



AGENDA OF THE REGULAR MEETING OF
THE CITY COUNCIL
CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA
February 11, 2020
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

PLEDGE OF ALLEGIANCE

APPROVE AGENDA

OPEN PUBLIC FORUM

ANNOUNCEMENTS

- A. Street snow removal comments should be sent to info@cityofbirchwood.com
- B. We are social, follow us on Facebook/Twitter and/or register for the email listserv

ADMINISTRATIVE PRESENTATION

- A. Sheriff Report* (p. 3)
- B. Seth Plunkett Resigned from Roads Committee* (p. 5)

CITY BUSINESS – CONSENT AGENDA

- A. Approve Regular Meeting Minutes from January 14, 2020* (pp. 7-9)
- B. Approve Special Meeting Minutes from February 6, 2020* (p. 11)
- C. Approve Treasurer's Report* (pp. 13-24)
- D. Resolution 2020-07, Rename Nordling Park to Polly's Park* (p. 25)
- E. Approve Washington County Code Red Agreement* (pp. 27-32)
- F. Approve Comcast Extension Agreement* (pp. 33-34; 38-68)
- G. Resolution 2020-08, Preliminary Assessment Franchise Not Renewed* (pp. 35-37; 38-68)

CITY BUSINESS – REGULAR AGENDA

- A. Cedar Street Vacant Lot
 - a. Discuss erosion control and tree preservation plan
Time Budget: 15 Minutes
- B. Water Superintendent Report
 - a. Water Backflow Shutoff
 - b. Irrigation Permit (sprinkler systems)
 - c. Sewer Line Cleaning
Time Budget: 15 Minutes

* Denotes items that have supporting documentation provided

- C. City Attorney's Report
 - a. Kay Beach Update* (pp. 69-78)
Time Budget: 15 Minutes
- D. City Project No. 2019-1 – Lake Ave Mill, Overlay & Drainage* (pp. 79-99)
 - a. Council Deliberation
 - b. Approve Resolution 2019-26 for Special Assessment Hearing OR Amend Special Assessment Policy
Time Budget: 15 Minutes
- E. Wildwood Ave Stop Signs at Iris Street* (pp. 101-102)
 - a. Review Roads Committee Recommendation
 - b. Council Deliberation and Approval
Time Budget: 15 Minutes
- F. Ordinance 2017-07-01, Sec. 615 Exterior Storage* (pp. 103-104)
 - a. Council Deliberation and Approval
Time Budget: 10 Minutes
- G. Water Meter Upgrades* (pp. 105-106)
 - a. Review Bids and Utility Committee Recommendation
 - b. Schedule Public Discussion & Vote
Time Budget: 20 Minutes
- H. Lift Station 1 Update
 - a. Washington County Discussing Road Overlay
 - b. Catch Basin Removal
 - c. Bids for Scoping Residential Sewer Lines
Time Budget: 10 Minutes
- I. Planning Commission Recommendation* (pp. 107-108)
 - a. Ordinance 2020-02-01 Nominal & Accessory Structures Definitions
Time Budget: 10 Minutes
- J. Council Member Reports:
 - a. Mayor Wingfield
 - i. Centennial Preparations
 - 1. Researching Parks History/Signage
 - 2. Twinning/Sister Cities - France
Time Budget: 5 Minutes
 - b. Councilmember LaFoy
 - i. Comcast Franchise Renewal* (pp. 38-68; 33-34; 35-37)
Time Budget: 7 Minutes
- K. City Administrator's Report
 - a. Water Efficiency Rebate Program (WBL)
Time Budget: 5 Minutes

ADJOURN

* Denotes items that have supporting documentation provided

MEMORANDUM



Birchwood Village

TO: Birchwood City Council
FROM: Tobin Lay, City Administrator
SUBJECT: Sheriff Report
DATE: February 6, 2020

Dear Mayor & City Council Members:

Below is a reporting of law enforcement incidents and citations for January 2020.

WASHINGTON COUNTY SHERIFFS OFFICE



BIRCHWOOD

1/1/2020 8:36:17 PM	WC20000121	XXX Birchwood Ave, BIRCHWOOD	ANIMAL COMPLAINT
1/2/2020 11:27:27 AM	WC20000213	XXX Wildwood Ave, BIRCHWOOD	THEFT
1/7/2020 7:24:37 PM	WC20000972	XXX Cedar St, BIRCHWOOD	CITIZEN/PUBLIC ASSIST
1/12/2020 10:03:45 AM	WC20001657	XX Oakridge Dr, BIRCHWOOD	MEDICAL
1/12/2020 10:45:49 AM	WC20001661	XX Oakridge Dr, BIRCHWOOD	PUBLIC WORKS CONCERN
1/12/2020 11:38:55 AM	WC20001666	XX Five Oaks Ln, BIRCHWOOD	PUBLIC WORKS CONCERN
1/12/2020 12:15:26 PM	WC20001668	XX Five Oaks Ln, BIRCHWOOD	PUBLIC WORKS CONCERN
1/17/2020 12:10:53 PM	WC20002325	XX Birchwood Ln, BIRCHWOOD	MAIL THEFT
1/18/2020 10:04:24 PM	WC20002544	Tighe-Schmitz Park, BIRCHWOOD	DIRECTED PATROL
1/19/2020 4:12:24 AM	WC20002587	XXX Hall Ave, BIRCHWOOD	911 ABANDONED/HANGUP/OPEN LINE
1/20/2020 9:10:04 PM	WC20002800	XXX Wildwood Ave, BIRCHWOOD	SUSPICIOUS PERSON/ACTIVITY
1/28/2020 9:13:34 AM	WC20003926	XX Oakview Ct, BIRCHWOOD	MEDICAL
1/29/2020 2:50:34 AM	WC20004053	XXX WILDWOOD AVE, BIRCHWOOD	PARKING COMPLAINT
1/29/2020 8:38:19 AM	WC20004079	Lake Ave / Wildwood Ave, BIRCHWOOD	PUBLIC WORKS CONCERN
1/29/2020 12:52:20 PM	WC20004110	XXX Wildwood Ave, BIRCHWOOD	ORDINANCE VIOLATION
1/29/2020 5:11:54 PM	WC20004151	70XXX -715 HALL AVE, BIRCHWOOD	TRAFFIC STOP
1/31/2020 10:03:32 AM	WC20004344	10XXX -181 CEDAR ST, BIRCHWOOD	TRAFFIC STOP
1/31/2020 10:34:25 AM	WC20004348	CEDAR ST / BIRCHWOOD AVE, BIRCHWOOD	TRAFFIC STOP
1/31/2020 10:35:03 AM	WC20004350	Cedar St / Oakridge Dr, BIRCHWOOD	TRAFFIC STOP
1/31/2020 4:06:02 PM	WC20004392	Hall Ave / Cedar St, BIRCHWOOD	TRAFFIC STOP
1/31/2020 6:24:28 PM	WC20004419	Hall Ave / Wildwood Ave, BIRCHWOOD	TRAFFIC STOP

Citations for: Birchwood

1/1/2020 To 1/31/2020

Agcy	Date	Citation Number	Badge	Officer Name	Citation Type	Block	Street Name	Str Sfx	Cross Street Name	Cross St Sfx	City	Literal Description	Statute
WCSC	1/29/2020	820022002901	WC121 1	J. Hutchins	Citation	0	WILDWOOD AVE				Birchwood	BW - No overnight parking	502.040
WCSC	1/29/2020	820022002902	WC121 1	J. Hutchins	Citation	0	WILDWOOD AVE				Birchwood	BW - No overnight parking	502.040
WCSC	1/29/2020	820031002901	WC127 7	Tyler Jarrett	Citation	0	JAY ST		BIRCHWOOD AVE		Birchwood		169.14.1
WCSC	1/31/2020	820044003101	WC107	D. Anschutz	Citation	0	CEDAR ST		OAKRIDGE DR		Birchwood	MOV-Stop Sign Violation	169.30(b)
WCSC	1/31/2020	820044003102	WC107	D. Anschutz	Citation	0	CEDAR ST		OAKRIDGE DR		Birchwood	MOV-Stop Sign Violation	169.30(b)
WCSC	1/31/2020	820022003102	WC120 2	J. Stringer	Citation	0	CEDAR DR		OAKRIDGE RD		Birchwood	MOV-Stop Sign Violation	169.30(b)

ADMINISTRATIVE A PLUNKETT RESIGNATION

Tobin Lay

From: Seth Plunkett
Sent: Monday, January 27, 2020 1:59 PM
To: Tobin Lay
Subject: Re: FW: Roads Committee Feb 3 Mtg

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

Good Afternoon Tobin,

Unfortunately I will not be able to fulfill the duties I originally agreed to with the Roads Committee. Since last year I have found myself much busier than I intended to be. My wife and I recently had our first child, I am a full time student at Concordia University and also founded a weekly stand up comedy show in Minneapolis which happens to be every Wednesday evening. I apologize for not being able to fulfill my duties and will have to step down from the Birchwood Village Roads Committee. I wish you all the very best of luck.

Best Regards,

Seth Plunkett

**CITY OF BIRCHWOOD VILLAGE
REGULAR CITY COUNCIL MEETING
January 14th, 2020**

MINUTES

MEMBERS PRESENT: Mayor Mary Wingfield; Council Members: Randy LaFoy, Jessi Aakre, Kevin Woolstencroft, & Jonathan Fleck.

STAFF PRESENT: Tobin Lay, City Administrator; Alan Kantrud, City Attorney

OTHERS PRESENT: Ron Malles (420 Wildwood Ave); Steve Wolgamot (Lake Links Trail Association); Chris Sorenson (5 Oakridge Drive); Stan Karwoski (Washington County Commissioner)

Mayor Wingfield called the regular meeting to order at 6:45pm. The pledge of allegiance was recited.

AGENDA APPROVAL

MOTION WAS MADE BY COUNCILMEMBER LAFOY AND SECONDED BY COUNCILMEMBER WOOLSTENCROFT TO APPROVE THE ADGENDA. ALL AYES. MOTION PASSED.

OPEN PUBLIC FORUM

- A. Gary Bauman (Mahtomedi resident): Provided opinion on potential for school district change
- B. Barton Winter (1 Five Oaks Ln): Expressed concern over the status of the ice hockey rink

ANNOUNCEMENTS

- A. Ice Rink is now open! See the event page on the City's website for updates.
- B. Street snow removal comments should be sent to info@cityofbirchwood.com
- C. We are social, follow us on Facebook/Twitter and/or register for the email listserv

MAYOR WINGFIELD ADDED ONE ITEM TO ANNOUNCEMENTS

- D. Letter from White Bear Lake regarding water rates

ADMINISTRATIVE PRESENTATION

- A. Sheriff Report
- B. 2020 Schedule of Meetings and Holidays

CONSENT AGENDA

- A. Approve Regular Meeting Minutes from December 10, 2019
- B. Approve Emergency Meeting Minutes from December 12, 2019
- C. Approve Treasurer's Report
- D. Approve Resolution 2020-01, Designating the White Bear Press as the Official Newspaper for Publication
- E. Approve Resolution 2020-02, Naming U.S. Bank and the 4M Fund as Official Depositories of Municipal Funds
- F. Approve Resolution 2020-03, Accepting a Cash Donation from Artists Group Members
- G. Approve Resolution 2020-05, Appointment of Election Judges 2020
- H. Approve Tennis Sanitation Rate Increase
- I. Approve NYFS Agreement and Rate Increase

MOTION WAS MADE BY COUNCILMEMBER LAFOY AND SECONDED BY COUNCILMEMBER AAKRE TO APPROVE THE CONSENT AGENDA. ALL AYES. MOTION PASSED.

CITY BUSINESS – REGULAR AGENDA

- A. Council Business
 - a. Council Member Assignments

MOTION WAS MADE BY COUNCILMEMBER LAFOY AND SECONDED BY COUNCILMEMBER WOOLSTENCROFT TO APPROVE COUNCIL MEMBER ASSIGNMENTS. ALL AYES. MOTION PASSED.

- b. Council Goal Setting Meeting
- c. Local Board of Appeal and Equalization
 - i. Approve Resolution 2020-04, Reinstating Power for Local Board of Appeal and Equalization

MOTION WAS MADE BY COUNCILMEMBER LAFOY AND SECONDED BY COUNCILMEMBER WOOLSTENCROFT TO APPROVE RESOLUTION 2020-04, REINSTATING POWER FOR LOCAL BOARD OF APPEAL AND EQUALIZATION. ALL AYES. MOTION PASSED.

- ii. Appoint Council Members to be trained

- B. 2020 Fee Schedule
 - a. Review proposed amendments
 - b. Council Deliberation and Approval
 - i. Council deliberated on potential for kayak storage fee waiver for financial hardship

MOTION WAS MADE BY COUNCILMEMBER LAFOY AND SECONDED BY COUNCILMEMBER FLECK TO CONTINUE OPERATING UNDER THE 2019 FEE SCHEDULE. ALL AYES. MOTION PASSED.

- C. Ordinance 2017-07-01, Sec. 615 Exterior Storage (LaFoy)
 - a. Council Deliberation and Approval
 - i. Discussed proposed changes to exterior storage

- D. Lake Lines Trail Update
 - a. Council Deliberation and Approval
 - i. Steve Wolgamot: Confirmed amount Birchwood Village wishes to be requested from State Legislature

MOTION WAS MADE BY MAYOR WINGFIELD AND SECONDED BY COUNCILMEMBER FLECK TO APPROVE ADMINISTRATOR LAY REVISE THE LAKE LINKS ASSOCIATION FUNDING REQUEST LETTER.

MOTION WAS MADE BY MAYOR WINGFIELD AND SECONDED BY COUNCILMEMBER LAFOY TO ENGAGE ISTHMUS ENGINEERING FOR DESIGN ALTERNATIVES FOR THE INTERFACE BETWEEN THE BIRCHWOOD – MAHTOMEDI CITY LINE UP TO \$1,000. ALL AYES. MOTION PASSED.

- E. Renaming Nordling Park (Wingfield)
 - a. Discussed history of the park's name and suggestions from the community on renaming

MOTION WAS MADE BY COUNCILMEMBER FLECK AND SECONDED BY COUNCILMEMBER LAFOY TO RENAME NORDLING PARK TO "POLLY'S PARK". ALL AYES. MOTION PASSED.

- F. East County Line Road Drainage
 - a. County Presentation, Q & A
 - i. Detailed current state of road and planned restoration activity in 2020
- G. Council Member Reports
- H. City Attorney's Report
 - a. Kay Beach Update
 - i. **Attorney Kantrud:** Informed Council that resident next to Kay Beach has requested to postpone agenda item discussion to the Regular Council Meeting in February 2020.
- I. City Administrator's Report
 - a. 2040 Comprehensive Plan Update
 - i. Informed council of pending items
 - b. Administrator's Contract
 - i. Informed Council that his contract has expired.
 - ii. Personnel Committee members will arrange employee review.
 - c. Snow Removal Contract
 - d. Law Enforcement Update
 - i. Suggested a taskforce be created to research law enforcement alternatives.
 - ii. Commissioner Karwoski agreed to look into this matter.

ADJOURN

MOTION WAS MADE BY COUNCILMEMBER AAKRE AND SECONDED BY COUNCILMEMBER LAFOY TO ADJOURN THE MEETING. ALL AYES. MOTION PASSED. MEETING ADJOURNED AT 9:00 PM.

ATTEST:

Mary Wingfield
Mayor

Tobin Lay
City Administrator - Clerk

**CITY OF BIRCHWOOD VILLAGE
SPECIAL CITY COUNCIL MEETING
FEBRUARY 6, 2020**

MINUTES

MEMBERS PRESENT: Mayor Mary Wingfield; Council Members: Kevin Woolstencroft, Jessi Aakre, and Jonathan Fleck.

MEMBERS ABSENT: Council Member Randy LaFoy.

STAFF PRESENT: Tobin Lay, City Administrator.

OTHERS PRESENT: Many Birchwood residents (approx. 50)

Jonathan Fleck: He called the special meeting to order at 7:00pm.

CITY BUSINESS – CONSENT AGENDA

- A. Approve Resolution 2020-06, Appointment of Election Judges 2020

MOTION WAS MADE BY COUNCILMEMBER AAKRE AND SECONDED BY COUNCILMEMBER FLECK TO PASS RESOLUTION 2020-06. ALL AYES. MOTION PASSED.

REGULAR AGENDA – TOWN HALL MEETING FORMAT

- A. Special Assessment Discussion
a. INTRODUCTION: Council Members Jonathan Fleck & Jessi Aakre
b. GROUP DISCUSSION:

Council Members Jonathan Fleck & Jessi Aakre: They summarized the history of this topic and explained that the discussion was regarding the general special assessment policy and not specific to just the current Lake Avenue project. They also explained that the discussion specifically regarded mill & overlay type road projects.

City Council & Birchwood Residents: Many residents shared their opinions and concerns and Council Members answered questions.

At the close of the meeting, Councilmember Fleck asked for a show of hands for the two payment methods discussed. Approx. thirteen residents supported using special assessments to the individual properties that receive an actual appraised benefit from the project (the current policy). The remaining residents supported all residents paying for every road project through property taxes.

ADJOURN

MEETING ADJOURNED AT 8:01 PM.

ATTEST:

Mary Wingfield, Mayor

Tobin Lay, City Administrator - Clerk

For the Period : 1/14/2020 To 2/7/2020

<u>Name of Fund</u>	<u>Beginning Balance</u>	<u>Total Receipts</u>	<u>Total Disbursed</u>	<u>Ending Balance</u>
General Fund	\$153,780.90	\$1,042.43	\$26,786.50	\$128,036.83
Road and Bridge	\$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	\$17,665.79	\$0.00	\$340.00	\$17,325.79
Spec Rev - Warm House	\$40.00	\$0.00	\$0.00	\$40.00
REIMBURSED CONTRACTED SERVICES	(\$7,285.26)	\$0.00	\$0.00	(\$7,285.26)
General Debt Service (Identify) (Inactive)	\$0.00	\$0.00	\$0.00	\$0.00
Birchwood In Re-hab Bond	(\$25,181.54)	\$0.00	\$0.00	(\$25,181.54)
Sewer Re-hab Debt	\$27,765.44	\$0.00	\$0.00	\$27,765.44
CAPITAL PROJECT FUNDS (401 through 499)	\$0.00	\$0.00	\$0.00	\$0.00
Capital Improvement 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	\$66,233.91	\$0.00	\$0.00	\$66,233.91
Water	\$30,740.80	\$0.00	\$18,762.43	\$11,978.37
Sewer	\$65,251.47	\$0.00	\$10,198.43	\$55,053.04
Transit System	\$0.00	\$0.00	\$0.00	\$0.00
Sewer Infrastructure	\$0.00	\$0.00	\$0.00	\$0.00
Engineering Services	\$0.00	\$0.00	\$0.00	\$0.00
Total	\$324,971.51	\$1,042.43	\$56,087.36	\$269,926.58

**CONSENT C
TREASURER'S REPORT**

Fund Name: All Funds

Date Range: 01/14/2020 To 02/07/2020

<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>
								<u>\$ 142.45</u>
01/25/2020	Residents	171734792*	Artist Donations	(01/25/2020) -	N	Miscellaneous	100-36140-	<u>\$ 80.00</u>
Total for Selected Receipts								<u><u>\$ 1,042.43</u></u>

Fund Name: All Funds

Date Range: 01/14/2020 To 02/07/2020

<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>
01/14/2020	MN Department of Revenue	EFT011420A	MN State Tax eFiling - Q4 2019	N	Clerk - Treasurer	100-41401-115-	\$ 1,088.58
	Total For Check	EFT011420A					\$ 1,088.58
01/17/2020	Payroll Period Ending 01/17/2020	30844	Administrator	N	Clerk - Treasurer	100-41401-100-	\$ 1,913.04
	Total For Check	30844					\$ 1,913.04
01/17/2020	Payroll Period Ending 01/17/2020	30845	Treasurer - Deputy Clerk	N	Clerk - Treasurer	100-41401-100-	\$ 186.52
	Total For Check	30845					\$ 186.52
01/21/2020	PERA	EFT012120A*	Administrator Retirement - Tobin Lay	N	Clerk - Treasurer	100-41401-121-	\$ 367.02
	Total For Check	EFT012120A					\$ 367.02
01/21/2020	PERA	EFT012120B*	Treasurer - Deputy Clerk Retirement - Andy Gonyou	N	Clerk - Treasurer	100-41401-121-	\$ 32.14
	Total For Check	EFT012120B					\$ 32.14
01/30/2020	Water Conservation Service Inc.	30849*	Water Main Leak Locate - 10/24/2019	N	Wtr/Swr Emergency	601-43185-300-	\$ 287.40
	Total For Check	30849					\$ 287.40
01/30/2020	Metropolitan Council - Env. Service	30850*	Wastewater Service - Feb 2020	N	Sewer Utility	605-43190-217-	\$ 4,948.50
	Total For Check	30850					\$ 4,948.50
01/30/2020	Metropolitan Area Management Assoc.	30851*	Training - Jan 2020	N	City Training and Development	100-41914-310-	\$ 25.00
	Total For Check	30851					\$ 25.00
01/31/2020	Payroll Period Ending 01/31/2020	30846	Administrator	N	Clerk - Treasurer	100-41401-100-	\$ 1,913.04
	Total For Check	30846					\$ 1,913.04
01/31/2020	Payroll Period Ending 01/31/2020	30847	Treasurer - Deputy	N	Clerk - Treasurer	100-41401-100-	\$ 201.71
	Total For Check	30847					\$ 201.71
01/31/2020	Payroll Period Ending 01/31/2020	30848	Office Support - Dennis Sonnek	N	Clerk - Treasurer	100-41401-100-	\$ 101.58
	Total For Check	30848					\$ 101.58
02/03/2020	PERA	EFT020320A*	Administrator -Retirement - Tobin Lay	N	Clerk - Treasurer	100-41401-121-	\$ 367.02

