



AGENDA OF THE REGULAR MEETING OF
THE CITY COUNCIL
CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA
May 9, 2023
6:45 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.

PLEDGE OF ALLEGIANCE

APPROVE AGENDA

OPEN PUBLIC FORUM

PRESENTATIONS

- A. Birchwood Village Financial Controls – Mary Cahill, Treasurer* (pp. 5-9)

ANNOUNCEMENTS

CONSENT AGENDA

- A. Approve March Special Meeting Minutes* (pp. 10-12)
- B. Approve April Regular Meeting Minutes* (pp. 13-20)
- C. Approve LBAE Meeting Minutes* (pp. 21-22)
- D. Approve April Special Meeting Minutes* (pp. 23-24)
- E. Approve Treasurer’s Report* (pp. 25-50)
- F. Approve RESOLUTION 2023-29 Honoring Steve Thatcher* (p. 51)
- G. Approve RESOLUTION 2023-30 Authorizing the Adjustment of Fund Balances* (p. 52)
- H. Approve RESOLUTION 2023-31 Authorizing the Suspension of Rules* (p. 53)
- I. Approve RESOLUTION 2023-32 Removing Disabled Parking Spot at Kay Beach* (pp. 54-55)
- J. Approve Annual \$200 Contributions to White Bear Lakes Fireworks Fund* (p. 56)
- K. Approve Permitting Fee* (p. 57)
- L. Approve Schifsky Road Maintenance Bid* (pp. 58-64)
- M. Approve City Tree Inspection Invitation to Bid* (pp. 65-68)

CITY BUSINESS – OLD BUSINESS

- A. 2023-03-VB (529 Lake) Variances* (pp. 69-110)
 - a. Public Forum

- b. Review and Discuss Variances Requested and Supporting Documents
- c. Vote to Approve or Deny Variance Requests

Time Budget: 20 Minutes

B. Second Reading ORDINANCE 2023-04-01 (304.035) Variances* (pp. 111-113)

- a. Public Hearing
- b. Council Deliberation & Approval

Time Budget: 10 Minutes

C. Second Reading ORDINANCE 2023-04-02 Fee Schedule* (pp. 114-122)

- a. Public Hearing
- b. Council Deliberation & Approval
- c. Approve RESOLUTION 2023-29 Approving Summary Publication Ord. 2023-4-02

Time Budget: 10 Minutes

D. Second Reading ORDINANCE 2023-04-03 (615) Exterior Storage* (p. 123)

- a. Public Hearing
- b. Council Deliberation & Approval

Time Budget: 10 Minutes

E. First Reading ORDINANCE 2023-04-04 (208/309) Regulating Public Rights of Way *
(pp. 124-151)

- i. First Reading and Council Deliberation
- ii. Order Second Reading and Public Hearing

Time Budget: 20 Minutes

F. Ash Path Survey Update – Alan Kantrud

CITY BUSINESS – NEW BUSINESS

G. Mayor Ford Updates

- a. Birchwood Road Condition Discussion
- b. Lake Links Trail Discussion
- c. South Shore Blvd Construction Update

Time Budget: 20 Minutes

H. Impervious Surface Code Revisions

- a. First Reading ORDINANCE 2023-05-01 REPEALING AND REPLACING 302.050 IMPERVIOUS SURFACES IN THE CITY CODE * (pp. 152-161)

- i. First Reading and Council Deliberation
 - ii. Order Second Reading and Public Hearing
Time Budget: 10 Minutes
 - b. First Reading ORDINANCE 2023-05-02 AMENDING 302.020 LAND USE IN THE CITY CODE * (pp. 162-169)
 - i. First Reading and Council Deliberation
 - ii. Order Second Reading and Public Hearing
Time Budget: 10 Minutes
 - c. First Reading ORDINANCE 2023-05-03 AMENDING THE FEE SCHEDULE* (pp. 170-172)
 - i. First Reading and Council Deliberation
 - ii. Order Second Reading and Public Hearing
Time Budget: 10 Minutes
- I. Solar Panels
 - a. First Reading Ordinance 2023-02-01: Removing Solar Panels from CUP* (pp. 173-177)
 - i. First Reading and Council Deliberation
 - ii. Order Second Reading and Public Hearing
Time Budget: 10 Minutes
 - b. First Reading ORDINANCE 2023-05-04 AMENDING SECTION 306.060 ZONING CODE: SOLAR ENERGY SYSTEMS* (pp. 178-179)
 - i. First Reading and Council Deliberation
 - ii. Order Second Reading and Public Hearing
Time Budget: 10 Minutes
- J. First Reading ORDINANCE 2023-05-05 (FEE SCHEDULE, 201 / 202) Utility Availability* (pp. 180-185) –
 - i. First Reading and Council Deliberation
 - ii. Order Second Reading and Public Hearing
Time Budget: 10 Minutes
- K. Safe Streets and Roads for All (SS4A) Grant Program* (p. 186)
Time Budget: 5 Minutes
- L. Administrator Compensation – Justin McCarthy/Mark Foster

Time Budget: 5 Minutes

M. Administrator Updates* (p. 187)

Time Budget: 5 Minute

ADJOURN

CITY OF BIRCHWOOD VILLAGE

FINANCIAL INTERNAL CONTROL PROCEDURES

The City of Birchwood Village sets forth financial internal control procedures in order to establish financial processes, separation of duties, ensure continuity, and define City Council oversight for City financial transactions without unduly inhibiting the ability of the City's staff to efficiently and effectively carry out its fiduciary responsibilities.

In developing the internal control procedures, the City has tried to incorporate the separation of duties basic principle that whenever possible, one individual should not handle a financial transaction from beginning to end.

The objective of the City's Financial Internal Control Procedures document is to provide a guideline for the City's staff to ensure that a system of checks and balances is in place. However, due to the part-time status of limited staff it is recognized that circumstances may present that the following processes be adjusted when the need arises. Modifications will be presented to Council or staff as a need presents:

REVENUES AND EXPENSES

1. Payments to the City are receipted, recorded, secured, and deposited in an accurate and timely manner.
2. Disbursements by the City meet the following criteria:
 1. Appropriate – The disbursement is directly related to legitimate City business.
 2. Legitimate – The disbursement is allowed or required by policy, law, contractual agreement, and/or professional standards.
 3. Reasonable – The amount being paid for a product or service is justifiable and where required has met the requirement for competitive bidding.
 4. Funded – Sufficient funding exists to pay for the disbursement.
 5. Accurately recorded – The disbursement amount is consistent with an invoice presented for payment of a service or product provided to the City and is appropriately coded in accordance with the city's budget and State Auditor guidelines.
 6. Supportable – The amount being paid, or the amount of an adjustment is consistent with supporting documentation, standard, situation, or practice.
 7. Timely payment– The date of disbursement is within statutory requirements to avoid late fees being assessed.

8. Authorized - The disbursement is statutory and/or approved by the City Council.
9. Budgeted – The disbursement purpose has been provided for in the City budget or is within the terms of an approved contract.

RECEIPTS

1. Staff will use a numbered, duplicate money receipt or accounting program to document receipt of all cash payments made to the City.
2. The receipt should indicate method of payment)-with a copy provided to the payee, if desired.
3. For all check payments, staff will stamp the check with the City’s bank endorsement stamp indicating, “For Deposit Only”. An entry will be made in CTAS and shown as an accounting program entry. (Except those checks being forwarded to the City handling the utility billing process for the City of Birchwood). Utility payments made at Birchwood will be logged into an Excel spreadsheet. The spreadsheet will be sent to St. Anthony listing the resident name, address and amount of payment. The spreadsheet will be emailed to St. Anthony Village when payments are due. Checks are mailed to St. Anthony within 3 days of due date.
4. The staff will secure the receipt book along with all payments received daily. Both will be secured in the City’s safe.
5. The Deputy Clerk and Treasurer will investigate and resolve any discrepancies between receipted and deposited amounts.
6. The Deputy Clerk will
 - i. Code receipts according to statutory requirements or the City’s budget guidelines for entry into the City’s accounting system,
 - ii. Print and save an electronic copy of the CTAS Receipts Register report for the deposit period covered by the receipts and file for Council documentation and audit review.
7. The Treasurer is to review the CTAS Receipts Register report to ensure the total receipts in the report match the total of the funds received as part of the monthly reconciliation.
8. If the totals do not match, the Deputy Clerk and Treasurer will investigate and resolve any discrepancies.
9. The Deputy Clerk or Treasurer will prepare a deposit ticket for the bank deposit, and take the deposit to the bank for processing).
10. Staff will deposit all received payments into the appropriate City bank account weekly.
11. Each month, the Treasurer will provide a copy of the CTAS Receipts Register covering-receipts for the period/month to the City Council as an element of the Treasurer’s Report.

DISBURSEMENTS

1. Disbursements of City funds will be made using sequentially numbered, dual signed checks.
2. Checks for claims paid shall have printed or stamped on the reverse side (per statutory requirement), above the space for endorsement “The undersigned payee, in endorsing this check declares that the same is receive in payment of a just and correct claim against the City, and that no part of it has heretofore been paid”.
3. The City Council will authorize all disbursements of City funds, via check or electronic funds transfer (EFT) including those required by law (i.e., PERA, federal and state taxes, state surcharges, financial fees, bank charges, payroll, etc).
4. The Deputy Clerk will determine or verify, code, and enter validated claims as an entry into CTAS. All Vendor claims must have a written invoice detailing the expense to be paid. Personnel must complete an expense reimbursement form.
5. Each month, the Treasurer will print CTAS Claims List for Approval reports and provide it to the City Council for approval. All supporting documentation will be on file and available for review.
6. If the City Council approves the claims as presented, the date of approval will be notated on the Claims List for Approval report(s) by the Mayor or Deputy Mayor.
7. If a claim(s) is not approved by the City Council, the City Administrator will strike through all disapproved claims on the Claims List for Approval and present the corrected report to the Mayor or Deputy Mayor for signature. In addition, the meeting minutes shall state actions directed by the City Council disapproved claim.
8. The City Administrator will give the Deputy Clerk a copy of the *approved* Claims List for Approval report.
9. The Treasurer will use disapproved claims noted on the approved Claims List for Approval to VOID the unapproved claims in the CTAS program. The unapproved claims must be VOIDED in both the Claims and Disbursements modules of CTAS.
10. The Treasurer will provide disbursement checks to be signed at the City Council meeting (NOTE: payroll checks disbursements will occur every other Friday and will not be signed at the councilCouncilg)
11. The disbursement register will provide the following information for each check or EFT:

Date of the check or EFT,

Check or EFT number

Amount of check or EFT

Description of expense(s)

Fund and Account numbers to be charged.

14. The Treasurer will provide a copy of the CTAS Disbursement Register report with the Treasurer’s Report.

15. Staff and City Council should compare the Claims List for Approval report(s) against the Disbursement Register. If there appears to be an error the Deputy Clerk and Treasurer will work to rectify the discrepancy.
16. Each check must contain two signatures and be signed by the Mayor or Deputy Mayor AND Deputy Clerk or Treasurer. The Mayor may elect to use a signature stamp in lieu of a signature. The Deputy Clerk or Treasurer may be allowed to use the Mayor stamp as directed by the Mayor.
17. The City staff will promptly mail all signed checks.
18. The Deputy Clerk or Treasurer will attach a CTAS Claim Report to paid invoices along with a portion of the City's check stub or EFT confirmation and place in the City's paid claims files.
19. The Council will establish an annual delegation of authority to make electronic funds transfer. Authorization will be on file at the bank.
20. Any new vendor electronic payment must be approved by the Council prior to initiating the payment.
21. The Treasurer will receive and open all bank statements, reviewing the check images provided to ensure only approved disbursements have been paid. Any discrepancies will be documented, reviewed with the Deputy Clerk and if needed, presented to the City Council for review.
22. The Treasurer will reconcile the 4M bank account and US Bank account to CTAS on a monthly basis. These reconciliations will be available for review by the 20th of the following month.
23. The bank statements and/or reconciliations will be reviewed by a designated Council member twice a year. Any discrepancies will be resolved by staff with Council review. If needed the issue will be documented and presented to the City Council.
24. In accordance with M.S. 471.425, subd. 2, claims of the City shall be paid within 35 days from the date of receipt, unless disputed or as otherwise stipulated by the terms of a contract. Claims not paid within this time frame may be subject to penalty and interest charges assessed by the vendor, as provided for in M. S. 471.425, subd. 4.
25. Checks that have been issued but not cashed by the payee will go through the unclaimed property process as stated by statutes.

Payroll

1. The City Personnel Liaison and City Attorney will develop, and the City Council will approve personnel policies that set out the accounting for vacations, holidays, sick leave and other benefits.
2. Each pay period employees will provide a timesheet for wage payment. Timesheets for each employee will be reviewed and approved by the City Administrator.
3. The Treasurer or Deputy Clerk will validate the time listed on the timesheet has been added and totaled correctly. Any discrepancies found will be noted on the timesheet and a copy of the revision given to the City Administrator and employee.

4. The City Administrator is an exempt salaried employee. They are not required to submit a timecard except when taking vacation or sick leave. The Deputy Clerk or Treasurer will process the CTAS payroll checks from approved timesheets presented. The CTAS Net Pay Account Distribution report will be printed, after checks are printed, a portion of the paycheck stub attached to it and filed along with the supporting documentation in the claims folder).
5. The Treasurer or Deputy Clerk will review the Net Pay Account Distribution report and the supporting documentation to ensure all payroll payments are made to valid employees, any pay increases were authorized by the City Council.
6. All payroll entries for checks or EFTs processed will be shown on the Disbursement Register report, showing the payroll period and the net pay.
7. CTAS is to be used to print all payroll checks. Live payroll checks require two signatures and EFT (via direct deposit) instruments will be marked NON-NEGOTIABLE and remain unsigned.
8. Paychecks will be provided to employees on the designated pay date.
9. The Deputy Clerk or Treasurer will prepare all payroll related tax withholding and PERA deposits and reports. PERA and Payroll-related taxes, including employer share, shall be withheld and paid to the appropriate government agency on a timely basis.
10. The Deputy Clerk or Treasurer will prepare and mail year-end W-2's to employees, 1099's to vendors as needed and respond to inquiries regarding the same.
11. The Treasurer will keep employee records for each employee in CTAS that detail wage rates, benefits, taxes withheld, PERA and any changes in employment status.

Invoices

1. The Deputy Clerk will generate and distribute invoices or notice of payment due for City permits, fees, goods and/or services such as: City hall rental fees, water meter purchase, etc.
2. CTAS does not generate invoices; as a result, the Deputy Clerk will use City computer programs to generate invoices.

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

**MINUTES OF THE SPECIAL CITY COUNCIL MEETING
MARCH 30, 2023, 5:00 P.M.**

MEMBERS:

Margaret Ford	Mayor
Mark Foster	Councilmember
Ryan Hankins	Councilmember
Justin McCarthy	Councilmember
Katherine Weier	Councilmember

STAFF:

Becky Kellen	City Administrator
H. Alan Kantrud	City Attorney

GUESTS:

Brian Bachmeier	Senior Project Manager, Bolton & Menk
Marcus Johnson	Engineer, Bolton & Menk
Ben Wikstrom	Consultant

Minutes prepared by Anh Nguyen of Minutes Solutions Inc. from a video recording.

1. CALL TO ORDER

Mayor Ford called the meeting to order at 5:00 p.m.

2. PLEDGE OF ALLEGIANCE

3. APPROVAL OF AGENDA

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

Mayor Ford requested that the candidates for City Engineer and City Planner present following the approval of the consent agenda.

4. OPEN PUBLIC FORUM

There were no comments.

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

5. **ANNOUNCEMENTS**

There were no announcements.

6. **CITY BUSINESS – CONSENT AGENDA (0:02:22)**

a. **Approval of Resolution 2023-22 – Authorizing the Correction of Measurement**

On a motion made by Councilmember McCarthy, seconded by Councilmember Hankins, it was resolved to approve Resolution 2023-22, Authorizing the Correction of Measurement. All in favor; motion carried.

b. **Approval of March 2023 Closed Meeting Minutes (0:22:43): ACTION – Becky Kellen will make the requested amendments to the March 2023 closed meeting minutes and include the minutes on the consent agenda for approval at the next Council meeting**

Councilmember McCarthy requested a notation that a motion was duly made and carried to close the meeting and to include Mayor Ford’s balancing statement.

c. **Approval of 2024 City Assessor Fee Increase (0:25:00):**

On a motion made by Mayor Ford, seconded by Councilmember Weier, it was resolved to approve the 2024 city assessor fee increase. Councilmember McCarthy opposed. Motion carried.

Councilmember McCarthy expressed concern regarding the \$3 new line item fee for all other building permits and the potential for it to become costly for the city. He suggested the Council explore the market to ensure the city is receiving a competitive rate for city assessor services.

Councilmember Hankins queried the benefits of the city’s own assessor versus a county assessor. Councilmember Foster reported the city changed from a county assessor to a city assessor in recent years so residents could benefit from more interaction with the assessor, and for cost savings.

H. Alan Kantrud confirmed the change was made within the last four years due to discrepancies in values that residents knew to be true but did not match with the county. It was noted Washington County charged \$6,300 for assessor services in 2020.

7. **CITY BUSINESS**

a. **City Engineer – Bolton & Menk (0:05:35)**

ACTION – H. Alan Kantrud will review Section C, Limitation of Liability, and Section V, Limitation of Liability in the Bolton & Menk contract to confirm no potential concerns for the city.

H. Alan Kantrud reviewed the contract provided by Bolton & Menk and reported no concerns other than the city’s capability to terminate the contract based on certain conditions.

Bolton & Menk confirmed a \$300 lump sum fee per meeting only if the City Engineer’s attendance is requested. Only the designated City Engineer would attend, not a Senior Project Manager. Estimated costs for representatives can be provided in advance.

b. City Planner – Ben Wikstrom (0:12:30)

ACTION – H. Alan Kantrud will include a for-cause termination clause and an equal opportunity clause in the City Planner contract.

H. Alan Kantrud reported a final review of Ben Wikstrom’s revisions to the City Planner contract is pending. The final contract will be available for approval at the next Council meeting.

Ben Wikstrom confirmed his fee would reduce from \$2,400 to \$1,600 for 10 to 20 hours of City Planner time per month. He removed mileage from the contract and does not charge a meeting fee. He noted insurance for general liability and errors and omissions can be obtained and provided to Council.

c. Deputy Clerk Position Staff Recommendation (0:31:05)

On a motion made by Councilmember McCarthy, seconded by Councilmember Weier, it was resolved to approve the hiring of Therese Bellinger as the deputy clerk with a tentative start date of April 10, 2023. All in favor; motion carried.

ACTION – H. Alan Kantrud will prepare a resolution for the hiring of the deputy clerk to be included in the consent agenda for approval at the next Council meeting.

Five candidates were reviewed and rated by Mayor Ford, Councilmember Weier, Becky Kellen, and Mary Cahill, the City Treasurer. Two candidates were interviewed. Becky Kellen recommended the Council hire Therese Bellinger, due to her experience with bookkeeping, accounts payable and receivable, and permits, at a rate of \$30 per hour up to a maximum of 30 hours per week. The deputy clerk position was accounted for in the current fiscal year budget.

The Council noted a maximum of 30 hours per week for the deputy clerk is reasonable given that Mary Cahill and Becky Kellen have been working more hours due to an increased workload.

8. ADJOURNMENT

On a motion made by Councilmember Hankins, seconded by Councilmember McCarthy and carried unanimously, it was agreed that there was no further business of the Council to transact; the meeting was closed at 5:38 p.m. by Mayor Ford.

DISCLAIMER

The above minutes should be used as a summary of the motions passed and issues discussed at the meeting. This document shall not be considered a verbatim copy of every word spoken at the meeting.

Mayor Margaret Ford

City Administrator Becky Kellen

Date

Date

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

**MINUTES OF THE CITY COUNCIL MEETING
APRIL 11, 2023, 6:45 P.M.**

MEMBERS:

Margaret Ford	Mayor
Mark Foster	Councilmember
Ryan Hankins	Councilmember
Justin McCarthy	Councilmember
Katherine Weier	Councilmember (via teleconference)

STAFF:

Becky Kellen	City Administrator
H. Alan Kantrud	City Attorney

GUESTS:

Minutes prepared by Anh Nguyen of Minutes Solutions Inc. from a video recording.

1. CALL TO ORDER

Mayor Ford called the meeting to order at 6:45 p.m.

2. PLEDGE OF ALLEGIANCE

3. APPROVAL OF AGENDA

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

Becky Kellen requested the addition of the following item to the agenda:

- Section 8, City Business – New Business, Administrator Updates, Jim Rydeen Salary Increase

4. OPEN PUBLIC FORUM

James Nelson, 256 Wildwood Avenue, expressed his gratitude to Birchwood residents who supported his candidacy for mayor. He expressed concern regarding the ongoing discussions to resolve the previous Council pay raise issue and urged the Council to heed the Attorney General's opinion. He reiterated the importance of honesty and transparency from the Council.

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

5. **ANNOUNCEMENTS**

- A. **Planning Commission Meeting Public Forum:** A public forum to discuss variances for the properties at 127 Wildwood Avenue and 529 Lake Street will be held at the Planning Commission meeting scheduled for April 27, 2023, at 7:00 p.m.

6. **CITY BUSINESS – CONSENT AGENDA (0:05:50):**

On a motion made by Councilmember Weier, seconded by Councilmember McCarthy, it was resolved to approve the consent agenda with the exception of items A, E, H, and I. All in favor; motion carried.

A. **Approval of the March 14, 2023 Meeting Minutes:**

On a motion made by Councilmember Hankins, seconded by Councilmember McCarthy, it was resolved to approve the minutes of the Council meeting held on March 14, 2023, as amended. All in favor; motion carried.

The minutes of the Council meeting held on March 14, 2023, were provided for the Council's review and approval. Councilmember Weier requested the following amendment:

- Section 7.a., Next Steps, include requesting an updated proposal for engineering services from Bolton & Menk in the action item.

B. **Approval of the March 14, 2023, Closed Meeting Minutes**

C. **Approval of Resolution 2023-27 – Authorizing Hiring of Deputy Clerk**

- D. **Approval of the Treasurer's Report:** The Treasurer's report for the period ending April 5, 2023, was provided for the Council's review and approval.

E. **Approval of the Building in the City of Birchwood Village Document (0:09:40):**

On a motion made by Councilmember McCarthy, seconded by Councilmember Weier, it was resolved to direct city staff to convert the Building in the City of Birchwood Village document, as amended, to a web page to be posted on the City of Birchwood website for residents to view. All in favor; motion carried.

On a motion made by Councilmember McCarthy, seconded by Councilmember Weier, it was resolved to direct the Planning Commission to conduct an annual review of the Building in the City of Birchwood Village web page to ensure its accuracy and to date the review as completed. All in favor; motion carried.

Councilmember McCarthy made the following suggestions:

- Conditional Use Permit: Remove solar energy systems given the Council's current efforts to remove solar energy systems from the permitting process.
- Zoning Variances: Second paragraph, second sentence, remove "without practical difficulty".
- What are my neighbor's rights: Remove "your neighbor has the right to be notified and to comment" and replace it with "you may want to notify your neighbor".

- F. **Approval of the Parks Committee Bylaws**
- G. **Approval of the Engineer’s Review of Hall’s Marsh Priebe Lake Outfall Project**
- H. **Approval of the City Engineer Contract (0:16:40): ACTION – H. Alan Kantrud will follow up with Bolton & Menk’s legal counsel regarding the separation of Limitation of Liability in Section C and Section 5 of the engineering contract and will request to remove the notation regarding cancellations under Section 5, Signatures.**

Councilmember McCarthy requested to remove the items listed as “not used in this agreement” throughout the engineering contract. He expressed concern regarding the separation of Limitation of Liability in Sections C and 5, which appear to conflict with each other. He noted Section 5, Signatures conflicts with Section 4, L (2), which states that either party can terminate the contract at any time.

The Council agreed to defer the approval of the city engineer contract with Bolton & Menk pending revisions to be made. The contract will be approved at a special Council meeting to expedite the provision of city engineering services.

- a. **Approval of the City Planner Contract (0:24:45):**

On a motion made by Councilmember Weier, seconded by Councilmember Foster, it was resolved to approve the City Planner contract with Ben Wikstrom as presented. All in favor; motion carried.

H. Alan Kantrud confirmed that the monthly flat fee of \$1,600 is the equivalent of a retainer.

7. CITY BUSINESS – OLD BUSINESS

- A. **Second Reading of Ordinance 2023-03-01, Section 608 and 609 Firearms and Trapping (0:28:40)**

- a. **Public Hearing:**

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

- b. **Council Deliberation and Approval:**

On a motion made by Councilmember McCarthy, seconded by Councilmember Weier, it was resolved to approve the second reading of Ordinance 2023-03-01 replacing Ordinance No. 609 titled “Firearms” and repealing Ordinance No. 608 titled “Trapping Prohibited”. All in favor; motion carried.

- c. **Approve Resolution 2023-23 Approving Summary Publication of Ordinance 2023-03-01:**

On a motion made by Councilmember McCarthy, seconded by Councilmember Hankins, it was resolved to approve Resolution 2023-23 to approve a summary publication of Ordinance 2023-03-01. All in favor; motion carried.

B. Second Reading of Ordinance 2023-03-02, Section 610 Curfew, Firearms, Tobacco (0:33:07)

a. Public Hearing:

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

b. Council Deliberation and Approval:

On a motion made by Councilmember McCarthy, seconded by Councilmember Weier, it was resolved to approve the second reading of Ordinance 2023-03-02 repealing and replacing Ordinance No. 610 titled “Curfew for Minors, Firearms; Tobacco”. All in favor; motion carried.

c. Approve Resolution 2023-24 Approving Summary Publication of Ordinance 2023-03-02:

On a motion made by Councilmember McCarthy, seconded by Councilmember Weier, it was resolved to approve Resolution 2023-23 to approve a summary publication of Ordinance 2023-03-02, as amended. All in favor; motion carried.

ACTION – Becky Kellen will correct the ordinance number in subsection 1 to indicate Ordinance 2023-03-02 and the spelling of “ordinance” on page 2, in the second paragraph of the resolution.

C. Second Reading of Ordinance 2023-03-03, Section 201 Water Meters (0:38:50)

a. Public Hearing:

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

b. Council Deliberation and Approval:

On a motion made by Councilmember McCarthy, seconded by Mayor Ford, it was resolved to approve the second reading of Ordinance 2023-03-03 amending Section 201.080 of Ordinance 201 titled “City Water Systems”. All in favor; motion carried.

Becky Kellen reported one or two residents with outstanding water meter changes.

c. Approve Resolution 2023-25 Approving Summary Publication of Ordinance 2023-03-03:

On a motion made by Councilmember McCarthy, seconded by Councilmember Weier, it was resolved to approve Resolution 2023-25 to approve a summary publication of Ordinance 2023-03-03, as amended. All in favor; motion carried.

ACTION – Becky Kellen will correct the ordinance number in subsection 1 to indicate Ordinance 2023-03-03 and the spelling of “ordinance” on page 2, in the second paragraph of the resolution.

8. **CITY BUSINESS – NEW BUSINESS**

A. **First Reading of Ordinance 2023-04-01, Section 304.035 Variances (0:41:45)**

- a. **Planning Commission Review:** The Planning Commission recommended allowing for a one-year extension of the variance duration.
- b. **First Reading and Council Deliberation:** The proposed ordinance extends the duration that a variance is valid from one year to two years with the potential for a one-year extension, not to exceed a total of three years.

H. Alan Kantrud recommended including parameters in the ordinance. Councilmember McCarthy suggested the following amendment:

- Include “for a good cause” between “variance” and “not more than once by one year”.

- c. **Order Second Reading and Public Hearing:**

On a motion made by Councilmember McCarthy, seconded by Councilmember Hankins, it was resolved to order a second reading and public hearing for Ordinance 2023-04-01 amending Ordinance 304 titled “Variances”. All in favor; motion carried.

B. **Right-of-Way Code Revisions**

i) **First Reading of Ordinance 2023-04-02 Fee Schedule (0:55:30)**

- a. **Planning Commission Review:** The Planning Commission recommended the addition of a right-of-way degradation escrow in the amount of \$3,000 in the fee schedule for right-of-way fees.
- b. **First Reading and Council Deliberation:** Councilmember Hankins reported that the ordinance proposes fees were not clearly defined in the city’s code or previously documented in the fee schedule. The proposed fees are based on the fees charged by the surrounding communities. Councilmember McCarthy noted that the delay penalty fee should instead be an administrative fee.
- c. **Order Second Reading and Public Hearing:**

On a motion made by Councilmember McCarthy, seconded by Councilmember Hankins, it was resolved to order a second reading and public hearing for Ordinance 2023-04-02 amending the fee schedule. All in favor; motion carried.

ii) **First Reading of Ordinance 2023-04-03 Section 615 Exterior Storage (1:00:36)**

- a. **Planning Commission Review:** The Planning Commission supported the prohibition of outdoor storage containers being added to Section 615 of the city code.
- b. **First Reading and Council Deliberation:** Councilmember Hankins noted that Section 615 of the city code more closely relates to exterior storage containers than right-of-way issues. The code stipulates that exterior storage containers are not permitted on any public right-of-way and must be on private property.

c. **Order Second Reading and Public Hearing:**

On a motion made by Councilmember Hankins, seconded by Councilmember Weier, it was resolved to order a second reading and public hearing for Ordinance 2023-04-03 to adopt Section 060 of Ordinance 615 titled “Exterior Storage”. All in favor; motion carried.

iii) **First Reading of Ordinance 2023-04-04 Section 208/309 Regulating Public Rights of Way (1:01:55)**

a. **Planning Commission Review:** The Planning Commission supported the adoption of Section 208A as proposed.

b. **First Reading and Council Deliberation:** *ACTION – Councilmember Hankins will explore the best practices for granting telecommunication companies access to the poles in the city’s right-of-ways as it relates to Section 208A.090, subsection 1.c., Small Wireless Facility Permit, and will review Section 208A.130, subsection 3, Small Wireless Facility Permit Fee for completion.*

Councilmember Hankins noted that the proposed code manages telecommunication cables over the city’s right-of-ways and will be particularly important as CenturyLink upgrades its facilities.

Councilmember Foster expressed concern regarding additional costs to residents for tree removal services, or the like, which would require a service truck temporarily obstructing the right-of-way. H. Alan Kantrud noted that the original code was meant for the installation of commercial projects such as telecommunication cables, and not residential projects.

The Council agreed on the following amendments:

- Change any reference to “no person” to “registrant” and include an intent section to ensure residents are aware it does not pertain to residents.
- Section 208A.040 Administration: Change the “City Engineer” to “City Administrator”.
- Section 208A.060, subsection 1, Registration: Include “must register with the city prior to work”.
- Section 208A.060, subsection 3, Exceptions: Include mailboxes (defined as not a facility).

c. **Order Second Reading and Public Hearing:** The Council agreed to defer further discussion to the next Council meeting pending revisions. A first reading of Ordinance 2023-04-04 will be held at the next Council meeting.

C. **Resolution 2023-26 Councilmembers Declining Salaries (1:23:15)**

On a motion made by Councilmember Hankins, seconded by Councilmember McCarthy, it was resolved to approve Resolution 2023-26 Councilmembers Declining Salaries. All in favor; motion carried.

H. Alan Kantrud confirmed no legal implications to allowing the option for Councilmembers and/or the Mayor to voluntarily decline their salaries.

In regard to the Council pay raise issue, H. Alan Kantrud reported that a response from the General Counsel at the League of Minnesota Cities is pending. In the interim, a letter has been drafted with exact figures owed by previous Council members confirmed by the City Treasurer, including a copy of the Attorney General's opinion, to be sent to each of the previous Council members to formally request a return of the salary in question.

The letter suggests that civil or criminal penalties will follow if the funds are not returned. Should the funds not be returned, the Council would have to consider whether to sue the previous Council members in civil court or to refer to criminal prosecution since the funds are taxpayer's money that is being kept unlawfully.

Councilmember Foster noted the state statute is directory and not mandatory, which was not further explored in previous discussions regarding the Council pay raise issue. Mayor Ford emphasized that there is no clear directive on the action required to remediate the issue. Councilmember Weier suggested not to further pursue the issue if there is no legal obligation for the Council to collect the funds owed by the previous Council members.

Becky Kellen suggested a cost-benefit analysis for the city to proceed with attempts to recuperate the funds from the previous Council members. H. Alan Kantrud reported the state auditor identified that the issue may not be worth pursuing depending on the next course of action that the Council selects.

D. Update on the Century Avenue Coalition Meeting (1:34:40)

Mayor Ford reported the Century Avenue Coalition is in the information-gathering stage and encouraged feedback from residents and stakeholders. The work along Century Avenue located in Birchwood Village is complete, however, the Coalition's priority is to ensure that walking and biking paths are integrated to run along the entire length of Century Avenue.

E. Administrator Updates (1:36:15)

a. **Potential Tree Removal Delays in Polly's Park Due to Weather:** The deadline to remove the trees in Polly's Park is April 15, 2023; however, 14 trees slated for removal remain. Becky Kellen confirmed that the tree grant does not require the trees to be removed by the deadline.

b. **2023 Tree Inspection: ACTION** – *Becky Kellen will present the Council with a preliminary RFP for the 2023 tree inspection.*

An RFP will be required. Becky Kellen reported feedback that the tree inspection should be limited to public spaces. Councilmember Foster and Councilmember Hankins were in support of this feedback.

c. **2023 Canoe/Kayak Rack Non-Resident Rentals:** The Council discussed whether to grant non-residents access to the canoe/kayak rack rental and agreed that the city's ordinance does not allow it and to restrict the privilege to Birchwood residents only.

d. **May City Council Meeting Administrator Training Conflict:** Becky Kellen will not be in attendance at the next Council meeting in May 2023; however, she will prepare the meeting package in advance of the meeting.

e. Jim Rydeen Salary Increase:

On a motion made by Councilmember Hankins, seconded by Mayor Ford, it was resolved to approve a 6% salary increase for Jim Rydeen, the City Maintenance worker, at a rate of \$28.09 for maintenance work and \$22.48 for ice rink maintenance, effective immediately. All in favor; motion carried.

9. ADJOURNMENT

On a motion made by Mayor Ford, seconded by Councilmember McCarthy and carried unanimously, it was agreed that there was no further business of the Council to transact; the meeting was closed at 7:28 p.m. by Mayor Ford.

DISCLAIMER

The above minutes should be used as a summary of the motions passed and issues discussed at the meeting. This document shall not be considered a verbatim copy of every word spoken at the meeting.

Mayor Margaret Ford

City Administrator Becky Kellen

Date

Date

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

**MINUTES OF THE CITY OF BIRCHWOOD VILLAGE LOCAL BOARD OF APPEAL AND
EQUALIZATION MEETING OF 2023
April 11, 2023, 6:00 P.M.**

MEMBERS PRESENT:

Margaret Ford	Mayor/LBAE Member
Kathy Weier	Councilmember/LBAE Member
Justin McCarthy	Councilmember/LBAE Member
Ryan Hankins	Councilmember/LBAE Member
Mark Foster	Councilmember/LBAE Member

MEMBERS ABSENT:

None

STAFF:

Rebecca Kellen	City Administrator
Chase Peloquin	City Assessor

1. CALL TO ORDER

Mayor Ford called the meeting to order at 6:00 p.m.

2. CITY BUSINESS – REGULAR AGENDA

- A. 2023 Assessment Report for Birchwood Village
 - a. Presentation from City Assessor
- B. Appeals
 - a. Board of Appeals and Equalization to hear appeals

City Assessor Chase Peloquin reviewed and discussed the 2023 Assessment report for Birchwood Village with the Mayor and City Council Members.

There were no appeals brought forth to the board to the Local Board of Appeals and Equalization. A complete video recording of the full meeting is available online at www.cityofbirchwood.com.

3. ADJOURNMENT

On a motion made by Councilmember Mark Foster seconded by Councilmember Kathy Weier and carried unanimously, it was agreed that there was no further business of the Council to transact; the meeting was closed at 6:15 p.m. by Mayor Ford.

DISCLAIMER

The above minutes should be used as a summary of the motions passed and issues discussed at the meeting of the members of the Birchwood Village City Council. This document shall not be considered to be a verbatim copy of every word spoken at the meeting.

Mayor Margaret Ford

City Administrator Rebecca Kellen

Date

Date

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

**MINUTES OF THE SPECIAL CITY COUNCIL MEETING
APRIL 20, 2023, 5:00 P.M.**

MEMBERS:

Mark Foster	Councilmember
Ryan Hankins	Councilmember
Justin McCarthy	Councilmember

STAFF:

Becky Kellen	City Administrator
H. Alan Kantrud	City Attorney

CALL TO ORDER

Councilmember Mark Foster called the meeting to order at 5:00 p.m. on behalf of Mayor Ford.

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

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

AGENDA (unfinished New Business from regular meeting in April)

a. Approve City Engineer Contract

Alan Kantrud indicated that the contract was cleaned up in the liability section and the word solely was removed from the contract. He recommended passage.

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

b. Approve City Planner Contract

Alan Kantrud indicated that the contract was cleaned up from the previous meeting and he recommends passage.

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

ADJOURNMENT

On a motion made by Councilmember Foster, seconded by Councilmember McCarthy and carried unanimously, it was agreed that there was no further business of the Council to transact; the meeting was closed at 5:04 p.m. by Councilmember Foster.

DISCLAIMER

The above minutes should be used as a summary of the motions passed and issues discussed at the meeting. This document shall not be considered a verbatim copy of every word spoken at the meeting.

Mayor Margaret Ford

City Administrator Becky Kellen

Date

Date

Treasurer report for May Council meeting

Mary Cahill <Mary.Cahill@cityofbirchwood.com>

Wed 5/3/2023 12:06 PM

To: Rebecca Kellen <Rebecca.Kellen@cityofbirchwood.com>

📎 2 attachments (119 KB)

Revised Internal Controls.docx; WBL Utility Rate changes.pdf;

Items to note:

1. As mentioned last month, I updated the general funds beginning balance for 3 VOIDED checks from previous years. Total for the three voided checks was \$ 1539.43.
2. Cost for the two laptop replacements equaled \$2,466.90. I have submitted a request for reimbursement of one laptop from Ramsey/Washington Cable Commission since Becky occasionally has to use the laptop for presentations at the council meeting. They have approved the claim and will be issuing us a reimbursement check for \$1233.45.
3. Final billing from BrightView for 4-1-23 snow removal totaled \$ 1,725.00.
4. Manship billing for March did not have the water main break charges to the water emergency account. I revised for your signatures.
5. Total cost for the two water main breaks was \$18, 510.23. You may need to determine if a utility billing surcharge should be assessed.
6. Thatcher engineering had another large bill for the Wildwood Lift station. Total billing for the lift station for 2022 was \$ 79,718.49 and for 2023 \$37,820. I was under the understanding that the design was complete, so I have asked him for an explanation of this month's charges. I just received the invoice today so I am waiting on a response from Thatcher. All of these expenses have been logged to the Sewer Fund.
7. Alan has reviewed our revised financial internal controls. It includes the markup so you can see the alterations made. I will be attending the council meeting to answer any questions you may have on the controls. If possible, please send me your questions by Monday, May 8.
8. We have received revised water rates from White Bear Lake. I am attaching for your reference.

Thank you.

Mary Cahill

Treasurer

City of Birchwood Village, MN

email: mary.cahill@cityofbirchwood.com

website: <http://www.cityofbirchwood.com>



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City of White Bear Lake

Utility Rate Changes for 2023

Water Rates

Water Consumption Rates: White Bear Lake’s municipal water service involves the operation, maintenance, and repair of all facilities necessary for the production, storage, treatment and distribution of water. The usage rates listed below generate revenue for operating costs. Your winter quarter consumption sets the “base” consumption for the year. The non-winter conservation rate applies to the water consumption above the “base” level for the other three quarterly billing cycles during the year. The conversion from gallons to billing units remains the same at 1 unit = 750 gallons.

