Members, shall have their microphones muted unless recognized by the Mayor. Public Forum shall be honored using this technology and the meeting will be broadcast via the Cable Commission like other meetings.

The City of Birchwood Village is inviting you to a scheduled Zoom meeting.

Join Zoom Meeting

<https://us02web.zoom.us/j/82592455875?pwd=ektiRkNMOFIDY3RRaEJRMnpaTmJuZz09>

Meeting ID: 825 9245 5875

Passcode: 384079

Phone: +1 312 626 6799 US

PLEDGE OF ALLEGIANCE

APPROVE AGENDA

OPEN PUBLIC FORUM

ANNOUNCEMENTS

- A. We are social, follow us on Facebook at @BirchwoodCityHall or Twitter at @CityofBirchwood

ADMINISTRATIVE PRESENTATION

- A. Sheriff Report* (pp. 5-7)
- B. Planning Commission Meeting Minutes* (pp. 9-12)
- C. Birchwood Dock Association Meeting, April 17th at 9:30am* (p. 13)

CITY BUSINESS – CONSENT AGENDA

- A. Approve Treasurer’s Report* (pp. 15-27)
- B. Approve Regular Meeting Minutes from January 12, 2021* (pp. 29-34)
- C. Approve Regular Meeting Minutes from March 9, 2021* (pp. 35-40)
- D. Approve Resolution 2021-09, Authorizing Fund Transfers* (p. 41)
- E. Approve Resolution 2021-11, Declining to Waive the Statutory Monetary Limits on Municipal Tort Liability Established by Minnesota Statutes 466.04* (p. 42)
- F. Approve bid from T.A. Schifsky for Roadwork* (pp. 43-45)
- G. Approve MS4 Public Hearing for May Council Meeting – Storm Water Pollution Prevention Program

CITY BUSINESS – REGULAR AGENDA

- A. Washington County Historical Society* (pp. 47-54)
 - I. Presentation by Brent Peterson
Time Budget: 10 Minutes
- B. Second Reading of Ord. 2021-03-01, Granting a Cable Television Franchise* (pp. 55-121)
 - I. Public Hearing
 - II. Council Deliberation & Approval
 - III. Approve Resolution 2021-10, Summary Publication
Time Budget: 10 Minutes
- C. Variance Case No. 21-01-VB for 419b Wildwood Avenue* (pp. 123-141)
 - I. Council Deliberation
Time Budget: 10 Minutes
- D. Planning Commission Appointment* (pp. 143-151)
 - I. Council Review of Applicants
Time Budget: 15 Minutes
- E. Ordinance 2021-04-01, Amending City Code Sec. 301.060(B)* (pp. 153-154)
 - I. First Reading
 - II. Schedule Second Reading and Public Hearing
Time Budget: 5 Minutes

- F. City Assessor Report* (pp. 155-159)
Time Budget: 5 Minutes
- G. Three Way Iris/Wildwood Intersection
 - I. Update
Time Budget: 5 Minutes
- H. Brine Pre-Application
 - I. Efficacy Review
Time Budget: 5 Minutes
- I. American Rescue Plan Funding* (pp. 161-162)
 - I. Council Deliberation
Time Budget: 5 Minutes
- J. Sheriff Meeting Update (Mayor Wingfield & Councilmember Foster)* (p. 163)
 - I. Update
Time Budget: 5 Minutes
- K. 312 Wildwood Update
Time Budget: 5 Minutes
- L. City Attorney Report
 - I. Cedar/Hall Junction Update
Time Budget: 5 Minutes
- M. Councilmember Reports
 - I. Mayor Wingfield* (p. 165)
 - i. City Planner
 - ii. Irrigation Permits
 - iii. Tree Ordinance
 - iv. ROW Permit*Time Budget: 10 Minutes*
 - II. Councilmember McCarthy
 - i. Donation of Sand for Kay Beach* (P. 167)
 - ii. IT Proposal* (pp. 169-175)
 - 1. Approve Resolution 2021-12* (pp. 176-177)*Time Budget: 10 Minutes*
- N. City Administrator Report
 - I. Village Hall Rental Reopening?
 - II. Music in the Park* (pp. 179-180)
 - i. Approve Resolution 2021-08* (pp. 181)*Time Budget: 5 Minutes*
- O. Husnik Homes Property Update

ADJOURN

MEMORANDUM



TO: Birchwood Village City Council
FROM: Andy Gonyou, City Administrator
SUBJECT: Sheriff Report
DATE: April 4, 2021

Dear Mayor & City Council Members: Below is a reporting of law enforcement incidents and citations for March 2021:

Incident Summary Report PUBLIC

From:3/1/2021 12:00:00 AM To:3/31/2021 11:59:59 PM



WASHINGTON COUNTY SHERIFFS OFFICE

BIRCHWOOD VILLAGE - 58

3/1/2021 7:53:23 AM	WC21009248	XXX - 341 WILDWOOD AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
3/1/2021 6:11:54 PM	WC21009325	10XXX -180 CEDAR ST, BIRCHWOOD VILLAGE	DIRECTED PATROL
3/2/2021 3:40:50 PM	WC21009421	10XXX -190 WILDWOOD AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
3/2/2021 5:41:24 PM	WC21009433	XXX BIRCHWOOD AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
3/3/2021 7:42:25 AM	WC21009494	50XXX -698 HALL AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
3/4/2021 2:49:28 AM	WC21009619	20XXX -298 WILDWOOD AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
3/4/2021 2:58:26 AM	WC21009620	XXX WILDWOOD AVE, BIRCHWOOD VILLAGE	ORDINANCE VIOLATION
3/4/2021 10:03:46 AM	WC21009659	WILDWOOD AVE / HALL AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
3/5/2021 12:27:39 AM	WC21009793	XXX LAKE AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
3/5/2021 7:30:34 AM	WC21009818	19XXX -299 WILDWOOD AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
3/5/2021 9:30:15 PM	WC21009964	30XXX -307 JAY ST, BIRCHWOOD VILLAGE	DIRECTED PATROL
3/6/2021 12:55:47 AM	WC21009992	60XXX -699 WILDWOOD AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
3/7/2021 1:34:33 AM	WC21010184	60XXX -698 WILDWOOD AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
3/7/2021 4:00:14 PM	WC21010252	50XXX -699 HALL AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
3/8/2021 8:05:34 AM	WC21010356	XXX - 341 WILDWOOD AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
3/8/2021 3:33:36 PM	WC21010428	70XXX -714 HALL AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
3/9/2021 7:49:48 AM	WC21010523	XXX - 341 WILDWOOD AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
3/9/2021 3:41:52 PM	WC21010589	XXX WILDWOOD AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
3/10/2021 7:46:05 AM	WC21010666	WILDWOOD AVE / CEDAR ST, BIRCHWOOD VILLAGE	DIRECTED PATROL
3/10/2021 4:06:04 PM	WC21010728	50XXX -698 HALL AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
3/10/2021 6:27:43 PM	WC21010747	XXX Wildwood Ave, BIRCHWOOD VILLAGE	SUSPICIOUS PERSON/ACTIVITY
3/12/2021 12:42:47 AM	WC21010916	1-199 BIRCHWOOD AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
3/12/2021 12:24:58 PM	WC21010970	XXX Lake Ave, BIRCHWOOD VILLAGE	HRO VIOLATION
3/12/2021 1:05:08 PM	WC21010973	XXX LAKE AVE, BIRCHWOOD VILLAGE	FOLLOW UP
3/13/2021 3:06:17 AM	WC21011104	WHITE PINE LN / HALL AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
3/13/2021 3:09:53 AM	WC21011106	Cedar St / Birchwood Ave, BIRCHWOOD VILLAGE	TRAFFIC STOP
3/13/2021 3:14:43 AM	WC21011108	XXX LAKE AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL

Incident Summary Report PUBLIC

From:3/1/2021 12:00:00 AM To:3/31/2021 11:59:59 PM

3/13/2021 2:57:41 PM	WC21011171	XXX Birchwood Ave, BIRCHWOOD VILLAGE	DEATH INVESTIGATION
3/14/2021 3:51:44 PM	WC21011340	20XXX -298 WILDWOOD AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
3/15/2021 6:58:27 PM	WC21011573	XXX WILDWOOD AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
3/17/2021 10:57:42 AM	WC21011821	XXX Wildwood Ave, BIRCHWOOD VILLAGE	PARKING VIOLATION
3/17/2021 10:59:12 AM	WC21011822	XXX Wildwood Ave, BIRCHWOOD VILLAGE	PARKING VIOLATION
3/17/2021 4:46:10 PM	WC21011869	XXX HALL AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
3/17/2021 7:08:35 PM	WC21011900	38XXX -3868 EAST COUNTY LINE RD, BIRCHWOOD VILLAGE	TRAFFIC STOP
3/18/2021 9:25:27 AM	WC21011981	XXX Wildwood Ave, BIRCHWOOD VILLAGE	VEHICLE TOW
3/18/2021 3:38:13 PM	WC21012027	40XXX -599 WILDWOOD AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
3/18/2021 7:13:46 PM	WC21012061	3XXX EAST COUNTY LINE RD, BIRCHWOOD VILLAGE	TRAFFIC STOP
3/19/2021 2:22:28 AM	WC21012126	70XXX -714 HALL AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
3/19/2021 7:44:19 AM	WC21012139	70XXX -715 HALL AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
3/19/2021 5:56:26 PM	WC21012214	XX White Pine Ln, BIRCHWOOD VILLAGE	SUSPICIOUS PERSON/ACTIVITY
3/19/2021 7:15:05 PM	WC21012227	39XXX -4030 EAST COUNTY LINE RD, BIRCHWOOD VILLAGE	TRAFFIC STOP
3/19/2021 7:28:29 PM	WC21012230	38XXX -3868 EAST COUNTY LINE RD, BIRCHWOOD VILLAGE	TRAFFIC STOP
3/20/2021 12:23:34 PM	WC21012347	XX White Pine Ln, BIRCHWOOD VILLAGE	PARKING COMPLAINT
3/20/2021 12:57:18 PM	WC21012352	XX White Pine Ln, BIRCHWOOD VILLAGE	PARKING COMPLAINT
3/21/2021 8:01:21 AM	WC21012487	1-19 WHITE PINE LN, BIRCHWOOD VILLAGE	DIRECTED PATROL
3/22/2021 1:21:14 AM	WC21012624	20XXX -221 BIRCHWOOD AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
3/22/2021 3:10:43 AM	WC21012634	XXX Wildwood Ave, BIRCHWOOD VILLAGE	SUSPICIOUS PERSON/ACTIVITY
3/22/2021 1:50:14 PM	WC21012677	XXX Hall Ave, BIRCHWOOD VILLAGE	SUSPICIOUS PERSON/ACTIVITY
3/23/2021 1:25:55 PM	WC21012852	XXX Cedar St, BIRCHWOOD VILLAGE	FRAUD/SCAM
3/24/2021 5:42:09 AM	WC21012934	XXX Birchwood Ave, BIRCHWOOD VILLAGE	SUSPICIOUS PERSON/ACTIVITY
3/24/2021 9:39:18 PM	WC21013033	XXX Cedar St, BIRCHWOOD VILLAGE	MEDICAL
3/25/2021 6:31:53 PM	WC21013148	38XXX -3982 EAST COUNTY LINE RD, BIRCHWOOD VILLAGE	TRAFFIC STOP
3/26/2021 5:23:30 AM	WC21013218	XXX LAKE AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL
3/26/2021 5:53:36 PM	WC21013311	XXX Hall Ave, BIRCHWOOD VILLAGE	CITIZEN/PUBLIC ASSIST
3/26/2021 6:26:29 PM	WC21013323	10XXX -181 CEDAR ST, BIRCHWOOD VILLAGE	TRAFFIC STOP
3/27/2021 8:13:47 AM	WC21013426	70XXX -714 HALL AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL

Incident Summary Report PUBLIC

From:3/1/2021 12:00:00 AM To:3/31/2021 11:59:59 PM

3/28/2021 8:40:36 AM	WC21013599	XXX JAY ST, BIRCHWOOD VILLAGE	DIRECTED PATROL
3/30/2021 6:30:09 PM	WC21014075	20XXX -221 BIRCHWOOD AVE, BIRCHWOOD VILLAGE	DIRECTED PATROL

TOTAL INCIDENTS: 58

Citations for: Birchwood

3/1/2021 To 3/31/2021

Agcy	Date	Citation Number	Badge	Officer Name	Citation Type	Block	Street Name	Str Sfx	Cross Street Name	Cross St Sfx	City	Literal Description	Statute
WCSO	3/4/2021	820022106301	WC1211	J. Hutchins	Citation	0	WILDWOOD AVE				Birchwood	BW - No overnight parking	502.040
WCSO	3/12/2021	820082107101	WC176	N. Sullivan	Citation	0	LAKE AVE				Birchwood	CRIM-HARASSMENT RESTRAINING ORDER VIOLATION CRIM-VIOLATION OF A COURT ORDER - MS-VIOLATION OF COURT ORDER-WILLFUL DISOBEDIENCE TO COURT MANDATE	609.748.6(b)
WCSO	3/12/2021	820082107101	WC176	N. Sullivan	Citation	0	LAKE AVE				Birchwood	CRIM-HARASSMENT RESTRAINING ORDER VIOLATION CRIM-VIOLATION OF A COURT ORDER - MS-VIOLATION OF COURT ORDER-WILLFUL DISOBEDIENCE TO COURT MANDATE	588.20.2(4)
WCSO	3/17/2021	820006107601	WC1209	C. Rice	Citation	0	WILDWOOD AVE				Birchwood	BW - Winter parking ban REG-Motor Vehicle Displaying Expired Registration	502.060
WCSO	3/17/2021	820006107601	WC1209	C. Rice	Citation	0	WILDWOOD AVE				Birchwood	BW - Winter parking ban REG-Motor Vehicle Displaying Expired Registration	168.09.4
WCSO	3/17/2021	820006107602	WC1209	C. Rice	Citation	0	WILDWOOD AVE				Birchwood	BW - Winter parking ban REG-Motor Vehicle Displaying Expired Registration	502.060
WCSO	3/17/2021	820006107602	WC1209	C. Rice	Citation	0	WILDWOOD AVE				Birchwood	BW - Winter parking ban REG-Motor Vehicle Displaying Expired Registration	168.09.4

WCSO	3/17/2021	820001107603	WC1282	M. Ramos	Citation	3800	EAST COUNTY LINE RD				Birchwood	MOV-Speed-Exceed Limit DL-Driving w/o Valid MN Drivers License/More than one DL/Wrong Class	169.14.2(a)
WCSO	3/17/2021	820001107603	WC1282	M. Ramos	Citation	3800	EAST COUNTY LINE RD				Birchwood	MOV-Speed-Exceed Limit DL-Driving w/o Valid MN Drivers License/More than one DL/Wrong Class	171.02.1(a)
WCSO	3/17/2021	820001107604	WC1282	M. Ramos	Citation	3800	EAST COUNTY LINE RD				Birchwood	CRIM-Possess Small Amount of Marijuana in MV (1.4 grams or more) MOV-Speed-Exceed 30 mph-Urban District CRIM-Possession of Drug Paraphernalia	152.027.3
WCSO	3/17/2021	820001107604	WC1282	M. Ramos	Citation	3800	EAST COUNTY LINE RD				Birchwood	CRIM-Possess Small Amount of Marijuana in MV (1.4 grams or more) MOV-Speed-Exceed 30 mph-Urban District CRIM-Possession of Drug Paraphernalia	169.14.2(a)(1)
WCSO	3/17/2021	820001107604	WC1282	M. Ramos	Citation	3800	EAST COUNTY LINE RD				Birchwood	CRIM-Possess Small Amount of Marijuana in MV (1.4 grams or more) MOV-Speed-Exceed 30 mph-Urban District CRIM-Possession of Drug Paraphernalia	152.092(a)
WCSO	3/18/2021	820001107705	WC1282	M. Ramos	Citation	3800	EAST COUNTY LINE RD				Birchwood	MOV-Speed-Exceed Limit	169.14.2(a)

WCSO	3/19/2021	820001107807	WC1282	M. Ramos	Citation	3900	EAST COUNTY LINE RD				Birchwood	MOV-Speed-Exceed Limit	169.14.2(a)
WCSO	3/19/2021	820001107808	WC1282	M. Ramos	Citation	3800	EAST COUNTY LINE RD				Birchwood	MOV-Speed-Exceed Limit	169.14.2(a)
WCSO	3/25/2021	820001108410	WC1282	M. Ramos	Citation	3900	EAST COUNTY LINE RD				Birchwood	MOV-Speed-Exceed Limit	169.14.2(a)

MEETING MINUTES (Draft)

Birchwood Planning Commission Meeting

Virtual Meeting per Governor's Request – 7:01 PM Meeting 3/25/2021

Submitted by Michael Kraemer – acting secretary

COMMISSIONERS PRESENT: Andy Sorenson – Chairman, Jozsef Hegedus, Ryan Hankins, Michael Kraemer

COMMISSIONERS ABSENT: none

OTHERS PRESENT: Cameron Sigecan – property owner 143 Wildwood Ave.

1. CALL TO ORDER Meeting called to order by Chairman Andy Sorenson at 7:01 pm.
2. APPROVE AGENDA
 - a. Motion by Michael Kraemer to approve the agenda, second by Ryan Hankins: Approved unanimously.
3. AGENDA ITEM A - Variance Case No 21-02-VB - 143 Wildwood Ave
 - a. Property owner Cameron Sigecan was present to discuss the newly submitted architectural drawings on the remodel of his home at 143 Wildwood Ave.
 - i. Mr. Sigecan discussed the two new architectural renderings submitted this past week. The two renderings have been revised to relocate the proposed garage reconstruction to the center of the lot to line up with the north and south walls of the existing house.
 - ii. He explained his relocation would maximize the side yard setbacks and better achieve the 10' guideline in the Village Code.
 - iii. Mr. Sigecan identified that the garage relocation would require the addition of a new entrance. The new entrance overhang structure would still exceed the 10' side yard setback requirements.
 - b. Finding of Fact
 - i. The property at 143 Wildwood Ave was determined to be a non-conforming pre-existing parcel with five non-conforming issues.
 - ii. ISSUE #1 – UNDER SIZED LOT, Code: 302.005 The lot is undersized at 8250 sf versus the Village Code requirement of 9000 sf for a pre-existing riparian lot.
 1. FINDING: The parcel should be considered eligible for grandfathering in as compliant with the minimal lot size and recognized as a pre-existing single-family lot as there is no practical way to add to the property.
 - iii. ISSUE #2 – SIDE YARD SETBACK, Code: 302.020.2 The revision to the plans theoretically move the proposed garage to the center of the lot and align it with the exterior of the house. The resultant side yard setbacks will be 9'-6" to 10' on the north and 10'+ on the south.
 1. **ADDITIONAL INFORMATION REQUEST** Site plans did not show location and setback dimensions of the proposed garage structure. Planning Commission requested plans be update to show proposed location and dimension so they can be incorporated into the variance review.

2. FINDING: Planning Commission commented favorably on the relocation as approaching compliance with the 10' Village Code the side yard guideline even with one corner's actual dimension will be 9'-6". Good practical effort was made to comply with the Code by moving the garage to the center of the lot and a previous side yard setback of 4'-6"
- iv. ISSUE #3 – STREET SET BACK Code 302.020.2 The current Village Code for municipal street setback is 40'. The relocation of the garage up tight against the house will put the garage setback from the right of way at 26' and 30'+ from the edge of the street bituminous.
 1. FINDING: Planning Commission commented that the proposed relocation of the garage up tight against the house as a favorable way to maximize the street setback. The 26' setback achieved by the relocation of the garage will afford the property 26' for off ROW parking.
- v. ISSUE #4 – IMPAIRED SITE LINES At the February meeting neighbor Doug Danks identified that if the location of the addition of a bonus room above the walkout garage was allowed to be built against the property line it would impair their view of the lake from across Wildwood Ave.
 1. FINDING: The relocation of the new garage to the center of the lot and up against the house will place the bonus room above the garage in line with the current house roof line and minimize any additional site line impediments.
- vi. ISSUE #5 – IMPERVIOUS SURFACE. Code 302.050 The relocation of the garage against the house will eliminate the underground tunnel, create a similar garage impervious footprint, and add 12' additional impervious length to the driveway. The total impervious footprint including the house, garage, entry, driveway and sidewalk are estimated to create an impervious footprint of approximately 3065 sf on the 8250-sf lot. This calculates to an impervious percentage on the parcel of 37% versus Village Code guideline of 25%.
 1. **FINDING: No impervious calculations nor storm water management plan were provided with the variance application there for the application was incomplete and no action could be taken.**
 2. **ADDITIONAL INFORMATION REQUEST. Planning Commission requested the applicant provide the prescribed impervious calculations and storm water management plan if he would like the application considered.**
- vii. ISSUE #6 – SLOPE STABILIZATION
 1. **FINDING:** The relocation of the garage 12' into the slope will expose the adjacent garage wall and slope. No information was provided on how that wall and slope would be stabilized.
- viii. Final Resolution.
 1. **FINAL ACTION: Commissioner Ryan Hankins moved that the application was incomplete and had be tabled until the April planning commission meeting or until the property owner provide the required stormwater management plan, revised site plan showing garage**

setbacks and location dimensions, and information on wall/slope stabilization information. Motion was second by Jozsef Hegedus. Vote: Yes 4, No 0 Motion passed.

4. AGENDA ITEM B – Second Review of Sec. 302.070 Fence Ordinance with City Council Comments.
 - a. Overview: The request for additional review of the Fence Ordinance was broken into the following five questions.
 - i. Review of the County Road Setback dimension of 20'
 1. DISCUSSION: Since the west edge of the Village of Birchwood is defined by County Road Jozsef Hegedus computer had dropped his call. TH-120/Century Ave/East County Line Road the Planning Commission felt it wise to address the setback dimension in the Fence Ordinance as applicable.
 2. DISCUSSION: It was the understanding of the Planning Commission that the reason the 20' County Road dimension was called out specifically in the Village Code of setbacks was the concern of safety. It was the understanding of the Planning Commission that the concern centered around the higher volumes and higher speed traffic generally associated with County roads.
 3. DECISION: The Planning Commission elected to honor the safety consideration of the original code and leave the existing Village Code dimension at 20'. Vote: Yes – 4, No – 0
 - ii. Change Name from Nuisance Fence to Nuisance Barrier.
 1. DISCUSSION: It was the impression from listening to the Council deliberation that the Council felt changing the name to Barrier would help with the differentiation and enforcement of this new fence category.
 2. DECISION: The Planning Commission felt the need for the Nuisance Fence category still exists, and agreed the name change might help the administration of this new code element. Vote to approve the change to new wording -Nuisance Barrier. Yes – 4, No – 0.
 - iii. Change the permit form for Nuisance Barrier from Interim Use Permit to Conditional Use Permit.
 1. DISCUSSION: The Planning Commission agreed with the rationale that a Conditional Use Permit format better fit the application and objective the Nuisance Fence code item.
 2. DECISION: The Planning Commission vote to change the application permit type to Conditional Use Permit. Yes – 4, No – 0
 - iv. Change the abolishment of the use of electric or barbwire fence to limiting the use no closer than 20' from property line.
 1. DISCUSSION: Planning Commission agreed with Council recommendation to make the change from abolishing the use for

electric are barbwire fence to allowing their use up to within 20' of property line. Vote: Yes – 4, No – 0

- v. Council request to reconsider the use of Garden or Seasonal Fence designation.
 1. DISCUSSION: No one on the Planning Commission was quite sure what the Council's request was here.
 2. DISCUSSION: In light of the uncertainty of the Councils request the Planning Commission revisited their previous recommendation and elected to eliminate the category of Garden or Seasonal fence to eliminate confusion in the Code. The Commission elected to recommend that the Code use the category of Nuisance Fence to govern this category. Vote to cancel Planning Commission request for the Council to consider the category of Garden or Seasonal Fence. Yes – 4, No – 0.
5. Agenda Item C – Approve Minutes from Planning Commission February 25, 2021 meeting
 - a. Motion to approve minutes made by Jozsef Hegedus, second by Ryan Hankins. Vote: Yes – 4, No – 0.
6. Planning Commission Follow-up Workshop
 - a. Advisory vote was taken to schedule a follow-up Planning Commission Workshop to review the topic/minutes from the March 16, 2021 Workshop. In an effort to review the large volume of material covered at the March workshop the Planning Commission has elected to hold a second workshop following the regularly scheduled April 22, 2021 meeting. The workshop will be held after the closure of the regular meeting. The purpose of the workshop will be to determine if any of the topics discussed at the first workshop warrant elevating to the agenda of future meetings for action consideration.
 - b. Advisory vote to have Chairman Sorenson schedule the workshop. Yes – 3 , No – 0
Jozsef Hegedus computer had dropped his call.
 - c. Since elements in the draft minutes from the 3/16/2021 workshop captured history and precedence information shared by Mr. Doug Danks, Michael Kraemer suggested Mr. Danks be given a chance to review the draft minutes to make sure we accurately captured his thoughts. Advisory vote to send draft minutes to Mr Danks for review: Yes – 4. No - 0
7. Adjournment
 - a. At 8:35 motion was made by Michael Kraemer and 2nd by Ryan Hankins to adjourn the meeting. Vote: Yes – 3, NO – 0. Jozsef Hegedus computer had dropped his call.

Birchwood Dock Association Virtual 2021 Spring Meeting

Saturday, April 17th: 9:30 am – 10:20am
WebEx meeting link: <https://bit.ly/3us2nhz>

Hello Birchwood Neighbors!

The ice went out last week, which means it is time again for the Dock Association Spring meeting! The continued COVID situation necessitates we have our spring meeting virtually again this year. All Boating and Non-Boating Members are invited to join us as we make plans and set the schedules for the 2021 boating season. Please join our WebEx meeting via the April 7th email, or through the link above.

Hope to “see” all of you on April 17th!
-David Heiden
242 Wildwood Ave

The agenda for this meeting follows:

- Call to Order
- Agenda Review
- Old Business
 - Approve Fall Meeting Minutes
- Treasurer’s Report
- New Business
 - Boat Slip Assignments & Commitment
 - 22 spaces committed in 2021, slips are full
 - Identify Lake Tract Managers
 - Dock in Date – Update from Miller Marine
 - Non-returning boaters: mark lifts as “do not install”
 - Remove from easement by May 1st
- President’s Notes
 - Each boater needs to carry \$1M in insurance
- Adjourn



2021 Dock Association Board of Directors:

David Heiden- President
Dana Klump - Vice President
Alicia Jackola - Secretary

Lynn Hanson – Treasurer
Jim Berg - Member at Large

Non-boaters: Please consider becoming a voting member of the Association!
Please send this form with your **\$35 Annual Membership Fee**.

First and Last Name:

Address:

Phone Number:

Email:

Please Mail: **Birchwood Dock Association, 242 Wildwood Ave, Birchwood, MN 55110**

MEMORANDUM



TO: Birchwood Village City Council
FROM: Tobin Lay, Treasurer
SUBJECT: March Treasurer's Report
DATE: April 7, 2021

Dear Mayor & Council Members,

Andy informed me that during the March 9, 2021 City Council meeting, Council Members discussed some confusion with items on the treasurer's report and directed me to reallocate some of the funds. Specifically, there was discussion about how the T.A. Schifsky's invoice was paid last July for the Lake Ave and warming house parking lot paving job. The Council had previously directed me to charge \$3,500 of that invoice to the 210 Special Revenue Fund (park fund). After looking into the history of this claim, this is what I've found:

Payment for the invoice was cut on July 7, 2020 and was originally coded to come out of the 406 Capital Projects PW Fund. Upon the Council's direction last month, I recoded that same file so that \$3,500 was charged to the 210 Special Revenue Fund and I left the coding for the remainder of the file unchanged. There was no transfer of funds, just a recoding/correction of the CTAS file.

As was pointed out by Mayor Wingfield last month, none of that invoice should have been charged to the 406 Fund because the Council never authorized that to happen. Accordingly, I have now recoded/corrected the CTAS file so that the remaining balance is coded 100-49201-430 (General Fund-Unallocated Expenditures-Misc.), as directed. Again, I did not transfer funds, I simply recoded/corrected the file. The file now shows \$3,500 coming out of the 210 Fund and \$40,870 coming out of the 100 General Fund. Please be advised that the unallocated expenditure account in the general fund only has a budget of \$1,930 for the year. This transaction exceeds that budget.

The Council also directed me to transfer \$5,000 from the 210 Special Revenue Fund to the 100 General Fund to cover parks related expenditures that took place in 2020. That transfer has been completed. As it has been our policy to authorize fund transfers via resolution, I have requested Andy create a resolution to cover this and the last transfer of \$35,000 from the 601 Water Fund to the newly established 620 Water Meter Upgrade Fees Fund. Please look out for that resolution.

Thank you,
Tobin Lay
City Treasurer

For the Period : 3/9/2021 To 4/7/2021

<u>Name of Fund</u>	<u>Beginning Balance</u>	<u>Total Receipts</u>	<u>Total Disbursed</u>	<u>Ending Balance</u>
General Fund	\$369,683.06	\$5,555.51	\$13,182.79	\$362,055.78
Road and Bridge	\$0.00	\$0.00	\$0.00	\$0.00
Other Federal Programs	\$0.00	\$0.00	\$0.00	\$0.00
Comp Plan Grant	(\$4,040.00)	\$0.00	\$0.00	(\$4,040.00)
Tree Canopy Care	\$0.00	\$0.00	\$0.00	\$0.00
Special Rev Projects	\$24,225.69	\$0.00	\$5,000.00	\$19,225.69
Spec Rev - Warm House	\$40.00	\$0.00	\$0.00	\$40.00
REIMBURSED CONTRACTED SERVICES	\$0.00	\$0.00	\$0.00	\$0.00
General Debt Service (Identify) (Inactive)	\$0.00	\$0.00	\$0.00	\$0.00
Birchwood In Re-hab Bond	\$0.00	\$0.00	\$0.00	\$0.00
Sewer Re-hab Debt	\$2,119.89	\$0.00	\$0.00	\$2,119.89
CAPITAL PROJECT FUNDS (401 through 499)	\$0.00	\$0.00	\$0.00	\$0.00
General Capital Projects	\$0.00	\$0.00	\$0.00	\$0.00
Municipal State Aid Streets - Construction (Inactive)	\$0.00	\$0.00	\$0.00	\$0.00
Capital Project PW	\$123,615.31	\$0.00	\$0.00	\$123,615.31
Water	\$20,541.05	\$0.00	\$2,395.39	\$18,145.66
Sewer	\$120,908.94	\$10,821.14	\$7,738.67	\$123,991.41
Transit System	\$0.00	\$0.00	\$0.00	\$0.00
Sewer Infrastructure	\$0.00	\$0.00	\$0.00	\$0.00
Water Meter Upgrade Fees	\$35,205.68	\$0.00	\$0.00	\$35,205.68
Engineering Services	\$0.00	\$0.00	\$0.00	\$0.00
Total	\$692,299.62	\$16,376.65	\$28,316.85	\$680,359.42

Disbursements Register

Fund Name: All Funds

Date Range: 03/09/2021 To 04/07/2021

<u>Date</u>	<u>Vendor</u>	<u>Check #</u>	<u>Description</u>	<u>Void</u>	<u>Account Name</u>	<u>F-A-O-P</u>	<u>Total</u>
03/12/2021	IRS - US Treasury	EFT031221A	Federal Taxes - Q1 2021 - Feb Payment	N	Clerk - Treasurer	100-41401-100-	\$ 1,692.75
	Total For Check	EFT031221A					\$ 1,692.75
03/18/2021	Payroll Period Ending 03/13/2021	31354	Administrator	N	Clerk - Treasurer	100-41401-100-	\$ 917.25
	Total For Check	31354					\$ 917.25
03/18/2021	Payroll Period Ending 03/13/2021	31355	Deputy Clerk	N	Clerk - Treasurer	100-41401-100-	\$ 436.52
	Total For Check	31355					\$ 436.52
03/18/2021	PERA	EFT031821A	Personnel Retirement - Gonyou	N	Clerk - Treasurer	100-41401-121-	\$ 231.00
	Total For Check	EFT031821A					\$ 231.00
03/23/2021	Payroll Period Ending 02/28/2021	31356	Maintenance / Rink - Jim Rydeen	N	Parks	100-45207-100-	\$ 316.18
	Total For Check	31356					\$ 316.18
03/23/2021	Cavanor, Katie	31357*	Kayak Permit Overpayment Partial Refund	N	MISCELLANEOUS	100-49001-810-	\$ 5.00
	Total For Check	31357					\$ 5.00
03/23/2021	PERA	EFT032321A	Personnel Retirement - Rydeen	N	Parks	100-45207-121-	\$ 51.80
	Total For Check	EFT032321A					\$ 51.80
03/31/2021	Payroll Period Ending 03/27/2021	31358	Administrator	N	Clerk - Treasurer	100-41401-100-	\$ 917.25
	Total For Check	31358					\$ 917.25
03/31/2021	Payroll Period Ending 03/27/2021	31359	Deputy Clerk	N	Clerk - Treasurer	100-41401-100-	\$ 546.25
	Total For Check	31359					\$ 546.25
03/31/2021	PERA	EFT033121A	Personnel Retirement - Gonyou	N	Clerk - Treasurer	100-41401-121-	\$ 231.00
	Total For Check	EFT033121A					\$ 231.00
04/07/2021	Payroll Period Ending 03/31/2021	31360	Treasurer	N	Clerk - Treasurer	100-41401-100-	\$ 429.25
	Total For Check	31360					\$ 429.25
04/07/2021	Andrew Gonyou	31361	Reimbursement - Postage	N	Postage/Postal Permits	605-41430-810-	\$ 176.00
	Total For Check	31361					\$ 176.00

Fund Name: All Funds
 Tuesday, April 13th 2021 City Council Meeting
Date Range: 03/09/2021 To 04/07/2021

<u>Date</u>	<u>Vendor</u>	<u>Check #</u>	<u>Description</u>	<u>Void</u>	<u>Account Name</u>	<u>F-A-O-P</u>	<u>Total</u>
04/07/2021	Lay, Tobin	31362*	Reimbursement - Zoom	N	Unallocated Expenditures	100-49201-430-	\$ 16.06
	Total For Check	31362					\$ 16.06
04/07/2021	Manship Plumbing & Heating Inc	31363	Standby & Locates - Mar 2021	N	Water Utility	601-43180-314-	\$ 600.00
		31363				601-43180-314-	\$ 240.00
	Total For Check	31363					\$ 840.00
04/07/2021	Tracy Printing, Inc.	31364*	U/B Envelopes	N	Office Operations Supplies	601-41911-210-	\$ 243.26
		31364*				605-41911-210-	\$ 243.26
	Total For Check	31364					\$ 486.52
04/07/2021	Companion Animal Control LLC	31365	Animal Control Services - Mar 2021	N	Animal Control	100-41916-314-	\$ 80.00
	Total For Check	31365					\$ 80.00
04/07/2021	Gopher State One Call	31366*	Billable Tickets (15) - Mar 2021	N	Utility Locates	605-42805-314-	\$ 20.25
	Total For Check	31366					\$ 20.25
04/07/2021	City of Roseville	31367*	IT Services - Apr 2021	N	General Government Buildings and Plant	100-41940-320-	\$ 692.70
	Total For Check	31367					\$ 692.70
04/07/2021	Press Publications	31368*	Legal Notice Publications - Apr 2021	N	Ordinances and Proceedings	100-41130-351-	\$ 99.94
	Total For Check	31368					\$ 99.94
04/07/2021	BIRCH, INC.	31369*	Snow Removal Services - 03/15/2021 - 03/16/2021	N	Ice and Snow Removal	100-43125-210-	\$ 337.50
		31369*				100-43125-314-	\$ 497.00
	Total For Check	31369					\$ 834.50
04/07/2021	TSE, Inc. Work Account	31370*	Janitorial Services - Mar 2021	N	General Government Buildings and Plant	100-41940-314-	\$ 25.00
	Total For Check	31370					\$ 25.00
04/07/2021	R Leeves Productions LLC	31371*	Videography - Mar 2021	N	Cable Eqpmt and Service	100-41950-314-	\$ 109.45
	Total For Check	31371					\$ 109.45
04/07/2021	Metropolitan Council - Env. Service	31372*	Wastewater Service - Apr 2021	N	Sewer Utility	605-43190-217-	\$ 4,988.17
	Total For Check	31372					\$ 4,988.17
04/07/2021	SL-serco	31373*	Water Meter Readings - Feb 2021	N	Water Utility	601-43180-314-	\$ 1,300.00

Fund Name: All Funds
 Tuesday, April 13th 2021 City Council Meeting
Date Range: 03/09/2021 To 04/07/2021