Fund Name: All Funds

Date Range: 01/14/2020 To 02/07/2020

<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	EFT020320A				\$ 367.02
02/03/2020	PERA	EFT020320B*	Treasurer -Retirement - Andy Gonyou	N	Clerk - Treasurer	100-41401-121-	\$ 35.11
		Total For Check	EFT020320B				\$ 35.11
02/04/2020	Payroll Period Ending 01/31/2020	30852	Maintenance/Rink Attendant - Jim Rydeen	N	Parks	100-45207-100-	\$ 1,579.63
		Total For Check	30852				\$ 1,579.63
02/05/2020	Menard's - MAPLEWOOD	30853*	Parks Supplies	N	Parks	100-45207-400-	\$ 41.34
		30853*				100-45207-400-	\$ 41.34
		Total For Check	30853				\$ 82.68
02/05/2020	Menards - Oakdale	30854*	Parks Supplies	N	Parks	100-45207-400-	\$ 19.95
		Total For Check	30854				\$ 19.95
02/05/2020	Manship Plumbing & Heating Inc	30855*	Standby, Testing - December 2019	N	Water Utility	601-43180-314-	\$ 600.00
		30855*				601-43180-314-	\$ 960.00
		30855*				601-43180-314-	\$ 850.00
		30855*			Unallocated Expenditures	601-49201-430-	\$ 120.00
		Total For Check	30855				\$ 2,530.00
02/05/2020	St. Cloud State University	30856*	2020 MN Municipal Clerks Institute (MMCI)	N	City Training and Development	100-41914-310-	\$ 445.00
		Total For Check	30856				\$ 445.00
02/05/2020	Metropolitan Area Management Assoc.	30857*	City Management - 2020 Membership	N	City Training and Development	100-41914-310-	\$ 45.00
		Total For Check	30857				\$ 45.00
02/05/2020	Thatcher Engineering, Inc	30858*	City Engineering Services - Dec Projects, Lake Ave, & Sewer Lift Station	N	Engineer Service	100-41650-300-	\$ 170.00
		30858*				100-41650-300-	\$ 1,792.85
		30858*				100-41650-300-	\$ 2,210.00
		30858*			Unallocated Expenditures	100-49201-430-	\$ 637.50
		30858*			Parks	210-45207-314-	\$ 340.00
		30858*			Unallocated Expenditures	601-49201-430-	\$ 2,600.95
		Total For Check	30858				\$ 7,751.30
02/05/2020	Gopher State One Call	30859*	Facility Operator Fee - 2020	N	Utility Locates	605-42805-314-	\$ 50.00

Fund Name: All Funds

Date Range: 01/14/2020 To 02/07/2020

<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>
		30859*				605-42805-314-	\$ 5.40
	Total For Check	30859					\$ 55.40
02/05/2020	Office Depot	30860*	W-2 and 1099 Tax Forms	N	Office Operations Supplies	100-41911-200-	\$ 19.99
		30860*				100-41911-200-	\$ 19.99
	Total For Check	30860					\$ 39.98
02/05/2020	Washington County Sheriff	30861*	Police Services Code Red Fee - 2020	N	Police	100-42101-314-	\$ 68.38
	Total For Check	30861					\$ 68.38
02/05/2020	Washington County - Road & Bridge	30862*	Snow & Ice Control - 12/09/2019	N	Ice and Snow Removal	100-43125-210-	\$ 280.88
	Total For Check	30862					\$ 280.88
02/05/2020	Washington County - Property & Tax	30863*	Election Maintenance - 2020	N	Elections	100-41410-220-	\$ 830.00
	Total For Check	30863					\$ 830.00
02/05/2020	AirFresh Industries, Inc.	30864*	Portable Restroom Rental (1)	N	Parks	100-45207-314-	\$ 81.25
	Total For Check	30864					\$ 81.25
02/05/2020	Water Conservation Service Inc.	30865*	Water Main Leak Locate - 01/12/2020	N	Wtr/Swr Emergency	601-43185-300-	\$ 460.44
	Total For Check	30865					\$ 460.44
02/05/2020	CAPRA'S UTILITIES, INC	30866*	Water Main Break.	N	Wtr/Swr Emergency	601-43185-314-	\$ 6,526.75
	Total For Check	30866					\$ 6,526.75
02/05/2020	Press Publications	30867*	Legal Notice Publications - 02/06/2020 Town Hall	N	Ordinances and Proceedings	100-41130-351-	\$ 56.28
	Total For Check	30867					\$ 56.28
02/05/2020	TSE, Inc. Work Account	30868*	Janitorial Services - Jan 2020	N	General Government Buildings and Plant	100-41940-314-	\$ 25.00
	Total For Check	30868					\$ 25.00
02/05/2020	National Band & Tag Company	30869*	Animal License Tags for 2020 - 2021	N	Office Operations Supplies	100-41911-210-	\$ 60.54
	Total For Check	30869					\$ 60.54
02/05/2020	Steve Dean	30870*	Water Main Break Storage	N	Wtr/Swr Emergency	601-43185-220-	\$ 500.00

Fund Name: All Funds

Date Range: 01/14/2020 To 02/07/2020

<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	30870				\$ 500.00
02/05/2020	BIRCH, INC.	30871*	Snow Removal Services - January 2020	N	Ice and Snow Removal	100-43125-314-	\$ 463.00
		30871*				100-43125-314-	\$ 431.10
		30871*				100-43125-314-	\$ 1,397.70
		30871*				100-43125-314-	\$ 1,170.00
		30871*				100-43125-314-	\$ 1,553.40
		Total For Check	30871				\$ 5,015.20
02/05/2020	USS Minnesota One MT LLC	30872*	Energy Charges - Dec 2019	N	General Government Buildings and Plant	100-41940-380-	\$ 30.21
		30872*			Sewer Utility	605-43190-380-	\$ 146.03
		30872*				605-43190-380-	\$ 70.50
		Total For Check	30872				\$ 246.74
02/05/2020	Core & Main	30873*	Water Repair Clamps	N	Water Utility	601-43180-220-	\$ 421.66
		Total For Check	30873				\$ 421.66
02/05/2020	Leeves, Robert	30874*	Videographer - Jan 2020	N	Cable Eqpmt and Service	100-41950-314-	\$ 76.50
		Total For Check	30874				\$ 76.50
02/05/2020	H.A. Kantrud, P.A.	30875*	Attorney Fees - January 2020	N	Legal Services	100-41601-300-	\$ 1,500.00
		Total For Check	30875				\$ 1,500.00
02/05/2020	Lay, Tobin	30876*	Reimbursement - Stamps & Domain Renewal	N	Office Operations Supplies	100-41911-200-	\$ 330.00
		30876*			Unallocated Expenditures	100-49201-430-	\$ 20.00
		Total For Check	30876				\$ 350.00
02/05/2020	Woolstencroft, Kevin	30877*	Reimbursement - warming house heater repair	N	Unallocated Expenditures	100-49201-430-	\$ 74.18
		Total For Check	30877				\$ 74.18
02/05/2020	Xcel Energy	EFT020520A*	Xcel Gas Bill: 12.17.19 - 01.20.20	N	Sewer Utility	605-43190-383-	\$ 29.50
		Total For Check	EFT020520A				\$ 29.50
02/06/2020	Water Conservation Service Inc.	30878	Water Main Leak Locate - 01/28/2020	N	Wtr/Swr Emergency	601-43185-300-	\$ 310.30
		Total For Check	30878				\$ 310.30
02/06/2020	Miller Excavating, Inc.	30879	Water Main Break - Jan 29	N	Wtr/Swr Emergency	601-43185-314-	\$ 4,975.33
		Total For Check	30879				\$ 4,975.33

Fund Name: All Funds

Date Range: 01/14/2020 To 02/07/2020

<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>
02/06/2020	Merrick Inc.	30880	Flyers & Mailers - 12/13/2019	N	Newsletter	601-41960-350-	\$ 149.60
	Total For Check	30880					\$ 149.60
02/06/2020	BF Lauzon Enterprizes Inc	30881	Snow Removal - January 2020	N	Ice and Snow Removal	100-43125-314-	\$ 66.00
		30881				100-43125-314-	\$ 66.00
		30881				100-43125-314-	\$ 66.00
		30881				100-43125-314-	\$ 66.00
	Total For Check	30881					\$ 264.00
02/06/2020	City of Roseville	30882	IT Services Feb 2020	N	General Government Buildings and Plant	100-41940-320-	\$ 580.00
	Total For Check	30882					\$ 580.00
02/07/2020	Companion Animal Control LLC	30883	Animal Control Services - Jan 2020	N	Animal Control	100-41916-314-	\$ 243.88
	Total For Check	30883					\$ 243.88
02/07/2020	Metropolitan Council - Env. Service	30884	Wastewater Service - Mar 2020	N	Sewer Utility	605-43190-217-	\$ 4,948.50
	Total For Check	30884					\$ 4,948.50
02/07/2020	Dahlen, Dwyer, Foley & Tinker, Inc.	30885	Property Assessments for Lake Ave Stormwater	N	Legal Services	100-41601-300-	\$ 3,500.00
	Total For Check	30885					\$ 3,500.00
02/07/2020	Leeves, Robert	30886	Videographer - Feb 2020 Town Hall	N	Cable Eqpmt and Service	100-41950-314-	\$ 67.50
	Total For Check	30886					\$ 67.50
02/07/2020	MN Department of Labor and Industry	EFT020720A*	Building Permit Surcharge - Q4 2019	N	Building Inspections Administration	100-42401-437-	\$ 150.60
	Total For Check	EFT020720A					\$ 150.60
02/07/2020	PERA	EFT020720B*	Maintenance -Retirement - Jim Rydeen	N	Parks	100-45207-121-	\$ 278.75
	Total For Check	EFT020720B					\$ 278.75
Total For Selected Checks							\$ 56,087.36

As on 2/7/2020

Special Rev Projects

	<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:			
Parks			
Contracted Services	0.00	340.00	(340.00)
Miscellaneous (431 through 499)	0.00	4,889.00	(4,889.00)
Total Acct 452	0.00	5,229.00	(5,229.00)
Total Disbursements	0.00	5,229.00	(5,229.00)
Other Financing Uses:			
Total Other Financing Uses	0.00	0.00	0.00
Beginning Cash Balance		22,554.79	
Total Receipts and Other Financing Sources		0.00	
Total Disbursements and Other Financing Uses		5,229.00	
Cash Balance as of 02/07/2020		17,325.79	

As on 2/7/2020

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		66,233.91	
Total Receipts and Other Financing Sources		0.00	
Total Disbursements and Other Financing Uses		0.00	
Cash Balance as of 02/07/2020		66,233.91	

As on 2/7/2020

Water

	<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:			
Newsletter			
Printing and Binding (351 through 359)	0.00	149.60	(149.60)
Total Acct 419	<u>0.00</u>	<u>149.60</u>	<u>(149.60)</u>
Water Utility			
Repair and Maintenance Supplies (221 through 229)	0.00	421.66	(421.66)
Contracted Services	0.00	13,243.79	(13,243.79)
Wtr/Swr Emergency			
Repair and Maintenance Supplies (221 through 229)	0.00	500.00	(500.00)
PROFESSIONAL SERVICES (301 through 319)	0.00	1,058.14	(1,058.14)
Contracted Services	0.00	11,502.08	(11,502.08)
Total Acct 431	<u>0.00</u>	<u>26,725.67</u>	<u>(26,725.67)</u>
Unallocated Expenditures			
Miscellaneous (431 through 499)	0.00	2,720.95	(2,720.95)
Total Acct 492	<u>0.00</u>	<u>2,720.95</u>	<u>(2,720.95)</u>
Total Disbursements	<u>0.00</u>	<u>29,596.22</u>	<u>(29,596.22)</u>
Other Financing Uses:			
Total Other Financing Uses	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
Beginning Cash Balance		41,574.59	
Total Receipts and Other Financing Sources		0.00	
Total Disbursements and Other Financing Uses		<u>29,596.22</u>	
Cash Balance as of 02/07/2020		11,978.37	

As on 2/7/2020

Sewer

	<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:			
Utility Locates			
Contracted Services	0.00	66.20	(66.20)
Total Acct 428	<u>0.00</u>	<u>66.20</u>	<u>(66.20)</u>
Sewer Utility			
Sewer - Wastewater Charge	0.00	14,845.50	(14,845.50)
Utility Services (381 through 389)	0.00	880.32	(880.32)
Utility Services: Gas Utilities	0.00	58.53	(58.53)
Total Acct 431	<u>0.00</u>	<u>15,784.35</u>	<u>(15,784.35)</u>
Total Disbursements	<u>0.00</u>	<u>15,850.55</u>	<u>(15,850.55)</u>
Other Financing Uses:			
Total Other Financing Uses	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
Beginning Cash Balance		70,903.59	
Total Receipts and Other Financing Sources		0.00	
Total Disbursements and Other Financing Uses		<u>15,850.55</u>	
Cash Balance as of 02/07/2020		55,053.04	

RESOLUTION 2020-07

CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA

A RESOLUTION APPROVING THE RENAMING
OF NORDLING PARK TO POLLY’S PARK

WHEREAS, it has been the practice of the City of Birchwood Village to name its parks after influential individuals from the City’s past; and

WHEREAS, the City Council of the City of Birchwood Village desires to rename Nordling Park; and

WHEREAS, the City Council invited City residents to participate in the Park’s renaming by suggesting new names; and

WHEREAS, the most popular suggestion was the name “Polly Shank;” and

WHEREAS, Polly Shank was influential to the City and the White Bear Lake area in many ways, including founding the annual Birchwood Fourth of July parade and the White Bear Center for the Arts, among so many others.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Birchwood Village, Washington County, Minnesota that Nordling Park is renamed Polly’s Park.

Resolution duly seconded and passed this 11th day of February, 2020.

Attest:

Mary Wingfield, Mayor

Tobin Lay, City Administrator-Clerk



Office of the Sheriff

Commitment to Excellence



Dan Starry
County Sheriff
Brian R. Mueller
Chief Deputy

January 31, 2020

I have enclosed one Joint Powers Agreement with the Washington County Sheriff's Office. Please review and obtain the appropriate signature. Please return the signed agreement by mail at your earliest convenience to Ronda Anderson. I will send you a fully executed copy upon Washington County's final signature. If you would like an electronic copy versus a hardcopy, please contact me by the phone number or email listed below.

Any questions or concerns, just let me know.

Sincerely,

Ronda Anderson

Ronda Anderson
Washington County Sheriff's Office
15015 62nd Street North
PO Box 3801
Stillwater, MN 55082
Phone: 651-430-7979
Email: ronda.anderson@co.washington.mn.us

**JOINT POWERS AGREEMENT BETWEEN THE WASHINGTON COUNTY SHERIFF'S
OFFICE AND THE VILLAGE OF BIRCHWOOD**

THIS AGREEMENT is made by and between political subdivisions organized and existing under the Constitution and laws of the State of Minnesota. Washington County a political subdivision by and through its Sheriff's Office (hereinafter "Provider") and the Village of Birchwood, Minnesota, a municipal corporation, (hereinafter referred to as the "City") are the parties to this agreement.

WHEREAS, both political subdivisions through their law enforcement agencies manage threats to public health and safety.

WHEREAS, Minnesota Statutes Section 471.59 provides that two or more governmental units may by Agreement jointly exercise any power common to the contracting parties.

WHEREAS, The Provider has entered into a contract with OnSolve, LLC, formerly Emergency Communications Network (ECN), for the purpose of providing a Mass Emergency Notification System also known as Code Red.

WHEREAS, The provider has agreed to purchase 150,000 minutes from Emergency Communications Network for the purpose of sending Mass Emergency Notifications to home, business or cell phones.

WHEREAS, the Provider has agreed to purchase the Mass Emergency Communication system to assist agencies within Washington County provide necessary emergency and non-emergency mass notifications.

WHEREAS, The City is in need of having the ability to communicate with the public in a timely fashion during both emergency and non-emergency situations.

WHEREAS, At the request of the City, the Provider is willing to provide a Mass Emergency Notification System.

NOW THEREFORE, Pursuant to the authority contained in Minnesota Statute Section 471.59. commonly known as the Joint Powers Act which authorizes two or more governmental units to jointly exercise any power common to them and /or Minnesota Statutes Sections 626.76 and in consideration of the mutual covenant herein contain and the benefits that each party hereto shall derive hereby the Provider and City agree to the following terms and conditions.

PURPOSE

The purpose of this joint powers agreement is set forth in the recitals contained in the above whereas clauses which are incorporated by references if fully set forth herein.

CITY'S RESPONSIBILITIES

1. When needed, the City's representative shall be able to utilize the Mass Emergency Notification Communication System by notifying the Washington County Sheriff's Office 911 PSAP for Emergency Notifications. Emergency Notifications are those that are related to public safety as defined in the Code Red Policy. The 150,000 minutes purchased by the provider will be used for all Emergency Notifications at no additional cost to the City.
2. The City agrees to pay the Provider \$68.38 for the purpose of purchasing its proportionate share of 150,000 Emergency Notification minutes per year.
3. The City will conform to any Policy developed by Provider related to the use and maintenance of Code Red.
4. The City's representative shall be responsible for determining the content of any Emergency Notification message in addition to the geographic area the message is to be sent.
5. The Washington County 911 PSAP Center personnel will assist in preparing Emergency Notifications as defined in the Code Red Policy and will be responsible for initiating the call procedures through Code Red at the direction of the City's authorized representative.
6. The City's representative will be responsible for sending any General Notifications, as defined in the Code Red Policy, through a web based server. General Notification minutes used will be paid by the City to the Provider at an additional contracted rate of .25 per minute. Those funds will be retained by the provider for the sole purpose of purchasing minutes on the Code Red System.
7. For every additional year this agreement is extended the Provider will invoice the City at a rate of \$ 68.38 per year for emergency notification minutes.
8. City will be responsible for the payment of additional year(s) extension upon receipt of the invoice from the Provider.

PROVIDER'S RESPONSIBILITIES

1. Provider agrees to enter into a contract with OnSolve for the purchase of 150,000 minutes of the Code Red Mass Notification System in 2020.
2. Provider will develop a policy related to the use and maintenance of the Code Red System.
3. Provider will assign an employee as the Code Red System administrator.
4. Provider agrees to train the 911 PSAP personnel in the operation of the Code Red System.
5. Provider agrees to train the City representative in the use of the Code Red System.
6. The Provider will test the Code Red System to ensure the system is operating properly.
7. The Provider will monitor the number of minutes used by all agencies to ensure there is sufficient number of minutes available in the event of an emergency.

TERM OF AGREEMENT

The initial Term of this Agreement shall be from January 01, 2020 and ends December 31, 2022, the date of the signature of the parties notwithstanding, unless earlier terminated in accordance with the termination clause. After the initial Term, this Agreement will automatically renew for 2 additional one year periods with the final termination date of December 31st 2024, unless the automatic extension is cancelled by the City in accordance with the termination clause.

PAYMENT

The City shall pay the Provider within 30 days of being invoiced for the City's annual portion of the Code Red System or for any General Message minute usage.

INDEPENDENT CONTRACTOR

It will be agreed that nothing within the contract is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties or as constituting the City as the agent, representative, or employee of the Provider for any purpose or in any manner whatsoever.

ASSIGNMENT

The City shall not assign any services contemplated under this agreement.

RECORD DISCLOSURES/MONITORING

Pursuant to Minn. Statute 16C.05 SUBD. 5, the books, records, documents and accounting procedures and practices of the contractor relevant to the contract are subject to examination by the County and either the legislative auditor or the state auditor, as appropriate. The contractor agrees to maintain and make available these records for a period of six years from the date of termination of this agreement.

INDEMNIFICATION

- a. The City agrees it will defend, indemnify and hold harmless the Provider, its officers and employees against any and all liability, loss, costs, damages, and expenses which the Provider, its officers, or employees may hereafter sustain, incur, or be required to pay arising out of the negligent or willful acts or omissions of the City in the performance of this agreement.

- b. The liability of the parties under this agreement shall be governed by Minnesota Statutes section 471.59 subdivision 1a. Each party to this agreement shall be liable for its own acts or omissions and shall not be liable for the acts or omissions of any other party to this agreement.

INSURANCE REQUIREMENTS

The City agrees that in order to protect itself, as well as the Provider, under the indemnity provisions set forth above, it will at all times during the term of this Agreement, keep in force the following insurance protection in the limits specified:

1. Maintain membership and participation in the Minnesota League of Cities Trust or Commercial General liability Insurance with contractual liability coverage in the amount of the City's and Provider's tort liability limits set forth in Minnesota Statute Section 466.04 and as amended from time to time.

2. Automobile coverage in the amount of the City's and Provider's tort liability limits set forth in Minnesota Statute Section 466.04 and as amended from time to time.

3. Worker's Compensation in statutory amount.

Prior to the effective date of this Agreement, the City will furnish the Provider, with certificates of insurance as proof of insurance. This provision shall be set as a condition subsequent; failure to abide by this provision shall be deemed a substantial breach of contract.

Any policy obtained and maintained under this clause shall provide that it shall not be cancelled, materially changed, or not renewed without thirty days notice thereof to the Provider.

DATA PRACTICES

All data collected, created, received, maintained, or disseminated for any purposes by the activities of the contractor, because of this agreement, is governed by the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as amended, the Minnesota Rules implementing such Act now in force or as adopted, as well as federal regulations on data privacy. For purposes of this agreement each party shall remain the Responsible Authority for all data it generates or creates as part of this agreement.

TERMINATION

- a. Provider may cancel this Agreement with or without cause at any time upon giving a 30 days written notice to the City Administrator or designee. The City may cancel this Agreement with or without cause at anytime upon giving a 30 days notice to the Washington County Sheriff or designee. No monies paid will be refunded to the City upon termination of this contract.

- b. During the initial or subsequent term if the City does not want to exercise the automatic one year renewal, it must provide written notice of such to Provider at least 90 days prior to December 31st of the current year.

- c. If Provider does not renew its contract with OnSolve for 150,000 minutes of the Code Red Mass Notification System for years 2020, 2021 and or 2022, the Provider will notify the City 30 days prior to December 31st 2019, December 31st 2020 or December 31st 2021 respectively.

WASHINGTON COUNTY

BIRCHWOOD VILLAGE

BY: _____ DATE: _____
County Board Chair

BY: _____ DATE: _____

BY: _____ DATE: _____
County Administrator

BY: Daniel Steury DATE: 1/30/20
Sheriff

Approved to as form:
Rufus Anderson
Asst County Attorney

**CONSENT F
COMCAST EXTENSION AGREEMENT**

EXTENSION AGREEMENT BETWEEN AND AMONG THE MEMBERS OF THE RAMSEY WASHINGTON SUBURBAN CABLE COMMISSION AND COMCAST OF MINNESOTA

WHEREAS, Comcast of Minnesota, Inc., (“Franchisee”) operates a cable television system (the “System”) in communities which are members of the Ramsey/Washington Suburban Cable Commission (RWSCC) pursuant to a franchise scheduled to expire on November 1, 2018, to which the City of Birchwood Village, the City of Dellwood, the City of Grant, the City of Lake Elmo, the City of Mahtomedi, the City of North St. Paul, the City of Oakdale, the City of White Bear Lake, White Bear Township and the City of Willernie, Minnesota, are parties (each community is a “Franchisor”); a March 9, 1995 Memorandum of Understanding; and the April 10, 2014 Settlement Agreement, as amended by Section 2 of that certain 2015 Transfer Agreement Between and Among The Members of the Ramsey Washington Suburban Cable Commission, Comcast of Minnesota, Inc. and Midwest Cable, Inc. (collectively, the Franchise and these documents are the “Franchise Documents”); and

WHEREAS, the parties previously agreed to extend the expiration date of the Franchise, and of obligations in the Settlement Agreement, through August 31, 2019; and

WHEREAS, the parties wish to extend certain time periods provided under the Franchise Documents to provide time for the parties to work cooperatively as they engage in the renewal processes contemplated by state and federal law.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

Section 1. The Franchise is extended through and including March 31, 2020.