Water Infrastructure Fee: The Water Infrastructure fee generates revenues for future capital improvement investments.

Residential Customers:

Consumption Per Quarter	2022 Rate	2023 Rate
0-6,000 gallons (0-8 units)	\$14.16 flat fee	\$14.56 flat fee
Winter qtr >6,000 gallons (> 8 units)	1.77 per 750 gal	1.82 per 750 gal
Non-winter qtr >6,000 gallons (>8 units)	2.14 per 750 gal	2.20 per 750 gal
Other Fees Per Quarter	2022 Rate	2023 Rate
Infrastructure fee - includes \$1.00 for water meter replacement	\$6.00 per qtr	\$11.00 per qtr

Commercial and Institutional Customers:

Consumption Per Quarter	2022 Rate	2023 Rate
0-6,000 gallons (0-8 units)	\$13.68 flat fee	\$14.08 flat fee
6,001-20,250 gallons (8-27 units)	1.71 per 750 gal	1.76 per 750 gal
20,251-56,250 gallons (27-75 units)	1.77 per 750 gal	1.82 per 750 gal
>56,250 gallons (>75 units)	1.98 per 750 gal	2.04 per 750 gal
Non-winter quarter over base	2.14 per 750 gal	2.20 per 750 gal
Other Fees Per Quarter	2022 Rate	2023 Rate
Infrastructure fee	\$21.00 per qtr	\$30.00 per qtr
Meter Replacement Fee		
1" Meter	8.00 per qtr	8.00 per qtr
1.5" Meter	18.00 per qtr	18.00 per qtr
2" Meter	21.00 per qtr	21.00 per qtr
3" Meter	55.00 per qtr	55.00 per qtr
4" Meter	67.00 per qtr	67.00 per qtr
6" Meter	110.00 per qtr	110.00 per qtr

State Water Testing Fee: The State’s annual water testing fee is \$9.72 for 2023, which is \$2.43 each quarter. The City collects this fee on the quarterly utility bills and submits the funds directly to the State. The City does not set the rate nor keep any of the funds.

Sewer Rates

The City's sanitary sewer service provides for the collection and conveyance of wastewater from your home or business to the regional treatment plant. The regional treatment plant, owned by Metropolitan Council Environment Services (MCES), processes and safely returns the wastewater to the environment. There is no rate increase for 2023, the sewer rates remain at the 2022 level of \$4.60 per 750 gallons (1 unit) of wastewater contributed to the system. The City calculates your quarterly sewer charge based on your water consumption during the winter quarter or current water consumption, whichever is less. Customers using less than 6,000 gallons (8 units) receive a minimum fee of \$36.80.

Refuse and Recycling Rates

Refuse and Recycling Rates: Three separate contracted services are used to provide curbside residential refuse and recycling services: 1) Curbside collection provided by Republic Services, 2) Processing of recyclables at the Eureka Recycling processing facility, 3) Disposal of refuse at the tipping facility in Newport, co-operated by Ramsey-Washington counties. The cost of these services are passed on directly to residents through their quarterly utility bill. The following schedule is the service rate and does not include state or county taxes.

Service Level	2022 Rate	2023 Rate
30 Gallon (Senior)	\$38.37 per qtr	\$39.84 per qtr
30 Gallon	\$39.03 per qtr	\$40.62 per qtr
60 Gallon	\$55.86 per qtr	\$60.48 per qtr
90 Gallon	\$75.27 per qtr	\$83.37 per qtr

Recycle Processing Fee: The City contract with Eureka Recycling includes a revenue sharing formula, which means the City receives all revenues from the sale of the recyclables less the cost of processing the materials. There is no recycling processing fee for 2023.

Surface Water Management Fee

The Minnesota Pollution Control Agency administers the Municipal Separate Storm Sewer System (MS4) permit program, which works to reduce the amount of sediment and pollution that enters surface and ground water from storm sewer systems. Stormwater discharges associated with MS4s are subject to regulation under the Federal National Pollutant Discharge Elimination System program. The City has a Stormwater Pollution Prevention Program (SWPPP) to meet these MS4 permit requirements. The 2023 quarterly Surface Water Management Infrastructure fee is \$7.00 per Residential Equivalent Unit (REU) to support related program activities.

In 2023, the City is beginning to transition to a new REU based rate for commercial properties. The REU for each commercial property is calculated based on the property's size and the impervious surface coverage (areas that do not allow rain to infiltrate the ground) on the property. Commercial entities with an actual REU of 1-3 will pay the \$7.00 rate multiplied by their actual REU each quarter. Commercial entities with an actual REU of greater than 3 will be limited to the \$7.00 rate multiplied by 3. The City intends to increase the REU limit each year to allow entities with higher REU values to gradually get to their actual quarterly charge over an extended time frame.

For the Period : 4/6/2023 To 5/3/2023

<u>Name of Fund</u>	<u>Beginning Balance</u>	<u>Total Receipts</u>	<u>Total Disbursed</u>	<u>Ending Balance</u>	<u>Less Deposits In Transit</u>	<u>Plus Outstanding Checks</u>	<u>Total Per Bank Statement</u>
General Fund	\$577,335.05	\$11,041.55	\$26,626.05	\$561,750.55	\$1,380.25	\$21,652.90	\$582,023.20
Road and Bridge	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Other Federal Programs	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Comp Plan Grant	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Tree Canopy Care	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Special Rev Projects	\$19,170.69	\$0.00	\$0.00	\$19,170.69	\$0.00	\$0.00	\$19,170.69
Spec Rev - Warm House	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
REIMBURSED CONTRACTED SERVICES	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Birchwood In Re-hab Bond	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Sewer Re-hab Debt	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
CAPITAL PROJECT FUNDS (401 through 499)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
General Capital Projects	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Capital Project PW	\$111,711.31	\$0.00	\$0.00	\$111,711.31	\$0.00	\$0.00	\$111,711.31
Water	\$55,845.74	\$12,281.57	\$9,207.30	\$58,920.01	\$0.00	\$9,138.18	\$68,058.19
Sewer	\$81,129.02	\$17,117.91	\$15,154.39	\$83,092.54	\$0.00	\$15,036.90	\$98,129.44
Transit System	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Sewer Infrastructure	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Water Meter Upgrade Fees	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
American Rescue Act Proceeds	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Engineering Services	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Total	\$845,191.81	\$40,441.03	\$50,987.74	\$834,645.10	\$1,380.25	\$45,827.98	\$879,092.83

<u>Name of Fund</u>	<u>Beginning Balance</u>	<u>Total Receipts</u>	<u>Total Disbursed</u>	<u>Ending Balance</u>	<u>Less Deposits In Transit</u>	<u>Plus Outstanding Checks</u>	<u>Total Per Bank Statement</u>
Justin R. McCarthy	City Council/Town Board						Date
Katherine A Weier	City Council/Town Board						Date
Margaret Arola Ford	City Council/Town Board, Mayor						Date
Robert Mark Foster	City Council/Town Board						Date
Ryan A Hankins	City Council/Town Board						Date

Fund Name: All Funds

Date Range: 04/06/2023 To 05/03/2023

<u>Date</u>	<u>Vendor</u>	<u>Check #</u>	<u>Description</u>	<u>Void</u>	<u>Account Name</u>	<u>F-A-O-P</u>	<u>Total</u>
04/14/2023	Payroll Period Ending 04/14/2023	32408	Becky Kellen, City Administrator	N	Clerk - Treasurer	100-41401-100-	\$ 1,998.27
	Total For Check	32408					\$ 1,998.27
04/21/2023	Dell Marketing LP	32409*	2 Laptops for office use	N	Cable Eqpmt and Service	100-41950-320-	\$ 2,466.90
	Total For Check	32409					\$ 2,466.90
04/21/2023	Kodiak Power Solutions	32410*	Lake Ave Lift Station: Semi Annual Inspection	N	Sewer Utility	605-43190-314-	\$ 130.00
	Total For Check	32410					\$ 130.00
04/21/2023	Toshiba America Business Solutions	32411*	Printer Maintenance -4/9/23-5/8/23	N	Office Operations Supplies	100-41911-314-	\$ 10.62
	Total For Check	32411					\$ 10.62
04/21/2023	City of White Bear Lake Fire	32412*	Fire Srvc -April 2023	N	Fire	100-42201-314-	\$ 3,049.17
	Total For Check	32412					\$ 3,049.17
04/21/2023	H.A. Kantrud, P.A.	32413*	Attorney Services -April 2023	N	Legal Services	100-41601-300-	\$ 1,500.00
	Total For Check	32413					\$ 1,500.00
04/21/2023	Merrick Inc.	32414*	Q1 mailer	N	Newsletter	601-41960-350-	\$ 180.00
	Total For Check	32414					\$ 180.00
04/21/2023	BrightView Landscapes, LLC.	32415*	4/1 Snow Removal	N	Ice and Snow Removal	100-43125-314-	\$ 1,725.00
	Total For Check	32415					\$ 1,725.00
04/21/2023	White Bear Township	32416*	Contracted Services - Mar 2023	N	Sewer Utility	605-43190-314-	\$ 628.95
	Total For Check	32416					\$ 628.95
04/21/2023	TSE, Inc. Work Account	32417*	Janitorial Services - 4/6	N	General Government Buildings and Plant	100-41940-314-	\$ 26.88
	Total For Check	32417					\$ 26.88
04/21/2023	Press Publications	32418*	Deputy Clerk Posting, Prop Tax Assess, Variance 23-02, 23-03	N	Ordinances and Proceedings	100-41130-351-	\$ 130.13
		32418*				100-41130-351-	\$ 160.16
		32418*				100-41130-351-	\$ 160.16
		32418*			Unallocated Expenditures	100-49201-351-	\$ 424.00
	Total For Check	32418					\$ 874.45

Fund Name: All Funds

Date Range: 04/06/2023 To 05/03/2023

<u>Date</u>	<u>Vendor</u>	<u>Check #</u>	<u>Description</u>	<u>Void</u>	<u>Account Name</u>	<u>F-A-O-P</u>	<u>Total</u>
04/21/2023	CAPRA'S UTILITIES, INC	32419*	Water Main Break @ 221 Wildwood Ave-April 3rd	N	Wtr/Swr Emergency	601-43185-314-	\$ 5,799.50
		Total For Check	32419				\$ 5,799.50
04/21/2023	USS Minnesota One MT LLC	32420*	Energy Charges - March	N	General Government Buildings and Plant	100-41940-380-	\$ 104.31
		32420*			Sewer Utility	605-43190-380-	\$ 278.15
		32420*				605-43190-380-	\$ 504.15
		Total For Check	32420				\$ 886.61
04/21/2023	Minutes Solutions	32421*	Minutes for Mar 14 & 30 meeting	N	MISCELLANEOUS	100-49001-300-	\$ 305.00
		32421*				100-49001-300-	\$ 200.00
		Total For Check	32421				\$ 505.00
04/21/2023	Water Conservation Service Inc.	32422*	Water Main Leak Locates -4/2/2023 221 Wildwood Ave	N	Wtr/Swr Emergency	601-43185-300-	\$ 524.89
		Total For Check	32422				\$ 524.89
04/21/2023	LRS Portables, LLC	32423*	Portable Restrooms- April Billing	N	Parks	100-45207-314-	\$ 325.00
		Total For Check	32423				\$ 325.00
04/25/2023	PERA	EFT042523A*	Retirement funds- Becky Kellen PR 3/26/23 - 4/8/23	N	Clerk - Treasurer	100-41401-121-	\$ 366.13
		Total For Check	EFT042523A				\$ 366.13
04/25/2023	PERA	EFT042523B*	Retirement funds- Becky Kellen PR 4/9/23 - 4/22/23	N	Clerk - Treasurer	100-41401-121-	\$ 366.13
		Total For Check	EFT042523B				\$ 366.13
04/25/2023	PERA	EFT042523C*	Retirement funds- Therese Bellinger PR 4/9/23 - 4/22/23	N	Clerk - Treasurer	100-41401-121-	\$ 59.86
		Total For Check	EFT042523C				\$ 59.86
04/28/2023	Payroll Period Ending 04/24/2023	32424	Payroll for Rebecca Kellen-City Administrator	N	Clerk - Treasurer	100-41401-100-	\$ 1,998.27
		Total For Check	32424				\$ 1,998.27
04/28/2023	Payroll Period Ending 04/24/2023	32425	Payroll-Deputy Clerk-Therese Bellinger	N	Clerk - Treasurer	100-41401-100-	\$ 363.16
		Total For Check	32425				\$ 363.16

Fund Name: All Funds

Date Range: 04/06/2023 To 05/03/2023

<u>Date</u>	<u>Vendor</u>	<u>Check #</u>	<u>Description</u>	<u>Void</u>	<u>Account Name</u>	<u>F-A-O-P</u>	<u>Total</u>
04/28/2023	Xcel Energy	EFT041923A*	202 Wildwood Ave Lift , 207 Hall gas/electri , 407 1/2 lift, 423 Lake Ice Rink-2/20-3/23	N	General Government Buildings and Plant	100-41940-380-	\$ 318.99
		EFT041923A*			Parks	100-45207-380-	\$ 76.35
		EFT041923A*			Sewer Utility	605-43190-380-	\$(58.53)
		EFT041923A*				605-43190-380-	\$ 109.36
		Total For Check	EFT041923A				\$ 446.17
04/28/2023	Xcel Energy	EFT041923B*	210 Birchwood Tower	N	Water Utility	601-43180-380-	\$ 15.62
		Total For Check	EFT041923B				\$ 15.62
04/28/2023	Xcel Energy	EFT041923C*	407 Lake Lift Station Gas	N	Sewer Utility	605-43190-380-	\$ 34.25
		Total For Check	EFT041923C				\$ 34.25
04/28/2023	Xcel Energy	EFT041923D*	200 Wildwood Lift	N	Sewer Utility	605-43190-380-	\$ 32.41
		Total For Check	EFT041923D				\$ 32.41
04/28/2023	A T & T Mobility	EFT042423A*	Wireless for water tower- Apr 2 thru May 7	N	Water Utility	601-43180-382-	\$ 53.50
		Total For Check	EFT042423A				\$ 53.50
04/28/2023	Xcel Energy	EFT042823A*	Street Lighting 3/3 - 4/2	N	Street Lighting	100-43160-380-	\$ 1,366.16
		Total For Check	EFT042823A				\$ 1,366.16
05/02/2023	Manship Plumbing & Heating Inc	32426	Standby -April, water main break, testing for state lab /meet with state drink water insp	N	Water Utility	601-43180-314-	\$ 700.00
		32426				601-43180-314-	\$ 240.00
		32426			Wtr/Swr Emergency	601-43185-314-	\$ 1,210.00
		Total For Check	32426				\$ 2,150.00
05/02/2023	Steve Dean	32427	Tree and Brush Removal \$500, Water M Break \$400, Ash Tree Removal \$2800	N	Tree Removal	100-43135-314-	\$ 500.00
		32427				100-43135-314-	\$ 2,800.00
		32427			Wtr/Swr Emergency	601-43185-314-	\$ 400.00
		Total For Check	32427				\$ 3,700.00
05/02/2023	Press Publications	32428*	Ord #2023-04-01,02,03, Ord # 2023-23-02, Ord#2023-23-03	N	Ordinances and Proceedings	100-41130-351-	\$ 110.11
		32428*				100-41130-351-	\$ 80.08

Fund Name: All Funds

Date Range: 04/06/2023 To 05/03/2023

<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>
		32428*				100-41130-351-	\$ 80.08
	Total For Check	32428					\$ 270.27
05/02/2023	Tennis Sanitation, LLC	32429*	Recycling for Service Period: Mar - April 2023	N	Recycle	100-43300-314-	\$ 2,944.00
	Total For Check	32429					\$ 2,944.00
05/02/2023	Stoltzman, Cris	32430	Videography - Council Mtgs, Feb 14, Mar 10 Special Meeting, April 11 Council Meeting	N	Cable Eqpmt and Service	100-41950-314-	\$ 125.00
		32430				100-41950-314-	\$ 75.00
		32430				100-41950-314-	\$ 100.00
	Total For Check	32430					\$ 300.00
05/02/2023	MENARD'S - OAKDALE	32431*	Pothole Patch	N	Parks	100-45207-400-	\$(8.00)
		32431*			Wtr/Swr Emergency	601-43185-400-	\$ 83.79
	Total For Check	32431					\$ 75.79
05/02/2023	Gopher State One Call	32432*	Email tickets- April	N	Utility Locates	605-42805-314-	\$ 25.65
	Total For Check	32432					\$ 25.65
05/02/2023	Flattum, David	32433*	Reimbursement--Permit Fee Pd twice	N	MISCELLANEOUS	100-49001-430-	\$ 243.81
	Total For Check	32433					\$ 243.81
05/02/2023	Bernier, Michael and Jessica	32434*	Overpayment of utility bill--reimbursement, 430 Hall Ave	N	MISCELLANEOUS	100-49001-430-	\$ 14.77
	Total For Check	32434					\$ 14.77
05/02/2023	Payroll Period Ending 05/02/2023	32435	Payroll April Mary Cahill Treasurer	N	Clerk - Treasurer	100-41401-100-	\$ 264.79
	Total For Check	32435					\$ 264.79
05/02/2023	Payroll Period Ending 05/02/2023	32436	Payroll Jim Rydeen	N	Parks	100-45207-100-	\$ 495.76
	Total For Check	32436					\$ 495.76
05/03/2023	Thatcher Engineering, Inc	32437*	City Engineer -engineering, Wildwood Lift station,529 Lake, 469 Lake, 127 Wildwood	N	Engineer Service	100-41650-300-	\$ 700.00
		32437*				100-41650-300-	\$ 100.00
		32437*				100-41650-300-	\$ 300.00
		32437*				605-41650-300-	\$ 13,470.00

Fund Name: All Funds

Date Range: 04/06/2023 To 05/03/2023

<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	32437					\$ 14,570.00
05/03/2023	Minutes Solutions		32438*	Minutes for April 11	N	MISCELLANEOUS	100-49001-300-	\$ 200.00
		Total For Check	32438					\$ 200.00
Total For Selected Checks								\$ 50,987.74

Fund Name: All Funds

Date Range: 04/06/2023 To 05/03/2023

<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>
04/06/2023	Built Strong Exteriors	171735779*	BP # 2023-22, 533 Lake Ave	(04/06/2023) -	N	Building Permits	100-32211-	\$ 243.81
								\$ 243.81
04/12/2023	MN Management & Budget	171735794*	Fines	(04/12/2023) -	N	Court Fines	100-35101-	\$ 266.63
								\$ 266.63
04/18/2023	Northerns One Hour	171735792*	BP#2023-31, 521 Hall Ave	(04/18/2023) -	N	Building Permits	100-32211-	\$ 151.00
								\$ 151.00
04/18/2023	Pro Master Plumbing	171735793*	BP# 2023-30, 401 Birchwood Ave	(04/18/2023) -	N	Building Permits	100-32211-	\$ 151.00
								\$ 151.00
04/19/2023	Gale, Nadja	171735780*	BP 2023-26, 419B Wildwood Ave	(04/19/2023) - 1	N	Building Permits	100-32211-	\$ 151.00
								\$ 151.00
04/19/2023	Place, Andrew	171735781*	Kayak Permit	(04/19/2023) - 1	N	Kayak/Canoe Permits	100-32212-	\$ 30.00
								\$ 30.00
04/19/2023	Madison, Donna	171735782*	Kayak Permit	(04/19/2023) - 1	N	Kayak/Canoe Permits	100-32212-	\$ 30.00
								\$ 30.00
04/19/2023	Seifert, Adam	171735783*	2 kayak permits	(04/19/2023) - 1	N	Kayak/Canoe Permits	100-32212-	\$ 60.00
								\$ 60.00
04/19/2023	Wallace, Rosemary	171735784*	3 Kayak Permits	(04/19/2023) - 1	N	Kayak/Canoe Permits	100-32212-	\$ 90.00
								\$ 90.00
04/19/2023	Heisdorffer, Kevin	171735785*	VB-04, 423 Wildwood, Variance Application	(04/19/2023) - 1	N	Building Permits	100-32211-	\$ 600.00
								\$ 600.00

Fund Name: All Funds

Date Range: 04/06/2023 To 05/03/2023

<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>
04/19/2023	Heisdorffer, Kevin	171735786*	VB- 04, Escrow Dep, 423 Wildwood Ave	(04/19/2023) - 1	N	Escrow Deposits	100-36245-8	\$ 3,000.00
								\$ 3,000.00
04/19/2023	N & M Transfer CO	171735787*	refund of shipping cost for cones	(04/19/2023) - 1	N	Miscellaneous	100-36140-	\$ 159.39
								\$ 159.39
04/19/2023	Eisele, Ryan	171735788*	Outstanding money owed for BP, 421 Birchwood Ct	(04/19/2023) - 1	N	Building Permits	100-32211-	\$ 50.00
								\$ 50.00
04/19/2023	Built Strong Exteriors	171735789*	BP# 2023-29, 511 Lake Ave	(04/19/2023) -	N	Building Permits	100-32211-	\$ 157.11
								\$ 157.11
04/19/2023	Built Strong Exteriors	171735790*	BP# 2023-28, 509 Lake Ave	(04/19/2023) -	N	Building Permits	100-32211-	\$ 446.55
								\$ 446.55
04/19/2023	Built Strong Exteriors	171735791*	BP# 2023-22, 533 Lake Ave	(04/19/2023) -	N	Building Permits	100-32211-	\$ 243.81
								\$ 243.81
04/28/2023	4 M Fund	171735795	April interest	(04/28/2023) -	N	Interest Earning	100-36210-	\$ 3,707.82
								\$ 3,707.82
04/28/2023	Residents - via St Anthony Village	171735803	Utility Billing-April	(04/28/2023) -	N	Leaf Collection	100-34408-	\$ 116.41
							100-34408-5	\$ 6.77
							601-37111-	\$ 8,775.76
							601-37112-	\$ 2,357.81
							601-37112-	\$ 49.48
							601-37113-	\$ 156.83
							601-37115-	\$ 269.56
							601-37116-	\$ 468.81
							601-37117-	\$ 44.49
							601-37118-	\$ 80.00
							601-37160-	\$ 78.83
							605-37211-	\$ 9,075.52
							605-37212-	\$ 8,038.02
							605-37213-	\$(35.34)
							605-37260-	\$ 39.71

Fund Name: All Funds

Date Range: 04/06/2023 To 05/03/2023

<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>
								\$ 29,522.66
05/02/2023	1st Team Exteriors	171735804*	BP # 2023-32 203 Birchwood Ave	(05/02/2023) -	N	Building Permits	100-32211-	\$ 215.25
								\$ 215.25
05/03/2023	Haupt, Mary	171735796*	Kayak Permit	(05/03/2023) - 1	N	Kayak/Canoe Permits	100-32212-	\$ 60.00
								\$ 60.00
05/03/2023	Tomlinson, Cynthia	171735797*	Hall Rental	(05/03/2023) - 1	N	City/Town Hall Rent	100-34101-	\$ 25.00
								\$ 25.00
05/03/2023	Engquist-Geisenheyner, Saira	171735798*	Hall Rental	(05/03/2023) - 1	N	City/Town Hall Rent	100-34101-	\$ 25.00
								\$ 25.00
05/03/2023	Florence, Mitchell	171735799*	Kayak Permit	(05/03/2023) - 1	N	Kayak/Canoe Permits	100-32212-	\$ 60.00
								\$ 60.00
05/03/2023	Hegedus, Jozsef	171735800*	Kayak Permit	(05/03/2023) - 1	N	Kayak/Canoe Permits	100-32212-	\$ 30.00
								\$ 30.00
05/03/2023	Webber, Dan	171735801*	Kayak Permit	(05/03/2023) - 1	N	Kayak/Canoe Permits	100-32212-	\$ 30.00
								\$ 30.00
05/03/2023	Wippler, Luke	171735802*	Outstanding Eng Fees	(05/03/2023) - 1	N	Building Permits	100-32211-	\$ 935.00
								\$ 935.00
Total for Selected Receipts								\$ 40,441.03

As on 5/3/2023

Special Rev Projects

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
Receipts:			
Dock/Lift Permit Fee	0.00	15,750.00	15,750.00
Total Acct 322	0.00	15,750.00	15,750.00
Total Revenues	0.00	15,750.00	15,750.00
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		3,420.69	
Total Receipts and Other Financing Sources		15,750.00	
Total Disbursements and Other Financing Uses		0.00	
Cash Balance as of 05/03/2023		19,170.69	

As on 5/3/2023

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		111,711.31	
Total Receipts and Other Financing Sources		0.00	
Total Disbursements and Other Financing Uses		0.00	
Cash Balance as of 05/03/2023		111,711.31	

As on 5/3/2023

Water

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
Receipts:			
Water Consumption	0.00	34,002.84	34,002.84
Water Utility User Fee	0.00	13,806.44	13,806.44
Water Main-break Surcharge	0.00	7,298.46	7,298.46
Special Water Charges	0.00	324.56	324.56
State Surcharge	0.00	1,448.86	1,448.86
Certified Bills Collections	0.00	44.49	44.49
Administrative Fee Move/Out	0.00	180.00	180.00
Penalties and Forfeited Discounts	0.00	324.07	324.07
Total Acct 371	0.00	57,429.72	57,429.72
Total Revenues	0.00	57,429.72	57,429.72
Other Financing Sources:			
Total Other Financing Sources	0.00	0.00	0.00
Disbursements:			
Financial Administration			
Contracted Services	0.00	2,250.81	(2,250.81)
Total Acct 415	0.00	2,250.81	(2,250.81)
Newsletter			
Printing and Binding (351 through 359)	0.00	360.96	(360.96)
Total Acct 419	0.00	360.96	(360.96)
Water Utility			
Contracted Services	0.00	25,390.34	(25,390.34)
Utility Services (381 through 389)	0.00	2,523.44	(2,523.44)
Utility Services: Water	0.00	214.00	(214.00)
Fees	0.00	817.00	(817.00)
Wtr/Swr Emergency			
PROFESSIONAL SERVICES (301 through 319)	0.00	1,050.44	(1,050.44)
Contracted Services	0.00	17,376.00	(17,376.00)
REPAIRS AND MAINTENANCE - CONTRACTUAL (401 through 409)	0.00	83.79	(83.79)
Total Acct 431	0.00	47,455.01	(47,455.01)
Total Disbursements	0.00	50,066.78	(50,066.78)
Other Financing Uses:			
Total Other Financing Uses	0.00	0.00	0.00
Beginning Cash Balance		51,557.07	
Total Receipts and Other Financing Sources		57,429.72	
Total Disbursements and Other Financing Uses		50,066.78	
Cash Balance as of 05/03/2023		58,920.01	

As on 5/3/2023

Sewer

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
Receipts:			
Sewer Consumption	0.00	28,745.72	28,745.72
Sewer Minimum Charge	0.00	23,715.47	23,715.47
Sewer Only	0.00	(35.34)	(35.34)
Penalties and Forfeited Discounts	0.00	145.20	145.20
Total Acct 372	0.00	52,571.05	52,571.05
Total Revenues	0.00	52,571.05	52,571.05
Other Financing Sources:			
Total Other Financing Sources	0.00	0.00	0.00
Disbursements:			
Postage/Postal Permits			
Refunds and Reimbursements	0.00	896.25	(896.25)
Total Acct 414	0.00	896.25	(896.25)
Engineer Service			
PROFESSIONAL SERVICES (301 through 319)	0.00	37,820.00	(37,820.00)
Total Acct 416	0.00	37,820.00	(37,820.00)
Utility Locates			
Contracted Services	0.00	99.95	(99.95)
Total Acct 428	0.00	99.95	(99.95)
Sewer Utility			
Sewer - Wastewater Charge	0.00	19,874.80	(19,874.80)
Contracted Services	0.00	2,329.92	(2,329.92)
Utility Services (381 through 389)	0.00	3,510.80	(3,510.80)
Total Acct 431	0.00	25,715.52	(25,715.52)
Total Disbursements	0.00	64,531.72	(64,531.72)
Other Financing Uses:			
Total Other Financing Uses	0.00	0.00	0.00
Beginning Cash Balance		95,053.21	
Total Receipts and Other Financing Sources		52,571.05	
Total Disbursements and Other Financing Uses		64,531.72	
Cash Balance as of 05/03/2023		83,092.54	

Date Range : 5/3/2023 To 5/3/2023

<u>Date</u>	<u>Vendor</u>	<u>Description</u>	<u>Claim #</u>	<u>Total</u>	<u>Account #</u>	<u>Account Name</u>	<u>Detail</u>
05/03/2023	Minutes Solutions	Minutes for April 11	6452*	\$200.00	100-49001-300-	MISCELLANEOUS	\$200.00
05/03/2023	Thatcher Engineering, Inc	City Engineer -engineering, Wildwood Lift station,529 Lake, 469 Lake, 127 Wildwood	6453*	\$14,570.00	605-41650-300- 100-41650-300- 100-41650-300- 100-41650-300-	Engineer Service Engineer Service Engineer Service Engineer Service	\$13,470.00 \$700.00 \$100.00 \$300.00
Total For Selected Claims				\$14,770.00			\$14,770.00

Justin R. McCarthy

City Council/Town Board

Date

Katherine A Weier

City Council/Town Board

Date

Margaret Arola Ford

City Council/Town Board, Mayor

Date

Robert Mark Foster

City Council/Town Board

Date

Ryan A Hankins

City Council/Town Board

Date

Date Range : 3/21/2023 To 4/21/2023

<u>Date</u>	<u>Vendor</u>	<u>Description</u>	<u>Claim #</u>	<u>Total</u>	<u>Account #</u>	<u>Account Name</u>	<u>Detail</u>
04/21/2023	Dell Marketing LP	2 Laptops for office use	6419*	\$2,466.90	100-41950-320-	Cable Eqmpt and Service	\$2,466.90
04/21/2023	Kodiak Power Solutions	Lake Ave Lift Station: Semi Annual Inspection	6420*	\$130.00	605-43190-314-	Sewer Utility	\$130.00
04/21/2023	Toshiba America Business Solutions	Printer Maintenance -4/9/23-5/8/23	6421*	\$10.62	100-41911-314-	Office Operations Supplies	\$10.62
04/21/2023	City of White Bear Lake Fire	Fire Svc -April 2023	6422*	\$3,049.17	100-42201-314-	Fire	\$3,049.17
04/21/2023	H.A. Kantrud, P.A.	Attorney Services -April 2023	6423*	\$1,500.00	100-41601-300-	Legal Services	\$1,500.00
04/21/2023	Merrick Inc.	Q1 mailer	6424*	\$180.00	601-41960-350-	Newsletter	\$180.00
04/21/2023	BrightView Landscapes, LLC.	4/1 Snow Removal	6425*	\$1,725.00	100-43125-314-	Ice and Snow Removal	\$1,725.00
04/21/2023	White Bear Township	Contracted Services - Mar 2023	6426*	\$628.95	605-43190-314-	Sewer Utility	\$628.95
04/21/2023	TSE, Inc. Work Account	Janitorial Services - 4/6	6427*	\$26.88	100-41940-314-	General Government Buildings and Plant	\$26.88
04/21/2023	Press Publications	Deputy Clerk Posting, Prop Tax Assess, Variance 23-02, 23-03	6428*	\$874.45	100-49201-351- 100-41130-351- 100-41130-351- 100-41130-351-	Unallocated Expenditures Ordinances and Proceedings Ordinances and Proceedings Ordinances and Proceedings	\$424.00 \$130.13 \$160.16 \$160.16

Date Range : 3/21/2023 To 4/21/2023

<u>Date</u>	<u>Vendor</u>	<u>Description</u>	<u>Claim #</u>	<u>Total</u>	<u>Account #</u>	<u>Account Name</u>	<u>Detail</u>
04/21/2023	CAPRA'S UTILITIES, INC	Water Main Break @ 221 Wildwood Ave-April 3rd	6429*	\$5,799.50	601-43185-314-	Wtr/Swr Emergency	\$5,799.50
04/21/2023	USS Minnesota One MT LLC	Energy Charges - March	6430*	\$886.61	605-43190-380- 100-41940-380- 605-43190-380-	Sewer Utility General Government Buildings and Plant Sewer Utility	\$504.15 \$104.31 \$278.15
04/21/2023	Minutes Solutions	Minutes for Mar 14 & 30 meeting	6431*	\$505.00	100-49001-300- 100-49001-300-	MISCELLANEOUS MISCELLANEOUS	\$305.00 \$200.00
04/21/2023	Water Conservation Service Inc.	Water Main Leak Locates -4/2/2023 221 Wildwood Ave	6432*	\$524.89	601-43185-300-	Wtr/Swr Emergency	\$524.89
04/21/2023	LRS Portables, LLC	Portable Restrooms- April Billing	6433*	\$325.00	100-45207-314-	Parks	\$325.00
Total For Selected Claims				\$18,632.97			\$18,632.97

Date Range : 3/21/2023 To 4/21/2023

<u>Date</u>	<u>Vendor</u>	<u>Description</u>	<u>Claim #</u>	<u>Total</u>	<u>Account #</u>	<u>Account Name</u>	<u>Detail</u>
	Justin R. McCarthy		City Council/Town Board			Date	
	Katherine A Weier		City Council/Town Board			Date	
	Margaret Arola Ford		City Council/Town Board, Mayor			Date	
	Robert Mark Foster		City Council/Town Board			Date	
	Ryan A Hankins		City Council/Town Board			Date	

Date Range : 5/2/2023 To 5/2/2023

<u>Date</u>	<u>Vendor</u>	<u>Description</u>	<u>Claim #</u>	<u>Total</u>	<u>Account #</u>	<u>Account Name</u>	<u>Detail</u>
05/02/2023	Manship Plumbing & Heating Inc	Standby -April, water main break, testing for state lab /meet with state drink water insp	6443	\$2,150.00	601-43180-314- 601-43185-314- 601-43180-314-	Water Utility Wtr/Swr Emergency Water Utility	\$700.00 \$1,210.00 \$240.00
05/02/2023	Steve Dean	Tree and Brush Removal \$500, Water M Break \$400, Ash Tree Removal \$2800	6444	\$3,700.00	100-43135-314- 601-43185-314- 100-43135-314-	Tree Removal Wtr/Swr Emergency Tree Removal	\$500.00 \$400.00 \$2,800.00
05/02/2023	Press Publications	Ord #2023-04-01,02,03, Ord # 2023-23-02, Ord#2023-23-03	6445*	\$270.27	100-41130-351- 100-41130-351- 100-41130-351-	Ordinances and Proceedings Ordinances and Proceedings Ordinances and Proceedings	\$110.11 \$80.08 \$80.08
05/02/2023	Tennis Sanitation, LLC	Recycling for Service Period: Mar - April 2023	6446*	\$2,944.00	100-43300-314-	Recycle	\$2,944.00
05/02/2023	Stoltzman, Cris	Videography - Council Mtgs, Feb 14, Mar 10 Special Meeting, April 11 Council Meeting	6447	\$300.00	100-41950-314- 100-41950-314- 100-41950-314-	Cable Eqpmt and Service Cable Eqpmt and Service Cable Eqpmt and Service	\$125.00 \$75.00 \$100.00
05/02/2023	MENARD'S - OAKDALE	Pothole Patch	6448*	\$75.79	601-43185-400- 100-45207-400-	Wtr/Swr Emergency Parks	\$83.79 (-\$8.00)
05/02/2023	Gopher State One Call	Email tickets- April	6449*	\$25.65	605-42805-314-	Utility Locates	\$25.65

Date Range : 5/2/2023 To 5/2/2023

<u>Date</u>	<u>Vendor</u>	<u>Description</u>	<u>Claim #</u>	<u>Total</u>	<u>Account #</u>	<u>Account Name</u>	<u>Detail</u>
05/02/2023	Flattum, David	Reimbursement--Permit Fee Pd twice	6450*	\$243.81	100-49001-430-	MISCELLANEOUS	\$243.81
05/02/2023	Bernier, Michael and Jessica	Overpayment of utility bill--reimbursement, 430 Hall Ave	6451*	\$14.77	100-49001-430-	MISCELLANEOUS	\$14.77
Total For Selected Claims				\$9,724.29			\$9,724.29

Justin R. McCarthy	City Council/Town Board	Date
Katherine A. Weier	City Council/Town Board	Date
Margaret Arola Ford	City Council/Town Board, Mayor	Date
Robert Mark Foster	City Council/Town Board	Date
Ryan A. Hankins	City Council/Town Board	Date

Date Range : 3/21/2023 To 4/28/2023

<u>Date</u>	<u>Vendor</u>	<u>Description</u>	<u>Claim #</u>	<u>Total</u>	<u>Account #</u>	<u>Account Name</u>	<u>Detail</u>
04/19/2023	Xcel Energy	202 Wildwood Ave Lift , 207 Hall gas/electri , 407 1/2 lift, 423 Lake Ice Rink-2/20-3/23	6434*	\$446.17			
					605-43190-380-	Sewer Utility	\$109.36
					100-41940-380-	General Government Buildings and Plant	\$318.99
					605-43190-380-	Sewer Utility	(\$58.53)
					100-45207-380-	Parks	\$76.35
04/19/2023	Xcel Energy	210 Birchwood Tower	6435*	\$15.62			
					601-43180-380-	Water Utility	\$15.62
04/19/2023	Xcel Energy	407 Lake Lift Station Gas	6436*	\$34.25			
					605-43190-380-	Sewer Utility	\$34.25
04/19/2023	Xcel Energy	200 Wildwood Lift	6437*	\$32.41			
					605-43190-380-	Sewer Utility	\$32.41
04/28/2023	Xcel Energy	Street Lighting 3/3 - 4/2	6438*	\$1,366.16			
					100-43160-380-	Street Lighting	\$1,366.16
04/24/2023	A T & T Mobility	Wireless for water tower- Apr 2 thru May 7	6439*	\$53.50			
					601-43180-382-	Water Utility	\$53.50
Total For Selected Claims				\$1,948.11			\$1,948.11

Date Range : 3/21/2023 To 4/28/2023

<u>Date</u>	<u>Vendor</u>	<u>Description</u>	<u>Claim #</u>	<u>Total</u>	<u>Account #</u>	<u>Account Name</u>	<u>Detail</u>
	Justin R. McCarthy		City Council/Town Board				Date
	Katherine A Weier		City Council/Town Board				Date
	Margaret Arola Ford		City Council/Town Board, Mayor				Date
	Robert Mark Foster		City Council/Town Board				Date
	Ryan A Hankins		City Council/Town Board				Date

Date Range : 4/24/2023 To 4/25/2023

<u>Date</u>	<u>Vendor</u>	<u>Description</u>	<u>Claim #</u>	<u>Total</u>	<u>Account #</u>	<u>Account Name</u>	<u>Detail</u>
04/25/2023	PERA	Retirement funds- Becky Kellen PR 3/26/23 - 4/8/23	6440*	\$366.13	100-41401-121-	Clerk - Treasurer	\$366.13
04/25/2023	PERA	Retirement funds- Becky Kellen PR 4/9/23 - 4/22/23	6441*	\$366.13	100-41401-121-	Clerk - Treasurer	\$366.13
04/25/2023	PERA	Retirement funds- Therese Bellinger PR 4/9/23 - 4/22/23	6442*	\$59.86	100-41401-121-	Clerk - Treasurer	\$59.86
Total For Selected Claims				\$792.12			\$792.12

Justin R. McCarthy	City Council/Town Board	Date
Katherine A Weier	City Council/Town Board	Date
Margaret Arola Ford	City Council/Town Board, Mayor	Date
Robert Mark Foster	City Council/Town Board	Date
Ryan A Hankins	City Council/Town Board	Date

RESOLUTION 2023-29

A RESOLUTION RECOGNIZING STEVE THATCHER’S SERVICE AS CITY ENGINEER

WHEREAS Steve Thatcher was appointed as City Engineer by the City Council on April 9, 2013.