<u>Date</u>	<u>Vendor</u>	<u>Check #</u>	<u>Description</u>	<u>Void</u>	<u>Account Name</u>	<u>F-A-O-P</u>	<u>Total</u>
		Total For Check	31373				\$ 1,300.00
04/07/2021	Toshiba Business Solutions	31374*	Printer Maintenance - 03/09/2021 - 04/08/2021	N	Office Operations Supplies	100-41911-314-	\$ 10.62
		Total For Check	31374				\$ 10.62
04/07/2021	White Bear Township	31375*	Contracted Services - L/S 2 & 3	N	Sewer Utility	605-43190-314-	\$ 1,700.19
		Total For Check	31375				\$ 1,700.19
04/07/2021	USS Minnesota One MT LLC	31376*	Energy Charges - Feb 2021	N	General Government Buildings and Plant	100-41940-380-	\$ 62.50
		31376*			Sewer Utility	605-43190-380-	\$ 302.09
		31376*				605-43190-380-	\$ 166.67
		Total For Check	31376				\$ 531.26
04/07/2021	Menards - Maplewood	31377*	Parks Supplies	N	Parks	100-45207-400-	\$ 17.96
		Total For Check	31377				\$ 17.96
04/07/2021	Menards - Oakdale	31378*	Parks Supplies	N	Parks	100-45207-400-	\$ 22.29
		31378*				100-45207-400-	\$ 3.56
		Total For Check	31378				\$ 25.85
04/07/2021	H.A. Kantrud, P.A.	31379	Attorney Services - Mar 2021	N	Legal Services	100-41601-300-	\$ 1,500.00
		Total For Check	31379				\$ 1,500.00
04/07/2021	City of White Bear Lake	31380*	Fire Services - Mar 2021	N	Fire	100-42201-314-	\$ 2,445.58
		Total For Check	31380				\$ 2,445.58
04/07/2021	PERA	EFT040721A	Personnel Retirement - Lay	N	Clerk - Treasurer	100-41401-121-	\$ 70.00
		Total For Check	EFT040721A				\$ 70.00
04/07/2021	Xcel Energy	EFT040721B*	Gas for L/S 3 Generator: 02/18/2021 - 03/21/2021	N	Sewer Utility	605-43190-383-	\$ 26.78
		Total For Check	EFT040721B				\$ 26.78
04/07/2021	Xcel Energy	EFT040721C*	Gas for L/S 2 Generator: 02/18/2021 - 03/21/2021	N	Sewer Utility	605-43190-383-	\$ 27.92
		Total For Check	EFT040721C				\$ 27.92
04/07/2021	Xcel Energy	EFT040721D*	Xcel Utility Billing - 02/18/2021 - 03/21/2021	N	General Government Buildings and Plant	100-41940-380-	\$ 175.35
		EFT040721D*			Parks	100-45207-380-	\$ 33.70
		EFT040721D*			Sewer Utility	605-43190-380-	\$ 87.34

Fund Name: All Funds
 Tuesday, April 13th 2021 City Council Meeting
Date Range: 03/09/2021 To 04/07/2021

<u>Date</u>	<u>Vendor</u>	<u>Check #</u>	<u>Description</u>	<u>Void</u>	<u>Account Name</u>	<u>F-A-O-P</u>	<u>Total</u>
		Total For Check	EFT040721D				\$ 296.39
04/07/2021	Xcel Energy	EFT040721E*	Electric for Street Lights: 02/03/2021 - 03/02/2021	N	Street Lighting	100-43160-380-	\$ 1,209.33
		Total For Check	EFT040721E				\$ 1,209.33
04/07/2021	Xcel Energy	EFT040721F*	Electric for Tower: 02/18/2021 - 03/21/2021	N	Water Utility	601-43180-381-	\$ 12.13
		Total For Check	EFT040721F				\$ 12.13
04/07/2021	City of Birchwood Village	TRF040721A*	Fund Transfer per Mar 9, 2021 CC Directive	N	Transfer To Governmental Fund	210-49360-720-	\$ 5,000.00
		Total For Check	TRF040721A				\$ 5,000.00
Total For Selected Checks							\$ 28,316.85

Fund Name: All Funds

Date Range: 03/09/2021 To 04/07/2021

<u>Date</u>	<u>Remitter</u>	<u>Receipt #</u>	<u>Description</u>	<u>Deposit ID</u>	<u>Void</u>	<u>Account Name</u>	<u>F-A-P</u>	<u>Total</u>
03/23/2021	MN Management & Budget	171735049*	Court Fines Feb 2021	(03/23/2021) -	N	Court Fines	100-35101-	\$ 30.00
								\$ 30.00
03/23/2021	FTC v A1 Janitorial Sup. Corp Refun	171735050*	Class Action Lawsuit Winnings	(03/23/2021) -	N	Miscellaneous	100-36140-	\$ 25.51
								\$ 25.51
03/23/2021	Strobel	171735051	Kayak/Canoe Permit x 2	(03/23/2021) -	N	Kayak/Canoe Permits	100-32212-	\$ 60.00
								\$ 60.00
03/23/2021	Cummins	171735052	Kayak/Canoe Permit	(03/23/2021) -	N	Kayak/Canoe Permits	100-32212-	\$ 30.00
								\$ 30.00
03/23/2021	Walker	171735053	Kayak/Canoe Permit x 2	(03/23/2021) -	N	Kayak/Canoe Permits	100-32212-	\$ 60.00
								\$ 60.00
03/23/2021	Hegedus	171735054	Kayak/Canoe Permit	(03/23/2021) -	N	Kayak/Canoe Permits	100-32212-	\$ 30.00
								\$ 30.00
03/23/2021	White	171735055	Kayak/Canoe Permit x 2	(03/23/2021) -	N	Kayak/Canoe Permits	100-32212-	\$ 60.00
								\$ 60.00
03/23/2021	LaFoy	171735056	Kayak/Canoe Permit	(03/23/2021) -	N	Kayak/Canoe Permits	100-32212-	\$ 30.00
								\$ 30.00
03/23/2021	Klump	171735057	Kayak/Canoe Permit x 2	(03/23/2021) -	N	Kayak/Canoe Permits	100-32212-	\$ 60.00
								\$ 60.00
03/23/2021	Felt	171735058	Kayak/Canoe Permit x 2	(03/23/2021) -	N	Kayak/Canoe Permits	100-32212-	\$ 60.00
								\$ 60.00
03/23/2021	Malles	171735059	Kayak/Canoe Permit	(03/23/2021) -	N	Kayak/Canoe Permits	100-32212-	\$ 30.00
								\$ 30.00

Fund Name: All Funds
 Tuesday, April 13th 2021 City Council Meeting
Date Range: 03/09/2021 To 04/07/2021

<u>Date</u>	<u>Remitter</u>	<u>Receipt #</u>	<u>Description</u>	<u>Deposit ID</u>	<u>Void</u>	<u>Account Name</u>	<u>F-A-P</u>	<u>Total</u>
03/23/2021	Kropelnicki, Roger & Karen	171735060*	Grotto Pavement Payment 3 of 3	(03/23/2021) -	N	HIGHWAYS AND STREETS	100-34303-	\$ 50.00
								\$ 50.00
03/23/2021	Westphal	171735061*	Kayak/Canoe Permit	(03/23/2021) -	N	Kayak/Canoe Permits	100-32212-	\$ 30.00
								\$ 30.00
03/23/2021	Berkley Risk Administrators Company	171735064*	LMCIT Reimbursement - l/s 3 power pole	(03/23/2021) -	N	MISCELLANEOUS REVENUES	605-36200-	\$ 10,821.14
								\$ 10,821.14
04/07/2021	City of Birchwood Village	171735065*	Fund Transfer per Mar 9, 2021 CC Directive	(04/07/2021) -	N	Transfers from other Funds	100-39205-	\$ 5,000.00
								\$ 5,000.00
Total for Selected Receipts								\$ 16,376.65

As on 4/7/2021

Special Rev Projects

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
Receipts:			
Total Revenues	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
Other Financing Sources:			
Total Other Financing Sources	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
Disbursements:			
Total Disbursements	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
Other Financing Uses:			
Transfer To Governmental Fund			
Interfund Transfers	0.00	5,000.00	(5,000.00)
Total Acct 493	<u>0.00</u>	<u>5,000.00</u>	<u>(5,000.00)</u>
Total Other Financing Uses	<u>0.00</u>	<u>5,000.00</u>	<u>(5,000.00)</u>
Beginning Cash Balance		24,225.69	
Total Receipts and Other Financing Sources		0.00	
Total Disbursements and Other Financing Uses		<u>5,000.00</u>	
Cash Balance as of 04/07/2021		19,225.69	

As on 4/7/2021

Capital Project PW

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
Receipts:			
Total Revenues	0.00	0.00	0.00
Other Financing Sources:			
Total Other Financing Sources	0.00	0.00	0.00
Disbursements:			
Total Disbursements	0.00	0.00	0.00
Other Financing Uses:			
Total Other Financing Uses	0.00	0.00	0.00
Beginning Cash Balance		123,615.31	
Total Receipts and Other Financing Sources		0.00	
Total Disbursements and Other Financing Uses		0.00	
Cash Balance as of 04/07/2021		123,615.31	

As on 4/7/2021

Water

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
Receipts:			
Water Fee	0.00	21,533.74	21,533.74
Penalty - Late Water/Sewer	0.00	174.07	174.07
State and Misc fees	0.00	575.90	575.90
Total Acct 341	0.00	22,283.71	22,283.71
Delinquent Water/Sewer Fees	0.00	468.51	468.51
Miscellaneous	0.00	5,790.79	5,790.79
Total Acct 361	0.00	6,259.30	6,259.30
Total Revenues	0.00	28,543.01	28,543.01
Other Financing Sources:			
Total Other Financing Sources	0.00	0.00	0.00
Disbursements:			
Financial Administration			
Contracted Services	0.00	4,073.73	(4,073.73)
Total Acct 415	0.00	4,073.73	(4,073.73)
Office Operations Supplies			
Operating Supplies (211 through 219)	0.00	243.26	(243.26)
Newsletter			
Printing and Binding (351 through 359)	0.00	150.80	(150.80)
Total Acct 419	0.00	394.06	(394.06)
Water Utility			
Repair and Maintenance Supplies (221 through 229)	0.00	438.84	(438.84)
Contracted Services	0.00	17,626.92	(17,626.92)
Utility Services: Electric Utilities	0.00	53.15	(53.15)
Fees	0.00	860.00	(860.00)
Wtr/Swr Emergency			
Repair and Maintenance Supplies (221 through 229)	0.00	800.00	(800.00)
PROFESSIONAL SERVICES (301 through 319)	0.00	1,041.50	(1,041.50)
Contracted Services	0.00	19,983.56	(19,983.56)
Total Acct 431	0.00	40,803.97	(40,803.97)
Total Disbursements	0.00	45,271.76	(45,271.76)
Other Financing Uses:			
Transfer To Enterprise Fund			
Interfund Transfers	0.00	35,000.00	(35,000.00)
Total Acct 493	0.00	35,000.00	(35,000.00)
Total Other Financing Uses	0.00	35,000.00	(35,000.00)
Beginning Cash Balance		69,874.41	
Total Receipts and Other Financing Sources		28,543.01	
Total Disbursements and Other Financing Uses		80,271.76	
Cash Balance as of 04/07/2021		18,145.66	

As on 4/7/2021

Sewer

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
Receipts:			
Penalty - Late Water/Sewer	0.00	109.97	109.97
Sewer Fee	0.00	18,996.94	18,996.94
Total Acct 341	0.00	19,106.91	19,106.91
Delinquent Water/Sewer Fees	0.00	468.51	468.51
Total Acct 361	0.00	468.51	468.51
MISCELLANEOUS REVENUES	0.00	10,821.14	10,821.14
Total Acct 362	0.00	10,821.14	10,821.14
Total Revenues	0.00	30,396.56	30,396.56
Other Financing Sources:			
Total Other Financing Sources	0.00	0.00	0.00
Disbursements:			
Postage/Postal Permits			
Refunds and Reimbursements	0.00	176.00	(176.00)
Total Acct 414	0.00	176.00	(176.00)
Office Operations Supplies			
Operating Supplies (211 through 219)	0.00	243.26	(243.26)
Total Acct 419	0.00	243.26	(243.26)
Utility Locates			
Contracted Services	0.00	126.95	(126.95)
Total Acct 428	0.00	126.95	(126.95)
Sewer Utility			
Sewer - Wastewater Charge	0.00	19,952.68	(19,952.68)
Contracted Services	0.00	14,093.40	(14,093.40)
Utility Services (381 through 389)	0.00	1,492.87	(1,492.87)
Utility Services: Gas Utilities	0.00	224.35	(224.35)
Total Acct 431	0.00	35,763.30	(35,763.30)
Unallocated Expenditures			
Miscellaneous (431 through 499)	0.00	300.00	(300.00)
Total Acct 492	0.00	300.00	(300.00)
Total Disbursements	0.00	36,609.51	(36,609.51)
Other Financing Uses:			
Total Other Financing Uses	0.00	0.00	0.00
Beginning Cash Balance		130,204.36	
Total Receipts and Other Financing Sources		30,396.56	
Total Disbursements and Other Financing Uses		36,609.51	
Cash Balance as of 04/07/2021		123,991.41	

As on 4/7/2021

Water Meter Upgrade Fees

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
Receipts:			
Miscellaneous	0.00	205.68	205.68
Total Acct 361	0.00	205.68	205.68
Total Revenues	0.00	205.68	205.68
Other Financing Sources:			
Transfers from other Funds	0.00	35,000.00	35,000.00
Total Acct 392	0.00	35,000.00	35,000.00
Total Other Financing Sources	0.00	35,000.00	35,000.00
Disbursements:			
Total Disbursements	0.00	0.00	0.00
Other Financing Uses:			
Total Other Financing Uses	0.00	0.00	0.00
Beginning Cash Balance		0.00	
Total Receipts and Other Financing Sources		35,205.68	
Total Disbursements and Other Financing Uses		0.00	
Cash Balance as of 04/07/2021		35,205.68	

MINUTES

**OF THE REGULAR MEETING OF THE
CITY OF BIRCHWOOD VILLAGE
VIRTUAL MEETING
JANUARY 12, 2021
7:00PM**

CALL TO ORDER

Mayor Wingfield called the meeting to order at 7:02pm and stated that the meeting was being held remotely in compliance with Governor Walz' Stay at Home Order, then shared the procedure for public hearing and community comment.

MEMBERS PRESENT: Mayor Mary Wingfield, Councilmembers; Kevin Woolstencroft, John Fleck, Justin McCarthy, Mark Foster

STAFF PRESENT: City Administrator, Andy Gonyou; City Attorney, H. Alan Kantrud

PLEDGE OF ALLEGIANCE

OATH OF OFFICE

Swearing in of new Councilmembers; Justin McCarty, Mark Foster, and Mayor Mary Wingfield.

APPROVE AGENDA

MOTION MADE BY COUNCILMEMEBER WOOLSTENCROFT AND SECONDED BY COUNCILMEMER FOSTER TO APPROVE THE AGENDA. ROLL CALL VOTES: AYES; FLECK, WOOLSTENCROFT, FOSTER, MCCARTHY, WINGFIELD. MOTION PASSED

PUBLIC FORUM

A. **Commissioner Karowski** congratulated Mayor Wingfield and Councilmembers McCarthy and Foster on their swearing in and is looking forward to working with the Council.

B. **Barton** Winter(1 Five Oaks Lane, Birchwood) discussed the hockey rink and warming house.

ANNOUNCEMENTS

A. Ice Rink is now open.

B. We are social, follow us on Facebook@BirchwoodCityHallor Twitter@CityofBirchwood

ADMINISTRATIVE PRESENTATION

A. Sheriff's Report

B. 2021 Schedule of Meetings and Holidays

CITY BUSINESS -CONSENT AGENDA

Mayor Wingfield wants to pull out items A and Band move them **under REGULAR AGENDA** under E.

*A. ~~Approve Regular Meeting Minutes from December 8, 2020~~

*B. ~~Approve Treasurer's Report~~

- C. Approve Resolution 2021-01, Designating White Bear Press as the Official Newspaper for Publication
- D. Approve Resolution 2021-02, Naming U.S. Bank and the 4M Fund as Official Depositories of Municipal Funds
- E. Approve Resolution 2021-03, Accepting a Cash Donation from the Artist's Group Members.

MOTION MADE BY COUNCILMEMBER FLECK AND SECONDED BY COUNCILMEMBER FOSTER TO APPROVE THE CONSENT AGENDA ITEMS C, D AND E..ROLL CALL VOTES: AYES: FLECK, FOSTER, WOOLSTENCROFT,MCCARTHY, WINGFIELD. MOTION PASSED.

CITY BUSINESS-REGULAR AGENDA

A. Sgt. Marquardt Invitation

a. Update on Public Safety

- i. Sgt Marquardt discussed the concerns and issues the Council provided to him.

b. Council Questions

B. 2021 Fee Schedule

a. Review Proposed Amendments

- i. **Mayor Wingfield** made some changes to some of the wordings on the fee schedule.
- ii. **Mayor Wingfield** and Councilmembers discussed the increase of the variance application fee from \$300 to \$600 and to also be paid up front.

b. Council Questions

MOTION MADE BY COUNCILMEMBER FLECK AND SECONDED BY COUNCILMEMBER MCCARTHY TO ACCEPT THE 2021 FEE SCHEDULE AS AMENDED. ROLL CALL VOTES: AYES; MCCARTHY, FOSTER, WOOLSTENCROFT, FLECK, WINGFIELD. MOTION PASSED

C. Appoint Planning Commissioners

a. Review Candidates & Appoint Commissioners

- i. Joe Evans (545 Wildwood, Birchwood)
- ii. Ryan Hankins (183 Wildwood, Birchwood)
- iii. Michael McKenzie-(509 Lake Ave, Birchwood)
- iv. David Remely was not able to make the meeting.

b. Council Discussion

MOTION MADE BY MAYOR WINGFIELD AND SECONDED BY COUNCILMEMBER FLECK TO APPOINT RYAN HANKINS TO THE PLANNING COMMISSIONER'SOPENING. ROLL CALL VOTES: AYES; FLECK, WOOLSTENCROFT,FOSTER, MCCARTHY, WINGFIELD. MOTION PASSED.

c. Request of two incumbent Commissioners to be reappointed.

i. John Lund- Chairperson

ii. Michael Kramer

MOTION MADE BY COUNCILMEMBER WOOLSTENCROFT AND SECONDED BY COUNCILMEMBER FOSTER TO ADOPT THE RECOMMENDATION OF THE CITY ADMINISTRATOR GONYOU. ROLL CALL VOTES: AYES; FOSTER, WOOLSTENCROFT, MCCARTHY, FLECK, WINGFIELD. MOTION PASSED.

D. City Planner Search

a. Council discussion

MOTION MADE BY COUNCILMEMBER FLECK AND SECONDED BY COUNCILMEMBER MCCARTHY TO ALTERNATE DOUG DANKS AS CITY PLANNER/CONSULTANT AND STEVE THATCHER IF THERE WOULD BE A CONFLICT OF INTEREST CONCERN. ROLL CALL VOTES: AYES; MCCARTHY, FLECK, FOSTER, WOOLSTENCROFT, WINGFIELD. MOTION PASSED

From the Consent Agenda:

•A. Approve Regular Meeting Minutes from December 8, 2020

a. Mayor Wingfield and Council made some corrections to the minutes.

MOTION MADE BY MAYOR WINGFIELD AND SECONDED BY COUNCILMEMBER WOOLSTENCROFT TO ADOPT THE DECEMBER 8, 2020 MINUTES AS AMENDED. ROLL CALL VOTES: AYES; WOOLSTENCROFT, FOSTER, MCCARTHY, FLECK, WINGFIELD. MOTION PASSED.

*B. Approve Treasurer's Report

a. **Mayor Wingfield** discussed issues of some of the monies that need to be corrected.

MOTION MADE BY MAYOR WINGFIELD AND SECONDED BY COUNCILMEMBER WOOLSTENCROFT TO ADOPT THE TREASURER'S REPORT AS AMENDED. ROLL CALL VOTES: AYES; MCCARTHY, FOSTER, WOOLSTENCROFT, FLECK, WINGFIELD. MOTION PASSED.

E. First Reading Ord 2021-01-01. Sec.302.020 Structure Location Requirements

a. Council Deliberation

i. **Mayor Wingfield** explained as to why this was brought to the January Council Meeting agenda

b. Order Public Hearing and Second Reading

MOTION MADE BY COUNCILMEMBER FLECK AND SECONDED BY COUNCILMEMBER FOSTER TO ADOPT THIS AS A FIRST READING WHICH NEEDS TO BE PUBLISHED IN THE NEWSPAPER AND GO TO THE PUBLIC HEARING AT THE FEBRUARY COUNCIL MEETING. ROLL CALL VOTES: AYES; FOSTER, FLECK, WOOLSTENCROFT, WINGFIELD. NAY; MCCARTHY. MOTION PASSED

F. Sewer Line Inspections

a. Council Deliberation

Mayor Wingfield gave a little bit of background on the Birchwood Ave sewer line inspections which was to be done by Velocity Drain Services.

MOTION MADE BY COUNCILMEMBER WOOLSTENCROFT AND SECONDED BY COUNCILMEMBER FOSTER TO AUTHORIZE CITY ADMINISTRATOR GONYOU TO CONTACT THE REMAINING PROPERTIES AND COORDINATE WITH VELOCITY DRAIN SERVICE TO GET ACCESS TO THE HOMES TO COMPLETE THEIR CONTRACTUAL OBLIGATIONS AND TO RELEASE THE MONIES DUE TO VELOCITY DRAIN SERVICES. ROLL CALL VOTES: AYES; FOSTER, WOOLSTENCROFT, MCCARTHY, WINGFIELD. MOTION PASSED.

G. 310/312 Wildwood Building Inspection (Wingfield)

a. **Mayor Wingfield and Councilmembers** discussed the issues at 310/312 Wildwood regarding the home that is possibly unsafe and a shed that needs to be taken down.

H. Council Member Reports:

a. **Mayor Wingfield**

I. Reconsider Resolution 2020-45, Naming City Treasurer

MOTION MADE BY MAYOR WINGFIELD AND SECONDED BY COUNCILMEMBERFOSTER TO ACCEPT THE RESOLUTION 2020-45 TO CHANGE: 1. THE RETRO ACITVE DATE TO DECEMBER 8TH, AND 2.THE WORDING FROM 20 HOURS/MONTH TO "UPTO 20 HOURS/MONTH" ROLL CALL AYES; FLECK, FOSTER, MCCARTHY, WOOLSTENCROFT, WINGFIELD. MOTION PASSED

ii. Councilmember Assignments and Parks

The Proposed districts for park assignments are as follows:

1. Tighe-Schmitz, Dellwood, and Kay Beaches-McCarthy
2. Ash, Birch, Elm and Wildwood Park- Fleck
3. Bloomquist, Polly's Park and Village Hall -Foster

General assignments for Councilmember ownership are as follows:

1. Roads - **Woolstencroft**
2. Personnel-McCarthy
3. Weeds/Assistant week inspector-Wingfield
4. VolunteerCoordinator-Wingfield
5. Dock Association Liaison - **Foster**
6. Public Safety (police)-Fleck
7. Utility Committee-Wingfield
8. Intergovernmental Relations- **Foster**
9. Buildings -**Wingfield**
10. Acting Mayor- **Fleck**
11. Website-McCarthy
12. Storm water/Drainage-Fleck

13. Planning Commission Liaison - Foster

14. Recycling/Garbage-

15. Grants- McCarthy

iii. 100th Anniversary Booklet

a) **Mayor Wingfield** gave an update on her findings

b) Pursuing a grant for signage

iv. Release 300 Jay Plans-

a) **Mayor and Council** agreed to send plans back to homeowner

v. Mahtomedi Garden Grant

a) **Mayor Wingfield** discussed about what to do with the Grant.

vi. **Mayor and Council** would like to monitor the Snowplow saline brine application efficiency.

vii. **Mayor Wingfield** explained to Councilmember McCarthy how the Public Forum works

viii Parks and Open Space Capital Improvement Plan

a. tabled

b. Councilmember McCarthy

i. League of MN Cities Council Training

MOTION WAS MADE BY COUNCILMEMBER FLECK AND SECONDED BY COUNCILMEMBER FOSTER TO AUTHOIZE COUNCILMEMBER MCCARTHY AND COUNCILMEMBER FOSTER TO GO TO THE LEAGUE OF MN CITIES COUNCIL TRAINING. ROLL CALL VOTES: AYES; FLECK, WOOLSTENCROFT, MCCARTHY, FOSTER, WINGFIELD. MOTION PASSED

ii. IT Task Force

1. Council Deliberation

a. **Mayor and Council** discussed the possibility of putting together an IT Task Force Committee

2. Approve Resolution 2011-05, Creating IT Task Force

a. tabled.

iii. Parks Committee

2. Councilmember McCarthy mentioned that during campaigning, the public wanted to bring back the parks committee. Councilmember McCarthy is looking for discussion from the council and the council pointed out some of the pros and cons.

I. City Attorney's Report

a. Hall/Cedar/Wildwood Junction Update

1. **Mayor Wingfield** mentioned that she is still working with City Attorney Kantrud and the surveyor on getting the documents signed on the agreed easement.

J. City Administrator's Report

a. Deputy Clerk

i. City Administrator Gonyou mentioned that there are two applicants. Council authorized City Administrator to hire best candidate.

b. Rink Attendant Pay

1. Council Deliberation

2. Approve Resolution 2021.04, Approving Rink Attendant Pay Increase

MOTION MADE BY COUNCILMEMBER FLECK AND SECONDED BY COUNCILMEMBER FOSTER TO APPROVE RESOLUTION 2021. 04. ROLL CALL VOTES: AYES; FLECK, WOOLSTENCROFT, FOSTER, MCCARTHY, WINGFIELD. MOTION PASSED.

3. Short Stop Electric

a. Update

MOTION MADE BY COUNCILMEMBER MCCARTHY AND SECONDED BY COUNCILMEMBER FLECK TO PAY SHORT STOP ELECTRIC FOR \$4,005 AND REQUESTED STEVE THATCHER TO GET AN UPDATE ON THESE TWO PROJECTS. ROLL CALL VOTES; AYES; WOOLSTENCROFT, FLECK, MCCARTHY, FOSTER, WINGFIELD. MOTION PASSED

ADJOURN

MOTION MADE BY COUNCILMEMBER WOOLSTENCROFT AND SECONDED BY FLECK TO ADJOURN. ROLL CALL VOTES: AYES; FLECK, FOSTER, MCCARTHY, WOOLSTENCROFT, WINGFIELD. MOTION PASSED. MEETING ADJOURNED AT 9:22pm

ATTEST:

Mary Wingfield
Mayor

Andy Gonyou
City Administrator- Clerk

OF THE REGULAR MEETING OF THE
CITY OF BIRCHWOOD VILLAGE
VIRTUAL MEETING

March 9, 2021

7:00PM

CALL TO ORDER

Mayor Wingfield called the meeting to order at 7:01 and stated that the meeting was being held remotely in compliance with Governor Walz' Stay at Home Order, then shared the procedure for public hearing and community comment.

MEMBERS PRESENT: Mayor Mary Wingfield, Councilmembers; Kevin Woolstencroft, John Fleck, Justin McCarthy, Mark Foster

STAFF PRESENT: City Administrator, Andy Gonyou; City Attorney, H Alan Kantrud

PLEDGE OF ALLEGIANCE

APPROVE AGENDA

Mayor Wingfield stated that she would like to add the following:

- a. Joint Planning Commission meeting with the Council
- b. January minutes
- c. \$30,000 transfer to a Capital Improvements to 2021
- d. Portable restroom at tennis courts
- e. Weight limit permits
- f. State house hearing at the legislature for our sewer funding on the March 16th, 2021.

OPEN PUBLIC FORUM

- a. Randy LaFoy introduced the representative from Suburban Cable Company
- b. **Mayor Wingfield** shared a letter from Andy Sorenson thanking all for keeping up with the hockey rinks.
- c. **Mayor Wingfield** wanted to thank John Lund for his hard work and service with the Planning Commission.

ANNOUNCEMENTS

- A. We are social, follow us on Facebook@BirchwoodCityHall or Twitter@CityofBirchwood
- B. Canoes/kayak rack reservations open.
- C. The historical group are working on the Centennial and the booklet. They are asking for people to submit a couple of short stories, memories, pictures on any Birchwood activities or locations of people and submit items at the City Hall office, Mayor Wingfield's home or at the White Bear Society.

CITY BUSINESS-CONSENTAGENDA

A. Approve Treasurer's Report:

1. **Mayor Wingfield** questioned a \$3,500 that needs to be corrected into the right account.
2. **Mayor Wingfield** also mentioned a \$5,000 transfer that also needs to be corrected into the right account.
3. **Mayor Wingfield** asked Administer Gonyou if he could contact City Treasurer Lay to have him get a short memo together for the City Council letting the Council know if these transfers can be done, or why it hasn't been done.
4. **Mayor Wingfield** talked about the water and sewer amounts are not right, water fund is low, sewer is high. Mayor Wingfield talked to Shelley from St Anthony Village, where Shelley suggested that the utility committee get together to discuss this issue.
6. Last page on expenses- (pg19) paying Xcel for things that seems like double charging. Mayor Wingfield would like Administrator Gonyou to check it out.

MOTION MADE BY MAYOR WINGFIELD AND SECONDED BY COUNCILMEMBERWOOLSTENCROFT TO PAY THE BILLS IN THE TREASURERS REPORT. ROLL CALL VOTES; AYES; FOSTER, MCCARTHY, FLECK, WOOLSTENCROFT, WINGFIELD. MOTION PASSED

B. Approve Regular Meeting Minutes from February 9, 2021

1. **Mayor Wingfield** and Councilmembers pointed out some items that needed to be corrected on the February minutes.

MOTION MADE BY COUNCILMEMBER MCCARTHY AND SECONDED BY FOSTER TO APPROVE THE FEBRUARY 9, 2021 MINUTES. ROLL CALL VOTES: AYES; FOSTER, MCCARTHY, WOOLSTENCROFT, FLECK, WINGFIELD. MOTION PASSED.

C. Approve Resolution 2021-07 (pg 33)

1. **Mayor Wngfield would like the following taken out of the Resolution.**

~~a) WHEREAS, the Water Fund had unexpected expenditures arising from allocation of funds received from the CARES Act~~

~~b) WHEREAS, the Water Fund has been replenished~~

MOTION MADE BY MAYOR WINGFIELD AND SECONDED BY COUNCILMEMBERFLECK TO APPROVE RESOLUTION 2021-07 AS AMENDED. ROLL CALL VOTES: AYES: FLECK, WOOLSTENCROFT, MCCARTHY, FOSTER, WINGFIELD. MOTION PASSED.

CITY BUSINESS-REGULARAGENDA

A. Suburban Cable Commission Presentation

I. Presentation

- a) A representative from the Suburban Cable Company made a power point presentation to propose starting the process of adopting an ordinance which would ultimately renew the agreement between Birchwood Village and the Cable Commission fora cable television franchise agreement.

- b) Discussion and concerns were made by the Mayor and Councilmembers pertaining to this agreement.
- c) Deadline for approval is April 1, 2021.
- d). Mayor Wingfield would like to have this put on the April 13th meeting.

11. 1st reading of Ordinance 2021-03-01

MOTION MADE BY MAYOR WINGFIELD AND SECONDED BY COUNCILMEMBERFLECK, TO APPROVE THIS 1st READING AND TO PUT IT ON FOR A 2nd READING AT OUR APRIL 13th MEETING, AND TO PUBLISH A NOTICE ON THE WEBSITE AND BULLETIN BOARD OUTSIDE OF CITY HALL. LIST IT UNDER CHAPTER 900 OF CITY CODE BOOK WITH THE APPROPRIATE NUMERICALIZATION FOR FITTING INTO OUR CODE BOOK. ROLL CALL VOTES: AYES; FLECK, WOOLSTENCROFT, FOSTER, MCCARTHY, WINGFIELD. MOTION PASSED.

B. Planning Commission Updates

I. Undersized Lot Regulations

- a) tabled

II. Fence Ordinance

- a) Council discussed and addressed some concerns on City Fence Ordinance (Sec. 302.070)

III. Impervious Surface

- b) tabled

C. Planning Commission Vacancy

I. Discuss Chairperson John Lund Resignation

- a) Discussion was made on Chairperson John Lund's Resignation which went into effect immediately

II. Approve Posting Vacancy Notice and Request Letters of Interest

- a) **Mayor Wingfield** and Councilmembers discussed areas to have the Planning Commission vacancy posted and to whom it should be emailed out to. April 5, 2021 was agreed by the Council as the deadline.

D. 2021 Local Board of Appeal and Equalization and Open Book Meeting April 13th.

I. Council Deliberation

11. Change Regular City Council Meeting Date

- a) **Mayor Wingfield** gave an overview on how the Board of Appeal and Equalizations works.
- b) Administrator Gonyou mentioned that the starting time is set for 6:00pm on the same day as the council meeting on April 13, 2021.
- c) Council discussed the options of the timing of both the Council meeting starting at 7:00pm and the Board of Appeal meeting starting at 6:00pm

E.. Uniform Maintenance Code

I. Council Deliberation

a) **Mayor Wingfield** summarized the reason the Uniform Maintenance Code was brought up to the Council. Councilmembers discussed their views and concerns regarding this code.

F. Interim-City Administrator Check-in

I. Council Deliberation on City Staffing

a) **Mayor Wingfield** and Councilmember McCarthy agreed that Administrator Gonyou is doing a great job and looking to postpone his 'check-in" review and bring it back in 6 months. Councilmember McCarthy also wanted to make sure Administrator Gonyou was getting the support and information he needs.

G. City Attorney Reports

I. Husnik Homes

a) **Mayor Wingfield** mentioned that City Attorney Kantrud and Mayor Wingfield were not ready for the review this evening and will potentially have a short, closed session at a later date.

II. Mahtomedi Water Agreement

- a) There are 4 residences on the east side of town that are getting their water from Mahtomedi.
- b) City Attorney Kantrud explained the contents of the Mahtomedi Water Agreement.
- c) **Mayor Wingfield** and Councilmembers voiced their concerns and suggested that Mahtomedi come back to the Council after co-meeting the contract with the affected property owners.

H. Councilmembers Reports

I. Mayor Wingfield

i. 2040 Comp Plan Refund Update

a) Looking for about \$5,000 from met council. Administrator Gonyou hopes to have finalized paperwork by next council meeting. Mayor Wingfield would like him to send an email to the Councilmembers when the paperwork comes in, does not have to be on next meeting's agenda.

II. Subdivision Task Force Update & Request for Engineering Review of First Draft

MOTION MADE BY MAYOR WINGFIELD AND SECONDED BY COUNCILMEMBER MCCARTHY, TO AUTHORIZE THE CITY ENGINEER REVIEW THE FIRST DRAFT OF THE SUBDIVISION CODE FOR REVIEW AND COMMENT. ROLL CALL VOTES; AYES; MCCARTHY, FLECK, WOOLSTENCROFT, FOSTER, WINGFIELD. MOTION PASSED.

a) **Mayor Wingfield** discussed the delivery and working hours for commercial trades from the February 24, 2021 Subdivision Task Force Minutes, item#2, which is looking to change the working hours of commercial trades.

b) **Mayor Wingfield** and Councilmembers discussed their views and concerns.

c) **Mayor Wingfield** would like to have it on as a public hearing to get some outside input. Put on as a 1st reading on the April 13, 2021 Council meeting.

111. Historical Signage Updates

a) With grant money coming to the City of Birchwood Village, it would cover 2 signs.

1. Village Hall - (207 Birchwood Ave)

2. Polly's Park Entrance-(21 White Pine Ln)

i) Councilmembers discussed their views and concerns of possibly replacing some of the pavement with more green space. Will add it to Comprehensive Plan for consideration.

iv. South Side of the Hockey Rink Arborvitaes Planting

a) Discussion was made by Councilmembers

MOTION MADE BY MAYOR WINGFIELD AND SECONDED BY COUNCILMEMBER FLECK TO AUTHORIZE COUNCILMEMBER FLECK TO COME UP WITH A MASTER PLAN, WORKING ALONG WITH MAYOR WINGFIELD, ON THE TYPES OF PLANTINGS TO PURCHASE, AND TO SPEND UP TO \$1,000 WITH A POSSIBLE GRANT OF \$500, TO BE DONE BY THIS SPRING. ROLL CALL VOTES: AYES; WOOLSTENCROFT, FLECK, FOSTER, MCCARTHY, WINGFIELD. MOTION PASSED.

v. Bike Interface with Mahtomedi Final Review

a) **Mayor Wingfield** and Councilmember Fleck met with Mahtomedi last fall. Discussion was made on what was discussed at the Mahtomedi meeting, and mentioned that Birchwood did not exactly receive everything that they agreed on. Speed limit 20mph, yellow striping at pedestrian crossing.

b) Councilmembers discussed their views and concerns. Asked Administrator Gonyou to send an email out to Mahtomedi with the council's concerns.

Mayor Wingfield added from "Approve Agenda."

1) Joint Planning Commission meeting with the Council

i. Joint Planning Commission meeting to talk about working together. Would like an in-person workshop, if possible, in May.