Section 2. Paragraph 10 of the “Settlement Agreement Regarding PEG Capacity” is amended so that the reference to August 31, 2019 is changed to March 31, 2020.

Section 3. Otherwise, the Franchise Documents shall remain in full force and effect in accordance with their terms.

Section 4. Both parties agree that the further extension will not require recommencement of the renewal process under state or federal law, or require either party to re-conduct any studies or proceedings that may have been or are being conducted.


Section 5. This Extension Agreement does not confer upon the Franchisee any additional rights under Section 626 of the Cable Act.

Section 6. By entering into this Extension Agreement, the parties do not otherwise waive their rights to rely upon the rights, procedures, protections and recourses granted to them pursuant to applicable Federal, state, or local rule, regulation, law or precedent.

Section 7. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement

IN WITNESS WHEREOF, the Parties have caused this Extension Agreement to be executed by duly authorized representatives of each Party on the dates written below.

COMCAST OF MINNESOTA, INC.

By: 
John D. Keller
Title: Regional Vice President

Date: 11/16/19

CITY OF BIRCHWOOD VILLAGE

By:

Title:

Date:

CITY OF DELLWOOD

By:

Title:

Date:

CITY OF GRANT

By:

Title:

Date:

CITY OF LAKE ELMO

By: _____

Title:

Date:

WHITE BEAR TOWNSHIP

By:

Title:

Date:

CITY OF MAHTOMEDI

By:

Title:

Date:

CITY OF NORTH ST. PAUL

By:

Title:

Date:

CITY OF OAKDALE

By:

Title:

Date:

CITY OF WHITE BEAR LAKE

By:

Title:

Date:

CITY OF WILLERNIE

By:

Title:

Date:

RESOLUTION 2020-08

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

**PRELIMINARY ASSESSMENT THAT THE COMCAST OF MINNESOTA, INC.
CABLE FRANCHISE SHOULD NOT BE RENEWED**

WHEREAS, The City of Birchwood Village is a member of the Ramsey/Washington Counties Suburban Cable Communications Commission II (hereinafter “RWSCC”) a Joint Powers Commission organized pursuant to Minn. Stat. § 471.59, as amended, and includes the municipalities of Birchwood Village, Dellwood, Grant, Lake Elmo, Mahtomedi, North St. Paul, Oakdale, White Bear Lake, White Bear Township and Willernie, Minnesota (“Member Municipalities”); and

WHEREAS, the Member Municipalities enacted separate ordinances and entered into individual agreements authorizing MediaOne North Central Communications Corp. to provide cable service (collectively, the “Franchises”); and

WHEREAS, as a result of several transfers of the Franchises, Comcast of Minnesota, Inc., (“Comcast”) currently holds the Franchises in the Member Municipalities; and

WHEREAS, Section 626(a)(1) of the Cable Communications Policy Act of 1984, as amended (the “Cable Act”), 47 U.S.C. § 546(a)(1), provides that if a written renewal request is submitted by a cable operator during the 6-month period which begins with the 36th month before franchise expiration and ends with the 30th month prior to franchise expiration, a franchising authority shall, within six months of the request, commence formal proceedings to identify the future cable-related community needs and interests and to review the performance of the cable operator under its franchise during the then current franchise term; and

WHEREAS, Comcast invoked the formal renewal procedures set forth in Section 626 of the Cable Act, 47 U.S.C. § 546; and

WHEREAS, the Joint Powers Agreement empowers the Commission and/or its designee(s) to conduct the Section 626 formal franchise renewal process on the Member Cities’ behalf and to take such other steps and actions as are needed or required to carry out the formal franchise renewal process; and

WHEREAS, the Commission commenced formal franchise renewal proceedings under Section 626(a) of the Cable Act, 47 U.S.C. § 546(a), and authorizing the Commission or its designee(s) to take certain actions to conduct those Section 626(a) proceedings; and

WHEREAS, RWSCC performed a needs assessment of the Member Municipalities’ and their communities’ present and future cable-related needs and interests and has evaluated and continues to evaluate Comcast’s past performance under the Franchises and applicable laws and regulations, all as required by Section 626(a) of the Cable Act, 47 U.S.C. § 546(a); and

WHEREAS, the Commission’s needs ascertainment and past performance review included the Report on Cable-Related Needs and Interests and System Technical Review Within the Ramsey Washington Suburban Cable Commission Franchise Area, dated August 30, 2017, by CBG Communications, Inc.; Constance Ledoux Book, Ph. D., Telecommunications Research Corporation; Carson Hamlin, Media Integration Specialist; and Issues and Answers Telephone Research Firm (“CBG Report”); and in addition, the Commission reviewed its own files and conducted certain investigations as to needs and interests and past performance, and drew upon publicly available information regarding industry and area trends; and

WHEREAS, based on its needs ascertainment and past performance review, RWSCC staff prepared a “Request for Renewal Proposal for Cable Franchise” (“RFRP”) that summarizes the Member Municipalities’ and their communities’ present and future cable-related needs and interests, establishes requirements for facilities, equipment and channel capacity on Comcast’s cable system and includes model provisions for satisfying those requirements and cable-related needs and interests; that identified past non-compliance issues, and provided Comcast a further opportunity to correct them; and included a model franchise with terms and conditions; and

WHEREAS, RWSCC and Comcast engaged in informal renewal negotiations pursuant to 47 U.S.C. § 546(h) but are currently unable to arrive at mutually acceptable terms; and

WHEREAS, RWSCC established November 11, 2019 as a deadline for Comcast’s response to the RFRP; and

WHEREAS, RWSCC and Comcast agreed to extend certain deadlines including the deadline for Comcast to respond to the RFRP; and on or about December 13, 2019, Comcast submitted to RWSCC its Response to Ramsey Washington Counties Suburban Cable Communications Commission II’s Request for Renewal Proposal for Cable Franchise (“Comcast Proposal”); and

WHEREAS, RWSCC reviewed the Comcast Proposal and based on that review made a preliminary assessment that the Franchises should not be renewed, as set forth in Resolution 2020-01, (“RWSCC Resolution”) and recommended that each Member Municipality confirm and issue a preliminary assessment that the franchise not be renewed; and

WHEREAS, RWSCC has proposed Rules for the Conduct of an Administrative Hearing, attached to the RWSCC Resolution as Exhibit B and asked each Member Municipality to confirm those rules.

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

Section 1. The City of Birchwood Village hereby issues a preliminary assessment that the franchise should not be renewed, and the actions of the RWSCC affirmed.

Section 2. Exhibit A to the RWSCC Resolution is adopted and incorporated herein, and sets out grounds for the preliminary denial, and the which of the categories of issues set out in 47 U.S.C. § 546(c)(1) may be raised in any formal administrative proceeding.

Section 3. Exhibit B, the Rules for Conduct of an Administrative Hearing are confirmed and may be used for conduct of the proceeding. To remove any doubt, the RWSCC is authorized to make such changes to the Rules as may be necessary or appropriate for the conduct of the proceeding without seeking further authorization from The City of Birchwood Village.

Section 4. RWSCC shall provide such notices as may be required and promptly commence the administrative proceeding required by law.

Section 5. The proceeding maybe delayed by agreement, subject to ratification by the Member Municipalities. The proceeding may be terminated if an agreement is reached as to renewal, or if Comcast determines it does not wish an administrative hearing on its application.

Resolution duly seconded and passed this 11th day of February, 2020.

Attest:

Mary Wingfield, Mayor

Tobin Lay, City Administrator-Clerk

CONSENT F, G & REGULAR J.b RWSCC EXECUTIVE SUMMARY

MEMORANDUM

February 4, 2020

TO: Tobin Lay, City Administrator-Clerk, City of Birchwood Village

FROM: Tim Finnerty, Executive Director, Cable Commission

SUBJECT: Recommendation for Preliminary Assessment that the Comcast of Minnesota, Inc., Cable Franchise Should Not Be Renewed

Please find attached the recommendation of the Cable Commission that the City adopt a **preliminary assessment** that the cable franchise with Comcast should not be renewed.

It's important that this recommended action represents a PRELIMINARY ASSESSMENT. It is not a FINAL decision. This will simply trigger the next step, which is an administrative hearing that gives Comcast a fair opportunity, right to introduce and produce evidence, and question witnesses. That's what the federal law calls for. It's designed to provide due process to the parties, including Comcast. And it will determine what is reasonable and what is not reasonable under the law.

The attached documents include:

Analysis of Comcast's proposal, including the grounds for the preliminary assessment. The statement is not intended to lay out all the problems with the Comcast proposal, but is instead meant to provide enough information for the Member Municipalities to understand why the Cable Commission has found that the proposal is not adequate to support renewal at this point.

A recommended Resolution to Member Municipalities for adoption that issues a **preliminary assessment that the franchise should not be renewed**.

Recommended rules for conducting an administrative hearing for Comcast of Minnesota, Inc., franchise renewal. The rules are to be applied to ensure that Comcast is afforded a fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence and to question witnesses.

The recommended hearing rules include a timeline for the schedule of proceedings, which assumes that all the member communities act on the Cable Commission's recommendation by March 10. The Cable Commission may be able to move faster if the communities act more quickly.

It is important to note that other documents are referenced, but not contained, within the attachments, include the following:

The Commission's Request for Renewal Proposal (RFRP) issued to Comcast in October, 2019; and Comcast's response in December, 2019, to that RFRP.

MEMORANDUM
PAGE TWO

These documents are available for public inspection at the Commission office, and can also be found at the following link: <https://drive.google.com/drive/folders/1gaFIAPBPFiTrjRW5WXGX8LwBrOmG4jj9>

Also available at this link are the following:

A December 30, 2019, letter from Mr. Joe Van Eaton (representing the Cable Commission) to Mr. Anthony Mendoza (representing Comcast) regarding Comcast's response to the RFRP, as well as Mr. Mendoza's January 10, 2020 reply to that letter.

A January 30, 2020, letter from Mr. Anthony Mendoza (representing Comcast) to the Cable Commission.

An alternative draft resolution in the event your community wishes to accept Comcast's proposal. The Cable Commission DOES NOT recommend, but makes it available for your convenience if applicable.

Finally, the discussion of the grounds for the preliminary assessment refers to a financial analysis by consultant to the Cable Commission, Garth Ashpaugh. That report is confidential, but can be made available to authorized municipal officials – but the confidentiality of the specific information in that report should be respected. To make arrangements to view this material, please contact me.

Please contact me with any questions. Thank you.

Executive Summary of Grounds for Preliminary Assessment that Comcast Cable Franchise Should Not Be Renewed

Each community would be deciding whether to issue a preliminary assessment that the franchise should not be renewed. The communities would then conduct a formal hearing through the Cable Commission before making a final renewal decision.

1. Under the Cable Act, an operator's request for renewal can be denied unless an operator "has substantially complied with the material terms of the existing franchise and with applicable law;" and "the quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been reasonable in light of community needs." The needs review showed that Comcast:

Failed to satisfy customer billing requirements.

Failed to properly maintain the system, and failed to devise an effective system for identifying and correcting maintenance problems.

(Separately, the company failed to provide information required by the renewal application form, and failed to respond to questions about its proposal or to pay application fee in connection with renewal application process).

2. Under the Cable Act, an operator's request for renewal can be denied unless an operator has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal. In addition, to be legally qualified, the company must accept legal conditions locality has a right to impose.

Cases suggest the refusal to correct maintenance problems (sloppy placement on poles, open boxes, wires on ground) indicates a company may not satisfy the technical standard.

Comcast refused to accept conditions that may be imposed as a condition of issuance of a franchise, and requires communities to accept conditions which they are not required to accept.

Comcast will not provide a local customer service office – its closest offices are a significant distance from subscribers. It did not agree to customer service conditions the communities may impose.

Comcast does not agree to pay full 5% franchise fee permitted by law; and it also does not preserve right to assess fees on non-cable revenues, even if permitted by state and federal law.

Executive Summary

Page 2 of 3

Company insists on one-way, level playing field clause that is likely to require you to either give up franchise benefits, or deny franchises to others.

Company insists on incorporating an FCC Order, still under appeal, that would allow reduction of franchise fees.

3. Lastly, a renewal may be denied unless “the operator’s proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.” Among other things:

Comcast argues build out requirements are subject to a “needs and interest test.” It does not agree to build-out conditions that will ensure its system is available to residents and businesses throughout the communities.

While elsewhere, Comcast agrees to share the cost of extending its service to remote areas, if subscribers (or developers) are willing to pay share in extension costs, Comcast refuses to agree to cost-sharing in the RWSCC communities.

Comcast does not propose to upgrade its cable system.

The Cable Act allows localities to require operators to build “institutional networks” – part of the cable system designed to provide advanced communications services to small businesses, community organizations and other non-residential customers. An institutional network already exists. However, Comcast will not agree to provide or continue to provide an institutional network throughout the communities to serve local businesses.

The Cable act allows localities to require an operator to provide capacity on an institutional network for educational and government use. Instead, the company offers to maintain existing connections at a cost of over \$554,000 for a ten year period. Comcast elsewhere has agreed to maintain much larger “dark fiber networks” for under \$15,000 annually, and normal market prices for dark fiber maintenance could be one-tenth of the price Comcast proposed.

With respect to PEG, Comcast does not propose to maintain PEG channels with an appropriate option for adding a Century College channel, for example; it does not agree to terms that will ensure the quality of PEG that keeps pace with television technology, (company proposes only two High Definition channels, while other local channels to remain in old, standard definition format); it does not agree to

Executive Summary
Page 3 of 3

provide a facility for PEG throughout the franchise term; and it does not propose adequate, other capital support going forward.

The Cable Commission's RFRP suggested a support level of about \$244,000, a **reduction** of PEG support as currently structured. However, Comcast proposed just half that amount and less (as a percentage of gross) than it provides in many communities. It would make it more difficult, and perhaps impossible to produce many live events, such as local high school sporting events.

**CONSENT F, G & REGULAR J.b
PRELIMINARY ASSESSMENT FRANCHISE PACKET**

RESOLUTION NO. 2020-01

**PRELIMINARY ASSESSMENT THAT THE COMCAST OF MINNESOTA, INC.
CABLE FRANCHISE SHOULD NOT BE RENEWED**

WHEREAS, The Ramsey/Washington Counties Suburban Cable Communications Commission II (hereinafter “RWSCC”) is a Joint Powers Commission organized pursuant to Minn. Stat. § 471.59, as amended, and includes the municipalities of Birchwood, Dellwood, Grant, Lake Elmo, Mahtomedi, North St. Paul, Oakdale, White Bear Lake, White Bear Township and Willernie, Minnesota (“Member Municipalities”);

WHEREAS, the Member Municipalities enacted separate ordinances and entered into individual agreements authorizing MediaOne North Central Communications Corp. to provide cable service (collectively, the “Franchises”);

WHEREAS, as a result of several transfers of the Franchises, Comcast of Minnesota, Inc. (“Comcast”) currently holds the Franchises in the Member Municipalities;

WHEREAS, a Joint Powers Commission organized pursuant to Minn. Stat. § 471.59 has the statutory authority to “jointly or cooperatively exercise any power common to the contracting parties [i.e., the Member Municipalities]”;

WHEREAS, the RWSCC was established by the Ramsey/Washington Counties Suburban Cable Communications Commission II Joint and Cooperative Agreement for the Administration of a Cable Communications Franchises (the “Joint Powers Agreement”), to monitor Comcast’s performance, activities, and operations under the Franchises and to coordinate, administer, and enforce the Member Municipalities’ Franchises, among other things;

WHEREAS, Section 626(a)(1) of the Cable Communications Policy Act of 1984, as amended (the “Cable Act”), 47 U.S.C. § 546(a)(1), provides that if a written renewal request is submitted by a cable operator during the 6-month period which begins with the 36th month before franchise expiration and ends with the 30th month prior to franchise expiration, a franchising authority shall, within six months of the request, commence formal proceedings to identify the future cable-related community needs and interests and to review the performance of the cable operator under its franchise during the then current franchise term;

WHEREAS, Comcast invoked the formal renewal procedures set forth in Section 626 of the Cable Act, 47 U.S.C. § 546;

WHEREAS, the Joint Powers Agreement empowers the Commission and/or its designee(s) to conduct the Section 626 formal franchise renewal process on the Member Municipalities’ behalf and to take such other steps and actions as are needed or required to carry out the formal franchise renewal process;

WHEREAS, the Commission commenced formal franchise renewal proceedings under Section 626(a) of the Cable Act, 47 U.S.C. § 546(a), and authorizing the Commission or its designee(s) to take certain actions to conduct those Section 626(a) proceedings;

WHEREAS, RWSCC performed a needs assessment of the Member Municipalities' and their communities' present and future cable-related needs and interests and has evaluated and continues to evaluate Comcast's past performance under the Franchises and applicable laws and regulations, all as required by Section 626(a) of the Cable Act, 47 U.S.C. § 546(a);

WHEREAS, the Commission's needs ascertainment and past performance review included the Report on Cable-Related Needs and Interests and System Technical Review Within the Ramsey Washington Suburban Cable Commission Franchise Area, dated August 30, 2017, by CBG Communications, Inc.; Constance Ledoux Book, Ph. D., Telecommunications Research Corporation; Carson Hamlin, Media Integration Specialist; and Issues and Answers Telephone Research Firm ("CBG Report"); and in addition, the Commission reviewed its own files and conducted certain investigations as to needs and interests and past performance, and drew upon publicly available information regarding industry and area trends;

WHEREAS, based on its needs ascertainment and past performance review, RWSCC staff prepared a "Request for Renewal Proposal for Cable Franchise" ("RFRP") that summarizes the Member Municipalities' and their communities' present and future cable-related needs and interests, establishes requirements for facilities, equipment and channel capacity on Comcast's cable system and includes model provisions for satisfying those requirements and cable-related needs and interests; that identified past non-compliance issues, and provided Comcast a further opportunity to correct them; and included a model franchise with terms and conditions;

WHEREAS, RWSCC and Comcast engaged in informal renewal negotiations pursuant to 47 U.S.C. § 546(h) but are currently unable to arrive at mutually acceptable terms;

WHEREAS, RWSCC established November 11, 2019 as a deadline for Comcast's response to the RFRP;

WHEREAS, RWSCC and Comcast agreed to extend certain deadlines including the deadline for Comcast to respond to the RFRP; and on or about December 13, 2019, Comcast submitted to RWSCC its Response to Ramsey Washington Counties Suburban Cable Communications Commission II's Request for Renewal Proposal for Cable Franchise ("Comcast Proposal");

WHEREAS, RWSCC has carefully reviewed the Comcast Proposal and has preliminarily considered whether:

(A) the cable operator has substantially complied with the material terms of the existing franchise and with applicable law;

(B) the quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been reasonable in light of community needs;

(C) the operator has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal; and

(D) the operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests; and

WHEREAS, the RWSCC has preliminarily assessed the proposal and determined that the proposal does not show that Comcast's past performance justifies renewal; or show that Comcast has the financial, legal and technical ability to provide the services, facilities and equipment set forth in the proposal; and does not show that it is reasonable to meet future cable-related needs and interests, in light of the costs of meeting those needs and interests; and

WHEREAS, RWSCC has proposed Rules for the Conduct of an Administrative Hearing, attached hereto as Exhibit B, which rules are intended to comply with all procedural obligations set forth in 47 U.S.C. § 546(c);

WHEREAS, the preliminary assessment and the rules will be referred to each of the Member Municipalities for their adoption, and each of the Member Municipalities should take action on the preliminary assessment and rules by April 13, 2020;

NOW, THEREFORE, BE IT RESOLVED BY THE RAMSEY WASHINGTON CABLE COMMUNICATIONS COMMISSION II, THAT:

1. Each of the above recitals is hereby incorporated as a finding of fact by RWSCC.
2. RWSCC hereby issues a preliminary assessment that the franchise should not be renewed. The basis for RWSCC's preliminary assessment is set forth in Exhibit A. The proposed rules for conduct of the proceeding are set forth in Exhibit B.
3. RWSCC recommends to the Member Municipalities that the Member Municipalities issue a preliminary assessment that the Comcast Franchises should not be renewed, and confirm that the hearing will be conducted for the community pursuant to the Rules set forth in Exhibit B; and make it clear that the rules may be changed as necessary or appropriate in the conduct of the proceeding.
4. RWSCC recommends that each of the Member Municipalities adopt a resolution in the form of Exhibit C, Preliminary Assessment, but also provides an alternative resolution that would approve the renewal proposal.
5. At any administrative hearing, the Rules for the Conduct of an Administrative Hearing attached hereto as Exhibit B shall be applied to ensure that Comcast is afforded a fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence and to question witnesses.
6. The administrative proceeding will commence immediately after any Member Municipality adopts a resolution affirming this preliminary assessment and the procedural

rules, and after proper notice is given. Commencement may be delayed to allow for each of the Member Municipalities to act upon these recommendations.

7. The proceeding may be delayed by agreement, subject to ratification by the Member Municipalities. The proceeding may be terminated if an agreement is reached as to renewal, or if Comcast determines it does not wish an administrative hearing on its application.
8. RWSCC finds that its actions are appropriate and reasonable in light of the mandates contained in federal law including 47 U.S.C. § 546.

PASSED AND ADOPTED this 30th day of January, 2020:

RAMSEY/WASHINGTON COUNTIES
SUBURBAN CABLE COMMUNICATIONS
COMMISSION II

By: 
Chair

EXHIBIT A

**ANALYSIS OF COMCAST'S CABLE PROPOSAL TO THE RAMSEY/WASHINGTON
COUNTIES SUBURBAN CABLE COMMUNICATIONS COMMISSION II**

PRELIMINARY ASSESSMENT OF THE COMCAST FORMAL PROPOSAL FOR RENEWED FRANCHISES WITH THE RWSCC II MEMBER MUNICIPALITIES

A. Recommendation

The RWSCC should adopt, and recommend that its Member Municipalities issue a preliminary assessment that the cable franchises (“Franchises”) issued to Comcast of Minnesota, Inc. (“Comcast”) should not be renewed.

