



AGENDA OF THE PLANNING  
COMMISSION  
CITY OF BIRCHWOOD VILLAGE  
WASHINGTON COUNTY, MINNESOTA  
November 2, 2017  
7:00 P.M.

**CALL TO ORDER**

**APPROVE AGENDA**

**REGULAR AGENDA**

- A. Review/Approve October 19, 2017 Meeting Minutes\* (p. 2)
- B. Review City Project No. 2017-1 Feasibility Study: Sewer Improvement Project\* (pp. 3-18)
  - 1. Recommendation to City Council to approve the improvement project
- C. Review Draft Right of Way Ordinance\* (pp. 19-44)
  - 1. Amend recommendation to the City Council
- D. Review Draft Planning Commission Bylaws\* (pp. 45-46)
  - 1. Recommendation to City Council to approve the bylaws.

**ADJOURN**

\* Denotes items that have supporting documentation provided

**CITY OF BIRCHWOOD VILLAGE  
PLANNING COMMISSION MEETING  
October 19, 2017**

**MINUTES**

**COMMISSIONERS PRESENT:** Chair Doug Danks, Vice Chair John Lund, John Winters and Jozsef Hegedus. Randy Felt was absent.

**OTHERS PRESENT:** City Attorney Alan Kantrud, City Administrator Tobin Lay, Alan Mitchell, Bryan McGinnis.

Chair Doug Danks called the meeting to order at 6:40 p.m.

**REGULAR AGENDA**

**A. Review/Approve October 3, 2017 Meeting Minutes.**

Doug Danks asked for change in wording in Informational Meeting with Steve and Linda Hawkinson; changing wording from advised to "would have to."  
October 3<sup>RD</sup> meeting minutes approved unanimously.

**B. Review Alan Mitchell Feedback on Draft City Code 303.**

John Lund motioned to approve Item B City Code 303, with amendments as noted. Jozsef Hegedus seconded. Motion passed unanimously.

**C. Review Draft Right of Way Ordinance.**

Tabled. Attorney Kantrud will make additional edits to be reviewed at the next meeting.

**D. Review Feedback on Draft Impervious Surface Amendment.**

John Lund motioned to approve Impervious Surface Amendment with changes as noted. Jozsef Hegedus seconded. Motion passed unanimously.

**E. John Lund motioned to cancel regular meeting and reschedule on November 2, 2017**

Jozsef Hegedus seconded

Motion passed unanimously.

**ADJOURN**

**MOTION WAS MADE BY COMMISSIONER LUND AND SECONDED BY COMMISSIONER HEGEDUS TO ADJOURN THE MEETING. ALL AYES. MOTION PASSED. MEETING ADJOURNED AT 8:39 P.M.**

# MEMORANDUM

DATE: November 2, 2017

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TO: Birchwood Planning Commission  
FROM: Tobin Lay, City Administrator  
SUBJECT: City Project No. 2017-1 Feasibility Study



**Birchwood Village**

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Dear Commissioners,

Enclosed is a feasibility study performed by the City Engineer at the request of the City Council regarding a proposed sewer improvement project.

Many sections of the City's sewer system were not included in previous sewer improvement projects and the City Council would like to complete these sections before too much time lapses from the previous projects. The last project was in 2008.

**Request**

Council requests Commissioners:

- 1) Review the enclosed feasibility study; and
- 2) Recommend the proposed sewer improvement project for Council's approval.

Thanks!

Regards,  
Tobin Lay



Thatcher Engineering, Inc.  
6201 Creek Valley Road  
Edina, MN 55439  
Phone: 612.781.2188  
www.thatcher-eng.com

**FEASIBILITY STUDY**  
**For**  
**CITY OF BIRCHWOOD VILLAGE, MINNESOTA**  
**CURED-IN-PLACE PIPING**  
**City Project No. 2017-1**  
**OCTOBER 18, 2017**

**1.0 BACKGROUND AND PURPOSE**

The City of Birchwood Village retained Thatcher Engineering, Inc. to prepare a feasibility study for the construction of Cured-In-Place Piping (CIPP) for approximately 2,600 feet of sanitary sewer. This sanitary sewer pipe was not included in previous CIPP projects within the city. The most recent CIPP project was in 2008.

**2.0 PROJECT DESCRIPTION**

The proposed project will consist of cleaning, televising, and construction of CIPP for approximately 2,600 feet of sanitary sewer.

On August 30, 2017, Pipe Services, Shakopee, Minnesota performed a closed circuit television inspection of the sanitary sewer and determined that there is 2,565.1 feet of unlined sanitary sewer. A summary of the inspection is included in Appendix 1. A map showing the location of the unlined pipe is included in Appendix 2.

**3.0 ALTERNATIVES**

Alternatives analyzed for the proposed project include doing nothing. Doing nothing is not a viable option because the existing pipe is getting old.

**4.0 COST ESTIMATE**

The cost estimate is as follows:

<u>Item</u>	<u>Estimated Cost</u>
TV Inspection of of sewer	\$3,000.00
Furnish and Install 2,565.1 feet of CIPP	<u>\$70,000.00</u>
Construction Cost	\$73,000.00
Engineering	\$7,500.00
Contingency (20% of Estimated Construction Cost)	<u>\$14,600.00</u>
Estimated Total Cost	<u>\$95,100.00</u>

**5.0 FUNDING**

Funding for the proposed project will be provided from city funds. No bond is needed.

The plan is to assess 50% of the total cost to properties that benefit from the project or abut the 2,565.1 feet of CIPP. The estimated number of properties that benefit from the project or abut the CIPP is 53. A list and maps of the properties proposed to be assessed is included in Appendix 3.

The estimated assessment per property is \$900.00 ( $\$95,100 \times 50\% / 53$  properties = \$897.16).

## **6.0 DISCUSSION & SCHEDULE**

Thatcher Engineering, Inc. recommends the construction of Cured-In-Place Piping (CIPP) for 2,565.1 feet of sanitary sewer. The proposed improvement is necessary, cost-effective, and feasible. Also, the improvement should be made as proposed and not in connection with some other improvement.

If the city authorizes TEI to prepare the plans and specifications and secure construction bids, the project could be constructed in early 2018.

## **7.0 CONCLUSIONS**

Based on the age of the existing sanitary sewer pipe, it will be necessary to construct CIPP in the near future. This feasibility study should be reviewed and if acceptable, the City should take the proper steps to secure a professional appraisal for the project.

## **APPENDIX 1**

### **Summary of Closed Circuit Television Inspection of the Sanitary Sewer**

**City of Birchwood Village  
Sanitary Sewer  
Summary of TV Inspection Performed August 30, 2017 - All Pipes  
10/18/2017**

#	From Manhole (MH)	To Manhole (MH)	Location	Lined	Length (Feet)	Notes
1	39	38	Birchwood Avenue (near City Hall)	Partially lined	66.0	Pipe is lined from MH 39 to 53 feet from MH 9 (13 feet unlined)
2	1H	1G	Oakridge Drive	No	224.5	
3	1G	1F	Oakridge Drive	No	195.5	Broken casting on 1F
4	1F	1E	Oakridge Drive	Yes	196.4	
5	1E	1C	Oakridge Drive	Yes	313.0	Flow is from 9" diameter pipe to 8" diameter pipe. Liner is wrinkled at transition from 9" pipe to 8" pipe.
6	56F	56E	Oakview Court	Yes	167.4	
7	56E	56D	Oakview Court	Yes	154.0	
8	84N	84M	Birchwood Courts	No	129.9	
9	84O	84M	Birchwood Courts	Yes	153.9	
10	84M	84L	Birchwood Courts	No	107.9	
11	84L	84K	Birchwood Courts	No	101.9	
12	84K	84J	Birchwood Courts	Yes	96.7	
13	84E	84D	White Pine Lane	No	86.9	
14	84G	84F	White Pine Lane	No	118.2	
15	84F	84D	White Pine Lane	No	75.1	
16	84EE	84E	White Pine Lane	Yes	353.4	The casing for MH 84EE was not opened because bituminous covers the casting. TV inspection from MH 84E to 84EE showed that 40 feet from MH 84E (the approximate location of MH 84EE) there was a change in pipe direction which would indicate the pipe was lined through the manhole and not cut out for access to the pipe from the MH. TV inspection continued until the next manhole (MH 84H) which is approximately 400 feet from MH 84E.
17	84D	84C	White Pine Lane	No	62.2	
18	84C	84B	White Pine Lane	Yes	102.2	
19	84B	84	White Pine Lane	Yes	349.1	
20	75C	75D	Jay Street	No	199.1	
21	75D	75G	Jay Street	No	205.2	
22	75G	75	Jay Street	No	119.9	
23	75	74	Jay Street	No	283.8	
24	75B	75	Birchwood Avenue (near Jay Street)	No	158.2	
25	75A	75B	Birchwood Avenue (near Jay Street)	No	195.1	MH 75A is in boulevard planter near hydrant
26	76	75	Birchwood Avenue (near Jay Street)	No	235.7	
	<b>Total</b>				<b>4,451.2</b>	