WHEREAS Mr. Thatcher served the City as our Engineer for over ten years.

WHEREAS Mr. Thatcher announced his retirement in late 2022 and retired in April 2023.

WHEREAS Mr. Thatcher has been involved with many of the land use decisions in the City of Birchwood Village over many years, has ensured that the village maintains high standards, protected the environment and ensured the health and welfare of our residents and visitors.

WHEREAS Mr. Thatcher has advised the City on diverse issues, including drainage and runoff, wetland preservation, subdivisions, city regulations, variances, permit applications and utilities.

WHEREAS The City of Birchwood Village would be a very different place without the contributions of Mr. Thatcher and the value of his expertise and wisdom.

WHEREAS The City wishes to honor Mr. Thatcher for his long and valuable service to the City.

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

Recently retired City Engineer Steve Thatcher is hereby honored and commended for his service to the City of Birchwood Village over ten years, for his consistent and reliable advice, for his diverse and valuable contributions, and for his personal involvement in our City.

Passed by the City Council of Birchwood Village, Minnesota this 8th day of May, 2023.

Mayor

Attested:

City Clerk

RESOLUTION 2023-30
CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY,
MINNESOTA

A Resolution Authorizing the Adjustment of fund balances for 2023

WHEREAS, the City has budgets for various departments and funds in anticipation of expenses, and

WHEREAS, the City has identified the need to transfer funds to cover the costs of Road Maintenance, and

WHEREAS, our Treasurer has identified the following specific funds that need adjustments:

1. Transfer \$28500 from Fund 406 Capital Project Fund to 100 (General Fund)

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Birchwood Village hereby authorizes the following:

I. Adjusting the following fund balances by increasing these amounts

1. Transferring \$28500 from Fund 406 Capital Project Fund to 100 (General Fund) to cover the costs of road maintenance.

Passed by the City Council of The City of Birchwood Village, Minnesota this

_____ th day of _____, 2023.

Margaret Ford, Mayor

Rebecca Kellen, City Administrator

RESOLUTION 2023-31
CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA

**A Resolution Suspending the City Council Procedure As It Relates To When Public
Comment Is Taken On A Variance Request/Application**

WHEREAS, the City normally conducts Public Hearings/takes Public Comment in the Planning Commission on Variance Applications, and

WHEREAS, the City has taken in a Variance Application that has been through the Planning Commission already and Public Comment was taken for the Variance Application as it was presented, and

WHEREAS, the Planning Commission also addressed two other Variances that the Applicant required but did not apply for, and

WHEREAS, the City does not want to slow-down the Application by send the matter back to the Planning Commission for another opportunity for public comment and,

WHEREAS, the City has noticed and notified the neighbors and the Public of their opportunity to comment on the Variance Application at its upcoming City Council Meeting where it will also address the Variances themselves and,

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Birchwood Village hereby authorizes the following:

1. The Suspension of the requirement under council procedure that the public hearing/ comment time be offered at the Planning Commission for this particular application given that the Planning Commission has had one already and the City Council will take in any comments themselves in lieu of the Planning Commission having to have another one a month from now.

Passed by the City Council of The City of Birchwood Village, Minnesota this 9th day of May, 2023.

Margaret Ford, Mayor

Attest:

Rebecca Kellen, City Administrator

To: Council

From: Justin McCarthy and Kathy Weier, Parks Committee liaisons

RE: Kay Beach Disabled Parking

Summary: The Parks and Natural Resources Committee unanimously voted (4-0 with one member absent), in its April meeting that the disabled parking spot on Kay Beach should be removed and the chain placed over the entrance. One member expressed interest in opening the chain up on the side a smaller width to better allow entrance/exit without having to go onto the neighbor's property. I will explore that with Becky and our maintenance person Jim Rydeen.

For context, below is the previous memo to the Council on the issue.

Kay Beach is a beach in Birchwood dedicated to swimming. Previous Council experimented with opening the chain gate at Kay and putting a disabled parking space in the center of the parcel, about half-way down.

In talking with nearby residents and in my own observations, this disabled space is rarely used for disabled parking. Unfortunately, by removing the chain gate, it allows cars to (illegally) drive right down on the beach and to the water's edge. This has been happening with increasing frequency. Cars have frequently been observed backing all the way to the waterfront to launch watercraft such as kayaks and canoes and to dump substances into the lake.

Because this traffic is well past the parking spot, this conduct is in violation of City Ordinance 607.810 which states "No person shall park, drive or operate a motor vehicle within any Open Space Site except upon roadways, parking areas, parkways, or other areas designated for such use ..."

In addition to being a violation of City Ordinances, such conduct is dangerous as Kay Beach has become a very popular destination for beach-goers. Small children often play in the shallow and sandy beaches there and are often less attentive to traffic and their surroundings whilst there. Having traffic mixed with that usage is a recipe for disaster.

In addition to being a violation of Ordinances and dangerous, such usage threatens the health of White Bear Lake. Motor vehicles that are not properly maintained and in good working order may leak fluids such as motor oil and gasoline onto the sand and into the Lake.

This past summer I personally observed a woman who repeatedly and regularly launched her Kayak into the lake by backing her car right up to the shore. I also witnessed a man and his son back up their car to the lake to dump some unknown muddy substances from a large fish-tank into the lake. It was only due to my intervention that the man and his son left without dumping the contents.

Finally, because the gate is open, a large path has been worn on the beach from vehicular traffic where the grass is no longer growing and there is nothing but dirt.

RESOLUTION 2023-32

RESOLUTION REMOVING THE DISABLED PARKING SPOT AT KAY BEACH

WHEREAS, the City of Birchwood Village currently has a disabled parking spot that allows disabled persons to drive their car part-way down Kay Beach.

WHEREAS, the City of Birchwood Village has designated Kay Beach as a “swimming and non-motorized boating only” beach.

WHEREAS, the City of Birchwood Village finds that the opening in the gate required by the parking spot has been abused by drivers who drive down to the beach.

WHEREAS, the presence of automobiles presents dangers to park-goers as well as to the environment of White Bear Lake.

WHEREAS, the Parks and Natural Resources Committee considered the matter, solicited public opinion, and determined, by a vote of 4-0 (one member absent), that the parking spot should be removed and the chain put back up to block entry by automobiles.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Birchwood Village that: The disabled parking spot at Kay Beach should be removed by removing the sign from the ground, and the chain at the gate be reinstalled. Staff is hereby directed to effectuate this change.

Resolution duly seconded and passed this _____ day of _____, 2023.

Margaret Ford, Mayor

Attest:

Rebecca Kellen, City Administrator-Clerk

White Bear Lake Fireworks Fund

4701 Highway 61 • White Bear Lake • MN 55110

Spring 2023

City of Birchwood Village
207 Birchwood Ave
Birchwood, MN 55110

Dear City of Birchwood Village,

Summer is just around the corner so it's time again to start planning for our annual White Bear Lake Fireworks Program. Last year, you were gracious enough to donate \$200.00 and we hope that you will be able to do so again this year.

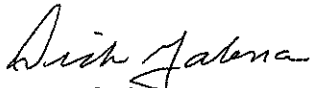
The White Bear Lake 4th of July Fireworks program is totally funded by generous donations from businesses and people like you. All contributions are tax deductible. The City of White Bear Lake has established a special separate fund for us to ensure tax deductibility and auditing.

The White Bear Lake Fireworks Display is so amazing and the event has become a great community tradition in bringing our families and friends together to celebrate the 4th of July.

Thank you for your consideration in helping to make this hometown event a real success. If you have any questions, please feel free to contact either of us.

All checks are made payable to "White Bear Lake Fireworks Fund."

Sincerely,


Dick Galena
Fireworks Committee Chair


Bill Foussard
Fundraising Coordinator
651-429-5393

Committee Members

Gene Altstatt
Bill Foussard
Dick Galena
Rick Juba
Bill Matschke
Kim Perkins
Pete Carlson
Mark Sather
Frank Watson

Presenting Sponsor

JL Schwieters Building
Supply Construction, Inc.

Major Sponsors

White Bear Lake Superstore
Edwin and Susan McCarthy
Si and Vicki Ford
Roberts Family Foundation
Osilas Foundation
Wold Family Fund at GWBLCF
Spire Credit Union
White Bear Mitsubishi
Paul Sutherland
White Bear Yacht Club
Walser Polar Chevrolet/
Walser Polar Nissan

Business Sponsors

Trade Press
Press Publications
Rudy's Red Eye Grill/
White Bear Country Inn

Agency Sponsors

City of White Bear Lake
White Bear Lake Fire Dept.
White Bear Lake Police
Department
Ramsey County Sheriff Water
Patrol



MEMORANDUM

Date: 5/3/23

TO: Mayor and City Council

FROM: Rebecca Kellen, City Administrator

COPIED: Mary Cahill

SUBJECT: Permitting fee to Offset Permitting Software and Planner Expenses

The City estimated a permitting fee to cover the costs of the newly approved permitting software and planning fees.

The City forecasts approximately 110 permits for 2023.

- Average number of permits received from over the past 3 years is 127. (78 in 2020, 103 in 2021, 199 in 2022).
- Total number of permits forecasted for 2023 is 92, based on the receipt of 23 permits in the first quarter.
- An average of the average number of permits received in the past 3 years and the forecasted amount for 2023 is an estimated 110 permits per year.

The City forecasts permitting expenses related to permitting software and planner fees to be \$23200 annually for the first year.

- Year one costs for the permitting software = \$4000.
- Annual cost of planner fees = \$19200 (1600 monthly planning fee * 12 months).

The City recommends a \$210 nonrefundable fee added to any existing fees for all permits applications submitted, to offset technology and planning permit related expenses. The City recommends the fee schedule be updated to reflect the new charges effective June 1st. The City recommends that a similar analysis be completed on an annual basis to ensure that the fees and expenses remain in balance.

Thank you,

Rebecca Kellen
City Administrator

Road Fixing and Cleaning 2023 Schifsky Bid

City staff recommends approval of the Addendum 1 2023 bid from Schifsky including crack filling, patching, street sweeping, and water main break.

Item	2022	2023 Budget	2023 Bid	Additional Notes
Schifsky streets and road maintenance	\$43,787.00 (\$33,787.00 from the 406 Capital project funds so we didn't exceed budget.)	\$14000	Crack Filling: \$4,500.0 City Wide Patching: \$38,000.00 Total is \$42500	
street sweeping	None, except for maintenance areas	\$4000	\$3,500.00	
Water main breaks: billed to the Water fund 601, acct 43185			Watermain Break Patches 226 Wildwood & 411 Wildwood \$4,315.00	Typically, expenses are reviewed with St. Anthony for water main breaks to determine if a surcharge needs to be added to the utility bills. We haven't ever booked Schifsky for water main breaks, but they provided this bid. We have confirmed damage resulting from the water main break at 411 Wildwood and at 226 Wildwood.

\$36000 quote is for the bike lane project.

To: City of Birchwood	Contact: Rebecca Kellen
Address: Birchwood, MN	Phone: 612-396-5038
	Fax:
Project Name: City Of Birchwood Misc	Bid Number:
Project Location: Birchwood	Bid Date: 4/4/2023

Item #	Item Description
--------	------------------

Crack Filling

1	Route & Fill Bituminous Cracks		
Total Price for above Crack Filling Items:			\$4,500.00

City Wide Patching 55 Patches 14,900 SF

2	Mobilization Per Day		
3	Crew Rate For Patching		
4	Furnish Bituminous Asphalt Per Ton Price		
5	Milling For Removals (Based On 36-6' Wide)		
Total Price for above City Wide Patching 55 Patches 14,900 SF Items:			\$38,000.00

Watermain Break Patches 226 Wildwood & 411 Wildwood

6	Mobilizatio Per Day		
7	Milling For Removals (Based On 36" Wide)		
8	Furnish Bituminous Asphalt Per Ton Price		
9	Crew Rate For Patching Crew		
Total Price for above Watermain Break Patches 226 Wildwood & 411 Wildwood Items:			\$4,315.00

Sweeping

10	Sweeping (Spring)		
11	Sweeping (Fall)		
Total Price for above Sweeping Items:			\$3,500.00

Total Bid Price: \$50,315.00

- Notes:**
- PRICING IS BASED ON WORK BEING COMPLETED IN 2023
 - **EXCLUSIONS:**
 - PERMITS
 - UNFORESEEN SITE CONDITIONS
 - SURVEYING/STAKING/LAYOUT
 - REMOVALS OR DEMO
 - SUBGRADE PREP AND/OR CORRECTIONS
 - EXCAVATION OR GRADING. SUBGRADE SHALL BE TURNED OVER WITHIN +/- 0.1'.
 - GEOTEXTILE FABRIC
 - TRAFFIC CONTROL AND/OR FLAGGING
 - STREET PATCHING FOR UTILITY CONNECTIONS
 - TOLERANCING
 - LOT SIGNAGE AND/OR STRIPING
 - SPECIAL INSPECTIONS AND/OR TESTING
 - SWEEPING/CLEANUP CAUSED BY OTHER TRADES
 - WINTER CONDITIONS AND/OR ROAD RESTIRCTIONS

Payment Terms:

SCHEDULE TO BE AGRRED UPON BY ALL PARTIES AT TIME OF CONTRACTING. PRICING BASED ON STANDARD AIA CONTRACT WITH NET 30 PAYMENT. RETAINAGE SHALL NOT EXCEED 5% WITHOUT PRIOR APPROVAL, AND IS TO BE REDUCED/RELEASED AS SCOPE IS COMPLETE.

PRE-LIEN NOTICE

(A) ANY PERSON OR COMPANY SUPPLYING LABOR OR MATERIALS FOR THIS IMPROVEMENT TO YUR PROPERTY MAY FILE A LIEN AGAINST YOUR PROPERTY IF THAT PERSON OR COMPANY IS NOT PAIID FOR THE CONTRIBUTIONS

(B) UNDER MINNESOTA LAW, YOU HAVE THE RIGHT TO PAY PERSONS WHO SUPPLIED LABOR OR MATERIALS FOR THIS IMPROVEMENT DIRECTLY AND DEDUCT THIS AMMOUNT FROM OUR CONTRACT PRICE, OR WITHHOLD THE AMMOUNTS DUE THEM FROM US UNTIL 120 DAYS AFTER COMPLETION OF THE IMPROVMENT UNLESS WE GIVE YOU A LIEN VAIVER SIGNED BY PERSONS WHO SUPPLIED ANY LABOR OR MATERIAL FOR THE IMPROVEMENT AND WHO GAVE YOU TIMELY NOTICE.

<p>ACCEPTED: The above prices, specifications and conditions are satisfactory and are hereby accepted.</p> <p>Buyer: _____</p> <p>Signature: _____</p> <p>Date of Acceptance: _____</p>	<p>CONFIRMED: TA Schifsky & Sons Inc</p> <p>Authorized Signature: _____</p> <p>Estimator: Noah Juliar 651-260-5926 njuliar@taschifsky.com</p>
---	---



To: City of Birchwood	Contact: Rebecca Kellen
Address: Birchwood, MN	Phone: 612-396-5038
	Fax:
Project Name: City Of Birchwood Misc	Bid Number:
Project Location: Birchwood	Bid Date: 4/4/2023

Item #	Item Description
--------	------------------

Hall Ave

1 Remove Vegetation & Excess Fill

Total Price for above Hall Ave Items: \$32,000.00

Add Limestone

2 Install Class 5 Limerock Up To 3' Compact With Roller

Total Price for above Add Limestone Items: \$4,000.00

Total Bid Price: \$36,000.00

Notes:

- PRICING IS BASED ON WORK BEING COMPLETED IN 2023
- **EXCLUSIONS:**
- PERMITS
- UNFORESEEN SITE CONDITIONS
- SURVEYING/STAKING/LAYOUT
- REMOVALS OR DEMO
- SUBGRADE PREP AND/OR CORRECTIONS
- EXCAVATION OR GRADING. SUBGRADE SHALL BE TURNED OVER WITHIN +/- 0.1'.
- GEOTEXTILE FABRIC
- TRAFFIC CONTROL AND/OR FLAGGING
- STREET PATCHING FOR UTILITY CONNECTIONS
- TOLERANCING
- LOT SIGNAGE AND/OR STRIPING
- SPECIAL INSPECTIONS AND/OR TESTING
- SWEEPING/CLEANUP CAUSED BY OTHER TRADES
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ACCEPTED:

The above prices, specifications and conditions are satisfactory and are hereby accepted.

Buyer: _____

Signature: _____

Date of Acceptance: _____

CONFIRMED:

TA Schifsky & Sons Inc

Authorized Signature: _____

Estimator: Noah Juliar
651-260-5926 njuliar@taschifsky.com

polygon	area	perimeter		
TOTAL:	0 sq ft	0.0 ft		
Spots:				
Icon	name	latitude	longitude	altitude
0	1. 4 x 13 wild wood	W 92° 59' 4.71"	N 45° 3' 53.09"	965.0 ft
0		2 W 92° 59' 4.94"	N 45° 3' 53.06"	963.5 ft
0	3. 6x12 x2	W 92° 59' 4.51"	N 45° 3' 53.26"	965.1 ft
0		4 W 92° 59' 2.24"	N 45° 3' 52.96"	964.3 ft
0		5 W 92° 59' 1.55"	N 45° 3' 54.88"	947.7 ft
0		6 W 92° 59' 2.80"	N 45° 3' 54.83"	950.0 ft
0	7 60x 3	W 92° 58' 59.04"	N 45° 3' 52.88"	962.7 ft
0	8 30x10. 30x22	W 92° 58' 52.70"	N 45° 3' 51.72"	952.5 ft
0		9 W 92° 58' 51.83"	N 45° 3' 51.29"	951.7 ft
0		10 W 92° 58' 49.79"	N 45° 3' 50.59"	942.2 ft
0		11 W 92° 58' 49.06"	N 45° 3' 50.42"	939.4 ft
0		12 W 92° 58' 47.36"	N 45° 3' 49.80"	940.1 ft
0		13 W 92° 58' 43.32"	N 45° 3' 48.66"	932.0 ft
0	14. 66x 8 30x30	W 92° 58' 42.65"	N 45° 3' 48.03"	933.8 ft
0	15 8x8 ? watermain	W 92° 58' 41.02"	N 45° 3' 45.97"	947.3 ft
0	15 226 wildwood watermain	W 92° 58' 40.72"	N 45° 3' 45.78"	948.0 ft
0		16 W 92° 58' 39.38"	N 45° 3' 44.27"	939.8 ft
0		17 W 92° 58' 38.31"	N 45° 3' 45.39"	944.3 ft
0		18 W 92° 58' 37.90"	N 45° 3' 42.59"	943.6 ft
0		19 W 92° 58' 37.59"	N 45° 3' 42.85"	942.8 ft
0		20 W 92° 58' 34.58"	N 45° 3' 39.34"	965.0 ft
0		21 W 92° 58' 32.50"	N 45° 3' 37.11"	968.4 ft
0	22. 8x8 watermain break 411 wildwood	W 92° 58' 30.55"	N 45° 3' 35.54"	967.1 ft
0		22 W 92° 58' 30.10"	N 45° 3' 34.69"	967.3 ft
0		23 W 92° 58' 28.27"	N 45° 3' 32.89"	940.7 ft
0		24 W 92° 58' 27.94"	N 45° 3' 32.07"	940.5 ft
0	25. 20x6	W 92° 58' 27.23"	N 45° 3' 31.30"	942.5 ft
0		26 W 92° 58' 26.97"	N 45° 3' 31.10"	943.5 ft
0		27 W 92° 58' 23.03"	N 45° 3' 27.09"	941.9 ft
0		28 W 92° 58' 22.65"	N 45° 3' 26.80"	938.2 ft
0		29 W 92° 58' 20.93"	N 45° 3' 21.54"	946.0 ft
0	29 jay and Hall new sign and attach stop sign to new post	W 92° 58' 20.93"	N 45° 3' 21.65"	945.8 ft
0	30 60x6 50 x21. 40x21	W 92° 58' 22.00"	N 45° 3' 20.67"	945.7 ft
0		31 W 92° 58' 20.30"	N 45° 3' 17.73"	940.6 ft
0		32 W 92° 58' 28.30"	N 45° 3' 16.14"	946.5 ft
0	33 hall	W 92° 58' 24.60"	N 45° 3' 23.86"	951.5 ft
0	34 white pine	W 92° 58' 33.76"	N 45° 3' 30.68"	967.0 ft
0	35 hall	W 92° 58' 39.12"	N 45° 3' 37.57"	984.9 ft
0	36 birchwood	W 92° 58' 46.81"	N 45° 3' 39.30"	992.6 ft
0	37 50x 4	W 92° 58' 45.46"	N 45° 3' 35.78"	994.7 ft
0		38 W 92° 58' 46.21"	N 45° 3' 35.02"	994.7 ft

0	Spot 41		W 92° 58' 47.09"	N 45° 3' 35.01"	994.5 ft
0	40 oak ridge		W 92° 58' 49.97"	N 45° 3' 34.84"	998.6 ft
0	41 12 x10 oak ridge		W 92° 58' 49.91"	N 45° 3' 33.14"	995.4 ft
0	42 50x 6 oak ridge		W 92° 58' 50.13"	N 45° 3' 32.47"	995.7 ft
0		43	W 92° 58' 49.84"	N 45° 3' 31.73"	994.5 ft
0		44	W 92° 58' 49.90"	N 45° 3' 30.87"	994.4 ft
0	45 2x30		W 92° 58' 52.92"	N 45° 3' 28.95"	994.7 ft
0	46 2x30		W 92° 58' 54.31"	N 45° 3' 28.62"	992.5 ft
0		47	W 92° 58' 51.20"	N 45° 3' 33.04"	999.1 ft
0		47	W 92° 58' 50.16"	N 45° 3' 35.63"	1,002 ft
0	48 6x20		W 92° 58' 50.83"	N 45° 3' 36.29"	1,003 ft
0	49 6x20		W 92° 58' 51.59"	N 45° 3' 36.67"	1,004 ft
0		50	W 92° 58' 52.42"	N 45° 3' 37.67"	1,008 ft
0		51	W 92° 58' 49.02"	N 45° 3' 43.32"	986.2 ft
0	52 6x20		W 92° 58' 50.92"	N 45° 3' 44.79"	991.9 ft
0		53	W 92° 58' 55.01"	N 45° 3' 46.78"	996.9 ft
0		54	W 92° 58' 58.42"	N 45° 3' 48.03"	992.0 ft
0		55	W 92° 59' 1.08"	N 45° 3' 48.73"	983.8 ft

INVITATION TO BID

Project Description: Annual Tree Inspection Services

Scope of the Work: The City of Birchwood Village wishes to contract with an outside consulting firm or individual to administer the City's Tree Inspection Program by providing tree inspections on an annual basis and perform such duties as may be set forth within the City's Municipal Code related to tree care and maintenance. City Tree Inspector shall conduct a City-wide inspection of all trees for evidence of pestilence (insect-borne) and disease and provide data summaries, electronic reports, and maps of their findings to the City. City Tree Inspector shall, based on their findings, make such recommendations for mitigation and treatment for all observed instances of insect infestation and/or instances of disease as they deem appropriate and effective based on their training, experience, and latest technical information available. Such recommendations may include the removal of trees when appropriate.

Project Budget: The City of Birchwood Village budgeted \$1,300 for tree inspection services in 2023.

Service Agreement, Insurance, and Independent Contractor Status: The successful service provider will be asked to enter into a service agreement (See Addendum 1) and to provide a certificate of insurance naming the City as an additional insured showing coverage for liability, workers compensation, and automobile.

Receipt of Bids: Bids shall be addressed to, and will be received until 2 PM June 30, 2023, via mail or email.

To: City of Birchwood Village
Attn: Rebecca Kellen, City Administrator
207 Birchwood Avenue,
Birchwood Village, MN 55110
651-426-3403
Rebecca.kellen@cityofbirchwood.com

INDEPENDENT CONSULTANT SERVICES AGREEMENT

The agreement ("Agreement") is made by and between The City of Birchwood Village, a Minnesota Public Entity ("City"), and _____, an individual ("Consultant") and is effective as of _____ ("Effective Date").

1. **ENGAGEMENT OF SERVICES.** Herein is a description of the services to be provided by Consultant pursuant to the terms of the Agreement ("Consulting Services"). Consultant hereby agrees to utilize best efforts in performing the following Consulting Services:

Consultant will be administering the City's Tree Inspection Program by providing tree inspections on an annual basis.

Consultant shall conduct a City-wide inspection of all trees, public and private, for evidence of pestilence (insect-borne) and disease and provide a report findings to the City on a annual basis.

Consultant shall, on the basis of his findings, make such recommendations for mitigation and treatment for all observed instances of insect infestation and/or instances of disease as he deems appropriate and effective based on his training, experience and latest technical information available. Such recommendations may include the removal of trees when appropriate.

2. **COMPENSATION.**

Consultant shall be compensated on an annual basis in the amount of _____ per year, payable following the receipt of final inspection reports to the City.

3. **INDEPENDENT CONTRACTOR RELATIONSHIP.** Consultant's relationship with the City is that of an independent contractor, and nothing in this Agreement is intended to, or should be construed to, create a partnership, agency, joint venture or employment relationship. Consultant will not be entitled to any of the benefits that City may make available to its employees, including, but not limited to, group health or life insurance, profit sharing or retirement benefits. Consultant is not authorized to make any representation, contract or commitment on behalf of City unless specifically requested or authorized in writing to do so by City. Consultant is solely responsible for, and will file, on a timely basis, all tax returns and payments required to be filed with, or made to, any federal, state or local tax authority with respect to the performance of services and receipt of fees under the Agreement. Consultant is solely responsible for, and must maintain adequate records of, expenses incurred in the course of performing services under the Agreement. No part of Consultant's compensation will be subject to payroll taxes. City will regularly report amounts paid to Consultant by filing Form 1099-MISC with the Internal Revenue Service.

4. **CONFIDENTIAL INFORMATION.**

4.1 **OBSERVANCE OF CITY OF BIRCHWOOD RULES.** At all times while on City premises, Consultant will observe CITY OF BIRCHWOOD'S rules and regulations with respect to conduct, health and safety and protection of persons and property.

4.2 **NO CONFLICT OF INTEREST.** During the term of the Agreement, Consultant will not accept work, enter into a contract, or accept any obligation, inconsistent or incompatible with Consultant's obligations, or the scope of services rendered for City, under the Agreement. Consultant warrants that, to the best of its knowledge, there is no other contract or duty on Consultant's part, which conflicts with or is inconsistent with the Agreement. Consultant agrees to indemnify City from any and all loss or liability incurred by reason of the alleged breach by Consultant of any services agreement with any third party.

5. **TERM AND TERMINATION.**

5.1. **TERM.** The Agreement is effective as of the Effective Date set forth above.

5.2. **TERMINATION.** Either party may terminate the Agreement, with or without cause, at any time upon thirty (30) days' prior written notice to the other party.

6. **SUCCESSOR AND ASSIGNS.** Consultant may not assign the Agreement or subcontract or otherwise delegate its obligations under the Agreement without City's prior written consent. Subject to the foregoing, the Agreement will be for the benefit of City's successors and assigns, and will be binding on Consultant's assignees.

7. **CONSEQUENTIAL DAMAGES.** Neither party will be liable to the other for any consequential, special or incidental.

8. **NOTICES.** Any notice required or permitted by the Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated: (i) by personal delivery when delivered personally; (ii) by overnight courier upon written verification of receipt; (iii) by telecopy or facsimile transmission upon acknowledgment of receipt of electronic transmission; or (iv) by certified or registered mail, return receipt requested, upon verification of receipt. Notice shall be sent to the addresses set forth above or such other address as either party may specify in writing.

9. **GOVERNING LAW.** The Agreement shall be governed in all respects by the laws of the United States of America and by the laws of the State of Minnesota, excluding Minnesota's conflict of law provisions.

10. **SEVERABILITY.** Should any provisions at the Agreement be held by a court of law to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of the Agreement shall not be affected or impaired thereby.

11. **WAIVER.** The waiver by City of a breach of any provision of the Agreement by Consultant

shall not operate or be construed as a waiver of any other or subsequent breach by Consultant.

12. **INJUNCTIVE RELIEF FOR BREACH.** Consultant's obligations under the Agreement are of a unique character that gives them particular value; breach of any of such obligations will result in irreparable and continuing damage to City or which there will be no adequate remedy at law; and, in the event of such breach, City will be entitled to injunctive relief and/or a decree for specific performance, and such other and further relief as may be proper (including monetary damages if appropriate).
13. **ENTIRE AGREEMENT.** The Agreement constitutes the entire agreement between the parties relating to the subject matter and supersedes all prior or contemporaneous oral or written agreements concerning such subject matter. The terms of the Agreement will govern all Project Assignments and services undertaken by Consultant for City. The Agreement will govern all aspects of the Project as laid out herein and services offered by Consultant. The Agreement may only be changed by mutual agreement of authorized representatives of the parties in writing.

IN WITNESS WHEREOF, the parties have executed the Agreement as of the date first written above.

Margaret Ford

CITY OF BIRCHWOOD
By: Its Mayor

_____, Certified Tree Inspector

Rebecca Kellen

CITY OF BIRCHWOOD
By: Its Administrator



City of Birchwood Village
Petition for Variance Application

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

FOR OFFICIAL USE ONLY

Application Received Date: 3-23-2023 Amount Paid: \$ \$3600.00
Payment Type (Circle One): Cash / Check / Money Order / Credit Card
Check/Money Order # 42365 / # 5644
Application Complete? Yes No If no, date application was deemed complete: _____
Signature of City Planner: Steve W. Hatch Date: 3/27/23

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

- Name of Applicant(s) SUSAN WELLES
Address 3227 26TH AVE. N.
City GOLDEN VALLEY State MN Zip Code 55422
Business Phone 612-998-8404 Home Phone _____
- Address of Property Involved if different from above: 529 LAKE AVE.
- Name of Property Owner(s) if different from above and describe Applicant's interest in the property:
SANDRA KRIZ. BUEKLE & DAVID BUEKLE
I AM THE PROJECT DESIGNER.
- Specific Code Provision from which Variance is requested: 302.055.2.a.4

5. Describe in narrative form what the Applicant is proposing to do that requires a variance:
THE OBJECTIVE FOR THIS VARIANCE APPLICATION IS TO ALLOW HOMEOWNERS TO STABILIZE THEIR LAKESHORE. AT PRESENT WE ARE PROPOSING TO INSTALL SEVERAL 6"X6" TIMBER RETAINING WALLS AND PLACE NEW RIP-RAP AT THE SHOULDERLINE TO PRESERVE HILLSIDE RUN-OFF & PROTECT FROM ANNUAL REPERCUSSIONS FROM ICE-OUT RISE AND

FALL OF THE LAKES ELEVATION.

6. Type of Project:

- New Construction (empty lot)
- Addition
- Demolition
- Landscaping
- Repair or removal of nonconforming structure
- Other (describe) _____

7. Type of Structure Involved:

- Single Dwelling
- Garage
- Tennis Court
- Grading/Filling
- Other (describe) _____
- Double Dwelling
- Addition
- Pool

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

***SEE REVERSE SIDE OF APPLICATION.**

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

ONCE RETAINING WALLS ARE IN PLACE, NEW LEVEL AREAS WILL BE PLANTED TO CAPTURE WATER THAT PRIOR WOULD HAVE DRAINED DIRECTLY INTO W.B.L.

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

NO ALTERNATIVES OTHER THAN RETAINING CONSIDERED. IN THE PAST OWNER HAD ATTEMPTED TO PLANT ON SLOPE BUT IT PROVED TOO STEEP TO BE EFFECTIVE IN TERMS OF STABILIZING THE

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

HILLSIDE OR CAPTURING RAINWATER. THIS HAS RESULTED IN PROPOSING RETAINING & RIP RAP.

DEAR COMMISSIONERS, CITY COUNCIL MEMBERS,

THE PROPERTY AT 529 LAKE AVE HAS A CHALLENGING INCLINE ALONG THE SHORE OF W. BEAR LAKE. IN THE PAST THE HOMEOWNERS HAVE ATTEMPTED TO PLANT AND MAINTAIN PLANTINGS ALONG THE INCLINE TO STABILIZE THE SLOPE AND PROVIDE AREAS FOR STORMWATER TO BE CAPTURED BEFORE ENTERING W.B.L.

THE VERTICLE CHALLENGES THE SLOPE PRESENTS HAS PROVEN TO BE AN OBSTACLE IN MAINTAINING PLANTING AND CONTROLLING STORMWATER RUN-OFF. AS WITH MANY LAKESHORE PROPERTIES IN BIRCHWOOD (INCLUDING BOTH NEIGHBORING ADJACENT LOTS TO 529), THE INTRODUCTION OF RETAINING WALLS HAS BECOME A PROVEN STANDARD FOR DEALING WITH STEEP SLOPING SHORELINES.

MY CLIENT WISHES TO INSTALL A TIERED RETAINING WALL SYSTEM OF ~~WOOD~~ TREATED 6"X6" TIMBERS TO HEIGHTS OF 4' OR LESS TO BE COMPLIANT WITH CITY CODE. THIS WILL ENSURE AGAINST AND COMBAT SOIL EROSION AND HELP TO STABILIZE THE EXISTING SLOPE. THE ADDED HORIZONTAL PLANES BETWEEN THE TIERED RETAINING WALLS WILL BE PLANTED WITH NATIVE PERENNIALS TO SLOWDOWN AND HELP CONTAIN STORMWATER RUN-OFF ALONG THE SLOPE BEFORE IT ENTERS THE LAKE. WE ARE ALSO PROPOSING TO INSTALL NEW RIP-RAP AT THE BASE OF THE SLOPE ALONG THE SHORELINE NOT TO EXCEED 3' ABOVE O.H.W OR GREATER THAN 3:1 RATIO LANDWARD PURSUANT TO CITY GUIDELINES. ALL APPROPRIATE GRADING AND FILTER BLANKETS TO BE INSTALLED AS REQUIRED. THE INTRODUCTION OF THE RIP-RAP WILL HELP TO MITIGATE AND MINIMIZE EROSION CAUSED BY ICE OUT AND SEASONAL WATER LEVEL FLUCUATIONS.

TO ACCOMPLISH THE ABOVE PROPOSAL IT WILL BE NECESSARY TO MOVE AND REDISTRIBUTE SOIL ALONG THE SHORELINE SLOPE. WE INTEND TO INSTALL THE NEW RETAINING AND RIP-RAP WITHOUT CAUSING A NET GAIN OR LOSS OF SOIL TO THE PROPERTY. PURSUANT OF CITY CODE 302.055.2.a.4 WE ASK FOR A VARIANCE TO GRADE AND FILL IS NEEDED TO MEET OUR GOALS. RESPECTFULLY, *John Wilkes*

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

If yes, explain: _____

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

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

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

	EXISTING	PROPOSED	CHANGE
1. Total Square Footage of Lot			
2. Maximum Impervious Surface (25% of item 1)			
3. Roof Surface			
4. Sidewalks			
5. Driveways			
6. Other Impervious Surface			
7. Total of Items 3-6			
8. Percent Impervious Surface			

15. Please attach the following:

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

↑
SEE ATTACHED SURVEY.

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

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

SUBD. 1.

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

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

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

NOTICE:

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

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

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

Signature of Applicant: Susan Welles

Date: 3.23.23

RETAINING WALL EXHIBIT

~for~ HUSNIK HOMES
~of~ 529 LAKE AVENUE
BIRCHWOOD, MN

Lot 7, Block 2, LAKEWOOD PARK 3RD
DIVISION, Washington County, Minnesota.