2) January minutes?

3) Transfer \$30,000 to our Capital Improvement for 2021

i. Need to prepare a resolution, by our next City Council meeting on April 13th

4) Requested to put a portable restroom up at tennis/pickle ball courts as soon as possible

i. Council agreed was a good idea

5) Weight limit permits

i. Deputy Clerk Smith was asked to put together a permit form and information sheet.

6) State House hearing at the legislator for our sewer funding on the 16th of March.

i. **Mayor Wingfield** read the letter she received from Representative Fisher.

7) **Mayor Wingfield** also mentioned that more soil was added to where the water main breaks occurred.

Minutes/BirchwoodCityCouncil/March 9, 2021

I. City Administrator Report

i. Village Hall Siding

a) No work has started, still waiting on a finalized contract from Pelco. City Attorney Kantrud will be drafting up the contract to present to Pelco.

ii. Music in The Park

a. Looking to see if Council is interested in pursuing music in the park.

b. Councilmembers discussed their views and concerns and would like to revisit it again at the April 13th meeting.

ADJOURN

MOTION MADE BY COUNCILMEMBER FLECK AND SECONDED BY FOSTER TO ADJOURN THE MEETING. ROLL CALL VOTES: AYES; FOSTER, FLECK, WOOLSTENCROFT, MCCARTHY, WINGFIELD. MOTION PASSED. MEETING ADJOURNED AT 9:47PM

ATTEST:

Mary Wingfield

Mayor

Andy Gonyou

City Administrator

RESOLUTION 2021-09

**CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA**

A RESOLUTION AUTHORIZING FUND TRANSFERS

WHEREAS, each year staff budgets certain operating and debt service transfers between funds; and,

WHEREAS, each year, staff evaluates existing funds and identifies those funds in which all activity has concluded and obligations have been satisfied; and

WHEREAS, the City now has funds from the first half of its 2021 tax levy settlement from Washington County and can now complete fund transfers previously budgeted; and

WHEREAS, the City Council has previously approved a transfer from the Parks Fund to the General Fund.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Birchwood Village hereby authorizes the fund transfers as follows:

- \$30,000 from the General Fund to the Capital Project Fund.
- \$5,000 from the Parks Fund to the General Fund.

Resolution duly seconded and passed this 13th day of April, 2021.

Mary Wingfield, Mayor

Attest:

Andy Gonyou, City Administrator-Clerk

RESOLUTION 2021-11

**CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA**

**A Resolution Declining to Waive the Statutory Monetary Limits on Municipal Tort
Liability Established by Minnesota Statute 466.04**

At a regular meeting of the City Council of the City of Birchwood Village held virtually through video and telephone conferencing on Tuesday, April 13, 2021, via Zoom Video Communications, Inc., with the following members present: Mayor Mary Wingfield, Council Members Jon Fleck, Justin McCarthy, Mark Foster, and Kevin Woolstencroft, and the following absent: none, the Birchwood Village City Council resolved:

WHEREAS, cities obtaining liability coverage from the League of Minnesota Cities Insurance Trust must decide whether or not to waive the statutory tort liability limits to the extent of coverage purchased.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Birchwood Village hereby does not waive the monetary limits on municipal tort liability established by Minnesota Statute 466.04.

Resolution duly seconded and passed this 12th day of April, 2021.

Mary Wingfield
Mayor

Attest:

Andy Gonyou
City Administrator-Clerk



PROPOSAL

Bid To:	Birchwood Misc.	Attention:	Mary Wingfield
Job:		Address:	City of Birchwood Village, MN
Location:	Birchwood, MN	Phone:	651-653-1022
Addendums:	NA	Fax:	
Date:	3.10.2021	Email:	wingfield.mary@gmail.com

We propose the following for the above referenced project:

<u>Crack Filling</u>	<u>Unit</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Amount</u>
City Wide Crack Filling				
Route and fill bituminous cracks	LF	1000	\$1.50	\$1,500.00
<u>Patching</u>	<u>Unit</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Amount</u>
City Wide Patching				
Mobilization PER DAY	Ea	4	\$750.00	\$3,000.00
Crew Rate for Patching Crew	Hr	10	\$530.00	\$5,300.00
Furnish Bituminous Asphalt per ton price	Ton	50	\$70.00	\$3,500.00
Milling for Removals (Based on 36" Wide)	LF	300	\$7.50	\$2,250.00
			Total	\$14,050.00
3- Watermain Breaks				
Mobilization PER DAY	Ea	1	\$750.00	\$750.00
Milling for Removals (Based on 36" Wide)	LF	250	\$7.50	\$1,875.00
Furnish Bituminous Asphalt per ton price	Ton	25	\$70.00	\$1,750.00
Crew Rate for Patching Crew	Hr	10	\$530.00	\$5,300.00
				\$9,675.00

Notes:	<i>Bid is based on SY listed above and provided plan. Not included in bid are permits, unforeseen site conditions, surveying, subgrade correction or excavation, geotextile fabric, and testing.</i>
---------------	--

Contractor's Guarantee

We guarantee all material used in this contract to be as specified above and the entire job to be done in a neat, workmanlike manner. Bid is based on quantities stated. Any variations from the plan or alterations requiring extra labor or material will be performed only upon written order and billed in addition to the sum covered by this contract. Prices are for 2021 unless otherwise specified.

Thank you for the opportunity to quote. If you have any questions please do not hesitate to call.

T.A. Schifsky & Sons, Inc. (Affirmative Action, Equal Opportunity Employer)

Due to the rising cost of asphalt oil fuel, we can only honor our quotes for 30days. After 30 days bids/quotes are subject to our review and possible cost increase. Payment due upon completion.

By: Tuesday, April 13th 2021 City Council Meeting
Rob Stangler 651-775-8399

Date 3.10.2021

Accepted By:

Date

(Bid must be signed and returned)

Due to the rising cost of asphalt oil fuel, we can only honor our quotes for 30days. After 30 days bids/quotes are subject to our review and possible cost increase. Payment due upon completion.

M:\2020\2020 Proposals\Patching\City of Birchwood Patching

Due to the rising cost of asphalt oil fuel, we can only honor our quotes for 30days. After 30 days bids/quotes are subject to our review and possible cost increase. Payment due upon completion.

M:\2020\2020 Proposals\Patching\City of Birchwood Patching

Preserving  Tomorrow's

 **HISTORY** 





WASHINGTON COUNTY HISTORICAL SOCIETY

WASHINGTON COUNTY HISTORICAL SOCIETY

In 1934 a group of individuals gathered at the Stillwater Public Library to “investigate and study the history of Washington County” and to “provide for the collection and preservation” of our history and the Washington County Historical Society was formed.



For more than ninety years, WCHS has focused on purchasing historic buildings and land in order to tell the

stories of the area. Initially storing collections in a room in the library, it quickly became necessary to expand. After incorporating in 1941, the Warden’s House of the Stillwater Prison was purchased from the State of Minnesota. The Warden’s House is the only Minnesota Territorial building remaining, as well as the second oldest continuously operating house museum in the state. It was added to the National Register of Historic Places in 1974.

During the 1970s, the Historical Society took over the tours at the Hay Lake School building and later purchased the school from the Forest Lake School District. At the same time, an 1868 log house, constructed by Johannes Erickson, a Swedish immigrant, was moved onto the site.

Both these buildings have also been added to the National Register of Historic Places.

In 1996, with the collections growing rapidly, the WCHS reconstructed the Warden’s House carriage house for use as storage and a research facility. Now, twenty years later, the collections again have grown to a point to where more storage is needed. More importantly, the organization is now ready to expand its offerings to provide a substantial resource currently lacking in this community: a Heritage Center, to include dedicated exhibit space, up-to-date research facilities, and classroom/meeting areas. This new Center will confirm the role Washington County played in both the early days of statehood as well as allow new opportunities to highlight the important role it continues to play in the ongoing developments of our state and nation. It is to this end that the Board of Director’s approved launching a \$5 million capital campaign in January, 2019.





OUR MISSION and OFFERINGS

The Historical Society operates three historic sites that showcase 19th century heritage of Washington County, Minnesota:

WCHS's mission is to collect, preserve, and disseminate the history of Washington County and the State of Minnesota. The ultimate goal is to provide the opportunity for all to learn about and enjoy this area's unique history and build a sense of community heritage.

Warden's House Museum, Stillwater – Built in 1853 as the residence of the Minnesota Territorial Prison warden, the Museum consists of 14 rooms decorated in the late 19th and early 20th century style.

Hay Lake School and Erickson Log Home, Scandia – The buildings illustrate pioneer life of the area's 19th-century Scandinavian immigrants.

Eder School Museum, located at the Oakdale Nature Center, offers programs by the Historical Society during the summer.

The WCHS:

Sponsors a vintage baseball team

Offers expertise to help community members conserve collections and produce exhibits

Provides educational programs to school groups and the public

Develops and offers historical displays, lectures, and workshops throughout the County

Collects and preserves cultural artifacts and documents for future generations

Writes and publishes books about County history

Maintains an informative history web site (www.wchsmn.org)

Curates 150 years of history in the Carriage House library collection



THE ISSUES FACING WCHS TODAY

While WCHS's house and school museums provide excellent interpretation of pioneer and Victorian life, early schooling, and even life behind bars, these facilities do not have space to adequately highlight other parts of Washington County, its business and agricultural history, and events that occurred before and after the mid- to late nineteenth century. The interpretive sites can not tell the stories of Native American populations, railroads, logging, agriculture, women's suffrage, or prohibition in the County, all of which have had colorful and important roles in the area.

Most of the artifacts and records collected by WCHS are stored at the Warden's House Museum and Carriage House but most are not available for display and are not properly stored for conservation. Some of the issues are:

The lack of museum quality HVAC (heating, ventilation and air conditioning), which is highly detrimental to preservation of the collection.

Inability of proper research for family or local history due to lack of space and technology.

Insufficient exhibit space to display some amazing collection items - including a lumberman's bateaux, a nineteenth century delivery wagon, or an extensive collection of period clothing.

Currently, the Washington County Historical Society is the only organization that is collecting the history of Washington County and preserving its stories. In the near future, our present facilities will run out of space, which will severely affect our ability to collect, preserve, and exhibit the County's historical artifacts and records. In addition, there is no centralized location to create exhibits to showcase the history of this area or to bring in traveling exhibits that will complement our collection.



OUR FUTURE PLANS

The WCHS purchased a building at 1862 South Greeley Street in 2013. Fortunately, part of the purchase included a contract with MNDOT to rent the building while the new bridge over the river was being built, helping to completely pay off the building. The remaining cost of the building was provided by the Margaret Rivers Fund, the Hardenbergh Foundation, Washington County, the City of Stillwater, and many generous donors. This building offers 14,000 square feet of space as well as ample parking and easy access to Highway 36. The new building will allow the Historical Society to become an even greater resource to the County and all its visitors. The Heritage Center will include:

Three exhibit galleries which will provide permanent and temporary exhibit space showcasing local history

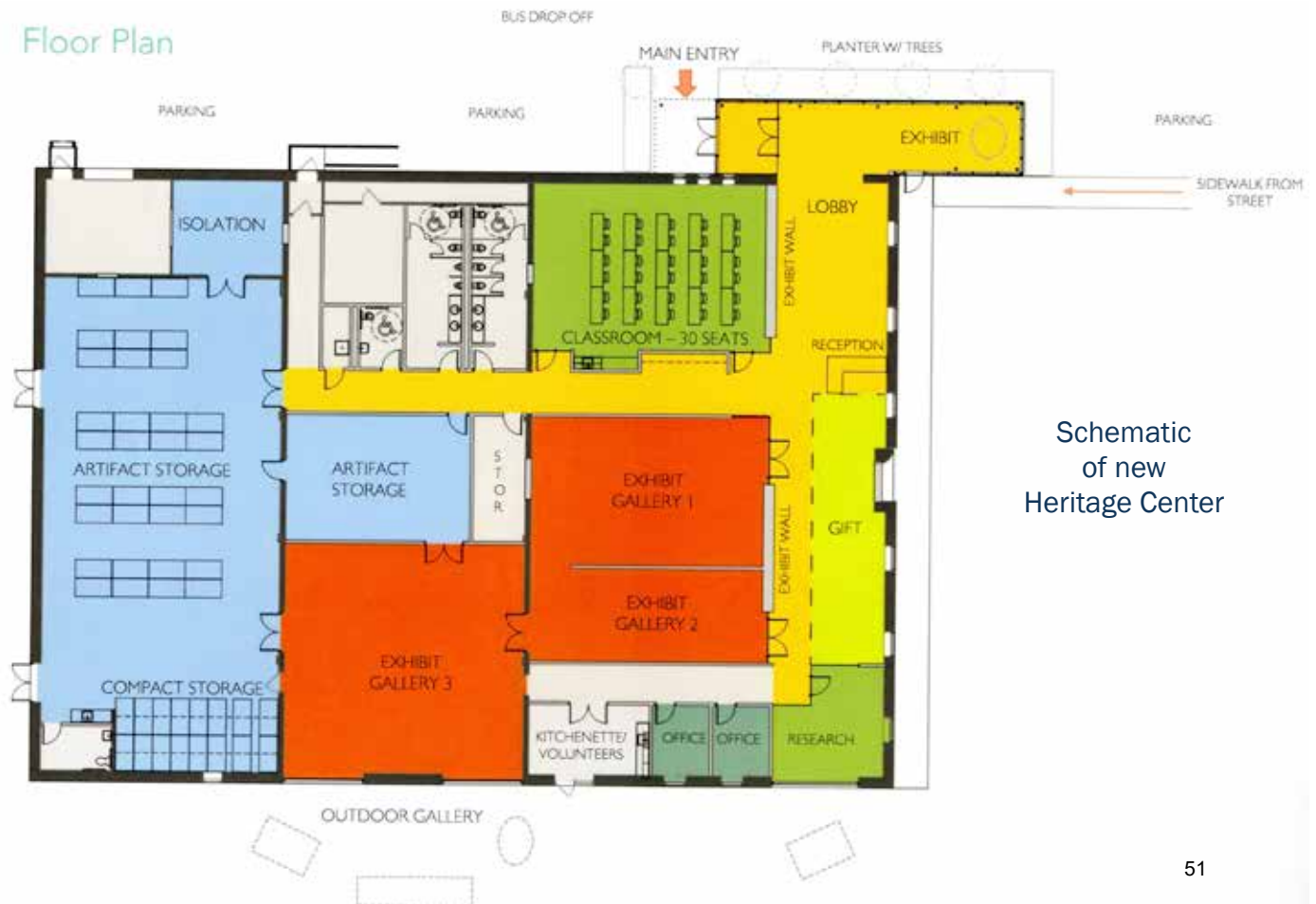
A state of the art archives/research library

Multiple display areas to highlight smaller exhibits

Climate-controlled storage areas to preserve valuable documents and artifacts

Expanded space for larger and more comprehensive education programs

Gift shop space



Schematic of new Heritage Center

HOW YOU CAN HELP

Your gift to the campaign will help the WCHS move forward and make it possible to bring the history of Washington County alive for generations to come. This is our opportunity to step forward into the future in order to preserve our past. Please join us!



WAYS TO GIVE

We ask you to consider a special pledge toward the Preserving Tomorrow's History capital campaign, over and above what you may already donate to WCHS. There are several ways to make your gift:

Outright gifts:

Checks are payable to the WCHS.

Long Term Pledges:

Pledges payable over a period of three or five years are imperative to reaching our goal, An initial investment of 10% is encouraged, with the balance to be paid in monthly, quarterly, semi-annual or annual installments at the donor's discretion.

IRA contributions:

You may contribute directly from your IRA, eliminating any taxes on appreciated investments.



Non-cash Gifts: Gifts such as securities (stocks, bonds), real estate (homes, buildings, land) and personal property (autos, artwork, antiques, etc.) are also an option. A gift of stock, for example, allows you to avoid capital gains taxes and gives you a tax deduction for the current value of your stock. Please consult your accountant or personal financial advisor for the tax advantages of non-cash gifts.



EXAMPLES OF POSSIBLE GIFT PAYMENTS

Tuesday, April 13th 2021 City Council Meeting

	Total gift	10% Initial Gift	Semi-Annual	Quarterly	Monthly
Lumber Barons	\$500,000	\$50,000	\$45,000	\$22,500	\$7,500
	\$250,000	\$25,000	\$22,500	\$11,250	\$3,750
	\$100,000	\$10,000	\$9,000	\$4,500	\$1,500
Riverboat Captains	\$75,000	\$7,500	\$6,750	\$3,375	\$1,125
	\$50,000	\$5,000	\$4,500	\$2,250	\$750
	\$25,000	\$2,500	\$2,250	\$1,125	\$375
Railroad Engineers	\$10,000	\$1,000	\$900	\$450	\$150
	\$5,000	\$500	\$450	\$225	\$75
	\$2,500	\$250	\$225	\$113	\$38
	\$1,000	\$100	\$90	\$45	\$15

5 year (60 month) pledge payments



NAMING OPPORTUNITIES

Several opportunities are available for individuals or businesses wishing to identify themselves with a particular area in the new building. These include: Three Exhibit halls, Classroom, Lobby and the building itself. Additional information is available.

Your gift will help make this possible.

WASHINGTON COUNTY HISTORICAL SOCIETY

ORDINANCE 2021-03-01

**CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA**

AN ORDINANCE RENEWING THE GRANT OF A FRANCHISE TO COMCAST OF MINNESOTA, INC. TO OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF BIRCHWOOD VILLAGE, MINNESOTA; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF A FRANCHISE; PROVIDING FOR CITY REGULATION AND ADMINISTRATION OF THE CABLE SYSTEM; TERMINATING THE PRIOR FRANCHISE AND ESTABLISHING CHAPTER 900 IN CITY CODE.

FINDINGS

1. The City of [Birchwood Village], Minnesota (“City”), pursuant to applicable federal and state law, is authorized to grant one (1) or more nonexclusive cable television franchises to construct, operate, maintain and reconstruct cable television systems within the City limits.
2. Comcast of Minnesota, Inc., a Pennsylvania corporation (“Grantee”) has operated a Cable System in the City, under a cable television franchise granted pursuant to a Cable Television Franchise Ordinance approved in 1999.
3. Negotiations between Grantee and the City have been completed and the franchise renewal process followed in accordance with Minnesota Statutes Chapter 238 and the Cable Act (47 U.S.C. §546).
4. The City has determined that it is in the best interest of the City and its residents to renew the cable television franchise with Grantee.
5. The Franchise granted to Grantee by the City is nonexclusive and complies with existing applicable Minnesota Statutes, federal laws and regulations.
6. The City has exercised its authority under Minnesota law to enter into a Joint and Cooperative Agreement with other cities authorized to grant cable communications franchises, and has delegated authority to the Ramsey Washington Counties Suburban Cable Communications Commission II to make recommendations to the City regarding this Franchise and to be responsible for the ongoing administration and enforcement of this Franchise as herein provided.

NOW, THEREFORE, THE CITY OF BIRCHWOOD VILLAGE DOES ORDAIN that a franchise is hereby granted to Comcast of Minnesota, Inc., to operate and maintain a Cable System in the City upon the following terms and conditions:

901 CABLE FRANCHISE: DEFINITIONS

For the purpose of this Franchise, the following terms, phrases, words, derivations and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory.

901.010 “Affiliate” means any Person controlling, controlled by or under common control of Grantee.

...

EFFECTIVE DATE: This Ordinance shall be in full force and effect from and after its passage and approval and publication as required by law.

Adopted by the City of Birchwood Village City Council this 13th day of April, 2021

Mary Wingfield
Mayor

Attest:

Andy Gonyou
City Administrator-Clerk

901 CABLE FRANCHISE: DEFINITIONS

For the purpose of this Franchise, the following terms, phrases, words, derivations and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory.

901.010 “Affiliate” means any Person controlling, controlled by or under common control of Grantee.

901.020 “Applicable Law(s)” means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any governmental authority of competent jurisdiction.

901.030 “Basic Cable Service” means any service tier which includes the lawful retransmission of local television broadcast, as set forth in Applicable Law, currently 47 U.S.C. §522(3).

901.040 “Cable Act” means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992, as further amended by the Telecommunications Act of 1996, as further amended from time to time.

901.050 “Cable Service” means (a) the one-way transmission to Subscribers of (i) Video Programming or (ii) other programming service, and b) Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service, as set forth in Applicable Law, currently 47 U.S.C. § 522(6). For the purposes of this definition, “other programming service” means information that a cable operator makes available to all Subscribers generally.

901.060 “Cable System” or “System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within a community, but such term does not include:

- (a) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
- (b) a facility that serves Subscribers without using any Streets;
- (c) a facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;
- (d) an open video system that complies with 47 U.S.C. § 573; or

- (e) any facilities of any electric utility used solely for operating its electric utility system.

Unless otherwise specified, it shall in this document refer to the Cable System constructed and operated in the City under this Franchise.

901.070 “Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel as defined by the FCC by regulation, as set forth in Applicable Law, currently 47 U.S.C. § 522(4).

901.080 “City” means the City of [Birchwood Village], a municipal corporation in the State of Minnesota, acting by and through its City Council, or its lawfully appointed designee.

901.090 “City Code” means the Municipal Code of the City of [Birchwood Village], Minnesota, as may be amended from time to time.

901.100 “Commission” means the Ramsey Washington Counties Suburban Cable Communications Commission II or its successors, delegations, or its lawfully appointed designee, including representatives of the Member Cities as may exist pursuant to a then valid and existing Joint and Cooperative Agreement among Member Cities.

901.110 “Converter” means an electronic device, including Digital Transport Adapters, which converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber, and by an appropriate Channel selector also permits a Subscriber to view all Cable Service signals.

901.120 “City Council” means the governing body of the City of Birchwood Village , Minnesota.

901.130 “Day” means a calendar day, unless otherwise specified.

901.140 “Drop” means the cable that connects the Subscriber terminal to the nearest feeder cable of the cable in the Street and any electronics on subscriber property between the Street and the Subscriber terminal.

901.150 “Effective Date” means April 1, 2021.

901.160 “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

901.170 “Franchise” means the right granted by this Franchise Ordinance and the regulatory and contractual relationship established hereby.

901.180 “Franchise Area” means the entire geographic area within the City as it is now constituted or may in the future be constituted.

901.190 “Franchise Fee” means the fee assessed by the City to Grantee, in consideration of Grantee’s right to operate the Cable System within the City’s Streets, determined in amount as a percentage of Grantee’s Gross Revenues and limited to the maximum percentage allowed for such assessment by federal law. The term Franchise Fee does not include the exceptions noted in 47 U.S.C. §542(g)(2)(A-E).

901.200 “GAAP” means generally accepted accounting principles as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”).

901.210 “Gross Revenues” means, and shall be construed broadly to include, all revenues derived directly or indirectly by Grantee and/or an Affiliated Entity that is the cable operator of the Cable System, from the operation of Grantee’s Cable System to provide Cable Services within the City. Gross Revenues include, by way of illustration and not limitation:

- (f) monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, pay-per-view, pay-per-event, and video-on-demand Cable Services);
- (g) fees paid to Grantee for Channels designated for commercial/leased access use and shall be allocated on a pro rata basis using total Cable Service Subscribers within the City;
- (h) Converter, digital video recorder, remote control, and other Cable Service equipment rentals, leases, or sales;
- (i) installation, disconnection, reconnection, change-in service, “snow-bird” fees;
- (j) Advertising Revenues as defined herein;
- (k) late fees, convenience fees, and administrative fees;
- (l) other service fees such as HD fees, convenience fees, broadcast fees, regional sports fees, home tech support fees, bill payment fees for in-person or phone payments, additional outlet fees, and related charges relating to the provision of Cable Service;
- (m) revenues from program guides and electronic guides;
- (n) Franchise Fees;
- (o) FCC regulatory fees;
- (p) except as provided in subsection (ii) below, any fee, tax or other charge assessed against Grantee by municipality, which Grantee chooses to pass through and collect from its Subscribers; and
- (q) commissions from home shopping channels and other Cable Service revenue sharing arrangements, which shall be allocated on a pro rata basis using total Cable Service Subscribers within the City.

“Advertising Revenues” shall mean revenues derived from sales of advertising that are made available to Grantee’s Cable System Subscribers within the City and shall be allocated on a pro rata basis using total Cable Service Subscribers reached by the advertising. Additionally, Grantee agrees that Gross Revenues subject to Franchise Fees shall include all commissions, representative fees,

Affiliated Entity fees, or rebates paid to National Cable Communications and Comcast Spotlight or their successors associated with sales of advertising on the Cable System within the City allocated according to this paragraph using total Cable Service Subscribers reached by the advertising.

- (i) “Gross Revenues” shall not include:
 - 1. actual bad debt write-offs, except any portion which is subsequently collected, which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total Subscriber revenues within the City; and
 - 2. unaffiliated third-party advertising sales agency fees which are reflected as a deduction from revenues.

Grantee shall allocate fees and revenues generated from bundled packages and services to cable revenues pro rata based on the current published rate card for the packaged services delivered on a stand-alone basis as follows:

- (i) To the extent revenues are received by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a GAAP methodology that allocates revenue, on a pro rata basis, when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, state or local law (for example, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value). The City reserves its right to review and to challenge Grantee’s calculations.
- (ii) Grantee reserves the right to change the allocation methodologies set forth in this section in order to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”). Grantee will explain and document the required changes to the City upon request or as part of any audit or review of Franchise Fee payments, and any such changes shall be subject to the next subsection below.
- (iii) Resolution of any disputes over the classification of revenue should first be attempted by agreement of the parties, but should no resolution be reached, the parties agree that reference shall be made to GAAP as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”). Notwithstanding the foregoing, the City reserves its right to challenge Grantee’s calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

Notwithstanding the above provisions, Grantee will calculate Franchise Fees using the same methodology it uses for all Twin Cities Region franchising authorities with respect to the allocation of revenues among Cable and non-cable Services. Upon written notice by City to Grantee showing that Grantee has afforded more favorable treatment with respect

to the allocation of revenues among Cable and non-cable Services to a local franchising authority elsewhere in the Twin Cities Region, City will get the same favorable treatment Grantee provides to such local franchising authority. Specifically, this methodology is intended to provide City with equivalent treatment of revenues earned from multi-service (for example late fees, nonsufficient-funds fees) and convenience fees assessed on customers to service bundles that include non-cable services. This “most favored nations” provision will not apply where Grantee settles a franchise fee dispute which does not address the treatment of multi-service fees, bundled revenues or GAAP. However, this “most favored nations” provision will apply in the event of any order or judgment resolving a dispute regarding treatment of multi-service fees, bundled revenues, or GAAP between Grantee and a local franchising authority in the Twin Cities Region which results in more favorable treatment with respect to the allocation of revenues among Cable and non-cable Services to the local franchising authority than that afforded by Grantee to City.

901.220 “Member Cities” means those cities that are parties to a then valid and existing joint powers agreement which, at the time of granting this Franchise, include Birchwood Village, Dellwood, Grant, Lake Elmo, Mahtomedi, Oakdale, White Bear Lake, White Bear Township, and Willernie.

901.230 “Normal Business Hours” means those hours during which most similar businesses in the City are open to serve customers. In all cases, “Normal Business Hours” must include some evening hours, at least one (1) night per week and/or some weekend hours.

901.240 “Normal Operating Conditions” means those Service conditions which are within the control of Grantee. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

901.250 “PEG” means public, education and government.

901.260 “Person” means any natural person and all domestic and foreign corporations, closely-held corporations, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, businesses, common law trusts, societies and/or any other legal entity.

901.270 “Street” means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane, and public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility easements. A Street does not include the airwaves above a public right-of-way with regard to cellular or other non-wire telecommunications or broadcast service.

901.280 “Subscriber” means a Person who lawfully receives Cable Service.

901.290 “Twin Cities Region” shall mean the cities in Minnesota wherein Grantee or Affiliate holds a franchise agreement to provide Cable Service.

901.300 “Video Programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

901.310 “Wireline MVPD” means any entity, including the City, that utilizes the Streets to install cable or fiber and is engaged in the business of making available for purchase, by Subscribers, multiple Channels of Video Programming in the City, which could also include the City. For purposes of this Franchise, the term “Wireline MVPD” shall not be limited to entities defined by the FCC as “multichannel video programming distributors” and shall include entities that providemultiple Channels of Video Programming via open video systems, as defined by the FCC, but it is the intent of the Grantee and the City that the term Wireline MVPD shall not include small cellproviders, unless the City has the legal authority under Applicable Law to regulate or to impose cable franchise obligations upon such small cell providers.

902. CABLE FRANCHISE: FRANCHISE

902.010 GRANT OF FRANCHISE

The City hereby authorizes Grantee to occupy or use the City's Streets subject to: 1) the provisions of this non-exclusive Franchise to provide Cable Service within the City; and 2) all applicable provisions of the City Code. Unless this Franchise has expired pursuant to Section 902.080 herein or this Franchise is otherwise terminated pursuant to Section 911.020 herein, this Franchise shall constitute both a right and an obligation to provide Cable Services as required by the provisions of this Franchise.

Nothing in this Franchise shall be construed to prohibit Grantee from: (1) providing services other than Cable Services to the extent not prohibited by Applicable Law; or (2) challenging any exercise of the City's legislative or regulatory authority in an appropriate forum. The City hereby reserves all of its rights to regulate such other services to the extent not prohibited by Applicable Law and no provision herein shall be construed to limit or give up any right to regulate. Except as expressly provided herein, in granting this Franchise, City and Commission release Grantee from any claims they have or could have asserted with respect to underpayment of franchise or other fees through March 31, 2021, under the previous franchise, assuming that the fees owed through March 31, 2021, but not yet paid, are calculated in the same manner that they have been calculated and paid in 2020 (without offsets), and assuming that the fees are timely paid (e.g., the last franchise fee payment under the old franchise must be paid by May 15, 2021).

The parties do not waive any rights the parties may have under the previous franchise regarding Grantee's compliance with all applicable obligations governing Grantee's facilities in Streets, the duty to indemnify, and the duty to repair or pay for damages to public or private property. Conversely, claims that (1) arise before April 1, 2021, and (2) that do not relate to Grantee's compliance with all applicable obligations governing Grantee's facilities in Streets, the duty to indemnify, and the duty to repair or pay for damages to public or private property, are not expressly preserved. A condition that violates this Franchise does not "arise before" April 1, 2021, if that violation exists after April 1, 2021, even if it was also present before the renewal.

902.020 RESERVATION OF AUTHORITY

The Grantee specifically agrees to comply with the lawful provisions of the City Code and applicable regulations of the City. Subject to the police power exception below, in the event of a conflict between A) the lawful provisions of the City Code or applicable regulations of the City and B) this Franchise, the express provisions of this Franchise shall govern. Subject to express federal and state preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendments to the City Code, ordinances or any regulation of City, except in the lawful exercise of City's police power.

Grantee acknowledges that the City may modify its regulatory policies by lawful exercise of the City's police powers throughout the term of this Franchise. Grantee agrees to comply with such lawful modifications to the City Code; however, Grantee reserves all rights it

may have to challenge such modifications to the City Code whether arising in contract or at law. The City reserves all of its rights and defenses to such challenges whether arising in contract or at law. Nothing in this Franchise shall (A) abrogate the right of the City to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City, or (C) be construed as a waiver or release of the rights of the City in and to the Streets.

902.030 FRANCHISE TERM

The term of this Franchise shall be ten (10) years from the Effective Date, unless renewed, amended or extended by mutual written consent in accordance with Section 917.080 or terminated sooner in accordance with this Franchise.

902.040 FRANCHISE AREA

This Franchise is granted for the Franchise Area defined herein. Grantee shall extend its Cable System to provide Service to any residential unit in the City in accordance with Section 906.060 herein.

902.050 FRANCHISE NONEXCLUSIVE

The Franchise granted herein shall be nonexclusive. The City specifically reserves the right to grant, at any time, such additional franchises for a Cable System as it deems appropriate provided, however, such additional grants shall not operate to materially modify, revoke, or terminate any rights previously granted to Grantee other than as described in Section 917.200. The grant of any additional franchise shall not of itself be deemed to constitute a modification, revocation, or termination of rights previously granted to Grantee. Any additional cable franchise grants shall comply with Minn. Stat. § 238.08 and any other applicable federal level playing field requirements.

902.060 PERIODIC PUBLIC REVIEW OF FRANCHISE

The City may conduct a public review of the Franchise. The purpose of any such review shall be to ensure, with the benefit of full opportunity for public comment, that the Grantee continues to effectively serve the public in accordance with Applicable Law, and considering any new cable technology, Grantee's performance with the requirements of this Franchise, local regulatory environment, community needs and interests, and other such factors. So long as Grantee receives reasonable notice, Grantee shall cooperate in good faith. The review shall not operate to modify or change any provision of this Franchise without mutual written consent in accordance with Section 917.080 of this Franchise. The City and Grantee shall each be responsible for their own costs regarding the conduct of, or cooperation with, any such periodic review.

902.070 TRANSFER OF OWNERSHIP

- (a) A sale or transfer of this Franchise, including a sale or transfer by means of a “fundamental corporate change,” as defined in Minn. Stat. § 238.083 Subd. 1, or the sale or transfer of stock in Grantee so as to create a new “controlling interest,” as defined in Minn. Stat. § 238.083 Subd. 6, in the Cable System, shall require the written approval of the City. Grantee shall submit a written request to the City for the City’s approval, provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and assets to secure an indebtedness. The written approval of the City shall not be required under this section for internal corporate reorganizations involving Affiliates or pledges of the Franchise as collateral or security for any loan or other debt instrument.
- (b) City shall approve or deny in writing the sale or transfer request. City shall set forth in writing with particularity its reason(s) for denying approval. City shall not unreasonably withhold its approval.
- (c) Any sale or transfer of stock in Grantee so as to create a new controlling interest in the System shall be subject to the requirements of this Section 902.070. The term “controlling interest” as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.
- (d) In no event shall a transfer or assignment of ownership or control be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations thereunder, and assuming all other rights and obligations of the transferor to the City.
- (e) In accordance with Minn. Stat. § 238.084, Subd. 1(y), the City shall have the right to purchase the System in the event the Franchise or System is proposed to be transferred or sold on the same terms and conditions as the offer pursuant to which transfer notice was provided pursuant to this section. The City shall have thirty (30) days from receipt of an application for consent under this Section 902.070 in which to give notice of its intention to consider exercising such right.
- (f) If the City has issued a written notice of franchise violation in accordance with the terms of this Franchise, the transfer may be conditioned upon the transferee agreeing to a mutually acceptable remediation plan. The approval of any transfer of ownership pursuant to this section shall not be deemed to waive any rights of the City to subsequently enforce noncompliance issues relating to this Franchise even if such issues predated the approval, whether known or unknown to the City.

902.080 EXPIRATION

Upon expiration of the Franchise, the City shall have the right at its own election and subject to Grantee’s rights under Section 626 of the Cable Act to:

- (a) extend the Franchise, though nothing in this provision shall be construed to requiresuch extension;
- (b) renew the Franchise, in accordance with Applicable Laws;
- (c) invite additional franchise applications or proposals;
- (d) terminate the Franchise subject to any rights Grantee has under Section 626 of theCable Act; or
- (e) take such other action as the City deems appropriate

902.090 RIGHT TO REQUIRE REMOVAL OF PROPERTY

At the expiration of the term for which this Franchise is granted, provided no renewal is granted, or upon its forfeiture or revocation as provided for herein, the City shall have the right to require Grantee to remove at Grantee's own expense all or any part of the Cable System from all Streets and public ways within the Franchise Area within a reasonable time. If Grantee fails to do so, the City may perform the work and collect the cost thereof from Grantee. However, Grantee shall have no obligation to remove the Cable System where it utilizes the system to provide other non-Cable Services and has any other authority under Applicable Law to maintain facilitates in the public rights-of-way, or where Grantee is able to find a purchaser of the Cable System who holds such authorization.

902.100 CONTINUITY OF SERVICE MANDATORY

It shall be the right of all Subscribers to receive Cable Service in accordance with the terms of this Franchise and Applicable Law. In the event that Grantee elects to overbuild, rebuild, modify, or transfer the system in accordance with Section 902.070, or the City revokes or fails to renew the Franchise, Grantee shall make its best effort to ensure that all Subscribers receive continuous uninterrupted service, regardless of the circumstances, while the Franchise remains effective. In the event of expiration, revocation/termination, purchase, lease-purchase, condemnation, acquisition, taking over or holding of plant and equipment, sale, lease, or other transfer to any other Person, including any other grantee of a cable communications franchise, the current Grantee shall cooperate fully to operate the system in accordance with the terms and conditions of this Franchise for a temporary period sufficient in length to maintain continuity of service to all Subscribers.