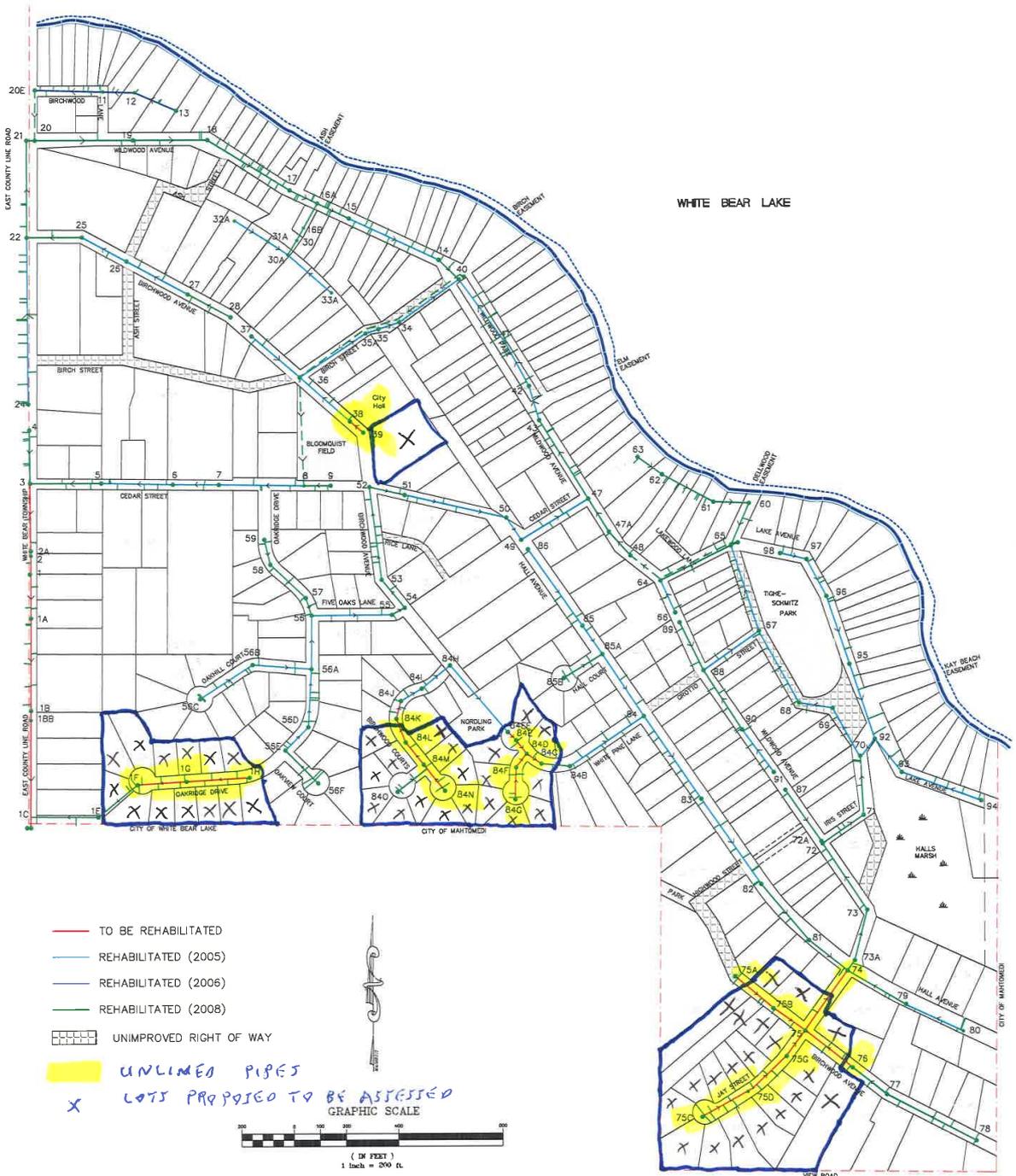
**City of Birchwood Village  
Sanitary Sewer  
Summary of TV Inspection Performed August 30, 2017 - Unlined Pipes  
10/18/2017**

#	From Manhole (MH)	To Manhole (MH)	Location	Lined	Length (Feet)	Notes
1	39	38	Birchwood Avenue (near City Hall)	Partially lined	66.0	Pipe is lined from MH 39 to 53 feet from MH 9 (13 feet unlined)
2	1H	1G	Oakridge Drive	No	224.5	
3	1G	1F	Oakridge Drive	No	195.5	Broken casting on 1F
4	84N	84M	Birchwood Courts	No	129.9	
5	84M	84L	Birchwood Courts	No	107.9	
6	84L	84K	Birchwood Courts	No	101.9	
7	84E	84D	White Pine Lane	No	86.9	
8	84G	84F	White Pine Lane	No	118.2	
9	84F	84D	White Pine Lane	No	75.1	
10	84D	84C	White Pine Lane	No	62.2	
11	75C	75D	Jay Street	No	199.1	
12	75D	75G	Jay Street	No	205.2	
13	75G	75	Jay Street	No	119.9	
14	75	74	Jay Street	No	283.8	
15	75B	75	Birchwood Avenue (near Jay Street)	No	158.2	
16	75A	75B	Birchwood Avenue (near Jay Street)	No	195.1	MH 75A is in boulevard planter near hydrant
17	76	75	Birchwood Avenue (near Jay Street)	No	235.7	
	<b>Total</b>				<b>2,565.1</b>	

T:\Projects\Birchwood Village\Sanitary Sewer\2017-10-18 Sanitary Sewer Summary of TV Inspection dated 2017-8-30 Unlined Pipes Televised.xlsx\Sanitary Sewer

## **APPENDIX 2**

### **Map Showing the Location of the Unlined Pipe**



UNLINED PIPES  
BASED ON TV INSPECTION  
PERFORMED 8/30/17

**CITY OF BIRCHWOOD VILLAGE**  
 SANITARY SEWER MAP

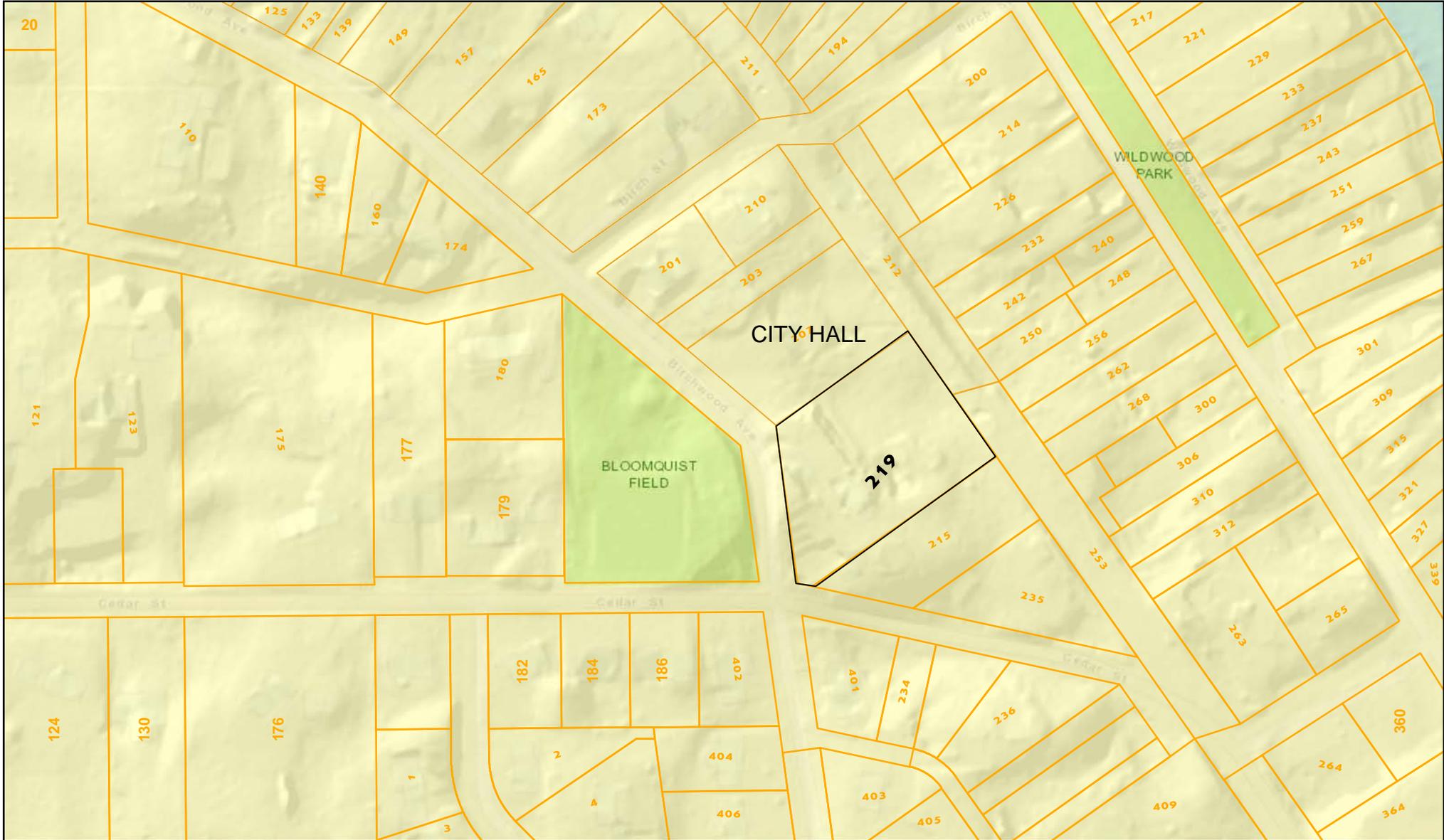
**ELEERING & ASSOCIATES**  
 10062 FLANDERS COURT NE  
 BLAINE, MN 55449  
 PH: (763) 780-0450