LEGEND

- DENOTES IRON MONUMENT FOUND
- DENOTES EXISTING ELEVATION
- DENOTES GUY WIRE
- DENOTES MAILBOX
- DENOTES POWER POLE
- DENOTES TELEPHONE PEDESTAL
- DENOTES STEPPING STONE
- DENOTES PROPOSED ELEVATION
- DENOTES DIRECTION OF DRAINAGE
- DENOTES EXISTING CONTOURS
- DENOTES PROPOSED CONTOURS
- DENOTES RETAINING WALL
- DENOTES SILT FENCE
- DENOTES FENCE
- DENOTES BITUMINOUS SURFACE
- DENOTES CONCRETE SURFACE
- DENOTES PAVER SURFACE

NOTES

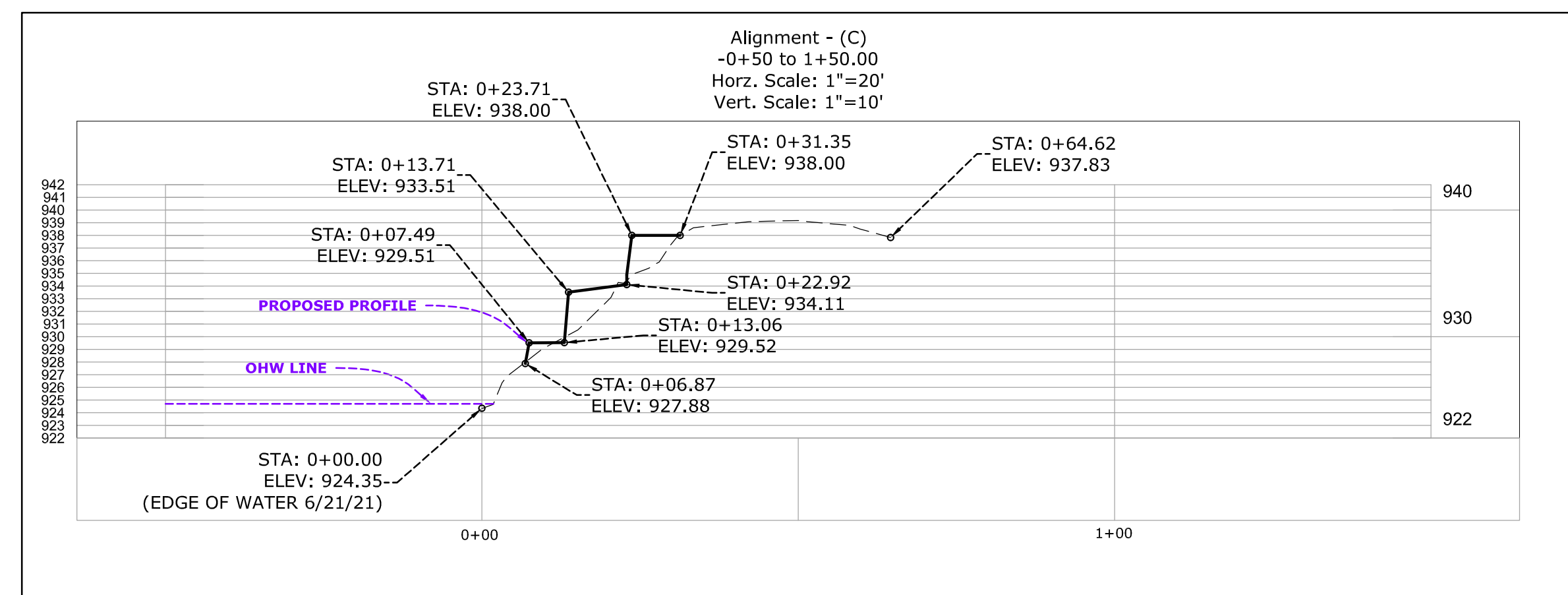
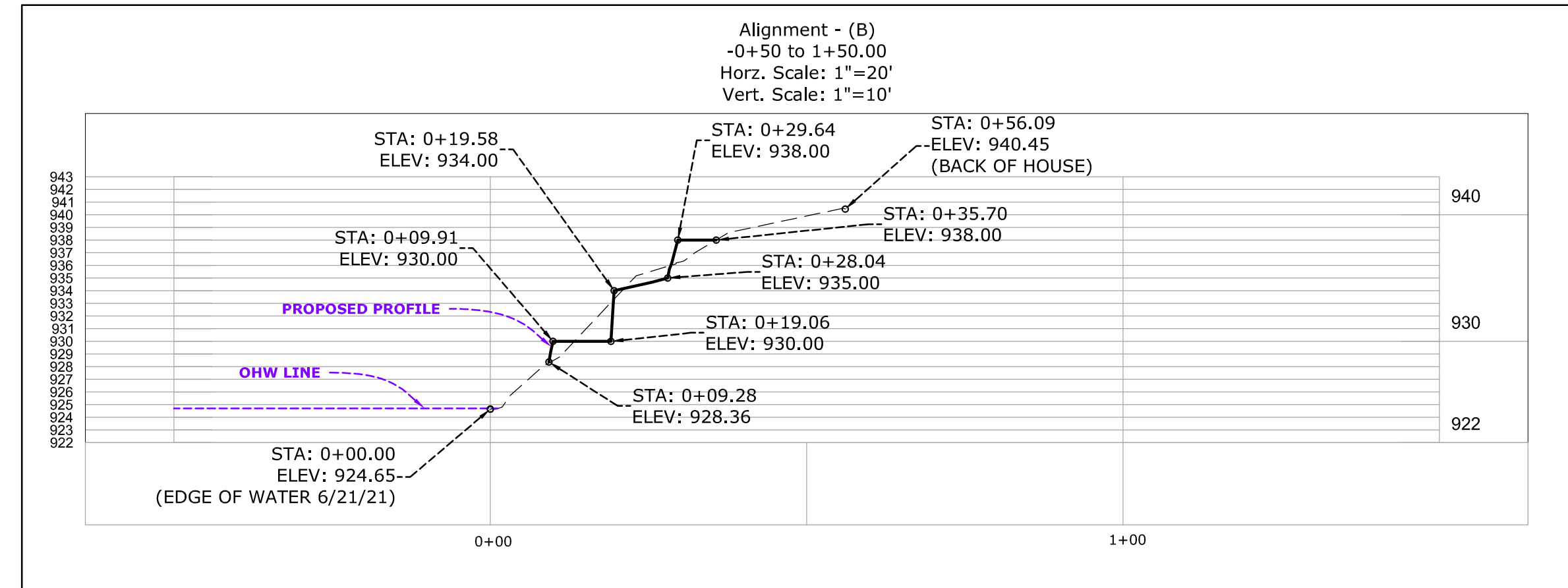
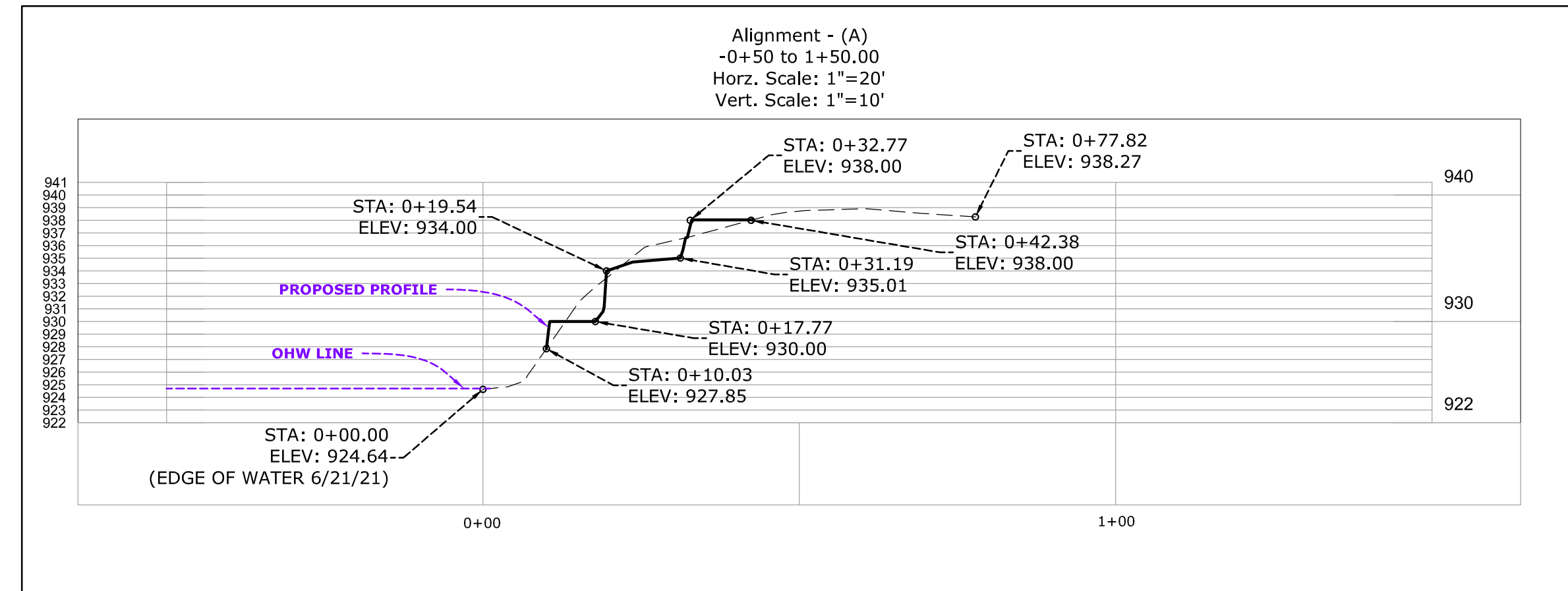
- Field survey was completed by E.G. Rud and Sons, Inc. on 06/21/2021.
- Bearings shown are on Washington County datum.
- This survey was prepared without the benefit of title work. Additional easements, restrictions and/or encumbrances may exist other than those shown hereon. Survey subject to revision upon receipt of a current title commitment or an attorney's title opinion.

EXISTING IMPERVIOUS SURFACE CALCULATIONS

TOTAL LOT AREA ABOVE O.H.W.	12,921 S.F.
HOUSE AND GARAGE	1,515 S.F.
DRIVEWAY	1,669 S.F.
CONCRETE	420 S.F.
RETAINING WALL/ROCK EDGING	167 S.F.
SHED	108 S.F.
STEPPING STONES	41 S.F.
TOTAL IMPERVIOUS SURFACE	3,920 S.F.
PERCENT IMPERVIOUS	30.3%

PROPOSED IMPERVIOUS SURFACE CALCULATIONS

TOTAL LOT AREA ABOVE O.H.W.	12,921 S.F.
HOUSE, GARAGE, STOOP AND WELL ROOM	2,289 S.F.
CONCRETE	314 S.F.
TOTAL IMPERVIOUS SURFACE	2,603 S.F.
PERCENT IMPERVIOUS	20.1%
PROPOSED WALLS	96 S.F.
PROPOSED CONCRETE DRIVEWAY	1,189 S.F.
TOTAL PROPOSED IMPERVIOUS SURFACE	3,888 S.F.
PROPOSED PERCENT IMPERVIOUS	30.1%



EARTHWORK NOTES

- * EARTHWORKS ARE CALCULATED TO TOP OF WALL AND FINISHED GRADE WHERE APPLICABLE.
- * NO ADJUSTMENT HAS BEEN MADE TO ACCOUNT FOR SWELLING/SHRINKAGE.

EARTHWORK SUMMARY

2d Area	Cut	Fill	Net
948.7 Sq. Ft.	25.48 Cu. Yd.	24.71 Cu. Yd.	Balance

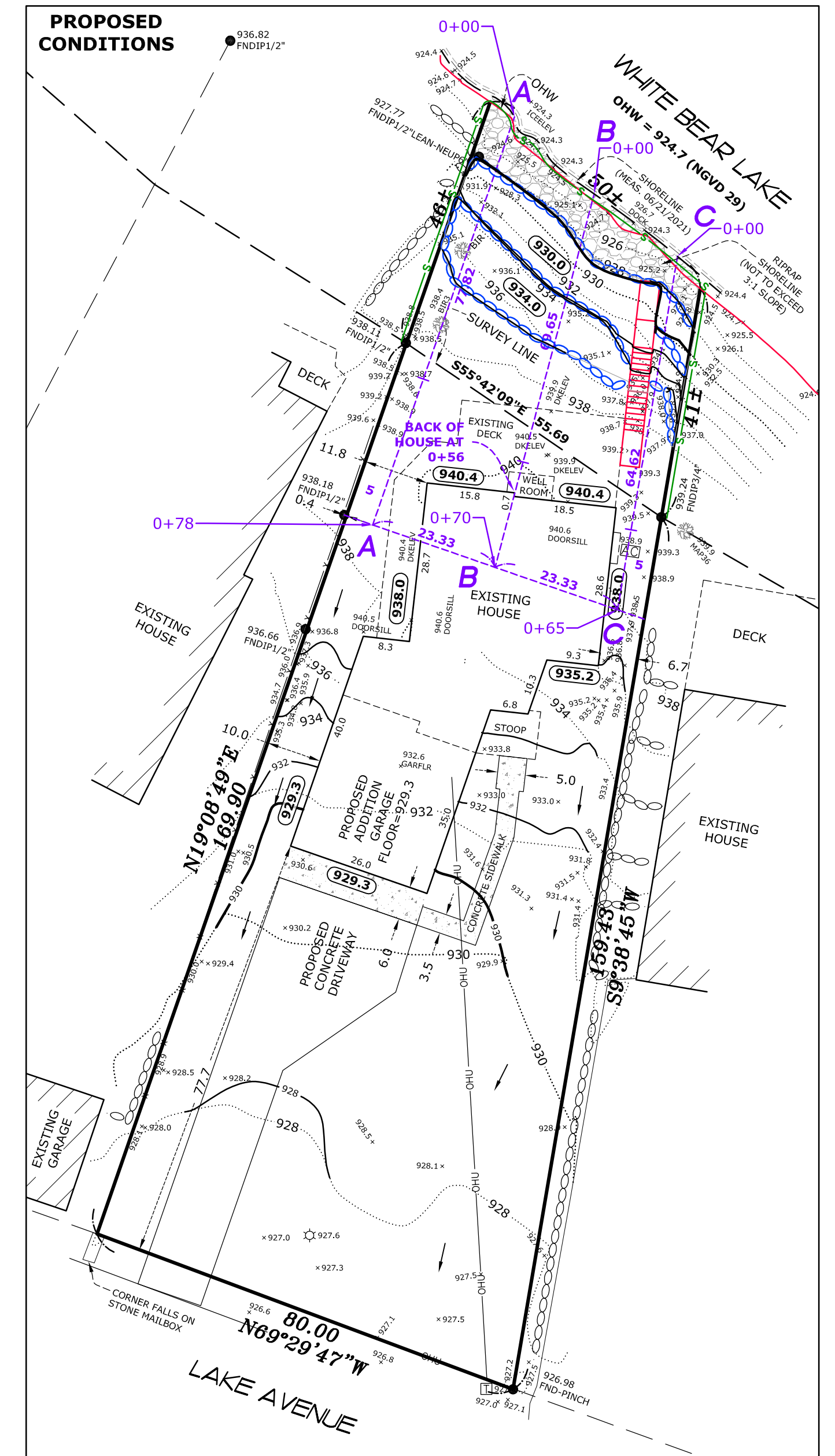
(SUMMARY PRESUMES THAT ANY EXCESS MATERIAL WILL BE SPREAD ACROSS THE REAR YARD)

HOUSE ELEVATIONS

MAIN FINISHED FLOOR = 940.6
ENTRY FINISHED FLOOR = 936.3
EXISTING BASEMENT = 932.9
NEW BASEMENT = 931.1
GARAGE FLOOR = 929.3

BENCHMARK

BENCHMARK: Top nut of hydrant located near 115 Birchwood Avenue.
Elevation = 997.64
Datum = (NGVD29)



NORTH

GRAPHIC SCALE



1 INCH = 20 FEET

I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of Minnesota.

JASON E. RUD
Date: 3/21/2023 License No. 41578

NO.	DATE	DESCRIPTION	BY
1	3-17-23	CITY COMMENTS	CMB
2	3-21-23	CONCRETE DRIVEWAY	CMB
3			

E. G. RUD & SONS, INC.
EST. 1977
Professional Land Surveyors
6776 Lake Drive NE, Suite 110
Lino Lakes, MN 55014
Tel. (651) 361-8200 Fax (651) 361-8701

**CITY OF BIRCHWOOD VILLAGE
MEMORANDUM**

TO: Rebecca Kellen, City of Birchwood Village Administrator-Clerk

FROM: Thatcher Engineering, Inc.

DATE: March 27, 2023

REGARDING: Variance Application

APPLICANT: Susan Welles, 3227 26th Avenue North, Golden Valley, MN 55422

PROPERTY OWNER(S): Sandy Kriz Buerkle and David Buerkle

LOCATION: 529 Lake Avenue, Birchwood Village, MN 55110

BACKGROUND

On or about March 9, 2023, the City Birchwood Village (City) received a Conditional Use Permit Application and Zoning Permit Application for the installation of retaining walls and land disturbance activity at 529 Lake Avenue (Application #1) signed by Susan Welles. Application #1 is in Appendix #1. On March 15, 2023, Thatcher Engineering, Inc. (TEI) received a retaining wall and land disturbance activity plan dated March 9, 2023 (Plan #1), in PDF format, from Susan Welles. TEI understands that Plan #1 is part of Application #1. Plan #1 is in Appendix #2 and shows the following:

1. The existing impervious surface coverage is 30.3% and the proposed impervious surface coverage will be 20.8% which is below the 25% maximum allowed by City Code 302.050 because of the proposed installation of a permeable paver driveway.
2. A variance application is required from the City Code to do the proposed work because City Code 302.055.2.a.4 states: "No grading or filling shall be permitted within twenty (20) feet (measured horizontally) of the ordinary high water level of any lake, pond, or wetland." The Plan shows grading and filling within 20 feet of the ordinary high water level of WBL.

City received a large paper copy of Plan #1 that TEI has not yet received or reviewed, but it likely has the same information in the PDF formatted copy of Plan #1.

On March 23, 2023, the City received an application for one (1) variance for 529 Lake Avenue signed by Susan Welles (Applicant) on March 23, 2023 (Application #2). Application #2 is in Appendix #3 and shows the following:

1. The existing impervious surface coverage is 30.3% and the proposed impervious surface coverage will be 30.1% which is greater than the 25% maximum allowed by City Code 302.050.
2. The proposed impervious surface coverage in Application #2 (Variance Application) is greater than the proposed impervious surface coverage in Application #1 because the proposed driveway in Application #2 is concrete (not a permeable paver driveway as proposed in Application #1).

Application #2 (Variance Application) shows that the property owner intends to do the following:

1. Install a tiered retaining wall system of treated 6-inch by 6-inch timbers. The height of each tier will be four (4) feet or less. The proposed height of each retaining wall tier meets the City Code maximum height requirement (4-feet).
2. Install new rip rap at the shoreline in accordance with City Code requirements.

The Applicant is making the request because they would like to:

1. Stabilize their lakeshore.
2. Preserve hillside runoff and protect it from annual repercussions from ice-out and the rise and fall of the lake water elevation.
3. After the retaining wall system is installed, the new level areas will be planted to capture water that prior to the retaining walls would have drained directly into White Bear Lake (WBL). In the past, owners had attempted to plant on the slope but it proved too steep to be effective in terms of stabilizing the hillside or capturing rainwater.

TEI understands that the lot will continue to contain one dwelling unit.

The existing structure (house with attached garage) is a non-conforming pre-existing structure because of the following:

1. The existing structure is set back 6.7 feet from the south side yard lot line which is less than the City Code required minimum setback of 10 feet.
2. The existing structure is set back 27 feet from the Ordinary High Water Level of White Bear Lake which is less than the City Code required minimum setback of 50 feet.

REQUEST

The Application requests the following variance:

Variance Request #1 (Grading or Filling): The Applicant is requesting a variance from City Code 302.055.2.a.4 - Grading or filling within twenty feet of the ordinary high water level of any lake, pond, or wetland.

City Code 302.055.2.a.4 states: "No grading or filling shall be permitted within twenty (20) feet (measured horizontally) of the ordinary high water level of any lake, pond, or wetland." A variance is needed from this requirement because the Application shows grading and filling within 20 feet of the ordinary high water level of WBL.

SITE CHARACTERISTICS

The lot area is 12,921 square feet with steep slopes according to the Plan prepared by E. G. Rud and Sons, Inc. dated March 21, 2023 (Application #2 – Variance Application). The lot is narrow (about 50.0 feet wide at White Bear Lake and about 80 feet at Lake Avenue) and contains a single-family residence with attached garage.

PRACTICAL DIFFICULTY

The lot is small with steep slopes and extremely narrow and long.

STATUTORY REQUIREMENTS FOR PERMITTING VARIANCES

Minnesota State Statute 394.27 subdivision 7 states:

Variations shall only be permitted when they are in harmony with the general purposes and intent of the official control and when the variations are consistent with the comprehensive plan. Variations may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the official control. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by an official control; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties...

CITY CODE REQUIREMENTS FOR PERMITTING VARIANCES

Sec 304.040 of the City Code states:

Standards for Variances. Variances may be granted when the applicant for the variance establishes:

1. That there are practical difficulties in complying with the zoning ordinance;
2. That the proposed structure or use is in harmony with the general purposes and intent of the ordinance; and
3. That the proposed structure or use is consistent with the City's comprehensive plan.

"Practical difficulties", as used in connection with the granting of a variance, means that i.) the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance, ii.) the plight of the landowner is due to circumstances unique to the property not created by the landowner; and iii.) the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties.

ANALYSIS

Variance Request #1 (Grading or Filling): The Applicant is requesting a variance from City Code 302.055.2.a.4 Grading or filling within twenty feet of the ordinary high water level of any lake, pond, or wetland. A variance is needed from this requirement because the Application shows grading and filling within 20 feet of the ordinary high water level of WBL.

A variance for retaining wall setback from White Bear Lake is also required for the following reason:

City Code 302.020.4.b states: "Retaining Wall Setbacks: Front, back, side street and other lot line setback requirements shall not apply to retaining walls except that the ordinary high water level setback requirements shall apply to retaining walls." A variance is needed from this requirement because Application #2 (Variance Application) shows retaining walls within 50 feet of the ordinary high water level of WBL.

A variance for impervious surface is required for the following reason:

The work proposed increases the impervious surface coverage of the lot because the existing impervious surface coverage (29%) will increase to 30.1%. Page 6 of the City Council meeting minutes dated March 8, 2022 state that the City Council approved a variance request to reduce the impervious surface from 30.3% to 29%. The meeting minutes are in Appendix #4.

Substandard Lot

The Application states that the lot is substandard by area (12,921 square feet). However, a variance is not needed from the minimum lot size requirement because the lot size (12,921 square feet) is more than the City Code required minimum lot size of 9,000 square feet (15,000 feet x 60%). Also, a variance is not needed from the minimum lot width requirement because the lot width at the front building line for the existing structure (approximately 67 feet) is more than the City Code required minimum lot width of 48 feet (80 feet x 60%) for a lot containing one dwelling unit.

Placement of natural rock riprap

City Code 302.055.2.a.6 states: "Placement of natural rock riprap, including associated grading of the shoreline and placement of a filter blanket, is permitted if the finished slope does not exceed three (3) feet horizontal to one (1) foot vertical, the landward extent of the riprap is within ten (10) feet of the ordinary high water level, and the height of the riprap above the ordinary high water level does not exceed three (3) feet."

REASONS FOR RECOMMENDING VARIANCE APPROVAL

Variance request #1:

1. The lot is small with steep slopes and extremely narrow and long.
2. This project would preserve the essential character of the locality.

REASONS FOR RECOMMENDING VARIANCE DENIAL

Variance request #1:

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

ADDITIONAL INFORMATION

Additional information or variance requests from other City Code requirements may be required by the City depending on the work proposed by the Applicant and the information provided to show the proposed work.

CONDITIONS

In accordance with City Code 304.035, a variance shall become null and void one year after it was granted, unless made use of within the year or such longer period as prescribed by the Council.

In accordance with City Code 302.050.1.k., a variance shall not be valid unless the applicant properly records the variance at the property records office at Washington County and a copy of the recording is properly returned to the City for verification.

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

1. All application materials, maps, drawings, and descriptive information submitted with this application shall become part of the building permit.
2. Land alteration may not cause adverse impact upon abutting property.

APPENDIX 1

Permit #
APPROVALS:
Eng: _____
Plng: _____
Bldg: _____
for office use only

Please Note:
All Permits must be accompanied with a checklist and survey



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

ZONING/CONDITIONAL USE Permit Application

PRINT OR TYPE APPLICATION

Site Information
Address 529 LAKE AVE
Is a variance required? Yes No If yes, provide Planning Department information _____

Work Description
Proposed starting date JUNE '23 Completion date Aug '23

<p><input type="checkbox"/> ZONING</p> <p><input checked="" type="checkbox"/> Land Disturbance (greater than 100 sq ft/ 50 cubic yds)*</p> <p><input type="checkbox"/> Beach sand replacement (above the OHWL not to exceed 400 sq ft and/or 50 cubic yds in volume)*</p> <p><input type="checkbox"/> Decks/platforms (less than 30" above grade not attached to structure with frost ftg)</p> <p><input type="checkbox"/> Driveways/sidewalks/patio (whose area is greater than 100 sq ft)*</p> <p><input type="checkbox"/> Fences*</p> <p><input checked="" type="checkbox"/> Retaining Wall*</p> <p><input type="checkbox"/> Stairs/lifts to lake or water body*</p> <p><input type="checkbox"/> Shed (144 sq ft)*</p>	<p><input type="checkbox"/> CONDITIONAL USE</p> <p><input checked="" type="checkbox"/> Land Disturbance (slopes toward a lake, pond, wetland, Watercourse)*</p> <p><input type="checkbox"/> Land Disturbance (greater than 400 Sq ft and/or more than 50 cubic yds)*</p> <p><input type="checkbox"/> Solar Energy System</p> <p><input type="checkbox"/> Swimming Pool*</p> <p><input type="checkbox"/> Tennis/pickleball courts*</p> <p><input type="checkbox"/> Home Occupation</p> <p><input type="checkbox"/> *PLEASE NOTE- Any person applying for a Conditional Use Permit (301.070) shall fill out and submit to the City Clerk at least (14) days prior to the Planning Commission meeting a "Conditional Use Permit form. A fee to be set by the City Council shall be paid.</p> <p>*Surveys are required with permit</p>
--	--

Additional Description: 6" X 6" TIMBER RETAINING WALLS PER SURVEY.

Valuation \$ 80,000

Applicant is: Owner Contractor

Contractor Information
Company name HESHNIK HOMES MN Contractors License # _____
Address 2300 COUNTY RD 1 City WBI State MN Zip 55
Contact person name SUSAN H. HILLS
Phone _____ Cell 612 993 8409 Email design@heshnikhomes.com Fax _____

Homeowner Information
Name SANDRA KRIZ KUORIK
Address 529 LAKE AVE
City BIRCHWOOD State MN Zip _____
Phone _____ Cell _____ Email _____ Fax _____

NOTICE:

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

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

Any changes to this application will make the permit voidable unless amendments are approved by the City with prior consent. The applicant will provide (separate documents, surveys, and calculations) to the City, showing the affected areas, grade plane, change in elevation, and imperious surface.

The applicant shall comply with all provision of the State Building, Plumbing, Mechanical, Electrical, and Fire Codes, as well as all City Ordinances governing zoning and buildings. The State of Minnesota regulates all electrical work. The continued validity of this permit is contingent upon the applicant's compliance of all work done and materials used, with the plans and specifications herewith submitted, and with the applicable ordinances of the City.

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

Applicant's signature Susan Welles Date 3-9-23

Applicant's printed or typed name SUSAN WELLES

Owner/Applicant Statement - To be completed only when the homeowner is the permit applicant

I understand the State of Minnesota requires residential contractors, residential remodelers and residential roofers be licensed to work in the State unless they qualify for a specific exemption from the licensing requirements. By signing this statement, I certify that I am building or improving this dwelling myself. I claim to be exempt from state licensing requirements because I am not in the business of building on speculation or for resale. I certify I have not built or improved any other residential structures in the State within the past twelve months. I also acknowledge that, because I do not have a state license, I forfeit any mechanic's lien rights to which I may otherwise have been entitled under MS 514.01.

I further acknowledge I may be hiring independent contractors to perform certain aspects of the improvements on this dwelling, and I understand some of these contractors may be required to be licensed by the State. I understand unlicensed residential contracting, residential remodeling and residential roofing activity is a misdemeanor under Minnesota law, and I forfeit my rights to reimbursement from the Contractors Recovery Fund in the event any contractors I hire are unlicensed.

Homeowner's Signature: _____ Date: _____

Contact the Minnesota Department of Commerce, Enforcement Division to determine if a contractor is licensed or exempt or to check on contractor status. Metro: (651) 296-2594, Outstate: 1 (800) 657-3602, www.commerce.state.mn.us/mainbc.htm

For office use only:

Special Approvals	req	rec	Cert of insurance or cash Escrow	Permit Fees
Washington County			Soil Investigation Report or Shoring Plan	City Plan Review Fee \$
Rice County			Existing Conditions Report	Planner Review Fee \$
WBL Conservation Dist			Demolition Notification	State Surcharge Fee \$
Dept Natural Resource (DNR)			Construction Signage	Permit Escrow Fee \$ 3,000.00
City Council			Stormwater/Erosion Control Plan	TOTAL \$

APPENDIX 2

RETAINING WALL EXHIBIT

~for~ HUSNIK HOMES
~of~ 529 LAKE AVENUE
BIRCHWOOD, MN

Lot 7, Block 2, LAKEWOOD PARK 3RD
DIVISION, Washington County, Minnesota.

LEGEND

- DENOTES IRON MONUMENT FOUND
- DENOTES EXISTING ELEVATION
- DENOTES GUY WIRE
- DENOTES MAILBOX
- DENOTES POWER POLE
- DENOTES TELEPHONE PEDESTAL
- DENOTES STEPPING STONE
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- DENOTES EXISTING CONTOURS
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- DENOTES RETAINING WALL
- DENOTES SILT FENCE
- DENOTES FENCE
- DENOTES BITUMINOUS SURFACE
- DENOTES CONCRETE SURFACE
- DENOTES PAVER SURFACE

NOTES

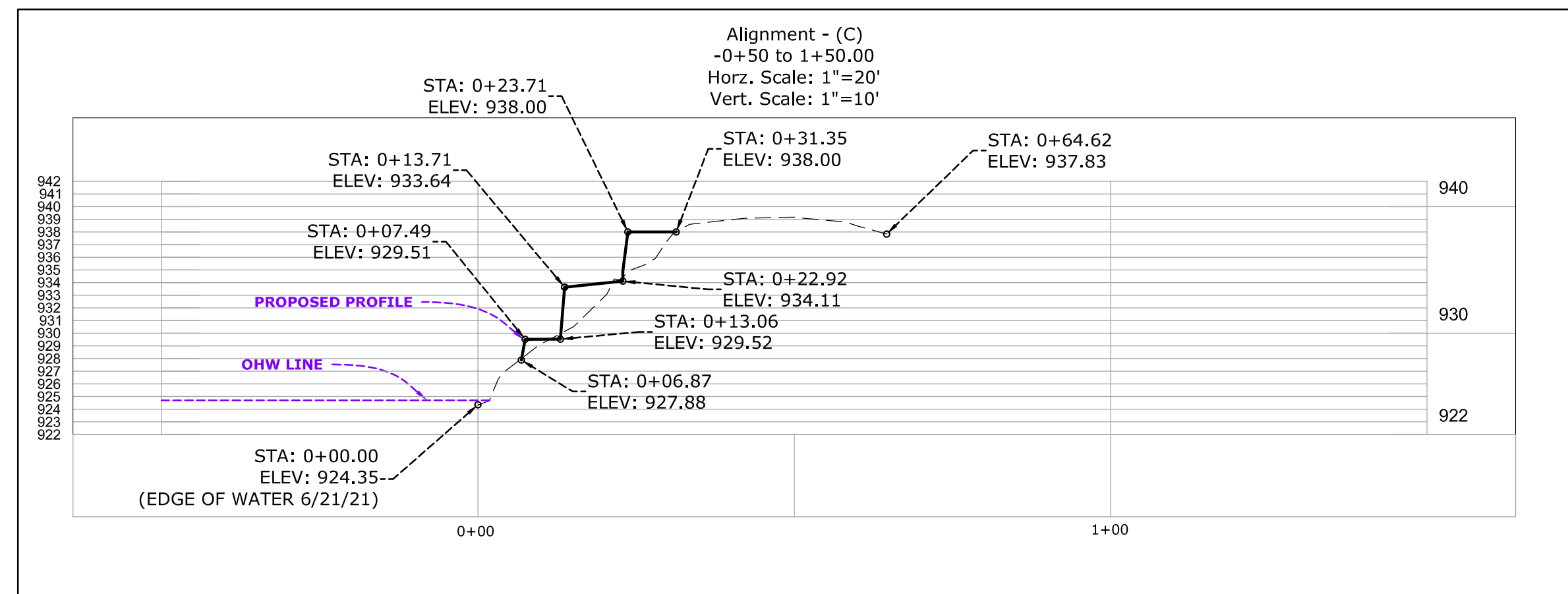
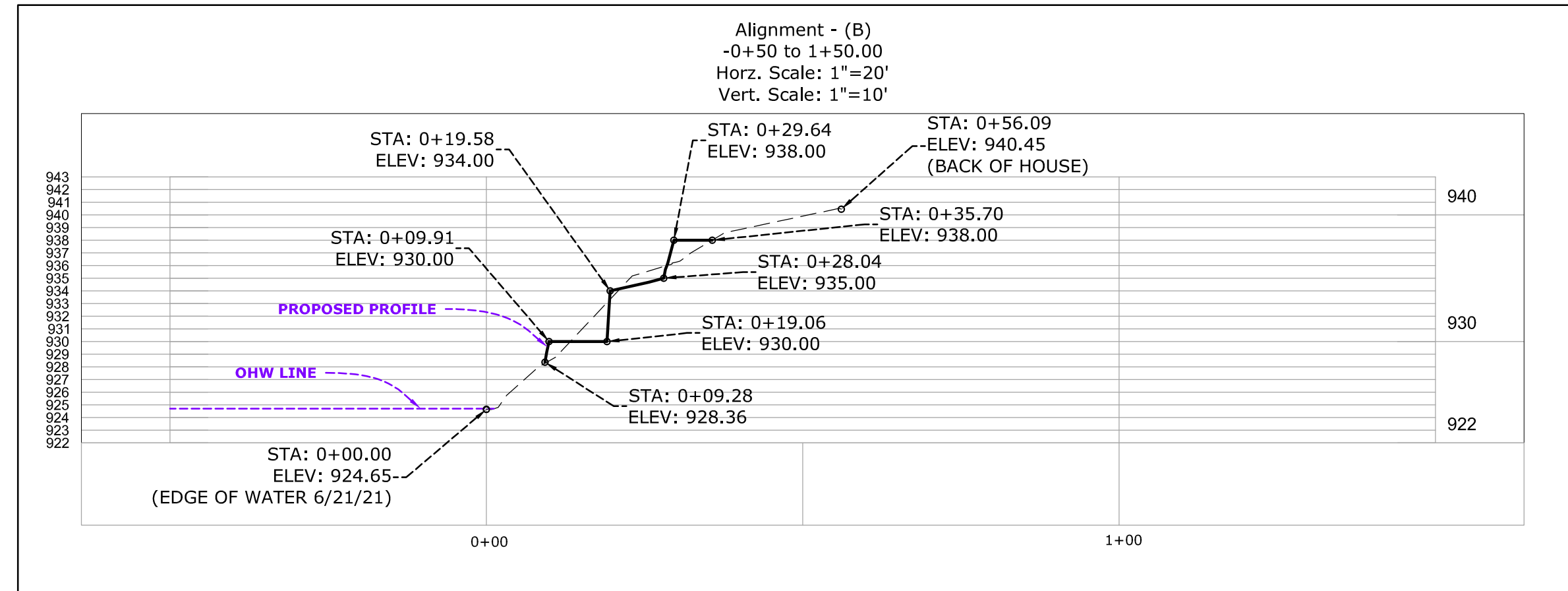
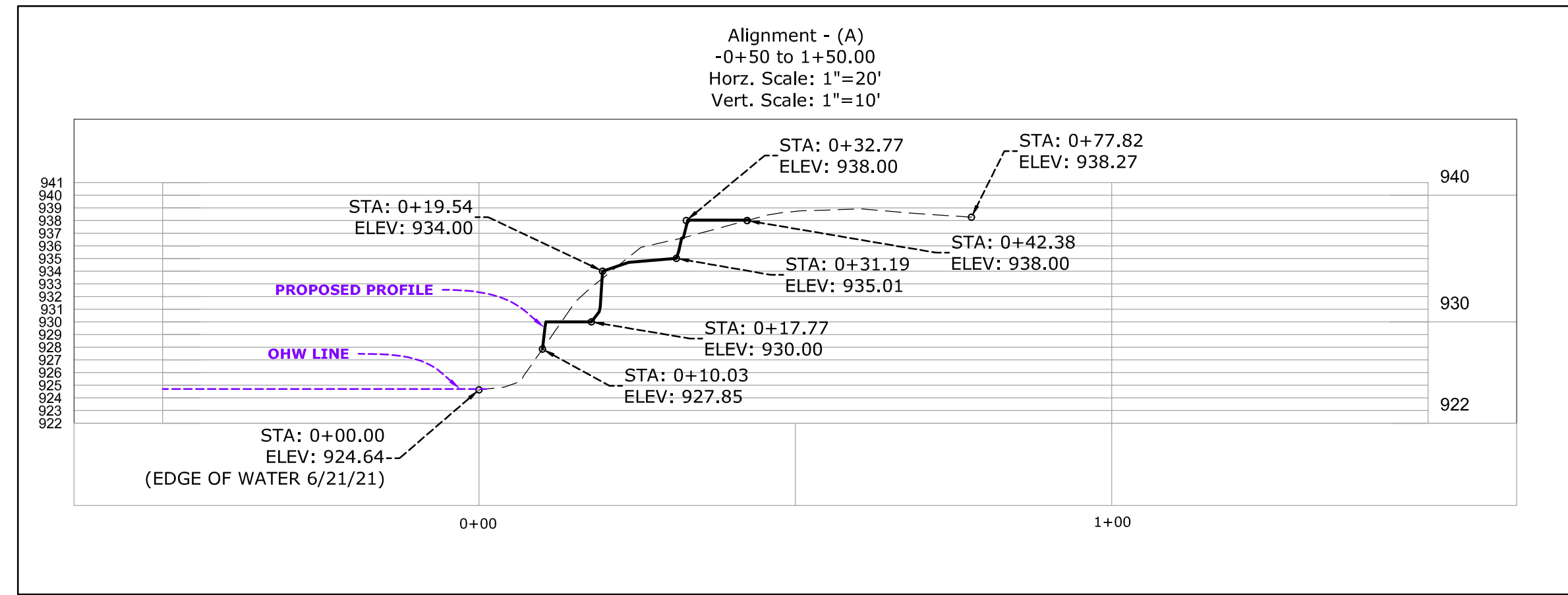
- Field survey was completed by E.G. Rud and Sons, Inc. on 06/21/2021.
- Bearings shown are on Washington County datum.
- This survey was prepared without the benefit of title work. Additional easements, restrictions and/or encumbrances may exist other than those shown hereon. Survey subject to revision upon receipt of a current title commitment or an attorney's title opinion.

EXISTING IMPERVIOUS SURFACE CALCULATIONS

TOTAL LOT AREA ABOVE O.H.W.	12,921 S.F.
HOUSE AND GARAGE	1,515 S.F.
DRIVEWAY	1,669 S.F.
CONCRETE	420 S.F.
RETAINING WALL/ROCK EDGING	167 S.F.
SHED	108 S.F.
STEPPING STONES	41 S.F.
TOTAL IMPERVIOUS SURFACE	3,920 S.F.
PERCENT IMPERVIOUS	30.3%

PROPOSED IMPERVIOUS SURFACE CALCULATIONS

TOTAL LOT AREA ABOVE O.H.W.	12,921 S.F.
HOUSE, GARAGE, STOOP AND WELL ROOM	2,289 S.F.
CONCRETE	314 S.F.
TOTAL IMPERVIOUS SURFACE	2,603 S.F.
PERCENT IMPERVIOUS	20.1%
PROPOSED WALLS	96 S.F.
TOTAL PROPOSED IMPERVIOUS SURFACE	2,699 S.F.
PROPOSED PERCENT IMPERVIOUS	20.9%



EARTHWORK NOTES

- * EARTHWORKS ARE CALCULATED TO TOP OF WALL AND FINISHED GRADE WHERE APPLICABLE.
- * NO ADJUSTMENT HAS BEEN MADE TO ACCOUNT FOR SWELLING/SHRINKAGE.

EARTHWORK SUMMARY

2d Area	Cut	Fill	Net
948.7 Sq. Ft.	25.48 Cu. Yd.	24.71 Cu. Yd.	Balance

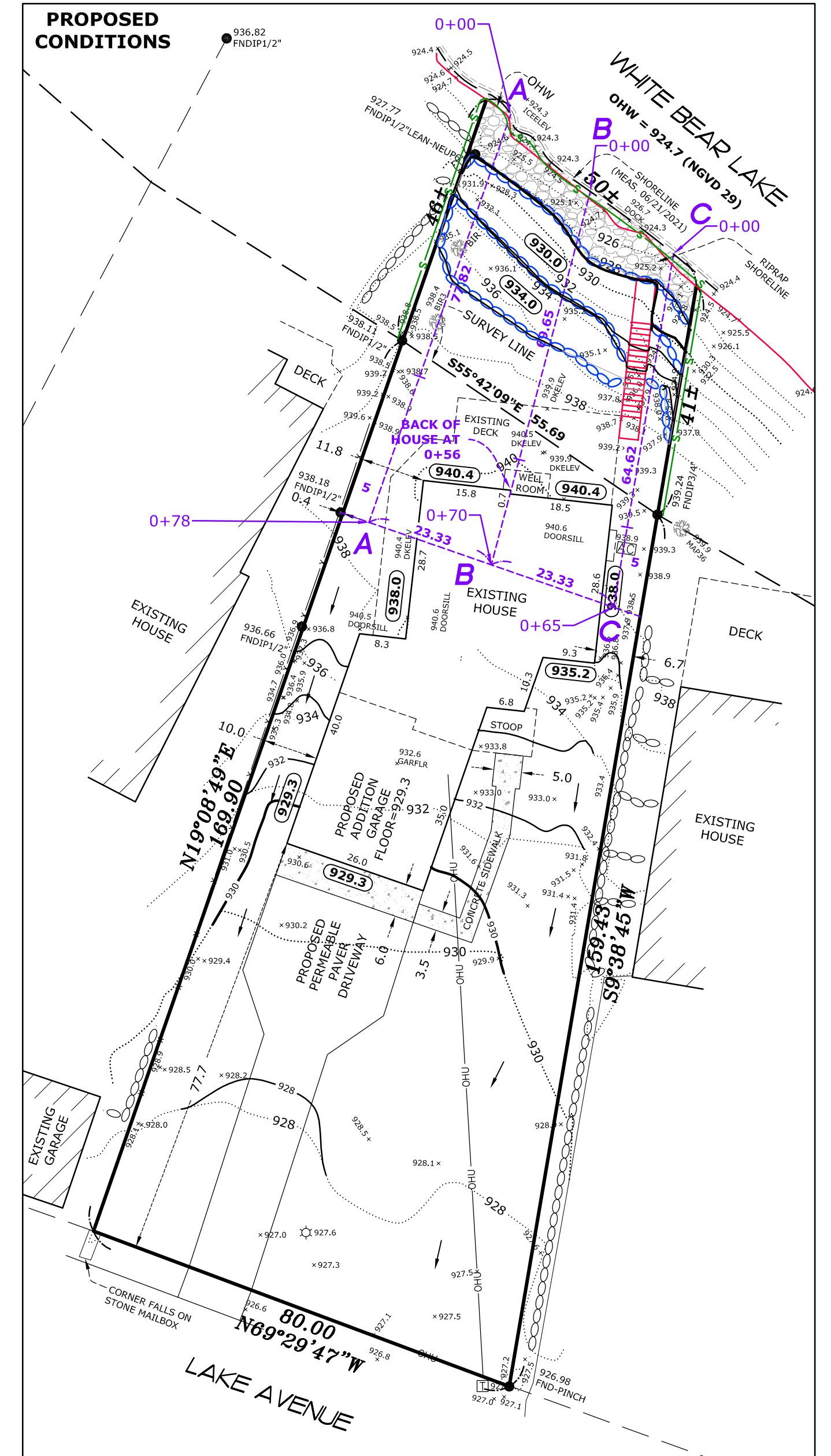
(SUMMARY PRESUMES THAT ANY EXCESS MATERIAL WILL BE SPREAD ACROSS THE REAR YARD)

HOUSE ELEVATIONS

MAIN FINISHED FLOOR = 940.6
ENTRY FINISHED FLOOR = 936.3
EXISTING BASEMENT = 932.9
NEW BASEMENT = 931.1
GARAGE FLOOR = 929.3

BENCHMARK

BENCHMARK: Top nut of hydrant located near 115 Birchwood Avenue.
Elevation = 997.64
Datum = (NGVD29)



NORTH

GRAPHIC SCALE



I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of Minnesota.