903. CABLE FRANCHISE: OPERATION IN STREETS AND RIGHTS-OF-WAY

903.010 USE OF STREETS

- (a) Grantee may, subject to the terms of this Franchise and the City Code, erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the Streets within the City such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the City. Without limiting the foregoing, Grantee expressly agrees that it will construct, operate and maintain its Cable System in compliance with, and subject to, the requirements of the City Code, including by way of example and not limitation, those requirements governing the placement of Grantee's Cable System; and with other applicable City Codes, and will obtain, pay for and maintain all permits and bonds required by the City Code in addition to those required in this Franchise.
- (b) All wires, conduits, cable and other property and facilities of Grantee shall be so located, constructed, installed and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic and travel upon, or other use of the Streets of City. Grantee shall keep and maintain all of its property in good condition, order and repair so that the same shall not menace or endanger the life or property of any Person. Grantee shall keep accurate maps and records of all of its wires, conduits, cables and other property and facilities located, constructed and maintained in the City.
- (c) All wires, conduits, cables and other property and facilities of Grantee, shall be constructed and installed in an orderly and professional manner in accordance with all applicable requirements of the City Code and Applicable Law. All wires, conduits and cables shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.
- (d) Nothing in this Franchise shall be construed to prevent the City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Street; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.

903.020 CONSTRUCTION OR ALTERATION

Grantee shall in all cases comply with applicable sections of the City Code, City resolutions and City regulations regarding the acquisition of permits and/or such other items as may be reasonably required in order to construct, alter or maintain the Cable System. Grantee shall, upon request, provide information to the City regarding its progress in completing or altering the Cable System.

903.030 NON-INTERFERENCE

Grantee shall exert its best efforts to construct and maintain a Cable System so as not to interfere with other use of Streets. Grantee shall, where possible in the case of above ground lines, make use of existing poles and other facilities available to Grantee. When residents receiving underground service or who will be receiving underground service will be affected by proposed construction or alteration, Grantee shall provide such notice as set forth in the permit or in City Code of the same to such affected residents.

903.040 CONSISTENCY WITH DESIGNATED USE

Notwithstanding the above grant to use Streets, no Street shall be used by Grantee if the City, in its sole opinion, determines that such use is inconsistent with the terms, conditions or provisions by which such Street was created or dedicated, or presently used under Applicable Laws.

903.050 UNDERGROUNDING

- (a) Grantee shall place underground all of its transmission lines which are located or are to be located above or within the Streets of the City in the following cases:
 - (i) all other existing utilities are required to be placed underground by statute, resolution, policy or other Applicable Law;
 - (ii) Grantee is unable to get pole clearance;
 - (iii) underground easements are obtained from developers of new residential areas; or
 - (iv) utilities are overhead but residents prefer underground (undergrounding provided at cost paid by benefitted residents).
- (b) If an ordinance is passed which involves placing underground certain utilities including Grantee's cable plant which is then located overhead, Grantee shall participate in such underground project and shall remove poles, cables and overhead wires if requested to do so and place facilities underground. The City and Grantee shall comply with the provisions of Minn. Rules, Chapter 7819.3100 governing the relocation of existing facilities. Nothing in this Franchise shall mandate that City provide reimbursement to Grantee for the costs of such relocation and removal, and the Grantee shall not seek damages or other compensation from the City for such compliance, unless reimbursement is mandatory under Minn. Rules, Chapter 7819.3100. However, if the City makes available funds for the cost of placing facilities underground, nothing herein shall preclude the Grantee from participating in such funding to the extent consistent with the City Code or Applicable Laws. If non-City funds, such as funds from residents or state or federal grant funding, are made available to place electric or telephone lines underground, nothing herein shall prohibit Grantee from participating in such funding.
- (c) Grantee shall use conduit or its functional equivalent to the greatest extent possible for undergrounding, except for Drops from pedestals to Subscribers' homes and for cable on other private property where the owner requests that conduit not be used. Cable and conduit shall be utilized which meets the highest industry standards for electronic performance and resistance to interference or damage from environmental factors. Grantee shall use, in conjunction with other utility companies or providers, common trenches for underground construction wherever available.

903.060 MAINTENANCE AND RESTORATION

- (a) Restoration. In case of disturbance of any Street, public way, paved area or public improvement, Grantee shall, at its own cost and expense and in accordance with the requirements of the City Code restore such Street, public way, paved area or public improvement to substantially the same condition as existed before the work involving such disturbance took place. All requirements of this section pertaining to public property shall also apply to the restoration of private easements and other private property. Grantee shall perform all restoration work within a reasonable time and with due regard to seasonal working conditions. If Grantee fails, neglects or refuses to make restorations as required under this section and any applicable City Code provision, then the City may do such work or cause it to be done, and the cost thereof to the City shall be paid by Grantee. If Grantee causes any damage to private property in the process of restoring facilities, Grantee shall repair such damage.

- (b) Maintenance. Grantee shall maintain all above ground improvements that it places on City Streets pursuant to the City Code and any permit issued by the City. In order to avoid interference with the City's ability to maintain the Streets, Grantee shall provide such clearance as is required by the City Code and any permit issued by the City. If Grantee fails to comply with this provision, and by its failure, property is damaged, Grantee shall be responsible for all damages caused thereby.

- (c) Disputes. In any dispute over the adequacy of restoration or maintenance relative to this section, final determination shall be the prerogative of the City, Department of Public Works and consistent with the City Code and any permit issued by the City.

- (d) Grantee will verify that prior to the end of 2021 it provided its technicians (whether employees or independent contractors) with a training update on system maintenance standards and practices, including those for identifying and reporting system issues.

903.070 WORK ON PRIVATE PROPERTY

Grantee, with the consent of property owners, shall have the authority, pursuant to the City Code, to trim trees upon and overhanging Streets, alleys, sidewalks, and public ways so as to prevent the branches of such trees from coming in contact with the wires and cables of Grantee, except that at the option of the City, such trimming may be done by it or under its supervision and direction at the reasonable expense of Grantee.

903.080 RELOCATION

- (a) Public Property. Grantee shall relocate its System and facilities in accordance with the City Code. In addition, if, during the term of the Franchise, the City or

any government entity elects or requires a third party to alter, repair, realign, abandon, improve, vacate, reroute or change the grade of any Street or other public property; or to construct, maintain or repair any public improvement; or to replace, repair, install, maintain, or otherwise alter any cable, wire conduit, pipe, line, pole, wire-holding structure, structure, or other facility, including a facility used for the provision of utility or other services or transportation of drainage, sewage or other liquids, for any public purpose, Grantee shall, upon request, except as otherwise hereinafter provided, at its sole expense remove or relocate as necessary its poles, wires, cables, underground conduits, vaults, pedestals, manholes and any other facilities which it has installed. The City and Grantee shall comply with the provisions of Minn. Rules, Chapter 7819.3100 governing the relocation of existing facilities. Nothing in this Franchise shall mandate that the City provide reimbursement to Grantee for the costs of such relocation and removal, and the Grantee shall not seek damages or other compensation from the City for such compliance, unless reimbursement is mandatory under Minn. Rules, Chapter 7819.3100. However, if the City makes available funds for the cost of placing facilities underground, nothing herein shall preclude the Grantee from participating in such funding to the extent consistent with the City Code or Applicable Laws. If non-City funds, such as funds from residents or state or federal grant funding, are made available to place electric or telephone lines underground, nothing herein shall prohibit Grantee from participating in such funding.

(b) Utilities and Other Franchisees. If, during the term of the Franchise, another entity which holds a franchise or any utility requests Grantee to remove or relocate such facilities to accommodate the construction, maintenance or repair of the requesting party's facilities, or their more efficient use, or to "make ready" the requesting party's facilities for use by others, or because Grantee is using a facility which the requesting party has a right or duty to remove, Grantee shall do so. The companies involved may decide among themselves who is to bear the cost of removal or relocation, pursuant to City Code, and provided that the City shall not be liable for such costs.

(c) Notice to Remove or Relocate. Any Person requesting Grantee to remove or relocate its facilities shall give Grantee no less than forty-five (45) Days' advance written notice advising Grantee of the date or dates removal or relocation is to be undertaken, provided that no advance written notice shall be required in emergencies or in cases where public health and safety or property is endangered.

(d) Failure by Grantee to Remove or Relocate. If Grantee fails, neglects or refuses to remove or relocate its facilities as directed by the City; or in emergencies or where public health and safety or property is endangered, the City may do such work or cause it to be done, and the cost thereof to the City shall be paid by Grantee. If Grantee fails, neglects or refuses to remove or relocate its facilities as directed by another franchisee or utility, that franchisee or utility may do such work or cause it to be done, and if Grantee would have

been liable for the cost of performing such work, the cost thereof to the party performing the work or having the work performed shall be paid by Grantee.

(e) Procedure for Removal of Cable. Grantee shall not remove any underground cable or conduit which requires trenching or other opening of the Streets along the extension of cable to be removed, except as hereinafter provided. Grantee may remove any underground cable from the Streets which has been installed in such a manner that it can be removed without trenching or other opening of the Streets along the extension of cable to be removed. Subject to Applicable Law, Grantee shall remove, at its sole cost and expense, any underground cable or conduit by trenching or opening of the Streets along the extension thereof or otherwise which is ordered to be removed by the City based upon a determination, in the sole discretion of the City, that removal is required in order to eliminate or prevent a hazardous condition. Underground cable and conduit in the Streets which is not removed shall be deemed abandoned and title thereto shall be vested in the City.

(f) Movement of Buildings. Grantee shall, upon request by any Person holding a building moving permit, franchise or other approval issued by the City, temporarily remove, raise or lower its wire to permit the movement of buildings. The expense of such removal, raising or lowering shall be paid by the Person requesting same, and Grantee shall be authorized to require such payment in advance. The City shall require all building movers to provide not less than fifteen (15) Days' notice to the Grantee to arrange for such temporary wire changes.

904. CABLE FRANCHISE: REMOVAL OR ABANDONMENT OF SYSTEM

904.010 REMOVAL OF CABLE SYSTEM

In the event that: (1) the use of the Cable System is discontinued for any reason for a continuous period of twelve (12) months; or (2) the Cable System has been installed in a Street without complying with the requirements of this Franchise or the City Code, Grantee, at its expense shall, at the demand of the City remove promptly from the Streets all of the Cable System other than any which the City may permit to be abandoned in place. In the event of any such removal Grantee shall promptly restore the Street to a condition as nearly as possible to its prior condition or other public places in the City from which the System has been removed. However, Grantee shall have no obligation to remove the Cable System where it utilizes the system to provide other non-Cable Services and has any other authority under Applicable Law to maintain facilities in the Street, or where Grantee is able to find a purchaser of the Cable System who holds such authorization.

904.020 ABANDONMENT OF CABLE SYSTEM

In the event of Grantee's abandonment of the Cable System, City shall have the right to require Grantee to comply with the state right-of-way rules, Minn. Rules, Chapter 7819. The Cable System to be abandoned in place shall be abandoned in the manner prescribed by the City. Grantee may not abandon any portion of the System without having first given three (3) months written notice to the City. Grantee may not abandon any portion of the System without compensating the City for damages resulting from the abandonment.

904.030 REMOVAL AFTER ABANDONMENT OR TERMINATION

If Grantee has failed to commence removal of System, or such part thereof as was designated by the City, within thirty (30) Days after written notice of the City's demand for removal consistent with Minn. Rules, Ch. 7819, is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of the City's demand for removal is given, the City shall have the right to apply funds secured by the Bond toward removal and/or declare all right, title, and interest to the Cable System for the City with all rights of ownership including, but not limited to, the right to operate the Cable System or transfer the Cable System to another for operation by it.

904.040 CITY OPTIONS FOR FAILURE TO REMOVE CABLE SYSTEM

4.1 If Grantee has failed to complete such removal within the time given after written notice of the City's demand for removal is given, the City shall have the right to exercise one of the following options:

- (a) Declare all right, title and interest to the System for the City or its designee with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it; or
- (b) Declare the System abandoned and cause the System, or such part

thereof as the City shall designate, to be removed at no cost to the City. The cost of said removal shall be recoverable from the security fund, indemnity and penalty section provided for in this Franchise or from Grantee directly.

(c) Upon termination of service to any Subscriber, Grantee shall promptly remove all facilities and equipment from within the dwelling of a Subscriber who owns such dwelling upon his or her written request, except as provided by Applicable Law. Such Subscribers shall be responsible for any costs incurred by Grantee in removing the facilities and equipment.

904.050 SYSTEM CONSTRUCTION AND EQUIPMENT STANDARDS

The Cable System shall be installed and maintained in accordance with standard engineering practices and shall conform, when applicable, with the National Electrical Safety Code, the National Electrical Code and the FCC's rules and regulations.

904.060 SYSTEM MAPS AND LAYOUT

In addition to any generally applicable mapping requirements included in the City Code and required of other utilities, Grantee shall maintain complete and accurate system maps, which shall include trunks, distribution lines, and nodes. Such maps shall include up-to-date route maps showing the location of the Cable System adjacent to the Streets. Grantee shall make all maps available for review by the appropriate City personnel.

905. CABLE FRANCHISE: SYSTEM DESIGN AND CAPACITY

905.010 AVAILABILITY OF SIGNALS AND EQUIPMENT

- (a) The Cable System utilizes a fiber to the fiber node architecture, with fiber optic cable deployed from Grantee's headend to Grantee's fiber nodes, tying into Grantee's coaxial Cable System serving Subscribers. The System shall pass a minimum of 750 MHz (with a minimum passband of between 50 and 750 MHz) and shall be maintained to provide to Subscribers a minimum of at least two hundred (200) or more activated downstream video Channels, or such comparable video viewing capability as is provided in light of developing technologies and video distribution practices in the future.
- (b) The entire System shall be technically capable of transmitting industry-standard digital television signals in a manner and quality consistent with applicable FCC regulations.
- (c) Grantee agrees to maintain the Cable System in a manner consistent with, or in excess of the specifications in Section 905.010 (a) and (b) throughout the term of the Franchise with sufficient capability and technical quality to enable the implementation and performance of all requirements of this Franchise, including the exhibits hereto, and in a manner which meets or exceeds FCC technical quality standards at 47 C.F.R. § 76 Subpart K, regardless of the particular format in which a signal is transmitted.

905.020 EQUAL AND UNIFORM SERVICE

Grantee shall provide access to equal and uniform Cable Service throughout the City consistent with Applicable Law.

905.030 SYSTEM SPECIFICATIONS

- (a) System Maintenance. In all construction and service provision activities, Grantee shall meet or exceed the construction, technical performance, extension and service requirements set forth in this Franchise.
- (b) Emergency Alert Capability. At all times during the term of this Franchise, Grantee shall provide and maintain an Emergency Alert System (EAS) consistent with Applicable law and regulations including 47 C.F.R., Part 11, and any Minnesota State Emergency Alert System requirements. The City may identify authorized emergency officials for activating the EAS insofar as the City's process is consistent with the Minnesota State Emergency Statewide Plan ("EAS Plan"). The City may also develop a local plan containing methods of EAS message distribution, insofar as the local plan is consistent with Applicable Laws and the EAS Plan.
- (c) Standby Power. Grantee shall provide standby power generating capacity at the

Cable System control center and at all hubs. Grantee shall maintain standby power systems supplies, rated for at least two (2) hours' duration, throughout the trunk and distribution networks. In addition, Grantee shall have in place throughout the Franchise term a plan, and all resources necessary for implementation of the plan, for dealing with outages of more than two (2) hours.

(d) Technical Standards. The technical standards used in the operation of the Cable System shall comply, at minimum, with the technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76, Subpart K of the Code of Federal Regulations, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference. The Cable System shall be installed and maintained in accordance with standard engineering practices and shall conform with the National Electrical Safety Code and all other Applicable Laws governing the construction of the Cable System.

(e) System Upgrades. The Cable System will be upgraded consistent with future System upgrades performed in Grantee's other Twin Cities Cable Systems, when any other of Grantee's Cable Systems in Ramsey County or Washington County also receives a System upgrade.

905.040 PERFORMANCE TESTING

Grantee shall perform all system tests at the intervals required by the FCC, and all other tests reasonably necessary to determine compliance with technical standards required by this Franchise. These tests may include, at a minimum:

- (a) Initial proof of performance for any construction;
- (b) Tests in response to Subscriber complaints; and
- (c) Tests reasonably requested by the City to demonstrate Franchise compliance.
- (d) Written records of all system test results performed by or for Grantee shall be maintained, and shall be available for City inspection upon request.

905.050 SPECIAL TESTING

- (a) Throughout the term of this Franchise, City shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise. In addition, City may require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints regarding such construction or installation work or pertaining to such location(s). Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or noncompliance. Such tests shall be limited to the particular

matter in controversy or unresolved complaints. City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers impacted by such testing.

(b) Before ordering such tests, Grantee shall be afforded thirty (30) Days following receipt of written notice to investigate and, if necessary, correct problems or complaints upon which tests were ordered. City shall meet with Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which are the focus of concern. If, after such meetings and inspections, City wishes to commence special tests and the thirty (30) Days have elapsed without correction of the matter in controversy or unresolved complaints, the tests shall be conducted at Grantee's expense by Grantee's qualified engineer. The City shall have a right to participate in such testing by having an engineer of City's choosing, and at City's expense, observe and monitor said testing.

906. CABLE FRANCHISE: PROGRAMMING AND SERVICES

906.010 CATEGORIES OF PROGRAMMING SERVICE

Grantee shall provide video programming services in at least the following broad categories subject to Applicable Law:

- Local Broadcast (subject to federal carriage requirements)
- Public Broadcast News and Information Sports
- General Entertainment Arts/Performance/Humanities Science/Technology
- Children/Family/Seniors
- Foreign Language/Ethnic Programming
- PEG Programming (to the extent required by the Franchise) Movies
- Leased Access

906.020 CHANGES IN PROGRAMMING SERVICES

Grantee shall provide at least thirty (30) Days' prior written notice to Subscribers and to the City of Grantee's request to effectively delete any broad category of programming or any Channel within its control, including all proposed changes in bandwidth or Channel allocation and any assignments including any new equipment requirements that may occur as a result of these changes.

906.030 PARENTAL CONTROL DEVICE OR CAPABILITY

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device or functionality that will enable the Subscriber to block all access to any and all Channels without affecting those not blocked. Grantee shall inform Subscribers of the availability of the lockout device or functionality at the time of original subscription and annually thereafter.

906.040 FCC REPORTS

The results of any tests required to be filed by Grantee with the FCC shall also be copied to City within ten (10) Days of the conduct of the tests.

906.050 ANNEXATION

Unless otherwise provided by Applicable Law, including the City Code, upon the annexation of any additional land area by City, the annexed area shall thereafter be subject to all the terms of this Franchise upon sixty (60) Days written notification to Grantee of the annexation by City. Unless otherwise required by Applicable Laws, nothing herein shall require the Grantee to expand its Cable System to serve, or to offer Cable Service to any area annexed by the City if such area is then served by another Wireline MVPD franchise to provide multichannel video programming.

906.060 LINE EXTENSION

Grantee shall construct and operate its Cable System so as to provide Cable Service within the Franchise Area where there exists a density equivalent of twenty-five (25) dwelling units per mile of feeder cable as measured from the nearest active plant of the Cable System if the extension is to be constructed using existing aerial plant, and thirty (30) dwelling units per mile of feeder cable as measured from the closest existing distribution plant capable of supporting the extended distance if the extension is to be constructed using underground plant. The 25 dwelling units per mile aerial and 30 dwelling units per mile underground standards will be applied proportionately. The City, for its part, shall endeavor to exercise reasonable efforts to require developers and utility companies to provide the Grantee with at least fifteen (15) Days advance notice of an available open trench for the placement of necessary cable.

(a) Except for the areas set forth in Exhibit A, the Cable System shall be further extended to Franchise Areas within the City that do not meet the 25-dwelling-units and 30-dwelling-units density requirements set forth above upon the request from the City based upon the following:

(i) “Total Construction Costs.” Grantee shall first determine the total construction costs of the extension. “Total construction costs” (“TCC”) is defined as the actual turnkey cost to construct the entire extension from the existing trunk and distribution system that is required to serve the Person(s) requesting Cable Service including electronics, pole make-ready charges, labor and reasonable associated overhead, but not the cost of the Drop. TCC shall include existing plant modifications needed to support the extension (such as node splits and fiber extensions).

(ii) “Grantee Contribution.” Grantee shall then determine its contribution (“GC”) toward the construction costs per participating dwelling unit by dividing the TCC by 25 in the case of aerial construction, or by 30 in the case of underground construction, which are the density thresholds specified in section 906.060(a).

$$GC = \frac{TCC}{Density\ Threshold}$$

For illustration, if the TCC in the area to be extended is \$50,000, GC is \$2,000 per dwelling unit for aerial construction, and \$1,667 per participating dwelling unit for underground construction.

(iii) “Participating Dwelling Unit” is a residential dwelling unit owner who requests and has signed a contract to receive Cable Service.

(iv) “Third Party Contribution” (“TPC”) means the TCC less the

product of the Grantee Contribution and the number of PDUs.

$$TPC = TCC - (GC \times PDUs)$$

For illustration, using the TCC and GC values from subparagraph (b)(ii) above, if there are 16 PDUs, the TPC would be \$18,000 for an aerial construction project, and \$23,328 for underground construction.

- (b) Grantee shall provide a construction credit of Two Hundred Fifty Thousand (\$250,000) (the "Construction Credit") restricted solely for the purpose of making a TPC as defined in Section 906.060(a)(iv). The Commission and not Grantee will have the responsibility of determining how the Construction Credit should be allocated. The Construction Credit must be used within five (5) years after the Effective Date of the Franchise or it will be forfeited by the Commission and City.
- (c) Subject to the limitations, conditions, and restrictions set forth in Exhibit A, Grantee will also extend its Cable System in the Franchise Area to the developments listed on Exhibit A.
- (d) Grantee and the Commission will collaborate directly with the Member Cities on applications for federal or state grants to extend buildouts. Comcast will reasonably amend this agreement to eliminate a condition that affects eligibility for grant funding for broadband deployment within the boundaries of the Commission unless that amendment would require Grantee to materially alter its rights and obligations under this Franchise.
- (e) Any residential unit located within one hundred and twenty-five (125) feet from the nearest point of access on the Street from which the Cable System is designed to serve the site shall be connected to the Cable System at no charge other than the standard installation charge. Grantee shall, within fifteen (15) Days request by any potential Subscriber residing in City beyond the one hundred and twenty-five (125) foot limit, provide a quote identifying the costs and construction schedule associated with extending service to such Subscriber. Grantee shall perform the extension of service as soon as reasonably possible and in no event later than the date committed in the quote, excluding events covered by Section 917.100 herein. The Subscriber shall pay the net additional Drop costs, unless the Grantee agrees to waive said costs. To the extent consistent with Applicable Laws, Grantee agrees that it shall impose installation costs for non-standard installations in a uniform and nondiscriminatory manner throughout the City.
- (f) Upon request from the City (made before all Third Party Contributions are made), Grantee will explain how it arrived at its calculation of Total Construction Costs.

906.070 NONVOICE RETURN CAPABILITY

Grantee is required to use cable and associated electronics having the technical capacity for nonvoice return communications.

906.080 SERVICES TO PUBLIC BUILDINGS

The provision of Cable Service and phase out of dark fiber services to public buildings is set forth in Exhibit B.

907. CABLE FRANCHISE: LOCAL PEG PROGRAMMING

907.010 NUMBER OF PEG CHANNELS

(a) Upon the Effective Date of this Franchise, Grantee will make available a minimum of four (4) PEG Channels in addition to channels required by the State of Minnesota, such as regional channel 6. Throughout the term of this Franchise, Grantee shall provide the PEG Channels on the Basic Cable Service tier or such other most subscribed tier of Cable Service (within the Franchise Area) as may be offered by Grantee in accordance with Applicable Law.

(b) For purposes of this Franchise, a high definition (“HD”) format or signal refers to a PEG signal delivered by Grantee to subscribers in a resolution that is either: (i) the same as received by Grantee from City or the entity from which Grantee received the PEG signal, or (ii) the highest resolution used for the delivery of the primary signals of local broadcast stations, if lower than the level described in subparagraph (b)(i). .

907.020 HD PEG CHANNELS

(a) No later than one year after the Effective Date of this Franchise, and upon 90 days written notice to Grantee, Grantee shall provide four (4) HD PEG Channels that are simulcasted in Standard Definition (“SD”) until SD is no longer offered. At the Commission’s discretion, two of the four PEG Channels may be narrowcast channels. At any time 24 months after Effective Date of this Franchise, the Commission may require additional Channels if it satisfies the standards set out in Minn. Stat. § 238.084. The parties agree that PEG funding may be used to support streaming of PEG programming, provided the Commission or City does not permit PEG funding to be used for operational expenses except as permitted by law. Grantee may propose dedicated streaming options as an alternative to the additional linear channels.

(b) The City acknowledges that receipt of an HD format PEG Channel may require Subscribers to buy or lease special equipment or pay additional HD charges applicable to all HD services.

(c) The Commission shall pay for and be responsible for all HD playback servers to be located at 2460 East County Road F, Suite A, White Bear Lake, MN 55110 (“Playback Facility”). Grantee agrees that it shall be responsible for costs associated with the provision of encoders or other equipment necessary to receive HD/SD signals at the headend, and to convert PEG HD signals to SD consistent with the historic practice between the parties.

907.030 CONTROL OF PEG CHANNELS

The control and administration of the PEG Channels shall rest with the City. The City may delegate, from time to time over the term of this Franchise, such control and administration to various entities as determined in City’s sole discretion. As of the Effective Date of this Franchise the City has delegated control of the PEG Channels to the Commission.

907.040 TRANSMISSION OF PEG CHANNELS

PEG Channels may be used for transmission of non- video signals in compliance with Applicable Laws. This may include downstream transmission of data using a protocol such as TCP/IP or current industry standards. Should Grantee develop the capability to provide bi-directional data transmission, spectrum capacity shall be sufficient to allow Subscribers to transmit data to PEG facilities.

907.050 PEG CHANNEL LOCATIONS

(a) Grantee shall continue cablecasting PEG programming on the Cable System on the same Channel locations as such programming is cablecast within the City as of the Effective Date. Current SD PEG Channel locations as of the Effective Date as well as the location of the four (4) HD PEG Channels to be provided under Section 907.020 are listed on Exhibit C. Grantee agrees not to change these PEG Channel locations more than two (2) times during the term of this Franchise unless required by law for other programmers with specific Channel number rights or pursuant to an overall Channel reorganization of the entire Channel lineup. In no event shall any PEG Channel relocations be made prior to ninety (90) days written notice to the City by Grantee, except for circumstances beyond Grantee's control. If relocated, Grantee will work in good faith with the City to identify new Channel locations such that the PEG Channels will be located within reasonable proximity to other broadcast or news Channels where available Channel numbers allow.

(b) Grantee agrees not to encrypt the PEG Channels differently than other commercial Channels available on the Cable System.

(c) In the event Grantee requires relocation of a PEG Channel pursuant to Section 907.050(a), Grantee shall provide a rebranding reimbursement grant of One Thousand Five Hundred and No/100 Dollars (\$1,500) per relocated Channel.

907.060 NAVIGATION TO PEG CHANNELS AND ELECTRONIC PROGRAMMING GUIDE

Grantee agrees that if it utilizes any navigation interfaces, the PEG Channels shall be treated in a nondiscriminatory fashion consistent with Applicable Laws so that Subscribers will have ready access to PEG Channels. Grantee will maintain the existing ability of the City to place PEG Channel programming information on the interactive Channel guide via the electronic programming guide ("EPG") vendor ("EPG provider") that Grantee utilizes to provide the guide service. PEG Channel programming provided by the City shall appear on the EPG for each channel carried in all Member Cities. Grantee will be responsible for providing the designations and instructions necessary for the PEG Channels to appear on the EPG. Each programming stream will not be individually listed for narrowcast channels unless technically feasible. All costs and operational requirements of the EPG provider shall be the responsibility of the City. City acknowledges that the EPG may not be technically possible for all PEG programming, and that Grantee is not responsible for operations of the EPG provider.

907.070 OWNERSHIP OF PEG CHANNELS

Grantee does not relinquish its ownership of or ultimate right of control over a Channel by designating it for PEG use. A PEG access user – whether an individual, education or government user – acquires no property or other interest by virtue of the use of a Channel position so designated. Grantee shall not exercise editorial control over any public, education, or government use of a Channel position, except Grantee may refuse to transmit any public access program or portion of a public access program that contains obscenity, indecency, or nudity in violation of Applicable Law.

907.080 PEG MONITORING

Grantee shall continue to provide the capability, without charge, for Commission representatives at the Member City locations and the Commission’s master control facility listed in Exhibit D, to monitor and verify the audio and visual quality of PEG Channels received by Subscribers as well as the existing connections and equipment at the Commission’s master control facility. This will include equipment comparable to that deployed to residential cable Subscribers that will allow the Commission to verify the accuracy of EPG listings for the PEG Channels consistent with what is currently provided. Grantee shall also maintain one (1) feed to the Commission office to provide the ability to monitor Subscriber services and address Subscriber concerns which feed shall include all cable boxes and platforms (i.e., Xfinity X1).

907.090 PEG TRANSPORT

During the term of this Franchise, Grantee will provide PEG transport as follows:

(a) The Commission may transmit signals for the PEG Channels in “real time” upstream from the nine (9) locations listed in Exhibit D to the Commission’s playback facility currently located at 2460 East County Road F Suite A, White Bear Lake, MN 55110 (“Playback Facility”) to Grantee’s hub and headend using existing fiber connections without additional charge or offsets from Grantee. Grantee shall continue to provide without charge or offsets, fiber backhaul and transmitter/receiver equipment for PEG programming as is the practice on the Effective Date of this Franchise. The Commission must be able to simultaneously program all PEG channels with signals originating from a central playback facility, designated by the Commission, and from the nine (9) remote locations specified in Exhibit D. Each connection shall be bidirectional and satisfy the requirements of this Section.

(b) Grantee may invoice the Commission for any actual, incremental cost of maintenance, and agrees to cap any return line maintenance charges at \$10,000 per year for the nine (9) permanent return line sites. This will allow the Commission to continue cablecasting PEG programming from the locations listed in Exhibit D and maintain connections from the Commission’s master control to Grantee’s hub and headend without additional charge or offsets. Grantee will replace PEG transport fiber for the nine (9) sites if any such fiber is destroyed or if the Cable System has moved. If one of the nine (9) sites moves, Grantee is required by this Franchise to serve that new location at its cost if no new fiber construction in the Street is required to serve that new location. If one of the nine (9) sites moves and new fiber construction in the Street is required to serve that new location, Grantee may require the City to reimburse Grantee for reasonable construction costs as a condition to serving that new location. Grantee

shall also make any capital improvements required to maintain upstream transmission without significant deterioration at no cost. Should a member of the Commission choose to depart from the Commission, the Commission may terminate the obligation to maintain any return line from the departing community, in which case, the fees for maintenance will be reduced proportionately.

(c) For all of the PEG origination points identified in Exhibit E, Grantee must either provide permanent fiber connections for PEG transport to replace the coaxial connections, or it may provide for an alternative solution acceptable to the Commission. As an alternative solution acceptable to the Commission, the parties agree to the following: All PEG origination points identified on Exhibit E will be served by a portable cable-modem solution for transport of PEG programming. The cable modem service shall include all the equipment needed to use Comcast's business class internet service. The Commission shall be responsible for renting necessary modems from Comcast, and providing encoders, decoders, or similar devices. In the event that Commission equipment causes interference with the Grantee's delivery of Cable Service, the source of the interference shall be removed and the parties will cooperate to determine and rectify the cause of the interference. If the Commission requests that a new site be added to Exhibit E, Grantee will provide the portable cable modem connection to the subscriber network if technologically and economically feasible. In connection with the use of cable modems or substitute equipment under this paragraph:

(i) Grantee will provide to Commission, and the Commission shall be responsible for purchasing, a subscription to a Comcast Business Class Internet account including cable modem (or an equivalent commercial broadband service however named by Grantee in the future) at a price per account per year equivalent to the lowest price at which Grantee offers the closest equivalent service on a commercial basis. The Commission may determine the number of accounts with cable modems to purchase and may add or terminate use of all or any of the accounts at any time without penalty or additional charge.

(ii) The Commission shall, at its expense, provide any necessary encoders, decoders or similar devices and shall configure equipment and connections so that signals can be transmitted to the Playback Facility. Grantee does not sell and is not required to provide such devices.

(iii) Grantee may request that the Commission remove an encoder, or similar device if it technically interferes with Grantee's delivery of Cable Service.

PEG transport, however provided, shall be reliable and permit continuous programming of a quality such that the Commission may deliver to Comcast signals equivalent or better in quality to the PEG signals that Comcast may be required to deliver to subscribers.

907.100 INTERCONNECTION WITH OTHER TWIN CITIES PEG STATIONS

Grantee shall continue to make the metro area fiber ring known as the PRISMA Ring available to the City, without charge, as long as the PRISMA Ring remains serviceable. The City may use the PRISMA Ring (or its equivalent) to send and receive live and recorded programming to/from other Twin Cities PEG stations for as long as the network remains viable. Grantee shall provide City access to the PRISMA Ring at an agreed upon demarcation point. Grantee will provide use of and maintain the PRISMA Ring without charge, but Grantee will not be obligated to replace network equipment on the PRISMA Ring or for any equipment on the City's side of the demarcation point. Grantee agrees to continue to provide, without charge or offsets, use of Grantee's Converged Regional Area Network (C- RAN) for delivery of live and recorded programming to and from the entities listed on Exhibit F limited to six (6) multi-cast IP Channels. This obligation shall terminate if Grantee no longer utilizes the C-RAN for its own business purposes. Grantee shall have no obligation to replace any network equipment currently located in its headend facility or at the City or Commission facility necessary to deliver or receive such programming over the C-RAN. Replacement of any decoding equipment necessary to receive the programming via the C-RAN will be the responsibility of the City and will require Grantee's approval to ensure equipment compatibility. If there are incremental equipment and maintenance costs specific to the PEG use of the C-RAN, Grantee will notify the City of such costs and allow the City the option of reimbursing Grantee for such costs or to cease using the C-RAN. Grantee shall not be responsible for providing a specific performance level over the C-RAN or resolving any transmission issues caused by incompatibility of audio or video file formats with interconnected equipment.

907.110 FUTURE PEG TRANSPORT

At such time that the City determines:

- (a) that the City desires the capacity to allow Subscribers in the City to receive PEG programming (video or character generated) which may originate from schools, City facilities, other government facilities or other designated facilities (other than those indicated in paragraph 907.090); or
- (b) that the City desires to establish or change a location from which PEG programming is originated; or
- (c) that the City desires to upgrade the connection to Grantee from an existing signal point of origination,

the City will give Grantee written notice detailing the point of origination and the capability sought by the City. After receipt of such notice by Grantee, Grantee and the City may enter into an agreement which compensates Grantee in accordance with Applicable Law, for new sites added or upgraded connections. After such an agreement has been executed, Grantee will implement any necessary Cable System changes within a reasonable period of time. Nothing herein prevents the City, or a private contractor retained by the City, from constructing said connection, as long as such connection does not interconnect with Grantee's Cable System without Grantee's consent or interfere with Grantee's Cable System.

907.120 PEG CHANNEL CARRIAGE

- (a) The City or its designee shall be responsible for developing, implementing, interpreting and enforcing rules for PEG Channel use.
- (b) The Grantee shall monitor the PEG Channels for technical quality to ensure that they meet FCC technical standards including those applicable to the carriage of PEG Channels, provided however, that the Grantee is not responsible for the production quality of PEG programming productions. The City, or its designee, shall be responsible for the production and quality of all PEG programming. Grantee shall carry all components of the SD/HD PEG Channel(s) including, but not limited to, closed captioning, stereo audio and other elements associated with the programming.

907.130 PEG PROGRAMMING FINANCIAL SUPPORT

- (a) In accordance with the schedule below, during the term of the Franchise, Grantee shall pay quarterly to the Commission a public, educational, and governmental programming capital support fee (herein the “PEG Fee”) in an amount equal to the following percentages of its quarterly Gross Revenues:

Beginning April 1, 2021 (expected effective date of renewed franchise)	3.25% of gross revenue
Beginning April 1, 2022	3% of gross revenue
Beginning April 1, 2023 through remaining term of franchise, which will end on April 1, 2031.	2.75% of gross revenue

Payments pursuant to this subsection shall be paid to the Commission on the same schedule and including the same payment worksheets as the Franchise Fee payments set forth in Section 916.010(a-c) of this Franchise.

- (b) The PEG Fee may be used by City and Commission to fund PEG expenditures in accordance with Applicable Law. Grantee agrees not to contest the internal accounting treatment (whether operating or capital support) of the Commission’s use of PEG funding for the purchase of cable modem services (as described in Section 907.090(c) or dark fiber institutional network services (as described in Exhibit B) from Grantee on the basis that this reflects a compromise of the Commission’s claim that it could request permanent facilities that would qualify as capital if not for these alternative solutions.
- (c) The PEG Fee is not part of the Franchise Fee and instead falls within one or more of the exceptions in 47 U.S.C. § 542, unless the PEG Fee is used by City or Commission in violation of Applicable Law. The PEG Fee may be categorized, itemized, and passed through to Subscribers as permissible, in accordance with 47 U.S.C. § 542 or other Applicable Laws.
- (d) After December 31, 2021, Grantee is no longer responsible for lease payments for the Commission’s PEG facilities (including studio, administrative, and business office space), and the Commission shall assume sole responsibility for the lease of its PEG facilities (including studio, administrative, and business office space).