B. Federal Law Background

The Cable Communications Policy Act of 1984 (“Cable Act”) contemplates a three-stage renewal process.¹ In the first stage, a local franchising authority (“LFA”) identifies future, cable-related community needs and interests and evaluates the cable franchisee’s performance during the term of the franchise.² Next, the LFA issues a Request for Renewal Proposal (“RFRP”) to the incumbent cable operator. The operator has the opportunity to respond to this request by submitting a proposal for renewal which must contain such material as the franchising authority may require.³ Assuming it does so, and if the LFA issues “a preliminary assessment that the franchise should not be renewed,” the operator is entitled to an administrative hearing on its renewal proposal.⁴ The operator is afforded fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence, and to question witnesses. A transcript shall be made of any such proceeding.⁵

Following the administrative proceeding, the LFA must “issue a written decision granting or denying the proposal for renewal based upon the record of such proceeding, and ... [s]uch decision shall state the reasons therefor.”⁶

The renewal proceeding considers four statutory criteria. Specifically, the LFA considers whether:

1. the cable operator has substantially complied with the material terms of the existing franchise and with applicable law;
2. the quality of the operator’s service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been reasonable in light of community needs;
3. the operator has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator’s proposal; and
4. the operator’s proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.⁷

¹ 47 U.S.C. § 546.

² See 47 U.S.C. § 546(a)(1).

³ 47 U.S.C. § 546(b)(1).

⁴ 47 U.S.C. § 546(c)(1), (2).

⁵ 47 U.S.C. § 546(c)(2).

⁶ 47 U.S.C. § 546(c)(3).

The LFA must then issue a written decision either granting or denying the operator's renewal proposal. A final written decision by the LFA to deny renewal may be based on an adverse finding on one or more of these four issues. The operator may appeal a final decision to deny to state or federal court.

The focus of the renewal proceeding is the operator's proposal. If inadequate, the operator's request may be denied, even if the operator expresses a willingness to offer something different during the proceeding. It is bound by its proposal and its limits, and this memorandum describes some of the issues with the Comcast Proposal, based on the preliminary assessment of that proposal.

C. RWSCC/Local Actions/Comcast Submission

On October 4, 2019, the RWSCC issued its RFRP to Comcast. The RFRP, among other things, identified specific needs and interests based in part upon the analysis prepared by CBG Communications, Inc., and included specific instructions for Comcast to submit its renewal proposal. The RFRP also contained a model for meeting certain of those needs and interests.

The RFRP was divided into several sections. Parts II A-C identified the communities' future cable-related needs and interests. Part II.D identified past performance issues. The RFRP states Comcast should satisfy the needs and interests identified, and address past performance issues. We discuss Comcast's response in detail below.

Part III provided Comcast a model for meeting needs and interests. Comcast was not required to hew to the model, but the model provided the company a clear guide for meeting needs and interests. The RFRP went on to state that if the company departed from the model, it needed to justify the model and explain why its proposal satisfied local, cable-related needs and interests. The company largely ignored this requirement, as well as requirements e.g., that it provide detailed financial information if it claimed that its proposal was reasonable in light of costs.

Part IV included a model franchise ("RWSCC Model"). The Cable Act requires the company to enter into a franchise, and Part IV specified franchise terms, including customer service and franchise fee provisions. The RFRP allowed a company to propose changes, but noted that if it was unwilling to accept franchise terms, it would be legally unqualified to provide the services, facilities, and equipment it proposed – even assuming those were adequate. The RFRP made it clear that if the company was silent, it would be deemed a statement that the company was not willing to accept the franchise. Comcast did not say it would accept the model franchise, and submitted its own alternative ("Comcast Franchise").

⁷ 47 U.S.C. § 546 (c)(1)(A)-(D). A major legal issue in the renewal proceedings is likely to involve the proper application of this statutory standard. Comcast argues that its proposal need only be "adequate" to meet future cable-related needs and interests. RWSCC legal counsel believes that the proper standard for renewal is the express statutory standard. While it is unclear whether Comcast believes its proposal satisfies a "reasonableness" test, the analysis below would reach the same conclusion without regard to whether the relevant test is whether the proper test is "adequacy" or "reasonableness." The term "reasonable" or "reasonableness" is used throughout for convenience, and because that is the term that appears in Section 626.

The RFRP required Comcast to submit its response by November 11, 2019. This deadline was subsequently extended, by agreement of RWSCC and Comcast, in order to allow more time for negotiations aimed at reaching an informal settlement to continue. On December 13, 2019, Comcast submitted its response to the RFRP.

D. Analysis

While required to provide such material as the franchising authority may require, Comcast chose not to do so. Its failure to provide the information is in some cases based on legal claims with which RWSCC disagrees, but in many cases the departure from the requirements are unexplained, and creates burdens for the RWSCC and delays the renewal process. By letter dated December 30, 2020, the RWSCC notified Comcast that its failure to submit the information was both a violation of the franchise and a violation of the Cable Act, and Comcast was given an opportunity to cure. Comcast did not cure, and in its submission on January 10, 2020 refused to provide most of the requested information.

While the information provided is incomplete, and that incompleteness could justify termination of the renewal process or limitations on the information that may be presented by Comcast in any renewal proceeding, the RWSCC has attempted to analyze the Comcast Proposal, including the proposed Comcast Franchise.

As part of that review, the RWSCC retained the firm of Ashpaugh & Sculco (A&S) to review the proposal by Comcast from a financial perspective, in light of the renewal standards identified above. The report is confidential and cannot be made public. However, the main findings may be summarized as:

- the failure to provide the financial information requests limited the ability of A&S to analyze the proposal, BUT
- there is enough information to conclude that Comcast (at least as long as it maintains its current assets and structure) is financially qualified within the meaning of the Cable Act, and
- the company's operations generate significant revenues, enough so that the company should be able to continue to provide at least the levels of support it is providing for PEG now, as well as continuing to provide capacity on the institutional network, and investing new capital into the RWSCC communities.

CBG reviewed the report, and likewise concluded that it does not reasonably satisfy the needs and interests that it identified in its needs assessment report, and falls substantially short of doing so. This is particularly true with respect to proposals for upgrade; for PEG capital support, facilities and equipment; for PEG channels; for the institutional network, and for extension of the system to portions of the RWSCC communities not now served by Comcast.

Based on these, and on its own review, staff concludes that the RWSCC should issue a preliminary assessment that the franchise not be renewed, and recommend that each of the Member Municipalities do the same. A proceeding should be commenced to consider whether

the proposal satisfies each of the four requirements a proposal must satisfy in order to warrant renewal, with one exception. Based on the A&S report, the financial qualifications of Comcast to provide the services, facilities, and equipment as set forth in the operator's proposal would not be at issue, assuming the structure and assets of the company remain as set forth in the proposal.

Under the Cable Act, RWSCC is not required to detail the grounds for its preliminary assessment. As a result, this report does not list in detail all of the apparent shortcomings of the Comcast Proposal, nor all of the problems associated with Comcast's past performance. Rather, it identifies broadly the issues that will be in play during the renewal proceeding, provides examples of why those are at issue, and identifies issues that are of particular moment. Issuing a preliminary assessment that the Franchises should not be renewed will not prevent the parties from reaching a renewal agreement by negotiation later.

Under the Cable Act, within four months of the submission of a renewal proposal an LFA must either issue a preliminary assessment of non-renewal, or renew the franchise (unless the parties agree to extend that time). In this case, the four months expires on roughly April 13, 2020. The RWSCC should take action by that date, and as a matter of caution, by that same date, each Member Municipality should separately affirm the preliminary assessment and the grounds therefore, and affirm the proposed procedures for the conduct of the proceeding. Alternatively, the RWSCC could recommend, or a locality could choose to accept the Comcast proposal as submitted.

Grounds for Preliminary Assessment that Franchises Should not be Renewed

A. Has Comcast Substantially Complied with the Material Terms of Its Franchise?

RWSCC preliminarily concludes that it has not. The violations include:

1. The needs assessment showed several problems with the cable system. RFRP at 10, Sec. II(A); CBG Report, Ex. E1 and E2. Given the number of issues, and as part of the cure of these problems, Comcast was required to conduct an orderly inspection and to improve its existing system for identifying and correcting system problems; the RFRP indicated it was not an acceptable cure to maintain the status quo. RFRP at 3, 10, Secs. I(B), II(A). Comcast has not proposed an alternative method for compliance.
2. Comcast was being sued for fraudulent billing practices by the Minnesota Attorney General. The company was notified that the billing practices alleged would violate the franchise, as well as FCC rules, and put on notice that the practices should cease. The Minnesota Attorney General has settled with Comcast, without resolving the issue of whether Comcast in fact violated state law. The settlement will not result in correction all of the billing practices to which the RWSCC objected. The settlement resolves certain billing issues identified in the Attorney General's lawsuit by requiring Comcast to obtain affirmative informed consent from customers before customers are billed for any new products. This requirement does not assure that bills will be clear, concise, and understandable, as required under Section 5.2(b) of the Franchises. Comcast has not corrected its practices, and failed to timely respond to a notice of violation. It did submit

a letter in September, 2019, arguing that the litigation with the state provides no grounds for finding a violation, but its letter did not contest the findings that its billing practices violated federal law and the franchise – it made no effort to show that its practices comply with those requirements.

3. The RWSCC noticed a violation of Comcast's duty to provide information to the RWSCC in response to the RFRP. Comcast responded, but its response does not justify its failure to provide the required information.
 4. Comcast has had notice of each of these violations, and neither the RWSCC or its Member Municipalities has acquiesced in the violations, or agreed that Comcast's actions cure the defaults.
- B. Has the quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been reasonable in light of community needs?*

RWSCC preliminarily concludes that it has not. The areas of default include the same issues discussed in Section A above. Those are also relevant to this Section B, particularly as to billing practices, and as to each, Comcast has been provided notice and opportunity to cure, and has not done so.

Other problems identified in the needs assessment – such as the failure to maintain a local office (RFRP at 20, Sec. II(C)) – might be properly considered under this section but RWSCC intends to address them under item D.

- C. Does Comcast have the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal?*

RWSCC preliminarily concludes Comcast does not have the legal or technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal. The issues include:

1. The failure to maintain the system properly (see discussion of system issues in Section A.1.) is an indication that Comcast is either unwilling or unable to comply with requirements for the placement of its system in the rights of way upon which the RWSCC may insist. Similar past technical shortcomings have supported denial in formal renewal proceedings. *Rolla Cable System, Inc. v. City of Rolla*, 761 F. Supp. 1398 (E.D. Mo. 1991).
2. As discussed above, and in the RFRP, Comcast is legally required to obtain a franchise as a condition of placing its system in the rights of way and providing services, and the Member Municipalities may insist on inclusion of certain conditions in the franchise as a matter of right. RFRP at 6, Sec. I(C). These conditions need not be based on any showing of need, although as the RFRP

notes, there is a need for each provision. These include, for example, the right to require the franchisee to pay a franchise fee equal to 5% of gross revenues derived by a cable operator from the operation of the cable system to provide cable service. 47 U.S.C. § 542. Rather than accepting the provision proposed in the RFRP, the company proposes to pay less than the federal maximum 5%. Comcast Franchise, Sec. 1. Not only are certain revenues excluded from the definition of gross revenues, the Comcast Franchise inappropriately allocates revenues among services. The failure to agree to pay a franchise fee equal to 5% of all gross revenues, as permitted by the Cable Act alone would justify a preliminary assessment that the Franchises should not be renewed.

3. There are many ways in which the Comcast Franchise departs from the model in the RFRP that also justify the preliminary assessment. For example, the Cable Act states that localities have the right to establish “customer service requirements” of the cable operator and “requirements for customer service and for constructions schedules and other construction-related requirements, 47 U.S.C. § 552. The RFRP required a customer service office in the RWSCC service territories, RFRP at 20, Sec. II(C), and Comcast refuses to provide one. Comcast Ex. 3, Item 2(B)(2)(b). Likewise, Comcast did not agree to customer service conditions designed to protect consumers from billing fraud and misleading billing practices (RWSCC Model, Sec. 9.3) – even though Comcast’s own conduct suggests that there are good reasons to protect consumers.

As the RFRP describes, requirements for construction also are arguably requirements that may be imposed unilaterally, and RWSCC preliminarily concludes that Comcast’s proposal does not satisfy requirements in the RFRP for build-out.⁸

Comcast also insisted on conditions that it does not have the right to require the localities to accept as a condition of a franchise, and which are not in the interest of the RWSCC to accept.

The Comcast Franchise, Sec. 18.16, includes a “competitive equity” provision of the sort that the RFRP states was not acceptable. Minnesota state law contains a clause that prevents a city from entering into “sweetheart deals” that favor one franchise cable operator over another with respect to certain requirements. The Member Municipalities will obviously comply with applicable state law. But Comcast goes further, and states that if the City issues an “authorization” to be in the rights of way to any company that provides “similar video programming service,” Comcast can obtain relief from its obligations. Under federal law, however, the City is expected to issue franchises to provide video programming to open video systems (“OVS”), and by federal law, certain obligations cannot be imposed on OVS that can be applied to cable systems. The FCC has

⁸ The RFRP did include these requirements within the needs and interest section of the RFRP as a matter of caution. RFRP at 10-11, Sec. II(A). The RFRP also notes that each of the franchise requirements is justified by needs and interests described in the RFRP, although a needs and interest analysis is not required. RFRP at 6, Sec. I(C).

distinguished between obligations that can be imposed on new entrants and on incumbents, and noted that treating the former like the latter can preclude competition.⁹ Providers of wireless services may require an authorization to be in the rights of way, and may provide video programming services wirelessly, but FCC rules would prevent localities from charging a wireless provider a 5% franchise fee, for example.¹⁰ Systems that provide video programming on a common carrier basis are not subject to Cable Act requirements at all, even if a local authorization is required to use the rights of way. See, e.g., 47 U.S.C. §§ 571, 573. Comcast argues that the Commission has upheld the validity of competitive equity clauses, but that does not mean that (a) such clauses are in the interest of the community; or (b) a cable operator may require a locality to agree to a competitive equity clause as a condition of issuing a franchise. Among other things, because the clause goes far beyond what the State has considered appropriate; and because of the potential anticompetitive effects, the insistence on this clause may itself justify renewal preliminary assessment that the Franchises should not be renewed.

The FCC recently issued an order declaring generally that all franchise requirements are “in-kind” benefits and count against the franchise fee unless they are (a) requirements that fall within exceptions to the franchise fee definition in 47 U.S.C. § 542, such as exceptions for capital requirements related to PEG facilities, equipment and channels¹¹ (PEG includes I-Net by definition); or incidental requirements such as bonds; (b) customer service requirements; or (c) build-out requirements (obligations to extend the system to provide service) or customer service obligations. Comcast’s proposal appears to go beyond the FCC order. It defines gross revenues to permit it to deduct the fair market value of all “in kind” benefits (without defining that term, or including the exceptions in the FCC order) (Comcast Franchise, Sec. 1). In addition, in several places the Comcast Franchise “locks in” the FCC order, and does not promise to satisfy needs and interests in the event the FCC order is overturned. By contrast, the model in the RFRP recognized the existence of the order, but addressed how the order would apply while in force, and what Comcast’s obligations would be if the order is overturned, or appealed. See, e.g., RWSCC Model, Secs. 3.3, 7.13, 7.14. Similar problems appear in the scope of the Comcast franchise.

D. Is Comcast’s Proposal Reasonable to Meet the Future Cable-Related Community Needs and Interests, Taking Into Account the Cost of Meeting Such Needs and Interests?

RWSCC preliminarily concludes Comcast’s proposal is not reasonable to meet future, cable-related needs and interests, taking into account the cost of meeting such needs and

⁹ *Implementation of Section 621(a)(1) of the Cable Commc'ns Policy Act of 1984 As Amended by the Cable Television Consumer Prot. & Competition Act of 1992*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd. 5101, 5163, para. 138 (2007).

¹⁰ *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Inv.*, Declaratory Ruling and Third Report and Order, 33 F.C.C. Rcd. 9088, 9112-13, para. 50 (2018).

¹¹ Requirements for channel capacity do not count against the franchise fee.

interests. A table submitted by the company, Comcast Proposal, Exh. 3 shows that Comcast is not purporting to reasonably satisfy many needs and interest because it contends it cannot legally be required to satisfy them. Outside counsel disagree with those claims, and some of those disagreements are discussed below. Based on the preliminary assessment, it appears, among other shortcomings that:

1. Comcast has failed to submit a proposal reasonable to meet the need and interest in a cable system that includes equipment and facilities typical of a well-designed, state-of-the-art cable system, and which will maximize consumer choices, and the need and interest in a system upgrade. RFRP at 9-10, Sec. II(A). Comcast objects to the term “state-of-the-art” as vague and without a specific and generally accepted meaning with regard to cable systems. Ex. 3, Item 1. Comcast also claims that this requirement is impermissible, based upon 47 U.S.C. § 544(e), in that it prohibits, conditions, or restricts Comcast’s use of subscriber equipment or transmission technology in violation of federal law. *Id.* Comcast’s complaint that “state-of-the-art” is vague appears unfounded given that the RFRP provides objective measures, in addition to Model Franchise provisions, that demonstrate how the “state-of-the-art” requirement may be satisfied. In addition, Comcast’s application of 47 U.S.C. § 544(e) is erroneous, *see* Comcast Ex.. 3. Comcast suggests that localities may not require upgrades or establish construction schedules. The FCC has specifically stated that localities may require upgrade proposals in an RFRP, and the statute specifically permits establishment of construction-related schedules. What localities may not do is prescribe how the upgrade is to be performed. The RFRP does not prescribe *how or what equipment* may be used in connection with the upgrade. Rather, it gives Comcast the flexibility to use whatever technology it desires – including technologies it is actually using in the Twin Cities area.
2. Comcast has failed to submit a proposal reasonable to meet the need and interest in Comcast having an effective procedure in place and reporting process for identifying and correcting system problems. RFRP at 10, Sec. II(A). The Comcast Model does not contain a maintenance monitoring program, despite the specific finding by CBG Communications, Inc. that RWSCC should require such a program. CBG Report at 139.
3. Comcast has failed to submit a proposal reasonable to meet the need and interest in a cable system that passes all residences and businesses, except in cases where Comcast can show that requiring build-out would not provide it a reasonable opportunity to earn an adequate rate of return on the system as a whole. RFRP at 9, Sec. II(A). Comcast mischaracterizes this need and interest as a universal service obligation, Ex. 3, Item 2, but in any case, the law does not appear to prohibit universal service requirements. Comcast conflates the rules that apply to new entrants (and are designed to prevent imposition of unreasonable service area requirements as someone is entering the market) with requirements that may be imposed on existing long-term incumbents. The FCC has stated that limitation on build-out requirements for new entrants do not apply to incumbent cable operators. While Comcast has proposed a build-out requirement that is in some respects superior to that in the existing franchise, the proposal differs in at least four significant respects from the RFRP model franchise. Each of these differences alone would justify the preliminary conclusion that Comcast has not reasonably met the

identified needs and interests, and that preliminary conclusion is only bolstered by the absence of, for example, time limits for providing service to areas.

- a.* With respect to potential residential subscribers, the model required the system to pass all dwelling units where density was 15 units per street mile. RWSCC Model, Sec. 3.2.2. That is far below the density level proposed by Comcast. Comcast Franchise, Sec. 6.7(a).
 - b.* With respect to potential residential subscribers, the model proposed a build-out with no line extension charge unless Comcast showed build-out was not feasible. RWSCC Model, Sec. 3.2.2.
 - c.* Perhaps as importantly, where build-out is too expensive for Comcast, the model proposed to require Comcast to build-out and share the costs of the build-out with potential subscribers. RWSCC Model, Sec. 3.2.2. For example, if there were 14, instead of 15 residential dwelling units per mile, Comcast would pay 14/15 of the extension costs, if subscribers were willing to bear the remainder. Under the Comcast proposal, even if a customer was willing to share in build-out costs, Comcast could refuse to serve subscribers in lower density areas, or charge a potential subscriber the entire cost of the build-out. Comcast Franchise, Sec. 6.7(b).
 - d.* The model included similar provisions with respect to service to non-residential customers. RWSCC Model, Sec. 3.3. The proposed franchise does not require Comcast to pass any non-residential units, and no commitments are made with respect to build-out for service. Comcast Franchise, Sec. 6.7.
4. Comcast has failed to submit a proposal reasonable to satisfy the needs and interest in an institutional network. RFRP at 11, Sec. II(A). The authority to require an institutional network – a network designed to serve primarily non-residential customers is clear, and Comcast has not even responded to that need and interest. The existence of an I-Net, could, for example, ensure that small and large businesses have access to secure connections that are capable of supporting a wide range of advanced services, including high-speed Internet. RFRP at 19, Sec. II(B). No proposal is submitted in this regard.
5. Comcast has failed to submit a proposal reasonable to meet the needs and interests in public, educational, and government (“PEG”) use of the cable system both as to needs and interests related to capacity on an institutional network, or to related to capacity used to distribute video programming to cable service subscribers (Channel 16 being an example of PEG channel capacity). For convenience, the former are summarized in subsection (a) while the latter are summarized in subsection (b).
 - a.* The RFRP required Comcast to provide capacity and certain capital support for educational and government use of an institutional network, at no charge to the community, as permitted by 47 U.S.C. § 531. Comcast currently provides capacity for an institutional network and it is actively used by the Member Municipalities for critical applications. In this case, Comcast demands that localities pay for access to existing capacity, at rates that are more like rates charged for the provision of services (even though in this case, the only service

that would be arguably provided is “maintenance).” Ex. 3, Item 14. Charging for that capacity is not justified by cost to Comcast, and Comcast does not claim any benefit to the community from charging for the capacity. Moreover, the proposal, among other things, fails to reasonably address requirements for capacity as the institutional network expands.

- b. the Comcast Proposal fails to satisfy needs and interests identified for PEG. That includes the needs and interests in channel capacity now or for the future; for PEG channel quality (only two channels would be available in high definition, and nothing ensures PEG channel quality would keep pace with the quality of other channels); the need and interest in ongoing capital support for PEG and ongoing PEG facilities; the need and interest in connections necessary to permit PEG channels to be monitored to ensure that the signal is being properly transmitted; the need and interest in having adequate capital connections for program origination (for high school sports for example). RFRP at 12-16, Sec. II(B). RWSCC preliminarily concludes that Comcast does not provide the number of channels required to satisfy current and future needs; proposes no improvements in quality despite changes in video technology, and proposes lower levels of support than are provided now, and no guarantee that adequate facilities will continue to be available. Comcast Proposal at 7; Comcast Franchise, Sec. 7.1. The ability to produce remote programming would be limited, as existing capital infrastructure deteriorates. Comcast appears to primarily justify its proposals on three grounds. The first is that there is limited interest in PEG (Ex. 3, Item 5) – but the CBG ascertainment shows otherwise, and CBG does not believe that the contentions by Comcast to the contrary accurately reflect the need and interest in PEG. Second, the proposal is based on the amount of original programming carried on the channel, but this has little relation to the value of the programming, or the quality of the signal required, as the CBG reports suggest. Lastly, Comcast points to the RWSCC reserves and financial practices. Comcast Proposal at 19-20. Those claims are disputed. For example, as the RFRP shows, the RFRP identified significant additional capital as well as operational costs for the future that are *not* addressed by the level of support in the RFRP model franchise. RFRP at 14-16, Sec. II(B). The Member Municipalities will need to reserve those funds for such purposes, and Comcast’s future obligations cannot be reduced based on those reserves, or other concerns about RWSCC operations.