## **APPENDIX 3**

### **List and Maps of the Properties Proposed to be Assessed**

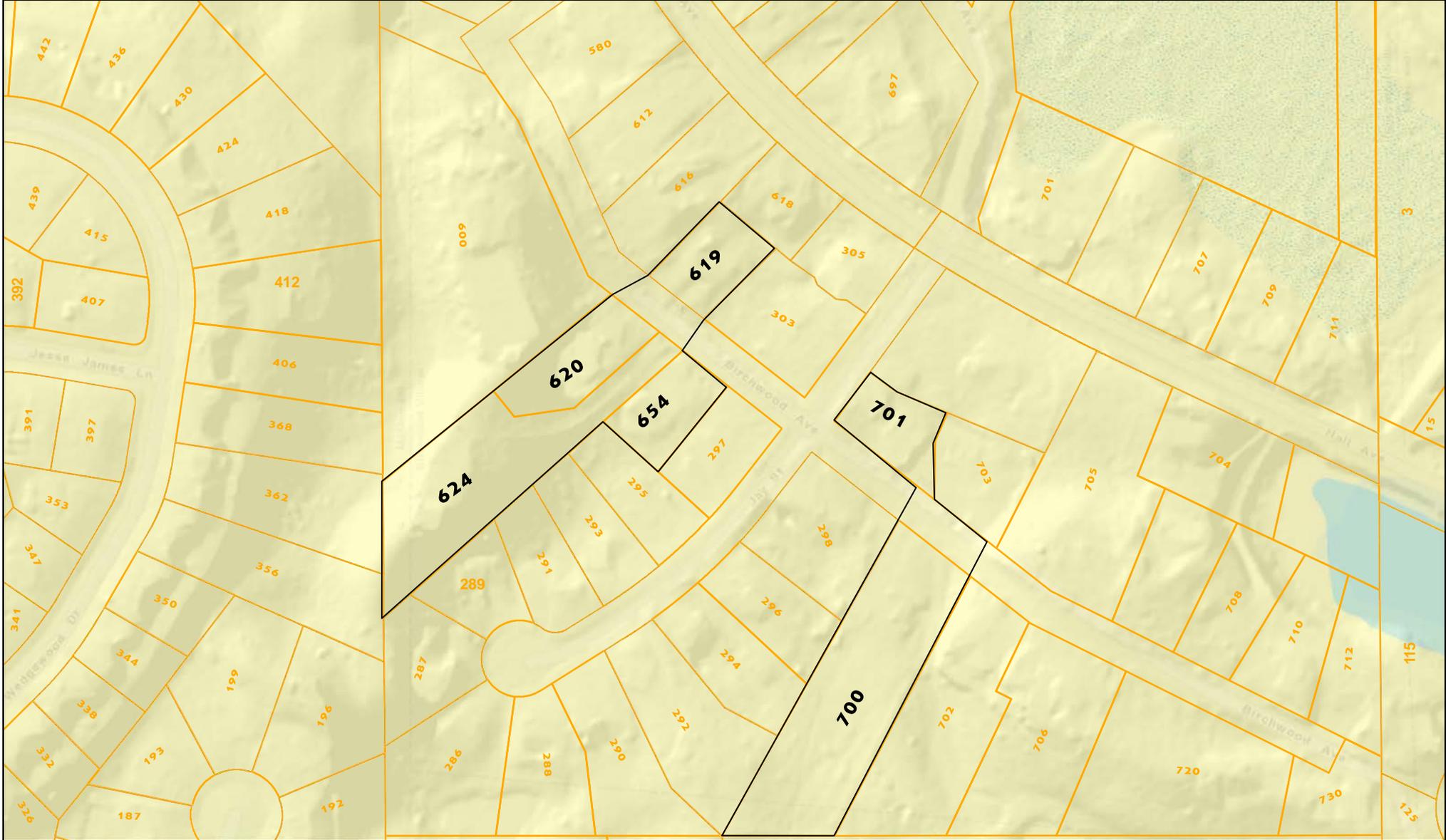
**City of Birchwood Village  
Sanitary Sewer  
Property Proposed to be Assessed for Pipe Lining  
Based on TV Inspection Performed August 30, 2017 - Unlined Pipes  
10/18/2017**

#	From Manhole (MH)	To Manhole (MH)	Location	Lined	Owner	Owner's Address	Property Address if Different from Owner's Address
1	39	38	Birchwood Avenue (near City Hall)	Partially	HARTZEL NICHOLAS J	219 BIRCHWOOD AVE, WHITE BEAR LAKE MN 55110	
2	75A	76	Birchwood Avenue (near Jay Street)	No	O'HARA MICHAEL D & JULIE J	619 BIRCHWOOD AVE, WHITE BEAR LAKE MN 55110	
3					HUNTLEY STEPHEN & KATHLEEN B	620 BIRCHWOOD AVE, WHITE BEAR LAKE MN 55110	
4					HAYDEN DENNIS J & DAVID M PRUNTY	624 BIRCHWOOD AVE, WHITE BEAR LAKE MN 55110	
5					EVANS ANDREA	654 BIRCHWOOD AVE, SAINT PAUL MN 55110	
6					BELKNAP ROBERT H & JOYCE A T	220 EAST AVE # 157, MAHTOMEDI MN 55115	700 BIRCHWOOD AVE, CITY OF BIRCHWOOD
7					LOOSBROCK JEREMY I & GINA A	701 BIRCHWOOD AVE, WHITE BEAR LAKE MN 55110	
8	84N	84K	Birchwood Courts	No	ANDERSON TIMOTHY W & SUZANNE L	424 BIRCHWOOD CT, BIRCHWOOD MN 55110	
9					SEIBERT MAUREEN L	425 BIRCHWOOD CT, WHITE BEAR LAKE MN 55110	
10					JACKOLA ANDREW & ALICIA	426 BIRCHWOOD CT, SAINT PAUL MN 55110	
11					CYRIL E KAPSNER TRS ETAL	428 BIRCHWOOD CT, WHITE BEAR LK MN 55110	
12					MCTAVISH SANDRA L	429 BIRCHWOOD CT, WHITE BEAR LAKE MN 55110	
13					MANKE ROBERT L & KATHLEEN M	430 BIRCHWOOD CT, BIRCHWOOD MN 55110	
14					HANSON MIKE	432 BIRCHWOOD CT, WHITE BEAR LAKE MN 55110	
15					HUNDER BRIAN A	433 BIRCHWOOD CT, WHITE BEAR LAKE MN 55110	
16					CASTILLO JOSEPH H & ELIZABETH L	434 BIRCHWOOD CT, WHITE BEAR LAKE MN 55110	
17					PARKER LYDIA L	1415 SERENGETI WAY, WESLACO TX 78596	437 BIRCHWOOD CT, CITY OF BIRCHWOOD
18					TREPANIER DAVID A TRS & PATRICIA A TREPANIER TRS	439 BIRCHWOOD CT, WHITE BEAR LAKE MN 55110	
19	75C	74	Jay Street	No	FELT RANDOLPH K & JACQUELINE B	286 JAY ST, WHITE BEAR LAKE MN 55110	
20					FRENCH CHRISTOPHER J & JULIE A	287 JAY ST, WHITE BEAR LAKE MN 55110	
21					CLINTON DIXON LIVING TRS	288 JAY ST, WHITE BEAR LAKE MN 55110	
22					PRINCE AMY & GRABOW CLINT W	289 JAY ST, WHITE BEAR LAKE MN 55110	
23					HULLSIEK WILLIAM & MARY	290 JAY ST, BIRCHWOOD MN 55110	
24					OAKINS GARY E & JUDITH A	291 JAY ST, BIRCHWOOD MN 55110	
25					WOOLSTENCROFT KEVIN L	292 JAY ST, WHITE BEAR LAKE MN 55110	
26					TOFTE SCOTT A & BRENDA L	293 JAY ST, WHITE BEAR LAKE MN 55110	
27					HEGEDUS NOEL D & JOZSEF Z	294 JAY ST, WHITE BEAR LAKE MN 55110	
28					SHELDON BRUCE D & PATRICIA L	295 JAY ST, BIRCHWOOD MN 55110	
29					CUMMINS ROBERT B & MARY C	296 JAY ST, BIRCHWOOD MN 55110	
30					IRVINE ROGER T & TERI A	297 JAY ST, BIRCHWOOD MN 55110	
31					WOOLSTENCROFT WILLIAM & EVANGELINE M	298 JAY ST, WHITE BEAR LAKE MN 55110	
32					WEGNER CARL S & MARY ELLEN	303 JAY ST, BIRCHWOOD MN 55110	
33	1H	1F	Oakridge Drive	No	SANDSTROM CHARLES T & SUZANN	20 OAKRIDGE DR, WHITE BEAR LK MN 55110	
34					MCCOY DANIEL J & ANDREA L	21 OAKRIDGE DR, WHITE BEAR LAKE MN 55110	
35					SCHULER CURTIS J & RACHEL L	22 OAKRIDGE DR, SAINT PAUL MN 55110	
36					ALAN R MITCHELL & SHARILYN A MITCHELL TRS	23 OAKRIDGE DR, WHITE BEAR LAKE MN 55110	
37					ANDERSON GREGORY L & MAUREEN B	24 OAKRIDGE DR, WHITE BEAR LAKE MN 55110	
38					SIKORSKI WILLIAM H JR	25 OAKRIDGE DR, WHITE BEAR LK MN 55110	
39					OLSON JEFF	26 OAKRIDGE RD, WHITE BEAR LAKE MN 55110	
40					LOREN MELISSA & JOSHUA NERLIEN	27 OAKRIDGE DR, WHITE BEAR LK MN 55110	
41					BARTON KEITH L & KATHLEEN S	28 OAKRIDGE DR, WHITE BEAR LAKE MN 55110	
42					BYERLY ANTHONY R & NICOLE K	29 OAKRIDGE DR, WHITE BEAR LAKE MN 55110	
43					BRUNNER JAY A & KATHERINE T CAVANOR	30 OAKRIDGE DR, WHITE BEAR LAKE MN 55110	
44					DAVID A NIETZ REV TRS ETAL	31 OAKRIDGE DR, WHITE BEAR LK MN 55110	
45					SIMANSKI MARK A & JULIE A OTTO	32 OAKRIDGE DR, WHITE BEAR LAKE MN 55110	
46	84G	84C	White Pine Lane	No	ALECKSON CHRISTINE & JEFFREY	8 WHITE PINE LN, WHITE BEAR LAKE MN 55110	
47					JOHNSON TYLER J & GRETCHEN M	10 WHITE PINE LN, BIRCHWOOD MN 55110	
48					BOWAR EUGENE M & SANDRA J	11 WHITE PINE LN, WHITE BEAR LAKE MN 55110	
49					STANGL THOMAS J & BARBARA J	14 WHITE PINE LN, BIRCHWOOD MN 55110	
50					CREAGH BENJAMIN J & CHRISTINE L	16 WHITE PINE LN, WHITE BEAR LAKE MN 55110	
51					STOCKWELL JAMES R & PEGGY K	17 WHITE PINE LN, WHITE BEAR LAKE MN 55110	
52					TELLIER DIDIER Y	18 WHITE PINE LN, WHITE BEAR LK MN 55110	
53					MOLITOR JOSEPH M & JULIE A	20 WHITE PINE LN, BIRCHWOOD MN 55110	