JASON E. RUD
Date: 3/9/2023 License No. 41578

NO.	DATE	DESCRIPTION	BY
1			
2			
3			

E. G. RUD & SONS, INC.
EST. 1977
Professional Land Surveyors
6776 Lake Drive NE, Suite 110
Lino Lakes, MN 55014
Tel. (651) 361-8200 Fax (651) 361-8701

APPENDIX 3



City of Birchwood Village
Petition for Variance Application

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

FOR OFFICIAL USE ONLY	
Application Received Date: <u>3-23-2023</u>	Amount Paid: \$ <u>\$3600.00</u>
Payment Type (Circle One): Cash / Check / Money Order / Credit Card	
Check/Money Order # <u>42365 / # 5644</u>	
Application Complete? Yes <input type="checkbox"/> No <input type="checkbox"/> If no, date application was deemed complete: _____	
Signature of City Planner: _____	Date: _____

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

- Name of Applicant(s) SUSAN WELLES
Address 3227 26TH AVE. N.
City GADEN VALLEY State MN Zip Code 55422
Business Phone 612-998-8404 Home Phone _____
- Address of Property Involved if different from above: 529 LAKE AVE .
- Name of Property Owner(s) if different from above and describe Applicant's interest in the property:
SANDRA KRIZ. BUERKLE & DAVID BUERKLE
I AM THE PROJECT DESIGNER .
- Specific Code Provision from which Variance is requested: 302.055.2.a.4

5. Describe in narrative form what the Applicant is proposing to do that requires a variance:
THE OBJECTIVE FOR THIS VARIANCE APPLICATION IS TO ALLOW HOMEOWNERS TO STABILIZE THEIR LAKESHORE . AT PRESENT WE ARE PROPOSING TO INSTALL SEVERAL 6'X6" TIMBER RETAINING WALLS AND PLACE NEW RIP-RAP AT THE SHORELINE TO PRESERVE HILLSIDE RUN-OFF & PROTECT FROM ANNUAL REPERCUSSIONS FROM ICE-OUT & RISE AND

FALL OF THE LAKES ELEVATION.

6. Type of Project:

- New Construction (empty lot)
- Addition
- Demolition
- Landscaping
- Repair or removal of nonconforming structure
- Other (describe) _____

7. Type of Structure Involved:

- Single Dwelling
- Garage
- Tennis Court
- Grading/Filling
- Other (describe) _____
- Double Dwelling
- Addition
- Pool

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

***SEE REVERSE SIDE OF APPLICATION.**

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

ONCE RETAINING WALLS ARE IN PLACE, NEW LEVEL AREAS WILL BE PLANTED TO CAPTURE WATER THAT PRIOR WOULD HAVE DRAINED DIRECTLY INTO W.B.L.

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

NO ALTERNATIVES OTHER THAN RETAINING CONSIDERED. IN THE PAST OWNER HAD ATTEMPTED TO PLANT ON SLOPE BUT IT PROVED TOO STEEP TO BE EFFECTIVE IN TERMS OF STABILIZING THE

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

HILLSIDE OR CAPTURING RAINWATER. THIS HAS RESULTED IN PROPOSING RETAINING & RIP RAP.

DEAR COMMISSIONERS, CITY COUNCIL MEMBERS,

THE PROPERTY AT 529 LAKE AVE HAS A CHALLENGING INCLINE ALONG THE SHORE OF W. BEAR LAKE. IN THE PAST THE HOMEOWNERS HAVE ATTEMPTED TO PLANT AND MAINTAIN PLANTINGS ALONG THE INCLINE TO STABILIZE THE SLOPE AND PROVIDE AREAS FOR STORMWATER TO BE CAPTURED BEFORE ENTERING W.B.L.

THE VERTICLE CHALLENGES THE SLOPE PRESENTS HAS PROVEN TO BE AN OBSTACLE IN MAINTAINING PLANTING AND CONTROLLING STORMWATER RUN-OFF. AS WITH MANY LAKESHORE PROPERTIES IN BIRCHWOOD (INCLUDING BOTH NEIGHBORING ADJACENT LOTS TO 529), THE INTRODUCTION OF RETAINING WALLS HAS BECOME A PROVEN STANDARD FOR DEALING WITH STEEP SLOPING SHORELINES.

MY CLIENT WISHES TO INSTALL A TIERED RETAINING WALL SYSTEM OF ~~WOOD~~ TREATED 6"X6" TIMBERS TO HEIGHTS OF 4' OR LESS TO BE COMPLIANT WITH CITY CODE. THIS WILL ENSURE AGAINST AND COMBAT SOIL EROSION AND HELP TO STABILIZE THE EXISTING SLOPE. THE ADDED HORIZONTAL PLANES BETWEEN THE TIERED RETAINING WALLS WILL BE PLANTED WITH NATIVE PERENNIALS TO SLOWDOWN AND HELP CONTAIN STORMWATER RUN-OFF ALONG THE SLOPE BEFORE IT ENTERS THE LAKE. WE ARE ALSO PROPOSING TO INSTALL NEW RIP-RAP AT THE BASE OF THE SLOPE ALONG THE SHORELINE NOT TO EXCEED 3' ABOVE O.H.W OR GREATER THAN 3:1 RATIO LANDWARD PURSUANT TO CITY GUIDELINES. ALL APPROPRIATE GRADING AND FILTER BLANKETS TO BE INSTALLED AS REQUIRED. THE INTRODUCTION OF THE RIP-RAP WILL HELP TO MITIGATE AND MINIMIZE EROSION CAUSED BY ICE OUT AND SEASONAL WATER LEVEL FLUCTUATIONS.

TO ACCOMPLISH THE ABOVE PROPOSAL IT WILL BE NECESSARY TO MOVE AND REDISTRIBUTE SOIL ALONG THE SHORELINE SLOPE. WE INTEND TO INSTALL THE NEW RETAINING AND RIP-RAP WITHOUT CAUSING A NET GAIN OR LOSS OF SOIL TO THE PROPERTY. PURSUANT OF CITY CODE 302.055.2.a.4 WE ASK FOR A VARIANCE TO GRADE AND FILL IS NEEDED TO MEET OUR GOALS. RESPECTFULLY, *John Wilkos*

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

If yes, explain: _____

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

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

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

	EXISTING	PROPOSED	CHANGE
1. Total Square Footage of Lot			
2. Maximum Impervious Surface (25% of item 1)			
3. Roof Surface			
4. Sidewalks			
5. Driveways			
6. Other Impervious Surface			
7. Total of Items 3-6			
8. Percent Impervious Surface			

15. Please attach the following:

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

↑
SEE ATTACHED SURVEY.

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

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

SUBD. 1.

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

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

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

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

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

Signature of Applicant: Susan Welles

Date: 3.23.23

RETAINING WALL EXHIBIT

~for~ HUSNIK HOMES
 ~of~ 529 LAKE AVENUE
 BIRCHWOOD, MN

Lot 7, Block 2, LAKEWOOD PARK 3RD
 DIVISION, Washington County, Minnesota.

LEGEND

- DENOTES IRON MONUMENT FOUND
- DENOTES EXISTING ELEVATION
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NOTES

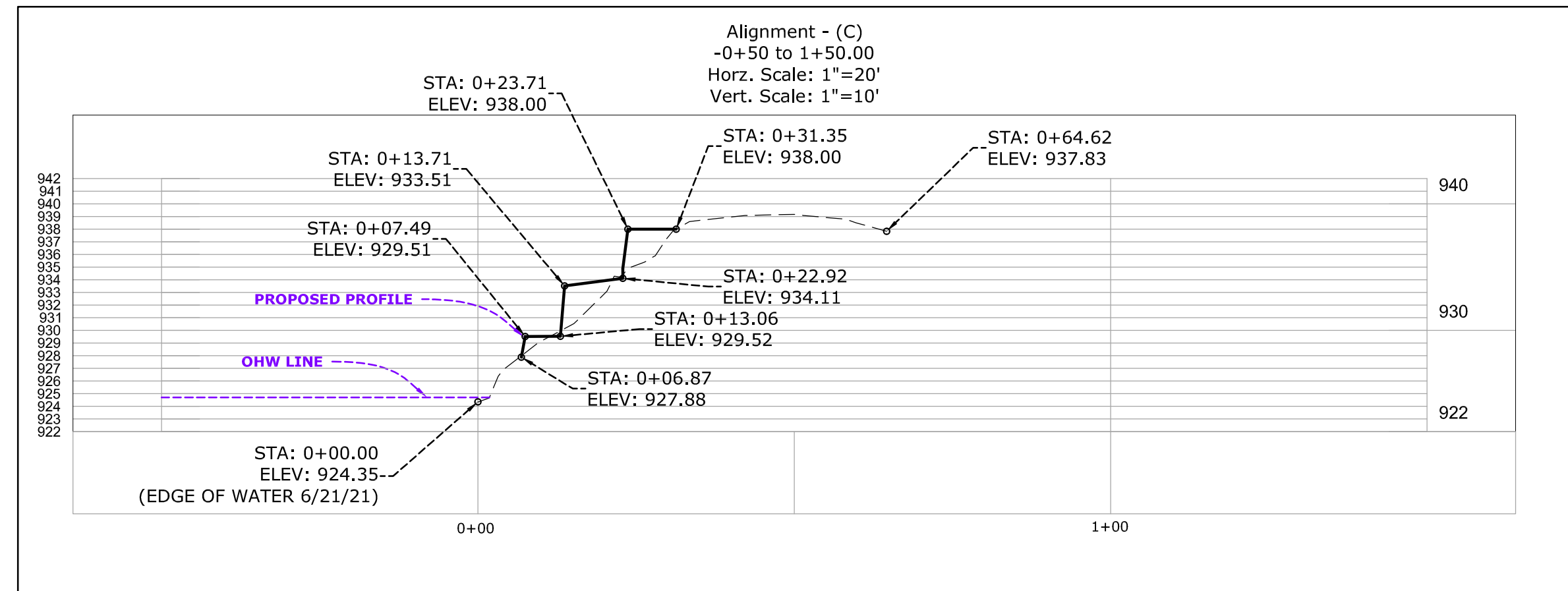
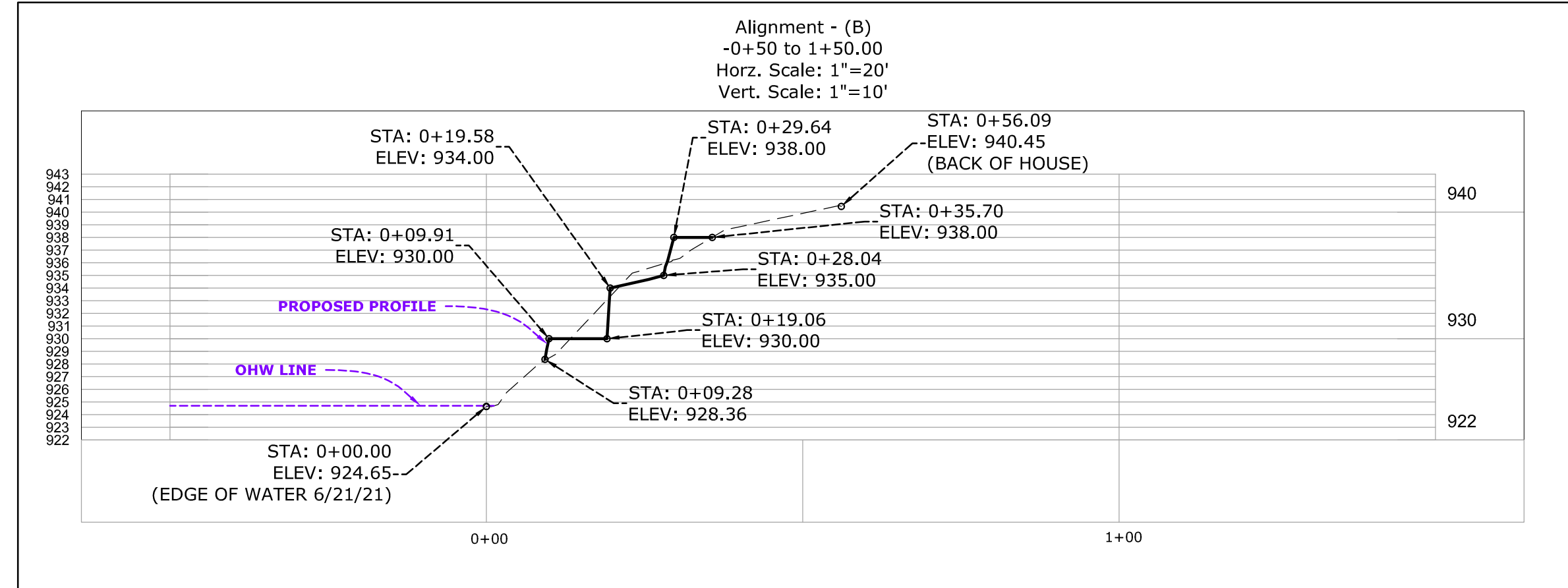
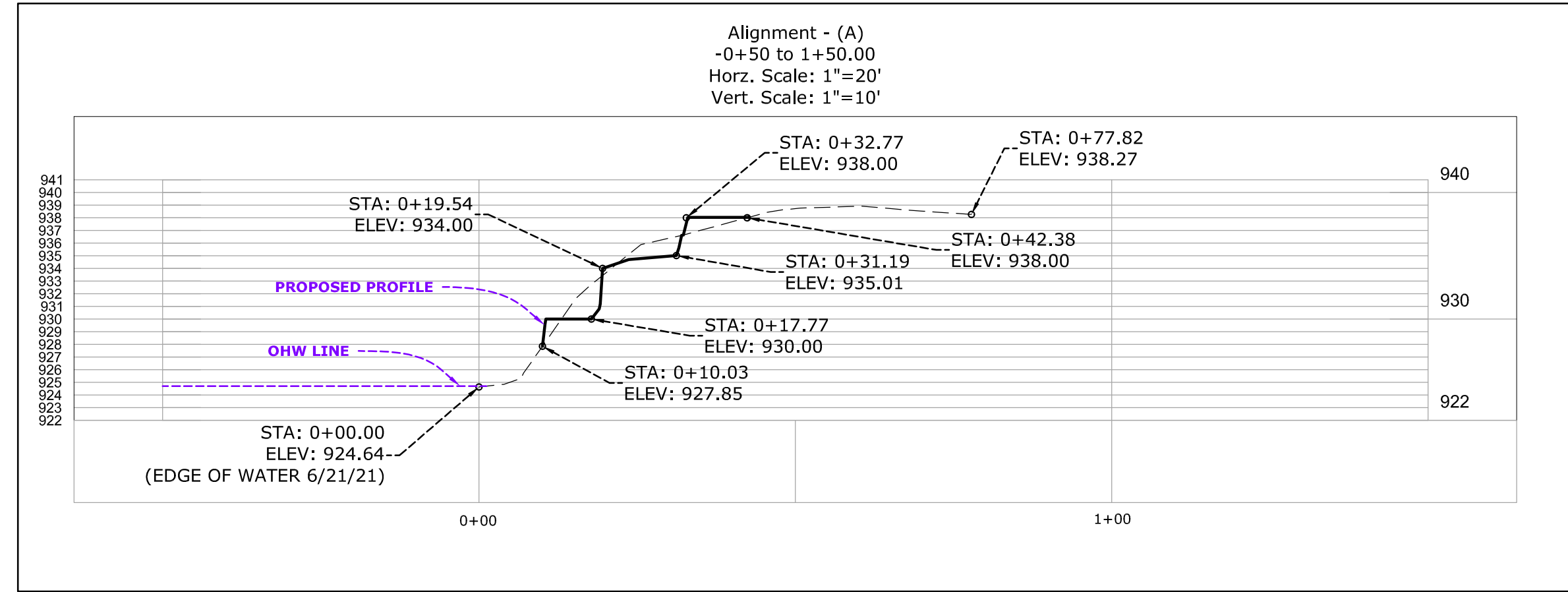
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CONCRETE	314 S.F.
TOTAL IMPERVIOUS SURFACE	2,603 S.F.
PERCENT IMPERVIOUS	20.1%
PROPOSED WALLS	96 S.F.
PROPOSED CONCRETE DRIVEWAY	1,189 S.F.
TOTAL PROPOSED IMPERVIOUS SURFACE	3,888 S.F.
PROPOSED PERCENT IMPERVIOUS	30.1%



EARTHWORK NOTES

- * EARTHWORKS ARE CALCULATED TO TOP OF WALL AND FINISHED GRADE WHERE APPLICABLE.
- * NO ADJUSTMENT HAS BEEN MADE TO ACCOUNT FOR SWELLING/SHRINKAGE.

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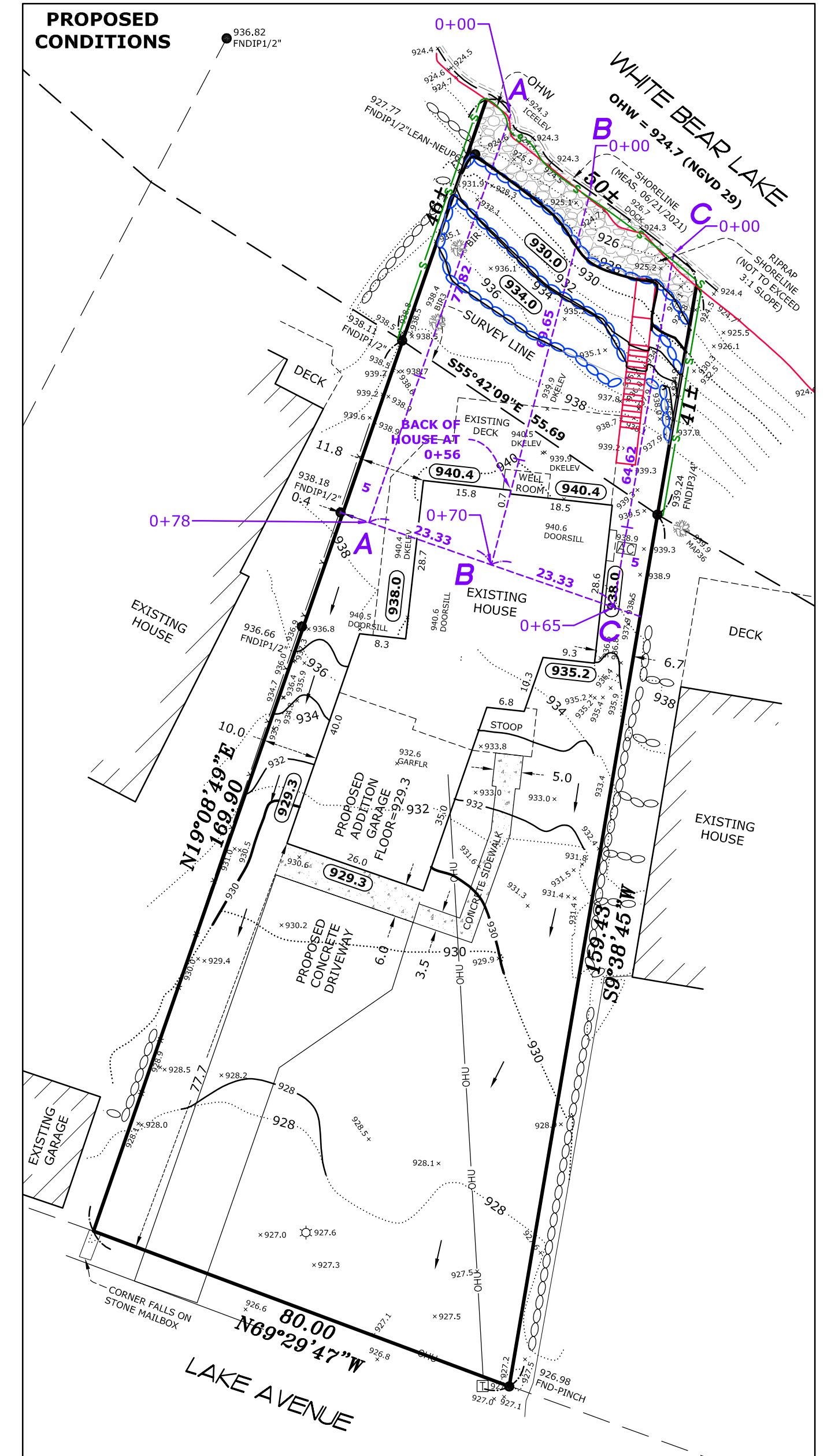
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EXISTING BASEMENT	= 932.9
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GARAGE FLOOR	= 929.3

BENCHMARK

BENCHMARK: Top nut of hydrant located near 115 Birchwood Avenue.
 Elevation = 997.64
 Datum = (NGVD29)



NORTH

GRAPHIC SCALE



I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of Minnesota.

JASON E. RUD
 Date: 3/21/2023 License No. 41578

NO.	DATE	DESCRIPTION	BY
1	3-17-23	CITY COMMENTS	CMB
2	3-21-23	CONCRETE DRIVEWAY	CMB
3			

E. G. RUD & SONS, INC.
 EST. 1977
 Professional Land Surveyors
 6776 Lake Drive NE, Suite 110
 Lino Lakes, MN 55014
 Tel. (651) 361-8200 Fax (651) 361-8701

APPENDIX 4

CITY OF BIRCHWOOD VILLAGE
207 BIRCHWOOD AVENUE
BIRCHWOOD, MINNESOTA

MINUTES OF THE CITY COUNCIL MEETING
VIA TELECONFERENCE
MARCH 8, 2022, 7:00 P.M.

MEMBERS:

Mary Wingfield	Mayor
Jon Fleck	Councilmember
Mark Foster	Councilmember
Justin McCarthy	Councilmember
Kevin Woolstencroft	Councilmember

STAFF:

Andy Gonyou	City Administrator
H. Alan Kantrud	City Attorney
Steve Thatcher	City Engineer

GUESTS:

Ryan Hankins	Planning Commission Vice Chairman
--------------	-----------------------------------

Minutes prepared by Anh Nguyen of Minutes Solutions Inc. from an audio recording.

1. **CALL TO ORDER**

In light of the status of the ongoing COVID-19 health pandemic, the City of Birchwood Village is conducting its March 2022, meeting using interactive web-based technology. Pursuant to *Minnesota Statutes, Chapter 13D.021 Subdivision 1(1)*, the City of Birchwood Village is declaring that, "an in-person meeting or a meeting conducted under section 13D.02 is not practical or prudent because of a health pandemic...".

Mayor Wingfield called the meeting to order at 7:00 p.m.

2. **PLEDGE OF ALLEGIANCE**

3. **APPROVAL OF AGENDA**

On a motion made by Councilmember Woolstencroft, seconded by Councilmember Foster, it was resolved to approve the agenda, as amended. All in favor; motion carried.

Mayor Wingfield requested the addition of the following items to the agenda:

- Planning Commission Discussion

- T.A. Schifsky & Sons Bid
- Ring Camera for City Hall
- Fence Tower Announcement
- Impervious Surface Code Adopted by the City of Mahtomedi

City Administrator Andy Gonyou requested that the following item be deferred until the April 2022 Council meeting:

- Approval of the Regular Meeting Minutes from February 8, 2022

4. OPEN PUBLIC FORUM

James Nelson, 256 Wildwood Avenue, requested that Council meetings resume to in-person as community members are eager to speak to the Council in person. He referred to the Birchwood Village newsletter and expressed concern regarding Mayor Wingfield reporting that Birchwood Village has never regulated content on signs. He noted this was a contradiction to the treatment he received as a result of his sign.

James Nelson reported that his sign followed size limitations and was not erected for more than 30 days in a calendar year, yet he was not provided an opportunity for polite discussion before being issued a citation. He reported that he would be attending the next in-person Council meeting with the support of fellow residents.

5. ANNOUNCEMENTS

- A. **Social Media:** Follow Birchwood Village on Facebook @BirchwoodCityHall or on Twitter @CityofBirchwood.

6. ADMINISTRATIVE PRESENTATION

- A. **Sheriff Report:** A report of law enforcement incidents and citations for February 2022, was provided for the Council's review.
- B. **Planning Commission Regular Meeting Minutes:** The minutes of the February 10, 2022, Planning Commission meeting was provided for the Council's review.

7. CITY BUSINESS – CONSENT AGENDA

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

- A. **Approval of the Special Meeting Minutes:** The meeting minutes of the February 15, 2022, special Council meeting was provided for the Council's review and approval.
- B. **Approval of the Treasurer's Report:** The Treasurer's Report for the period ending March 3, 2022, was provided for the Council's review and approval.

8. **CITY BUSINESS – REGULAR AGENDA**

A. **176 Cedar Street Lot Split**

a. **Public Hearing:** Steve Schad expressed concern regarding the number of trees that will be removed to accommodate the construction of houses. He queried the management of the potential water runoff. He was not in favor of the lot split and requested that the Council strictly adhere to city codes regarding water management and tree removal, and that variances regarding lot setbacks not be approved.

b. **On a motion made by Councilmember Woolstencroft, seconded by Councilmember Foster, it was resolved to close the public hearing. All in favor; motion carried.**

c. **Council Deliberation:**

On a motion made by Councilmember Fleck, seconded by Councilmember Woolstencroft, it was resolved to approve the lot split at 176 Cedar Street. All in favor; motion carried.

Mayor Wingfield requested that the builder, Paul Husnik of Husnik Homes, direct any questions to the City Attorney, H. Alan Kantrud, or the City Administrator, Andy Gonyou.

B. **Planning Commission Discussion**

a. *ACTION – Councilmember McCarthy will incorporate the feedback from the Planning Commission into a maintenance agreement for review at the next Council meeting in April 2022.*

ACTION – Councilmember McCarthy will send Ryan Hankins a draft of the maintenance agreement before the next Council meeting.

Ryan Hankins reported that the Planning Commission has done considerable work on the impervious surface code including transitioning to conditional use permits, refining language, and clarifying how the City Engineer evaluates the code. The Planning Commission requested feedback from the Council regarding the aforementioned changes, as well as guidance on pervious pavement surfaces.

C. **Variance Case No. 22-01-VB**

a. **Council Deliberation:**

On a motion made by Councilmember Woolstencroft, seconded by Councilmember Fleck, it was resolved to deny the driveway variance request on the basis that it does not meet practical difficulty and the solution presented by the applicant is due to the applicant's own initiative. All in favor; motion carried.

On a motion made by Councilmember McCarthy, seconded by Councilmember Woolstencroft, it was resolved to approve the variance request for the south side yard setback of 7.9 feet on the basis of practical difficulties due to a narrow lot. All in favor; motion carried.

On a motion made by Councilmember McCarthy, seconded by Councilmember Woolstencroft, it was resolved to approve the variance request for the north side yard setback of 7.5 feet for the cantilever bump out and 8.5 feet for the existing structure as presented on the basis of practical difficulties due to a narrow lot that expands towards the lake, and for the preservation of the existing sightlines for the neighbors, and on the condition that the house not be expanded closer to the lake and be recorded with Washington County. All in favor; motion carried.

On a motion made by Mayor Wingfield, seconded by Councilmember Woolstencroft, it was resolved to deny the variance request for impervious surface on the basis that it does not meet practical difficulty and exceeds 25% impervious surface as per city code. Councilmember Foster voted no. Motion carried.

Mayor Wingfield noted that the Council needs to be cognizant of the city's 60-day policy as the application was submitted on February 8, 2022, and will expire before the next Council meeting in April 2022.

Ryan Hankins reported that the Planning Commission recommended to approve all variance requests except the minimum setback requirement for the driveway due to reasonable use for the property under the current zoning code.

The Council expressed concern regarding the driveway being too close to the neighbor and the potential for runoff into the neighboring property.

H. Alan Kantrud confirmed that the variance request for the south side yard would set a new setback of 7.9 feet and the city code allows a maximum projection of 2 feet from the setback. The builder, Kyle Hunt, noted that the fireplace has a 1-foot projection from the setback.

Mayor Wingfield accepted the 8.5 feet setback from the lot on the condition that the house, including bump outs, cantilevers, or eaves, does not approach closer than 8 feet to the lot line to allow open space for neighbors on either side to build if they wish.

The applicant confirmed that he had no intention of encroaching towards the lake in the future and agreed to record the stipulation with Washington County for property records.

Steve Thatcher confirmed the project has an impervious surface of 29.56% and 42.7% including the pervious pavers. Mayor Wingfield reminded the Council that an impervious surface over 35% has not been historically permitted by the Council. The application is incompatible with the city's open space, values, and the Council's decisions in the past. Mayor Wingfield expressed concern regarding

setting a precedent and reiterated that the Council imposed a standard to deny any variance request over 25% impervious surface. Mayor Wingfield denied the request based on the builder's inability to mitigate the impervious surface down to 25% as per city code or to present a practical difficulty.

H. Alan Kantrud advised the Council to follow past precedent but noted that it is not acceptable to inject terms that are not included in the city code to the applicant's current variance request. He confirmed that if the builder can decrease the impervious surface to 25% or less, it is within city code and a variance is not required.

The Council agreed to waive the application fee if another variance request is required for the same issue.

D. Variance Case No. 22-02-VB

a. Council Deliberation:

On a motion made by Mayor Wingfield, seconded by Councilmember Fleck, it was resolved to approve the variance request to erect a fence 61 feet back from Birchwood Lane on the west property line and 50 feet south of the White Bear Lake high water mark, on the basis that the county line road is intended to keep property far back from the right of way but East County Line Road turns away from the lot and presents a practical difficulty, and on the condition that permission is obtained from Washington County. All in favor; motion carried.

Mary Jane LaVigne, a resident of Birchwood Village, expressed concern that a variance was granted, without proper notification to neighbors, for the construction of the applicant's driveway given its close proximity to a busy intersection. She objected to the fence citing interference with green space and no practical difficulty to warrant a fence.

Mayor Wingfield confirmed that the city code permits a fence not within 20 feet of the right of way. She noted that the Council had previously indicated that the side yard setback to the county line did not apply to the applicant because Feistner Beach intervened the county road and the property. This was erroneous and Feistner Beach does not sit in between East County Line Road and the property.

The applicant agreed to move the start of the fence to the back of the garage. This would be 61 feet away from the right of way of Birchwood Lane and on the property line until 50 feet south of the White Bear Lake high water mark.

A letter of no objection from Washington County is required before the applicant can obtain a fence permit, as recommended by H. Alan Kantrud.

- b. Approve Resolution 2022-06, Authorizing Extension:** A resolution was passed on March 8, 2022, to authorize a 60-day extension for decision in the variance case of 22-02-VB, thus extending the deadline to May 24, 2022.

E. Variance Case No. 22-03-VB

a. Council Deliberation:

On a motion made by Mayor Wingfield, seconded by Councilmember McCarthy, it was resolved to approve the variance request to modify the roof to allow the encroachment as requested. All in favor; motion carried.

On a motion made by Councilmember McCarthy, seconded by Councilmember Fleck, it was resolved to approve the variance request to reduce the impervious surface from 30.3% to 29%. All in favor; motion carried.

Ryan Hankins noted that the variance request will update the roof to meet current energy efficiency standards.

Steve Thatcher reported that the applicant has agreed to a maintenance agreement for their raingarden.

F. Wildwood Avenue Lift Station

a. Update from City Engineer: Steve Thatcher reported that he is preparing the plans and specifications, to be ready by May 3, 2022. The surveying of existing structures in the area will be completed weather permitting.

A notice will be posted in the newspaper and bids will be opened on June 7, 2022. The bids will be reviewed at the Council meeting on June 14, 2022. The contractor would start no earlier than the weekend of July 4, 2022, with completion aimed for December 5, 2022.

Mayor Wingfield reported no funding from the state. Any funding support would be in the form of low interest loans. She noted that the Council recovered funds from the removal of the Birchwood Lane Lift Station for the past three years, but would have to continue the capital improvement plan to cover the \$500,000 expenditure for the project.

Mayor Wingfield reiterated that the current Wildwood Avenue Lift Station is not OSHA compliant and is a liability. Steve Thatcher also noted that the above ground lift station is in a hazardous position next to the road.

G. Second Reading of Ordinance 2022-02-01, Amending Section 404

a. Public Hearing:

On a motion made by Councilmember Woolstencroft, seconded by Councilmember Foster, it was resolved to close the public hearing. All in favor; motion carried.

Councilmember McCarthy reported that unused definitions, a screen requirement, and inaccurate cross references to state billing code were removed.

There were no comments for the public hearing.

b. Council Deliberation and Approval:

On a motion made by Councilmember McCarthy, seconded by Councilmember Woolstencroft, it was resolved to approve Ordinance 2022-02-01, Amending Section 404. All in favor; motion carried.

c. Approve Resolution 2022-05, Summary Publication:

On a motion made by Councilmember McCarthy, seconded by Councilmember Fleck, it was resolved to approve Resolution 2022-05, Summary Publication. All in favor; motion carried.

H. Second Reading of Ordinance 2022-02-03, Repealing Section 301.065

a. Public Hearing:

On a motion made by Councilmember Woolstencroft, seconded by Councilmember Fleck, it was resolved to close the public hearing. All in favor; motion carried.

Councilmember McCarthy reported that requirements for obtaining variances and administrative appeals were separated, refined, and streamlined. He noted that Section 301.065 referred to an old standard that was not removed from the city code.

There were no comments for the public hearing.

b. Council Deliberation and Approval:

On a motion made by Councilmember Woolstencroft, seconded by Councilmember McCarthy, it was resolved to approve Ordinance 2022-02-03, Repealing Section 301.065. All in favor; motion carried.

c. Order Publication: ACTION – Andy Gonyou will order the publication of Ordinance 2022-02-03, Repealing Section 301.065.

I. Second Reading of Ordinance 2022-02-04, Amending Section 302.055

a. Public Hearing:

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

Councilmember McCarthy reported that unnecessary verbiage was removed.

There were no comments for the public hearing.

b. **Council Deliberation and Approval:**

On a motion made by Councilmember McCarthy, seconded by Councilmember Woolstencroft, it was resolved to approve Ordinance 2022-02-04, Amending Section 302.055. Councilmember Fleck abstained. Motion carried.

- c. **Order Publication:** *ACTION – Andy Gonyou will order the publication of Ordinance 2022-02-04, Amending Section 302.055.*

J. **Second Reading of Ordinance 2022-02-05, Repealing and Replacing Section 304**

a. **Public Hearing:**

On a motion made by Councilmember McCarthy, seconded by Councilmember Foster, it was resolved to close the public hearing. Councilmember Fleck abstained. All in favor; motion carried.

Councilmember McCarthy reported that repealing and replacing Section 304 provided more clarity for applicants to easily understand city code with respect to variances.

There were no comments for the public hearing.

b. **Council Deliberation and Approval:**

On a motion made by Councilmember McCarthy, seconded by Councilmember Woolstencroft, it was resolved to approve Ordinance 2022-02-05, Repealing and Replacing Section 304. Councilmember Fleck abstained. All in favor; motion carried.

- c. **Approve Resolution 2022-04, Summary Publication:**

On a motion made by Councilmember McCarthy, seconded by Councilmember Foster, it was resolved to approve Resolution 2022-04, Summary Publication. Councilmember Fleck abstained. All in favor; motion carried.

K. **Second Reading of Ordinance 2022-02-06, Adding Section 310**

a. **Public Hearing:**

On a motion made by Councilmember McCarthy, seconded by Councilmember Woolstencroft, it was resolved to close the public hearing. Councilmember Fleck abstained. All in favor; motion carried.

Councilmember McCarthy reported that the old administrative appeals section was removed and placed into a separate section.

There were no comments for the public hearing.

b. Council Deliberation and Approval:

On a motion made by Councilmember McCarthy, seconded by Councilmember Foster, it was resolved to approve Ordinance 2022-02-06, Adding Section 310. All in favor; motion carried.

- c. Order Publication:** *ACTION – Andy Gonyou will order the publication of Ordinance 2022-02-06, Adding Section 310.*

L. Second Reading of Ordinance 2022-02-07, Adding Irrigation Standards

a. Public Hearing:

On a motion made by Councilmember McCarthy, seconded by Councilmember Woolstencroft, it was resolved to close the public hearing. Councilmember Fleck abstained. All in favor; motion carried.

There were no comments for the public hearing.

- b. Council Deliberation:** Mayor Wingfield reported that the addition of irrigation standards was required to ensure the city's water system remains safe, and that the burden remains on any landowner with an irrigation system to properly provide a backflow valve to prevent contamination of city water.
- c. Order Publication:** *ACTION – Andy Gonyou will order the publication of Ordinance 2022-02-07, Adding Irrigation Standards.*

M. COVID-19 Protocols

a. Council Deliberation:

On a motion made by Mayor Wingfield, seconded by Councilmember Woolstencroft, it was resolved to return to in-house meetings and to rescind the mask mandate following the adjournment of the Council meeting on March 8, 2022. Councilmember Fleck abstained. All in favor; motion carried.

The Council discussed resuming with in-person meetings at City Hall based on the current status of the COVID-19 situation. Andy Gonyou expressed his support for in-person meetings.

N. Councilmember Reports

a. Mayor Wingfield

- i) Streetlights:** *ACTION – Mayor Wingfield will confirm that there is no charge for Xcel Energy to replace the bulbs for the streetlights at the east end of Wildwood Park with LED bulbs.*

ACTION – Mayor Wingfield will request that Xcel Energy install a longer arm at the streetlight for better lighting on the road at no charge.

ACTION – Councilmember McCarthy will speak to his neighbors regarding the two private streetlights at the end of his street.

ACTION – Mayor Wingfield will request that the city workers trim the tree on Owl Street that is currently obstructing the streetlight as reported by Councilmember Foster.

Mayor Wingfield noted that street lighting should be uniform. The Council authorized Mayor Wingfield to arrange for the streetlight bulbs in question to be changed.

- ii) **Dog Licenses:** *ACTION – Andy Gonyou will amend the fee schedule to reflect that dog license are valid for three years and will present it to the Council at the next Council meeting.*

Mayor Wingfield noted that the rabies vaccine is valid for three years, which does not coincide with the city's dog license of two years. The Council agreed it would be an administrative burden not to have the license coincide with the vaccine.

Mayor Wingfield reported that part of the fee from dog licenses is allocated to dog patrolling at a cost of \$80 per month.