Each of the failures identified above, considered individually, or collectively: the failure to reasonably meet needs and interest in a system upgrade; the need and interest in expanded service to residences and businesses, the institution of a program to ensure that the system is maintained in good order; the proposals with respect to institutional networks; and the proposals with respect to public, educational, and government uses of the system would justify a preliminary assessment not to renew the Comcast franchise.

Likewise, if measured under a “needs and interests” test, whether considered individually, or collectively, Comcast’s refusal to pay the a 5% franchise fee on all revenues; as permitted under the Cable Act; and its refusal to agree to the customer service standards in the

RFRP model franchise would justify a preliminary assessment that the Franchises should not be renewed, as would other proposed changes to the RFRP model franchise agreement.

CONCLUSION

The RWCC should determine, and recommend that its Member Municipalities make a preliminary assessment not to renew the Comcast franchises and authorize the RWSCC to commence an administrative proceeding to determine whether the Franchises should be renewed, consistent with the Section 626 of the Cable Act, 47 U.S.C. § 546.

The RWSCC should also approve an alternative resolution for consideration by the Member Municipalities, should any of them choose not to accept the recommendation. That Resolution should provide for approval of renewal.

EXHIBIT B

**RULES FOR CONDUCTING ADMINISTRATIVE HEARING FOR COMCAST OF
MINNESOTA, INC., FRANCHISE RENEWAL**

Explanatory Note:

The attached rules hew closely to procedures that were adopted for formal proceedings that have been noticed for other Minnesota communities, including the Northern Dakota County Cable Communications Commission. The rules contain some additional detail as to the procedures that will be followed, but substantively provide Comcast and the RWSCC communities the same procedural rights. Because these procedures have largely been litigated, the RWSCC has good reason to believe that these processes would be upheld if challenged by Comcast.

There is one significant departure from practices in other communities. Other communities have asked the Minnesota Office of Administrative Hearings to appoint a hearing officer. Under the attached model, RWSCC would appoint the hearing officer. Use of the OAH is not required by law, and the concern is that the OAH would not be able to conduct or complete the proceeding in accordance with the timetable set out in the proposed rules. In at least one recent case, it has been more than a year since the preliminary denial, and a hearing will not occur until next Fall. This would be of less concern if Comcast were willing to agree to a true “standstill” agreement with the RWSCC communities with a date certain for extension, but so far it has been willing to extend certain part of the agreements with the RWSCC communities, but not others.

The RWSCC therefore believes it is important to set out a process that allows for a rapid hearing and a conclusion of the renewal proceeding. This can be done by appointing an independent hearing officer. Case law suggests that the “hearing officer” could be, among others, the RWSCC itself, a subcommittee of the RWSCC, or its counsel, Michael Bradley. However, it appears important to have someone familiar with cable law conduct the case, and Mr. Bradley, while qualified believes it better if he not serve as the sole hearing officer.

James N. Horwood, a partner with Spiegel & McDiarmid, has agreed to act as hearing officer, His resume appears here: <http://www.spiegelmc.com/professionals/james-horwood/>

Mr. Horwood has significant experience with cable renewals, having litigated one of the few cases to have gone through the hearing process. He represents municipal governments and access centers on cable issues, but none in Minnesota. Because this proceeding must comply first and foremost with federal rules for renewal, he will be in a position to ensure that the proceedings are conducted rapidly, and in an appropriate manner.

You should be aware that your outside counsel, Joseph Van Eaton, was a member of Mr. Horwood’s firm, but left that firm more than 25 years ago. While occasionally Mr. Bradley, Mr. Van Eaton and Mr. Horwood’s firm will file joint appeals of FCC orders or comments with the FCC, neither Mr. Horwood or his firm have participated in this renewal proceeding in any way.

While we are not asking that the RWSCC approve the appointment of Mr. Horwood now, and we may propose additional alternatives, it is important for the Commission to understand that, if the rules are approved, we do have a person who can conduct the proceeding. Under the attached process, a hearing would occur in early June. A final decision would be made by the local communities and the RWSCC in the fall. Of course, as part of the consideration of the rules, the proposed schedule could be adjusted by the RWSCC.

RULES FOR CONDUCTING ADMINISTRATIVE HEARING FOR COMCAST OF MINNESOTA, INC., FRANCHISE RENEWAL

The RWSCC hereby establishes procedural guidelines for purpose of the administrative hearing under the Cable Communications Policy Act of 1984 as follows:

I. Hearing Officer Appointment; Duties:

- a. The RWSCC shall appoint a Hearing Officer to conduct the administrative hearing and issue recommended findings of fact for consideration by the RWSCC. The Hearing Officer will conduct the hearing consistent with the requirements of the Cable Communications Policy Act of 1984, and with the rules adopted below; ~~and to the extent practicable, and consistent with the above, in a manner consistent with the provisions for administrative hearings before the Minnesota Public Utilities Commission for rate cases. The rules and procedures for contested case hearings under the Minnesota Administrative Procedures Act shall not apply.~~
- b. Minn. R. 1400.7300, subp. 1-4 (2013) sets out the rules of evidence applicable to this proceeding.
- c. The Hearing Officer will conduct the hearing in accordance with the scheduled prescribed but may shorten or extend any date for good cause shown, or where the Hearing Officer's schedule requires a variance in the schedule. The schedule is based on the assumption that the RWSCC communities will act on the petition for preliminary denial no later than March 10, 2020.
- d. The Hearing Officer will have authority to issue any rulings, and establish any other procedures necessary to the conduct of the hearing, including page limits and formats for briefs. That authority includes, but is not limited to, the authority to require production of witnesses and evidence, to recommend or impose sanctions, to rule on the admissibility of evidence and to limit evidence that may be presented, and to adopt appropriate orders governing treatment of trade secrets and confidential information.
- e. Sanctions for failure to comply with discovery, to submit pre-filed testimony or to provide the information required to be produced with the pre-filed testimony may include, but are not limited to, the following: :
 - i. directing that the matters embraced by the failure to provide information be taken as established for purposes of the action, as the prevailing party claims;
 - ii. prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;
 - iii. striking pleadings or testimony in whole or in part;

- f. The RWSCC may remove a Hearing Officer if it appears the officer is unable or unwilling to perform his or her duties in a timely manner in a manner consistent with these rules.
- g. The rules may be altered by agreement of Comcast and RWSCC, and with the consent of the Hearing Officer, provided the rules comport with the requirements of the Cable Communications Policy Act of 1984.

II. Overview of Process:

- a. The proceeding will involve a review of Comcast's renewal proposal, and the submissions made in response to questions regarding that proposal in January, 2020. It will also involve a review of Comcast's past performance, and its qualifications. Amendments to the proposal are not permitted.
- b. Except for the record of the ascertainment, the RFRP and the Comcast response to the RFRP, which shall be introduced into the record, evidence, including exhibits will be submitted by pre-filed testimony. Any Witness submitting pre-filed testimony must appear at hearing, and shall be subject to cross-examination except where Hearing Officer determines, or parties agree, that the absence of a witness is not required (to authenticate documents, for example). The Hearing Officer may permit redirect and re-cross, but re-direct may not be used as a means of presenting evidence that should have been presented in pre-filed testimony.
- c. At the hearing, the Hearing Officer will consider whether :
 - (A) the cable operator has substantially complied with the material terms of the existing franchise and with applicable law;
 - (B) the quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been reasonable in light of community needs;
 - (C) the operator has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal; and
 - (D) the operator's proposal for renewal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.
- d. At the end of the hearing, the parties will submit briefs and recommended findings to the Hearing Officer, and the Hearing Officer will prepare a written recommendation as to whether Comcast's request for renewal should be granted, or denied, and the reasons therefore. Each party may submit objections to those recommendations.
- e. The RWSCC may accept the recommendations, reject them and adopt its own, or amend the recommendations. The adopted, alternative, or amended

recommendations will be sent to each community for final decision as to whether to grant or deny the renewal, based on the record of the proceedings.

III. Tentative Schedule of Proceedings:

Milestone¹²	Timing
Delivery of Record of Ascertainment	February 14, 2020
All Parties' Pre-Filed Direct Testimony	Monday, March 30, 2020
All Parties' Rebuttal Testimony	Thursday, April 30, 2020
All Parties' Surrebuttal Testimony	Thursday, May 21, 2020
Deadline for Minor Revisions to Pre-filed Testimony and Errata Sheets	Wednesday, May 27, 2020
Objection to the Admissibility of Testimony	See below
Prehearing Conference	Monday, June 1, 2020 at 1:30 p.m.
Evidentiary Hearing	June 8-12 2020
All Parties' Initial Briefs, Proposed Findings of Fact and Conclusions of Law	Friday, July 10, 2020
All Parties' Reply Briefs	Friday, July 31, 2020
Tentative Recommendation of Hearing Officer	Monday, August 31, 2020
Objections of Parties to Recommendations	Monday, September 14, 2020
RWSCC ISSUES RECOMMENDED DECISION	

¹² Dates assume that the RWSCC communities will either accept or preliminarily deny the proposal submitted by Comcast by March 10, 2020. If communities have not acted on the proposal, the RWSCC may establish different hearing dates, but as federal law requires action on a proposal within four months of submission, the date will not be extended more than one month.

IV. Discovery of Additional Information

- a. Information requests and responses shall not be served on the Hearing Officer.
- b. A party may serve requests for information on any other party in the form of interrogatories, or requests for production of documents. All requests for information shall be made in writing by email, and the requesting party shall follow the email with a copy of the request sent by regular U.S. mail or other delivery service to all parties. To the extent that a request includes material designated as Trade Secret or Not Public under the Minnesota Government Data Practices Act, Minn. Stat. Chap. 13, an e-mail request is required only between the requesting and responding party. Requests shall be sent to the person(s) designated to receive data requests by the party from whom the information is sought. Any request received by e-mail after 4:30 p.m. on a business day, on a weekend day, or on a Minnesota state holiday is considered received on the next business day.
- c. The party responding to the request shall respond to information request within eight business days of receipt of the information request, which will be deemed to be the date and time of the email, or if not sent on a business day, the following business day. A business day does not include a weekend day or a Minnesota state holiday. In accordance with Minn. R. 1400.6100. subp. 1, the day that the information request is received is not counted in the eight-day period. If the request is received after 4:30 p.m. on a business day, the following business day is also not counted in the calculation of the eight-day response period.
- d. Responses to information requests shall be submitted by email, and the responding party shall follow the email with a copy of the response sent by regular U.S. mail or other delivery service, if requested. To the extent that a response includes material designated as Trade Secret or Not Public, an e-mail response is required only between the requesting party and the responding party. Any response received before 4:30 p.m. on a business day is considered to be received on the same day. Any response that is received after 4:30 p.m. on a business day is considered to be received the following business day.
- e. In the event that the responding party is unable to send the response by email due to the volume or nature of information included in a response, the responding party shall send the response by facsimile, regular U.S. mail, or other delivery service so that the requesting party receives the entire response by the date due, including any material designated as Trade Secret or Not Public. Responding parties may utilize other electronic media to convey large volumes of data. If the response is sent by facsimile, the responding party shall follow the facsimile with a copy of the response sent by regular U.S. mail or other delivery service. There shall be a continuing obligation to update and supplement information responses with any responsive material that may subsequently be discovered or acquired by

the responding party. The responsive information need not be supplied to other parties unless specifically requested by a party.

- f. A party that wishes to receive e-mail copies of requests or responses shall notify the requesting/responding party, who shall provide the information in that format. If the request or response contains material designated as Trade Secret or Not Public information, the providing party may require that the requesting party comply with the terms of any Protective Order in this matter before providing the information.
- g. A party's response must include any objections to the request, but shall include any information requested to the extent the request is not objectionable. All objections shall be stated with specificity and any ground for objection which is not stated in a timely manner is waived unless the party's failure is excused. In the event the information cannot be supplied within eight business days, the responding party shall notify the requesting party as soon as reasonably possible in advance of the deadline of the reasons for not being able to supply the information and shall attempt to work out a schedule of compliance with the requesting party.
- h. The following persons shall be served with an e-mail copy of any information requests or responses. In addition, subject to any Protective Order in this matter, a discovery request may specify that copies be served on any person who has been retained to submit expert testimony in this matter.
 - i. For Comcast: [to be provided by Comcast]
 - ii. For RWSCC: [to be provided by RWSCC]
- i. Except for good cause shown to the Hearing Officer, each side is permitted twenty (25) requests for production of documents and twenty (20) interrogatories.
- j. Interrogatories or document requests do not count against the limit if the interrogatory or document request seeks information that was required to be produced as part of these procedures (for example, a request for workpapers that should have been included with pre-filed testimony).
- k. No depositions shall be permitted.
- l. All disputes concerning the reasonableness of information requests and the timing and sufficiency of responses; and all requests for waiver of any rules for good cause shall be heard by the Hearing Officer upon motion of a party. Hearings on such motions may be conducted by telephone conference call.
- m. Subject to the foregoing, discovery is limited to nonprivileged matter relevant to any party's claim or defense and proportional to the needs of the case, considering

the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable. Discovery may be limited or conditioned if the information sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive.

V. Prefiled Testimony:

- a. In prefiled direct testimony, Comcast shall, at a minimum, detail the grounds on which it claims it satisfies the renewal standards under the federal Cable Act, including by supporting any claim it intends to make that its proposal is reasonable to meet the future cable-related needs and interests “in light of the cost thereof.”
- b. In prefiled direct testimony, RWSCC shall, at a minimum, detail the grounds supporting the preliminary conclusion that the proposal did not satisfy renewal standards under the federal Cable Act based on the information submitted by Comcast.
- c. A person submitting pre-filed testimony shall attach all exhibits that witness intends to use in support of testimony, workpapers and calculations made in the preparation of testimony; and provide copies or a working link to all documents relied upon in the preparation of the testimony, except that if a document is part of the record of the ascertainment, a reference to the document in the ascertainment is sufficient.
- d. Prefiled testimony shall be marked as an exhibit and offered for admission into the record at the hearing. A hard copy shall be provided for that purpose and the offering party. The Hearing Officer will assign a hearing exhibit number to the document at the time that it is offered for admission at the hearing.
- e. Prefiled testimony that is amended or not offered into the record shall be considered withdrawn and no witness shall be cross-examined concerning the withdrawn testimony. Except for good cause shown, all revisions or corrections to any prefiled testimony shall be in writing and served upon the Hearing Officer and the parties no later than three days prior to the commencement of the evidentiary hearing.
- f. Information shall not be included in testimony that reasonably should have been included in an earlier round of testimony, absent affirmative approval of the Hearing Officer for good cause shown by the offering party and based on the offering party's motion to the Hearing Officer, which shall be appended to the new testimony.

VI. Objections to Prefiled Testimony:

- a. Objections by any party to prefiled testimony (including exhibits attached thereto), must be filed along with rebuttal testimony with respect to pre-filed direct testimony; one week before the scheduled date for submission of surrebuttal testimony with respect to rebuttal testimony, and on June 1, 2020, or by such time as the Hearing Officer may prescribe for surrebuttal testimony. Objections regarding introduction of wholly new matter, that is not properly responsive to earlier testimony, in prefiled rebuttal or surrebuttal testimony shall be considered waived unless the objecting party states its objection in writing by those dates. In such an objection the objecting party shall identify the information by witness and location in testimony and serve a copy of the objection on the Hearing Officer.

VII. Filing of Prefiled Testimony:

- a. Prefiled testimony and exhibits may be in any reasonable format that is understandable, logically organized, and capable of being cited by page and line number, paragraph number, or similar identifier.
- b. All prefiled testimony shall be submitted by email to the Hearing Officer with a courtesy copy delivered simultaneously to the other party. Original copies of said documents shall be filed with the Hearing Officer at the commencement of the hearing.
- c. If Trade Secret or Not Public Data is filed with the Hearing Officer, it shall be prepared and marked in accordance with the Minnesota Data Practices Act.

VIII. Pre-Hearing Disclosures:

- a. Each side shall disclose to the other any visual aids or demonstrative exhibits it intends to use at the administrative hearing at least seven (7) days before the hearing. Objections shall be raised to such materials in writing at least one business day before the hearing is to commence.

IX. Witness Testimony at Hearing:

- a. Comcast will present its witnesses for cross-examination first; RWSCC will present its witnesses second.
- b. Parties shall examine and cross-examine witnesses through their attorneys. If a party determines that the party has no questions for a particular witness, that party shall inform the Hearing Officer and other parties as soon as practicable.

- c. Witnesses will be allowed ten minutes in which to summarize their prefiled testimony. For good cause shown, witnesses will be permitted to respond to any new matters not addressed in prefiled testimony through direct examination by counsel.

X. Administrative Hearing, Generally:

- a. Each side may be represented by an attorney and through the procedures described above, shall be afforded the opportunity to present relevant evidence and to call and examine witnesses and cross-examine witnesses of the other party;
- b. Commission members and City Council Members may not be called as witnesses nor may the Commission's or Comcast's legal counsel be called as witnesses.
- c. Witnesses will be sworn;
- d. A court reporter will be present at the hearings. The parties must make arrangements with the Court Reporter to obtain a copy of the transcript.
- e. Request for Accommodation. The Hearing Officer shall be notified promptly if either an accommodation or interpreter is needed.
- f. Except as the Hearing Officer otherwise directs, post-hearing briefs will be submitted in lieu of closing argument.
- g. The Hearing Office will close the record of the proceedings;
- h. The Hearing Officer will issue recommended findings of fact in writing based upon the record of the proceeding and stating the reasons therefore, pursuant to the Cable Communications Policy Act of 1984, as amended.

XI. Post Hearing:

- a. The Commission will review the recommended findings of fact from the Hearing Officer and will, upon request of the parties, permit oral argument before the Commission not to exceed thirty (30) minutes per party. Thereafter the Commission will issue a written decision recommending to the Member Cities to grant or deny the proposal for renewal pursuant to the Cable Communications Policy Act of 1984, as amended. Each Member City shall issue a written decision granting or denying the proposal for renewal based upon the record of such proceeding, and transmit a copy of such decision to the cable operator. If the recommendation of the Commission is accepted, the Commission's decision may be adopted by reference.

Dated: _____



Matthew S. Duffy
mduffy@mmblawfirm.com
Direct 952.885.1290

September 23, 2019

VIA EMAIL AND U.S. MAIL

H. Alan Kantrud
City Attorney
City of Birchwood Village
5171 Hilltop Avenue
Lake Elmo, MN 55042
Email: hakantrud@coyotelawyer.com

Re: City of Birchwood/Kay Easement
Our File No.: 14551.016

Dear Mr. Kantrud:

As you may recall, this law firm represents Gerald and Judy Duffy (the “Duffys”) It has come to our attention that the City of Birchwood Village (the “City”) is implying or stating that a portion or portions of the beach located on the Duffys’ property, physical address 505 Lake Avenue (PID# 3003021130028) (the “Duffy Property”) may be used by the general public up to the Duffys’ dock. *See* Video of the City Council Meeting, Sept. 10, 2019, about the 2 hour mark. This implication or statement regarding the Duffy Property is categorically false and amounts to authorizing or condoning the general public to trespass on the Duffy Property, at best, and, at worst, establishes a taking by the City of the Duffy Property without compensation in violation of both the Minnesota and United States Constitutions.

As you may be aware, the Duffys’ predecessors in title (Reuben and Patricia Divine (the “Divines”)) sued the City in the late 1970s for ownership of at least a portion of what is the Kay Beach Easement. The lawsuit was resolved by an Order and Decree of Registration, signed by the City on July 25, 1980, and entered by the Washington County District Court (the “Order”); a copy of the Order is enclosed. In relevant parts, the Order created an easement from the City to the Divines (the “Easement”), set judicial landmarks (establishing the common boundary line between the City’s property and the Duffy Property in accordance with the Survey attached thereto), and enabled the Divines to complete the Torrens registration of the Duffy Property. Notably, the grant of the Easement from the City created “a perpetual easement for ingress, egress and enjoyment over and across that part of the land of Birchwood Village (as described in the Order). . . .” *See* Order pp. 3-4, Section 3. There was no reciprocal easement granted by the Divines to the City. Accordingly, the City has no authority to imply or state that the general public may use any portion

of the Duffy Property. For avoidance of any doubt as to the judicially established boundary line and easement created by the Order, please refer to the enclosed survey completed on or about August 12, 2019; which confirms the legal descriptions contained the Order and boundary line created by the judicial landmarks.

The City has no legal right to imply or authorize access to the Duffy Property by the general public. Similarly, the City must comply with the terms of the Order including the boundary line established by the judicial landmarks and the Easement created for the benefit of the Duffy Property. To the extent that there was any misunderstanding or misstatement by the City regarding the Duffy Property or the Easement, we expect that the City will correct or address that at the next public meeting to eliminate any confusion about the Duffy Property.

It has also come to our attention that the City believes that it has a quit claim deed that in some way influences the discussion regarding the Duffy Property and/or the Easement. We reviewed the most recent certificate of title to the Duffy Property and there is no record of any quit claim deed between the Duffy Property and the City. Please produce a copy (or copies) of this alleged quit claim deed(s) for our review.

Next, we are aware of at least a couple of public meetings involving City discussion of the Duffy Property. The Duffys have not received written notice of these meetings or the nature of these discussions regarding the Duffy Property. As you know, if there were any discussions involving the Duffy Property, Due Process demands that the Duffys receive written notice of the meeting and that they are provided a meaningful opportunity to be heard. And, to the extent the City has taken any action related to the Duffy Property at these meetings and no notice was provided, we are prepared to take legal action against the City for, among other things, violations of the Duffys' Due Process Rights.

Going forward, the Duffys have authorized this firm to undertake any legal action against the City to enforce their property rights, the Order, or redress any damages sustained. Also, please let me know the date and time of the public meeting at which the City's will address and/or correct the City's misunderstanding or misstatement about the Duffy Property.

Very truly yours,

MONROE MOXNESS BERG PA



Matthew S. Duffy
Attorney at Law

MSD/kh

cc: Client (via email only).