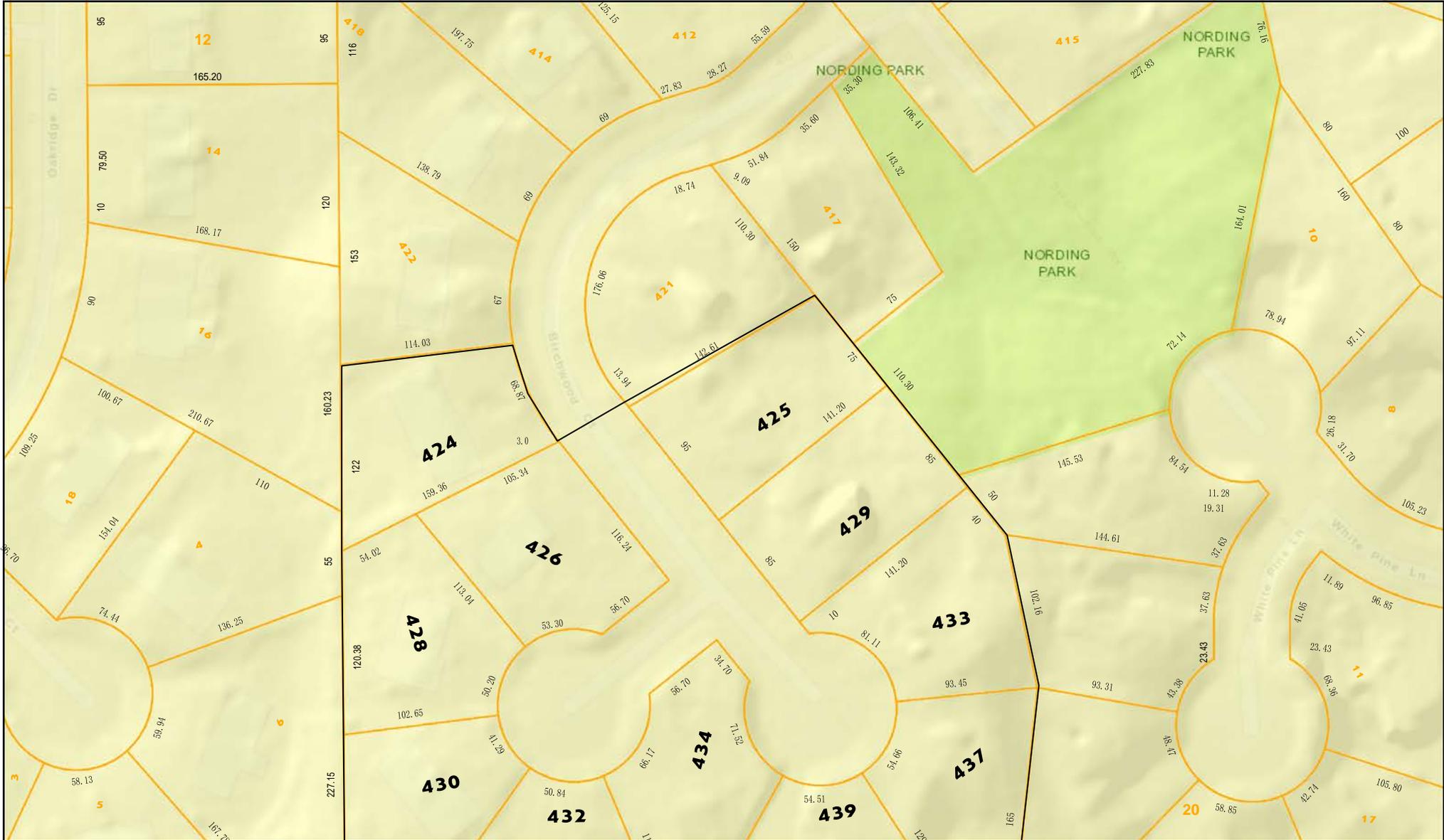
BIRCHWOOD AVE (NEAR CITY HALL)

**MAP FOR REFERENCE ONLY  
NOT A LEGAL DOCUMENT**



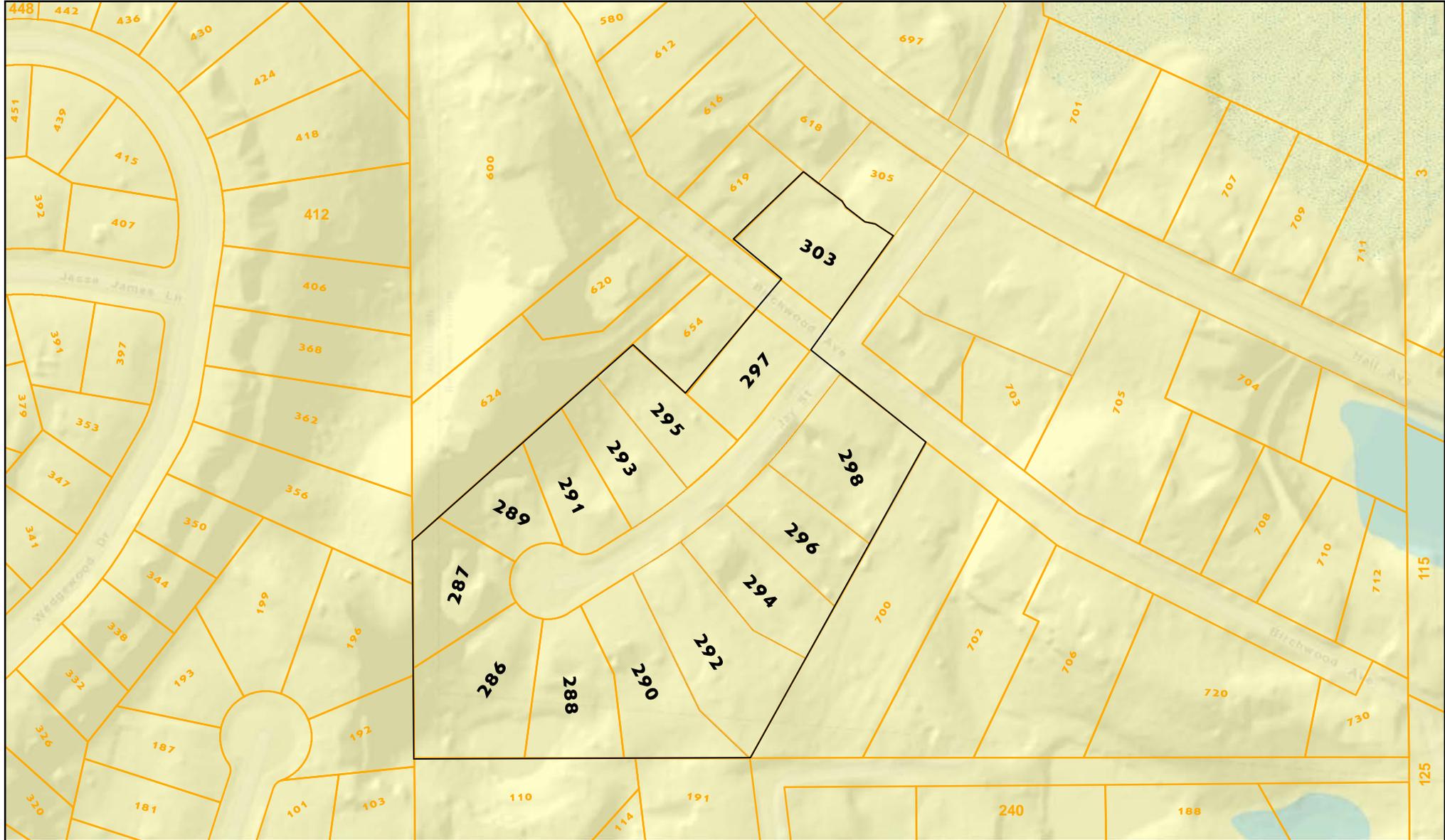
BIRCHWOOD AVE (NEAR JAY STREET)