- iii) **Data Practices Requests:** *ACTION – Andy Gonyou will draft a data practices request policy to be included on the consent agenda for the next Council meeting.*

Mayor Wingfield suggested that staff inform the Council when a data practice request is received. This will help determine how much staff time is allocated to data practices requests and how often the requests are received.

- iv) **Snow Plowing Services:** *ACTION – Mayor Wingfield will inform the snow plowing contractor that the clean-up work on March 9, 2022, is not required.*

Mayor Wingfield reported that the snowfall to date is 20.8 inches and expenses on snow plowing to date is \$17,000. The budget for snow plowing is \$22,000. The city has not been billed for the most recent heavy snowfall. The Council agreed that additional clean-up is not required given the warmer weather.

v) **T.A. Schifsky & Sons Bid:**

On a motion made by Mayor Wingfield, seconded by Councilmember Woolstencroft, it was resolved to approve the bid provided by T.A Schifsky & Sons for crack filling, patching, and watermain breaks, to be completed in May 2022. All in favor; motion carried.

ACTION – Mayor Wingfield will confirm that street sweeping can be completed in tandem with the work by T.A. Schifsky & Sons.

Mayor Wingfield noted a potential surcharge based on current oil prices.

vi) **Ring Camera for City Hall:** The Council agreed to install a Ring camera at City Hall.

Mayor Wingfield reported that the camera would monitor the front of City Hall, the garage across the street, and the bell tower at a monthly cost of \$3.

vii) **Fence Tower Announcement:** Mayor Wingfield reported that the fence post will be erected at the water tower receiver in a few weeks.

viii) **Impervious Surface Code Adopted by the City of Mahtomedi:** *ACTION – Mayor Wingfield will obtain the ordinance from Mahtomedi's city attorney and will present it to the Council, the Planning Commission, and the City Attorney for review.*

b. **Councilmember McCarthy**

i) **Sign Ordinance:**

On a motion made by Councilmember McCarthy, seconded by Councilmember Fleck, it was resolved to suspend the enforcement of Section 601 effective immediately. All in favor; motion carried.

ACTION – Andy Gonyou will include the repealing of the current sign ordinance for public hearing on the agenda for the next Council meeting.

Councilmember McCarthy presented a proposal to repeal the city's current sign ordinance. He noted constitutional concerns along with concerns that the current ordinance allows commercial signage with no time limit compared to non-commercial signage. He is working on a content neutral, size-based, revised ordinance and will present it at the next Council meeting.

H. Alan Kantrud advised city staff not to enforce the current sign ordinance, no criminal citations be issued pursuant to the sign ordinance, and no complaints regarding the sign ordinance be entertained pending the formal repeal of the ordinance at the next Council meeting. H. Alan Kantrud confirmed that a second reading can be waived as there is no state law requiring two readings.

- ii) **Administrative Complaint Procedure:** Councilmember McCarthy reported a misinterpretation of the city's ordinance by the public and the media. A revision is pending.
- ii) **Hall's Marsh Update:** Councilmember McCarthy reported that the Priebe Lake Inlet structure was completed; however, the dam eroded overnight and resulted in running water from the pipe into Hall's Marsh. A meeting with the Rice Creek Watershed District (RCWD) was held regarding the breach in which Councilmember McCarthy reiterated that the RCWD requires permission from Birchwood Village to draw down Priebe Lake.

A RCWD workshop was held on March 7, 2022, where staff were directed to develop a comprehensive plan and will be working with Birchwood Village. Councilmember McCarthy confirmed that a letter was sent to the RCWD, the City of White Bear Lake, and the City of Mahtomedi as previously discussed.

9. **NEXT MEETING**

The next Council meeting will be held at a date and time to be determined.

10. **ADJOURNMENT**

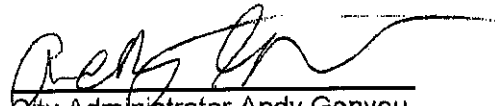
On a motion made by Councilmember McCarthy, seconded by Councilmember Woolstencroft and carried unanimously, it was agreed that there was no further business of the Council to transact; the meeting was closed at 10:39 p.m. by Mayor Wingfield.

DISCLAIMER

The above minutes should be used as a summary of the motions passed and issues discussed at the meeting of the members of the Birchwood Village City Council. This document shall not be considered to be a verbatim copy of every word spoken at the meeting.


 Mayor Mary Wingfield

04/12/2022
 Date


 City Administrator Andy Gonyou

04/12/2022
 Date



MEETING MINUTES (Draft)

Birchwood Planning Commission Regular Meeting

City Hall - 7:00 PM Regular Meeting 4/27/2023

Submitted by Michael Kraemer – secretary

COMMISSIONERS PRESENT: — Andy Sorenson - Chairman, Joe Evans, Michelle Maiers-Atakpu, Michael Kraemer

COMMISSIONERS ABSENT: Michael McKenzie

OTHERS PRESENT: Council Member - Justin McCarthy, City Engineer – Steve Thatcher, Susan Wells, David Buerke, Sandra Kriz Herbert Buerke

TO ORDER Meeting called to order by Chairman Andy Sorenson at 7:00 PM.

1. PUBLIC FORUM – No one present
2. APPROVE AGENDA
 - a. Maiers-Atakpu moved, 2nd by Evans, to approve the agenda as presented.
Vote: Yes – 4, No – 0. Motion to approve agenda passed.
3. REGULAR AGENDA
 - a. Item A – Review/Approve March 26, 2023, Meeting Minutes
 - i. Motion by Evans, 2nd by Sorenson to approve the minutes. Vote: Yes – 4, No – 0, Motion to approve the minutes passed.
 - b. Item B – 2023-03-VB (529 Lake Ave) Variance.
 - i. Public Forum – no one present to speak to topic.
 - ii. Review Variance Application
 1. Susan Wells, David Buerke, Sandra Kriz Herbert Buerke present to speak to the variance application.
 2. Susan Wells indicated discussions with City had indicated a variance to City Code 302.055.2.a.4 – Grading and filling within 20 feet of White Bear Lake OHW, would be required. The variance submitted indicated slope stabilization, retaining wall development, and shoreline rip rapping within the Shoreland District.
 - iii. Review City Engineer Memo
 1. Steve Thatcher – City Engineer discussed his review memo indicating reasons that could be used to deny or approve the variance request.
 - a. Engineer Thatcher’s memo indicated that the variance application submitted was deficient lacking recognition that variance requests from City Code 302.020 – STRUCTURE LOCATION REQUIREMENTS (prohibiting

retaining walls within 50' of White Bear Lake OHW and variance from City Code 302.050 IMPERVIOUS SURFACES (additional impervious generated by retaining wall) must be submitted and taken into account in addition to the shoreline grading/rip rap variance application.

iv. Commission Finding of Fact.

1. The shoreline slope at 529 Lake Ave is deteriorating, constitutes a practical difficulty unique to the lot, and warrants stabilization.
2. Rip rapping of the shoreline per DNR guidelines, stabilizing the slope using terracing, intermittent retaining walls, and erosion control and screening perennial plantings appears to be a practical solution to stabilizing the deteriorating slope.
3. It is the opinion of the Planning Commission that the stabilization of the slope as proposed including the walls and plantings are consistent with the intent of, and in harmony with, the City's comprehensive plan to control and protect shoreline and water bodies. Advisory Vote: Yes – 4, No – 0.
4. The Planning Commission supports combining all three required variances into one application consideration (when provided) and supports the granting the variance(s) provided the "Conditions of Support" listed herein are met and meet the approval of the City Planner and City Engineer. Advisory Vote: Yes – 4, No -0.
5. It is the opinion of the Planning Commission that if the "Conditions of Support" outlined below are completed to the satisfaction of the City Planner and City Engineer, that the variance applications do not need to come back to the Commission. Advisory Vote: Yes – 4, No – 0.

6. Conditions of Support/Commission Action:

- a. The initial submittal is deficient and needs to be expanded and resubmitted (before Council consideration) to include variance application from City Codes 302.020 – STRUCTURE LOCATION REQUIREMENTS (prohibiting retaining walls within 50' of White Bear Lake OHW and variance from City Code 302.050 IMPERVIOUS SURFACES. Advisory Vote: Yes – 4, No – 0.
- b. The initial variance submittal is deficient in construction and material details making it difficult for Commission to complete their review. As a condition of Planning Commission support, and before the variance is submitted for Council consideration, the deficient construction info shall be submitted to the City Planner and City Engineer

for review and approval: (Advisory Vote: Yes – 4, No – 0)
Examples of deficient anticipated construction details and material info includes the following:

i. Retaining Wall & Stairway Info

1. Designers name and qualifications
2. Design details such as wall and stairway foundation details, depth of bury, calculations of over-turn, connection details, seepage and drainage materials and details, dead-man and earth anchor locations and layouts, stairway layout and details. The Planning Commission would support the use of native boulder materials as and alternative retaining wall material.
3. Material specifications (i.e. stairways, wall timbers, connectors, dead-man, earth anchors, geotextile, erosion control fabric.)
4. Erosion control measures proposed during construction.

ii. Plantings Info

1. Proposed layouts and positioning plan of perennial plantings for erosion, slope stabilization, and screening.
2. Materials listing and specifications (species, sizes, quantities, bedding, ground cover, mulch, etc.)

c. Item C – New Variance Application Form Review

i. Discussion:

1. The Commission reviewed a sample revised Variance Application form submitted by Council Member Hankins. We applaud Councilor Hankins effort to make city forms as simple and useful as possible.

ii. Commission Input:

1. Commission would support the use of the revised form as presented with following suggested edits.
2. Item L – Replace “If so” with “Shall”. Commission would recommend this impervious calculation be preformed for any variance application whether or not the property is over or under the 25% threshold.
3. Section – Planning Commission Finding of Fact (table)

To: Birchwood City Council
From: Ryan Hankins
Re: Variance time extension

May 9 notes: “for good cause” was added as the reason for which the city council may extend the variance:

Revocation and Termination of Variances. A violation of any condition set forth or required in granting a variance shall be a violation of the Code and automatically terminates the variance. Unless the City Council prescribes another expiration, a variance shall become void two years after it was granted, unless the use for which it is granted has been established. The City Council may, for good cause, extend the expiration of a variance not more than once by one year, but only if an application for an extension is made in writing to the City Administrator before expiration.

Previous notes:

One document follows:

1. [ACTION] Proposed ordinance amendment for Variances

A discussion of the ordinance is included in the “Findings and Purpose” section.

ORDINANCE NO. ORD 2023-04-01

**AN ORDINANCE AMENDING ORDINANCE NO. 304 ADOPTED ON MARCH 8, 2022,
AND TITLED “VARIANCES.”**

The City Council of The City of Birchwood Village, Minnesota ordains:

Section 1. Findings and Purpose.

Construction projects that require variances often last longer than one year. Because construction work usually cannot begin until a variance is granted, construction at a typical pace risks overshooting the expiration of a variance. Construction projects are often completed more than one year after the grant, and providing that longer limit affords applicants some assurance that a variance will remain valid until it can be used. The council maintains the prerogative to lengthen the expiration in its discretion, but may now also shorten the expiration.

Section 2. Section 304.035 of Ordinance No. 304 adopted on March 8, 2022 and titled “VARIANCES” is amended to read:

304.035 **Revocation and Termination of Variances.** A violation of any condition set forth or required in granting a variance shall be a violation of the Code and automatically terminates the variance. ~~A variance shall become null and void one year after it was granted, unless made use of within the year or such longer period as prescribed by the Council. Unless the City Council prescribes another expiration, a variance shall become void two years after it was granted, unless the use for which it is was granted has been established. The City Council may, for good cause, extend the expiration of a variance not more than once by one year, but only if an application for an extension is made in writing to the City Administrator before expiration.~~

This ordinance becomes effective from and after its passage and publication.

Passed by the City Council of The City of Birchwood Village, Minnesota, Minnesota this ____th
day of _____, 2023.

Margaret Ford, Mayor

Attested:

Rebecca Kellen, City Clerk

To: Birchwood City Council
From: Ryan Hankins
Re: Righting and Rewriting the right-of-way-code

May 9 remarks:

First, statute limits significantly how much the city can regulate right-of-way. In general, we are limited to permitting for obstructions, excavations and wireless facilities:

Minn Stat. § 237.163 Subd. 2 (in part):

A local government unit may, by ordinance ... require a telecommunications right-of-way user seeking to excavate or obstruct a public right-of-way for the purpose of providing telecommunications services to obtain a right-of-way permit to do so and to impose permit conditions consistent with the local government unit's management of the right-of-way.

Minn Stat. § 237.163 Subd. 3a (in part):

A local government unit may require a telecommunications right-of-way user to obtain a permit or permits under this section to place a new wireless support structure or collocate a small wireless facility in a public right-of-way managed by the local government unit.

Additionally, we can require fees for those permits we can issue, plus for registration, but we cannot necessarily require permits for the hanging of cables.

Minn Stat. § 237.163 Subd. 6 (in part):

A local government unit may recover its right-of-way management costs by imposing a fee for registration, a fee for each right-of-way or small wireless facility permit.

Thus, I have added a reference to a fee that the city council may impose in the fee schedule for registration, but I have not added that fee. This would be the most likely fee that a resident would have to pay.

We are also unable to require a franchise fee or other fees that aren't authorized.

Minn Stat. § 237.163 Subd. 7 (in part):

No local government unit may require a telecommunications right-of-way user to obtain a franchise or pay for the use of the right-of-way.

...

Except as provided in this chapter or required by federal law, a local government unit shall not adopt or enforce any regulation on the placement or operation of communications facilities in the right-of-way where the entity is already authorized to operate in the right-of-way, and shall not regulate or impose or collect fees on communications services except to the extent specifically provided for in the existing authorization, and unless expressly required by state or federal statute.

April 11 remarks:

Our existing right-of-way code is from a previous version of the right-of-way code derived from the League of Minnesota Cities model ordinance. The model ordinance has been updated since that time, or else our current ordinance underwent many changes. Since CenturyLink/Lumen appears to be upgrading facilities, revision is appropriate.

The purpose of Right-of-Way regulation is largely to ensure that the city can regulate utilities and telecommunications as permitted by statute only if the city exercises its powers to do so in an ordinance. LMC indicates that a recital is necessary, which our existing code lacks:

Cities must “opt in” by exercising the authority given to them in state law. A recital in the preamble of the ordinance is necessary, and is included in the model right-of-way ordinances provided.

Because this section of code is large, complex, and the LMC model is constructed with consideration for federal and state laws and regulations and case law, it makes sense for our ordinance to hew as closely as possible to the model; this proposal modifies the model to make it appropriate for Birchwood, while keeping section numbers similar, making reference to the current model and adaptation to a similar future model easier.

Significant portions of the current right-of-way code have sections that go beyond the statutory powers of the city; our current code could be unenforceable, and utility or telecommunications companies might not be as forgiving as we’d hope.

In order to minimize the changes from the model, a previous modification to Birchwood’s ordinance regulating dumpsters and portable storage units is better placed in Chapter 615 relating to Exterior Storage, and a change to that Chapter is proposed here.

This ordinance also fits better in the 2xx section relating to city services and building regulation, with chapters regulating gas and electric utilities.

White Bear Lake has a section similar to §208A.060, without additional exceptions. §208A.060(3) does have a section exempting gardens.

Additionally, the “exceptions” section of our existing ordinance is broad:

309.044 **EXCEPTIONS.** The following are not subject to the requirements of this Section:

1. Person or Persons planting or maintaining pre-approved boulevard surface plantings or gardens.
2. Person or Persons installing mail boxes or private sidewalk from street or curb to dwelling or commercial structure.
3. Person or Persons engaged in commercial or private snow removal activities.
4. Person or Persons installing street furnishings.
5. Person or Persons installing irrigation systems.
6. City of Birchwood Village.
7. Persons acting as agents, contractors or subcontractors for a registrant who has properly registered in accordance with this Section.

Because any subsurface work in a right-of-way risks harm to facilities, current exemptions are tantamount to exempting government vehicles from stopping at stop signs.

I asked Kyle Hartnett at the League of Minnesota Cities this question and he responded:

Typically, a driveway would require a right of way permit because the applicant would be excavating the right of way. Annual registration is typically required for “facilities” placed in the ROW. Typically, the ordinance will note that facilities relate to telecommunication assets. Therefore, a mailbox or driveway would not be required to annually report to the city.

I made the following modifications to the model to make clearer that registration applies to work on *facilities* in right-of-way, not *right-of-way* itself.

Registration. Each person authorized to occupy or use, or who seeks to occupy or use, the right-of-way to ~~or~~ place any equipment or facilities ~~in or on the right-of-way~~, including persons with installation and maintenance responsibilities by lease, sublease, or assignment, must register with the city. Registration will consist of providing application information.

Registration Prior to Work. No person may, in any right-of-way, construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof, ~~in any right-of-way~~ without first being registered with the city.

The existing communications code has several sections relating to traffic management: flaggers, notice of traffic closure, and parking prohibited. These sections are covered in other code or may be unnecessary.

Because this code repeals a section of zoning code, Minnesota Statute §462.357 Subd. 4. requires a referral to the planning commission for its recommendation.

Four documents follow:

1. Amendment to fee schedule.
2. Amendment to Chapter 615.
3. Repeal of Chapter 208 and 309, and enactment of Chapter 208A.
4. LMC Recommendation for Summary Publication of Ordinance 208A.

Today:

I move to place this item on the Planning Commission's agenda for its next meeting, and request that it consider this memo, provide advice to the City Council, and make a recommendation on the repeal of Chapter 309, as required by Minnesota Statute §462.357 Subd. 4.

Future:

Direct staff to generate a permit form for:

1. Excavation.
2. Obstruction.
3. Small Wireless Facility

ORDINANCE 2023-04-02

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

AN ORDINANCE AMENDING THE FEE SCHEDULE

The City Council of the City of Birchwood Village hereby ordains that the Fee Schedule of the Municipal Code of the City of Birchwood Village is amended to read as specified in EXHIBIT A.

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 ____th day of _____ 2023.

Margaret Ford, Mayor

Attest:

Rebecca Kellen, City Administrator-Clerk

EXHIBIT A.

PLANNING AND ZONING FEES, ESCROWS AND DEPOSITS *subject to	Conditional Use Permit (CUP) Application or Amendment *	306.010	\$460.00	
	Refundable Conditional Use Permit or CUP Amendment Escrow for permitting costs incurred by city		\$3,000.00	
	Interim Use Permit Application *	305.020, 305.040(6)	\$400.00	

additional fees, in that section of the fee schedule. All planning and zoning permits require an additional refundable permit escrow when listed.

	Refundable Interim Use Permit Escrow for permitting costs incurred by city	302.050	\$3,000.00	
Street Vacation Application *			\$300.00	
	Refundable Street Vacation Escrow for permitting costs incurred by city	302.050	\$3,000.00	
Variance Application *		304.020	\$600.00	
	Refundable Variance Escrow for staff review time incurred by city	302.050	\$3,000.00	
Subdivision: Lot Split Application *		308.121	\$225.00	
	Refundable Lot Split Escrow for permitting costs incurred by City	301.055(2)	\$1,000.00	
Subdivision: Preliminary Plat Application *		308.040(3)	\$1,000.00	
	Subdivision: Refundable Preliminary Plat Application Escrow for permitting costs incurred by city	301.055(2)	\$10,000.00	
Subdivision: Final Plat Application *		308.050	\$1,000.00	
	Subdivision: Refundable Final Plat Application Escrow for permitting costs incurred by city	301.055(2)	\$10,000.00	
Zoning Permit *		307.010	\$50.00	
	Refundable Zoning Permit Escrow for permitting costs incurred by city	301.055(2)	\$3,000.00	
Right of Way (ROW) Permit Application Fee *		309.061	\$300.00 + \$100.00/hour for plan review after two hours	
	Refundable ROW Permit Escrow for permitting costs incurred by city	301.055(2)	\$3,000.00	
Right of Way Degradation Fee		309.080	Permit holder responsible for actual costs	

Move a building from its present location in Birchwood to any other site, whether or not the new site is within the City. *		\$500.00	
Refundable building move escrow for permitting costs incurred by city	301.055(2)	\$1,000.00	
Certificate of occupancy		\$25.00	
Public Property Access Limited License	607.235	\$50.00	

<u>RIGHT OF WAY FEES</u>	<u>Refundable ROW Excavation Permit Deposit</u>	<u>301.055(2)</u>	<u>\$3,000.00</u>	
	<u>Obstruction Permit</u>	<u>208B.06(2)</u>	<u>\$200</u>	
	<u>Excavation permit Permit</u>	<u>208B.060(1)</u>	<u>\$200</u>	
	<u>Small Wireless Facility Permit</u>	<u>208B.060(3)</u>	<u>\$500.00 up to 5 sites, \$100.00 for each additional</u>	
	<u>Delay Penalty Fee: minimum</u>	<u>208A.090(3)</u>	<u>\$60 plus \$20 / day each day late over 3 days</u>	
	<u>Delay Fee: one lane blocked to motor vehicle traffic</u>	<u>208A.090(3)</u>	<u>\$60 / day</u>	
	<u>Delay Fee: fully blocked to motor vehicle traffic</u>	<u>208A.090(3)</u>	<u>\$100 / day</u>	
	<u>Refundable Right-of-Way Non-Excavation Damage Deposit</u>	<u>208A.100(6)</u>	<u>\$3,000.00</u>	

<u>COMMUNICATIONS FEES</u>	<u>Permit to install, repair, remove or relocate communications facilities *, **</u>	<u>208.020</u>	<u>\$50.00</u>	<u>12/2022</u>
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RESOLUTION 2023-28

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

**A RESOLUTION APPROVING SUMMARY PUBLICATION OF
ORDINANCE NO. 2023-04-02: AN ORDINANCE AMENDING THE FEE SCHEDULE.**

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

WHEREAS, the City has adopted Ordinance No. 2023-04-02, which amends the fee schedule; and

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

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

1. Because the terms of Ordinance 2023-04-02 are lengthy, the City may publish the attached summary of the Ordinance as allowed by statute, and need not publish the entire ordinance. The attached summary clearly informs the public of the intent and effect of the Ordinance. Summary publication has been approved by at least a 4/5 vote of the City Council.
2. The effective date of the Ordinance amendments shall be upon their publication by summary as required by law.

Resolution duly seconded and passed this _____ day of _____, 2023.

Margaret Ford, Mayor

Attest:

Rebecca Kellen, City Administrator-Clerk

Please be advised that the City of Birchwood has duly-passed the following ORDINANCE:

AN ORDINANCE SETTING THE CITY'S FEE SCHEDULE FOR VARIOUS PERMITS
PURSUANT TO BIRCHWOOD CITY CODE.

The following is a SUMMARY of the Ordinance:

On May 9, 2023 the City adopted an Ordinance (2023-04-02)
setting the City's Fee Schedule for services/permits.

PLEASE BE ADVISED, this is not the full text of the Ordinance passed and the published material is only a summary. The full text is available for public inspection at the City of Birchwood, 207 Birchwood Avenue, Birchwood, Minnesota 55110 or delivered upon request electronically or by U.S. Mail.

Summary complies with Minn. Stat. §§ 331A.05 subd. 8. & 412.191 subd 4.

ORDINANCE 2023-04-03

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

**AN ORDINANCE ADOPTING SECTION 060 OF ORDINANCE NO. 615 ADOPTED ON
JULY 11, 1995, AND TITLED “EXTERIOR STORAGE.”**

Section 1. Findings and Purpose.

The repeal of Chapter 309 removes a prohibition on roll-off or portable, on-demand storage containers in streets. The City has a public interest in allowing the free flow of traffic and preventing obstructions in streets, but this section is better placed in Chapter 615 of the City Code, because that chapter relates more closely to exterior storage than right-of-way issues.

Section 2. Enactment.

Section 615.060, Ordinance No. 615 of the City Code is hereby adopted, to read as follows:

615.060 TEMPORARY OUTDOOR STORAGE CONTAINERS. Temporary outdoor storage containers include, but are not limited to, portable on-demand storage units and roll-off dumpsters. All temporary outdoor storage containers shall be regulated by this section. No person shall allow any temporary outdoor storage container to be placed or to remain in any street, roadway, parkway or alley.

EFFECTIVE DATE: This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by M.S. § 412.191, subd. 4, as it may be amended from time to time, which meets the requirements of M.S. § 331A.01, subd. 10, as it may be amended from time to time.

Adopted by the City of Birchwood Village City Council this ____th day of _____, 2023.

Margaret Ford, Mayor

Attest:

Rebecca Kellen, City Administrator-Clerk

ORDINANCE 2023-04-04

CITY OF BIRCHWOOD VILLAGE, WASHINGTON COUNTY, MINNESOTA

AN ORDINANCE TO ENACT A NEW CHAPTER OF THE CODE OF ORDINANCES TO ADMINISTER AND REGULATE THE PUBLIC RIGHTS-OF-WAY IN THE PUBLIC INTEREST, TO PROVIDE FOR THE ISSUANCE AND REGULATION OF RIGHT-OF-WAY PERMITS AND TO REPEAL SECTIONS 208 TITLED “COMMUNICATIONS” AND 309 TITLED “PUBLIC RIGHT-OF-WAY” OF THE CITY CODE

THE CITY COUNCIL OF THE CITY OF BIRCHWOOD VILLAGE, WASHINGTON COUNTY, MINNESOTA ORDAINS:

Section 1. Repeal.

Chapters 208 and 309 of the City Code are hereby repealed in their entirety.

Section 2. Enactment.

Chapter 208A of the Code of Ordinances is hereby enacted, to read as follows:

Chapter 208A

Right-of-way Management

208A.010. FINDINGS, PURPOSE, AND INTENT.—~~To~~The city desires to regulate telecommunications right-of-way users without undue burden of permitting or regulation of the public, to regulate uses within the right-of-way and to reduce risks to telecommunications and utilities facilities. Except for telecommunciations and utilities users, the city strives to limit the requirements in this section to the reduction of risk of harm to telecommunicatons or utilities facilities. The city further endeavors not to require fees beyond those required in other chapters, nor registration for typical residential excavation for driveways, mailboxes, gardens, tree maintenance and plantings.

The purpose of this code is to provide for the health, safety, and welfare of ~~its~~ citizens, and to ensure the integrity of its streets and the appropriate use of the rights-of-way, ~~the~~. The city strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances.

Accordingly, the city hereby enacts this new chapter of this code relating to right-of-way permits and administration. This chapter imposes reasonable regulation on the placement and maintenance of facilities and equipment currently within its rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this chapter, persons excavating and obstructing the

rights-of-way will bear financial responsibility for their work. Finally, this chapter provides for recovery of out-of-pocket and projected costs from persons using the public rights-of-way.

This chapter shall be interpreted consistently with Minnesota Statutes, sections 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the “Act”) and the other laws governing applicable rights of the city and users of the right-of-way. This chapter shall also be interpreted consistent with Minn. R. 7819.0050–7819.9950 and Minn. R., ch. 7560 where possible. To the extent any provision of this chapter cannot be interpreted consistently with the Minnesota Rules, that interpretation most consistent with the Act and other applicable statutory and case law is intended. This chapter shall not be interpreted to limit the regulatory and police powers of the city to adopt and enforce general ordinances necessary to protect the health, safety, and welfare of the public.

208A.020. ELECTION TO MANAGE THE PUBLIC RIGHTS-OF-WAY. Pursuant to the authority granted to the city under state and federal statutory, administrative and common law, the city hereby elects, pursuant to Minn. Stat. 237.163 subd. 2(b), to manage rights-of-way within its jurisdiction.

208A.030. DEFINITIONS. The following definitions apply in this chapter of this code. References hereafter to “sections” are, unless otherwise specified, references to sections in this chapter. Defined terms remain defined terms, whether or not capitalized.

1. Abandoned Facility. A facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service. A facility is not abandoned unless declared so by the right-of-way user.
2. Applicant. Any person requesting permission to excavate, obstruct, or otherwise place facilities in a right-of-way.
3. City. The city of Birchwood Village, Minnesota. For purposes of section 208A.290, city also means the city’s elected officials, officers, employees, and agents.
4. Collocate or Collocation. To install, mount, maintain, modify, operate, or replace a small wireless facility on, under, within, or adjacent to an existing wireless support structure or utility pole that is owned privately, or by the city or other governmental unit.
5. Commission. The State of Minnesota Public Utilities Commission.

6. Construction Performance Bond. Any of the following forms of security provided at permittee's option:
 - Individual project bond;
 - Cash deposit;
 - Security of a form listed or approved under Minn. Stat. § 15.73, subd. 3;
 - Letter of Credit, in a form acceptable to the city;
 - Self-insurance, in a form acceptable to the city;
 - A blanket bond for projects within the city, or other form of construction bond, for a time specified and in a form acceptable to the city.

7. Degradation. A decrease in the useful life of the right-of-way caused by excavation in or disturbance of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation or disturbance did not occur.

8. Degradation Cost. Subject to Minn. R. 7819.1100, means the cost to achieve a level of restoration, as determined by the city at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minn. R., parts 7819.9900 to 7819.9950.

9. Degradation Fee. The estimated fee established at the time of permitting by the city to recover costs associated with the decrease in the useful life of the right-of-way caused by the excavation, and which equals the degradation cost.

10. Delay Penalty Fee. The penalty fee imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as established by permit.

11. Emergency. A condition that (1) poses a danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.

12. Equipment. Any tangible asset used to install, repair, or maintain facilities in any right-of-way.

13. Excavate. To dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

14. Excavation Permit. The permit which, pursuant to this chapter, must be obtained before a person may excavate in a right-of-way. An Excavation permit allows the holder to excavate that part of the right-of-way described in such permit.

15. Excavation Permit Fee. Money paid to the city by an applicant to cover the costs as provided in Section 208A.130.
16. Facility or Facilities. Any tangible asset in the right-of-way used to provide Utility or Telecommunications Service.
17. Five-Year Project Plan. Shows projects adopted by the city for construction within the next five years.
18. Local Representative. A local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this chapter.
19. Management Costs. The actual costs the city incurs in managing its rights-of-way, including such costs, if incurred, as those associated with registering applicants; issuing, processing, and verifying right-of-way or small wireless facility permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way or small wireless facility permits. Management costs do not include payment by a telecommunications right-of-way user for the use of the right-of-way, unreasonable fees of a third-party contractor used by the city including fees tied to or based on customer counts, access lines, or revenues generated by the right-of-way or for the city, the fees and cost of litigation relating to the interpretation Minn. Stat. §§ 237.162 or 237.163; or any ordinance enacted under those sections, or the city fees and costs related to appeals taken pursuant to Section 208A.310 of this chapter.
20. Obstruct. To place any tangible object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way, or so as to hinder maintenance of any city asset.
21. Obstruction Permit. The permit which, pursuant to this chapter, must be obtained before a person may obstruct a right-of-way, allowing the holder to hinder free and open passage over the specified portion of that right-of-way, for the duration specified therein.

22. Obstruction Permit Fee. Money paid to the city by a permittee to cover the costs as provided in Section 208A.130.
23. Patch or Patching. A method of pavement replacement that is temporary in nature. A patch consists of (1) the compaction of the subbase and aggregate base, and (2) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions. A patch is considered full restoration only when the pavement is included in the city's five-year project plan.
24. Pavement. Any type of improved surface that is within the public right-of-way and that is paved or otherwise constructed with bituminous, concrete, aggregate, or gravel.
25. Permit. Has the meaning given "right-of-way permit" in this ordinance.
26. Permittee. Any person to whom a permit to excavate or obstruct a right-of-way has been granted by the city under this chapter.
27. Person. An individual or entity subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political.
28. Probation. The status of a person that has not complied with the conditions of this chapter.
29. Probationary Period. One year from the date that a person has been notified in writing that they have been put on probation.
30. Registrant. Any person who (1) has or seeks to have its equipment or facilities located in any right-of-way, or (2) in any way occupies or uses, or seeks to occupy or use, the right-of-way or place its facilities or equipment in the right-of-way.
31. Restore or Restoration. The process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition and life expectancy that existed before excavation.
32. Restoration Cost. The amount of money paid to the city by a permittee to achieve the level of restoration according to plates 1 to 13 of Minnesota Public Utilities Commission rules.

33. Public Right-of-Way or Right-of-Way. The area on, below, or above a public roadway, highway, street, cartway, bicycle lane, or public sidewalk in which the city has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the city. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other non-wire telecommunications or broadcast service.
34. Right-of-Way Permit. Either the excavation permit, the obstruction permit, the small cell permit or any combination thereof depending on the context, required by this chapter.
35. Right-of-Way User. (1) A telecommunications right-of-way user as defined by Minn. Stat. 237.162, subd. 4; or (2) a person owning or controlling a facility in the right-of-way that is used or intended to be used for providing utility service, and who has a right under law, franchise, or ordinance to use the public right-of-way.
36. Service or Utility Service. Includes (1) those services provided by a public utility as defined in Minn. Stat. 216B.02, subds. 4 and 6; (2) services of a telecommunications right-of-way user, including transporting of voice or data information; (3) services of a cable communications systems as defined in Minn. Stat. ch. 238; (4) natural gas or electric energy or telecommunications services provided by the city; (5) services provided by a cooperative electric association organized under Minn. Stat., ch. 308A; and (6) water, and sewer, including service laterals, steam, cooling, or heating services.
37. Service Lateral. An underground facility that is used to transmit, distribute or furnish gas, electricity, communications, or water from a common source to an end-use customer. A service lateral is also an underground facility that is used in the removal of wastewater from a customer's premises.
38. Small Wireless Facility. A wireless facility that meets both of the following qualifications:
1. each antenna is located inside an enclosure of no more than six cubic feet in volume or could fit within such an enclosure; and
 2. all other wireless equipment associated with the small wireless facility provided such equipment is, in aggregate, no more than 28 cubic feet in volume, not including electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems,

grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment.

39. Supplementary Application. An application made to excavate or obstruct more of the right-of-way than allowed in, or to extend, a permit that had already been issued.
40. Temporary Surface. The compaction of subbase and aggregate base and replacement, in kind, of the existing pavement only to the edges of the excavation. It is temporary in nature except when the replacement is of pavement included in the city's two-year plan, in which case it is considered full restoration.
41. Trench. An excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement.
42. Telecommunications Right-of-Way User. A person owning or controlling a facility in the right-of-way, or seeking to own or control a facility in the right-of-way that is used or is intended to be used for providing wireless service, or transporting telecommunication or other voice or data information. For purposes of this chapter, a cable communication system defined and regulated under Minn. Stat. ch. 238, and telecommunication activities related to providing natural gas or electric energy services, a public utility as defined in Minn. Stat. § 216B.02, a municipality, a municipal gas or power agency organized under Minn. Stat. ch. 453 and 453A, or a cooperative electric association organized under Minn. Stat. ch. 308A, are not telecommunications right-of-way users for purposes of this chapter except to the extent such entity is offering wireless service.
43. Two Year Project Plan. Shows projects adopted by the city for construction within the next two years.
44. Utility Pole. A pole that is used in whole or in part to facilitate telecommunications or electric service.
45. Wireless Facility. Equipment at a fixed location that enables the provision of wireless services between user equipment and a wireless service network, including equipment associated with wireless service, a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and a small wireless facility, but not including wireless support structures, wireline

backhaul facilities, or cables between utility poles or wireless support structures, or not otherwise immediately adjacent to and directly associated with a specific antenna.

46. Wireless Service. Any service using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or by means of a mobile device, that is provided using wireless facilities. Wireless service does not include services regulated under Title VI of the Communications Act of 1934, as amended, including cable service.

47. Wireless Support Structure. A new or existing structure in a right-of-way designed to support or capable of supporting small wireless facilities, as reasonably determined by the city.

208A.040. ADMINISTRATION. The City ~~Engineer~~Administrator is the principal city official responsible for the administration of the rights-of-way, right-of-way permits, and the ordinances related thereto. The City ~~Engineer~~Administrator or City Council may delegate any or all of the duties hereunder. The City Engineer shall advise the city on permits, enforcement and the administration of this chapter.

208A.060. REGISTRATION AND RIGHT-OF-WAY OCCUPANCY.

1. Registration. Each person authorized to occupy or use, or who seeks to occupy or use the right-of-way to place any equipment or facilities, including persons with installation and maintenance responsibilities by lease, sublease, or assignment, must register with the city: before performing work in any right-of-way. Registration will consist of providing application information.
2. Registration Prior to Work. No person may, in any right-of-way, construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof, without first being registered with the city.
3. Exceptions. ~~Nothing herein shall be construed to repeal or amend the provisions of a city ordinance permitting persons to plant or maintain boulevard plantings or gardens in the area of the right of way between their property and the street curb. Persons planting or maintaining boulevard plantings or gardens~~ The following activities shall not be deemed to use or occupy the right-of-way, and ~~shall not be required to obtain any~~neither permits ~~or satisfy any, registration, nor~~ other requirements ~~for planting or maintaining such boulevard plantings or gardens~~ under this chapter: shall apply. However, nothing herein

relieves a person from complying with the provisions of the Minn. Stat. ch. 216D, Gopher One Call Law, nor from complying with any other chapter of the city code.

- a. A person may, without violating this chapter, maintain trees and may plant or maintain herbaceous growth, plantings or gardens within the right-of-way.
- b. A person may, without violating this chapter, excavate to a depth of less than twelve (12) inches, if construction or replacement does not degrade any portion of a city street or roadway available to the public, and may construct or replace asphalt, concrete, or other driveway, parkway or walkway materials located entirely on the right-of-way.
- c. A person may, without violating this chapter, excavate to a depth of less than twenty four (24) inches and place or replace an official USPS-approved mailbox.

208A.070. REGISTRATION INFORMATION.

1. Information Required. Registration shall be requested on an application form produced by the city. The information provided to the city at the time of registration shall include, but not be limited to:
 - a. Each registrant's name, Gopher One-Call registration certificate number, address and email address, if applicable, and telephone and facsimile numbers.
 - b. The name, address, and email address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
 - c. A certificate of insurance or self-insurance:
 - i. Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the state of Minnesota, or a form of self-insurance acceptable to the city;
 - ii. Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (i) use and occupancy of the right-of-way by the registrant, its officers, agents, employees, and permittees, and (ii) placement and use of facilities and equipment in the right-of-way by the registrant, its officers, agents, employees, and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities, and collapse of property;
 - iii. Naming the city as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages;

- iv. Requiring that the city be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term; and
 - v. Indicating comprehensive liability coverage, automobile liability coverage, workers' compensation and umbrella coverage established by the city in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this chapter.
 - vi. The city may require a copy of the actual insurance policies.
 - vii. If the person is a corporation, a copy of the certificate is required to be filed under state law as recorded and certified to by the secretary of state.
- d. A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other authorization or approval from the applicable state or federal agency to lawfully operate, where the person is lawfully required to have such authorization or approval from said commission or other state or federal agency.
 - e. Any other information deemed necessary by the city to adequately protect the health, safety, and welfare of the city.
2. Notice of Changes. The registrant shall keep all of the information listed above current at all times by providing to the city information as to changes within fifteen (15) days following the date on which the registrant has knowledge of any change.

208A.080. REPORTING OBLIGATIONS.

1. Operations. Each registrant shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan for underground facilities with the city. Such plan shall be submitted using a format designated by the city and shall contain the information determined by the city to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way.
- a. The plan shall include, but not be limited to, the following information:
 - b. The locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year (in this section, a "next-year project"); and
 - c. To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five years following the next calendar year (in this section, a "five-year project").

The term "project" in this section shall include both next-year projects and five-year projects.

By January 1 of each year, the city will have available for inspection in the city's office a composite list of all projects of which the city has been informed of the annual plans. All registrants are responsible for keeping themselves informed of the current status of this list.

Thereafter, by February 1, each registrant may change any project in its list of next-year projects, and must notify the city and all other registrants of all such changes in said list. Notwithstanding the foregoing, a registrant may at any time join in a next-year project of another registrant listed by the other registrant.