In the Matter of the Application, to Register Title to Certain Land, of

Reuben Divine and Patricia June

Divine

No. 763

ORDER AND DECREE
OF REGISTRATION

The above entitled matter, upon the motion of the applicant(s), came on for hearing at the Court House in the City of Stillwater, said County and State, and the Court having duly considered the Application, the Report or Reports of the Examiner, the evidence adduced by the applicant(s) finds:

1. That according to the last official assessment thereof, the premises hereinafter described are of the assessed value of \$ 9,135.00, exclusive of improvements. The full and true value thereof, exclusive of improvements, according to the last official assessment is \$ 43,500.00.

2. That all the requirements of the law in respect to the application and any amendments thereto have been complied with and that all of the defendants in this proceeding have been duly served with process as required by law or have consented to the registration herein and it further appears that no Answer, Demurrer or Notice of appearance has been filed in this proceeding.

3. That, except as hereinafter provided, none of the defendants named in the summons and any amendments or supplements thereto, have any right, title, estate, lien or interest in the real estate hereinafter described.

4. That the premises hereinafter described are occupied by applicants

pursuant to _____

(add any additional findings and number them, beginning with number 5)

5. That applicants and their predecessors in title have openly and continuously owned, possessed and improved the property herein sought to be registered, being Lot 1, Block 2, Lakewood Park Third Division together with adjacent excess property arising out of survey errors occurring in said plat, for a period in excess of fifteen (15) years and have established ownership thereof both of record and by adverse possession.

6. That applicants and defendant City of Birchwood Village have entered into a Stipulation for the practical location of their common boundary which the Court finds to be fair and reasonable.

7. That a plat of survey dated November 2, 1978 and revised November 16, 1978, April 27, 1979, July 6, 1979, October 1, 1979, April 7, 1980 and June 17, 1980, by H. William Rogers of Suburban Engineering, Inc., a Registered Land Surveyor of Minneapolis, Minnesota, has been filed herein which depicts and describes the same land as described in the Third Amended Application herein.

8. That the boundary lines of said premises have been determined by said survey and are now marked by Judicial Landmarks set by H. William Rogers of Suburban Engineering, Inc., a Registered Land Surveyor of Minneapolis, Minnesota, as shown by his Certificate of Survey herein on file and as set out hereinafter in the description of said premises.

(over)

(Stamp for Fee Paid Registrar of Titles)

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, as follows:

1. That a default as to each defendant named in the summons and any amendments or supplements thereto and, "all other persons or parties unknown claiming any right, title, estate, lien or interest in the real estate hereinafter described", is hereby entered in the above entitled action.

2. That Reuben Divine and Patricia June Divine, husband and wife,
as joint tenants

whose post-office address is 1844 Yorkshire

City of St. Paul, County of Ramsey, State of Minnesota
xx(arc) the owner(s) of an estate in fee simple in the following described land in the County of Washington, State of Minnesota:

That part of Lakewood Park Third Division or Government Lot 2, Section 30, Township 30, Range 21, Washington County, Minnesota, described as follows: Commencing at the Southeast corner of said Government Lot 2; thence on an assumed bearing of N 1°12'34" W, along the East line of said Government Lot, 91.16 feet to the Southwesterly line of Block 2, Lakewood Park Third Division; thence N 71°00'42" W, along said Southwesterly line, 374.49 feet to the angle point in said block; thence N 27°28'42" West, along said Southwesterly line, 180.00 feet to the actual point of beginning, which point is marked by a Judicial Landmark; thence continuing N 27°28'42" W, 80.00 feet to a point hereafter known as point A, which point is marked by a Judicial Landmark; thence N 33°55'37" W, 35.00 feet to a point, which point is marked by a Judicial Landmark; thence N 72°17'33" E, 128.72 feet to a point, which point is marked by a Judicial Landmark; thence N 78°04'34" E, to its intersection with a line bearing N 62°45'49"E, from said point A, which point of intersection is marked by a Judicial Landmark, thence S 19°50'17" E to its intersection with a line bearing N 52°19'59" E from the actual point of beginning, which point of intersection is marked by a Judicial Landmark; thence S 52°19'59" W to the actual point of beginning. All of said Judicial Landmarks are set pursuant to Torrens Case No. 763. Subject to easements of record, if any.

The above-described property being Lot 1, Block 2, Lakewood Park Third Division, according to the recorded plat thereof, together with other property adjoining, which other property being excess property arising out of survey errors occurring in the original plat.

Together with accretions and relictions thereto.

3. That the applicants and the City of Birchwood Village desire to amicably settle and resolve all issues existing between them arising out of applicants' proceedings to register title to the above-described property or regarding the location of the common boundary between their properties.

4. That doubt and uncertainty as to the true location of the common boundary has given rise to dispute between the parties and prevents the applicants from improving their property because of the apprehension of future disturbance and litigation, and both are desirous of settling this dispute.

5. That the applicants have caused the property above-described to be surveyed by H. William Rogers, a registered surveyor, employed by Suburban Engineering, Inc., of 6875 Highway No. 65 NE, City of Minneapolis, County of Hennepin, State of Minnesota, to establish the location of the common boundary lines between their adjoining property and to obtain a proper description of excess property adjacent to Lot 1, Block 2, Lakewood Park Third Division arising out of survey errors occurring in the original plat and claim by applicants.

6. That said surveyor has prepared a certificate of survey dated June 17, 1980, which is attached hereto as Exhibit A.

NOW THEREFORE, For the reasons set forth above, and in consideration of mutual covenants and promises of the parties hereto, Reuben Divine and Patricia June Divine, hereinafter applicants, and the City of Birchwood Village, hereinafter Birchwood Village, agree as follows:

SECTION 1

ACCEPTANCE OF SURVEY

The parties hereby accept, ratify and locate by agreement the common boundary line between their property as established by the above-recited survey and shown upon the attached certificate thereof, to wit:

Commencing at the Southeast corner of Government Lot 2, Section 30, Township 30, Range 21, Washington County, Minnesota; thence on an assumed bearing of N 1°12'34" W, along the East line of said Government Lot, 91.16 feet to the Southwesterly line of Block 2, Lakewood Park Third Division; thence North 71°00'42" W, along said southwesterly line, 374.49 feet to the angle point in said block; thence North 27°28'42" W, along said Southwesterly line 260 feet to a point hereafter known as point A; thence North 33°55'37" W, 35.00 feet, to the point of beginning of the line to be described; thence North 72°17'33" E, 128.72 feet; thence North 78°04'34" E to its intersection with a line bearing N 62°45'49" E, from said point A; thence N 69°49'46" E to the shore line of White Bear Lake and there terminating.

SECTION 2

BINDING EFFECT

This Stipulation and the location of the common boundary line above described and established hereby shall be binding upon the parties hereto, their heirs, executors, successors and assigns as covenants running with the land.

SECTION 3

GRANT OF EASEMENT

Birchwood Village hereby grants unto applicants as joint tenants and not as tenants in common, their assigns, the survivor of said parties and the heirs and assigns of the survivor, a perpetual easement for ingress, egress and enjoyment over and across that part of the land of Birchwood Village described as follows:

That part of Lakewood Park Third Division or Government Lot 2, Section 30, Township 30, Range 21, Washington County, Minnesota, and accretions and relictions thereto, described as follows: Commencing at the Southeast corner of said Government Lot 2; thence on an assumed bearing of North 1°12'34" W, along the East line of said Government Lot 2, 91.29 feet to the Southwesterly line of Block 2, Lakewood Park Third Division; thence North 71°00'42" W, along said Southwesterly line, 374.49 feet to the angle point in said block; thence North 27°28'42" W, along said Southwesterly line 260 feet to a point hereafter known as point A; thence North 33°55'37" W, 35.00 feet; thence North 72°17'33" E, 128.72 feet; thence North 78°04'34" E to its intersection with a line bearing North 62°45'49" E, from said point A and the point of beginning of the land to be described; thence North 69°49'46" E, to the shore of White Bear Lake; thence Northwesterly, along said shore line, to its intersection with a line bearing North

62 45'49" E, from said point A; thence South
62 45'49" W, to the point of beginning.

SECTION 4

PROHIBITION ON IMPROVEMENTS

No improvements shall be constructed or permitted by the parties upon or encroaching upon the above described easement granted to applicants.

SECTION 5

CONSENT TO PROCEED BY DEFAULT

Birchwood Village hereby agrees and assents to applicants further proceeding by default to register title to the property described in their third amended application upon the condition that this Stipulation be presented to the Court and the same approved by the Court without change and memorialized upon the Certificate of Title to be issued to the applicants. In the event that this Stipulation shall not be so approved or memorialized Birchwood Village reserves the right to appear further in these proceedings and answer or oppose applicants' application without limitation.

SECTION 6

CONSIDERATION

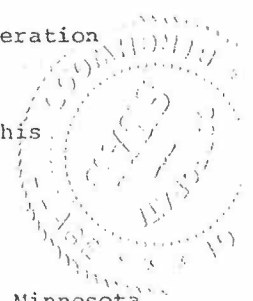
The easements, covenants, conditions and restrictions contained in this agreement together with the benefits of a practical location of the common boundary of the parties is acknowledged to constitute good and sufficient consideration therefor.

IN WITNESS WHEREOF, The parties have executed this agreement as follows:

CITY OF BIRCHWOOD VILLAGE

By *Walter B. Oliver* at Birchwood, Minnesota
this 25 day of July, 1980.

By *Nanette M. Mellgren* at Birchwood, Minnesota
this 25 day of July, 1980.



Dated at St. Paul, Minnesota
this 11th day of August, 1980.

Kenneth Maas
Kenneth Maas, Attorney for
City of Birchwood Village
301 Midwest Federal Building
St. Paul, Minnesota 55101

PETERSON, GRAY & SHEAHAN, LTD.

Dated at St. Paul, Minnesota
this 11th day of August, 1980.

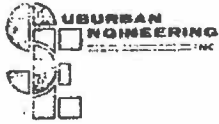
By Milton Gray
Milton Gray
Attorneys for Applicants
307 Midwest Federal Building
St. Paul, Minnesota 55101

Reuben Divine
Reuben Divine

Dated at St. Paul, Minnesota
this 11th day of August, 1980.

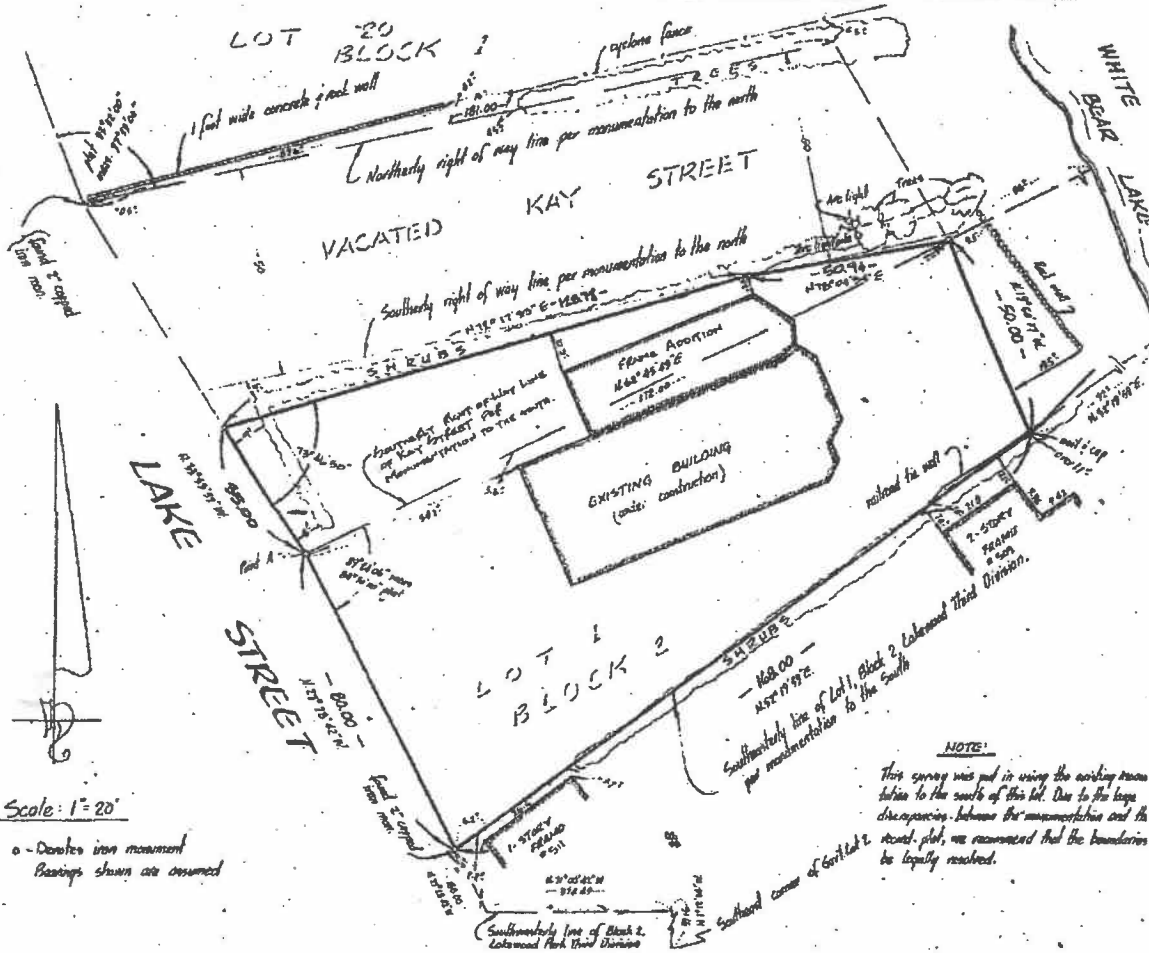
x Patricia June Divine
Patricia June Divine

Dated at St. Paul, Minnesota
this 11th day of August, 1980.



Main Office 571 0066
 12211 Highway No. 65, N.E.
 Minneapolis, Minnesota 55432
 South Office 890 0510
 1101 Oakwood
 Des Moines, Iowa 50317

Certificate of Survey for R. DIVINE



Scale: 1" = 20'

o - Denotes iron monument
Bearings shown are assumed

That part of Lakewood Park Third Division or Government Lot 2, Section 30, Township 30, Range 21, Washington County, Minnesota, described as follows: Commencing at the southeast corner of said Government Lot 2; thence on an assumed bearing of $N 71^{\circ} 12' 34'' W$, along the east line of said Government Lot 2, 91.16 feet to the southwesterly line of Block 2, Lakewood Park Third Division; thence $N 71^{\circ} 00' 42'' W$, along said southwesterly line, 374.49 feet to the angle point in said block; thence $N 27^{\circ} 28' 42'' W$, along said southwesterly line, 180.00 feet to the actual point of beginning; thence continuing $N 27^{\circ} 28' 42'' W$, 80.00 feet to a point hereafter known as point A; thence $N 33^{\circ} 55' 37'' W$, 35.00 feet; thence $N 72^{\circ} 17' 33'' E$, 128.72 feet; thence $N 78^{\circ} 04' 34'' E$ to its intersection with a line bearing $N 62^{\circ} 45' 49'' E$, from said point A; thence $S 19^{\circ} 50' 17'' E$ to its intersection with a line bearing $N 52^{\circ} 19' 59'' E$ from the actual point of beginning; thence $S 52^{\circ} 19' 59'' W$ to the actual point of beginning. Subject to easements of record, if any. The above described property being Lot 1, Block 2, Lakewood Park Third Division, according to the recorded plat thereof, together with other property adjoining, which other property being excess property arising out of survey errors occurring in the original plat.

I hereby certify that this is a true and correct representation of a survey of the boundaries of the above described land, and of the location of all buildings, thereon, and all visible encroachments, if any, from or on said land. As surveyed by me this 2nd day of Nov, A.D. 1978.

SUBURBAN ENGINEERING, INC.
Engineers Surveyors

by [Signature]

L377/ 9-158

Rev. 4/1/80
 Rev. 11/16/78
 Rev. 4/23/79
 Rev. 7/6/77
 Rev. 10/1/79
 Rev. 4/15/80

CERTIFICATE OF SURVEY



SCALE : 1" = 30'

PROPERTY DESCRIPTION

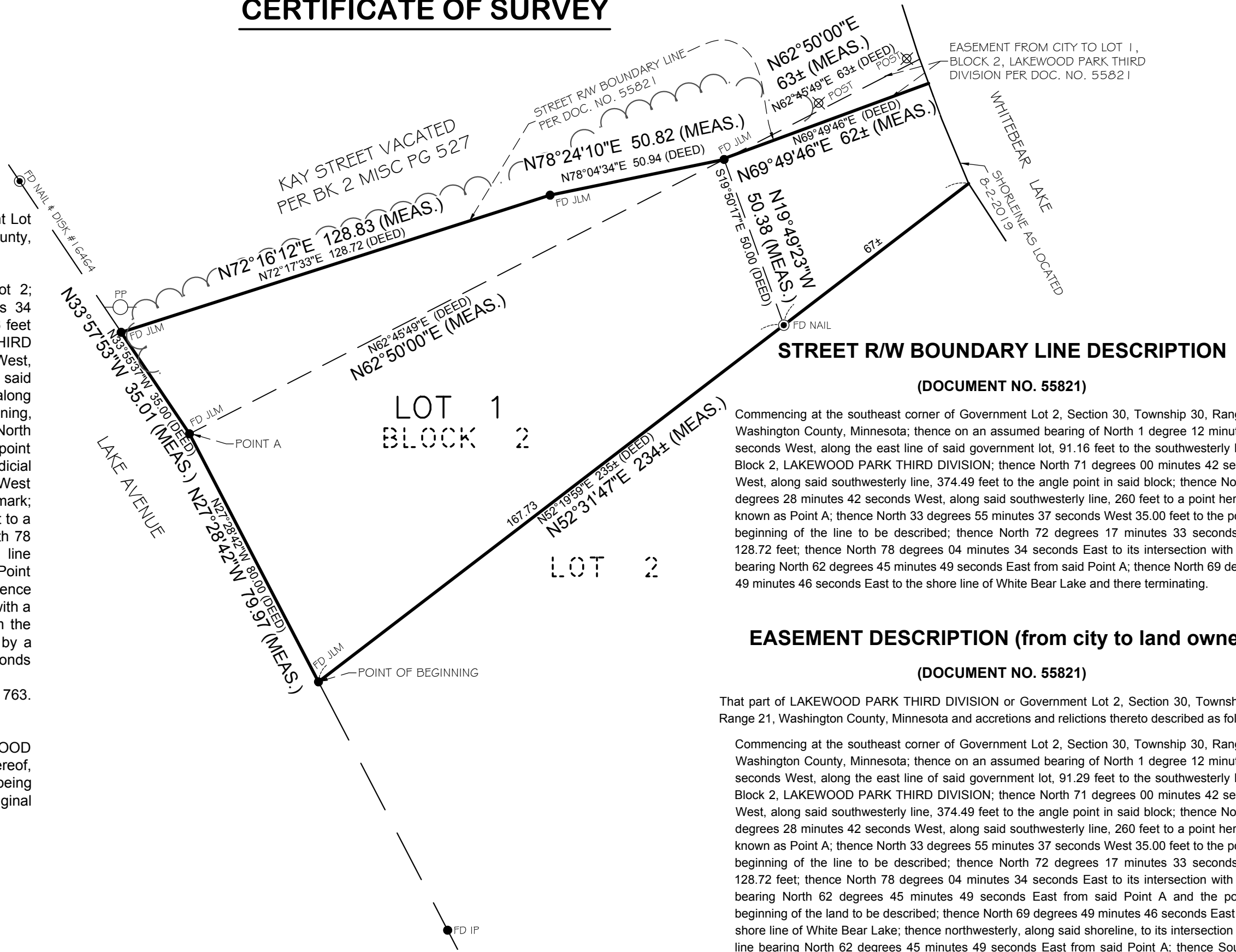
That part of LAKEWOOD PARK THIRD DIVISION or Government Lot 2, Section 30, Township 30, Range 21, Washington County, Minnesota, as to the following described property:

Commencing at the Southeast corner of said Government Lot 2; thence on an assumed bearing of North 1 degree 12 minutes 34 seconds West along the East line of said Government Lot, 91.16 feet to the southwesterly line of Block 2, LAKEWOOD PARK THIRD DIVISION; thence North 71 degrees 00 minutes 42 seconds West, along said southwesterly line, 374.49 feet to the angle point in said block; thence North 27 degrees 28 minutes 42 seconds West, along said southwesterly line, 180.00 feet to the actual point of beginning, which point is marked by a Judicial Landmark; thence continuing North 27 degrees 28 minutes 42 seconds West 80.00 feet to a point hereafter known as Point A, which point is marked by a Judicial Landmark; thence North 33 degrees 55 minutes 37 seconds West 35.00 feet to a point, which point is marked by a Judicial Landmark; thence North 72 degrees 17 minutes 33 seconds East 128.72 feet to a point, which point is marked by a Judicial Landmark; thence North 78 degrees 04 minutes 34 seconds East to its intersection with a line bearing North 62 degrees 45 minutes 49 seconds East from said Point A, which point of intersection is marked by a Judicial Landmark; thence South 19 degrees 50 minutes 17 seconds East to its intersection with a line bearing North 52 degrees 19 minutes 59 seconds East from the actual point of beginning, which point of intersection is marked by a Judicial Landmark; thence South 52 degrees 19 minutes 59 seconds West to the actual point of beginning.

All said Judicial Landmarks are set pursuant to Torrens Case No. 763. Subject to easements of record, if any.

The above described property being Lot 1, Block 2, LAKEWOOD PARK THIRD DIVISION, according to the recorded plat thereof, together with other property adjoining, which other property being excess property arising out of survey errors occurring in the original plat.

Together with accretions and relictions thereto.



STREET R/W BOUNDARY LINE DESCRIPTION

(DOCUMENT NO. 55821)

Commencing at the southeast corner of Government Lot 2, Section 30, Township 30, Range 21, Washington County, Minnesota; thence on an assumed bearing of North 1 degree 12 minutes 34 seconds West, along the east line of said government lot, 91.16 feet to the southwesterly line of Block 2, LAKEWOOD PARK THIRD DIVISION; thence North 71 degrees 00 minutes 42 seconds West, along said southwesterly line, 374.49 feet to the angle point in said block; thence North 27 degrees 28 minutes 42 seconds West, along said southwesterly line, 260 feet to a point hereafter known as Point A; thence North 33 degrees 55 minutes 37 seconds West 35.00 feet to the point of beginning of the line to be described; thence North 72 degrees 17 minutes 33 seconds East 128.72 feet; thence North 78 degrees 04 minutes 34 seconds East to its intersection with a line bearing North 62 degrees 45 minutes 49 seconds East from said Point A; thence North 69 degrees 49 minutes 46 seconds East to the shore line of White Bear Lake and there terminating.