**MAP FOR REFERENCE ONLY  
NOT A LEGAL DOCUMENT**



**BIRCHWOOD COURTS**

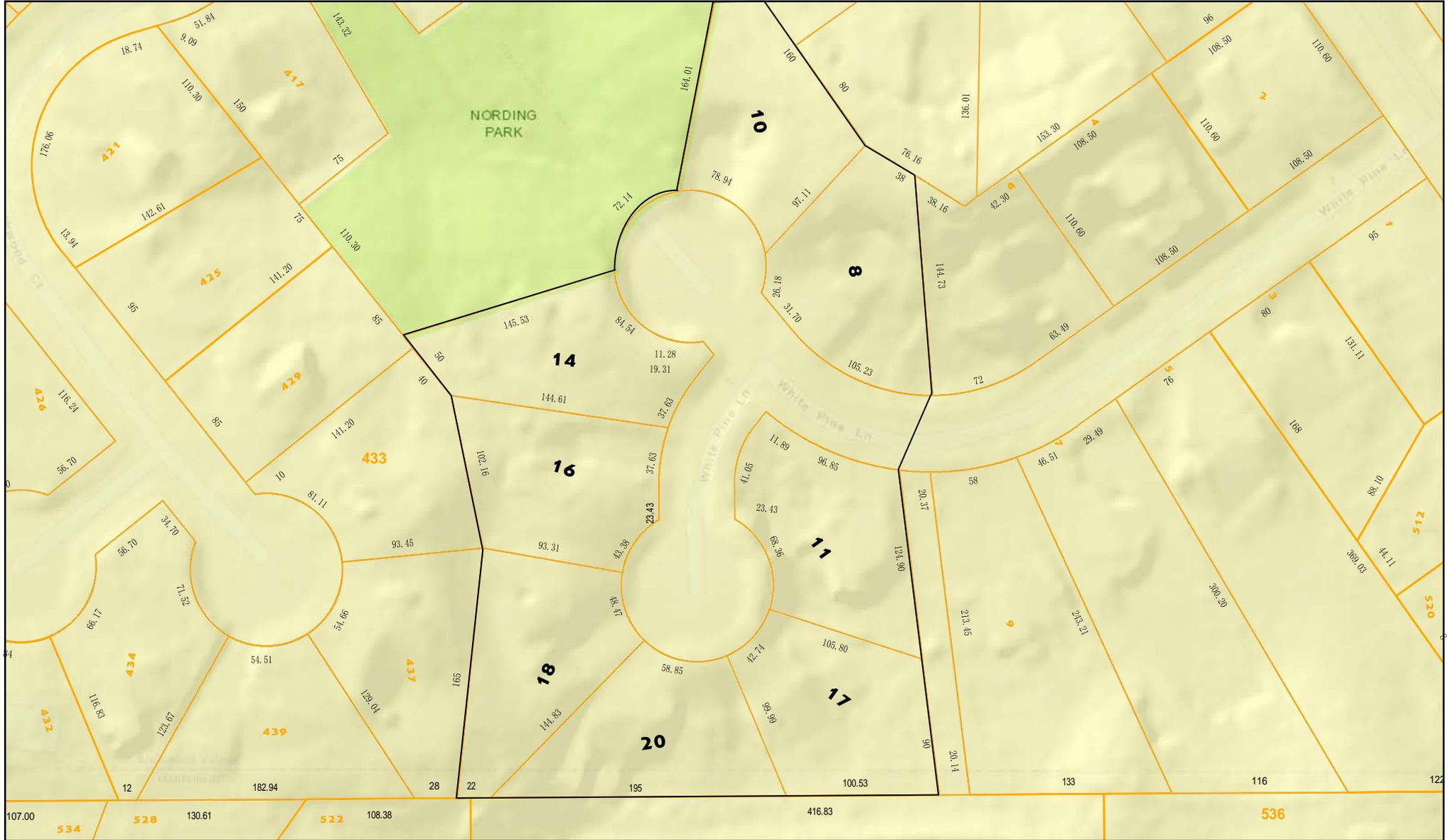
**MAP FOR REFERENCE ONLY  
NOT A LEGAL DOCUMENT**



JAY STREET

**MAP FOR REFERENCE ONLY  
NOT A LEGAL DOCUMENT**





**MAP FOR REFERENCE ONLY  
NOT A LEGAL DOCUMENT**

This drawing is the result of the compilation and reproduction of land records as they appear in various Washington County offices. The drawing should be used for reference purposes only. Washington County is not responsible for any inaccuracies.

# MEMORANDUM

DATE: November 2, 2017

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TO: Birchwood Planning Commission  
FROM: Tobin Lay, City Administrator  
SUBJECT: Right of Way Ordinance



**Birchwood Village**

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Dear Commissioners,

During the last Planning Commission meeting, the Commission requested Attorney Kantrud make additional edits to the proposed Right of Way ordinance.

Enclosed is the final draft from Attorney Kantrud for your review and approval. Also enclosed is the Land Use Table of Contents from the City Code.

Please consider the amendments made by Attorney Kantrud. If not already resolved, please also discuss how this ordinance should address non-permit users of the right-of-way; incidental uses.

## **Request/Recommendation**

Council and/or staff requests Commissioners:

- 1) Review and consider amendments to the previously recommended draft ordinance;
- 2) Discuss how this ordinance should address non-permit users of the right-of-way, such as incidental uses;
- 3) Recommend an amended draft ordinance for Council's approval; and
- 4) Determine the appropriate City Code chapter to place this ordinance.

Thanks!

Regards,  
Tobin Lay

## RIGHT-OF-WAY ORDINANCE

**City of Birchwood Village, Washington County, Minnesota, witnesseth:**

That an ordinance to enact a new Section of the Birchwood Village Code of Ordinances to administer and regulate the public rights-of-way (**Generally hereinafter called ROW**) in the public interest, and to provide for the issuance and regulation of ROW permits to maintain the safe maintenance and passage there-through:

### ***THE COUNCIL OF BIRCHWOOD VILLAGE ORDAINS:***

In General, ~~Section 32-4 through Section 32-27~~, City of Birchwood Village, County of Washington, Minnesota, “Right-of-Way Ordinance” is herewith adopted into city code. Any and all previously adopted sections or articles which may appear contrary or in conflict with this ordinance are hereby replaced or modified by this code.

#### **SEC. 32-4. FINDINGS, PURPOSE AND INTENT.**

The City of Birchwood Village holds the ROW within its geographical boundaries as an asset in trust for its citizens. The City and other public entities have invested millions of dollars in public funds to build and maintain the ROW. It also recognizes that some persons, by placing their equipment in the ROW and charging the citizens of the City for goods and services delivered thereby, are using this property held for the public good. Although such services are often necessary or convenient for the citizens, such persons receive revenue and/or profit through their use of public property. Although the installation of such service delivery facilities are in most cases necessary and proper use of the ROW, the City must regulate and manage such uses.

To provide for the health, safety and well-being of its citizens and to ensure the structural integrity of its streets and the appropriate use of ROW, the City strives to keep its ROW in a state of good repair and free from unnecessary encumbrances. Although the general population bears the financial burden for the upkeep of the ROW, one of the causes for the early and excessive deterioration of its ROW is frequent excavation or other intrusions into its sub-surface area. This Article imposes reasonable fees and regulations on the placement and maintenance of equipment currently within its ROW or to be placed therein at some future time. It is intended to complement the regulatory roles of state, federal and other agencies. Under this Article, persons disturbing and obstructing the ROW will bear a fair share of the financial responsibility for its integrity.

This Article also provides for recovery of the City's costs associated with managing its ROW.

#### **SEC. 32-5. EXEMPTIONS.**

The provisions and requirements of this ordinance shall not apply to inter-governmental entities that have Joint Powers Agreements with the City or other ROW users exempted by the statutes of the state of Minnesota or as identified herein.

## SEC. 32-6. DEFINITIONS.

The following words, terms and phrases, as used herein, have the following meanings:

**Abandoned Facility** - (1) a facility no longer in service and physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service; or (2) a facility that is deemed abandoned by the ROW user.

**Applicant** – Any person or entity requesting permission to excavate or obstruct a ROW.

**City** - means the corporate municipality, its elected officials, its manager and/or appointed employees to include the Director of Public Works or his/her designee, City of Birchwood Village, Minnesota.

**City Management Costs** - the actual costs incurred by the City for public ROW management; including, but not limited to, costs associated with registering applicants seeking permission to excavate or obstruct a ROW; issuing, processing and verifying ROW permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting or moving user equipment during public ROW work; determining the adequacy of ROW restoration; restoring work inadequately performed after providing notice and opportunity to correct the work; mapping of "as built" locations of facilities located in ROW; and revoking ROW permits and performing all other functions required by this Article, including other costs the City may incur in managing the provisions of this Article.

**Degradation** – means a decrease in the useful life of the ROW caused by excavation in or disturbance of the ROW, resulting in the need to reconstruct such ROW earlier than would be required if the excavation or disturbance did not occur. This condition is only applicable in ROW's that are not included in the current 5-year street replacement plan scheduled for full removal and reconstruction.

**Degradation Cost** – subject to Minnesota Rules 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 on Birchwood Village plates 1 to 13,~~ and set forth in Minnesota Rules parts 7819.9900 to 7819.9950.

**Degradation Fee** – Means 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 ROW caused by the excavation, and which equals the degradation cost. This fee does not include the cost of patching, which is the sole responsibility of the ROW user.

**Delay Penalty** - In accordance with Minnesota Rule 7819.1000 subd. 3, the director shall impose a delay penalty for unreasonable delays in ROW excavation, obstruction, patching, or restoration by permittee. The delay penalty shall be proposed by the director and established from time to time by city council resolution.

**Director** - the City's ADMINISTRATOR or designee.

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

**Emergency Hole** - excavation of a hole necessitated by a condition creating a clear and immediate threat to life, health, safety or property or requiring immediate repair or replacement in order to restore service to a customer.