2. Additional Next-Year Projects. Notwithstanding the foregoing, the city will not deny an application for a right-of-way permit for failure to include a project in a plan submitted to the city if the registrant has used commercially reasonable efforts to anticipate and plan for the project.

208A.090. PERMIT REQUIREMENT.

1. Permit Required. Except as otherwise provided in this code, no person may obstruct or excavate any right-of-way, or install or place facilities in the right-of-way, without first having obtained the appropriate right-of-way permit from the city to do so.
 - a. Excavation Permit. An excavation permit is required by a registrant to excavate that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein.
 - b. Obstruction Permit. An obstruction permit is required by a registrant to hinder free and open passage over the specified portion of right-of-way by placing equipment described therein on the right-of-way, for the purposes of installing, placing, maintaining or accessing facilities, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.
 - c. Small Wireless Facility Permit. A small wireless facility permit is required by a registrant to erect or install a wireless support structure, to collocate a small wireless facility, or to otherwise install a small wireless facility in the specified portion or the right-of-way, to the extent specified therein, provided that such permit shall remain in effect for the length of time the facility is in use, unless lawfully revoked.
2. Permit Extensions. No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless (i) such person makes a supplementary application

for another right-of-way permit before the expiration of the initial permit, and (ii) a new permit or permit extension is granted.

3. Delay Penalty Fee. In accordance with Minn. Rule 7819.1000 subp. 3 and notwithstanding 208A.090(2) of this Section, the city shall establish and impose a delay penalty fee for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty fee shall be established from time to time by the City Council ~~resolution~~.
4. Permit Display. Permits issued under this chapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the city.

208A.100. PERMIT APPLICATIONS. Application for a permit is made to the city on forms approved by the city City Administrator or the city's designee. Right-of-way permit applications shall contain, and will be considered complete only upon compliance with, the requirements of the following provisions:

1. Registration with the city pursuant to this chapter.
2. Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities and all other information deemed relevant by the City Engineer.
3. Payment of money due the city for:
 - a. permit fees, estimated restoration costs, and other management costs;
 - b. prior obstructions or excavations;
 - c. any undisputed loss, damage, or expense suffered by the city because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the city; and
 - d. franchise fees or other charges, if applicable.
4. Payment of disputed amounts due the city by posting security or depositing in an escrow account an amount equal to at least 110 percent of the amount owing.
5. Posting an additional or larger construction performance bond for additional facilities when applicant requests an excavation permit to install additional facilities and the city deems the existing construction performance bond inadequate under applicable standards.
6. Posting a construction performance bond deposit for right-of-way work on facilities that does not involve excavation, or depositing into an escrow account the amount in the fee schedule.

208A.110. ISSUANCE OF PERMIT; CONDITIONS.

1. Permit Issuance. If the applicant has satisfied the requirements of this chapter, the city shall issue a permit.
2. Conditions. The city may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use. In addition, a permittee shall comply with all requirements of local, state, and federal laws, including but not limited to Minn. Stat. §§ 216D.01 - .09 (Gopher One Call Excavation Notice System) and Minn. R., ch. 7560.
3. Small Wireless Facility Conditions. In addition to 208A.110(2), the erection or installation of a wireless support structure, the collocation of a small wireless facility, or other installation of a small wireless facility in the right-of-way, shall be subject to the following conditions:
 - a. A small wireless facility shall only be collocated on the particular wireless support structure, under those attachment specifications, and at the height indicated in the applicable permit application.
 - b. No new wireless support structure installed within the right-of-way shall exceed 50 feet in height without the city's written authorization, provided that the city may impose a lower height limit in the applicable permit to protect the public health, safety and welfare or to protect the right-of-way and its current use, and further provided that a registrant may replace an existing wireless support structure exceeding 50 feet in height with a structure of the same height subject to such conditions or requirements as may be imposed in the applicable permit.
 - c. No wireless facility may extend more than 10 feet above its wireless support structure.
 - d. Where an applicant proposes to install a new wireless support structure in the right-of-way, the city may impose separation requirements between such structure and any existing wireless support structure or other facilities in and around the right-of-way.
 - e. Where an applicant proposes collocation on a decorative wireless support structure, sign or other structure not intended to support small wireless facilities, such equipment shall be consistent with the city's aesthetic standards regarding wireless equipment as adopted by the city. Such standards shall ensure that wireless equipment is installed with a stealth design and that equipment does not detract from the character of the area in which it is installed. In addition, the city shall adopt standards that ensure city assets can continue to effectively perform their intended function. Standards shall be made available with the application required for a small cell permit.

- f. Where an applicant proposes to replace a wireless support structure, the city may impose reasonable restocking, replacement, or relocation requirements on the replacement of such structure.
 - g. A permit will be deemed void if the approved equipment is not installed within one year of issuance of the permit.
4. Small Wireless Facility Agreement. A small wireless facility shall only be collocated on a small wireless support structure owned or controlled by the city, or any other city asset in the right-of-way, after the applicant has executed a standard small wireless facility collocation agreement with the city. The standard collocation agreement may require payment of the following:
- 1. Up to \$150 per year for rent to collocate on the city structure; and
 - 2. \$25 per year for maintenance associated with the collocation; and
 - 3. A monthly fee for electrical service as follows:
 - a. \$73 per radio node less than or equal to 100 maximum watts;
 - b. \$182 per radio node over 100 maximum watts; or
 - c. The actual costs of electricity, if the actual costs exceed the foregoing.

The standard collocation agreement shall be in addition to, and not in lieu of, the required small wireless facility permit, provided, however, that the applicant shall not be additionally required to obtain a license or franchise in order to collocate. Issuance of a small wireless facility permit does not supersede, alter or affect any then-existing agreement between the city and applicant,

208A.120. ACTION ON SMALL WIRELESS FACILITY PERMIT APPLICATIONS.

- 1. Deadline for Action. The city shall approve or deny a small wireless facility permit application within 90 days after filing of such application or within any timeline established by state law. The small wireless facility permit, and any associated building permit application, shall be deemed approved if the city fails to approve or deny the application within the review periods established in this section.
- 2. Consolidated Applications. An applicant may file a consolidated small wireless facility permit application addressing the proposed collocation of up to 15 small wireless facilities, or a greater number if agreed to by a local government unit, provided that all small wireless facilities in the application:
 - a. are located within a two-mile radius;
 - b. consist of substantially similar equipment; and
 - c. are to be placed on similar types of wireless support structures.

In rendering a decision on a consolidated permit application, the city may approve some small wireless facilities and deny others, but may not use denial of one or more permits as a basis to deny all small wireless facilities in the application.

3. Tolling of Deadline. The 90-day deadline for action on a small wireless facility permit application may be tolled if:
 - a. The city receives applications from one or more applicants seeking approval of permits for more than 30 small wireless facilities within a seven-day period. In such case, the city may extend the deadline for all such applications by 30 days by informing the affected applicants in writing of such extension; or
 - b. the applicant fails to submit all required documents or information and the city provides written notice of incompleteness to the applicant within 30 days of receipt the application. Upon submission of additional documents or information, the city shall have ten days to notify the applicant in writing of any still-missing information; or
 - c. the city and a small wireless facility applicant agree in writing to toll the review period.

208A.130. PERMIT FEES.

1. Registration Fee. The City may set in the fee schedule and impose a fee to recover the cost of managing right-of-way registration and reporting.

2.2. Excavation Permit Fee. The city shall set in the fee schedule and impose an excavation permit fee in an amount sufficient to recover the following costs:

- a. the city management costs;
- b. degradation costs, if applicable.

2.3. Obstruction Permit Fee. The city shall set in the fee schedule and impose an obstruction permit fee in an amount sufficient to recover the city management costs.

3.4. Small Wireless Facility Permit Fee. The city shall set in the fee schedule and impose a small wireless facility permit fee in an amount sufficient to recover:

- a. the management costs; and
- b. city engineering, make-ready, and construction costs associated with collocation of small wireless facilities.

4.5. Payment of Permit Fees. No excavation permit, obstruction permit, or small cell permit shall be issued without payment of all required fees. The city may allow the applicant to pay such fees within thirty (30) days of billing.

5.6. Non Refundable. Permit fees that were paid for a permit that the city has revoked for a breach as stated in Section 208A.230 are not refundable.

6.7. Application to Franchises. Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise.

208A.140. RIGHT-OF-WAY PATCHING AND RESTORATION.

1. Timing. The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable under Section 208A.170.
2. Patch and Restoration. Permittee shall patch its own work. The city may choose either to have the permittee restore the right-of-way or to restore the right-of-way itself.
 - a. City Restoration. If the city restores the right-of-way, permittee shall pay the costs thereof within thirty (30) days of billing. If, following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the city, within thirty (30) days of billing, all costs associated with correcting the defective work.
 - b. Permittee Restoration. If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minn. Rule 7819.3000.
 - c. Degradation Fee in Lieu of Restoration. In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.
3. Standards. The permittee shall perform excavation, backfilling, patching, and restoration according to the standards and with the materials specified by the city and shall comply with Minn. Rule 7819.1100.
4. Duty to Correct Defects. The permittee shall correct defects in patching or restoration performed by permittee or its agents. The permittee upon notification from the city, shall correct all restoration work to the extent necessary, using the method required by the city. Said work shall be completed within five (5) calendar days of the receipt of the notice from the city, not including days during which work cannot be done because of circumstances

constituting force majeure or days when work is prohibited as unseasonable or unreasonable under Section 208A.170.

5. Failure to Restore. If the permittee fails to restore the right-of-way in the manner and to the condition required by the city, or fails to satisfactorily and timely complete all restoration required by the city, the city at its option may do such work. In that event the permittee shall pay to the city, within thirty (30) days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

208A.150. JOINT APPLICATIONS.

1. Joint application. Registrants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time.
2. Shared fees. Registrants who apply for permits for the same obstruction or excavation, which the city does not perform, may share in the payment of the obstruction or excavation permit fee. In order to obtain a joint permit, registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.
3. With city projects. Registrants who join in a scheduled obstruction or excavation performed by the city, whether or not it is a joint application by two or more registrants or a single application, are not required to pay the excavation or obstruction and degradation portions of the permit fee, but a permit would still be required.

208A.160. SUPPLEMENTARY APPLICATIONS.

1. Limitation on Area. A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area (i) make application for a permit extension and pay any additional fees required thereby, and (ii) be granted a new permit or permit extension.
2. Limitation on Dates. A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the

previous permit. This supplementary application must be submitted before the permit end date.

208A.170. OTHER OBLIGATIONS.

1. Compliance with Other Laws. Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the city or other applicable rule, law or regulation. A permittee shall comply with all requirements of local, state and federal laws, including but not limited to Minn. Stat. §§ 216D.01-.09 (Gopher One Call Excavation Notice System) and Minn. R., ch. 7560. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.
2. Prohibited Work. Except in an emergency, and with the approval of the city, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.
3. Interference with Right-of-Way. A permittee shall not so obstruct a right-of-way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. Private vehicles of those doing work in the right-of-way may not be parked within or next to a permit area, unless parked in conformance with city parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.
4. Trenchless Excavation. As a condition of all applicable permits, permittees employing trenchless excavation methods, including but not limited to Horizontal Directional Drilling, shall follow all requirements set forth in Minn. Stat. ch. 216D and Minn. R., ch. 7560 and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the city engineer.

208A.180. DENIAL OR REVOCATION OF PERMIT.

1. Reasons for Denial. The city may deny a permit for failure to meet the requirements and conditions of this chapter or if the city determines that the denial is necessary to protect the health, safety, and welfare of the public or when necessary to protect the right-of-way and its current use and any city asset or facility.
2. Procedural Requirements. The denial or revocation of a permit must be made in writing and must document the basis for the denial. The city must notify the applicant or right-of-

way user in writing within three business days of the decision to deny or revoke a permit. If an application is denied, the right-of-way user may address the reasons for denial identified by the city and resubmit its application. If the application is resubmitted within 30 days of receipt of the notice of denial, no additional application fee shall be imposed. The city must approve or deny the resubmitted application within 30 days after submission.

208A.190. INSTALLATION REQUIREMENTS. The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minn. R. 7819.1100 and 7819.5000 and other applicable local requirements, in so far as they are not inconsistent with the Minn. Stat., §§ 237.162 and 237.163. Installation of service laterals shall be performed in accordance with Minn. R., ch 7560 and these ordinances. Service lateral installation is further subject to those requirements and conditions set forth by the city in the applicable permits and/or agreements referenced in Section 208A.240(2) of this ordinance.

208A.200. INSPECTION.

1. Notice of Completion. When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minn. Rule 7819.1300 or other as built documentation as deemed necessary by the city.
2. Site Inspection. Permittee shall make the work site available to the city and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.
3. Authority of the City.
 - a. At the time of inspection, the city may order the immediate cessation of any work which poses a serious threat to the life, health, safety, or well-being of the public.
 - b. The city may issue an order to the permittee for any work that does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the permittee shall present proof to the city that the violation has been corrected. If such proof has not been presented within the required time, the city may revoke the permit pursuant to Section 208A.230.

208A.210. WORK DONE WITHOUT A PERMIT.

1. Emergency Situations. Each registrant shall immediately notify the city of any event regarding its facilities that it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Excavators' notification to Gopher State One Call regarding an emergency situation does not fulfill this requirement. Within two (2) business days after the occurrence of the emergency, the registrant shall apply for the necessary permits, pay the fees associated therewith, and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for the actions it took in response to the emergency.

If the city becomes aware of an emergency regarding a registrant's facilities, the city will attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the city may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.

2. Non-Emergency Situations. Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit and, ~~as a penalty, shall~~ pay double the normal fee for said permit, pay double all the other fees required by the city code, deposit with the city the fees necessary to correct any damage to the right-of-way, and comply with all of the requirements of this chapter.

208A.220. SUPPLEMENTARY NOTIFICATION. If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, permittee shall notify the city of the accurate information as soon as this information is known.

208A.230. REVOCATION OF PERMITS.

1. Substantial Breach. The city reserves its right, as provided herein, to revoke any right-of-way permit without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:
 - a. The violation of any material provision of the right-of-way permit.
 - b. An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens.
 - c. Any material misrepresentation of fact in the application for a right-of-way permit.

- d. The failure to complete the work in a timely manner, unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control.
 - e. The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to 208A.200.
2. Written Notice of Breach. If the city determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation, or any condition of the permit, the city shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the city, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.
3. Response to Notice of Breach. Within twenty-four (24) hours of receiving notification of the breach, permittee shall provide the city with a plan, acceptable to the city, that will cure the breach. Permittee's failure to so contact the city, or permittee's failure to timely submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit. Further, permittee's failure to so contact the city, or permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall automatically place the permittee on probation for one (1) full year.
4. Cause for Probation. From time to time, the city may establish a list of conditions of the permit, which if breached will automatically place the permittee on probation for one full year, such as, but not limited to, working out of the allotted time period or working on right-of-way grossly outside of the permit authorization.
5. Automatic Revocation. If a permittee, while on probation, commits a breach as outlined above, permittee's permit will automatically be revoked and permittee will not be allowed further permits for one full year, except for emergency repairs.
6. Reimbursement of City Costs. If a permit is revoked, the permittee shall also reimburse the city for the city's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

208A.240. MAPPING DATA.

1. Information Required. Each registrant and permittee shall provide mapping information required by the city in accordance with Minn. R. 7819.4000 and

7819.4100. Within ninety (90) days following completion of any work pursuant to a permit, the permittee shall provide the city accurate maps and drawings certifying the “as-built” location of all equipment installed, owned, and maintained by the permittee. Such maps and drawings shall include the horizontal and vertical location of all facilities and equipment and shall be provided consistent with the city’s electronic mapping system, when practical or as a condition imposed by the city. Failure to provide maps and drawings pursuant to this subsection shall be grounds for revoking the permit holder’s registration.

2. Service Laterals. All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minn. R. 7560.0150, subp. 2, shall require the permittee’s use of appropriate means of establishing the horizontal locations of installed service laterals and the service lateral vertical locations in those cases where the city reasonably requires it. Permittees or their subcontractors shall submit to the city evidence satisfactory to the city of the installed service lateral locations. Compliance with this 208A.240(2) and with applicable Gopher State One Call law and Minnesota Rules governing service laterals installed after Dec. 31, 2005, shall be a condition of any city approval necessary for:
 - a. payments to contractors working on a public improvement project, including those under Minn. Stat. ch. 429; and
 - b. city approval under development agreements or other subdivision or site plan approval under Minn. Stat. ch. 462. The City Engineer shall reasonably determine the appropriate method of providing such information to the city. Failure to provide prompt and accurate information on the service laterals installed may result in the revocation of the permit issued for the work or future permits to the offending permittee or its subcontractors.

208A.250. LOCATION AND RELOCATION OF FACILITIES.

1. Placement. Placement, location, and relocation of facilities must comply with the Act, with other applicable law, with other applicable standards adopted by the city engineer, and with Minn. R. 7819.3100, 7819.5000, and 7819.5100, to the extent the rules do not limit authority otherwise available to cities.
2. Corridors. The city may assign a specific area within the right-of-way, or any particular segment thereof as may be necessary, for each type of facility that is or, pursuant to current technology, the city expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the city involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue. Any registrant who has facilities in the right-of-way in a position at variance with the corridors

established by the city shall, no later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the right-of-way, unless this requirement is waived by the city for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs, and hardship to the registrant.

3. Nuisance. One year after the passage of this chapter, any facilities found in a right-of-way that have not been registered shall be deemed to be a nuisance. The city may exercise any remedies or rights it has at law or in equity, including, but not limited to, abating the nuisance or taking possession of the facilities and restoring the right-of-way to a usable condition.
4. Limitation of Space. To protect the health, safety, and welfare of the public, or when necessary to protect the right-of-way and its current use, the city shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making such decisions, the city shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future city plans for public improvements and development projects which have been determined to be in the public interest.

208A.260. PRE-EXCAVATION FACILITIES LOCATION. In addition to complying with the requirements of Minn. Stat. 216D.01-.09 ("One Call Excavation Notice System") before the start date of any right-of-way excavation, each registrant who has facilities or equipment in the area to be excavated shall mark the horizontal and vertical placement of all said facilities. Any registrant whose facilities are less than twenty (20) inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor to establish the exact location of its facilities and the best procedure for excavation.

208A.270. DAMAGE TO OTHER FACILITIES. When the city does work in the right-of-way and finds it necessary to maintain, support, or move a registrant's facilities to protect it, the city shall notify the local representative as early as is reasonably possible. The costs associated therewith will be billed to that registrant and must be paid within thirty (30) days from the date of billing. Each registrant shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damage. Each registrant shall be responsible for the cost of repairing any damage to the facilities of another registrant caused during the city's response to an emergency occasioned by that registrant's facilities.

208A.280. RIGHT-OF-WAY VACATION. Reservation of right. If the city vacates a right-of-way that contains the facilities of a registrant, the registrant's rights in the vacated right-of-way are governed by Minn. R. 7819.3200.

208A.290. INDEMNIFICATION AND LIABILITY. By registering with the city, or by accepting a permit under this chapter, a registrant or permittee agrees to defend and indemnify the city in accordance with the provisions of Minn. Rule 7819.1250.

208A.300. ABANDONED AND UNUSABLE FACILITIES.

1. Discontinued Operations. A registrant who has determined to discontinue all or a portion of its operations in the city must provide information satisfactory to the city that the registrant's obligations for its facilities in the right-of-way under this chapter have been lawfully assumed by another registrant.
2. Removal. Any registrant who has abandoned facilities in any right-of-way shall remove it from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the city.

208A.310. APPEAL. A right-of-way user that:

1. has been denied registration;
2. has been denied a permit;
3. has had a permit revoked;
4. believes that the fees imposed are not in conformity with Minn. Stat. § 237.163, subd. 6;
or
5. disputes a determination of the city regarding Section 208A.230(2) of this ordinance,

may have the denial, revocation, fee imposition, or decision reviewed, upon written request, by the City Council. The City Council shall act on a timely written request at its next regularly scheduled meeting, provided the right-of-way user has submitted its appeal with sufficient time to include the appeal as a regular agenda item. A decision by the [cityCity](#) Council affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

208A.320 RESERVATION OF REGULATORY AND POLICE POWERS. A permittee's rights are subject to the regulatory and police powers of the city to adopt and enforce general ordinances as necessary to protect the health, safety, and welfare of the public.

208A.330 SEVERABILITY. If any portion of this chapter is for any reason held invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and

independent provision and such holding shall not affect the validity of the remaining portions thereof. Nothing in this chapter precludes the city from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.

Passed by the City Council of The City of Birchwood Village this ____ day of Month, Year.

EFFECTIVE DATE: This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by M.S. § 412.191, subd. 4, as it may be amended from time to time, which meets the requirements of M.S. § 331A.01, subd. 10, as it may be amended from time to time.

Adopted by the City of Birchwood Village City Council this ____ th day of _____, 2023

Margaret Ford, Mayor

Attest:

Rebecca Kellen, City Administrator-Clerk

CITY OF BIRCHWOOD VILLAGE, WASHINGTON COUNTY, MINNESOTA

A summary of an ordinance to enact a new Chapter of the City of Birchwood Village Code of Ordinances to administer and regulate the public rights of way in the public interest, and to provide for the issuance and regulation of right-of-way permits.

1. The City Council has adopted a lengthy ordinance administering and regulating the public rights of way in the public interest and providing for issuance and regulation of right-of-way permits. The purpose of this summary is to inform the public of the intent and effect of the ordinance and to publish only a summary of the ordinance pursuant to Minnesota Statutes, section 412.191, with the full ordinance being on file in the office of the City Clerk during regular office hours.

2. The City of Birchwood Village Code of Ordinances is amended by adding a new chapter, Chapter 208A. The new chapter provides essentially as follows:

Sec. 208A.010. Findings, Purpose, and Intent.

States the reason and the need for the city to more effectively manage the public rights of way.

Sec. 208A.020. Election to Manage the Public Rights of Way.

States the intent of the Council to manage the public right of way pursuant to and in accordance with the authority given to it under state and federal statutory, administrative, and common law.

Sec. 208A.030. Definitions.

Certain words in the ordinance are defined here. This section also incorporates definitions adopted by the Minnesota Public Utilities Commission in state rules.

Sec. 208A.040. Administration.

Names the principal city official responsible for the administration of the city right-of-way ordinance.

Sec. 208A.060. Registration and Right-of-Way Occupancy and Sec. 208A.070. Registration Information.

Requires those using and occupying the public rights of way to register with the city and provide basic essential information.

Sec. 208A.080. Reporting Obligations.

Defines some minimum reporting obligations for utilities planning to do work in the public rights of way, including schedules for anticipated work.

Secs. 208A.090. Permit Requirement; 208A.100, Permit Applications; 208A.110, Issuance of Permit Conditions; and 208A.120, Action on Small Wireless Facility Permit Applications, and 208A.130, Permit Fees.

Describes the requirements for obtaining a permit and paying appropriate permit fees before excavating or in any way obstructing the public rights of way.

Sec. 208A.140. Right-of-Way Patching and Restoration.

Contains the requirements for restoring the public rights of way after excavation, and adopts the restoration standards contained in Minnesota Public Utilities Commission rules.

Sec. 208A.150. Joint Applications.

Sec. 208A.160. Supplementary Applications.

Sec. 208A.170. Other Obligations.

Sec. 208A.180. Denial of Permit.

Specifies the grounds for denying a right-of-way permit.

Sec. 208A.190. Installation Requirements.

Specifies that the installation of utility facilities in the public rights of way shall comply with city requirements and applicable rules of the Minnesota Public Utilities Commission.

Sec. 208A.200. Inspection.

Sec. 208A.210. Work Done Without a Permit.

Sec. 208A.220. Supplementary Notification.

Sec. 208A.230. Revocation of Permits.

Describes the grounds and procedures for revoking right-of-way permits.

Sec. 208A.240. Mapping Data.

Adopts rules of the Minnesota Public Utilities Commission describing the mapping information that must be provided by those placing utility facilities in the public rights of way.

Sec. 208A.250. Location and Relocation of Facilities.

Describes the requirement regarding location of utilities and further adopts Minnesota Public Utilities Commission rules regarding the circumstances when utilities can be forced to relocate their facilities.

Sec. 208A.260. Pre-Excavation Facilities Location.

Sec. 208A.270. Damage to Other Facilities.

Sec. 208A.280. Right-of-Way Vacation.

Sec. 208A.290. Indemnification and Liability.

Specifies the circumstances in which those placing facilities in the public rights of way will be required to defend and indemnify the city for actions brought against the city.

Sec. 208A.300. Abandoned and Unusable Facilities.

Sec. 208A.310. Appeal.

Describes the process for challenging a city's decision involving application of this ordinance.

Section 208A.320 Reservation of Regulatory and Police Powers.

Sec. 208A.330. Severability.

3. The City Council has determined that publication of the title and summary of the rights-of-way management ordinance as set forth in this summary will clearly inform the public of the intention and effect of the ordinance. The Council also directs that only the title and this summary be published. A copy of the entire text of the ordinance shall be posted in the _____ library.

TO: City Council

FROM: Justin McCarthy

RE: Rewriting the Impervious Surface Code (302.050). 4/30/2023

Council,

In the beginning of my tenure with the City Council, I was tasked with writing code that would require residents with rain gardens and pervious pavement systems to enter into a maintenance agreement with the City to ensure that the rain gardens and other systems continued to function properly. The natural and logical place for this was 302.050 which defined our requirements for such structures.

During the time I was writing this code, the planning commission recommended that we allow residents who were between 25% and 30% to obtain a building permit without having to follow the variance process if the residents installed the mitigation structures that are laid out in the current version of 302.050.

Since both changes were to section 302.050, I decided to merge these changes. During my editing, I also discovered that nothing in the City code actually *required* a resident to construct any proposed structures. That is, they could apply to the city, obtain a variance, and then fail to build the mitigation structures and the City had limited recourse. I have added provisions to fix this.

We had a draft of this ordinance done in Fall of 2022, but since this is a shoreland ordinance, we need the DNR's approval to amend 302.050. Upon submission to the DNR, the DNR initially denied our proposal. Dan Scollan of the DNR has been very helpful and indicated that the DNR would allow us to have more impervious surface if we add a requirement for a riparian buffer zone for riparian lots. This is due to the DNR's view that impervious surface requirements are both to protect the environment from excessive runoff, but also for habitat purposes. A riparian buffer zone is an area with native plants, grasses, trees, and shrubs that is designed according to DNR standards available at the DNR's website Restore your Shore:

<https://www.dnr.state.mn.us/rys/index.html> . I have therefore included a riparian buffer zone requirement for the Shoreland Impact Zone for riparian lots in accordance with the DNR's request. The amount of riparian buffer zone required to obtain the permit (without a variance) in the attached proposal is based upon the amount of impervious surface over 25%. Dan Scollan has indicated that the DNR would approve the attached impervious surface code.

The planning commission approved the proposed code by a 4-0 vote (1 member was absent) with some minor typographical corrections as well as a suggestion to change the 5 year certification fee from \$200.00 to \$100.00 which I have adopted.

I have had Steve Thatcher review a previous version and he provided some feedback which is in this version.

In consideration of all of the above, I have rewritten 302.050 from the ground up. In sum, it includes the following:

- In the new 302.050, the impervious surface limitation of 25% remains. However, for projects resulting in impervious surface coverage of 25%-30%, a property owner may obtain a special impervious surface permit without a variance by: 1.) having stormwater management practices/structures that infiltrate the total volume of impervious for the lot for a 1.1 inch storm over 48 hours 2.) for riparian lots, a riparian buffer with native plants/grasses from the DNR's restore your shore website equal to 8% of the shoreland impact zone for every 1% over 25% impervious and 3.) executing a maintenance and implementation agreement.
- The new 302.050 updates the requirements for the management practices and structures.
- The new 302.050 requires implementation of any planned structures and includes penalties for failure to implement the structures.
- The new 302.050 requires maintenance agreements that run with the land so that it binds future owners. Maintenance agreements are required to be recorded with the property. The code calls out penalties for failure to perform the maintenance. In addition, the code has several requirements for the maintenance agreements.
- The new 302.050 details emergency maintenance by the City is allowed to protect other residents or City property.

Many thanks to Ryan Hankins, who assisted in the drafting of this document when he was a member of the planning commission. Many thanks as well to the members of the planning commission for their thoughts and review during the April PC meeting.

ORDINANCE 2023 –05-01

CITY OF BIRCHWOOD VILLAGE WASHINGTON COUNTY, MINNESOTA AN ORDINANCE REPEALING AND REPLACING 302.050 IMPERVIOUS SURFACES IN THE CITY CODE

The City Council of the City of Birchwood Village hereby ordains that section 302.050 IMPERVIOUS SURFACE of the Municipal Code of the City of Birchwood Village is hereby repealed and replaced with the following:

302.050 Impervious Surfaces and Lot Coverage

1. **Intent.** High levels of impervious surface coverage on lots create excessive stormwater runoff, destroys animal habitat and reduces the natural character of the land. For these reasons, the Minnesota Department of Natural Resources (DNR) requires Cities with shoreland to regulate impervious surface. Stormwater runoff from properties pollutes public waters, erodes land, destroys natural vegetation and can create nuisances to other properties. In addition, the City of Birchwood Village has limited stormwater management facilities throughout the City. As a result, to reduce the unwanted harmful effects of stormwater, it is the policy of the City of Birchwood Village that each property within the City manage its own stormwater to limit runoff into streets, waterways, and neighboring properties. As one way of limiting the stormwater runoff from each property, the City seeks to reduce the impervious surface of properties in the City. Minimizing impervious surface causes more stormwater to be absorbed into the soil and less to flow off the property. This reduces erosion, pollution of public waters and damage to other properties within the City from stormwater.
2. **Definitions.** The following definitions are used in this section:
 - a. **Impervious Surface** is defined as a ground surface covered or compacted with material so as to substantially retard the entry of water into the soil, and to cause water to remain on the surface or to run off the surface in greater quantities or at an increased rate of flow than would occur if there was a natural soil surface. Impervious surfaces shall include improvements utilizing concrete, asphalt, gravel, or other non-porous materials. Examples of impervious surfaces include, but are not limited to, roads, driveways, parking areas, swimming pools, sidewalks, patios, rooftops, and covered decks. Impervious surfaces may also

result from compacting unpaved or ungraveled driveways and parking areas. For purposes of this section, pervious pavement systems are not considered impervious surfaces. Open decks and walkways with open joints at least ¼ inch wide per 8 inch wide board, and areas beneath overhangs less than 2 feet wide, if bare or vegetated soil is beneath the decks or walkways or overhangs is not considered impervious surfaces. Further, any surface approved by the City Engineer using applicable industry standards to be given credit as a “pervious surface” shall be calculated as the area of the surface, times the pervious fraction of the surface.

- b. **Impervious Surface Coverage** is defined as the percentage of a lot covered by impervious surfaces.
 - c. **Retention Volume** is defined as the volume of 1.1 inches of stormwater from the post-construction impervious surfaces. For example, if the lot is 15,000 square feet and the post construction impervious surface coverage is 30%, the Retention Volume would be 30% of 15,000 or 4,500 sq feet * 1.1 inches or 412.5 cubic feet of water that would need to be infiltrated within 48 hours or less.
 - d. **Shore Impact Zone** is the land located between the ordinary high water level of a public water and a line parallel to it at a setback of 50 percent of the required structure setback. The required structure setback from the OHWL in the City of Birchwood Village is 50 feet, and the Shore Impact Zone is 25 feet.
 - e. **Stormwater management structures and best management practices** include any surface water management system or practice that is designed, constructed, or implemented to control stormwater by collecting, conveying, storing, absorbing, inhibiting, treating, using, infiltrating, or reusing water. Example stormwater management structures include rain gardens, infiltration basins, and bioswales.
3. **Impervious Surface Limitation.** Impervious Surface Coverage shall not exceed twenty-five (25) percent of the lot area unless the provisions of either 302.050(4) or 302.050(5) are met.
 4. **Impervious Surface Coverage Permit.** Projects that result in impervious surface coverage that exceeds twenty-five (25) percent but does not exceed thirty (30) percent shall be permitted if the property owner complies with, and demonstrates compliance with, the requirements of Section 302.050(6) to the satisfaction of the City Planner. Property Owners who are dissatisfied with the decision of the City Planner may seek a review of the decision in accordance with the requirements and procedures of section 310.
 - a. Property owners unable or unwilling to comply with 302.050(6) to the satisfaction of the City Planner are not entitled to a permit under this section, but instead may seek a variance according to subsection 302.050(5).
 5. **Variance.** Projects that result in impervious surface coverage that exceeds thirty (30) percent, or those projects that result in impervious surface coverage that exceeds twenty-five (25) percent but does not meet the requirements of 302.050(6) may be permitted if

the property owner obtains a variance. To apply for a variance, the property owner shall comply with, and demonstrate compliance with, the requirements of subsection 302.050(6), or shall explain how and why the property owner is unable or unwilling to comply with subsection 302.050(6). In addition to the requirements of subsection 302.050(6), the property owner must follow the procedures and meet the standards defined in Section 304 for obtaining a variance, including demonstrating to the satisfaction of the City Council that a practical difficulty exists.

- a. **Property owner unable to meet the requirements of 302.050(6).** Any property owner unable or unwilling to meet the requirements of 302.050(6) may still apply for a variance and have the variance application heard according to section 304. In this case, property owner shall enumerate which requirements of section 302.050(6) the property owner does not comply with and explain why the property owner does not comply with each requirement. Additionally, the City Planner shall note in the City Planner's report that the property owner is unable or unwilling to comply with 302.050(6) and shall enumerate the reasons (if known) that the property owner is unable or unwilling to comply with 302.050(6). Property owners are strongly encouraged to comply with 302.050(6).

6. **Requirements.** The following are requirements for applying for a variance from the impervious surface coverage requirements, or for obtaining a permit under 302.050(4).

- a. **Stormwater Management Plan.** The property owner shall provide a stormwater management plan that:
 - i. Documents the proposed development including all impervious surfaces and direction of runoff.
 - ii. Includes calculations showing the Retention Volume.
 - iii. Documents proposed structures and/or best management practices that infiltrate the Retention Volume within a forty-eight (48) hour period or less and meet the requirements of 302.050(7).
 - iv. For variances, provides results from application of the most recent version of the Minnesota MIDS (Minimum Impact Design Standards) Calculator (available on the Minnesota Pollution Control Agency's website), the U.S. Environmental Protection Agency's National Stormwater Calculator, HydroCAD, or another similar stormwater design calculator approved by the City Planner that show that the proposed stormwater management practices meet the required infiltration standard.
 - v. For variances, documents that the rate and volume of stormwater runoff from the property from a hundred year storm is not increased after the proposed project has been completed.
- b. **Implementation and Maintenance Agreement.** The property owner shall include an implementation and maintenance agreement signed by the property owner or owners for the approved stormwater management practices and structures and for any riparian buffer required under section 6(c). The agreement must include the requirements of 302.050(8).
- c. **Riparian Lots.**

proposed testing protocol and standards to determine how the performance of the structures or best management practices are to be judged.

- iii. An identification of the type of maintenance and the maintenance intervals.
- iv. An agreement to perform the identified maintenance and any other repairs, replacement, or other necessary work to maintain the stormwater management structures or stormwater best management practices in a condition consistent with the performance standards for which they were originally designed.
- v. An identification of the Responsible Party who is responsible for maintenance of the stormwater management best practices and structures. The property owner shall notify the City within 30 days of any changes to the responsible party.
- vi. An indication that this agreement runs with the land and shall bind future successors in title.
- vii. An agreement to allow the City and its representatives the right-of-entry on the property for the purposes of inspecting the stormwater management structures and best management practices.
- viii. An agreement that should any stormwater management structures or best management practices not be implemented, or fail to operate in a condition consistent with the performance standards for which they were originally designed or pose a threat to public safety, public health, or property as determined by the City Planner, the City may, after reasonable notice to the responsible party, perform any work necessary in order to implement, or bring the structures into a condition consistent with the performance standards for which they were originally designed or to eliminate any threat to public safety, public health, or property. The property owner agrees to pay the costs of any such work performed by the City.
- ix. An agreement to provide to the City, every five years, documentation that the maintenance required by this agreement was completed and to pay the required fee to the City.

b. Requirements for Maintenance and Implementation Agreement for Riparian Buffer

- i. An agreement to implement and preserve the riparian buffer in perpetuity or until the impervious surface coverage of the lot is reduced to 25% or less.
- ii. An identification of the type of maintenance and the maintenance intervals to preserve the riparian buffer.
- iii. An agreement to perform the identified maintenance and any other repairs, replacement, or other necessary work to maintain the riparian buffer in a condition consistent with the original design.
- iv. An identification of the Responsible Party who is responsible for maintenance of the riparian buffer. The property owner shall notify the City within 30 days of any changes to the responsible party.
- v. An agreement that this agreement runs with the land and shall bind future successors in title.

- vi. An agreement to allow the City and its representatives the right-of-entry on the property for the purposes of inspecting the riparian buffer.
 - vii. An agreement that should the riparian buffer not be implemented, change character in a way that deviates substantially from the purpose of the original design, or pose a threat to public safety, public health, or property as determined by the City, the City may, after reasonable notice to the responsible party, perform any work necessary in order to implement, or bring the structures into a condition consistent with the original design or to eliminate any threat to public safety, public health, or property. The property owner agrees to pay the costs of any such work performed by the City.
9. **Requirement to implement.** Upon receiving the variance and/or permit under this section, the property owner must construct all proposed structures; all proposed best management practices in accordance with the stormwater management plan; and create all proposed riparian buffers. The proposed structures, implemented best management practices, and riparian buffers shall be constructed as approved by the City Council or City Planner and with any modifications directed by the City Council in granting any necessary variance. Failure to construct all proposed structures, riparian buffers, or to implement all best management practices will render the variance or permit invalid and any improvements constructed pursuant to said variance or permit will be illegal. The City may demolish and remove such improvements at the expense of the property owner. In the alternative, the City may construct the proposed improvements, implement the best management practices, or implement the riparian buffer, and charge the property owner costs for doing so. Such costs may be assessed to the property taxes of the property. This requirement shall run with the property and shall be binding upon all future property owners.
10. **Requirement to perform maintenance.** The property owner is required to perform, or cause to be performed all maintenance identified in the maintenance agreement, as well as any other additional work necessary to keep the stormwater management structures, best management practices, or riparian buffer in a condition consistent with the performance standards for which they were originally designed, including replacement of the structures, best management practices, or riparian buffer if necessary. The City may inspect the stormwater management structures, and/or records of best practices to ensure that the required maintenance is performed, and the City may inspect the riparian buffer to ensure that its condition is consistent with the original design. These requirements shall run with the property and shall be binding on upon all future property owners.
11. **City May Perform Maintenance or Replacement.** Should any stormwater management structure or best management practice fail to operate in a condition consistent with the performance standards for which it was originally designed or pose a threat to public safety, public health, or property as determined by the City, or should the riparian buffer deteriorate into a condition inconsistent with the original design, the City may, after reasonable notice to the responsible party, perform any work necessary in

order to bring the riparian buffer, stormwater management structure, or best management practice into a condition consistent with the performance standards for which they were originally designed or to eliminate any threat to public safety, public health, or property. The costs of any such work may be assessed to the property owner and may be certified to Washington County for assessment against the property taxes of the property.