907.140 PEG TECHNICAL QUALITY AND SUPPORT

(a) Grantee shall not be required to carry a PEG Channel in a higher quality format than that of the Channel signal delivered to Grantee, but Grantee shall not implement a change in the method of delivery of PEG Channels that results in a material degradation of signal quality or impairment of viewer reception of PEG Channels, provided that this requirement shall not prohibit Grantee from implementing new technologies also utilized for commercial Channels carried on its Cable System. Grantee shall meet FCC signal quality standards when offering PEG Channels on its Cable System and shall continue to comply with closed captioning pass-through requirements. There shall be no significant deterioration in a PEG Channel signal from the point of origination upstream to the point of reception (hub or headend) or downstream to the Subscriber on the Cable System.

(b) Grantee shall provide a local (Twin Cities) response phone number, cell number, and e-mail address for local (Twin Cities) technical support staff who are trained to effectively respond to and resolve PEG related issues. For urgent issues (such as signal problems during live programs) the Grantee will respond as soon as possible. For non-urgent tech support requests the Grantee will respond within three (3) hours or forty-eight (48) hours, depending upon the response time needed. Commission technical staff will determine what requests are urgent or non-urgent. The Commission agrees to use best efforts to verify that the issue is not on the Commission's side of the demarcation point before a call is made to Grantee.

(c) Grantee agrees to continue its practice of providing to the Commission two (2) satellite feeds identified on Exhibit G from Grantee's headend facility and/or hub site locations directly to the Commission's Playback Facility without charge to Commission. The Commission shall be responsible for obtaining any necessary carriage and license agreements for the programming aired on its PEG Channels to the extent the content providers require such agreements. The Commission shall pay any license fees, copyright fees and other costs of the programming provider. If Grantee receives a demand to cease and desist from providing any programming content to the Commission under this Section or the source of the programming ceases to operate, Grantee may terminate such programming immediately without prior notice, but will provide notice that such programming has been terminated as soon as possible. If Grantee ceases to maintain the satellite reception facility through which the programming is received, Grantee will give the Commission sixty (60) Days prior notice of the discontinuation to allow the Commission to obtain the programming from another source.

907.150 CHANGE IN TECHNOLOGY

In the event Grantee makes any change in the Cable System and related equipment and facilities or in its signal delivery technology, which requires the City to obtain new equipment in order to be compatible with such change for purposes of transport and delivery of the PEG Channels, Grantee shall, at its own expense and without charge to the City or its designated entities, purchase such equipment as may be necessary to facilitate the cablecasting of the PEG Channels in accordance with the requirements of the Franchise.

907.160 RELOCATION OF GRANTEE'S HEADEND

In the event Grantee relocates its headend, Grantee will be responsible for replacing or restoring the existing dedicated fiber connections at Grantee's cost so that all functions and capacity remain available, operate reliably and satisfy all applicable technical standards and related obligations of the Franchise without charge to the City or its designated entities.

907.170 REGIONAL CHANNEL SIX

Grantee shall make available Regional Channel Six as long as it is required to do so by Applicable Law.

907.180 COMPLIANCE WITH MINNESOTA STATUTES CHAPTER 238

In addition to the requirements contained in this Section 7 of this Franchise, Grantee and City shall comply with the PEG requirements mandated by Minn. Stat. § 238.084.

908. CABLE FRANCHISE: REGULATORY PROVISIONS

908.010 INTENT

The City shall have the right to administer and regulate activities under the Franchise to the full extent permitted by Applicable Law. The City may delegate to any other body or Person authority to administer the Franchise and to monitor the performance of Grantee pursuant to the Franchise. Grantee shall cooperate with any such delegates of the City.

908.020 DELEGATION OF AUTHORITY TO REGULATE

The City reserves the right to delegate its regulatory authority wholly or in part to another governmental entity, including, but not limited to, an entity which may be formed to regulate several franchises in the region in a manner consistent with Applicable Laws. As of the Effective Date of this Franchise, the Commission shall have continuing regulatory jurisdiction and supervision over the Cable System and Grantee's operation under the Franchise.

908.030 REGULATION OF RATES AND CHARGES

(a) Right to Regulate. The City reserves the right to regulate rates or charges for any Cable Service within the limits of Applicable Law, to enforce rate regulations prescribed by the FCC, and to establish procedures for said regulation or enforcement.

(b) Notice of Change in Rates and Charges. Throughout the term of this Franchise, Grantee shall give the City and all Subscribers within the City at least thirty (30) Days' notice of any intended modifications or additions to Subscriber rates or charges. Nothing in this subsection shall be construed to prohibit the reduction or waiving of rates or charges in conjunction with promotional campaigns for the purpose of attracting Subscribers or users.

(c) Rate Discrimination Prohibited. Within any category of Subscribers, Grantee shall not discriminate among Subscribers with regard to rates and charges made for any service based on considerations of race, color, creed, sex, marital or economic status, national origin, sexual preference, or (except as allowed by Applicable Law) neighborhood of residence, except as otherwise provided herein; and for purposes of setting rates and charges, no categorization of Subscribers shall be made by Grantee on the basis of those considerations. Nevertheless, Grantee shall be permitted to establish (1) discounted rates and charges for providing Cable Service to low-income, disabled, or low-income elderly Subscribers, (2) promotional rates, and (3) bulk rate and package discount pricing.

909. CABLE FRANCHISE: BOND

909.010 PERFORMANCE BOND

(a) Upon the Effective Date of this Franchise and at all times thereafter until the Grantee has liquidated all of its obligations under this Franchise, the Grantee shall furnish and file with Commission, on behalf of all Member Cities, a bond in the sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) in such form and with such sureties as shall be acceptable to the Commission (“Bond”). The Bond shall be conditioned upon the faithful performance by Grantee of this Franchise and upon the further condition that in the event Grantee shall fail to comply with any law, ordinance or regulation, there shall be recoverable jointly and severally from the principal and surety of the Bond, any damages or losses suffered by City as a result, including the full amount of any compensation, indemnification or cost of removal of any property of Grantee, including a reasonable allowance for attorneys’ fees and costs (with interest at prime rate plus two percent (2%)), up to the full amount of the Bond, and which Bond shall further guarantee payment by Grantee of all claims and liens against City, or any public property, and taxes due to City, which arise by reason of the construction, operation, maintenance or use of the Cable System.

909.020 RIGHTS

The rights reserved by City with respect to the Bond are in addition to all other rights the City may have under this Franchise or any other law.

909.030 REDUCTION OF BOND AMOUNT

City may, in its sole discretion, reduce the amount of the Bond.

909.040 PROCEDURE TO DRAW ON BOND

(a) The parties shall follow the procedure set forth in Section 911 of this Franchise regarding any draw on the Bond.

(b) In the event this Franchise is terminated in accordance with the procedure set forth in Section 911, the City shall be entitled to collect from the Bond that amount which is attributable to any damages sustained by the City as a result of said violation.

(c) Grantee shall be entitled to the return of the Bond, or portion thereof, as remains one hundred and twenty (120) Days after the expiration of the term of the Franchise or termination for violation thereof, provided the City has not notified Grantee of any actual or potential damages incurred as a result of Grantee’s operations pursuant to the Franchise or as a result of said violation.

(d) The rights reserved to the City with respect to the Bond are in addition to all other rights of the City whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to the Bond shall affect any other right the City may have.

910. CABLE FRANCHISE: SECURITY FUND

910.010 SECURITY FUND

Within thirty (30) Days of the Effective Date, Grantee shall establish and provide to the City or the Commission, on behalf of the City, as security for the faithful performance by Grantee of all provisions of this Franchise, an irrevocable letter of credit from a financial institution satisfactory to the City or the Commission in the amount of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) (“Security Fund”). Failure to post the Security Fund shall constitute a material violation of this Franchise. The Security Fund shall serve as security for the faithful performance by Grantee of all the provisions of this Franchise and compliance with all orders, permits and directions of the City and the payment by Grantee of any claim, liens, costs, expenses and taxes due the City which arise by reason of the construction, operation or maintenance of the Cable System. The obligation to establish the Security Fund required by this paragraph is unconditional. If Grantee fails to establish the Security Fund as required, the City may take whatever action is appropriate to require the establishment of that Security Fund and may recover its costs, reasonable attorneys’ fees, and an additional penalty of Five Thousand Dollars (\$5,000) in that action.

910.020 WITHDRAWAL OF FUNDS

The Security Fund shall permit the City to withdraw funds upon demand (sight draft). Grantee shall not use the Security Fund for other purposes and shall not assign, pledge or otherwise use this Security Fund as security for any other purpose.

910.030 LIQUIDATED DAMAGE

Subject to Section 910.050 and 910.110, in addition to recovery of any monies owed by Grantee to City or damages to City as a result of any acts or omissions by Grantee pursuant to the Franchise, City in its sole discretion may charge to and collect from the Security Fund the following liquidated damages:

- (a) For failure to provide data, documents, reports or information or to cooperate with City during an application process, audit, or System review, the liquidated damage shall be Two Hundred Fifty Dollars (\$250.00) per Day for each Day, or part thereof, such failure occurs or continues.
- (b) For failure to comply with any of the provisions of this Franchise for which a penalty is not otherwise specifically provided pursuant to this Section 910.030, the liquidated damage shall be Two Hundred Fifty Dollars (\$250.00) per Day for each Day, or part thereof, such failure occurs or continues.
- (c) For failure of Grantee to comply with construction, operation or maintenance standards, the liquidated damage shall be Five Hundred Dollars (\$500.00) per Day for each Day, or part thereof, such failure occurs or continues.

(d) For failure to provide the services Grantee has proposed, including but not limited to the implementation and the utilization of the PEG Channels, the liquidated damage shall be Two Hundred Fifty Dollars (\$250.00) per Day for each Day, or part thereof, such failure occurs or continues.

910.040 EACH VIOLATION A SEPARATE VIOLATION

Each violation of any provision of this Franchise shall be considered a separate violation for which separate liquidated damages can be imposed. However, to the extent City remains a Member City of Commission, liquidated damages under Section 910.030 for a violation of each Member City franchise shall be calculated by the Commission as one violation, and not as multiple violations (one violation for each individual Member City franchise). For example, liquidated damages per Day under Section 910.030(a) would equal Two Hundred Fifty Dollars (\$250.00), not One Thousand Seven Hundred Fifty Dollars (\$1,750) (seven times the per Day liquidated damages amount).

910.050 MAXIMUM DRAW PER VIOLATION

Any liquidated damages for any given violation shall be imposed upon Grantee for a maximum of Twenty-Five Thousand Dollars (\$25,000). If after that amount of draw from the Security Fund Grantee has not cured or commenced to cure the alleged breach to the satisfaction of the City, the City may pursue all other remedies.

910.060 WITHDRAWAL OF FUNDS TO PAY TAXES

If Grantee fails to pay to the City any taxes due and unpaid; or fails to repay to the City, any damages, costs or expenses which the City shall be compelled to pay by reason of any act or default of the Grantee in connection with this Franchise; or fails, after thirty (30) Days' notice of such failure by the City to comply with any provision of the Franchise which the City reasonably determines can be remedied by an expenditure of the Security Fund, the City may then draw from the Security Fund. Payments are not Franchise Fees as defined in Section 916 of this Franchise.

910.070 PROCEDURE FOR DRAW ON SECURITY FUND

The parties shall follow the procedure set forth in Section 911 of this Franchise regarding any withdrawal from the Security Fund.

910.080 GRANTEE'S RIGHT TO PAY PRIOR TO SECURITY FUND DRAW

Grantee shall have the opportunity to make prompt payment of any assessed liquidated damages and if Grantee fails to promptly remit payment to the City, the City may resort to a draw from the Security Fund in accordance with the terms of this Franchise.

910.090 FAILURE TO ESTABLISH SECURITY FUND

City may draw on said Security Fund for the whole amount thereof and hold the proceeds, without interest, and use the proceeds to pay costs incurred by City in performing and paying for any or all of the obligations, duties and responsibilities of Grantee under this Franchise that are

not performed or paid for by Grantee pursuant hereto, including attorneys' fees incurred by the City in so performing and paying. The failure to establish a Security Fund under Section 910.010 may also, at the option of City, be deemed a violation by Grantee under this Franchise. The drawing on the Security Fund by City, and use of the money so obtained for payment or performance of the obligations, duties and responsibilities of Grantee which are in default, shall not be a waiver or release of such violation.

910.100 REPLENISHMENT OF SECURITY FUND

If Commission or City exhaust the Security Fund under Section 910.050 during a given violation proceeding, Grantee shall have no obligation to replenish the Security Fund for such violation proceeding. However, Grantee must replenish the Security Fund as security for any future franchise violation. If the amount of the Security Fund established under Section 910.010 is not enough to secure the performance of the obligations described in Section 910.010, then the City or the Commission must resort to the Bond provided in Section 909 or other enforcement mechanisms provided under Section 911.

910.110 COLLECTION OF FUNDS NOT EXCLUSIVE REMEDY

The collection by City of any damages or monies from the Security Fund shall not affect any other right or remedy available to City, nor shall any act, or failure to act, by City pursuant to the Security Fund, be deemed a waiver of any right of City pursuant to this Franchise or otherwise. Notwithstanding this Section, however, should the City elect to impose liquidated damages, that remedy shall remain the City's exclusive remedy for one hundred twenty (120) Days or for the period needed for the Security Fund draw to reach the maximum in Section 910.050, whichever is less.

911. CABLE FRANCHISE: VIOLATION PROCEDURE

911.010 BASIS FOR VIOLATION

City or Commission shall give written notice to Grantee if City, in its sole discretion, determines that Grantee has:

- (a) Violated any material provision of this Franchise or the acceptance hereto;
- (b) Violated any law, ordinance, rule, order, regulation or determination of the City, state or federal government, not in conflict with this Franchise;
- (c) Attempted to evade any provision of this Franchise or the acceptance hereof;
- (d) Practiced any fraud or deceit upon City or Subscribers;

Made a material misrepresentation of fact in the application for or negotiation of this Franchise;
or

911.020 VIOLATION PROCEDURE

The written notice shall describe in reasonable detail the alleged violation so as to afford Grantee an opportunity to remedy the violation.

- (a) Grantee shall have thirty (30) Days subsequent to receipt of the notice in which to correct the violation (or if such violation is of such a character as to require more than thirty (30) Days within which to cure the same, and Grantee fails to commence to cure the same within said thirty (30) Day period and thereafter fails to use reasonable diligence, in City's sole opinion, to cure such violation as soon as possible).
- (b) Grantee may, within ten (10) Days of receipt of notice, notify the City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Grantee shall specify with particularity the matters disputed by Grantee and shall stay the running of the above-described time until the Commission or City issues final findings of fact with respect to the violation. However, all penalties shall accrue from the date of the notice of violation until the Commission or City issues final findings of fact with respect to the violation.
- (c) The City or Commission shall hear Grantee's dispute at the next regularly scheduled or specially scheduled meeting. Grantee shall have the right to speak and introduce evidence. The City or Commission shall determine whether Grantee has committed a violation and shall make written findings of fact relative to its determination.

- (d) If after hearing the dispute, the violation is upheld by the City or Commission, then Grantee shall have thirty (30) Days within which to remedy the violation.
- (e) If Grantee fails to cure the violation within thirty (30) Days, such violation shall be a substantial breach and City may elect to terminate the Franchise or establish and draw on the Bond or Security Fund as provided in Sections 909 or 910.
- (f) The City may place the issue of termination of this Franchise before the governing body of City at a regular meeting. If City decides there is cause or reason to terminate, the following procedure shall be followed:
 - (i) City shall provide Grantee with a written notice of the reason or cause for proposed termination and shall allow Grantee a minimum of thirty (30) Days subsequent to receipt of the notice in which to correct the violation.
 - (ii) Grantee shall be provided with an opportunity to be heard at a public hearing prior to any decision to terminate this Franchise.
 - (iii) If, after notice is given and an opportunity to cure, at Grantee's option, a public hearing is held, and the City determines there was a violation, breach, failure, refusal or neglect, the City may declare by resolution the Franchise terminated and of no further force and effect unless there is compliance within such period as the City may fix, such period may not be less than thirty (30) Days. No opportunity for compliance need be granted for fraud or misrepresentation.

911.030 FAILURE TO ENFORCE

Grantee shall not be relieved of any of its obligations to comply promptly with any provision of the Franchise by reason of any failure of the City to enforce prompt compliance, and City's failure to enforce shall not constitute a waiver of rights or acquiescence in Grantee's conduct.

911.040 COMPLIANCE WITH THE LAWS

(a) If any federal or state law or regulation shall require or permit City or Grantee to perform any service or act or shall prohibit City or Grantee from performing any service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Grantee and City shall conform to state laws and rules regarding cable communications not later than one (1) year after they become effective, unless otherwise stated, and shall conform to federal laws and regulations regarding cable as they become effective.

(b) If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and complied with, provided the loss of the invalid or unenforceable clause does not substantially alter the agreement between the parties. In the event such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and City.

912. CABLE FRANCHISE: FORECLOSURE AND RECEIVERSHIP

912.010 FORECLOSURE

Upon the foreclosure or other judicial sale of the Cable System, Grantee shall notify the City of such fact and such notification shall be treated as a notification that a change in control of Grantee has taken place, and the provisions of this Franchise governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.

912.020 RECEIVERSHIP

The City shall have the right to cancel this Franchise subject to any applicable provisions of state law, including the Bankruptcy Act, one hundred twenty (120) Days after the appointment of a receiver or trustee to take over and conduct the business of Grantee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) Days, or unless:

- (a) Within one hundred twenty (120) Days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Franchise and remedied all defaults thereunder; and,
- (b) Such receiver or trustee, within said one hundred twenty (120) Days, shall have executed an agreement, duly approved by the Court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise.

913. CABLE FRANCHISE: REPORTING REQUIREMENTS

913.010 QUARTERLY REPORTS

Within thirty (30) Days after the end of each calendar quarter, Grantee shall submit to the City along with its Franchise Fee payment, a report showing the basis for computation of the Franchise Fee and PEG Fee payments signed by an authorized representative of Grantee in form and substance substantially equivalent to Exhibit H attached hereto. This report shall separately indicate Grantee's Gross Revenues within the City including, but not limited to such items as listed in the definition of "Gross Revenues" at Section 901.210 of this Franchise. Nothing in the Franchise Fee payment worksheet form set forth in Exhibit H shall be construed to modify the definition of "Gross Revenues" set forth in Section 901.210 of this Franchise.

913.020 MONITORING AND COMPLIANCE REPORTS

Upon request, but no more than once a year, Grantee shall provide a written report of any and all FCC technical performance tests for the residential network required in FCC rules and regulations as now or hereinafter constituted.

913.030 MONTHLY SUBSCRIBER DATA REPORT

Every other month starting in January, Grantee shall provide the City with a Subscriber data report consistent with the format set forth in Exhibit I attached hereto, separately delineating, for each month within that two-month period, the responsive information. In the event technical or programming changes require changes to the format of the report, the City and Grantee shall work in good faith to make such changes without the need to amend this Franchise. The Commission reserves the right to request and receive from Grantee greater detail regarding Subscriber data provided in the form attached as Exhibit I in order to better understand differences in or trends regarding that data or in Franchise Fee report data.

913.040 OTHER REPORTS

Upon request of the City and in no event later than thirty (30) Days from the date of receipt of such request, Grantee shall, without charge, prepare and furnish to the City, at the times and in the form prescribed, such additional reports with respect to its operation, affairs, transactions, or property, as may be reasonably necessary to ensure compliance with the terms of this Franchise. Grantee and City may in good faith agree upon taking into consideration Grantee's need for the continuing confidentiality as prescribed herein. Neither City nor Grantee shall unreasonably demand or withhold information requested pursuant with the terms of this Franchise.

913.050 CONFIDENTIAL AND TRADE SECRET INFORMATION

Grantee acknowledges that information submitted by Grantee to the City may be subject to the Minnesota Government Data Practices Act ("MGDPA") pursuant to Minn. Stat. Chapter 13. The Commission shall follow all Applicable Laws and procedures for protecting any confidential and trade secret information of Grantee that may be provided to Commission. Grantee acknowledges that the Commission shall at all times comply with the Minnesota Data Practices Act ("MDPA")

related to the release of information and nothing herein shall be read to modify the Commission's obligations under the MDPA.

913.060 COMMUNICATIONS WITH REGULATORY AGENCIES

(a) Upon written request (unless service of copies is otherwise mandated by Applicable Law) Grantee shall submit to City copies or online links to copies of any pleading, applications, notifications, communications and documents of any kind, submitted by Grantee or its Affiliates to any federal, state or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of Grantee's Cable System within the Franchise Area. Grantee shall submit such documents to City no later than thirty (30) Days after receipt of City's request. Grantee and City shall comply with all Applicable Law governing confidential, privileged or proprietary rights to such documents.

(b) In addition, Grantee and its Affiliates, City and Commission shall, within ten (10) Days of any communication to or from any judicial or regulatory agency regarding any alleged or actual violation of this Franchise, City regulation or other requirement relating to the System, use its best efforts to provide the other party a copy of the communication, whether or not specifically requested to do so.

914. CABLE FRANCHISE: CUSTOMER SERVICE POLICIES

914.010 RESPONSE TO CUSTOMERS AND COOPERATION WITH CITY AND COMMISSION

Grantee shall promptly respond to all requests for service, repair, installation and information from Subscribers. Grantee acknowledges the City's interest in the prompt resolution of all cable complaints and shall work in close cooperation with the City to resolve complaints. Grantee shall provide the Commission and the City with the name, address and telephone number of an office that will act as the Grantee's agent to receive complaints, regarding quality of service, equipment malfunctions, billings, and similar matters. Grantee will maintain an "escalated complaint process" to address unresolved complaints from Subscribers. A team of specifically identified employees of Grantee shall be available to the City and the Commission via email and telephone for reporting issues. These specifically identified employees of Grantee will have the ability to take actions to resolve Subscriber complaints relating to billing, property or service restoration, technical appointments, or any other Subscriber matters when necessary. Grantee will follow-up with the City or the Commission in writing by email (and by phone when necessary) with a summary of the results of the complaint(s).

914.020 CUSTOMER SERVICE AGREEMENT AND WRITTEN INFORMATION

Grantee shall provide to Subscribers access to their service agreement and the following information if not included in the service agreement:

- (a) Services to be provided and rates for such services.
- (b) Billing procedures.
- (c) Service termination procedure.
- (d) Change in service notifications.
- (e) Converter/Subscriber terminal equipment policy.
- (f) How complaints are handled including Grantee's procedure for investigation and resolution of Subscriber complaints.
- (g) The name, address, and phone number of the Person identified by the City as responsible for handling cable questions and complaints for the City. This information shall be prominently displayed and Grantee shall submit the information to the City for review and approval as to its content and placement on Subscriber billing statements. A copy of the written information shall be provided to each Subscriber at the time of initial connection and any subsequent reconnection.

914.030 CUSTOMER SERVICE STANDARDS

- (a) The City hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended.
- (b) Grantee shall provide City with information demonstrating Grantee's compliance with each and every term and provision of Section 914.050.
- (c) Grantee shall comply in all respects with the customer service requirements established by the FCC and those set forth herein. The City reserves the right to enact additional consumer protection laws or requirements to the extent such requirements are not inconsistent with, and preempted by, the FCC's customer service standards.

914.040 LOCAL OFFICE

Grantee shall maintain a convenient, reasonably accessible local customer service and bill payment location for matters such as receiving Subscriber payments, handling billing questions, equipment replacement and customer service information. Grantee's customer service offices in Vadnais Heights and Woodbury (or reasonably accessible alternative locations) are deemed to satisfy this requirement for a convenient, reasonably accessible local customer service office.

914.050 CABLE SYSTEM OFFICE HOURS AND TELEPHONE AVAILABILITY

Grantee shall comply with the standards and requirements for customer service set forth below during the term of this Franchise.

- (a) Grantee will maintain a local, toll-free telephone access line which will be available to its Subscribers twenty-four (24) hours a Day, seven (7) days a week.
 - (i) Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.
 - (ii) The access line may be initially answered by an interactive voice response system but a Subscriber, under Normal Operating Conditions, shall have the option to speak to a trained Grantee representative during Normal Business Hours. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business day.
- (b) Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.

- (c) Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.
- (d) Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.
- (e) Customer service center and bill payment locations will be open at least during Normal Business Hours and will be conveniently located.
- (f) The Grantee shall utilize such equipment and software and keep such records as are necessary or required to enable the City and Commission to determine whether the Grantee is complying with all telephone answering standards required by applicable customer service regulations and laws, as amended from time to time. The Grantee shall provide the Commission with a quarterly report documenting Grantee's compliance with this Section 914.050 as is the current practice.

914.060 INSTALLATIONS, OUTAGES AND SERVICE CALLS

Under Normal Operating Conditions, each of the following standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:

- (a) Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard" Installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution system as more specifically set forth in Section 906.060(e).
- (b) Excluding conditions beyond the control of Grantee, Grantee will begin working on "service interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Grantee must begin actions to correct other Service problems the next business day after notification of the Service problem.
- (c) The "appointment window" alternatives for installations, Service calls, and other installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (Grantee may schedule Service calls and other installation activities outside of Normal Business Hours for the express convenience of the customer.)
- (d) Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
- (e) If Grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary,

at a time which is convenient for the customer.

914.070 COMMUNICATIONS BETWEEN GRANTEE AND SUBSCRIBERS

- (a) Refunds. Refund checks will be issued promptly, but no later than either:
 - (i) The customer's next billing cycle following resolution of the request or thirty (30) Days, whichever is earlier, or
 - (ii) The return of the equipment supplied by Grantee if Cable Service is terminated.
- (b) Credits. Credits for Cable Service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

914.080 BILLING

- (a) Consistent with 47 C.F.R. § 76.1619, bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, Basic Cable Service and premium Cable Service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.
- (b) In case of a billing dispute, Grantee must respond to a written complaint from a Subscriber within thirty (30) Days.

914.090 SUBSCRIBER INFORMATION

- (a) Grantee will provide Subscribers access to the following information at any time:
 - (i) Products and Services offered;
 - (ii) Prices and options for programming services and conditions of subscription to programming and other services;
 - (iii) Installation and Service maintenance policies;
 - (iv) Instructions on how to use the Cable Service;
 - (v) How to find or purchase programming carried on the System;
 - (vi) Billing and complaint procedures, including the address and telephone number of the Commission's office; and
 - (vii) A copy of its refund policy for Cable Services.
- (b) Subscribers shall be advised of the procedures for resolution of complaints about

the quality of the television signal delivered by Grantee, including contact information for the City and the Commission. Subscribers will be notified of any changes in rates or programming or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) Days in advance of such changes if the change is within the control of Grantee. In addition, Grantee shall notify Subscribers thirty (30) Days in advance of any significant changes in the information required by this Section 914.090.

914.100 NOTICE OF RATE OR PROGRAMMING CHANGES

Grantee shall give thirty (30) Days written notice to both Subscribers and the City before implementing any rate or Service change within the control of Grantee. For the purpose of this Section a "Service change" shall not include channel additions or moves that do not impact rates. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change. When the change involves the deletion of Channels, each Channel deleted must be separately identified.

914.110 SUBSCRIBER CONTRACTS

Grantee shall, upon written request, provide the Commission with any standard form residential Subscriber contract utilized by Grantee. If no such written contract exists, Grantee shall file with the City a document completely and concisely stating the length and terms of the Subscriber contract offered to customers. Grantee shall provide City a list of Grantee's current Subscriber rates and charges for Cable Service and a current Channel line-up showing all Channels available in the City. Grantee shall also provide on a monthly basis a copy of a sample Subscriber Bill to the Commission.

914.120 REFUND POLICY

If a Subscriber's Cable Service is interrupted or discontinued, without cause, for twenty-four (24) or more consecutive hours, Grantee shall, upon request by the Subscriber, credit such Subscriber pro rata for such interruption. For this purpose, every month will be assumed to have thirty (30) Days.

914.130 LATE FEES

Grantee shall comply with all applicable state and federal laws with respect to any assessment, charge, cost, fee or sum, however characterized, that Grantee imposes upon a Subscriber for late payment of a bill. The City reserves the right to enforce Grantee's compliance with all Applicable Laws to the maximum extent legally permissible.

914.140 DISPUTES

All Subscribers and members of the general public may direct complaints, regarding Grantee's Service or performance to the chief administrative officer of the City or the chief administrative officer's designee, which may be a board or a commission of the City.

914.150 SUBSCRIBER BILLS

Subscriber bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Subscribers, and in a way that (A) is not misleading and (B) does not omit material information. Grantee may, in its sole discretion, consolidate costs on Subscriber bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. § 542(c)).

914.160 FAILURE TO RESOLVE COMPLAINTS

Grantee shall resolve a complaint within thirty (30) Days in a manner deemed reasonable by the City under the terms of the Franchise.

914.170 NOTIFICATION OF COMPLAINT PROCEDURE

Grantee shall have printed clearly and prominently on each Subscriber bill and in the customer service agreement provided for in Section 914.020, the twenty-four (24) hour Grantee phone number for Subscriber complaints. Additionally, Grantee shall provide information to customers concerning the procedures to follow when they are unsatisfied with measures taken by Grantee to remedy their complaint. This information will include the phone number of the City office or Person designated to handle complaints. Additionally, Grantee shall state that complaints should be made to Grantee prior to contacting the City.

914.180 SUBSCRIBER PRIVACY

(a) To the extent required by Minn. Stat. § 238.084 Subd. 1(s) Grantee shall comply with the following:

(i) No signals including signals of a Class IV Channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. The request for permission must be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such permission. The permission shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.

(ii) No information or data obtained by monitoring transmission of a signal from a Subscriber terminal, including but not limited to lists of the names and addresses of Subscribers or any lists that identify the viewing habits of Subscribers shall be sold or otherwise made available to any party other than to Grantee or its agents for Grantee's business use, and also to the Subscriber subject of that information, unless Grantee has received specific written permission from the Subscriber to make such data available. The request for permission must be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one

(1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for aSubscriber's failure to provide or renew such permission. The permission shall berevocable at any time by the Subscriber without penalty of any kind whatsoever.

(iii) Written permission from the Subscriber shall not be required for the conducting of system wide or individually addressed electronic sweeps for the purpose of verifying System integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth in subparagraph (ii) of this Section.

914.190 GRANTEE IDENTIFICATION

Grantee shall provide all customer service technicians and all other Grantee employees entering private property with appropriate picture identification so that Grantee employees may be easily identified by the property owners and Subscribers.

915. CABLE FRANCHISE: SUBSCRIBER PRACTICES

915.010 SUBSCRIBER RATES

There shall be no charge for disconnection of any installation or outlet. If any Subscriber fails to pay a properly due monthly Subscriber fee, or any other properly due fee or charge, Grantee may disconnect the Subscriber's service outlet, provided, however, that such disconnection shall not occur until after the later of: (i) forty-five (45) Days after the original due date of said delinquent fee or charge; or (ii) ten (10) Days after delivery to Subscriber of written notice of the intent to disconnect. If a Subscriber pays before expiration of the later of (i) or (ii), Grantee shall not disconnect. After disconnection, upon payment in full of the delinquent fee or charge and the payment of a reconnection charge, Grantee shall promptly reinstate the Subscriber's Cable Service.

915.020 REFUNDS TO SUBSCRIBERS SHALL BE MADE OR DETERMINED IN THE FOLLOWING MANNER

- (a) If Grantee fails, upon request by a Subscriber, to provide any service then being provided to the Subscriber, Grantee shall promptly refund all deposits or advance charges paid for the service in question by said Subscriber. This provision does not alter Grantee's responsibility to Subscribers under any separate contractual agreement or relieve Grantee of any other liability that may be available under Applicable Law.

- (b) If any Subscriber terminates any monthly service because of failure of Grantee to render the service in accordance with this Franchise, Grantee shall refund to such Subscriber the proportionate share of the charges paid by the Subscriber for the services not received. This provision does not relieve Grantee of liability established in other provisions of this Franchise.

916. CABLE FRANCHISE: COMPENSATION AND FINANCIAL PROVISIONS

916.010 FRANCHISE FEES

During the term of the Franchise, Grantee shall pay quarterly to the City or its delegate a Franchise Fee in an amount equal to five percent (5%) of its quarterly Gross Revenues. If any such law, regulation or valid rule alters the five percent (5%) Franchise Fee ceiling established by the Cable Act, then the City shall have the authority to (but shall not be required to) increase the Franchise Fee accordingly, provided such increase is for purposes not inconsistent with Applicable Law.

(a) Franchise Fees shall be paid quarterly not later than forty-five (45) Days following the end of each quarter. Grantee shall include with each quarterly payment a Franchise Fee payment worksheet, in form and substance substantially similar to Exhibit H, signed by an authorized representative of Grantee. No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the City may have for further or additional sums payable under the provisions of this Section.

(b) Neither current nor previously paid Franchise Fees shall be subtracted from the Gross Revenue amount upon which Franchise Fees are calculated and due for any period, unless otherwise required by Applicable Law.

(c) Any Franchise Fees owing pursuant to this Franchise which remain unpaid after the due dates specified herein shall be delinquent and shall immediately begin to accrue interest at twelve percent (12%) per annum or two percent (2%) above prime lending rates as quoted by the Wall Street Journal, whichever is greater.

916.020 AUDITING AND FINANCIAL RECORDS

Throughout the term of this Franchise, the Grantee agrees that the City or its designee, upon reasonable prior written notice of twenty (20) Days to the Grantee, may review such of the Grantee's books and records regarding the operation of the Cable System and the provision of Cable Service in the Franchise Area which are reasonably necessary to monitor and enforce Grantee's compliance with the provisions of this Franchise. Grantee shall provide such requested information as soon as possible and in no event more than twenty (20) Days unless Grantee explains that it is not feasible to meet this timeline and provides a written explanation for the delay and an estimated reasonable date for when such information will be provided. All such documents pertaining to financial matters that may be the subject of an inspection by the City shall be retained by the Grantee for a minimum period of seven (7) years. The Grantee shall not deny the City access to any of the Grantee's records on the basis that the Grantee's records are under the control of any parent corporation, affiliated entity or a third party. The City may request in writing copies of any such records or books that are

reasonably necessary, and the Grantee shall provide such copies within thirty (30) Days of the receipt of such request. One (1) copy of all reports and records required under this or any other Section shall be furnished to the City at the sole expense of the Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then the Grantee may request, in writing within ten (10) Days of receipt of such request, that the City inspect them at the Grantee's local offices or at one of Grantee's offices more convenient to City or its duly authorized agent. If any books or records of the Grantee are not kept in such office and not made available in copies to the City upon written request as set forth above, and if the City determines that an examination of such records is necessary for the enforcement of this Franchise, then all reasonable travel expenses incurred in making such examination shall be paid by the Grantee.

916.030 REVIEW OF RECORD KEEPING METHODOLOGY

Upon request, Grantee agrees to meet with a representative of the City or its designee to review its methodology of record-keeping, financial reporting, computing Franchise Fee obligations, and other procedures the understanding of which the City deems necessary for understanding the meaning of reports and records.

916.040 AUDIT OF RECORDS

The City or its authorized agent may at any time and at the City's own expense conduct an independent audit of the revenues of Grantee in order to verify the accuracy of Franchise Fees or PEG Fees paid to the City under this Franchise. Grantee and each parent company of Grantee shall cooperate fully in the conduct of such audit. In the event it is determined through such audit that Grantee has underpaid Franchise Fees in an amount of five percent (5%) or more than was due the City, then Grantee shall reimburse the City for the entire cost of the audit within thirty (30) Days of the completion and acceptance of the audit by the City. Notwithstanding the foregoing rights, and consistent with the release under Section 902.010, City and the Commission shall not conduct an audit of franchise fees or other fees paid under the previous franchise except for the purpose of determining whether franchise fees paid for the first quarter of 2021 under the previous franchise were calculated in the same manner calculated and paid in 2020.

916.050 RECORDS TO BE REVIEWED

The City agrees to request access to only those books and records, in exercising its rights under this Section, which it deems reasonably necessary for the enforcement and administration of the Franchise.