**Engineer** – the City's Appointed or approved Engineer or Engineering Firm.

**Equipment** - any tangible asset used to install, repair or maintain facilities in any ROW.

**Excavate** - to dig into remove or physically disturb or penetrate any part of a ROW.

**Excavation Permit** - a permit which must be obtained before a person may excavate in a ROW. An excavation permit allows the holder to excavate only in that part of the ROW described in the permit.

**Facility or Facilities** - any tangible asset in the ROW required to provide utility service. The term does not include facilities to the extent the location and relocation of such facilities are preempted by Minnesota Statute 161.45, governing utility facility placement in state trunk highways.

**Franchise** – any person or entity with tangible assets or equipment in the ROW for the purpose of providing utility service to the general public having been previously approved by the city by written agreement, contract or by franchise ordinance.

**Hole** - an excavation having a length on the long side that is less than 2 times the dimension of the width of the excavation and that conforms to O.S.H.A. standards.

**Obstruct** - to place any tangible object in a public ROW so as to hinder free and open passage over that or any part of the ROW for an aggregate period of five (5) hours or more in conjunction with the issuance of a ROW permit.

**Obstruction Permit** - a permit which must be obtained before a person may obstruct a ROW, allowing the holder to hinder free and open passage over the specified portion of that ROW by placing equipment described therein on the ROW for the duration specified in the permit.

**Patch or Patching** - a method of pavement replacement that is considered temporary in nature. A patch consists of (1) the compaction of the sub base and aggregate base, and (2) the replacement in kind, to match the existing pavement. ~~per Birchwood Village Plates 1-13.~~ A patch shall be considered “full restoration” only if the pavement replacement is certified by the City Engineer as such upon completion is included in the City's five-year project plan.

**Pavement Repair Plates** – Drawings and details for the reconstruction and repair of Birchwood Village ROW pavements (all types) that are herewith copied and adopted from the official City Map original thirteen (13) plates as suggested and provided by the Minnesota Public Utilities Commission and any supplemental additions as provided by the City of Birchwood Village.

**Permit Holder** - any person to whom a permit to excavate, obstruct, or place equipment or facilities in a ROW has been granted by the City under this Article.

**Person** – a private individual or authorized representative or agent of an entity subject to all 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.

**Registrant** - any person or entity that digs, excavates, intrudes or has or seeks to have its facilities or equipment located in any ROW for temporary or permanent placement

**Restoration or “Full Restoration”** - the process by which the ROW and surrounding area, including pavement, foundation, and turf areas is returned to the same or better condition and life expectancy that existed immediately before excavation.

**Restoration Cost** - the amount of money paid to the City by a permit holder to have the city or its designated contractor perform the work to achieve the required level of restoration according to Birchwood Village Engineer plates 1 to 13, which are attached

~~hereto and incorporated herein.~~

**ROW** – (Right-of-Way) - the area on, below, or above a public roadway, highway, street, cart way, bicycle lane, and public sidewalk in which the City has an interest, including other dedicated ROW for travel purposes and/or utility easements of the City.

**ROW Engineer** – that person or persons appointed, directed and empowered by the City of Landfall Village to administrate the management of the Office of the Right-of-Way Engineer and those necessary responsibilities empowered by the City ROW Ordinance.

**ROW Permit** - either an excavation permit or obstruction permit, or both, depending on the context required by this Article.

**ROW User** - (1) a telecommunications ROW user as defined by Minnesota Statutes, Section 237.162, subdivision 4; or (2) a person owning or controlling a facility in the public ROW that is used or is intended to be used for providing utility service and who has a right under the law, franchise, or ordinance to use the public ROW.

**Trench** - an excavation having a length that is in excess of two (2) times the width of the excavation for the sections of roadway where the work is occurring, including a directional bore.

**Utility or Utility Service** – means services provided by: (1) a public utility as defined in Minnesota Statutes, section 216B.02; (2) services of a telecommunications ROW user, including the transporting of voice or data information;; (3) services provided by a cable communications system as defined in Minnesota Statutes, Chapter 238;(4) natural gas or electric energy or telecommunications services provided by a local government unit; (5)services provided by a cooperative electric association organized under Minnesota Statutes, chapter 308A; and (6) water, sewer, steam, cooling, heating services, community television antenna system, fire and alarm communications, storm sewer, light, or power services including wind generation.

**Wireless Telecommunication Facility** - a tangible asset used to provide wireless telecommunication or data services, including all antennas, support devices, equipment including ground equipment, associated cables, and attachments.

## **SEC. 32-7. REGISTRATION.**

(a) **Registration Required Prior to Work.** No one shall construct, install, repair, remove, relocate or perform any work within any ROW without first being registered pursuant to this Section. Such registration shall be made on an application form provided by the City's ~~Department of Public Works~~ and shall be accompanied by the registration fee set forth ~~by the City from time to time in this Code~~. Registration and the accompanying fee shall be required each calendar year. A franchised service or utility service operating under this section shall be registered pursuant to this Section but need not annually provide registration information as required by subsection (c) of this Section if such information has been submitted pursuant to a franchise agreement or ordinance. Further, a franchised service or utility service operating pursuant to a franchise agreement or ordinance shall be exempt from payment of an annual registration fee providing said franchise fee has been paid per written agreement or ordinance. Exceptions to the registration requirements, as described in section 32-7, shall be determined at the discretion of the ROW Engineer.

(b) **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.

(c) **Registration Information.** The registrant shall provide the following at the time of registration and shall promptly notify the City of changes in such information:

(1) Registrant's name, address, telephone number, facsimile number and Gopher One Call registration certificate number if required by state law.

(2) Name, address, telephone number and facsimile number of the person responsible for fulfilling the obligations of the registrant.

(3) Unless exempted by previous or existing agreements or ordinance, a current Certificate of Insurance from a company licensed to do business in the State of Minnesota providing minimum coverage in the following amounts:

**GENERAL LIABILITY:**

Public Liability, including premises, products and complete operations

Bodily Injury Liability - \$1,000,000 each person, \$3,000,000 each occurrence

Property Damage Liability - \$3,000,000 each occurrence

In lieu of (1) & (2): All Combined - \$3,000,000 single limit

**COMPREHENSIVE:**

Automobile Liability Insurance, including owned, non-owned and hired vehicles.

Bodily Injury Liability - \$1,000,000 each person, \$3,000,000 each occurrence

Property Damage Liability - \$3,000,000 each occurrence

In lieu of (1) and (2) Bodily Injury and Property Damage Combined - \$3,000,000 single limit. Such certificate shall verify 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 ROW by the registrant, its officers, agents, employees and permit holders, and (ii) placement and use of equipment or facilities in the ROW by the registrant, its officers, agents, employees and permit holders, including but not limited to, protection against liability arising from completed operations, damage of underground equipment and collapse of property. Such certificate shall also name the City as an additional insured as to whom the coverage required herein are in force and applicable and for whom defense will be provided as to all such coverage. Such certificate shall require that the City be notified thirty (30) days prior to cancellation of the policy.

(4) A 24 hour emergency number.

(5) An acknowledgment by the registrant of the indemnification pursuant to this Code.

(6) Such additional information as the City may require.

**SEC. 32-8. FRANCHISE REPORTING OBLIGATIONS.**

Each franchise registrant shall, at the time of registration and not later than November 1st of the preceding year, file a proposed 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 construction coordination and reduction in the frequency of excavations and obstructions of ROW.

The plan shall include, but not be limited to, the following information:

(a) To the extent known, the locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year; and

(b) 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.

The City will have available for inspection in ~~its the Engineer's~~ office a composite list of all known or planned projects that have been adopted for the next calendar year. All registrants are responsible for keeping themselves informed of the current status of this improvement list. Each franchise registrant must notify the City immediately of any change in its list of planned projects.

## **SEC. 32-9. PERMIT REQUIREMENT.**

### **(a) Permit Required.**

No person may obstruct or excavate any ROW without first having been issued the appropriate ROW permit pursuant to this Section, except as otherwise provided in this Code. Exceptions to the permitting requirements, other than as described in section 32-9(3)(h), shall be made at the discretion of the ROW Engineer.

(1) **Excavation Permit.** An excavation permit is required by the registrant to excavate that part of the ROW described in each permit that may hinder free and open passage over the specified portion of the ROW when placing or repairing facilities therein, to the extent and for the duration specified in the permit.

(2) **Obstruction/Aerial/Interduct Permit.** An obstruction/aerial/interduct permit is required by a registrant if the work proposed may hinder free and open passage over the specified portion of ROW by placing or repairing equipment described therein within the ROW, to the extent and for the duration specified in the permit. An obstruction/aerial/interduct permit is not required if a registrant has been issued a valid excavation permit for the same project.

(3) **Pole Attachment Permit.** A pole attachment permit is required by the registrant in order to attach a wireless telecommunication facility to an existing public utility structure in the public ROW. A pole attachment permit is not required if a registrant has been issued a valid excavation permit for the same project.

(b) **Permit Extension.** No person may excavate or obstruct the ROW beyond the date or dates specified in the permit or do any work outside the area specified in the permit unless such person makes a supplementary application before the expiration of the permit. Payment of all fees for an extension of the permit is required before extension may be granted by the City; If the work could not be completed because of circumstances beyond the control of the permit holder or the work was delayed or prohibited by unseasonable or unreasonable conditions, the City may grant and extend the completion date of the work.

(c) **Delay Penalty.** Notwithstanding Subsection (b) of this Section, the City may impose

a delay penalty where excavating or obstruction work in the ROW is not completed within the time specified if no permit extension application has been made prior to the expiration date of the permit.