12. **Reasonable Notice.** For purposes of this section, reasonable notice normally means 45 days. If, however, the City Planner provides a written opinion that the condition of the Storm Water Management Structure or Riparian Buffer is a danger to public safety, public health, or public or private property, and that 45 days' notice would not be in the best interests of public safety; public health; or the protection of public or private property; the City Administrator shall reduce or eliminate this notice to the extent necessary to protect the public safety; public health; or public or private property.
13. **Certification Required, Maintenance Fee.** Every five years, any property owner obtaining either a permit or a variance shall document that the conditions in the maintenance agreement have been met and shall pay a maintenance fee of an amount set by the Council in order to cover the administrative burden on the City in ensuring compliance with this section. This section applies to any maintenance agreement described in section 302.050.
14. **Remedy for Violations.** In addition to the remedies described above, such as in sections 302.050(9) and 302.050(11), violation of any portion this section, including the maintenance agreement provisions for both riparian buffers or stormwater management practices or structures, are also governed by Section 619.
15. **Severability.** If any section, subsection, sentence, clause, or phrase of this article is for any reason held to be invalid, such invalidity shall not affect the validity or enforceability of the remaining portions of this article. The City Council hereby declares that it would have adopted this article in each section, subsection, sentence, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

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 _____ 2023.

Margaret Ford, Mayor

Attested:

Rebecca Kellen, City Administrator

ORDINANCE 2023-05-02

**CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA
AN ORDINANCE AMENDING 302.020 LAND USE IN THE CITY CODE**

The City Council of the City of Birchwood Village hereby ordains that:

Section 300.020 LAND USE of the Municipal Code of the City of Birchwood Village is hereby amended to read as follows:

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

1. Accessory Structure. A non-habitable one-story detached accessory structures (e.g., tool sheds, storage sheds) provided the floor area does not exceed 144 square feet and a maximum wall height of 12 feet measured from the ground to the top of the top plate.

“AMENDED BY ORDINANCE 2020-02-01; APRIL 14, 2020.”

2. Basement. A story partly underground but having less than 1/2 of its clear height above finished grade.

3. Best Management Practices (BMPs). Erosion and sediment control and water quality management practices that are the most effective and practicable means of controlling, preventing, and minimizing the degradation of surface water, including construction-phasing, minimizing the length of time soil areas are exposed, prohibitions, and other management practices published by state or designated area-wide planning agencies.

Examples of BMPs can be found in the current versions of:

a. The Minnesota Pollution Control Agency publications, “Protecting Water Quality in Urban Areas”, and “Storm-Water and Wetlands: Planning and Evaluation Guidelines for Addressing Potential Impacts of Urban Storm-Water and Snow-Melt Runoff on Wetlands”

b. The Metropolitan Council “Urban Small Sites BMP Manual” (available on disk or at: www.metrocouncil.org/environment/watershed/BMP/manual.htm (address current January 2005)),

c. The United States Environmental Protection Agency “Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices” (as a reference for

BMPs)

d. The Minnesota Department of Transportation “Erosion Control Design Manual”.

4. Board. The Board of Appeals established in Section 304.010.
5. Boathouse. A structure designed and used solely for the storage of boats or boating equipment.
6. Building. Any structure which is built for the support, shelter or enclosures of persons, animals, chattels or movable property of any kind, which is permanently affixed to the land.
7. Building Line. A line parallel to the front lot line or the ordinary high water level at the required setback beyond which a structure may not extend.
8. Business. Any occupation, employment or enterprise wherein merchandise is exhibited or sold, or which occupies time, attention, labor and materials or where services are offered for compensation.
9. Clearcutting. Complete removal of trees or shrubs or woody ground cover in a contiguous patch, strip, row, or block.
10. Conventional Energy System. Any energy system, including supply elements, furnaces, burners, tanks, boilers, related controls, and energy-distribution components, which uses any source(s) of energy other than solar energy. These sources include, but are not limited to gas, oil and electric heating but exclude windmills.
11. Deck. A horizontal, unenclosed platform with or without attached railings, seats, trellises or other features, either attached or functionally related to a principal use.
12. Driveway. See Parking Space.
13. Dwelling. Any building or structure, or part thereof, which is used or intended to be used for living or sleeping.
14. Dwelling Unit. A room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping and cooking.
15. Easement. An interest in land owned by another that permits the owner of such interest the right of limited use or enjoyment of the land in which the interest exists.
16. Easement, Lake. Any tract of land running to and abutting the shoreline of White Bear Lake which is owned by the City, subject to the right of City residents to use for access to White Bear Lake.
17. Family. A family is:

- a. An individual or 2 or more persons related by blood, marriage or adoption, living together or
- b. A group of not more than 5 persons who need not be related by blood, marriage or adoption, living together as a single housekeeping unit in a dwelling unit.

18. Fence. A permanent partition, structure, wall or gate erected as a dividing marker or enclosure.

“AMENDED BY ORDINANCE 1997-3; AUGUST 12, 1997.”

19. Final Plat. The final map, drawing or chart on which the subdivider's plan or subdivision is presented to the City Council for approval, and which, if approved, will be submitted to the County Recorder or Registrar of Deeds for recording.

20. Garage. A building or portion of a building used by the tenants of the building on the premises which is designed primarily for the storage of motor vehicles. A detached garage is an accessory structure.

“AMENDED BY ORDINANCE 2000-1; FEBRUARY 8, 2000.”

21. Ground floor area. The ground floor area of any dwelling shall be the sum of the gross horizontal areas of the first floor of living area for each dwelling unit. However, the ground floor area shall not include the basement.

22. Home Occupation. A lawful occupation carried on solely or primarily within a dwelling unit. The occupation is clearly incidental and secondary to the use of the building for dwelling purposes, and does not change the character of the dwelling or accessory structure.

23. Impervious Surface. ~~A ground surface covered or compacted with material so as to substantially retard the entry of water into the soil, and to cause water to remain on the surface or to run off the surface in greater quantities or at an increased rate of flow than would occur if there was a natural soil surface.~~

~~Impervious surfaces shall include improvements utilizing concrete, asphalt, gravel, or other non-porous materials. Examples of impervious surfaces include, but are not limited to, roads, driveways, parking areas, swimming pools, sidewalks, patios, rooftops, and covered decks. Examples of impervious surfaces resulting from compacting are unpaved or ungraveled driveways and parking areas.~~

~~EXCEPTIONS 1: Open decks and walkways with open joints at least ¼ inch wide per 8 inch wide board, and areas beneath overhangs less than 2 feet wide, if bare or vegetated soil is beneath the decks or walkways or overhangs, shall not be considered impervious surfaces.~~

~~EXCEPTION 2: Any surface approved by the City Engineer using applicable industry standards to be given credit as a “pervious surface” shall be calculated as the area of the surface, times the pervious fraction of the surface.~~

Impervious surface is defined in section 302.050.

“AMENDED BY ORDINANCE 2018-08-01; OCTOBER 9, 2018.”

24. Land Disturbance Activity (LDA). Any land change that may result in soil erosion from water or wind and the movement of sediments including, but not limited to, grading, excavating, and filling of land, and removal of vegetation.

EXCEPTION: Gardening or the planting of trees or shrubs shall not be considered to be a land disturbance activity.

25. Lodging Room. A room rented as sleeping and living quarters without cooking facilities either with or without an individual bathroom. In a suite of rooms without cooking facilities, each room which provides sleeping accommodations shall be counted as one lodging room.

26. Lot. A parcel of land designated by plat, metes and bounds, registered land survey, auditors plot or other accepted means and separated from other parcels or portions by said description for the purpose of sale, lease or separation

27. Lot of Record. A parcel of land, whether subdivided or otherwise legally described, as of January 1, 1975, or approved by the City as a lot subsequent to such date and which is occupied by or intended for occupancy by one principal building or principal use, together with any accessory buildings and such open spaces as required by Chapters 301 through 399, and having its principal frontage upon a street or the lake.

28. Lot, Corner. A lot situated at the junction of and abutting on 2 or more intersecting streets.

29. Lot Line. A property boundary line of any lot.

30. Lot Line, Front. That lot boundary abutting a public street. The owner of a lot abutting two streets may select either street as the front lot line.

31. Lot Width. The shortest distance between lot lines measured at the midpoint of the building line

32. Master Plan. Is a comprehensive plan and includes all plans of the City for land use, transportation facilities and community.

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

“AMENDED BY ORDINANCE 2020-02-01; APRIL 14, 2020.”

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

“AMENDED BY ORDINANCE 2018-05-02; OCTOBER 9, 2018.”

35. 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.

36. Open Space. Land with no structures upon it.

37. Open Space Site. Any park, beach, open area, special use area, lake easement or other area owned, improved, maintained, operated or otherwise controlled by the City of Birchwood Village for recreational and natural resource preservation purposes.

38. Ordinary High Water Level. An elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial.

39. Owner. Any individual, firm, association, syndicate, co-partnership, corporation, trust or any other legal entity having a proprietary interest in land, including a sufficient proprietary interest in land sought to be subdivided and/or to commence and maintain proceedings to subdivide the same under this ordinance.

40. Parking Space or Driveway. A suitably surfaced and permanently maintained area on privately owned property either within or outside of a building of sufficient size to store one standard automobile or which provides ingress or egress to the principal or accessory structure of a suitable width for an automobile.

41. Preliminary Plan. The preliminary map, drawing, or chart indicating the proposed layout of the subdivision to be submitted to the City Council for its consideration.

42. Public Utility Use. Transmission facilities of electric power, gas, water, telephone and cable TV.

43. Public Waters. "Public waters" means any waters as defined in Minnesota Statutes, section 105.37, subdivision 14 and 15. In Birchwood, these waters and their shoreland classifications are:

DNR ID #82-167, White Bear Lake, General Development

DNR ID #82-134, Lost Lake, Recreational Development

DNR ID #82-480W, Hall's Marsh, General Development

44. Roadway. The paved portion of the street.

45. Setback. The minimum horizontal distance between a structure and an ordinary high water level, street, road or highway right-of-way or property line.

46. Shoreland. Land located within 1,000 feet of the ordinary high water level of a lake, pond, or wetland.

47. 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.

48. Solar Energy. Radiant energy (direct, diffuse, or reflected) received from the sun.

49. Solar Energy System. A set of devices whose primary purpose is to collect solar energy and convert or store it for useful purposes including heating and cooling buildings or other energy-using processes, or to produce generated power by means of any combination of collecting, transferring, or converting solar-generated energy.

50. Storage Shed. A storage shed is a detached accessory structure used to shelter household items as well as tools and machinery used for yard maintenance. A trailer, truck box or other vehicle with or without its wheels or in operable or inoperable condition shall not be allowed as a storage shed.

“AMENDED BY ORDINANCE 2000-1; FEBRUARY 8, 2000.”

51. Storm Water. Precipitation runoff, storm water runoff, snow melt runoff, and any other surface runoff and drainage.

52. Street. The land between the road right-of-way lines. "Street" is also a way for vehicular traffic, whether designated as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, lane, place or however otherwise designated. The City Council shall determine when a given street is an "arterial street", "collector street", "cul-de-sac", "local

a. "Arterial Street" is a fast or heavy traffic street of considerable continuity and used primarily as a traffic artery for intercommunication among large areas.

- b. "Collector Street" is a street which carries traffic from minor streets to arterial streets, including the principal entrance streets of a residential development and streets for circulation within such a development.
- c. "Cul-de-sac" or "Dead-end Street" is a minor street with only one outlet.
- d. "Local Street" is a street used primarily for access to abutting properties.
- e. "Private Street" is a street serving as vehicular access to two or more parcels of land which is not dedicated to the public but is owned by one or more private parties.
- f. "Width, Street" is the shortest distance between the lines delineating the right-of-way of a street.

53. Structure. Anything which is built, constructed or erected: an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner whether temporary or permanent in character including, but not limited to decks, buildings, cabins, manufactured homes, factories, sheds, screen porches, gazebos, platforms, shelters, pergolas, pools, whirlpools, detached garages, car ports, lean-tos, greenhouses, ice fishing houses, towers, and other similar items, except aerial or underground utility lines, such as sewer, electric, telephone, telegraph, gas lines, poles and other supporting facilities.

“AMENDED BY ORDINANCE 2013-08-01; AUGUST 13, 2013.”

54. Structural Alteration. Any change in the supporting members of a building, such as bearing walls, columns, beams or foundation.

55. Subdivider. Is an individual, firm, association, syndicate, co-partnership, corporation, trust or any other legal entity commencing proceedings under this Code to effect a subdivision of land hereunder for himself or for another.

56. Subdivision. Is the division of a parcel of land into two or more lots or parcels for the purpose of transfer of ownership or building development, or, if a new street is involved, any division of a parcel of land; provided that a division of land which may be ordered or approved by a court or effected by testamentary or intestate provisions, or a division of land for agricultural purposes into lots or parcels of ten acres or more and not involving a new street shall not be deemed a subdivision. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided.

57. Variance. The same as that term is defined or described in Minnesota Statutes, Chapter 462. (Procedures and criteria for obtaining variances are

provided in The Zoning Code, Chapter 304.)

58. Walkway. An unenclosed area used primarily for foot traffic. A walkway may be paved or covered by a platform which is constructed at grade level and which is at no point more than 1 foot above grade or 4 feet wide.

59. Wetland. An area where water stands near, at, or above the solid surface during a significant portion of most years, saturating the solid surface and supporting a predominantly aquatic form of vegetation. "Wetland" is further defined as a surface water feature which can be classified as a Type 2, 3, 4, 5, 6, 7, or 8 wetland per definitions in the United States Fish and Wildlife Service Circular No. 39 (1971 edition). White Bear Lake is not included as a "wetland" within this definition.

“AMENDED BY ORDINANCE 1995-2; MAY 9, 1995.”

60. Yard, Front. That open space which extends along at right angles to the front line to a depth or width specified in the set-back regulations.

61. Yard, Rear. That open space on the same lot with the principal building located between the rear line of the building and the rear lot line or the ordinary high water level of a lake, pond or wetland, and extending for the full width of the lot.

62. Yard, Side. The open space extending along the side lot between front and rear yards.

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 _____ 2023.

Margaret Ford, Mayor

Attested:

Rebecca Kellen, City Administrator

ORDINANCE 2023-05-03

**CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA
AN ORDINANCE AMENDING THE FEE SCHEDULE**

The City Council of the City of Birchwood Village hereby ordains that the fee schedule of the Municipal Code of the City of Birchwood Village is hereby amended as follows:

**CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA
AN ORDINANCE AMENDING THE FEE SCHEDULE**

The PLANNING AND ZONING FEES, ESCROWS AND DEPOSITS section of the fee schedule of the Municipal Code of the City of Birchwood Village is hereby amended to read:

PLANNING AND ZONING FEES, ESCROWS AND DEPOSITS *subject to additional fees, in that section of the fee schedule. All planning and zoning permits require an additional refundable permit escrow when listed.	Conditional Use Permit (CUP) Application or Amendment *		306.010	\$460.00	
		Refundable Conditional Use Permit or CUP Amendment Escrow for permitting costs incurred by city		\$3,000.00	8/2021
	Interim Use Permit Application *		305.020, 305.040(6)	\$400.00	
		Refundable Interim Use Permit Escrow for permitting costs incurred by city	302.050	\$3,000.00	8/2021
	Street Vacation Application *			\$300.00	12/2022
		Refundable Street Vacation Escrow for permitting costs incurred by city	302.050	\$3,000.00	12/2022
	Variance Application *		304.020	\$600.00	4/2021
		Refundable Variance Escrow for staff review time incurred by city	302.050	\$3,000.00	
	Subdivision: Lot Split Application *		308.121	\$225.00	

	Refundable Lot Split Escrow for permitting costs incurred by City	301.055(2)	\$1,000.00	12/2022
Subdivision: Preliminary Plat Application *		308.040(3)	\$1,000.00	8/2021
	Subdivision: Refundable Preliminary Plat Application Escrow for permitting costs incurred by city	301.055(2)	\$10,000.00	8/2021
Subdivision: Final Plat Application *		308.050	\$1,000.00	8/2021
	Subdivision: Refundable Final Plat Application Escrow for permitting costs incurred by city	301.055(2)	\$10,000.00	8/2021
Zoning Permit *		307.010	\$50.00	
	Refundable Zoning Permit Escrow for permitting costs incurred by city	301.055(2)	\$3,000.00	11/2021
Right-of-Way (ROW) Permit Application Fee *		309.061	\$300.00 + \$100.00/hour for plan review after two hours	1/2018
	Refundable ROW Permit Escrow for permitting costs incurred by city	301.055(2)	\$3,000.00	11/2021
Right-of-Way Degradation Fee		309.080	Permit holder responsible for actual costs	
Move a building from its present location in Birchwood to any other site, whether or not the new site is within the City. *			\$500.00	12/2022
	Refundable building move escrow for permitting costs incurred by city	301.055(2)	\$1,000.00	12/2022
Certificate of occupancy			\$25.00	12/2022
Public Property Access Limited License		607.235	\$50.00	1/2019

<u>Stormwater Management Maintenance</u>			<u>XX/202</u>
<u>Review</u>	<u>302.050(8)</u>	<u>\$100.00</u>	<u>3</u>

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 _____ 2022.

MEETING MINUTES (Final)

Birchwood Planning Commission Regular Meeting

City Hall - 7:00 PM Regular Meeting 3/23/2023

Submitted by Michael Kraemer – secretary

COMMISSIONERS PRESENT: — Andy Sorenson - Chairman, Joe Evans, Michelle Maiers-Atakpu, Michael McKenzie, Michael Kraemer

COMMISSIONERS ABSENT: None

OTHERS PRESENT: Nadja Gale 419 Wildwood Ave, Doug Coel – friend of Nadja Gale

TO ORDER Meeting called to order by Chairman Andy Sorenson at 7:00 PM.

1. PUBLIC FORUM

2. APPROVE AGENDA

- a. McKenzie moved, 2nd by Evans, to approve the agenda as presented. Vote: Yes – 5, No – 0. Motion to approve agenda passed.

3. REGULAR AGENDA

a. Item A – Review/Approve January 26, 2023, Meeting Minutes

- i. Motion by Maiers-Atakpu, 2nd by Evans to correct spelling of Michael Kraemer’s name and approve the amended minutes. Vote: Yes – 5, No – 0, Motion to approve the corrected minutes passed.

b. Item B – 419B Wildwood Ave Sewer and Water Discuss Options – Nadja Gale.

- i. Nadja Gale addressed the Planning Commission seeking input on ideas of how to resolve a sanitary sewer service issue serving her property. She indicated that her property and the adjacent property were served by a common sewer riser while City code requires each property to be served by their own individual riser and sanitary service.
- ii. Ms Gale indicated she was having trouble locating a responsive contractor she suspects due in part to the perceived depth of excavation needed to install a new riser and service line to serve her property. (She was not sure of the actual city sewer main depth.)
- iii. Planning Commission suggested she work with City Engineer Steve Thatcher to identify the as-built depth to the mainline sewer so contractors can accurately respond to the potential scope of work needed.
- iv. Commission suggested Ms. Gale work with the City Administrator to identify any alternative options to the one house/one service policy in fact the excavation depth needed to hookup is excessive and may create an undue hardship.

c. Item C – Ordinance 2023-02-01 Removing Solar Panels from CUP Code

- i. Discussion:
 - 1. The Commission reviewed the Minnesota Solar Model Ordinance provided in the packet.
 - 2. The Commission reviewed the proposed Ordinance 2023-02-01 amending Section 301.070 Conditional Uses to eliminate the need for CUP for solar systems which are attached to the roof and are within the bounds of the roof surface.
 - ii. **Commission Action:** Advisory motion by McKenzie and 2nd by Sorenson to support the proposed modification to City Code 301.070 CONDITIONAL USES, as presented, **provided** the City Code 306.060 SOLAR ENERGY SYSTEMS - Item 2 is simultaneously modified to add an Item c. stating: “The basis of the Birchwood SOLAR ENERGY SYSTEMS Code shall be tied by reference to the Minnesota Solar Model Ordinance”.
 - 1. The Commission felt that by blanket exempting the roof mounted systems from the CUP process (without referencing the Minnesota Solar Model Ordinance) the City Code does not go far enough to address best practices such as matching roof slopes and other esthetic considerations. Advisory Vote on the motion Yes – 5, No—0. Motion passed.
- d. Item D – Variance Application (Form) Discussion
- i. **Commission Action:** It was determined that the sample document included in the packet did not include any new edits for consideration as was indicated in the packet agenda.
 - ii. Advisory motion by Maiers-Atakpu and 2nd by Evans to table the discussion until the proposed revisions and edits are identified in the document. Advisory vote: Yes – 5 No – 0 Motion to table the item passed.
- e. Item E – Code Item 208A: Right of Way Code Revision Discussion
- i. Item 1 - Discuss Proposed Ordinance regarding fee schedule.
 - 1. **Commission Action:**
 - a. Advisory motion by Maiers-Atakpu, 2nd by Soreson to support the Fee Schedule as presented **with the recommended addition** of a fee item under RIGHT OF WAY FEES table, entitled Right of Way Degradation Escrow in the amount of \$3000.
 - i. Right of Way Degradation is identified in the proposed changes to Right of Way Code 208A under Section 208A and specifically section 208A.130 PERMIT FEES -1. Excavation Permit Fees, Item b. Degradation costs if applicable.
 - ii. It is opinion of Commission that adding this fee item 208A.130.1.b warrants consideration since

Memo by Margaret Ford, 2/7/2023

Revision of 301.070

The ordinance 301.070 governing conditional uses applies to those uses that have greater than usual chances of creating safety hazards, impact on neighboring people and property, and nuisance situations.

Under 301.070

1.e. A conditional use permit is required for any solar energy systems for heating, cooling, electrical generation or other purposes. This ordinance was written when solar energy systems intruded on open spaces. Residential solar panels that attach and are within the bounds of the roof surface should not require a conditional use permit and should be exempt from this provision.

Therefore, I propose the following ordinance:

An ordinance amending section 301.070 Zoning code conditional uses.

The City Council of Birchwood village hereby ordains that section .070 1e of chapter 301 of the Municipal Code of the City of Birchwood village is hereby revised to read:

e. Solar energy systems for heating, cooling, electrical generation or other purposes. Residential solar panels that attach and are within the bounds of the roof surface do not require a conditional use permit and are exempt from this provision.

ORDINANCE 2023-02-01

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

AN ORDINANCE AMENDING SECTION 301.070 CONDITIONAL USES

The City Council of the City of Birchwood Village hereby ordains that Section 301.070 (Conditional Uses) of the Municipal Code of the City of Birchwood Village is hereby amended to read as follows:

301.070. CONDITIONAL USES. Certain accessory uses permitted within the City have greater than usual chances to present safety hazards, impact on neighboring people and property, and nuisance situations. Because of these greater effects, the City requires these uses to be covered under Conditional Use Permits. Applications for Conditional Use Permits must comply with all provisions of Section 306. **CONDITIONAL USE PERMITS.**

1. A Conditional Use Permit shall be required for the following projects:
 - a. Any land disturbance activity where the slope is toward a lake, pond, wetland, or watercourse leading to such waters, and the alteration is closer to such waters than the structure setback requirement. See Note at end of Section 301.070.
 - b. Any land disturbance activity where such work involves an area greater than four hundred (400) square feet and/or more than fifty (50) cubic yards in volume. See Note at end of Section 301.070.
 - c. Any swimming pool with a capacity over three thousand (3000) gallons or with a depth of over three and one-half (3 1/2) feet of water.
 - d. Any tennis court.

~~e. Solar energy systems for heating, cooling, electrical generation or other purposes. Residential solar panels that attach and are within the bounds of the roof surface do not require a conditional use permit and are exempt from this provision.~~

~~e. Any solar energy system for heating, cooling, electrical generation or other purposes.~~

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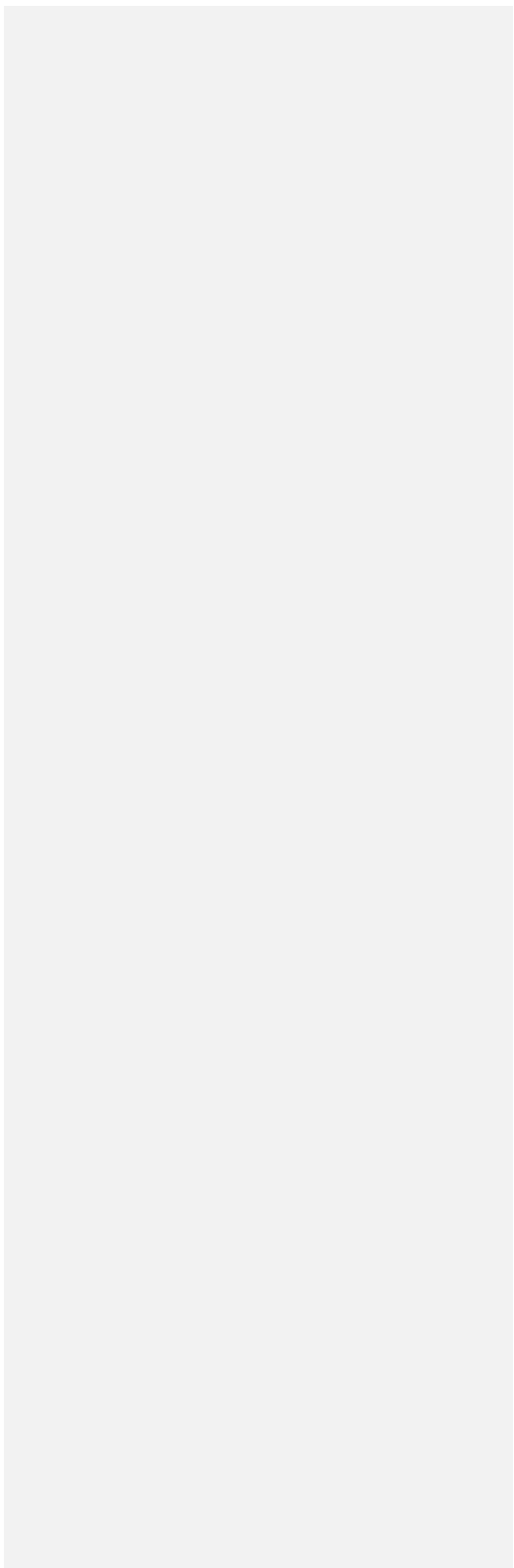
This ordinance becomes effective from and after its passage and publication.

Passed by the City Council of The City of Birchwood Village, Minnesota this ____ day of Month, Year.

Margaret Ford, Mayor

Attested:

Rebecca Kellen, City Clerk-Administrator



ORDINANCE 2023-05-04

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

AN ORDINANCE AMENDING SECTION 306.060 ZONING CODE: SOLAR ENERGY SYSTEMS

The City Council of the City of Birchwood Village hereby ordains that Section 306.060 (Solar Energy Systems) of Section 306 (Zoning Code: Conditional Use Permits) of the Municipal Code of the City of Birchwood Village is hereby amended to read as follows:

306.060. SOLAR ENERGY SYSTEMS. Use of Solar Energy Systems is subject to the restraints imposed by the topography within the corporate limits of the City and by zoning regulations contained in this Chapter. No guarantee is hereby given that any property within the City Limits is entitled to the use of Solar Energy Systems.

1. Required Information.

- a. Use for which system is being installed.
- b. Description of system including type, capacity, and physical size.
- c. Site plan including locations of Solar Energy System, collector, and other structures.

2. Requirements and Standards.

- a. Reasonable care must be taken so as not to restrict the solar radiation falling on adjacent parcels of land.
- b. Engineering calculations to show system is adequate to heat dwelling if solar energy system is to serve as primary heating system.
 - (i) Evidence system is maintainable.
 - (ii) Evidence of a backup system.
- c. The basis of the Birchwood SOLAR ENERGY SYSTEMS code shall be tied by reference to the Minnesota Solar Model Ordinance.

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 _____ 2023.

Margaret Ford, Mayor

Attest:

Rebecca Kellen, City Administrator-Clerk

To: Birchwood City Council
From Ryan Hankins
Subject: City Water and Sewer Connection Fees

Our fees to establish water and sewer connections are higher than those of our neighboring cities and add expense to construction. Currently, for new construction, one must pay \$5500 for sewer and \$4500 for water to the city, plus \$2485 for sewer to Met Council, plus \$3000 in refundable deposits. \$14,485 has caused concerns among property owners. These are fees that are paid the first time a residence is connected to city water and sewer. In addition, property owners encounter unexpected fees if their connections to city water or sewer have been shared with a neighbor. Met Council justifies its fee because each time a new connection to its sewer system is established, it must add sewer treatment capacity.

Met Council establishes a “grandfather” date of January 1, 2009, and properties connected to its sewer system before this date are not assessed for a new connection. Met council also waives fees if a fee was previously paid for a residence. Technically, if a dwelling is demolished anywhere in Birchwood, the city receives a credit for replacement, but most cities pass this along to the property owner. This change makes our code consistent with Met Council and eliminates the need to figure out whether a particular property paid a special assessment many years in the past.

Because 14 years have elapsed since the “grandfather” period ended in 2009, a property owner connected to water and sewer would have paid, under current rates, \$144 per year (\$36 per quarter) in base sewer fees and \$140 per year (\$35 per quarter) in base water fees. Thus, I propose we set our fees at 14 years of fees, or \$2016 for new sewer connections and \$1960 for new water connections. Under Minn. Statute § 462.353, “fees must be fair, reasonable, and proportionate and have a nexus to the actual cost of the service for which the fee is imposed,” and this proposal provides a reasonable basis for those fees, because the base rates are related to the cost of providing unconsumed service.

Birchwood has largely funded recent water and sewer maintenance and improvements through water and sewer bill fees and tax levies, rather than special assessments, and these costs have been borne by properties with and without connections to water and sewer. The references to assessments might require significant research to determine the amount that must be paid, there is significant ambiguity in what those amounts might be, and no reference exists to the fee schedule itself. Indeed, none of our most recent improvements for the cellular tower, wireless meters, lift stations or generators was funded through special assessment. Therefore, we have less justification than cities with newer systems funded by special assessment to collect large fees. Thus, I propose we decrease our fees from \$5500 for a sewer connection to \$2016, and from \$4500 for a water connection to \$1960.

Although we provide sewer services to some residences outside of Birchwood, west of Highway 120, we do not expect new connections from new construction. Thus, although we might reasonably assign higher fees to properties not subject to our tax levy, it is unlikely that we will ever collect fees from those properties.

We also appear to have no prohibition on obstructive contributions to sanitary sewer systems, such as disposable wipes or diapers, even though the city has requested residents avoid this use of the sewer.

Fee comparison:

	Sewer (single-family dwelling)	Water (single-family dwelling)
White Bear Lake	\$650	\$650
Oakdale	\$550	\$800
Mahtomedi	\$1435	\$1235
Birchwood (current)	\$5500	\$4500
Birchwood (proposed)	\$2016	\$1960

This amounts to a decrease of 63% from our previous sewer connection rates and 56% from our previous water connection rates.

ORDINANCE 2023-05-05
CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA

AN ORDINANCE AMENDING THE UTILITY AVAILABILITY FEES IN THE CITY FEE SCHEDULE, AMENDING SECTIONS 201.060 AND 201.070 OF ORDINANCE NO. 201, TITLED “CITY WATER SYSTEMS” AND SECTION 202.070 OF ORDINANCE NO. 202, TITLED “CITY PLUMBING AND SEWAGE SYSTEM”

The City Council of the City of Birchwood Village hereby ordains that:

Section 1. The Fee Schedule of the Municipal Code of the City of Birchwood Village is amended to read as specified in EXHIBIT A.

Section 2. Section 201.070 of Ordinance 201 is amended to read as follows:

201.070. NEW CONNECTION - COST.

~~For a water service connection, water service lines and shut-off boxes shall be installed, water mains shall be tapped and pipes laid within the right-of-way, at the expense, including materials and labor, of the property owner, by a licensed plumber bonded to operate in the City. Only City employees or duly authorized licensed plumbers shall tap water mains, lay pipe from main to property line and install shut-off boxes, the cost of which, including both material and labor, shall hereafter be paid by the consumer requesting the same, and any consumer whose property has not been specially assessed for a connection charge shall pay an additional sum as set by the City Council. The property owner shall also pay the fee set in the fee schedule for connection of each dwelling unit to the City water system. The fee shall relate to the cost of establishing and providing the water system. However, the City shall waive one fee if the dwelling unit, or a dwelling unit that the dwelling unit replaces, including after a lot split, subdivision or consolidation;~~

- ~~1. was connected to City water service, with or without a water meter, before January 1, 2009; or~~
- ~~2. previously paid the fee; or~~
- ~~3. had an approved water meter installed and sealed by the City.~~

~~Not more than one fee shall be waived for each dwelling unit replaced. Where an existing water main cannot be used to establish a connection, the City may assess additional costs.~~

202.071. MULTIPLE CONNECTIONS. Multiple connections of more than one building to a single building sewer or sewer service line shall be permitted only by ~~special application to the City~~ variance. ~~These types of multiple connections are strongly discouraged and shall be stringently reviewed by the City Building Official, City Engineer, Planning Commission and City Council. To apply for a variance,~~ the applicant shall submit a

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detailed sketch showing location, grades and special structures to the City, ~~and shall describe the practical difficulty~~ ~~Engineer for review prior to applying for a permit.~~ All costs involved for the engineering review shall be paid by the applicant along with the other required fees at the time of ~~issuance of the permit application.~~ ~~The charge for the cost of the trunk lines, lift station, force mains and disposal facilities shall be levied against each property sought to be connected either through single sewer services or multiple connections.~~ Multiple connections shall pay charges and receive credits as in 202.070.

Section 3. Section 202.060 of Ordinance 202 is amended to read as follows:

202.060. **USE OF PUBLIC SANITARY SEWER SYSTEM REQUIRED.** To protect the general health and welfare of the City, it is required that the ~~liquid~~-wastes from any plumbing system of any residence, dwelling or building be discharged into the public ~~sanitary~~ sewer system. Outside toilets or cesspools are not permitted. This does not prohibit the use of portable chemical toilet facilities on public property or construction sites.

Section 4. Section 202.070 of Ordinance 202 is amended to read as follows:

202.070. **CONNECTING TO SEWER LINE.** Sewer service lines shall be installed at the expense, ~~including materials and labor,~~ of the property owner within the right-of-way by a licensed plumber bonded to operate in the City. ~~Before connecting to the City sanitary sewer, the property owner shall pay the fee set in the fee schedule. The fee shall relate to the cost of establishing and providing the City sanitary sewer system. In addition, the property owner shall pay to the City the Metropolitan Council Environmental Services Sewer Access Charge (MCES SAC). However, the City shall waive one City fee and one MCES SAC if the dwelling unit, or a dwelling unit that the dwelling unit replaces, including after a lot split, subdivision or consolidation:~~

- ~~1. was connected to City sanitary sewer service before January 1, 2009; or~~
- ~~2. previously paid the City fee and MCES SAC.~~

~~These fees and charges shall apply to connections to City sanitary sewer from properties inside or outside of the City. Not more than one City fee and one MCES SAC shall be waived for each dwelling unit replaced. Where an existing sewer main cannot be used to establish a connection, the City may assess additional costs.~~

~~No connection shall be made to any sanitary sewer serving the property of any person or occupants of the land, parcel or buildings affected unless all assessments for such sewer, or such installments due and payable, have been paid in full, and unless such owner, occupant or user has paid or provided for the payment of the full and proportionate share of the utility, which share shall be payable as follows:~~

202.070.1. For service to the property for which a sewer service line has not been previously installed from the main sewer line to the property line, the owner, occupant or user shall contract with a licensed plumber for the installation of said line and all payments required

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~~shall be assumed by the owner, occupant, or user. Only plumbers bonded to operate in the City shall be allowed to install service lines within public right of way.~~

~~202.070.2. For service to property outside of the City, the owner, occupant or user shall pay to the City at the time of application for permit an amount not less than the payments made by or charges placed against comparable properties for like service within the City in an amount as may be established by the City Council.~~

EFFECTIVE DATE: This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by M.S. § 412.191, subd. 4, as it may be amended from time to time, which meets the requirements of M.S. § 331A.01, subd. 10, as it may be amended from time to time.

Adopted by the City of Birchwood Village City Council this ____ th day of _____, 2023

Margaret Ford, Mayor

Attest:

Rebecca Kellen, City Administrator-Clerk

EXHIBIT A.

Category	Description	Code	Fee	Last Revised
UTILITY AVAILABILITY FEES	Metropolitan Council Environmental Services Sewer Availability Charge	202.070	The most recent fee published by MCES. \$2485.00 as of July, 2022.	6/2023
	Water Connection Fee	201.070	\$1960.00	6/2023
	Sewer Connection Fee	202.070	\$2016.00	6/2023

Funding

Safe Streets and Roads for All (SS4A) Grant Program

The purpose of the SS4A program is to improve roadway safety by significantly reducing or eliminating roadway fatalities and serious injuries through safety action plan development and refinement and implementation focused on all users, including pedestrians, bicyclists, public transportation users, motorists, micro mobility users, and commercial vehicle operators.

Agency: US Department of Transportation

Amount Available: \$1.18 Billion

Matching Requirement: 20% Local match required

Program Website: <https://www.transportation.gov/grants/SS4A>

Application Due: 7/10/23

Funding Source: Federal

Type: Grant

Eligible Applicants: MPOs, local governments, federally recognized tribes and multijurisdictional combinations of these.

Eligible Project Types: Action plan development, activities to supplement existing action plans, and demonstration activities to inform further action plan development are eligible for Planning and Demonstration Grant funding. While construction, planning, and project development are eligible projects for implementation grants. **100% of Action Plan applicants received funding in FY 2022.**

Overview:

Applicants may submit to one of the two grant subprograms below. The key deliverable of this program is the safety action plan, which is required to request construction funding. The department even encourages implementation grant applicants to use funding to further develop action plans in addition to construction activities. Successful applications will promote safety to prevent fatalities, employ low-cost, high-impact strategies, invest in the safety needs of underserved communities, and incorporate evidence-based projects and strategies. All SS4A funds must be expended within 5 years of the grant agreement.

Planning and Demonstration Grants:

These grants can be used to develop or supplement a Safety Action Plan or to carry out demonstrations that inform safety action plan development. The expected minimum and maximum awards for planning and demonstration grants will range from \$100,000 to \$10 million. Required components of an acceptable safety action plan can be found on pg. 6 of the Notice of Funding Opportunity (NOFO).

Implementation Grants

Implementation grants fund projects that address roadway safety and are identified in existing action plans. **If applicants do not have an existing action plan, they are not eligible for Implementation Grants and must apply for a Planning and Demonstration grant.** Applicants can use the self-certification worksheet [here](#) to ensure an existing action plan meets program requirements. The expected minimum and maximum awards for planning and demonstration grants will range from \$2.5 million to \$25 million.

Application Process:

Applications are due by 5:00 pm on 7/10/23. While application materials can be found on grants.gov, grant applications will **not** be submitted through grants.gov. Grant Applications will be submitted via Valid Eval, which requires creating an account. Planning and Demonstration applications can be submitted [here](#), and implementation grants [here](#).

Additional Resources

Bolton & Menk, Inc. Internal Resources:

- Mike Larson, Transportation Project Engineer

The NOFO can be found [here](#).

Administrator Updates
5/9/23 City Council Meeting

Birchwood Village Welcomes New Colleagues!

Therese Bellinger joined Birchwood Village staff as our New Deputy Clerk in April. She is currently training in finance and billing, and licensing and permitting.

Marcus Johnson from Bolton and Menk is now officially on board as the Birchwood Village City Engineer. He has been working with the City and Steve Thatcher to transition the workload.

We are also excited to welcome **Ben Wikstrom**, our new City Planner, who is working with Steve Thatcher, and the City to get up to speed.

Complaints and Investigations

In April, several investigations were conducted into complaints, including erosion control at construction sites, work completed without a permit, and public nuisance issues. Subsequently, letters were issued to address code violations with specific deadlines communicated, when necessary. All cases have either been fully resolved, or the City is working with the property owner(s) toward a resolution.

Radon Testing

The radon testing in Village Hall is under way. The longer-term kit has been purchased and it is in place in the maintenance room.