916.060 INDEMNIFICATION BY GRANTEE

Grantee shall, at its sole expense, fully indemnify, defend and hold harmless the City and Commission, and in their capacity as such, the officers, agents and employees thereof (collectively the "Indemnified Parties"), from and against any and all claims,

suits, actions, demands, liability and judgments for damage or otherwise except those arising wholly from negligence on the part of the Indemnified Parties; for actual or alleged injury to Persons or property, including loss of use of property due to an occurrence, whether or not such property is physically damaged or destroyed, in any way arising out of or through or alleged to arise out of or through the acts or omissions of Grantee or its officers, agents, employees, or contractors or to which Grantee's or its officers, agents, employees or contractors acts or omissions in any way contribute, and whether or not such acts or omissions were authorized or contemplated by this Franchise or Applicable Law; arising out of or alleged to arise out of any claim for damages for Grantee's invasion of the right of privacy, defamation of any Person, firm or corporation, or the violation of infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any Person, firm or corporation; arising out of or alleged to arise out of Grantee's failure to comply with the provisions of any Applicable Law. Nothing herein shall be deemed to prevent the Indemnified Parties from participating in the defense of any litigation by their own counsel at such parties' expense. Such participation shall not under any circumstances relieve Grantee from its duty of defense against liability or of paying any judgment entered against the Indemnified Parties.

916.070 GRANTEE INSURANCE

Upon the Effective Date, Grantee shall, at its sole expense, take out and maintain during the term of this Franchise public liability insurance with a company licensed to do business in the State of Minnesota with a rating by A.M. Best & Co. of not less than "A-" that shall protect the Grantee, City and its officials, officers, directors, employees and agents from claims which may arise from operations under this Franchise, whether such operations be by the Grantee, its officials, officers, directors, employees and agents or any subcontractors of Grantee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from Grantee's vehicles, products and operations. The amount of insurance for single limit coverage applying to bodily and personal injury and property damage shall not be less than Three Million Dollars (\$3,000,000). The liability policy shall include:

- (a) The policy shall provide coverage on an "occurrence" basis.
- (b) The policy shall cover personal injury as well as bodily injury.
- (c) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.
- (d) Broad form property damage liability shall be afforded.
- (e) City and Commission shall be named as an additional insured on the policy.

- (f) An endorsement shall be provided which states that the coverage is primary insurance with respect to claims arising from Grantee's operations under this Franchise and that no other insurance maintained by the City will be called upon to contribute to a loss under this coverage.
- (g) Standard form of cross-liability shall be afforded.
- (h) An endorsement stating that the policy shall not be canceled without thirty (30) Days' notice of such cancellation given to City.
- (i) City reserves the right to adjust the insurance limit coverage requirements of this Franchise no more than once every three (3) years. Any such adjustment by City will be no greater than the increase in the State of Minnesota Consumer Price Index (all consumers) for such three (3) year period.
- (j) Upon the Effective Date, Grantee shall submit to City a certificate documenting the required insurance, as well as any necessary properly executed endorsements. The certificate and documents evidencing insurance shall be in a form acceptable to City and shall provide satisfactory evidence that Grantee has complied with all insurance requirements. Renewal certificates shall be provided to City prior to the expiration date of any of the required policies. City will not be obligated, however, to review such endorsements or certificates or other evidence of insurance, or to advise Grantee of any deficiencies in such documents and receipt thereof shall not relieve Grantee from, nor be deemed a waiver of, City's right to enforce the terms of Grantee's obligations hereunder. City reserves the right to examine any policy provided for under this paragraph or to require further documentation reasonably necessary to form an opinion regarding the adequacy of Grantee's insurance coverage.

917. CABLE FRANCHISE: MISCELLANEOUS PROVISIONS

917.010 POSTING AND PUBLICATION

Grantee shall assume the cost of posting and publication of this Franchise as such posting and publication is required by law and such is payable upon Grantee's filing of acceptance of this Franchise.

917.020 GUARANTEE OF PERFORMANCE

Grantee agrees that it enters into this Franchise voluntarily in order to secure and in consideration of the grant from the City of a ten (10) year Franchise. Performance pursuant to the terms and conditions of this Franchise is guaranteed by Grantee.

917.030 ENTIRE AGREEMENT

This Franchise contains the entire agreement between the parties and supersedes all prior agreements or proposals except as specifically set forth herein.

917.040 CONSENT

Wherever the consent or approval of either Grantee or the City is specifically required in this agreement, such consent or approval shall not be unreasonably withheld.

917.050 PRIOR FRANCHISE TERMINATED

The cable television franchise originally granted by Resolution No.1995-5 is hereby terminated.

917.060 PRIOR REGULATORY AGREEMENTS TERMINATED

The Memorandum of Understanding and Regulatory Agreement dated March 9, 1995 (herein "MOU"), the March 10, 2014 Settlement Regarding PEG Capacity (herein "2014 Settlement Agreement"), and any other prior settlement agreements or memorandums of understanding are terminated and of no further effect. Grantee releases any claims it has against City and the Commission with respect to its asserted rights to offset past payments made to the Commission pursuant to the MOU and the 2014 Settlement Agreement against Franchise Fees, and any claim of overpayment of franchise fees or other fees.

917.070 FRANCHISE ACCEPTANCE

No later than thirty (30) Days following City Council approval of this Franchise, Grantee shall execute and return to the City three (3) original franchise agreements. The executed agreements shall be returned to the City accompanied by performance bonds, security funds, and evidence of insurance, all as provided in this Franchise. In the event Grantee fails to provide the required executed Franchise, insurance certificate as required by Section 916.070(j) and the Bond, this Franchise shall be null and void. The Grantee agrees that despite the fact that its written acceptance may occur after the Effective Date, the obligations of this Franchise shall become effective on the Effective Date.

917.080 AMENDMENT OF FRANCHISE

Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made to address technology changes or advances subsequent to a review session pursuant to Section 902.060 or at any other time if City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, state or local laws; provided, however, nothing herein shall restrict City's exercise of its police powers.

917.090 NOTICE

All notices, reports, or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to any officer of the Grantee or the City's administrator of this Franchise during Normal Business Hours or forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

If to City: City Administrator
 City of Birchwood Village
 207 Birchwood Avenue
 Birchwood Village, MN 55110

If to Commission:
 Executive Director
 Ramsey Washington Counties Suburban
 Cable Communications Commission
 2460 East County Road F
 White Bear Lake, MN 55110

If to Grantee:
 General Manager
 Comcast
 10 River Park Plaza
 St. Paul, MN 55107

Such addresses may be changed by either party upon notice to the other party given as provided in this Section.

Recognizing the widespread usage and acceptance of electronic forms of communication, emails will be acceptable as formal notification related to the conduct of general business amongst the parties to this contract, including but not limited to programming and price adjustment communications required under Section 914.100. Such communication should be addressed and directed to the Person of record as specified above.

917.100 FORCE MAJEURE

In the event that either party is prevented or delayed in the performance of any of its obligations under this Franchise by reason of acts of God, floods, fire, hurricanes, tornadoes, earthquakes, or other unavoidable casualties, insurrection, war, riot, vandalism, strikes, delays in receiving permits where it is not the fault of Grantee, public easements, sabotage, acts or omissions of the other party, or any other similar event beyond the reasonable control of that party, it shall have a reasonable time under the circumstances to perform such obligation under this Franchise, or to procure a substitute for such obligation to the reasonable satisfaction of the other party.

917.110 WORK OF CONTRACTORS AND SUBCONTRACTORS

Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors, and others performing work on its behalf as if the work were performed by it and shall ensure that all such work is performed in compliance with this Franchise, the City Code and other Applicable Law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other Persons performing work on Grantee's behalf are familiar with the requirements of this Franchise, the City Code and other Applicable Laws governing the work performed by them.

917.120 GOVERNING LAW

This Franchise is made pursuant to Minnesota Statutes Chapter 238 and the City Code and is intended to comply with all requirements set forth therein. This Franchise shall be deemed to be executed in the State of Minnesota, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Minnesota, as applicable to contracts entered into and performed entirely within the State.

917.130 COMMISSION

In the event the City lawfully withdraws from the Commission, any reference to the Commission in this Franchise shall thereafter be deemed a reference to the City and the rights and obligations related thereto shall, where possible, accrue to the City unless or until a new franchise is executed between Grantee and City. Nothing herein shall in any way modify or alter any rights or obligations the City or Commission may have under the Joint and Cooperative Agreement between the parties. In the event that the Commission lawfully merges with another commission, it would not be deemed by the Grantee a withdrawal for purposes of this franchise.

917.140 NONENFORCEMENT BY CITY

Grantee shall not be relieved of its obligation to comply with any of the provisions of this Franchise by reason of any failure of the City or to enforce prompt compliance.

917.150 CAPTIONS

The paragraph captions and headings in this Franchise are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of this Franchise.

917.160 CALCULATION OF TIME

Where the performance or doing of any act, duty, matter, payment or thing is required hereunder and the period of time or duration for the performance is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last Day of the prescribed or fixed period or duration of time. When the last Day of the period falls on Saturday, Sunday or a legal holiday that Day shall be omitted from the computation and the next business Day shall be the last Day of the period.

917.170 NO WAIVER

All rights and remedies given to the City by this Franchise or retained by the City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to the City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the City and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

917.180 GRANTEE ACKNOWLEDGEMENT OF VALIDITY OF FRANCHISE

Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and that under current law Grantee believes that said terms and conditions are not unreasonable or arbitrary, and that Grantee believes the City has the power to make the terms and conditions contained in this Franchise.

917.190 SURVIVAL OF TERMS

Upon the termination or forfeiture of the Franchise, Grantee shall no longer have the right to occupy the Streets for the purpose of providing Cable Service. However, Grantee's obligations to the City (other than the obligation to provide service to Subscribers) shall survive according to their terms.

917.200 COMPETITIVE EQUITY

- (a) The Grantor has the authority to grant franchises that allow entities to construct and operate facilities in the Public Rights-of-Way that may be used to provide video programming services to residences that compete with Grantee's services. If Grantor grants such a franchise to an entity that provides competitive video programming services to residences that contains material terms and conditions that differ from Grantee's material obligations under this Franchise, then the parties agree that the processes and provisions of this Section will apply.

(b) If Grantor grants a franchise to an entity that provides competitive video programming services to residences that contains material terms and conditions that differ from Grantee's material obligations under this Franchise, the Grantor and Grantee will either negotiate the terms of this Franchise to include any material terms or conditions that the Grantor imposes upon the new entrant, or negotiate amendments to the Franchise to insure that the regulatory and financial burdens on each Grantee are materially equivalent. "Material terms and conditions" include franchise provisions related to: Franchise fees and Gross Revenues; Operation in Streets and Rights-of-Way (Section 903), number of Public, Education and Government Access Channels and their funding; customer service standards; required reports and related record keeping; and liquidated damages. The parties agree that this provision shall not require an identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens in their entirety on each entity are materially equivalent.

(c) Exemptions. The following are exempt from this Section:

- (i) video programming services delivered over wireless networks, unless the state or FCC has determined that these are subject to City franchising authority;
- (ii) video programming services delivered via means over systems that are not subject to the Grantor's franchising authority or upon which the Grantor may not impose similar requirements, under state or federal law, including a system described in 47 U.S.C. § 651(a)(2);
- (iii) telecommunication services;
- (iv) interstate information services;
- (v) any new franchise that is issued for less than 10% of the territory of the City. For the avoidance of doubt, this exemption is not intended to preclude the Grantee's pursuit of any remedies it may have under Minn. Stat. § 238.08, Subd. 1.

(d) Limits on Relief. The parties agree that:

- (i) Grantee may not withhold, delay or enjoin any performance or otherwise refuse to comply with its obligations whether or not it believes it is entitled to relief under this Section;
- (ii) Any relief shall be prospective only, and limited to the relief agreed upon, or the modifications obtained through any renewal of this Franchise;
- (iii) Grantor will not be liable for any damages to Grantee for any breach of this provision; and
- (iv) Grantee may not obtain any relief from non-franchise obligations it may have under settlements or other contracts with the Grantor via this provision.

(e) Modifications Process, Initiation. The modifications process provided for herein

shall only be initiated by written notice provided by Grantee to Grantor regarding specified franchise obligations. Grantee's notice must: (1) identify the specific terms or conditions in the competitive cable services franchise which are materially different from Grantee's obligations under this Franchise; (2) identify the Franchise terms and conditions for which Grantee is seeking amendments; (3) provide text for any proposed Franchise amendments to the Grantor with a written explanation of why the proposed amendments are necessary and consistent; and (4) confirm whether Grantee is willing to accept any additional obligations that may be contained within the modified franchise that are not contained within its franchise.

- (f) **Negotiation.** Upon receipt of Grantee's written notice as provided under subsection (e) above, Grantor and Grantee agree that they will use best efforts in good faith to negotiate the proposed Franchise modifications to achieve competitive equity of regulatory and financial burdens, and that such negotiation will proceed and conclude within a one hundred and eighty (180) day period, unless that time period is reduced or extended by mutual agreement of the parties. If Grantor and Grantee reach agreement on the Franchise modifications pursuant to such negotiations, then Grantor shall amend this Franchise to include the modifications insofar as permitted under City law. If the Grantor and Grantee fail to reach agreement in such negotiations, Grantee may elect to shorten the remaining term of this Franchise to not more than thirty-six (36) months, and Grantee may pursue non-monetary equitable relief it deems necessary to enforce its rights under this Section. If Grantee elects to shorten the term of this Franchise pursuant to this Section, Grantee shall be deemed to have timely invoked the formal renewal rights and procedures set forth in Section 626 of the Federal Cable Act.
- (g) **Actual Providers.** Notwithstanding anything contained herein to the contrary, Grantor shall not be obligated to amend this Franchise unless the new entrant is actually providing video programming services under a franchise granted by Grantor.

917.210 TREATMENT OF NEGOTIATED PROVISIONS

For the term of this Franchise any costs incurred by Grantee pursuant to Sections 907.020((c)), 907.050(c), 907.080, 907.090, 907.100, 907.120, 907.140, 907.150, 907.160, 913.010, 913.020, 913.030, and 913.040 shall be treated by Grantee as Grantee's business expense and not a Franchise Fee under Sections 901.190 and 916.010 of this Franchise or as a PEG Fee under Section 907.130 of this Franchise. Grantee reserves any rights it may have to recover from Subscribers, as a separate line item from the PEG Fee in Section 907.130 of this Franchise, any PEG capital costs set forth in Section 907.020(a) and (c), 907.080, 907.090, 907.100, 907.110, 907.150 and 907.160 as may be permitted by Applicable Law as of the Effective Date.

Passed and adopted this 13th day of, April 2021

ATTEST

City of Birchwood Village, Minnesota

By: Andy Gonyou

By: Mary Wingfield

Its: City Clerk

Its: Mayor

ACCEPTED: This Franchise is accepted, and we agree to be bound by its terms and conditions.

COMCAST OF MINNESOTA, INC.

Date: _____

By: _____

Its: _____

SWORN TO BEFORE ME this
____ day of _____, 2021.

NOTARY PUBLIC

RESOLUTION 2021-10

**CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA**

**A RESOLUTION APPROVING SUMMARY PUBLICATION OF
ORDINANCE NO. 2021-03-01, AN ORDINANCE GRANTING A FRANCHISE TO
COMCAST OF MINNESOTA, INC. (“ COMCAST”) TO CONSTRUCT, OPERATE, AND
MAINTAIN A CABLE SYSTEM IN THE CITY OF BIRCHWOOD VILLAGE ,
MINNESOTA AND ESTABLISHING CHAPTER 900 OF
CITY CODE**

WHEREAS, the City of Birchwood Village is a political subdivision, organized and existing under the laws of the State of Minnesota; and

WHEREAS, the City has adopted Ordinance No. 2021-03-01, which grants a cable television franchise to Comcast of Minnesota, Inc.; and

WHEREAS, the new ordinance is lengthy and would be costly for the City to publish in its entirety as required by law for the adoption of an ordinance.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Birchwood Village, Minnesota, as follows:

1. Because the terms of Ordinance 2021-03-01 are lengthy, the City may publish the attached summary of the Ordinance as allowed by statute, and need not publish the entire ordinance. The attached summary clearly informs the public of the intent and effect of the Ordinance. Summary publication has been approved by at least a 4/5 vote of the City Council.
2. The effective date of the Ordinance amendments shall be upon their publication by summary as required by law.

Resolution duly seconded and passed this 13th day of April, 2021.

Mary Wingfield, Mayor

Attest:

Andy Gonyou, City Administrator-Clerk

SUMMARY OF AN ORDINANCE GRANTING A FRANCHISE TO COMCAST OF MINNESOTA, INC. (“ COMCAST”) TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM IN THE CITY OF BIRCHWOOD VILLAGE , MINNESOTA SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS- OF-WAY; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN.

On April 13th, 2021, the City of Birchwood Village, Minnesota (“City”) adopted an Ordinance granting a Cable Television Franchise to Comcast. The Ordinance serves two purposes. First, it grants a nonexclusive cable franchise to Comcast to operate and maintain a cable system within the City. Second, it provides requirements for the provision of cable television services including technical standards, customer service obligations, and related matters.

The Ordinance includes the following key terms:

- 1) Establishes a franchise term of ten (10) years;
- 2) Imposes on Comcast a franchise fee of five percent (5%) of Comcast’s annual gross revenues;
- 3) Incorporates the City Code regarding right-of-way protections;
- 4) Requires Comcast to dedicate channel capacity for public, education, and government (“PEG”) programming;
- 5) Establishes a PEG Fee between three-and-one-quarter percent (3.25%) and two-and-three-quarters percent (2.75%) of Comcast’s annual gross revenues;
- 6) Imposes strong customer-service standards regarding Comcast’s provision of cable services; and
- 7) Requires a performance bond and letter of credit to enforce Comcast’s compliance with the Ordinance.

It is hereby determined that publication of this title and summary will clearly inform the public of the intent and effect of the Ordinance. A copy of the entire Ordinance shall be posted at the City of Birchwood Village City Hall.

It is hereby directed that only the above title and summary of the Ordinance be published, conforming to Minn. Stat. § 331A.01, with the following:

NOTICE

Persons interested in reviewing a complete copy of the Ordinance may do so at the City Hall at 207 Birchwood Avenue, Birchwood Village, MN 55110, during city hall regular hours.

Passed by the City of Birchwood Village City Council this 13th day of April, 2021.

CITY COUNCIL OF BIRCHWOOD VILLAGE

s/ Mary Wingfield, Mayor

Attest:

s/ Andy Gonyou, City Administrator-Clerk

From: [Steven W. Thatcher](#)
To: [Andy Gonyou](#)
Subject: RE: City of Birchwood Village Variance Request 21-01-VB
Date: Wednesday, March 17, 2021 6:42:34 PM
Attachments: [image001.jpg](#)

Caution: This email originated outside our organization; please use caution.

Hi Andy,

I reviewed the additional information provided by the applicant.

The additional information does not alter our assessment.

Please let me know if you have further questions.

Best regards,

Steve

Steven Thatcher, PE

Thatcher Engineering Inc.

6201 Creek Valley Road

Edina, MN 55439

Phone: 612-781-2188 Cell: 612-867-7234 Fax: 612-781-2188 Web: www.thatcher-eng.com

ADDENDUM TO 419b Wildwood Ave Variance request

We are proposing raising the house 2½ feet and replacing the current pier and beam foundation with a concrete basement foundation.

PRACTICAL DIFFICULTIES

- 1) Our cabin was built in 1906. The current pier and beam foundation that supports it is not up to current code.
- 2) My home is on a hill with a concrete patio in front of it which slopes TOWARDS the house. Because the house is at or below ground level, any time it rains the water runoff goes directly into the wood frame that supports the front of the house. The frame of the right front porch has rotted and has partially collapsed and if left unchanged the water runoff now managing to find its way underneath the house could eventually start washing out the piers that are supporting the house. Because the house is at or below ground level, anytime it snows the snow can build up against the wood siding of the house, further rotting it.

Addendum 419b Wildwood Ave p. 1

We are asking permission to raise the house 2½ feet and to put a concrete block foundation in.

This will:

- 1) Bring our foundation up to code
- 2) Preserve the house by preventing storm water runoff from rotting the wood foundation and washing out the piers of the current foundation
- 3) Prevent bugs, mice and wildlife from living under the house and entering the house
- 4) Enable us to fully winterize the house
- 5) Will help preserve the environment by lessening the percentage of impervious surface (we will be taking out the concrete patio and the concrete steps on the east side of the house going downhill)
- 6) Will help to preserve the essential character of the locality and its history.

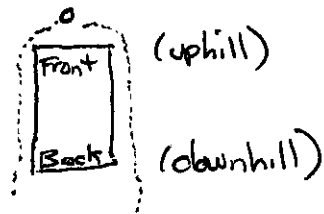
Addendum 419b Wildwood Ave p. 2

We will not be altering or changing the 24 x 38 footprint of the house.

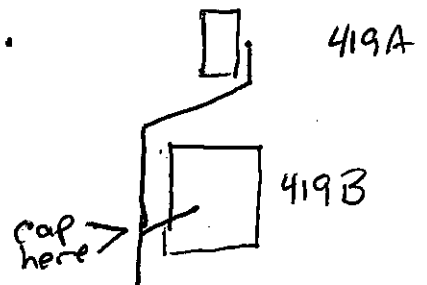
By raising it we will not be impeding a lake view of any of our neighbors.

By improving our home we will be improving the look of the immediate surroundings, improving the values of our neighbors homes, and increasing the tax base.

We will be putting in a french drain system with a starting collection point somewhere in front of our home (where the current concrete patio is) and going around the house in order to deal with any storm water runoff so that it doesn't effect our neighbors properties.



The sewer line from the cabin up the hill from ours at 419A does NOT go underneath our home and will not be affected by this project. We will cap off our portion of it and install our own new sewer line.



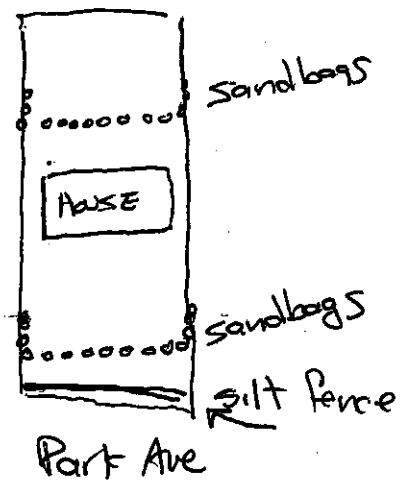
Addendum 419b Wildwood Ave p.3

Replacing pier and beam foundations with concrete basement foundations has been done before with several of our neighbors properties. One that I know of for sure is 427 Wildwood Ave, done in 2002.

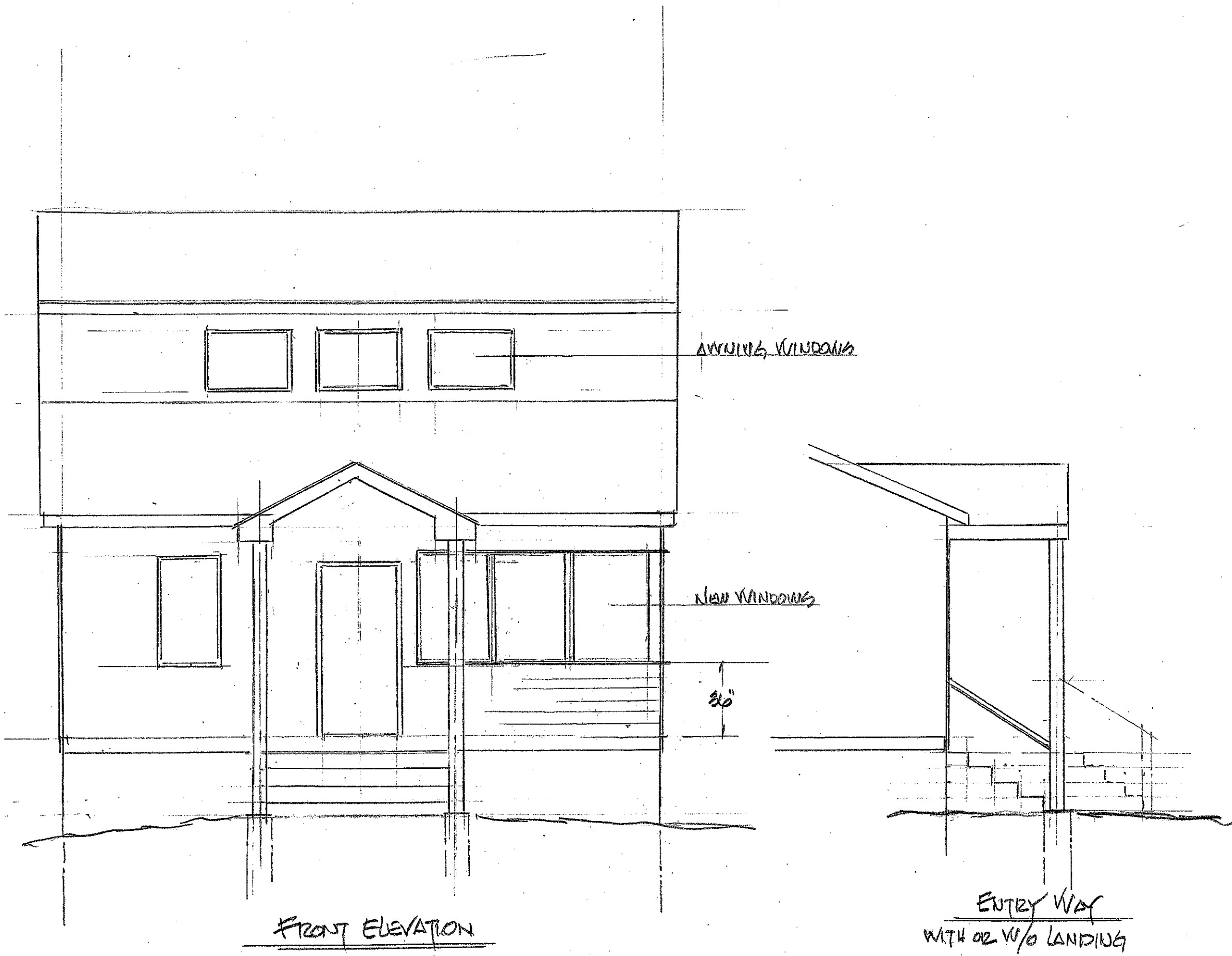
The current height of the cabin is just under 22½ feet from the peak of the roof to the ground. Raising it 2½ feet will bring it to 25 feet. The total height from the peak of the roof to the basement floor will be 30 feet.

Any dirt that is excavated will be either contained by sandbags (we have 1,000?), redistributed, or disposed of. Sandbags will be in two areas in the yard AND a silt fence will be at the bottom of the hill on our property abutting Park Ave.

our lot



Addendum 4196 Wildwood Ave p. 4



FRONT ELEVATION

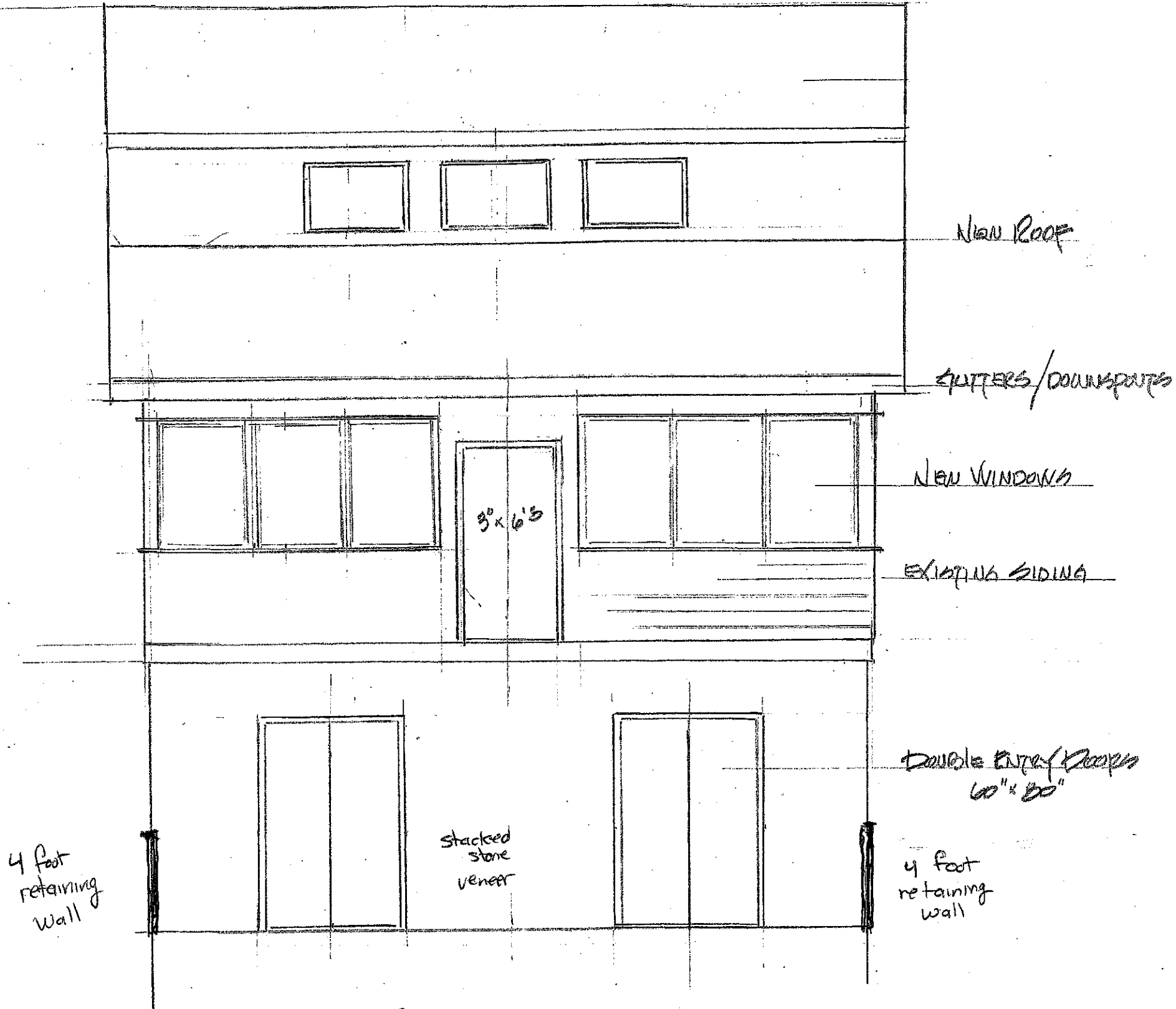
EXISTING WINDOWS

NEW WINDOWS

36"

ENTRY WAY
WITH OR W/O LANDING

SHEET 2 of 4

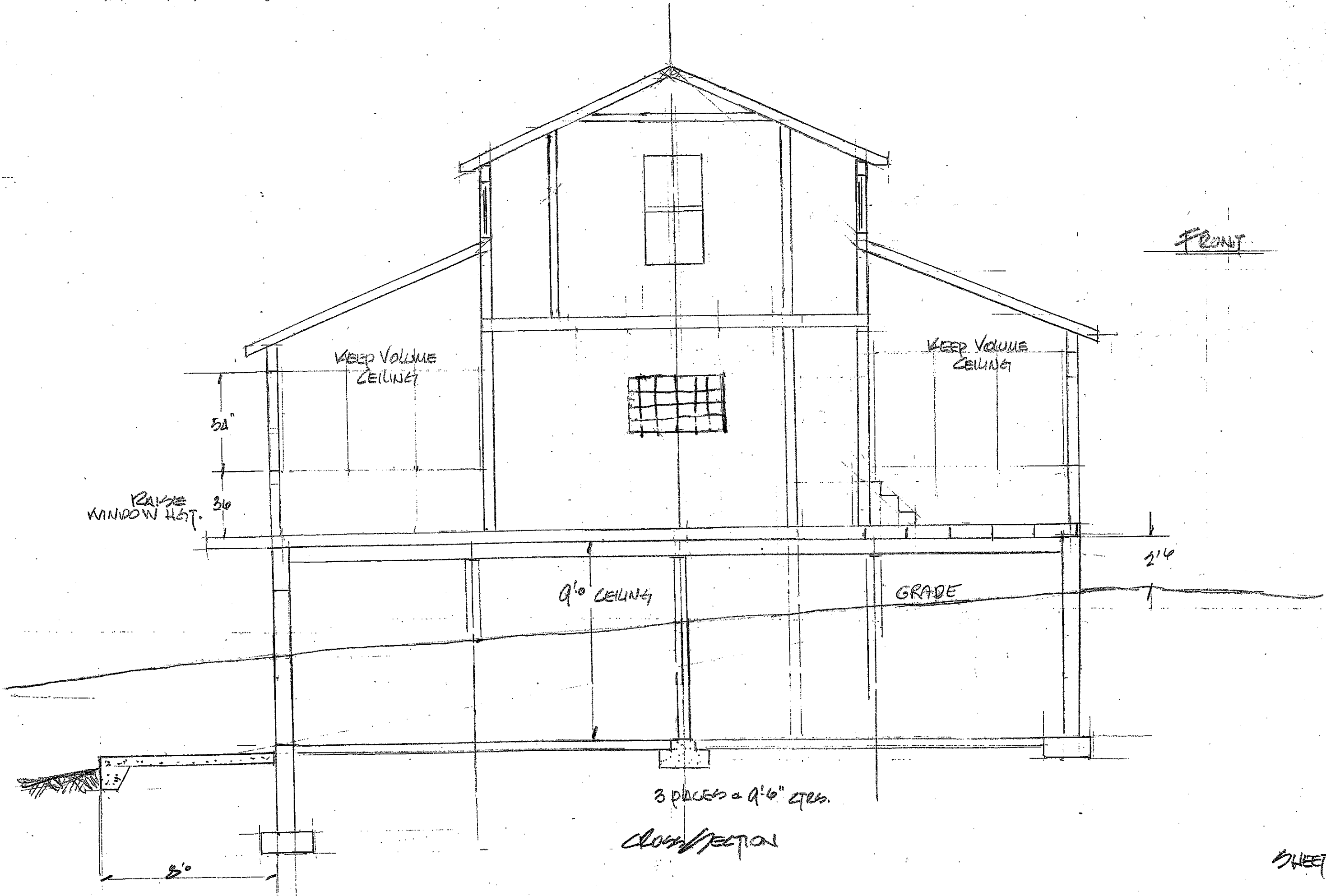


HOUSE REMODEL
 FOR
 HARJA ESKEL & DOUG KOEL
 419 W WILDWOOD AVE
 WILCHWOOD, MN 55110
 PLUTIKS DESIGN SCALE 1/4" = 1'

REAR ELEVATION

REV. A

SHEET 1 of 4



CITY OF BIRCHWOOD VILLAGE MEMORANDUM

TO: Birchwood Village Planning Commission
FROM: Thatcher Engineering, Inc.
DATE: December 16, 2020
APPLICANT: Nadja Gale, 1801 Elliot Avenue #12, Minneapolis, MN 55404
LOCATION: 419 B Wildwood Avenue, Birchwood Village, MN 55110

REQUEST

Variance request #1: The Applicant is requesting a variance from City Code 301.050.

1. The applicant requests a variance from the requirement that states the following:

“NON-CONFORMING USES.

A. Definition: Non-Conforming Use. See definition in Section 300.020.34

B. Pre-Existing Structures or Uses: A non-conforming use may be continued so long as it remains otherwise lawful, subject to the provisions of paragraphs (1) through (7) below, in order to ensure that the non-conforming use will not be intensified and that, over time, the non-conforming use will, where possible, be brought into conformity with the Zoning Code.

1. A Non-Conforming Pre-Existing Structure shall not be enlarged, modified, changed, extended (either horizontally or vertically) or structurally altered, unless such changes bring the Non-Conforming Pre-Existing Structure into conformity with the Zoning Code. (Exception: A non-conforming use, lawfully located within 60% of all required setbacks, may be structurally altered if the alterations do not change the horizontal or vertical dimensions of the structure and otherwise conform to the Zoning Code.)

2. A non-conforming use shall not be moved to any other part of the parcel of land upon which the same was constructed unless the move would bring the structure and its use into conformity with the Zoning Code.

3. If any Non-Conforming Pre-Existing Structure or Use is destroyed by fire or other peril to the extent of greater than 50 percent of its estimated market value, as

indicated in the records of the county assessor at the time of damage, and no building permit has been applied for within 180 days of when the property is damaged, any replacement or reconstruction must conform to the provisions of the Zoning Code. Exception: If the non-conforming use that is to be reconstructed came into being as the result of a previously granted variance, the Council, after review, may continue the variance if the owner demonstrates that the conditions under which that variance was granted continue to exist.

4. Normal maintenance of a Non-Conforming Pre-Existing Structure is permitted, including necessary non structural repairs and incidental alterations which do not physically extend or intensify the non-conforming use.

5. Notwithstanding paragraph (1) above, a Non-Conforming Pre-Existing Structure may be expanded, provided:

a. That such expansion does not increase the non-conformity in any dimension (vertical or horizontal), does not create a new non-conforming use, and in itself conforms with the Zoning Code; and

b. The sum of the setbacks on either side of the structure is not LESS than 20 feet.

6. When any Non-Conforming Pre-Existing use of land or of a building or structure is discontinued for a period in excess of one year, such land, building, or structure shall thereafter be used only as allowed by this Code.