EASEMENT DESCRIPTION (from city to land owner)

(DOCUMENT NO. 55821)

That part of LAKEWOOD PARK THIRD DIVISION or Government Lot 2, Section 30, Township 30, Range 21, Washington County, Minnesota and accretions and relictions thereto described as follows:

Commencing at the southeast corner of Government Lot 2, Section 30, Township 30, Range 21, Washington County, Minnesota; thence on an assumed bearing of North 1 degree 12 minutes 34 seconds West, along the east line of said government lot, 91.29 feet to the southwesterly line of Block 2, LAKEWOOD PARK THIRD DIVISION; thence North 71 degrees 00 minutes 42 seconds West, along said southwesterly line, 374.49 feet to the angle point in said block; thence North 27 degrees 28 minutes 42 seconds West, along said southwesterly line, 260 feet to a point hereafter known as Point A; thence North 33 degrees 55 minutes 37 seconds West 35.00 feet to the point of beginning of the line to be described; thence North 72 degrees 17 minutes 33 seconds East 128.72 feet; thence North 78 degrees 04 minutes 34 seconds East to its intersection with a line bearing North 62 degrees 45 minutes 49 seconds East from said Point A and the point of beginning of the land to be described; thence North 69 degrees 49 minutes 46 seconds East to the shore line of White Bear Lake; thence northwesterly, along said shoreline, to its intersection with a line bearing North 62 degrees 45 minutes 49 seconds East from said Point A; thence South 62 degrees 45 minutes 49 seconds West to the point of beginning.

I hereby certify that this is a true and correct representation of a tract as shown and described hereon. As 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.

Russell P. Damlo

RUSSELL P. DAMLO Minn. Reg. No. 19086

8-12-2019

Date

PREPARED FOR:

MATT DUFFY
7760 FRANCE AVE. SO. STE 700
MINNEAPOLIS, MN 55435

PROJECT NO. 16927-00B

ADDRESS:
505 LAKE AVENUE,
WHITEBEAR LAKE, MN

Special Assessment Policy

City of Birchwood Village



Special Assessment Policy – City of Birchwood Village

Table of Contents

1.0 POLICY GOALS 3

2.0 INTRODUCTION 3

3.0 POLICY DEFINITIONS 3

4.0 METHODS OF ASSESSMENT 6

5.0 ASSESSMENT CONSIDERATIONS: 7

6.0 POLICY REVIEW SCHEDULE 8

7.0 PAYMENT OF ASSESSMENTS 8

8.0 DEFERRED ASSESSMENTS 8

1.0 POLICY GOALS

Birchwood Village's special assessment policies are written to:

- 1) Provide a comprehensive, well-constructed and well maintained infrastructure system for current and future users.
- 2) Provide a stable source of funding for infrastructure needs that is cost-effective for the City, and fair and consistent for all property owners.
- 3) Follow MN Statutes, Chapter 429 Local Improvements, Special Assessments.

2.0 INTRODUCTION

A special assessment is a levy on a property for a particular improvement that benefits the property. The authority is provided to cities through MN Statutes, Chapter 429. Special assessments assign a portion of the cost of the improvement to those receiving a direct benefit from the public improvement, thereby reducing the reliance on the general tax levy.

Assessment amounts are based upon the value(s) of the benefits conferred to an individual parcel or parcels as a result of the particular improvement and are allocated by the Council as guided by this policy. The amount assessed against any particular parcel is required to be not greater than the increase in the market value of the property attributable to the improvement. This can be determined by benefit appraisals completed prior to the public improvement. Even though the special assessment goals, policies, and procedures are identified in this document, the City Council has the authority to deviate from this policy as deemed appropriate by the Council or when the law requires such a deviation. When the City deviates from the policies identified in this document, it will attempt to identify the reasons for the deviation in the feasibility report or at the public hearings associated with the public improvement.

Some examples for deviation from this policy would be assessment differences due to varying lot sizes, dimensions, multiple frontages and odd shaped lots.

The type of improvement, such as a road, could be dependent on the type of road and its use or the type of project and the number of residences that would benefit from it.

3.0 POLICY DEFINITIONS

Adjacent/Abutting Property: Property directly adjacent to, provided access to or served by public improvements.

Access: Properties shall be considered to have access to public street improvements when they may enter onto the improvement from their own private driveway, private road, common driveway, shared easement, alley (improved or unimproved), or public street. Properties shall be considered to have access to underground or above ground utility improvements when they are within 150 feet of the utility. When distance is greater than

150 feet an administrative review will determine feasibility of access.

Adjusted Frontage: The assessable front footage of a benefited property that has been modified by an adjustment factor to more accurately represent the true benefit that property receives from an improvement in comparison to other properties in the assessment area. The adjustment will be based on factors that are applicable to that parcel, as approved by the City Council. Parameters that may be used to determine the adjustment factor include, but are not limited to: lot area comparison to surrounding lots based on odd shape, lot size, corner lots or those with multiple frontages, cul-de-sac lots as well as those adjacent lots owned by the city. Adjustments may be made to more fairly reflect an assessment that would more fairly distribute the cost of a special assessment.

Assessed Cost: Those costs of public improvements that have been determined to benefit specific properties. The amounts included in these costs include, but are not limited to engineering, legal, finance charges, land acquisition, demolition, construction, and administration.

Assessable Area: The assessable area is the total area of all of the benefiting properties, when using an area based method.

Assessable footage: The assessable footage is the total area of all the benefiting properties, when using the front footage method of assessment.

Assessment Method: The way an improvement is paid for as determined by the City Council. The Council may adopt a front footage rate which is associated with the front lot length of a single building lot as defined by City Code, or it may use the 'Per Unit' rate which divides the cost of the project up among the total number of homes in that area which would benefit more or less equally from the improvement.

Assessment Rate: The amount assessed to each property by the city based on either per frontage foot or per unit.

Benefit: The increase in property value as a result of a public improvement such as, but not limited to, a street, sidewalk, trail, curb and gutter, water main, sanitary sewer, storm sewer, park, or street landscaping

Deferment: A process of postponing the collection of the cost of a public improvement with the intention of collecting at a later date.

Driveway Approach: That which lies between the pavement and the right-of-way line, curb cut to curb cut.

Front Footage: The distance measured along the right-of-way line that directly abuts an improvement. This measurement can be adjusted as described above to more fairly reflect an equitable distribution of costs for a particular project as pertaining to benefits realized per individual property values.

Improvement: The act of making a modification to the original design thereby changing

the dimensions, structure or makeup as well as the appearance or functionality of existing infrastructure. As examples, widening a street or adding curbs, gutters or sidewalks would be improvements. Seal-coating, crack-filling or other routine maintenance would generally not be considered assessable.

Lot Definitions:

- 1) **Corner Lot:** A lot located at a street intersection having both front and side-lot footage.
- 2) **Double Frontage Lot:** A lot with access to two separate non-intersecting or intersecting streets but not a corner lot.
- 3) **Irregularly Shaped Lot:** Those lots abutting curved streets, cul-de-sacs, or other lots where there is more than five feet of difference in length between the front and back lot lines.
- 4) **Rectangular Lot:** A lot with less than five feet of difference in length between the front and back lot lines.
- 5) **Special Case Lot:** A lot which may not directly abut the improvement shall be assessed on a per unit basis if the improvement can be accessed.

Maintenance: The repair and upkeep of infrastructure, including but not limited to streets, sewers, utilities, parks and other within the city that are used by all residents. Maintenance keeps things in the state that they were originally designed and built in, and as maintenance projects do not change appearance, dimensions, or function they are not considered improvements. Maintenance is budgeted for and funded through general tax revenue or other source(s) of funds.

Public Improvement: See “Improvement” definition above. Would include changes in or new infrastructure as defined above including but not limited to street, sidewalk, trail, curb and gutter, water main, sewers, park, or landscaping improvements.

Special Assessment: A legal process whereby the benefited property is charged for all or a portion of the cost of a public improvement which in turn increases the value of the assessed property.

Storm Water: Storm water runoff project funding will be considered in conjunction with street repairs.

Street: All public ways designed as a means of access to the adjoining properties.

Street Treatment Definitions:

- 1) **Seal Coat:** Involves filling cracks with bituminous patch, spraying the road surface with oil and covering it with a layer of small rock or crushed granite. Seal coating is considered maintenance and as such will not be assessed.
- 2) **Mill and Fill:** Involves milling out larger cracks and filling these as a more effective

and longer lasting method of repair. Considered maintenance, it will not be assessed unless the physical characteristics of the street are changed, widened or otherwise altered. If changes are made, it could be eligible for funding by special assessment.

- 3) **Mill and Overlay:** Consists of grinding off the upper layer of asphalt and replacing it with a new layer.
- 4) **Roadway Reclamation:** Consists of grinding up the existing asphalt surface completely and mixing it with a portion of the gravel base. This combination is then used as the new upper road base.
- 5) **Reconstruction:** Includes complete pavement removal, subgrade correction as needed, as well as elevation and width corrections, surface material, and other changes to the original design. This is often considered and done in conjunction with utility repairs/replacement.

System Cost: That portion of the assessable cost that benefits properties whose assessments are deferred because they are located outside of the City limits, or are unable to make use of the improvements due to factors beyond their control. An example would be street assessments for those properties along County Line Road, although these residents could derive some use from use of these streets. The City Council would need to make a special determination during the assessment stage of planning to allow for funding of anomalies such as these.

Unit: A unit for definitions of assessment may include, but is not limited to: a household; a parcel/lot or a residence.

Unit Share: That portion (or share) of the cost of an improvement project that is or will be assessed to a particular residence is considered the unit share. One unit is assessed no more than one share. If on a corner or odd shaped lot the unit may be assessed less than one share based on the frontages as accounted for in '**Methods of Assessment.**'

Yard, Front: A yard extending across the front of the lot between the side yard lines and lying between the front street line of the lot and the nearest line of the building.

4.0 METHODS OF ASSESSMENT

All Residential properties within Birchwood Village will be assessed by the Unit method whenever a special assessment is needed unless not feasible due to special conditions.

Residential Unit Method: This method is used for single dwelling residential properties. A unit shall be defined as one buildable lot consistent with the City of Birchwood Village's building ordinances. The types of lots listed reflect variations of computing unit shares to make the outcome fairer for differences in lot shape and frontage.

- 1) **Corner Lot:** A lot located at a street intersection having both front and side-lot footage shall be assessed per unit. If a driveway abuts both streets and only one street

is being improved then the lot will be assessed 50% of the per unit basis.

- 2) **Multiple Frontage Lot:** A lot with access to two separate non-intersecting or intersecting streets but not a corner lot may be assessed 50% of the per-unit basis for any street improvement that it has direct access to. Three sides would be 33.33%. This way the property will never be assessed more than one complete unit for all improvements it contacts.
- 3) **Irregularly Shaped Lot:** Those lots abutting curved streets, cul-de-sacs, or other lots where there is more than five feet of difference in length between the front and back lot shall be assessed as one unit.
- 4) **Rectangular Lot:** A lot with less than five feet of difference in length between the front and back lot lines shall be assessed as one unit.
- 5) **Special Case Lot Residential:** A lot which may not directly abut the improvement shall be assessed on a per unit basis if the improvement can be accessed. If not, the city council may make a case-by-case assessment taking exception in whole or part depending on the portion of use that the petitioning unit receives from the improvement.

Lot Frontage Method: This method assesses residences based on the length in front footage of the lot abutting the proposed improvement. While used by other cities utilizing this method as calculations can be more difficult, it is less fair as it penalizes residents with longer lots, corner or odd shaped lots, lots with multiple access sides and other anomalies. As our city is made up of a wide diversity of old and new lots of many sizes and shapes, the best choice will be the unit method. If necessary, the City Council can override that and choose to use a frontage method, and if so it will be based on the total cost of the improvement considered divided by the total frontage of the units involved. Consideration should be made for corner or multiple lots as in points 1-5 in the unit method above whenever possible. Frontage measurement must take into account the easements (subtracting these from the frontage) as well as the type of street being improved (see special considerations).

Note: These assessment methods and notes are shown for guidance purposes only. Prior to a public improvement project, a “benefits appraisal” shall be conducted to determine the actual special assessment based on the benefit received by the subject property/properties.

5.0 ASSESSMENT CONSIDERATIONS:

All properties benefiting from improvements are subject to the special assessment.

The project types to be assessed are not limited to those explicitly described in this policy. The City Council reserves the right to consider additional infrastructure improvements on a case by case basis for assessment, including but not limited to storm drainage improvements, street lights, walls, noise walls, boulevard trees, and sidewalks (both new and replaced).

Prior to assessment/adoption the special assessment levy, benefit shall be verified by an appraiser at the discretion of the City Council. The Council may consider assessing up to 100% of total project costs or proven benefit, whichever is less, when such cases are warranted. The council may consider any other calculation method for assessments based on lot size or linear footage of the property in a project area. The council shall articulate its methodology in its feasibility study.

6.0 POLICY REVIEW SCHEDULE

The City of Birchwood Village will review this special assessment policy annually and make adjustments to assessment methods and unit rates as deemed appropriate.

7.0 PAYMENT OF ASSESSMENTS

- 1) Assessments for single family residential and multi-family(four units and less) will be made payable on a 8 year repayment schedule or as determined by the City Council on a per project basis following public input at the improvement or assessment hearings. Interest rates vary based on project financing, but are set no more than 2% above the City's rate on the sale of bonds or prime if the project is financed with general fund dollars.
- 2) Assessments for commercial, institutional and multi-family(five-units or greater) property can be paid for up to 8 years as determined by the City Council on a per project basis through certification to property taxes as a special assessment. Interest rates vary, but are set no more than 2% above the City's rate on the sale of bonds or prime if the project is financed with general fund dollars.
- 3) Property owners can pay the entire assessment within 30 days following the adoption of the assessment roll with no interest charged. Property owners may also make an interest free partial payment within 30 days, but the minimum partial payment is 25%. All unpaid balances will be certified to Washington County for payment with property taxes after October 1 of the year in which the assessment hearing was conducted. Interest will start accruing on all unpaid amounts 30 days after the assessment hearing.

8.0 DEFERRED ASSESSMENTS

MN Statutes § 435.193 to 435.195 authorize City Councils to allow certain deferrals. All deferments are subject to the interest as stated in this policy and become due upon the death of the owner (if the spouse is not otherwise eligible for the deferment); the sale, transfer or subdivision of any part of the property; loss of homestead status on the property; or the council's determination that immediate or partial payment would impose no hardship.

The City Council may, at its discretion, defer the payment of an assessment of any homestead property owned by a person for who it would be a hardship to make the payment

if the owner is one of the following:

- 1) A person who is 65 or older.
- 2) A person who is retired by virtue of a permanent and total disability.
- 3) A member of the Minnesota National Guard (or other military reserves) ordered into active military service.
- 4) A person unable to meet the payment obligations due to proven financial hardship.

Determining a financial hardship shall be completed by the city council's review of the applicant's income statement. A financial hardship deferral is automatically met if the household adjusted gross income is at or below 125% of the most recent Federal Poverty Line.

This Policy was adopted by the City of Birchwood Village City Council on April 9, 2019.

CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA

RESOLUTION 2019-26

RESOLUTION DECLARING COST TO BE ASSESSED
AND ORDERING HEARING ON PROPOSED ASSESSMENT
2019 LAKE AVENUE MILL AND OVERLAY IMPROVEMENT
CITY PROJECT NO. 2019-1

At a regular meeting of the City Council of the City of Birchwood Village held on Tuesday, February 11, 2020, at Birchwood City Hall, 207 Birchwood Avenue, Birchwood, Minnesota, with the following members present: Mayor Mary Wingfield, Council Members Randy LaFoy, Jon Fleck, and Kevin Woolstencroft, with the following members absent: Councilmember Jessi Aakre, the Birchwood City Council resolved:

WHEREAS, by a resolution passed by the City Council on October 8, 2019, the City Clerk was directed to prepare a proposed assessment of the cost of Improvement No. 2019-1, improving Lake Avenue from Wildwood Avenue to the south end of Lake Avenue and Iris Street from Lake Avenue to Wildwood Avenue; and

WHEREAS, the City Clerk has notified the City Council that such proposed assessment has been completed and filed in his office for public inspection.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BIRCHWOOD VILLAGE, MINNESOTA:

1. The portion of the cost of such improvement to be paid by the City is hereby declared to be \$18,200.00 and the portion of the cost to be assessed against benefited property owners is declared to be \$58,500.00.
2. Assessments shall be payable in equal annual installments extending over a period of 5 years, the first of the installments to be payable on or before the first Monday in January, 2021, and shall bear interest at the rate of 4 percent per annum from the date of the adoption of the assessment resolution.
3. A hearing shall be held at 7:00 p.m. on March 10, 2020 in the City Hall located at 207 Birchwood Avenue to pass upon such proposed assessment. All persons owning property affected by such improvement will be given an opportunity to be heard with reference to such assessment.
4. The City Clerk is hereby directed to cause a notice of the hearing on the proposed assessment to be published once in the official newspaper at least two weeks prior to the hearing, and he shall state in the notice the total cost of the improvement. He shall also cause mailed notice to be given to the owner of each parcel described in the assessment roll not less than two weeks prior to the hearing.
5. The owner of any property so assessed may, at any time prior to certification of the assessment to the county auditor, pay the whole of the assessment on such property, with interest accrued to the

date of payment, to the City of Birchwood Village, except that no interest shall be charged if the entire assessment is paid within 30 days from the adoption of the assessment. An owner may at any time thereafter, pay to Washington County the entire amount of the assessment remaining unpaid, with interest accrued to December 31 of the year in which such payment is made. Such payment must be made before November 15 or interest will be charged through December 31 of the succeeding year.

Voting in Favor:

Voting Against:

Adopted by the City Council this 11th day of February, 2020.

Mary Wingfield, Mayor

Attest:

Tobin Lay, City Administrator-Clerk

REGULAR D SAMPLE ASSESSMENT ROLL

Example #1: Payments Over 5 Years at 4 Percent Interest

P.I.D.#	11.111.11.11.1111	NAME	RESIDENT, ROBBY
		PROPERTY	123 NEW RD
		ADDRESS	WHITE BEAR LAKE, MN 55110
Interest Start Date:	February 13, 2020		
Repayment Period:	5 years		
Interest Rate:	4.0%		
Legal Description:	LTS 6-7 BLK 7 TOG WITH EASE SUBDIVISIONNAME LAKEWOOD PARK 1ST DIVISION LOT 6 BLOCK 7 SUBDIVISIONCD 25440		

The amount to be specially assessed against your particular lot, piece, or parcel of land is calculated as follows:

Assessments:	Amount:
a. Lake Avenue Mill and Overlay	\$2,017.24

YEAR	ANNUAL PAYMENT	PRINCIPAL PAYMENT	INTEREST PAYMENT	PRINCIPAL REMAINING
2020				\$2,017.24
2021	\$524.31	\$372.44	\$151.87	\$1,644.80
2022	\$453.13	\$387.33	\$65.79	\$1,257.47
2023	\$453.13	\$402.83	\$50.30	\$854.64
2024	\$453.13	\$418.94	\$34.19	\$435.70
2025	\$453.13	\$435.70	\$17.43	(\$0.00)

\$2,336.82 = Total of Annual Payments

The special assessment principal amount is **\$2,017.24**. Assessment may be prepaid in full to the City of Birchwood within 30 days of adoption of assessment roll (by February 13, 2020 assuming assessment roll is adopted on January 14, 2020) with no accrued interest being charged.

The principal is spread over 5 years at 4.0% interest. After February 13, 2020 but prior to November 15, 2020, the payable amount including interest from February 13, 2020 (or when final assessment roll is adopted) to December 31, 2020 will already be on the tax rolls. The prepayment amount to the City is the balance owing for 2020. (Your tax statement payable 2021 to the County Treasurer will already have the first annual payment amount of **\$524.31** on it.)

Balance owing on assessments may be prepaid at any time (principal remaining column) prior to November 15th of each year. If not prepaid, the annual payment to the right of the year on the payment schedule above will be on your property tax statement. Partial prepayments have not been authorized by City Ordinance. Please call city hall for the amount or for answering your questions - 651-426-3403.