A delay penalty will not be imposed if the delay is due to circumstances beyond the control of the applicant, including without limitation inclement weather, acts of God, or civil strife.

(d) **Application and Fee.** An application for a ROW permit shall be made on forms provided by the City and shall be accompanied by a fee as set forth from time by the City which is established to reimburse the City for costs. A person who pays a franchise fee to the City in accordance with a franchise agreement shall be exempt from the payment of permit fees. If the work is to be performed by an agent, contractor, or subcontractor on behalf of the registrant, such application shall be signed by the registrant. The application shall also be accompanied by the following:

(1) Scaled drawings showing the location of all known existing facilities and improvements proposed by the applicant. The applicant will be requested to submit in English measurement two (2) paper copies at 1" = 50' scale plans at the smallest and/or one (1) copy in Auto CAD format (Washington County Coordinate system) with X, Y, Z dimensions to foot accuracy electronic plan. All plans must be dimensional and show existing utilities, curb and gutter, sidewalks, bikeways, signal poles, driveways, boxes, relevant structures, property lines and corners and property addresses.

(2) A description of the methods that will be used for installation.

(3) A proposed schedule for all work.

(4) The location of any public streets, sidewalks or alleys that will be temporarily closed to traffic during the work and proposed detour route with appropriate signage.

(5) A description of methods for restoring any public improvements disrupted by the work.

(6) Any other information reasonably required by the City.

(e) **Security.** A performance bond and cash deposit in an amount determined by the City shall be required from each applicant. The applicant, at its option, may post security sufficient to cover all projects contemplated for the current calendar year. The performance bond must be approved by the City Attorney. Security required pursuant to this Subsection shall be conditioned that the holder will perform the work in accordance with this Article and applicable regulations and will pay to the City any costs incurred by the City in performing work pursuant to this ~~Ordinance~~ Article. Said conditions will indemnify and save the City and its officers, agents and employees harmless against any and all claims, judgment or other costs arising from any excavation and related work covered by the ROW permit. And to include further indemnification by reason of any accident or injury to persons or property through the fault of the permit holder, either for improperly fencing and guarding the excavation or for any other injury resulting from the negligence or willful actions of the permit holder. The bond or any unused portions of a cash deposit shall be released by the City upon completion of the work and compliance with all conditions imposed by the ROW permit. For permits allowing excavations within public streets, such bond or unused part of a cash deposit shall be held for a period of twenty-four (24) months to guaranty adequacy of all restoration work.

(f) **Permit Issuances; Conditions.** The City shall grant a ROW permit upon finding the work will comply with the requirements of this ~~Ordinance~~~~Article~~. The City may impose reasonable conditions upon the issuance of the permit and the performance of the applicant there under to protect the public health, safety and welfare, to insure the structural integrity of the ROW, to insure completion of restoration of the ROW within a specified period, to protect the property and safety of other users of the ROW and to minimize the disruption and inconvenience to the traveling public. If it is determined by the Office of the ROW Engineer that the proposed ROW intrusion or use is not in the best interest of the city and no agreement or alternative compromise solution is feasible, the applicant may appeal the Engineer's decision to ~~the Director of Public Works. Should the issue there remain un-resolved, the applicant may then request to address the case before~~ the Birchwood Village City Council for final disposition. If the applicant's ROW permit application is terminated at any given level, the City may at its discretion elect to grant a partial refund of fees that may have been paid but shall not disburse any part of the basic Registration Fee or more than 50% of the Administrative Fees. No ROW permit shall be issued to any person who has failed to register pursuant to this code.

(g) **Dumpsters/Portable-on-Demand-Storage (POD) Units.** The placement of dumpsters or POD units in the street portion of the ROW is not allowed. Dumpsters or POD units may be placed within the boulevard or driveway portions of the ROW provided that they do not obstruct pedestrian traffic along sidewalks or trails and the boulevard is restored to previous conditions. In extraordinary circumstances, the City ~~Right of Way~~ Engineer may make exceptions to this provision and applicant shall be subject to the permitting and fee requirements of this ordinance.

(h) **Exceptions.** No permit shall be required for the following:

- (1) Approved surface landscaping work.
- (2) Approved private sidewalks, street furnishings, posts and pillars.
- (3) Snow removal activities.
- (4) Irrigation systems provided that the system does not connect directly to water mains in the ROW installed at the property owner risk.
- (5) Activities of the City of Birchwood Village.
- (6) If granted approval by the city, piercing or drilling a street or sidewalk/trail pavement for the purpose of exploratory examination or utility depth determination.

#### **SEC. 32-10. TIMELINESS OF WORK.**

The work to be done under the ROW permit and the patching and restoration of the ROW as required herein, must be completed within the dates specified in the permit. It may be increased by as many days as work could not be done because of circumstances beyond the control of the permit holder or when work was prohibited as unseasonable or unreasonable.

#### **SEC. 32-11. STANDARDS FOR CONSTRUCTION OR INSTALLATION.**

(a) **General Standards.** The permit holder shall comply with the following standards, to

the extent consistent with applicable Minnesota rules, when performing the work authorized under the permit:

(1) Take such precautions as are necessary to avoid creating unsanitary or unsafe conditions. Observe and comply with all laws, rules and regulations of the State and local governments.

(2) Conduct the operations and perform the work in a manner as to insure the least obstruction to and interference with traffic.

(3) Take adequate precautions to insure the safety of the general public and those who require access to abutting property.

(4) Notify adjoining property owners prior to commencement of work which may disrupt the use of and access to such adjoining properties.

(5) Comply with the Minnesota Manual of Uniform Traffic Control Devices at all times during construction or installation.

(6) Exercise precaution at all times for the protection of persons, including employees and property.

(7) Protect and identify excavations and work operations with barricade flags and if required, by flagmen in the daytime and by warning lights at night.

(8) Provide proper trench protection as required by O.S.H.A..

(9) Protect the root growth of trees and shrubbery.

(10) Where possible, provide for space in the installation area for other telecommunication ROW users and companies that install facilities in public ROW.

(11) Maintain maximum access to all properties and cross streets as possible during construction operations and maintain emergency vehicle access at all times.

(12) Maintain planned alignment and grade unless otherwise authorized by the City. Field changes not approved by the City will require removal and reconstruction.

(13) During trenching of facilities, a warning tape must be placed at a depth of twelve (12) inches above all copper cables with over two hundred (200) pairs and above any fiber facilities.

(14) Beneath concrete or bituminous paved road surfaces, directional bore facilities shall be installed in conduit of a type approved by the city.

(15) The placing of all telecommunications facilities must comply with the National Electric Safety Code, as incorporated by reference in Minn. Stat. Sec. 326.243.

(16) Locate all property lines near ROW lines and replace any disturbed property corner markers or judicial monuments. A Minnesota licensed surveyor must be used in the replacement of disturbed property corners markers or judicial monuments.

(17) Excavations, trenches and jacking pits off the roadway or adjacent to the roadway or curbing shall be sheathed and braced depending upon location and soil stability and as directed by the City.

(18) Excavating, trenches and jacking pits shall be protected when unattended to prevent entrance of surface drainage.

(19) All backfilling materials must be placed in 6 inch lifts (maximum) at optimum moisture and compacted with the objective of attaining ninety-five percent (95%) of Standard Proctor Density. Compaction shall be accomplished with hand, pneumatic or vibrating compactors as appropriate.

(20) Backfill material shall be subject to the approval of the City. The City may permit backfilling with the material from the excavation provided such material is granular in nature and acceptable to the City.

(21) Compacted backfill shall be brought to bottom of the gravel of the approved street section.

~~(22) All work performed in the ROW shall be done in conformance with Birchwood Village Plates 1 to 13, unless a less stringent standard is approved by the City.~~

(23) Street and pedestrian traffic shall be maintained throughout construction unless provided otherwise by the permit.

(24) No road surface damaging lugs, cleats or equipment may be used or driven upon paved city street surfaces.

(25) Dirt, trash or other debris must be periodically removed during construction

(26) Other reasonable standards and requirements of the City.

**(b) Standards for Installation of Underground Utilities.** The permit holder shall comply with the following standards when installing facilities underground:

(1) Underground facilities must be placed as far off the roadway as possible to provide access from outside of the paved area.

(2) Buried fiber facilities shall be at a minimum depth of three (3) feet and a maximum depth of four (4) feet unless an alternate location is approved by the City. Buried copper facilities beneath concrete or bituminous paved road surfaces must be placed at no less than three (3) feet but no more than four (4) feet deep. Other buried copper facilities must be placed at a minimum depth of thirty (30) inches and a maximum depth of four (4) feet.

(3) Crossing of streets and hard surfaced driveways shall be directional bored unless otherwise approved by the City.

(4) If construction is open cut, the permit holder must install the visual tracers approximately twelve (12) inches above buried facilities. If other construction methods are used, substitute location methods will be considered.

(5) The permit holder shall register with Gopher State One Call and comply with the requirements of that system.

(6) Compaction in trench backfill material shall be ninety-five percent (95%) of the standard proctor density and copies of test results shall be submitted to the City. All tests and their locations shall be determined by the City. Tests must be conducted by an independent testing firm approved by the City. Street pavement replacement will not be permitted until sub-base densities are approved by the city. Testing shall be required at the discretion of the ROW engineer. Street Pavement structure and materials shall be as specified by the city and re-paved ~~in accordance with Birchwood Village plates 1-13.~~ All pavement replacement shall be done in the presence of a City inspector with certified pavement material to City specifications.

(7) The facilities shall be located so as to avoid traffic signals and signs which are generally placed a minimum of five (5) feet behind the curb.