7. No provision of this section shall be interpreted as negating the provisions of 302.015 (Undersized Lots).

C. Illegal Structures, Uses, or Lots: Any replacement or reconstruction of any kind of a Non-Conforming Illegal Structure, Use, or Lot must conform to the provisions of the Zoning Code.” [Bold and underlines are in the Code]

City Code Section 300.020.34 states: “Non-Conforming Use. **Non-Conforming Pre-Existing Structure or Use:** Any building or structure which was legally existing on January 1, 1975, or authorized by variance thereafter, which would not conform to the applicable conditions if the building or structure were to be erected under this Code. **Non-Conforming Illegal Structure, Use, or Lot:** A lot, building, structure, premises, or use illegally established when it was initiated, created, or constructed, which did not conform with the applicable conditions or provisions of the City Code for the area in which the structure or use is located.” [Bold and underlines are in the Code]

The Applicant is making the request because the Applicant wants to improve the existing cabin to make it a permeant home to enjoy year round.

The existing cabin is on a pier and beam foundation. The Applicant wants to raise the cabin and install the cabin on a walkout basement foundation.

Currently, this property does not conform to City Code 302.050 because the impervious surface coverage of the lot is 33.6%. If approved, the impervious surface coverage of the lot will be 21.0% because the Applicant will remove the concrete patio and concrete stairs.

SITE CHARACTERISTICS

The lot area is 5,015 square feet according to the Certificate of Survey dated November 21, 2020 prepared by Engineering Design & Surveying. The lot is a narrow (about 30.0 feet wide) and contains a single-family residence.

PRACTICAL DIFFICULTY

- 1) The lot is an undersized lot based on City Code because the width is about 30.0 feet.
- 2) The lot has steep slopes and topography challenges.
- 3) The lot is extremely narrow and long.

STATUTORY REQUIREMENTS FOR PERMITTING VARIANCES

Minnesota State Statute 462.357 allows for a variance to be permitted only when:

- (1) The proposed use is in harmony with the general purposes and intent of the City's zoning ordinance;
- (2) The variance is consistent with the City's comprehensive plan; and,
- (3) The applicant establishes that there are practical difficulties in complying with the zoning ordinance.

Statutory criteria used to establish a practical difficulty include:

- (1) The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance;
- (2) The plight of the landowner is due to circumstances unique to the property not created by the landowner; and
- (3) The variance, if granted, will not alter the essential character of the locality.

CTY CODE REQUIREMENTS FOR PERMITTING VARIANCES

Sec 304.040 of the City Code states:

Variations to the strict application of the provisions of the Code may be granted, however, no variance may be granted that would allow any use that is prohibited within the City. Conditions and safeguards may be imposed on the variations so granted. A variance shall not be granted unless the following criteria are met:

SUBD. 1.

- A. Variances shall only be permitted
 - i. when they are in harmony with the general purposes and intent of the ordinance and
 - ii. when the variances are consistent with the comprehensive plan.
- B. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance.

SUBD. 2. "Practical difficulties," as used in connection with the granting of a variance, means that

- i. Special conditions or circumstances exist which are peculiar to the land, structure, or building involved.
- ii. The condition which result in the need for the variance were not created by the applicant's action or design solution. The applicant shall have the burden of proof for showing that no other reasonable design solution exists.
- iii. The granting of a variance will result in no increase in the amount of water draining from the property.
- iv. Granting the variance will not impair an adequate supply of light and air to adjacent property, or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, or welfare of the residents of the City.
- v. No variance shall be granted simply because there are no objections or because those who do not object outnumber those who do.
- vi. Financial gain or loss by the applicant shall not be considered if reasonable use for the property exists under terms of the Zoning Code.

ANALYSIS

The lot is an undersized lot with steep slopes and topography challenges. City Code 302.015 allows undersized lots to be utilized for single-family detached dwelling purposes provided the measurements of such area, width, or open space are at least 60% of that required.

REASONS FOR RECOMMENDING VARIANCE APPROVAL

Variance request #1:

1. The plan meets City Code requirements.
2. The lot is an undersized lot.
3. This project would preserve the essential character of the locality.
4. The lot will meet Code requirements for impervious surface coverage because the Applicant will remove the existing concrete patio and concrete stairs.

REASONS FOR RECOMMENDING VARIANCE DENIAL

Variance request #1:

1. A primary goal of the City of Birchwood Village's Zoning Ordinance is "to ensure that a non-conforming use is not intensified and that, over time, the non-conforming use will, where possible, be brought into conformity with the Zoning Code." The following could be argued:
 - a. That they are not in harmony with the general purposes and intent of the ordinance.
 - b. That the variance is not consistent with the comprehensive plan.
 - c. That the Applicant for the variance has not established that there are practical difficulties in complying with the zoning ordinance.
 - d. The lot does not meet the requirements of City Code 302.015.

CONDITIONS

If approved, a requested variance may be approved subject to the following conditions:

1. All application materials, maps, drawings and descriptive information submitted with this application shall become part of the building permit.
2. Per City Code 304.090, the variance shall become null and void if the project has not been completed or utilized within one year after the date it was granted, subject to petition for extension by the City Council.
3. Land alteration may not cause adverse impact upon abutting property.
4. Applicant shall meet the requirements of City Code 301.055 which states: "For a building permit, the applicant must submit stormwater and erosion control plans prepared and signed by a licensed professional engineer. The plans must be approved by the city engineer and the permit holder must adhere to the approved plans. The stormwater management plan must detail how stormwater will be controlled to prevent damage to adjacent property and adverse impacts to the public stormwater drainage system."



City of Birchwood Village Petition for Variance Application

207 Birchwood Ave, Birchwood, MN 55110
Phone: 651-426-3403 Fax: 651-426-7747
Email: info@cityofbirchwood.com

FOR OFFICIAL USE ONLY

Application Received Date: _____ Amount Paid: \$ _____
 Payment Type (Circle One): **Cash / Check / Money Order / Credit Card**
 Check/Money Order # _____
 Application Complete? Yes No If no, date application was deemed complete: _____
 Signature of City Planner: Sam W. Hutchins Date: 12/16/2020

Completed requests for variances submitted prior to the first Thursday of the month will be considered by the Planning Commission at its next meeting on the fourth Thursday of the month. Requests submitted after the first Thursday of the month will be considered at the following meeting. All final decisions on variance applications are made by the City Council, which meets on the second Tuesday every month.

- Name of Applicant(s) Nadya Gale
 Address 1801 Elliot Ave #12
 City Minneapolis State MN Zip Code 55404
 Business Phone _____ Home Phone (612) 222-1237
- Address of Property Involved if different from above: _____
419 B Wildwood Ave, Birchwood Village, MN 55110
- Name of Property Owner(s) if different from above and describe Applicant's interest in the property:
I am interested in improving the current cabin to make it a permanent home to enjoy year round.
- Specific Code Provision from which Variance is requested: Section 301.050
- Describe in narrative form what the Applicant is proposing to do that requires a variance:
The cabin is currently on a pier and beam foundation. We would like to raise it and put it on a walk out basement foundation instead.

6. Type of Project:

- New Construction (empty lot)
- Addition
- Demolition
- Landscaping
- Repair or removal of nonconforming structure ? ↓
- Other (describe) Change in foundation from pier and beam to walkout basement.

7. Type of Structure Involved:

- | | |
|---|--|
| <input checked="" type="checkbox"/> Single Dwelling | <input type="checkbox"/> Double Dwelling |
| <input type="checkbox"/> Garage | <input type="checkbox"/> Addition |
| <input type="checkbox"/> Tennis Court | <input type="checkbox"/> Pool |
| <input type="checkbox"/> Grading/Filling | |
| <input type="checkbox"/> Other (describe) _____ | |

8. Using the criteria from the City Code for a variance (see last page), explain why a variance is justified in this situation and describe what "Practical Difficulties" exist:

A walkout basement will enable us to fully winterize the home as well as keep out bugs, mice, and wildlife that currently reside under the home. Raising it is necessary to make a positive slope so that the water run off doesn't enter the home.

9. Describe any measures the Applicant is proposing to undertake if the variance is granted, including measures to decrease the amount of water draining from the property:

We are willing to remove the concrete patio in the front of our house as well as remove the concrete stairs going down the hill in the back in order to meet the 25% or less impervious surface.

10. Describe any alternatives the Applicant considered (if any) that do not require a variance:

11. Can an emergency vehicle (Fire Truck or Ambulance) access all structures on the property after the proposed change? Yes No

12. Does the proposed change bring any other nonconforming use into conformity with the City Building Code? Yes No

If yes, explain: Removing the concrete patio and concrete stairs will bring us into 25% impervious surface (actually, less than 25%)

13. Are there other governmental regulations that apply to the proposed action, including requirements of the Rice Creek Watershed District? Yes No

If yes, please identify the regulations AND attach evidence demonstrating compliance:

14. Please provide the applicable information in the following Table:

	EXISTING	PROPOSED	CHANGE
1. Total Square Footage of Lot	5015	5015	- 0 -
2. Maximum Impervious Surface (25% of item 1)	1254	1254	- 0 -
3. Roof Surface	970	970	- 0 -
4. Sidewalks and patio	716	88	- 628
5. Driveways	- 0 -	- 0 -	- 0 -
6. Other Impervious Surface	- 0 -	- 0 -	- 0 -
7. Total of Items 3-6	1686	1058	- 628
8. Percent Impervious Surface	33.6%	21%	- 12.6%

15. Please attach the following:

- Legal description of property.
- Plot plan drawn to scale showing existing and proposed new and changed structures on the lot. Also show existing structures on adjacent lots.

Criteria for Granting a Variance. Pursuant to Minn. Stat. Sec. 462.357, subd. 6, as it may be amended from time to time, the Planning Commission may issue recommendations to the City Council for variances from the provisions of this zoning code. A variance is a modification or variation of the provisions of this zoning code as applied to a specific piece of property.

Variances to the strict application of the provisions of the Code may be granted, however, no variance may be granted that would allow any use that is prohibited within the City. Conditions and safeguards may be imposed on the variances so granted. A variance shall not be granted unless the following criteria are met:

SUBD. 1.

- A. Variances shall only be permitted
 - i. when they are in harmony with the general purposes and intent of the ordinance and
 - ii. when the variances are consistent with the comprehensive plan.
- B. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance.

SUBD. 2. "Practical difficulties," as used in connection with the granting of a variance, means that

- i. Special conditions or circumstances exist which are peculiar to the land, structure, or building involved.
- ii. The condition which result in the need for the variance were not created by the applicant's action or design solution. The applicant shall have the burden of proof for showing that no other reasonable design solution exists.
- iii. The granting of a variance will result in no increase in the amount of water draining from the property.
- iv. Granting the variance will not impair an adequate supply of light and air to adjacent property, or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, or welfare of the residents of the City.
- v. No variance shall be granted simply because there are no objections or because those who do not object outnumber those who do.
- vi. Financial gain or loss by the applicant shall not be considered if reasonable use for the property exists under terms of the Zoning Code.

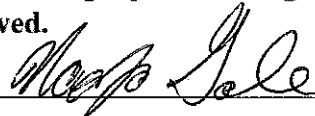
NOTICE:

***The City and its representatives accept no responsibility for errors and/or damages caused due to incomplete and/or inaccurate information herein. It is the responsibility of the applicant to ensure the accuracy and completeness of this information.**

***The City will hold applicant responsible for any damage to public property that occurs in the course of performing the activities of this permit.**

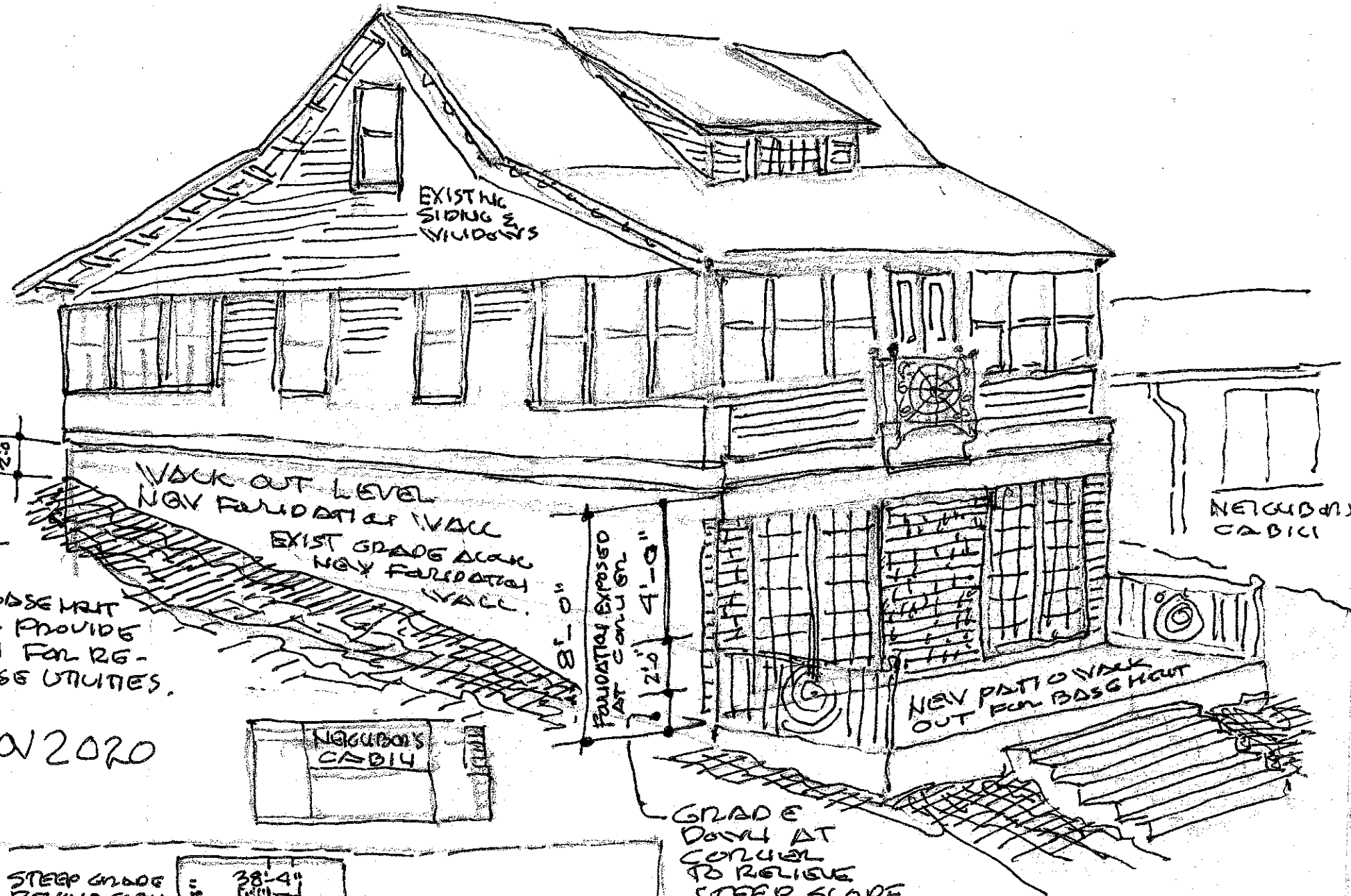
***Under penalty of perjury the applicant declares that the information provided in and enclosed herewith is complete and all documents represented are true and correct representations of the actual project/building that will be built in conformance with such representation if approved.**

Signature of Applicant: _____



Date: _____

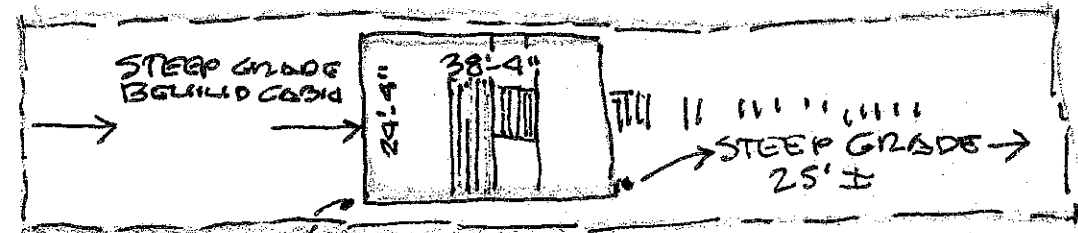
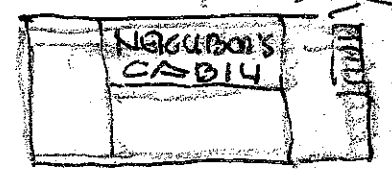




RAISE CABIN 2'-0" HIGH NEW FOUNDATION WALL FOR VAC OUT BASEMENT

VAC OUT BASEMENT WILL ALSO PROVIDE HEAD ROOM FOR REQUIRED HOSE UTILITIES.

DWG 19 NOV 2020



VAC OUT LOT

FOUNDATION RAISE REQUIRED TO MAKE POSITIVE SLOPE AROUND BACK OF CABIN.

GRADE DOWN AT CORNER TO RELIEVE STEEP SLOPE IN HILL

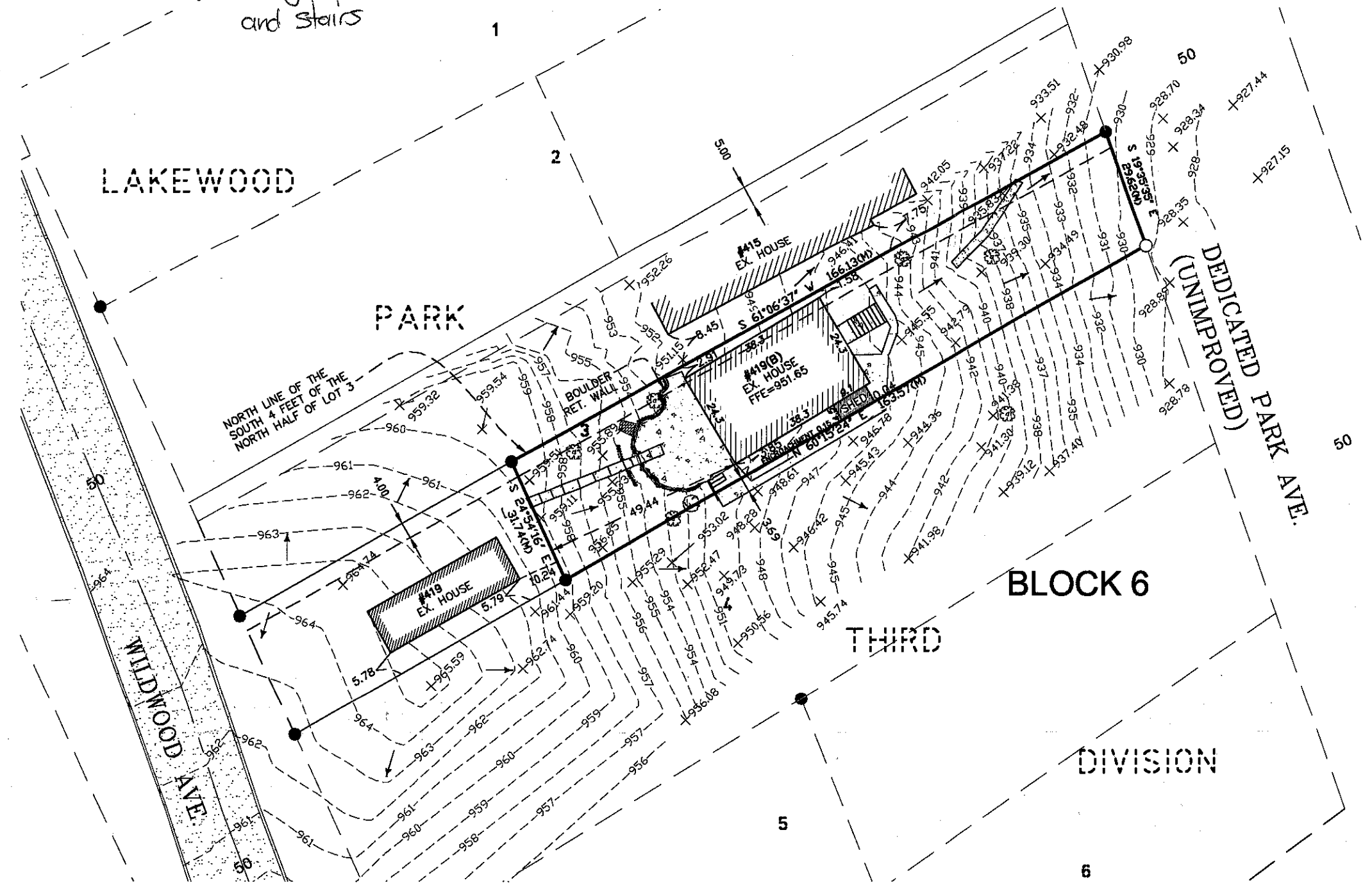
CERTIFICATE OF SURVEY

Call 48 Hours before digging
GOPHER STATE ONE CALL
 Twin Cities Area 651-454-0002
 MN. Toll Free 1-800-252-1166

proposing taking out existing concrete portion and stairs

-for-
NADJA GALE

Cabin will stay in current position but will be raised and put on a walk-out basement instead



- LEGEND**
- DENOTES FOUND PROPERTY IRON
 - DENOTES SET 1/2" X 18" REBAR WITH PLASTIC CAP "PLS 25105"
 - DENOTES BOUNDARY LINE
 - - - DENOTES LOT LINE
 - - - DENOTES PROPERTY LINE
 - x999.99 DENOTES EXISTING SPOT ELEVATION
 - DENOTES CONCRETE SURFACE
 - - - 999 DENOTES EXISTING CONTOUR LINE
 - FFE DENOTES FINISH FLOOR ELEVATION
 - ▨ DENOTES BITUMINOUS SURFACE
 - ▩ DENOTES BRICK PAVER SURFACE
 - ⊗ DENOTES DECIDUOUS TREE
 - DENOTES RETAINING WALL
 - (M) DENOTES MEASURED DISTANCE
 - DENOTES DRAINAGE FLOW

- NOTES**
1. THE BASIS OF THE BEARING SYSTEM IS ASSUMED.
 2. NO SPECIFIC SOIL INVESTIGATION HAS BEEN COMPLETED
 3. CONTRACTOR SHALL VERIFY PROPOSED ELEVATIONS.
 4. NO TITLE INFORMATION WAS PROVIDED FOR THIS SURVEY. THIS SURVEY DOES NOT PURPORT TO SHOW ALL EASEMENTS OF RECORD.
 5. EXISTING UTILITIES AND SERVICES SHOWN HEREON OWNER LOCATED EITHER PHYSICALLY ON THE GROUND DURING THE SURVEY OR FROM EXISTING RECORDS MADE AVAILABLE TO US OR BY RESIDENT TESTIMONY. OTHER UTILITIES AND SERVICES MAY BE PRESENT. VERIFICATION AND LOCATION OF UTILITIES AND SERVICES SHOULD BE OBTAIN FROM THE OWNERS OF RESPECTIVE UTILITIES BY CONTACTING GOPHER STATE ONE CALL AT (651) 454-0002 PRIOR TO ANY DESIGN, PLANNING OR EXCAVATION.

BUILDING SETBACKS
 ZONING: R-1-1 LOW DENSITY
 SINGLE FAMILY-ISLAND
 HOUSE: FRONT = 40 FT.
 REAR = 50 FT.
 SIDE = 35 FT.

EXISTING HARDCOVER

EXISTING HOUSE	929 SQ. FT.
EXISTING SHED	41 SQ. FT.
EXISTING BRICK SURFACE	10 SQ. FT.
EXISTING CONCRETE SURFACE	706 SQ. FT.
TOTAL IMPERVIOUS AREA	1,686 SQ. FT.
TOTAL LOT AREA	5,015 SQ. FT.
EXISTING HARDCOVER	33.6 %

REFERENCE BENCHMARK
 ELEVATION = 919.53 (NGVD 29) MNDOT DISK
 "MICHAEL"

LEGAL DESCRIPTION
 All that part of South Half of Lot 3, Block 6 & the South 4 feet of North Half of Lot 3, Block 6 Lakewood Park Third Division, Washington County, Minnesota, according to the recorded plat thereof.

NO.	DATE	DESCRIPTION	BY

EDS ENGINEERING DESIGN & SURVEYING
 6480 Wayzata Blvd. Minneapolis, MN 55426
 OFFICE: (763) 545-2800 FAX: (763) 545-2801
 EMAIL: info@edsmn.com WEBSITE: http://edsmn.com

I HEREBY CERTIFY THAT THIS SURVEY WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION, AND THAT I AM A DULY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF MINNESOTA.
Vlad Sivriev DATED: 11/21/20
 VLADIMIR SIVRIEV L.S. NO. 25105

JOB NAME: **NADJA GALE**
 LOCATION: 419(B) WILDWOOD AVE
 BIRCHWOOD, MN 55110

FIELD WORK DATE: 11/18/20
 FIELD BOOK NO.: EDS-13

DRAWN BY: GP
 CHECKED BY: VS
 PROJECT NO.: 20-190
 SHEET NO. 1 OF 1

MEMORANDUM



TO: Birchwood Village City Council
FROM: Andy Gonyou, City Administrator
SUBJECT: Planning Commission Appointment
DATE: April 7, 2021

Dear Mayor & City Council Members:

Recently, Planning Commission Chairperson John Lund resigned from his appointment and the City sought applications to fill the remainder of his term which is set to expire at the end of December 2023. The City has received the enclosed five (5) letters of interest from residents Joseph Evans, Paul Edwards, Michelle Maiers-Atakpu, Sandra Kriz Buerkle, and Michael McKenzie to serve on the Planning Commission to fill the remainder of John Lund's appointment.

Each applicant has been invited to attend the April 13th City Council meeting in the event the Council would like each applicant to speak to their interest and qualifications to serve on the Planning Commission.

Request/Recommendation

Staff requests Council:

- Review the enclosed five (5) letters of interest; and
- Determine one (1) appointment to the Planning Commission

Thank you,
Andy Gonyou
City Administrator - Clerk

Joseph E. Evans

Josephevans84@gmail.com | C: 651.353.8164 | 545 Wildwood Ave, Birchwood, MN 55110

Profile Summary

Detail-oriented and analytical risk management professional looking to join the Birchwood Village Planning Commission. With a strong background in economics and risk management, I believe I can provide support and add value to the city's Planning Commission by applying my experience and expertise. My team facilitates enterprise-wide policy and standards for the use of statistical models, and we ensure compliance with the risk management program. In addition to our daily functions, we facilitate monthly stakeholder meetings and quarterly Model Risk Steering Committee meetings, to report on the status and risk of new projects which impact the business. As a longtime resident of White Bear Lake and as a new resident to Birchwood Village, I would be honored to serve in this capacity. Though I have not served on a Planning Commission before, I would enjoy becoming intimately familiar with the City Code and Ordinances, work with developers, engineers, and other City Officials to ensure development remains within the vision of the City of Birchwood. I very much appreciate your time.

Professional Experience

U.S. Bank

Minneapolis, MN

Quantitative Analyst, Model Risk Governance

June 2016 – Present

- ✓ Successfully manage Marketing, Fraud, and Fair and Responsible Banking statistical models throughout the model lifecycle. This requires gathering and reviewing complex model information, assessing and assigning risk, obtaining management approval, and relaying information to stakeholders.
- ✓ Inform and advise appropriate stakeholders on Model Risk Governance policy requirements and standards. This requires asking tough questions and being firm on enforcing program requirements.
- ✓ Able to identify, analyze, and resolve complex and ambiguous problems and situations.
- ✓ Thrive in the fast-paced and diverse Governance environment; strong desire to understand complex circumstances and understand all perspectives.
- ✓ Contribute to policy and standards updates.
- ✓ Engage with internal auditors and federal government officials (OCC and Federal Reserve Board).

EPIEN Medical, Inc.

White Bear Lake, MN

Accounting Associate

May 2010 – June 2016

- ✓ Supported creation of financial statements, financial models, business forecasts, and management presentations.
- ✓ Effectively maintained accounting system's data integrity. Updated accounting and operational procedures.
- ✓ Identified, analyzed, and resolved accounting/business discrepancies; escalated to management when necessary.

Education

Saint Cloud State University

Saint Cloud, MN

Master of Science, Applied Economics

(Expected Summer 2021)

University of Minnesota, Twin Cities

Minneapolis, MN

Bachelor of Arts, Economics

Obtained Spring 2014

From: [Paul Edwards](#)
To: [BVInfoEmail](#)
Subject: Planning Commission - Cover Letter, Experience/Qualifications
Date: Monday, April 5, 2021 2:03:42 PM
Attachments: [Paul_Experience.pdf](#)

Caution: This email originated outside our organization; please use caution.

Mr. Gonyou,

I was excited to read of the opportunity in the White Bear Press about the Planning Commission opening. I've had a long standing interest in community service and land/housing development and in fact in college, I wrote a graduate paper on the savings and loan crisis and its impact on the real estate market and the broader implications to society.

You'll see from my qualifications that I have considerable experience in managing projects in heavily regulated industries. I'm a quick study and pride myself in the ability to articulate ideas and concepts in a collaborative manner, working with team members in ways that draw out individuals strengths thereby maximizing outcomes and elevating team member morale.

I'm no stranger to leadership and from a young age I have had the opportunity to measure my skill set relative to goals and missions. As a USMC Officer I oversaw the training and welfare of an infantry platoon of 39 Marines. That led to promotions to Company Executive Officer and to Light Armored Vehicle Platoon Commander. Each with intensified demands in leadership, scheduling, training and oversight.

My post graduate school career on Wall Street has provided the opportunity to deepen my knowledge in countless industries while facilitating equity capital raising, consulting with clients on portfolio construction and overseeing asset management in my own hedge fund.

I leveraged my skill set after the housing crisis founding a home building company and purchasing distressed assets from banks/financial institutions which I subsequently developed. Years in the homebuilding industry have provided familiarization with regulation, process, construction, and skills necessary to successfully develop a single family product in today's diversified communities.

I feel strongly about community service and believe it's my obligation to give back. I have a long history of donating time to the church, sporting teams, low income households and the community at large. Having recently retired from the Royal Bank of Canada I am excited to seek out areas where I can continue to give back and best harness the skills I have developed.

Respectfully submitted,

Paul Edwards

Tuesday, April 13th 2021 City Council Meeting

651-583-4479

Experience/Qualifications attached

Meridian Homes

Started a Limited Liability Corp (LLC) and targeted the acquisition of non performing assets post the housing crisis. This initiative resulted in vetting several opportunities and successfully negotiating and purchasing land from out of state banks/financial institutions. As President Meridian Homes I oversaw site development, plan development, material procurement, labor, scheduling, financing and various other management responsibilities in conjunction with building single family homes in Bayport, MN. I also oversaw company marketing, brand positioning and client consultation throughout the building process. I've worked with City Officials with respect to home plan development, application and permitting; I've also coordinated utility providers and the inspection process.

Investment Banker

Advised client companies seeking access to growth capital via equity capital markets. Oversaw the research process for each offering and capital raise. Successfully completed countless offerings raising millions of dollars of growth capital for client companies operating in the technology, financial, health care, home building/supplying and consumer end markets. Acted as liaison between distribution and client management teams. Provided education and forecasts.

Institutional Equity Sales

Consultant to client customers seeking investment in various publicly traded growth companies in a broad spectrum of industries. Client customers include: hedge funds, mutual funds, pension managers and accredited investors.

Hedge Fund Manager

Oversaw investment selection/portfolio management/risk management and capital deployment for \$20m equity fund seeking exposure to various consumer discretionary end markets.

Resurrection Lutheran Church

Oversaw Phase 1 new construction of a roughly 5000 square foot Church in Woodbury, MN. Worked with City Officials on site and plan development. Worked with architects in developing a comprehensive plan that included several phases to a building process that would be constructed over several years. Oversaw phase one construction of the church that included, sanctuary, office, class rooms and common area spaces. Lead two successful campaigns raising funds necessary for each phase of the project.

Captain - USMC

Responsible for training, education and management of Marines serving in my unit. As Executive Officer I oversaw the following departments: administration, motor transport, intel, weapons, food service. Oversaw maintenance program for Light Armored Vehicles including maintenance schedule, service, budgeting and equipment procurement. Oversaw Marines extensive training throughout the United States, Okinawa, Japan, Thailand and Central America.

Contractor Experience

Personally I have built three single family homes and oversaw countless improvement projects. I have a long history of working with subcontractors and city building officials.

Community Service

Long history of participating in youth athletics and volunteering time coaching in various sports including girls fast pitch softball, baseball, hockey and football.

Former President Mahtomedi Girls Fast Pitch Association.

Lead Resurrection Lutheran Church Capital Campaign 1 funding its initial building phase; committee member Resurrection Lutheran Church Capital Campaign 2.

Lead USMC fitness training for young Marines volunteering time outside working hours.

Liaison Piper Jaffray Community Service to People Serving People.

Donated \$350,000 single family house to the White Bear Lake Fire Department for training.

Volunteer tax consultant primarily to lower income households.

Proud father of three college educated young adults that have successfully launched their professional careers and families.

March 22, 2021

To: City of Birchwood Village
207 Birchwood Ave
Birchwood, MN 55110

From: Michelle Maiers-Atakpu
201 Birchwood Ave
Birchwood, MN 55110

RE: Planning Commission vacancy

To Whom it may concern:

I would like to apply for the vacant seat on the Planning Commission. I am a licensed Architect in the State of Minnesota and have lived in Birchwood Village since 1992. I am confident that I will be an asset to the Planning Commission, impart due to my near-daily experience in working with Codes - both the International Building Code and Zoning Ordinances from Cities around the State of Minnesota. My experience helps me to understand the importance of the codes, and how to apply them. Also, I personally have been involved in helping my clients apply for variances to zoning codes. This experience gives me insight from the applicant's point of view.

Many times, codes require interpretation given various circumstances. I believe the skills I have acquired as an Architect will transfer easily to the skills required of a Planning Commissioner – namely the ability to;

- listen and understand different perspectives
- communicate clearly
- investigate and understand the issues
- be open minded
- be prepared for meetings
- interpret codes, given various circumstances

In addition, I will be able to be fair minded and equitable in the application of the zoning code. If chosen for this position, I will bring a strong work ethic and integrity to the Birchwood Village Planning Commission. Thank you for your consideration.

Sincerely,
Michelle Maiers-Atakpu

January 3, 2021

Council Members
City of Birchwood Village
Birchwood, Minnesota 55110

Dear Council Members of the City of Birchwood Village,

My name is Sandra Kriz-Buerkle. I have lived in the City of Birchwood Village since 1980 at 529 Lake Avenue and I would like to be a part of the Planning Commission. My experiences as a teacher have contributed to one of my important assets; the ability to listen to people and to make organized plans. I believe a knowledge of the ordinances in Birchwood has helped me to understand the differences and misconceptions people may have in their understanding of all the perspectives with our ordinances.

I have gotten to know many community members in Birchwood and I would like to help people understand our ordinances and codes as they pertain to their building and remodeling in our city. When they come to the committee with their plans, I would like to work with them to improve and change, if needed, to help them develop and make their plans work. That all parties are satisfied with the outcomes as they follow the guidelines.

As a long time member of Birchwood; I have served on the parks committee for several years; soliciting for funding for our parks equipment and improving our parks for the children; I volunteered with Ed Herbert with the late night flooding of the rinks and monitoring the warming house. I assisted with the community club with the 4th of July parades and the Christmas parties for the community. When there was a garden club; I worked with community members to beautify the gardens in our community. As your representative, together with Art Johnson, at the White Bear Lake Conservation District; I worked with the five communities around the lake learning valuable knowledge with conserving our natural resources. As a fifteen year teacher at Matoska Elementary School I diligently developed plans for our prairie project which was a longtime educational experience for our students and parents.

I am willing to attend information meetings and stay informed and connected to our great City of Birchwood Village. I pride myself as a lifelong learner and a good collaborator. I will be fair and openminded. I am compassionate, understanding and impartial; able to make solid decisions based on the facts.

I will come to meetings prepared; having visited sites to attain pre knowledge of the concerns and issues individuals may have, who are presenting at the Planning Commission for building and remodeling at their site. I have worked with architects designing the remodeling project at my own homesite. I have learned a volume of technical information from electrical, plumbing to structural components to professional building practices and surveys.

I look forward to your consideration as a prospective member of the planning commission for the City of Birchwood Village.

Sandra Kriz Buerkle

I would like to throw my name in the hat to become a member of the planning commission. Here is some personal background.

I grew up in White Bear Lake in the Sunrise Park neighborhood and attended Bellaire Elementary, Sunrise Junior High, and Mariner High School. I come from a large family that has a long history of community involvement and political activism. For example, I have been active in community volunteering through coaching baseball, softball, hockey, and basketball for my siblings and my children.

I married my high school sweetheart, Julie, and we lived in St. Paul for a few years. In 1994 we were lucky enough to be able to purchase our current house at 509 Lake Ave. It was made even better because when I was young, I had hung out at the neighbors' house swimming and boating with Guy and Maryetta Coursolle's sons, Todd and Joe. Julie and I raised our three children in Birchwood: Tori, Will, and Grayson. Here is a brief professional background.