**THE NOTICE AND ASSESSMENT ROLL IS THE ONLY NOTICE THAT WILL BE MAILED.
NO BILL WILL BE SENT.**

REGULAR D PROPOSED ASSESSMENT MAP

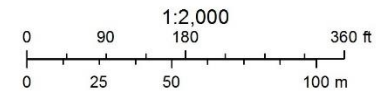
Appendix 2



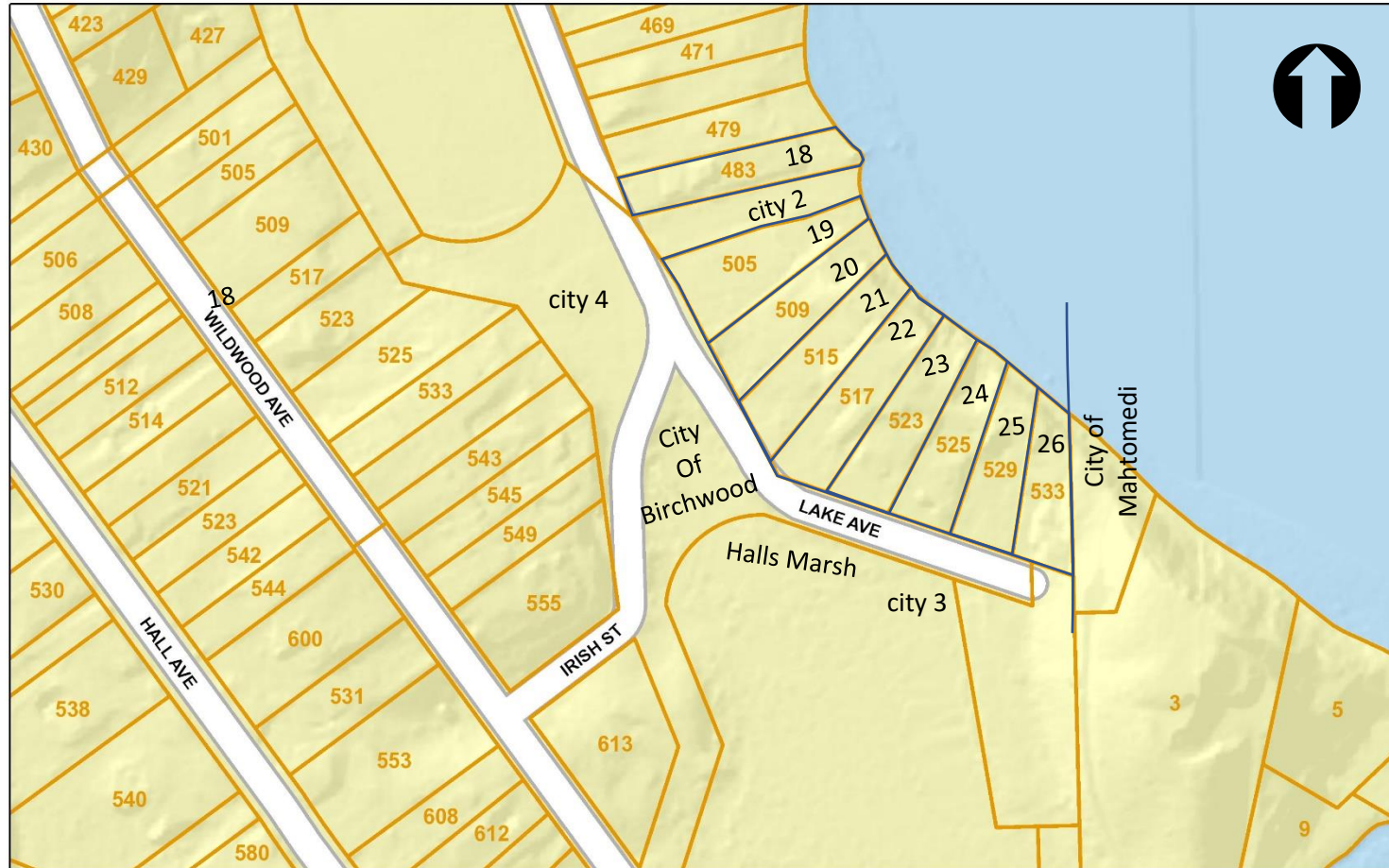
Map 1

Properties Proposed to be Assessed

3/26/2019



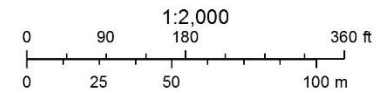
Appendix 2



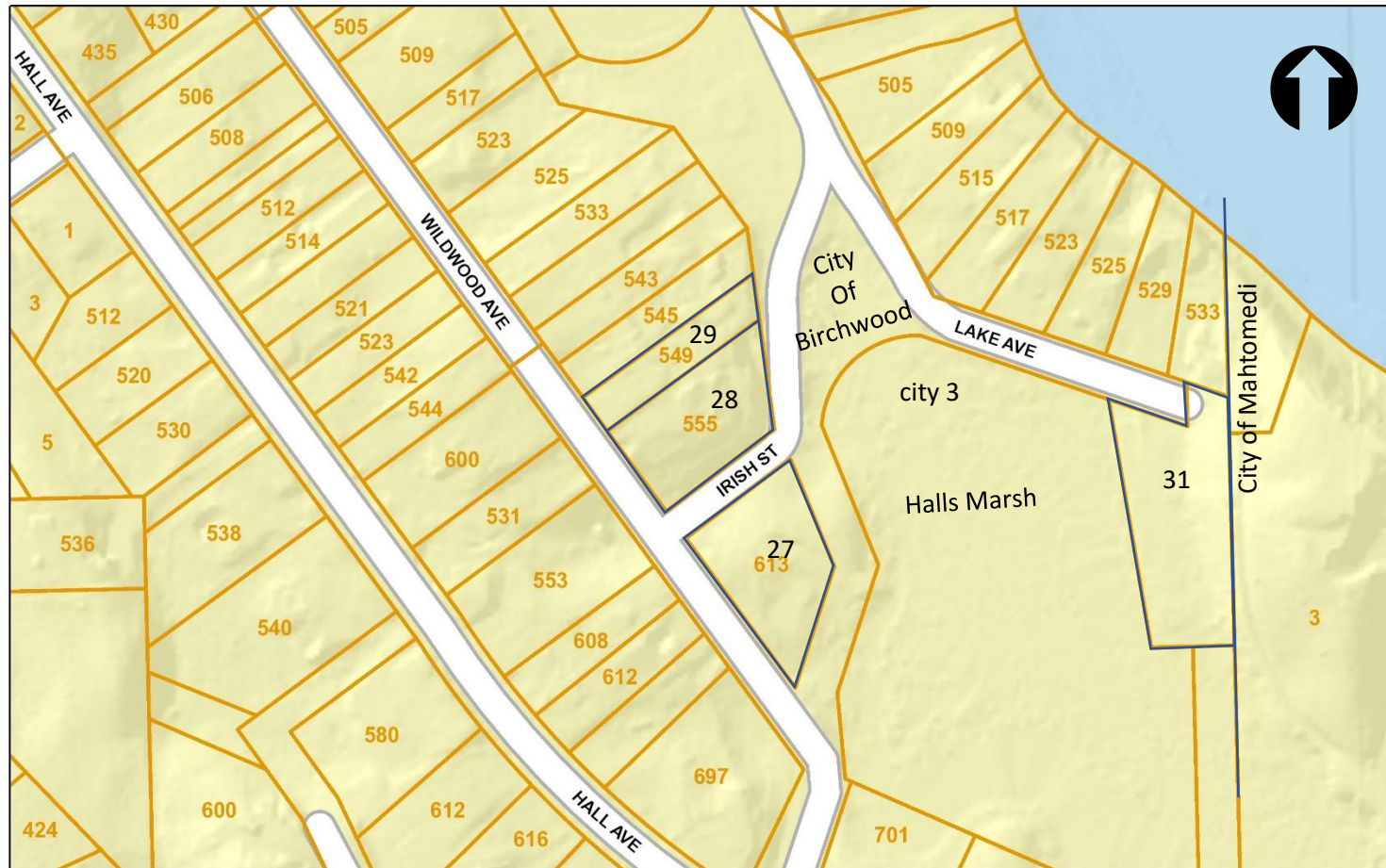
Map 3

Properties Proposed to be Assessed

3/26/2019



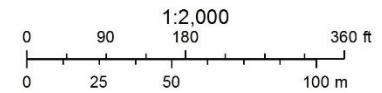
Appendix 2



Map 4

Properties Proposed to be Assessed

3/26/2019



REGULAR D PROPOSED ASSESSMENT LIST

City of Birchwood Village
Lake Avenue Mill and Overlay
Special Assessment
List of Property Owners Proposed to be
Assessed February 6, 2020

Lot #	Recommended Assessment Unit	Owner	Notes
1	0.5	WERRA, DANNY 369 WILDWOOD AVE WHITE BEAR LAKE, MN 55110	This lot also abuts Wildwood Ave.
2	1.0	MUELLERLEILE, SHARON A 365 LAKEWOOD LN WHITE BEAR LAKE, MN 55110	
3	1.0	DEMARS, ANTHONY J & CHRISTINA A 407 LAKE AVE WHITE BEAR LAKE, MN 55110	
4	1.0	CARLSON, JERRY J & JACQUELINE L JAROSZ 409 LAKE AVE WHITE BEAR LAKE, MN 55110	
5	1.0	MADORE, KATHLEEN E 413 LAKE AVE WHITE BEAR LAKE, MN 55110	
6	0.5	DAVIDSON, COYLEEN H 1040 SEAGROVE LN CH 4 SARASOTA, FL 34242	The house on this lot is also on lot 7.
7	0.5	DAVIDSON, COYLEEN H 425 LAKE AVE BIRCHWOOD, MN 55110 Second Address: DAVIDSON, COYLEEN H 1040 SEAGROVE LN CH 4 SARASOTA, FL 34242	The house on this lot is also on lot 6.
8	1.0	BARBARA A WINTERS TRS 429 LAKE AVE WHITE BEAR LAKE, MN 55110-1629	
9	1.0	WICKUM, DAREN & JESSICA 433 LAKE AVE WHITE BEAR LAKE, MN 55110	
10	1.0	MCKEOWN, THOMAS D & LISA A JR 441 LAKE AVE WHITE BEAR LK, MN 55110	

11	1.0	TRS AGR TODD & DENELLE A HAWKINS 445 LAKE AVE SAINT PAUL, MN 55110	
12	1.0	SCHREINER, DELORES M 453 LAKE AVE WHITE BEAR LAKE MN 55110	
13	1.0	ANDERSON, KENNETH L ETAL 461 LAKE AVE BIRCHWOOD, MN 55110 Second Address: ANDERSON, KENNETH L ETAL 85 LOGAN AVE W WEST SAINT PAUL, MN 55118	
14	1.0	BARTHEL, JAMES H 469 LAKE AVE WHITE BEAR LAKE, MN 55110	
15	1.0	KRAEMER, MICHAEL R & CANDICE L 471 LAKE AVE WHITE BEAR LAKE, MN 55110	
16	1.0	KRAEMER, MICHAEL R & CANDICE L 471 LAKE AVE WHITE BEAR LAKE, MN 55110	
17	1.0	MAHONEY, SUSAN L C 479 LAKE AVE WHITE BEAR LAKE, MN 55110	
18	1.0	HARROD, JAMES J & DEBRA L 483 LAKE AVE WHITE BEAR LAKE, MN 55110	
19	1.0	JUDY DUFFY REVOC TRS 505 LAKE AVE SAINT PAUL, MN 55110	
20	1.0	MCKENZIE, MICHAEL G & JULIE L 509 LAKE AVE BIRCHWOOD, MN 55110	
21	1.0	MCCARTHY, JUSTIN & JESSA 515 LAKE AVE WHITE BEAR LAKE, MN 55110	
22	1.0	WALL, WANDA F & DAVID W JR 517 LAKE AVE WHITE BEAR LAKE, MN 55110	

23	1.0	KOHL'S, PHILIP R & PATRICIA KOHL'S 523 LAKE AVE BIRCHWOOD, MN 55110	
24	1.0	MALVEY, MICHAEL D & MEGAN W 525 LAKE AVE WHITE BEAR LK, MN 55110	
25	1.0	KRIZ-HERBERT, SANDA K 529 LAKE AVE WHITE BEAR LAKE, MN 55110	
26	1.0	CALDERWOOD, MARY E TRS 533 LAKE AVE WHITE BEAR LAKE, MN 55110	
27	0.5	RAUSCHER ELLIOT M & KATHERINE A WEIER 613 WILDWOOD AVE BIRCHWOOD, MN 55110	This lot also abuts Wildwood Ave.
28	0.5	CORLISS, CHARLES D & KARLEEN R 555 WILDWOOD AVE WHITE BEAR LAKE, MN 55110	This lot also abuts Wildwood Ave.
29	0.5	VANG, MARY C 549 JAY ST BIRCHWOOD, MN 55110 Second Address: VANG, MARY C 20 FLYNN ST ESKO, MN 55733	This lot also abuts Wildwood Ave.
30	0.5	LIND, BRIAN R & KAREN A HAGAN-L 401 WILDWOOD AVE WHITE BEAR LAKE, MN 55110	This lot also abuts Wildwood Ave.
	26.5		



**FEASIBILITY STUDY
ADDENDUM #1
For
CITY OF BIRCHWOOD VILLAGE, MINNESOTA**

**LAKE AVENUE
MILL AND OVERLAY
(City Project No. 2019-1)
DECEMBER 1, 2019**

1.0 FUNDING

Based on public hearing comments at recent City Council meetings, the city could consider the following for assessing the improvements to the Lake Avenue Project:

Funding Alternative #1

Based on our previous analysis, there are twenty four and a half (24.5) assessment units for the project. Therefore, the total amount to be assessed is \$49,422.63 (24.5 assessment units x \$2,017.24 per assessment unit). The City of Birchwood Village would pay for the remaining sums incurred.

Funding Alternative #2

Funding Alternative #2 is to estimate the possible number of lots in Tighe-Schmitz Park and use that number in the assessment calculations.

Based on the City's minimum lot size of 12,000 square feet and minimum lot width of 80 feet, and based the City's assessment policy that multiple frontage lots are assessed a sum total of one unit, TEI estimates that the possible number of lots in Tighe-Schmitz Park is seven (7).

Therefore, there are thirty one and a half (31.5) assessment units for the project and the total amount to be assessed is \$63,543.06 (31.5 assessment units x \$2,017.24 per assessment unit). The City would also pay costs over and above that assessed amount.

MEMORANDUM



Birchwood Village

TO: Birchwood City Council
FROM: Tobin Lay, City Administrator
SUBJECT: Wildwood Ave Stop Signs at Iris Street
DATE: February 6, 2020

Dear Mayor and Council Members,

Per Council's request, here is the information from the August 2018 memo regarding the Roads and Streets Committee recommendation to reconfigure the traffic signage at the Wildwood Ave intersection at Iris St.:

The Roads and Street's Committee held a public hearing [in August 2018] to get public input on reconfiguring the traffic signage at the Wildwood Ave intersection at Iris St.

The vast majority of those who spoke at the public hearing were in support of the Committees suggested reconfiguration.

Accordingly, the Roads Committee recommends removing the existing stop sign on Iris St. at Wildwood Ave and instead, placing two (2) stop signs on Wildwood Ave – one (1) for southeast traffic and another (1) for northwest traffic at the Iris St. intersection. This will make the intersection a two-way stop with Iris St. traffic having the right of way through the intersection.

The Committee also recommends installing two "stop ahead" signs for both directions on Wildwood Ave to warn of the stop signs.

The Council tabled this item until after details regarding the Lake Avenue mill & overlay project were determined. With that project already approved now, there is renewed interest in the traffic signage configuration.

Request/Recommendation

The Roads and Streets Committee recommends Council:

- 1) Approve the reconfiguration of the Wildwood and Iris streets intersection as described above; and
- 2) Authorize City staff to purchase and install the signs accordingly.

Thanks!

Regards,
Tobin Lay

**Birchwood Village
Roads and Streets Committee Minutes - Draft
August 6th, 2018 - 6:30 PM
Village Hall**

Present: Tom Stangl, Ben Creagh, Gene Ruehle, Tom Patsy

1. Public Forum on Remove stop sign on Iris and Wildwood and add signage:
14 citizens present for roundtable discussion with overwhelming majority
in favor of recommendations

Concern over parking of pick-up truck on driveway, blocking stop sign [Stop sign ahead or
additional sign on left side of road north view]

Concern about vehicles needing to stop heading south on Wildwood Ave. and primary issue is
during winter. Suggestion more salting to alleviate

Citizen in favor of stop sign on Wildwood to get up hill when north side is too icy

History of buses going through stop sign on Iris

Challenge for line of sight when stopping on Iris with multiple citizens stating near misses with
accidents

Jay/Hall stop sign has made turn better

All intersections would benefit from brush removal

Motion to remove Iris street stop sign, and place two stop signs on Wildwood facing west, one
facing east, with "stop ahead" sign ahead of sign. Gene motions, Tom Patsy seconds. Motion
carries

2. Weed Control
 - a. Contact with Tobin for previous year's upkeep and can we do that again
3. Trees on Wildwood
 - b. Contact Tobin on Elm Beach clump that could disturb pavement
4. Lake Street Assessment
 - c. Waiting on council for vetting response. If after vetting, our recommendation
stands.

Adjourn 7:26 pm Tom Patsy motions, Gene seconds

ORDINANCE 2017-07-01

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

**AN ORDINANCE AMENDING EXTERIOR STORAGE
REQUIREMENTS IN CITY CODE**

The City Council of the City of Birchwood Village hereby ordains that Chapter 615 (Exterior Storage) of the Municipal Code of the City of Birchwood Village is hereby amended to read as follows:

SECTION 615. EXTERIOR STORAGE

615.010. POLICY. All materials and equipment shall be stored within buildings or in the rear yard in a screened area. Such screened area may consist of fencing of a suitable height, natural shrubbery, and/or topography so that the stored items are not visible from the frontage street or adjoining properties.

615.020. EXCEPTIONS TO POLICY.

1. Stacked firewood piles.
2. Clothesline poles and sires/lines.
3. Children's playground equipment.
4. Construction and landscaping equipment currently in use on the premises for use in the near future, pursuant to an existing and current building permit.
5. The normal tools used in lawn, garden and tree maintenance.
6. Off street parking of correctly licensed and operational automobiles and pickup trucks, parked on a designated driveway or on one (1) open paved or graveled space located adjacent to a driveway or garage. Provided, moreover, that any vehicle or boat parked on residential property for sale by the resident must be owned and licensed to the resident.
7. Boats, trailers, snowmobiles and recreational vehicles currently licensed and owned by the resident may be stored in the rear yard subject to the following:
 - a. Motorized boats, boat trailers, utility trailers, travel trailers, snowmobiles, and motorized recreational vehicles cannot exceed twenty (20) feet in length.
 - b. Sailboats cannot exceed twenty-eight (28) feet in length.

8. Seasonal storage of boats ~~and/or boat lifts is-is-are~~ permitted in the rear yard of a resident's lot. If storage in the rear yard of the lot presents a verifiable hardship is not conducive due to property restrictions (trees, shrubs, structures, impeded access to rear yards, or encumbrances) storage may be in the front yard by permit. Whether in the front or back yard, a boat or boat lift must be stored six (6) feet from the curb edge. Such storage is only authorized between October 1st through May 1st. Boat or a boat lift may be stored for a maximum of when public docks are taken out of the lake and one month after public docks go back into the lake. Boats and/or a boat lifts must be owned by the resident-property-owners where the boat or boat lift is being stored and boats must be on their trailer.

9. Visitors to Birchwood may park currently licensed and operational travel trailers and motorized recreational vehicles in a residents designated driveway for a period of up to seven (7) days. Parking beyond the seven (7) day period will require a non-fee permit from the City Clerk. The permit will provide for an additional parking period of up to fourteen (14) days. In no event will visitor parking by any one visitor exceed twenty-one (21) days during a six (6) month period.

615.030. EXCEPTIONS TO STORAGE LOCATIONS.

1. Normal storage items which are subject to the screening requirements of Section 615.010, and the items enumerated in Section 615.020 (7) (subject to the length limitations therein) may be stored at any place on the lot, but not closer to any street frontage lot line than the buildings existing on that lot forty (40) feet (whichever is) for the following properties:

- a. Lots abutting White Bear Lake;
- b. Multiple frontage lots (where there is no defined rear yard); or
- c. Lots on which a substantial portion of the dwelling is located within the rear one-third (1/3) of the lot.

2. Seasonal storage of boats, subject to length limitations found in 615.020 (7) a and b, boat lifts and docks are permitted on those lots abutting White Bear Lake in the area from the lake side of the residence to the ordinary high water level.

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 ___ day of _____, 2020

Attest:

Mary Wingfield, Mayor

Tobin Lay, City Administrator-Clerk

MEMORANDUM



Birchwood Village

TO: Birchwood City Council
FROM: Tobin Lay, City Administrator
SUBJECT: Water Meter Upgrades
DATE: February 6, 2020

Dear Mayor and Council Members,

Per Council’s request, the Utility Committee has scheduled to meet with the bidders on Mon Feb 10th to review the two bids received for upgrading the City’s water meters.

If the committee makes a recommendation during that meeting then I will provide that to you during your Council meeting. It is recommended that you schedule the vote for another meeting to allow for public discussion prior to your vote.

These bids are not included in the Council packets because of their size but hard copies will be available during the Council meeting for your review. They are the same documents that I emailed each of you on Friday December 6, 2019.

Request/Recommendation

Staff requests Council:

- 1) Review and discuss the two (2) bids and the Utility Committee recommendation; and
- 2) Schedule the meeting where the public discussion will take place and the bid will be awarded.

Thanks!

Regards,
Tobin Lay

BID TABULATION
City Of Birchwood Village, Minnesota

Water Meter Replacement Project
(City Project No. 2019-4)
Bid Opening 12/5/2019

No.	Bidder	Dakota Supply Group	Metering Technology Solutions			
1.	BID SCHEDULE A	\$126,895.00 plus \$5,500 for software	\$142,000.00 plus \$0.09/meter/month			
2.	Option #1: Voluntary Deduct	N/A	N/A			
3.	BID SCHEDULE B	No Bid	\$144,000.00 plus \$0.89/meter/month			
4.	Option #1: Voluntary Deduct	N/A	N/A			

T:\Projects\Birchwood Village\Water Meter Replacement\2019-12-5a Bid Tabulation.xlsx\Bid Tabulation

REGULAR I
NOMINAL & ACCESSORY STRUCTURES

ORDINANCE 2020-02-01

CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA

**AN ORDINANCE AMENDING AND ADDING DEFINITIONS
IN THE CITY LAND USE CODE**

The City Council of the City of Birchwood Village hereby ordains that Chapter 300 (Land Use) of the Municipal Code of the City of Birchwood Village is hereby amended to read as follows:

SECTION 300. LAND USE

300.020. DEFINITIONS. For the purpose of Chapters 300 through 399 certain terms and words are hereby defined as follows:

1. Accessory ~~Use or~~ Structure. A non-habitable one-story detached accessory structures (tool sheds, storage sheds, etc.) provided the floor area does not exceed 144 square feet and a maximum wall height of 12 feet measured from the finished floor level to the top of the top plate.~~A use or structure subordinate to the principal use or structure on the same lot and serving a purpose customarily incidental thereto.~~

...

33. Nominal Structure. A non-habitable one-story detached accessory structures (tool sheds, storage sheds, playhouses, dog house, etc.) provided the floor area does not exceed 25 square feet and a maximum wall height of 10 feet measured from the finished floor level to the top of the top plate.

3335. Official Map. The map established by the City Council showing the streets, highways and parks theretofore laid out, adopted and established by law and any amendments thereto adopted by the City Council and the subsequent filing of such approved plats.

6146. Significant Tree. A healthy coniferous tree six (6) feet or more in height or a healthy deciduous tree eight (8) inches or more in diameter.

The numbering on all subsequent terms are adjusted in correlation with these numbering changes.

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 ___ day of _____, 2020

Attest:

Mary Wingfield, Mayor

Tobin Lay, City Administrator-Clerk

SECTION 300: LAND USE

300.020. DEFINITIONS. For the purpose of Chapters 300 through 399 certain terms and words are hereby defined as follows:

1. Accessory Use or Structure. A use or structure subordinate to the principal use or structure on the same lot and serving a purpose customarily incidental thereto.

SECTION 302: ZONING CODE REQUIREMENTS AND PERFORMANCE STANDARDS

302.020. STRUCTURE LOCATION REQUIREMENTS

...

3. ACCESSORY STRUCTURES. No accessory building or structure, unless an integral part of the principal structure shall be erected, altered, or moved to, within five (5) feet of the principal structure except fences, driveways, walkways, and decks which may be as close as actually abutting the principal structure.

4. SETBACK REQUIREMENTS EXCEPTIONS.

...

d. Nominal Structures: Front, back, side street and other lot line setback requirements shall not apply to nominal structures such as small arbors, moveable yard furniture, moveable docks, storage boxes, dog houses, mail boxes, library small boxes, lock boxes, flagpoles, lawn ornaments and other similar items, which shall be exempt from setback regulations, but not including decks, platforms, or shelters such as pergolas.