After high school, I received degrees from Lakewood Community College (A.A. in Vocal Performance), St. Cloud State University (B.A. in Economics), UW River Falls (M.A.T. in U.S. History), and St. Mary's University (Ed.D. in Educational Leadership). Upon earning my Economics degree, I spent a few years selling investment accounts at Midwest Federal, then went back to school to get licensed to teach. I have been an educator for 32 years, predominately in White Bear Lake Area Schools.

Most of my time at White Bear Lake Area Schools has been spent teaching U.S. Government, Civics, Economics, and serving as a Work Experience Coordinator, as well as coaching baseball and starting the Girls' Varsity Hockey program. Last year, I went back into the classroom teaching Economics and U.S. Government as well as again being a Work Experience Coordinator after being on leave from my teaching duties for eight years.

For the previous eight years I was on leave while holding the position of President of the White Bear Lake Teachers' Association. During this time I obtained a certification in human resources and became a Society for Human Resources Certified Professional (SHRM-CP). In my position as WBLTA President, I ran an organization of 550-600+ members, facilitated a 20-person leadership team, led approximately 40 building stewards, and managed an annual budget of about \$650,000. I actively participated in state politics through my leadership positions in Education Minnesota and my association with the St. Paul Regional Labor Federation.

Please let me know if you need any further information.

Michael G. McKenzie, Ed.D.

ORDINANCE 2021-04-01

**CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA**

**AN ORDINANCE AMENDING PERMIT STANDARDS
IN THE CITY ZONING CODE**

The City Council of the City of Birchwood Village hereby ordains that Chapter 301 (Zoning Code: General Provisions) of the Municipal Code of the City of Birchwood Village is hereby amended to read as follows:

SECTION 301. ZONING CODE: GENERAL PROVISIONS

301.060. PERMIT STANDARDS. For building permits.

- A. The permit holder must otherwise comply with the requirements of Section 203 as it relates to Building Regulations.
- B. Deliveries of equipment and material to the site, work crews on site and construction and demolition activity are prohibited for permitted activity except between the hours of 7:~~30~~00 a.m. and ~~6:30~~7:00 p.m., Monday through Friday, and 9:00 a.m. and ~~5~~6:00 p.m. on Saturday. Work is prohibited on Sundays and holidays.
- C. The permit holder must repair any damage to public property, streets, and sidewalks. If damage occurs to the foregoing, it must be repaired within three working days after the damage occurs, unless the permit holder has received written permission from the building official to delay repairs to a later specified date.
- D. The permit holder must maintain a five-foot parking setback from driveways and a 30-foot parking setback from intersections. When parking on a street, a vehicle must be completely located on the street surface, parallel to and within 12 inches of the curb. Vehicles in violation of these requirements may be towed in accordance with Minn. Stats. § 168B.035. On-street parking of equipment other than licensed motor vehicles is prohibited. Stopping, standing or parking a vehicle is prohibited, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control device, in any of the following places:
 1. On a boulevard between the sidewalk and roadway;
 2. Within five feet of the intersection of any public or private driveway or alley with any street or highway;
 3. Where the vehicle will block a fire escape or the exit from any building;
 4. Where temporary signs prohibit parking.

Parking is allowed on local streets if a 12-foot wide area is open for the traveled portion of the road. Off-street and off-site parking for on-site workers is required to the extent practicable.

City Parks and Open Spaces shall not be used for parking vehicles or staging of any materials or equipment.

Any violation shall be prosecuted as a misdemeanor offense.

Police officers, community service officers, and City Staff shall be responsible for enforcing the parking requirements and parking regulations of this section.

- E. The site must be maintained in a neat and orderly condition. Prior to leaving the construction site at the end of each day, the permit holder must remove empty cans, paper, plastic and other material that is not needed for construction from the site or deposit them in a dumpster. The permit holder must sweep streets and boulevard areas and keep adjacent properties clean from waste, materials or refuse resulting from operations on the site. Inoperable equipment and equipment not being used on the site must be removed within 24 hours after it becomes inoperable or is no longer in use. All materials related to the project must be stockpiled in appropriate areas on-site.
- F. Deliveries of materials that need to be unloaded from a truck and transported to the project site will be done so with care and consideration of the pavement surface. Protection from a tractor or forklift consist of plywood or boards laid out to protect the pavement and removed after the load has been transferred. This also applies to trailers parked temporarily on roads or streets to unload equipment.
- G. No building material, temporary sanitary facilities, dumpster or equipment may be placed within street right-of-way, or on a sidewalk. Motor vehicles may not be parked or stopped on a sidewalk. Public sidewalks must be left open and unobstructed at all times.

EFFECTIVE DATE: This Ordinance shall be in full force and effect from and after its passage and approval and publication as required by law.

Adopted by the City of Birchwood Village City Council this 11th day of May, 2021

Mary Wingfield, Mayor

Attest:

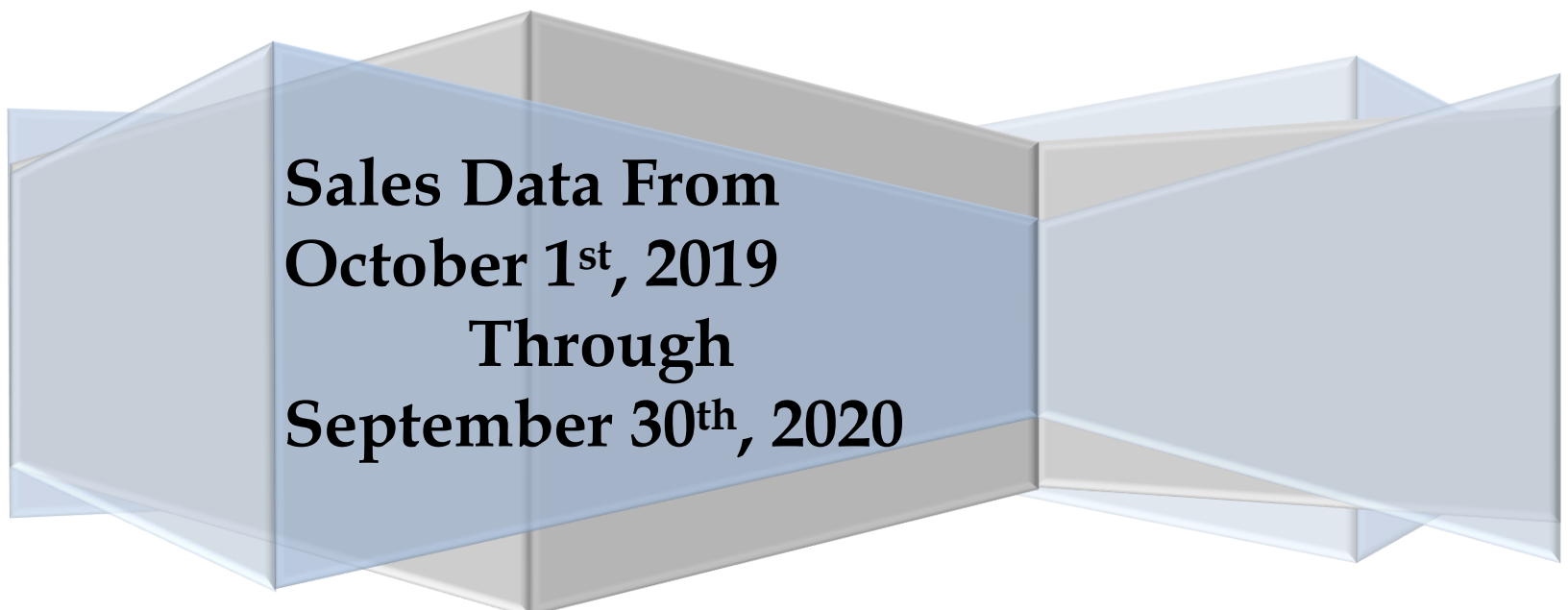
Andy Gonyou, City Administrator-Clerk

**Prepared For:
Birchwood Village City Council
207 Birchwood Avenue
Birchwood, MN 55110**

2021 Assessment Report

City of Birchwood Village

**Prepared By: Chase Peloquin, SAMA
Birchwood Local Board of
Appeal & Equalization
April 13th, 2021**



**Sales Data From
October 1st, 2019
Through
September 30th, 2020**

Number of Arm's Length Residential/SRR Class Sales

Oct 1 2015 To Sept 30 2016	Oct 1 2016 To Sept 30 2017	Oct 1 2017 To Sept 30 2018	Oct 1 2018 To Sept 30 2019	Oct 1 2019 To Sept 30 2020
12	11	9	20	12

Average Single-Family Sale Prices

Oct 1 2015 To Sept 30 2016	Oct 1 2016 To Sept 30 2017	Oct 1 2017 To Sept 30 2018	Oct 1 2018 To Sept 30 2019	Oct 1 2019 To Sept 30 2020
\$338,600	\$483,900	\$393,700	\$566,800	\$384,600

Adjustments Residential/SRR Class

2017 Assessment	2018 Assessment	2019 Assessment	2020 Assessment	2021 Assessment
4.41%	10.14%	9.07%	0.39%	1.50%

Median Home Value Residential/SRR Class

2017 Assessment	2018 Assessment	2019 Assessment	2020 Assessment	2021 Assessment
\$297,150	\$331,100	\$358,500	\$346,100	\$354,800

2021 Assessment Total Summary (Taxable Classes)

Total New Construction Value	Total Number of Parcels	New Home Permits	AY20 Total Value	AY21 Total Value	AY21 % Growth
\$638,700	414	2	\$167,645,900	\$170,804,600	1.50%

* Table data received from Washington County Assessment Report

4 Oakview Court



Sale Price: \$296,000
Sale Date: 1/24/2020
Above Grade Area: 1,204 sf
Basement Finish: 1,50 sf
Acres: .375
Year Built: 1970
Parcel #: 30.030.21.24.0059

306 Wildwood Ave

Sale Price: \$307,000
Sale Date: 4/23/2020
Above Grade Area: 1,188 sf
Basement Finish: 160 sf
Acres: .28
Year Built: 1930
Parcel #: 30.030.21.21.0081



300 Wildwood Ave



Sale Price: \$307,500
Sale Date: 3/4/2020
Above Grade Area: 1,276 sf
Basement Finish: 60 sf
Acres: .14
Year Built: 1940
Parcel #: 30.030.21.21.0062

613 Wildwood Ave

Sale Price: \$340,000
Sale Date: 12/9/2019
Above Grade Area: 1,842 sf
Basement Finish: 608 sf
Acres: .56
Year Built: 1925
Parcel #: 30.030.21.42.0010



545 Wildwood Ave



Sale Price: \$340,000
Sale Date: 8/28/2020
Above Grade Area: 1,510 sf
Basement Finish: 0 sf
Acres: .30
Year Built: 1920
Parcel #: 30.030.21.13.0057

3980 East County Line Rd

Sale Price: \$345,000
Sale Date: 3/10/2020
Above Grade Area: 1,504 sf
Basement Finish: 1,500 sf
Acres: .55
Year Built: 1926
Parcel #: 30.030.21.23.0042



25 Oakridge Dr



Sale Price: \$350,000
Sale Date: 12/3/2019
Above Grade Area: 1,981 sf
Basement Finish: 575 sf
Acres: .28
Year Built: 1974
Parcel #: 30.030.21.23.0003

402 Birchwood Ave

Sale Price: \$350,000
Sale Date: 8/31/2020
Above Grade Area: 1,200 sf
Basement Finish: 1,075 sf
Acres: .33
Year Built: 1964
Parcel #: 30.030.21.24.0046



186 Cedar St



Sale Price: \$360,000
Sale Date: 11/8/2019
Above Grade Area: 1,712 sf
Basement Finish: 522 sf
Acres: .31
Year Built: 1964
Parcel #: 30.030.21.24.0045

14 White Pine Ln

Sale Price: \$376,000
Sale Date: 7/22/2020
Above Grade Area: 1,596 sf
Basement Finish: 550 sf
Acres: .28
Year Built: 1976
Parcel #: 30.030.21.24.0020



4 Five Oaks Ln



Sale Price: \$390,000
Sale Date: 9/25/2020
Above Grade Area: 1,425 sf
Basement Finish: 600 sf
Acres: .28
Year Built: 1968
Parcel #: 30.030.21.24.0050

221 Wildwood Ave

Sale Price: \$890,000
Sale Date: 7/1/2020
Above Grade Area: 1,972 sf
Basement Finish: 0 sf
Acres: .5
Year Built: 1900
Parcel #: 30.030.21.21.0031
Lake: 75' White Bear Lake
Lot Sale, House Razed



MEMORANDUM



TO: Birchwood Village City Council
FROM: Andy Gonyou, City Administrator
SUBJECT: American Rescue Plan ACT Funding
DATE: April 4, 2021

Dear Mayor & City Council Members:

The recently passed American Rescue Plan Act of 2021 has provisions to supply financial aid to local governments across the United States, and Birchwood Village is included in the list of recipient cities. Birchwood Village has been tentatively allocated approximately \$100,000 (to be received in two installments) but the final allocation amount may be impacted slightly as there were cities left out of the original calculations that will need to be added.

The details on how cities will submit for these funds has not yet been provided, but the League of Minnesota Cities (LMC) does know that for cities with populations under 50,000 – the State of MN is expected to distribute the first round of funds around June 9th, 2021. The second round of funds distribution will be approximately May 10th of 2022.

The nice change to this round of stimulus is that the deadline to use the funds is December 31st of 2024, so the City will have plenty of time to come up with a plan on how to most effectively use these funds.

I've reached out to the LMC and learned that Minnesota Management and Budget will coordinate the distribution and will be providing more information to Cities as it becomes available. There are no action items required from the Council at this time, but I wanted to keep you informed of what can roughly be expected.

More guidance is expected to be received from the Federal government on what types of expenses are eligible uses for these funds, but at the moment the LMC has provided some guidance as it currently stands.

Eligible Uses

- Assistance to households, small businesses, and nonprofits to aid in the response to the public health emergency or to aid hard-hit industries such as tourism, travel and hospitality
- Premium pay for essential workers
 - An amount up to \$13 per hour that is paid to an eligible worker in addition to wages the worker otherwise received.
 - For all work performed by the eligible worker during the COVID-19 public health emergency.
 - May not exceed \$25,000 per eligible worker.
- Revenue replacement for the provision of government service to the extent the reduction in revenue due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency (FY 2019)
- Investments in water, sewer or broadband infrastructure

Request/Recommendation

Staff requests Council:

- 1) Consider what opportunities Birchwood Village could pursue with the upcoming funds and prepare for a discussion.

Thank you,
Andy Gonyou
City Administrator - Clerk

MEMORANDUM



TO: Birchwood Village City Council
FROM: Mary Wingfield, Mayor
SUBJECT: Sheriff Meeting Update
DATE: April 6, 2021

Dear City Council Members & Administrator,

Last week Council member Mark Foster and I met with Washington County Sheriff Dan Starry and his staff regarding code enforcement, community communication and follow through. It was a productive meeting. Here are some of the issues we discussed.

When residents have called for help or to report an issue, those folks often have had to wait for the next White Bear Press to learn what transpired. This has led to frustration and concern that the problem was not addressed. The Sheriff recognizes the need for good communication and is now instructing his deputies to inform the complaining party with information on any action taken (as permitted by Data Practices Act). The City will also be getting more timely, detailed reports.

The deputies have had more of a presence since we had our meeting with the sheriff's department in January. (See increase in the number of "Directed Patrol" items on the monthly reports). We were told that traffic violators are split equally between local residents and non-residents.

We asked that the deputies continue to use their best judgment in enforcing traffic codes. We also requested that the Speed Monitor Trailer be placed in Birchwood from time to time this year. (Last year was complicated by Covid.) The trailer is shared with many communities in Washington County. It is rotated throughout the area and we are in the queue for placement here. (Do we have a preference on locations?)

Our general property taxes pay for law enforcement and the sheriff's department. The city pays an additional \$63,500 to the Sheriff for "premium" service. The council has long believed that the city should have such additional patrol for code enforcement and traffic patrol. Mark and I wanted the Sheriff to know this is a substantial sum in our budget and we wanted to ensure good value for our money.

Everyone agreed that the meeting was productive and a good communication tool. We will be holding them semi-yearly to improve dialog and address any concerns that come to light. Please let us know if you have any concerns so we can follow up on such.

Thank you,
Mary Wingfield
Mayor

MEMORANDUM



TO: Birchwood Village City Council
FROM: Mary Wingfield, Mayor
SUBJECT: Councilmember Reports
DATE: April 6, 2021

Dear City Council Members & Administrator,

Please see the descriptions below for each sub item under Regular Agenda Item M, Subsection I.

City Planner: Consider adding to contract reviewing all plans with exterior dimension modifications to ensure code compliance. (Builder must affirmatively state the building is in compliance on the permit application, but that has not always ensured compliance.)

Irrigation permits. Needs to be established to protect water supply when lines are flushed out in the fall. Need to register all irrigation lines/properties.

Tree ordinance: Currently, there is no provision to enforce/regulate.
Non-monetary permit? Plan submission of trees to be removed/planted?

ROW permit. Require a permit for any use (eg rain gardens, retaining walls, trees, obstructions) other than 4x4 mail box post) so as not to interfere with city's use of its ROW that will cause a traffic hazard, affect snowplowing, access to utilities. This would include For Sale signs which add a considerable cost for locate call outs. (eg see Mahtomedi Code Chap 12.04)

Thank you,
Mary Wingfield
Mayor

MEMORANDUM



TO: Birchwood Village City Council
FROM: Justin McCarthy, Councilmember
SUBJECT: Donation of Sand
DATE: April 6, 2021

Dear Council,

The Duffy's at 505 Lake Avenue are planning on having fresh sand brought in for their lake frontage and are offering to share some with Kay Beach. I wanted to bring this to the Council's attention for discussion. We would likely need to have some volunteers or City staff spread the sand on the beach if we accept.

Thank you,
Justin McCarthy
Councilmember

MEMORANDUM



TO: Birchwood Village City Council
FROM: Justin McCarthy, Councilmember
SUBJECT: IT Proposal
DATE: March 25, 2021

Dear Council,

I. Executive Summary

We recommend modifying, but not replacing, our contract with Metro-INET. We recommend continuing to use Metro-INET for some IT services but replacing Metro-INET with another reputable service provider for other IT services, such as email hosting, cloud-storage, and work-from-home solutions. By going in this direction, the City can save around \$3,500 per year in IT costs, while maintaining or improving our current quality of service. It should be noted that this needs to be decided at the April meeting to notify Metro-INET by their May deadline.

II. Introduction

Currently the City pays \$8,312 for IT services with Metro-INET. The Appendix of this memo provides a breakdown of the services currently contracted for with Metro-INET and the costs for each service.

In short, we recommend replacing Metro-INET with another vendor for network storage, email hosting, and remote work solutions. We recommend keeping Metro-INET for the Windows domain, Internet access, support, Adobe licenses, WIFI support, and telephone service. We have verified with Metro-INET that this arrangement is possible. Depending on the replacement vendor the Council selects, we estimate this approach to yield a savings to the City of approximately \$3,500 per year, or more.

To replace these services, we recommend an annual subscription to a reputable cloud-based service provider that provides email hosting; cloud-based file storage and sharing; and productivity applications for a monthly, per-user fee. We have included prices for three such providers and have listed them below along with their features.

Should the Council authorize this change, the City needs to notify Metro-INET in May to discontinue these services starting January 2022. In order to maintain a smooth transition to the new service provider, we recommend subscribing to one of the cloud-based service providers below and beginning the migration in September to give us plenty of time to fix any issues before January when the Metro-INET services would end. We will assist the City in performing the migration to ensure a smooth transition.

III. Details

As part of our Metro-INET services, we are currently billed \$3,366.00 per year (charges A4 and S08 in the chart in the Appendix) for network storage. We use this storage only for CTAS backups.

Email hosting through Metro-INET is \$433.00 per year (charges A3 in the chart in the Appendix). As the email server is on the Metro-INET Windows domain, creation of new email accounts also requires a domain account, which increases costs further to about \$260.00 per email account, per Pete Bauer of Metro-INET.

These services can be provided significantly cheaper through a single reputable cloud-based service provider that provides email hosting; file storage and sharing; and productivity applications for a monthly subscription fee. Depending on the provider, these services can range from approximately \$200 - \$500 per year.

In addition to email hosting and file storage and sharing, these subscriptions provide applications like Microsoft Office or Google Apps. Depending on the vendor and plan chosen, the productivity applications are either web-based or allow for multiple local downloadable installations for each user. By utilizing these productivity applications along with the file sharing capabilities, City staff can use these tools to work remotely. Work files can be kept in cloud storage and are accessible to staff from either home or office and the productivity applications to work on those files is also similarly accessible from home or office. This also allows us to also eliminate the mobility services charges of \$250 per year (S02 in the chart in the Appendix).

We recommend moving the CTAS backup data, currently stored on the Metro-INET windows server, to cloud storage provided by the cloud-based storage. Further, while the cloud-based storage is secure and resilient, to absolutely ensure a backup of this data, we recommend a backup account from a separate cloud-based backup service that backs up this data to an offsite cloud-based location daily.

We recommend that Birchwood Village keep Metro-INET for user support (A1), computer support (A2); LAN/WAN (A6) for our internet connection (which also requires keeping network system support (A5)); keep Cisco telephony (V01), Adobe subscriptions (S01); and facility Wifi (S07). This cost is \$4265.00 per year. We feel that these charges are reasonable compared to the cost of these services on the open market given the level of service offered.

We have outlined the options for email hosting and productivity in the following chart which assumes 4 users (Andy, Jackie, Tobin, Dennis). We have included the costs of adding Council email addresses in the last column along with the savings in comparison to relying on Metro-INET for obtaining Council email addresses.

Council email addresses would be an additional \$1,300 per year (total for all five) under Metro-INET, so the comparison in the last column assumes an additional \$1,300 for our Metro-INET contract.

* Note that the costs below assume a year-long subscription.

The savings column is calculated using our costs per year of \$8312 from Metro-INET for our current package.

The cost of the Metro-INET services we are keeping is \$4,265 and is the total of services A1, A2, A5, A6, V01, S01, and S07 in the Metro-INET service chart in the Appendix.

<u>Provider Options</u>	<u>Features</u>	<u>New Vendor Yearly Cost</u>	<u>Total IT Costs</u> (MetroINET services we are keeping (\$4,265) plus New Vendor Yearly Cost)	<u>Savings compared to what is currently paid</u> (\$8,312 Metro INET current Cost – Total IT costs from the previous column)	<u>Costs and Savings Over Metro-INET if we also purchase Council Email Addresses</u>
#1: Google Workspace	Email hosting + Web-Based versions of Gmail, Google Drive, Google Meet, Google Calendar, Google Chat, Google Docs, Google Sheets, Google Slides, and others	\$6.00 per user/ per month. Total of \$288.00 per year	\$4,553.00 per year (\$4,265+\$288)	\$3,759.00 per year (\$8,312- \$4,553)	\$360.00 Per year for 5 Council Accounts (5 accounts at \$6.00 per month each) \$4,913.00 total IT cost (\$4553+\$360) \$4,699.00 per year savings over Metro- INET*
#2: Microsoft365 (3 business standard plans + 1 business basics)	We would recommend 3 business standard plans which provides Email hosting + downloadable (and continuously updated) copies of Outlook, Word, Excel, PowerPoint, Publisher, and Access. Each user may install on up to five	Business Standard: \$12.50 per user / per month – recommend 3 users. (\$450) Business Basics: \$5.00 per	\$4,775.00 per year (\$4,265 + \$510)	\$3,537.00 per year (\$8,312- \$4,775)	\$300.00 per year for 5 Council Accounts (5 business basic accounts @ \$5.00 per month each)

	<p>machines. Web and mobile versions of the Office apps. Microsoft OneDrive.</p> <p>We would recommend one business basic plan for Dennis which provides Email hosting + web versions of Office applications.</p>	<p>user/month – recommend 1 user. (\$60)</p> <p>Total of \$510.00 per year.</p>			<p>\$5,075.00 total IT cost (\$4775 + \$300)</p> <p>\$4,537.00 per year savings over Metro-INET.*</p>
<p>#3: Microsoft365 all business basic plans</p>	<p>We would recommend four business basic plans for all employees which provides Email hosting + web versions of Office applications. *could also supplement with downloadable – one-time purchases of Office for \$250.00</p>	<p>\$5.00 per user/month. Total of \$240.00 per year</p>	<p>\$4,505.00 per year (\$4,265+\$240)</p>	<p>\$3,807.00 per year (\$8,312-\$4,505)</p>	<p>\$300.00 per year for 5 council accounts (5 business basic accounts @ \$5.00 each per month)</p> <p>\$4,805.00 total cost (\$4,505 + \$300).</p> <p>\$4807.00 savings over Metro-INET.*</p>
<p>#4: Rackspace</p>	<p>4 Email plus users at \$3.99 per month. This plan includes email hosting, web versions of “MS Office-Compatible Apps.”</p>	<p>\$4.00 per user/month. Total of \$192.00 per year.</p>	<p>\$4,457.00 (\$4,265+\$192)</p>	<p>\$3,855.00 (\$8,312-\$4,457)</p>	<p>\$240.00 per year for 5 council accounts (5 email plus users at \$4.00 per account per month)</p>

					<p>\$4,697.00 total cost. (\$4,457 + \$240)</p> <p>\$4,915 in total savings over Metro-INET.*</p>
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Backup Services

While the cloud based products do provide excellent resiliency for files stored thereon (e.g., replicated copies across geographic regions), we also recommend a backup service for the CTAS data (whether the City chooses to put that on a shared drive or a local computer) to be absolutely sure. Three backup service options are provided below.

Provider	Features	Cost
Backblaze	Unlimited Data backup. Private Encryption Key. 30 day version history. 1 year version history for an additional \$24.00/year	\$60.00 /year
iDrive	5TB backup; 30 previous versions saved.	\$69.50 / year
SpiderOak OneBackup	150GB Plan; Versioning; Private encryption key.	\$69.00 /year

IV. Action requested of the Council

- 1.) Decide whether to authorize the City Administrator to modify our Metro-INET contract for 2022.**
- 2.) Determine a replacement vendor and authorize the City Administrator to subscribe to that vendor and migrate from Metro-INET to that vendor, at the appropriate time.**
- 3.) Determine whether to subscribe to a backup service in conjunction with the replacement vendor and authorize the City Administrator to subscribe to that backup service and begin backups at the appropriate time.**

3.) Determine whether to approve Council email addresses.

V. APPENDIX

a. Metro-INET information

2021 BUDGET SUMMARY						
BV	Birchwood Village	Annual Personnel Charge	Annual Operating Charge	Hardware Capital Charge	Software Capital Charge	TOTAL
	FTE 0.00	\$ 5,999	\$ 1,219	\$ 350	\$ 744	\$ 8,312
A1	USER SUPPORT	\$ 420	\$ 114	\$ 6	\$ 48	\$ 588
A2	COMPUTER SUPPORT	\$ 1,596	\$ 29	\$ 2	\$ 55	\$ 1,682
A3	EXCHANGE EMAIL SUPPORT	\$ 191	\$ 198	\$ 15	\$ 29	\$ 433
A4	WINDOWS SERVER SUPPORT	\$ 2,376	\$ 120	\$ 10	\$ 4	\$ 2,509
A5	NETWORK SYSTEM SUPPORT	\$ 384	\$ 30	\$ 6	\$ -	\$ 420
A6	LAN/WAN	\$ 132	\$ 300	\$ 48	\$ 24	\$ 504
V01	CISCO TELEPHONY	\$ 396	\$ 266	\$ 36	\$ 209	\$ 908
S01	ADOBE SUBSCRIPTIONS	\$ -	\$ 67	\$ -	\$ -	\$ 67
S02	MOBILITY SERVICES	\$ 161	\$ 30	\$ 4	\$ 54	\$ 249
S03	OPEN PROGRAM	\$ -	\$ -	\$ -	\$ -	\$ -
S04	LASERFICHE	\$ -	\$ -	\$ -	\$ -	\$ -
S05	MILESTONE VMS	\$ -	\$ -	\$ -	\$ -	\$ -
S06	ARBITRATOR VPU/BWC	\$ -	\$ -	\$ -	\$ -	\$ -
S07	FACILITY WI-FI	\$ 31	\$ 39	\$ 26	\$ -	\$ 96
S08	vSAN	\$ 313	\$ 27	\$ 197	\$ 321	\$ 857
S09	S2 CARD ACCESS	\$ -	\$ -	\$ -	\$ -	\$ -
S10	CISCO SMARTNET	\$ -	\$ -	\$ -	\$ -	\$ -
S11	FIBER MAINTENANCE	\$ -	\$ -	\$ -	\$ -	\$ -
S12	OPEN PROGRAM	\$ -	\$ -	\$ -	\$ -	\$ -
S13	LETG RMS	\$ -	\$ -	\$ -	\$ -	\$ -

A1 : USER SUPPORT

The agency would be responsible for end user support and troubleshooting. They would need to purchase a Microsoft domain controller for authentication and group policy as well as Microsoft client access licensing for each user.

A2 : COMPUTER SUPPORT

The agency would be responsible for computer hardware support and troubleshooting. They would also need to purchase an antivirus solution.

A3 : EXCHANGE EMAIL SUPPORT

The agency would be responsible for their own email solution. They could either purchase and support a Microsoft exchange server or migrate to a subscription based service in the cloud.

A4 : WINDOWS SERVER SUPPORT

The agency would be responsible for supporting their own server operating system and applications.

A5 : NETWORK SYSTEM SUPPORT

The agency owns their network equipment. They would be responsible for supporting and configuring this equipment. Depending on the agency, they may require different network hardware as the Metro INET shared infrastructure would no longer be accessible.

A6 : LAN/WAN

The agency would need to purchase internet through an Internet service provider. Purchase a firewall to protect internet traffic. Denial of service protection on the ISP connection as well as web filtering.

V01 : CISCO TELEPHONY

The agency owns their physical Cisco IP phones. They would need to purchase a Cisco Unified Communications Manager server, Cisco voice router, and a PRI or SIP connection through a local telco. Alternatively, the agency could purchase new physical phones and subscribe to a cloud phone system. The agency would be responsible for porting out existing numbers, call manager hardware purchase and licensing, monthly PRI/SIP setup, and all monthly reoccurring charges to the telco associated with the phone system.

S01 : ADOBE SUBSCRIPTIONS

The agency would be in charge of purchasing their own Adobe licensing

S02 : MOBILITY SERVICES

The agency would be responsible for supporting and purchasing a Netmotion mobility server for squad cars / mobile laptops or properly licensing their firewall for VPN connectivity.

S07 : FACILITY WI-FI

The agency owns their physical Cisco wireless access points. They would be responsible for purchasing a Cisco wireless controller and associated licensing/hardware support to manage them.

S08 : vSAN

Other than a few specific cases, the infrastructure that every agencies servers sit on is shared equipment. The agency owns their data and virtual server(s). They would need to purchase a physical server to house their virtual server(s), virtualization and Microsoft server licensing, a backup server with associated licensing, and hardware support. Geographically diverse data centers and off sites backups should also be a consideration as well.

Thank you,
Justin McCarthy
Councilmember

RESOLUTION 2021-12

**CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA**

**A RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO REPLACE
CERTAIN IT SERVICES PROVIDED BY METRO-INET WITH ANOTHER
PROVIDER**

At a regular meeting of the City Council of the City of Birchwood Village held virtually through video and telephone conferencing on Tuesday, April 13, 2021, via Zoom Video Communications, Inc., with the following members present: Mayor Mary Wingfield, Council Members Jon Fleck, Justin McCarthy, Mark Foster, and Kevin Woolstencroft, and the following absent: none, the Birchwood Village City Council resolved:

WHEREAS, the City of Birchwood Village currently relies on Information Technology (IT) such as computers, telephones, and other services and equipment to conduct its business, and

WHEREAS, the City relies on outside contractors to provide IT services, including Metro-INET, and

WHEREAS, the City desires to keep its costs for IT services low while still providing adequate resources for the staff and Council, and

WHEREAS, the City has found that email hosting, network storage, and work from home solutions for City employees may be provided in a more cost effective manner by purchasing < Four Google Business Starter/ Three Microsoft365 Business Standard and One Microsoft365 Business Basics / Four Microsoft365 Business Basics / Four Rackspace Email Plus> annual subscriptions from <Google, Microsoft, Rackspace> instead of continuing to use Metro-INET for these services.

WHEREAS, the City has found that certain elements of our IT services should continue to be provided by Metro-INET.

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of Birchwood Village that the City of Birchwood Village hereby authorizes the City Administrator to modify our contract with Metro-INET by removing email hosting, network storage, and work from home services for 2022.

NOW THEREFORE BE IT ALSO RESOLVED, by the City Council of the City of Birchwood Village that the City Administrator is authorized to procure < Four Google Business Starter/ Three Microsoft365 Business Standard and One Microsoft365 Business Basics / Four Microsoft365 Business Basics / Four Rackspace Email Plus> yearly subscriptions from <Google, Microsoft, Rackspace> on or around September 1, 2021 and begin transitioning email, network storage, and work from home activities to these services.

NOW THEREFORE BE IT ALSO RESOLVED, by the City Council of the City of Birchwood Village that the City Administrator is authorized to procure email accounts for each member of the City Council using the City’s web-domain as part of the subscription to _____ on or around September 1, 2021.

NOW THEREFORE BE IT ALSO RESOLVED, by the City Council of the City of Birchwood Village that the City Administrator is authorized to procure backup services from _____ on or around September 1, 2021.

Resolution duly seconded and passed this 12th day of April, 2021.

Mary Wingfield
Mayor

Attest:

Andy Gonyou
City Administrator-Clerk

MEMORANDUM



TO: Birchwood Village City Council
FROM: Justin McCarthy, Councilmember
SUBJECT: Music in the Park 2021
DATE: March 24, 2021

Dear Council,

Music in the Park(MIP) is a tradition in Birchwood and is considered by some to be a hallmark event. During the March City Council meeting, the City Council discussed MIP, however, the Council did not decide on any details with respect to MIP. The purpose of this memo is to lay out certain issues that the Council should address so that the City Administrator can begin efforts to plan this great tradition.

In the past the city has budgeted \$1500 for musicians for the concert series, which worked out to \$150 per week for a ten week series. I would like to propose raising that amount to at least \$200 per single musician or \$300 for a group of two or more. Just like restaurants and other local businesses, musicians have had a hard time over the past year or more as a result of the Covid pandemic. Let's do our part to support our local musicians.

Additionally, I would like to propose the following budget for MIP for 2021:

- Event Staff Time \$ 410.00 (2hr @ \$17/hr/performance)
- Administrative Time \$ 285.00 (15hr @ \$19/hr = all summer - contact bands, etc.)
- Performance Costs \$2,500.00 (enough for ten weeks with single musicians at \$200 per week and a little more since some weeks there will be groups)
- TOTAL \$3,200.00

I am asking that the council authorize, by motion, Music in the Park this summer with the following conditions.

1. A budget of \$3,200, which shall come out of the Special Revenue Fund. Single musicians shall be paid \$200 and groups of two or more shall be paid \$300. \$410 is authorized for staff time setting up the concerts and taking equipment down and \$285 for the city administrator's time in arranging the concerts. Any funds not expended shall be returned to the Special Revenue Fund.

2. The concert series shall run for no more than twelve weeks between the first Sunday in June and the last Sunday in September 2021, as determined by the city administrator. The concerts shall be held between the hours of 6:00 and 8:00 p.m. on Sunday evenings. The concert series shall terminate if the budget should be used

up. The city administrator shall be responsible for selecting the musicians to perform and the park locations. There shall be no concerts held in the village hall or any other indoor location due to the current Coronavirus pandemic.

3. The concerts will be conducted in accordance with state and federal requirements related to the Coronavirus pandemic. Audience members will be required to provide their own chairs or seating arrangements as the city will not provide chairs for the audience.

4. Musicians shall be permitted to sell CDs and to provide a tip jar during the concert.

In addition, I am attaching a resolution permitting beer and wine to be consumed by those of age during the concerts which has been traditionally done by the city in years past. I am asking the City Council to pass this resolution as well.

Thank you,
Justin McCarthy
Councilmember

RESOLUTION 2021-08

**CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA**

**A Resolution Authorizing Persons of Legal Age to Possess and Consume Beer and Wine
during 2021 Music in the Park Summer Concerts**

WHEREAS, each summer, the City of Birchwood Village sponsors Sunday concerts located within City parks; and

WHEREAS, City Code Section 607.641 allows the Birchwood City Council to authorize the use and consumption of beer and wine in public park spaces during designated times; and

WHEREAS, the Birchwood City Council has approved similar resolutions for possession and consumption of beer and wine during previous year's concert series.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Birchwood Village hereby authorizes persons of legal age to possess and consume beer and wine during 2021 summer evening concerts.

Passed by the City Council of The City of Birchwood Village, Minnesota this ___day of April, 2021.

Mary Wingfield
Mayor

Attest:

Andy Gonyou
City Administrator-Clerk