(8) When utilizing trenchless installation methods to cross an area in which a municipal utility is located, and/or when directed by the City, the permit holder shall excavate an observation hole over the utility to ensure that the City utility is not damaged. Observation holes shall not be backfilled until viewed and approved by the city ROW Inspector.

(9) All junction boxes or access points shall be located no closer than ten (10) feet from municipal fire hydrants, valves, manholes, lift stations or catch basins unless an alternate location is approved by the City.

(10) Underground facilities shall not be installed between a hydrant and auxiliary valve.

(11) Underground facilities shall not be installed within five (5) feet of hydrants, valves, lift stations or manholes in areas where utility easements exist beyond the ROW. In those

areas in which no utility easement exists, placement of an underground facility shall be between the edge of pavement and no closer than three (3) feet to an existing municipal utility appurtenance unless approved by the City.

(12) In areas where an extensive effort to determine the location of municipal utility lines will be required to accommodate the installation of private facilities, the City's representative for Gopher State One Call must be contacted by the permit holder two (2) weeks prior to the beginning of the work to schedule meetings.

(13) Buried telecommunication facilities must have a locating wire or conductive shield, except for di-electric cables.

(14) Buried fiber facilities must be placed in a conduit of a type determined by the ROW user unless the permit holder obtains a waiver from the City.

(c) **Standards for Installation of Overhead Facilities.** The permit holder shall comply with the following standards when installing facilities overhead:

(1) All wires must be in compliance with the National Electric Safety Code and at a location that does not interfere with traffic signals, overhead signs, or street lights.

(d) **Standards for Wireless Telecommunication Facilities.**

(1) **Purpose.** The City of Birchwood Village desires high quality wireless communication services to accommodate the needs of residents and businesses. At the same time, the City strives to minimize the negative impacts that wireless telecommunication facilities can have on aesthetics and public safety. Due to the many services that must be delivered within its limited area, the City also strives to avoid unnecessary encumbrances within the public ROW. The City allows and regulates wireless telecommunication facilities outside of the public ROW through performance standards and height limits. The purpose of this Section is to regulate wireless telecommunication facilities within the public ROW in a manner that balances desire for service with aesthetic, public safety, and ROW flexibility concerns.

Public ROW are appropriate locations for wireless telecommunication facilities that present minimal impacts (i.e. small pole attachments that do not require new poles, do not require pole extensions, and do not have associated ground mounted equipment).

Wireless telecommunication facilities that require greater heights than can be afforded by existing poles in the public ROW and that require ground-mounted equipment are more appropriately sited outside the public ROW in accordance with adopted performance standards of this Code. However, the City recognizes that as wireless technology advances, some residential areas of the City may be hard to serve with wireless technology due to the lack of acceptable siting alternatives in the immediate vicinity. In such areas, where no alternative non-ROW locations are available, wireless telecommunication facilities that require pole extensions and ground equipment will be allowed in the public ROW subject to the requirements of this Section which are meant to protect the public health, safety, and welfare.

(2) **Wireless Telecommunication Facilities as Pole Attachments.** Wireless telecommunication facilities that comply with the following requirements may be attached to existing public utility structures within the ROW after issuance of a pole attachment permit.

(A) The wireless telecommunication facility shall not extend above the top of the existing public utility structure and the height of the existing public utility structure shall not be increased to accommodate the wireless telecommunication facility.

(B) If the public utility structure must be replaced to structurally accommodate the wireless telecommunication facility, the replacement public utility structure height shall not exceed the existing public utility structure height and the replacement public utility structure diameter shall not exceed the existing public utility structure diameter by more than 50 percent.

(C) The wireless telecommunication facility shall not be larger than three (3) cubic feet and shall have no individual surface larger than four (4) square feet.

(D) The wireless telecommunication facility shall not extend outward from the existing pole or tower or arm thereof by more than two and one half (2 1/2) feet, except that an antenna one half inch in diameter or less may extend an additional six inches.

(E) The wireless telecommunication facility shall include no ground mounted equipment.

(F) The wireless telecommunication facility shall not interfere with public safety communications and shall meet the requirements of this ~~Ordinance~~Code.

(G) Wireless telecommunication facilities in the ROW shall be removed and relocated at City request subject to the provisions of this ~~Ordinance~~Article.

(H) The wireless telecommunication facility shall not block light emanating from the public utility structure and shall not otherwise interfere with the original use of the public utility structure.

(3) **Wireless Telecommunication Facilities as Pole Extensions or with Ground Mounted Equipment.** Wireless telecommunication facilities that require increased public utility structure height or that have ground mounted equipment may be erected in the public ROW only when in compliance with the following provisions and after issuance of a pole attachment permit or excavation permit:

(A) The applicant shall demonstrate to the satisfaction of the City or his/her designee that the wireless telecommunication facility cannot be placed in a ~~-Code~~-complying location outside the ROW within one quarter (1/4) mile of the proposed location.

(B) The replacement public utility structure, including lightning rods and all other attachments, shall not exceed the height of the existing public utility structure by more than fifteen (15) feet. Once the height of a public utility structure has been increased under the provisions of this Section, the height shall not be further increased.

(C) The replacement public utility structure diameter shall not exceed the existing public utility structure diameter by more than fifty (50) percent.

(D) The wireless telecommunication facility shall not extend outward from the public utility structure by more than two (2) feet.

(E) If feasible and desirable, as determined by the City, the replacement public utility structure shall match the original and surrounding public utility structures in materials and color.

(F) The wireless telecommunication facility shall not interfere with public safety communications and shall meet the requirements of this [Ordinance Code](#).

(G) A pole attachment or excavation permit for a wireless telecommunication facility that has ground mounted equipment will be issued only if the Issuing Authority finds the following:

(i) the ground mounted equipment will not disrupt traffic or pedestrian circulation;

(ii) the ground mounted equipment will not create a safety hazard;

(iii) the location of the ground mounted equipment minimizes impacts on adjacent property; and,

(iv) the ground mounted equipment will not adversely impact the health, safety, or welfare of the community.

(H) Ground mounted equipment associated with the wireless telecommunication facility shall meet the following performance standards:

(i) be set back a minimum of ten (10) feet from the edge of street or curb line;

(ii) be separated from a sidewalk by a minimum of three (3) feet;

(iii) be set back a minimum of fifty (50) feet from the nearest intersecting ROW line;

(iv) be separated from the nearest ground mounted wireless telecommunication equipment installation on the same block face by a minimum of 330 feet unless

the equipment is placed underground;

(v) if located adjacent to residential uses, ground mounted equipment shall be limited to three (3) feet in height above grade and twenty seven (27) cubic feet in cumulative size;

(vi) if located adjacent to non-residential uses, ground mounted equipment shall be limited to five (5) feet in height above grade and eighty-one (81) cubic feet in cumulative size;

(vii) ground mounted equipment located outside the public ROW shall conform to the requirements of this [OrdinanceCode](#).

(viii) vegetative or other screening compatible with the surrounding area shall be provided around the ground mounted equipment if deemed necessary by the City.

(I) Wireless telecommunication facilities in the ROW shall be removed and relocated at City request subject to the provisions of this [OrdinanceArticle](#).

(4) **New Poles.** The construction in the ROW of a new pole to support wireless telecommunication facilities is not allowed, except as a replacement of an existing public utility structure subject to the requirements of this Section.

(5) **Charges.** In addition to the permit fees outlined in this [OrdinanceCode](#), the City reserves the right to charge telecommunication providers for their use of the public ROW to the extent that such charges are allowed under state or Federal law. Telecommunication providers shall be responsible for payment of property taxes attributable to their equipment in the public ROW.

## **SEC. 32-12. PATCHING OR FULL RESTORATION OF ROW.**

The permit holder shall patch its own work. In lieu of ROW restoration, a ROW user may elect to pay a degradation fee as determined by the City.

(a) **City Restoration.** If the City restores the ROW, the permit holder shall pay the costs thereof within thirty (30) days of billing. If, during the twenty-four (24) months following such surface restoration, the pavement settles due to the permit holder's improper backfilling and compaction, the permit holder shall pay to the City, within thirty (30) days of billing, all costs associated with having to correct the defective work.

(b) **Permit Holder Restoration.** If the permit holder restores the ROW, it shall at the time of application for a ROW permit post a performance bond or cash deposit in an amount determined by the City to be sufficient to cover the cost of restoration and any associated erosion and sediment control measures. The performance bond or cash deposit must be approved by the City Attorney. If, within twenty-four (24) months after

completion of restoration of the ROW, the City determines the ROW has been properly restored, the posted security will be released.

(c) **Standards.** The permit holder shall perform patching and restoration according to the Birchwood Village standards or to the satisfaction of its Engineer.

(d) **Guarantees.** If the permit holder performs the restoration work, the permit holder shall guarantee such work and its maintenance for twenty-four (24) months following its completion. During this twenty-four (24) month period it shall, upon notification from the City, promptly and within 7 working days from receipt of notification, correct all faulty restoration work to the extent necessary, using the method required by the City or its Engineer.

If permit holder fails to act within the 7 working day period the City shall at its discretion have the work performed and the security shall be used to reimburse the City for its actual and administrative costs associated with the correction(s).

### **SEC. 32-13. JOINT APPLICATIONS.**

(a) **Joint Application.** Registrants may jointly apply for permits to excavate or obstruct the ROW at the same place and time.

(b) **Shared Fees.** Registrants who apply for permits for the same obstruction or excavation may share in the payment of the obstruction or excavation permit fee. Registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

### **SEC. 32-14. OTHER OBLIGATIONS.**

(a) **Compliance With Other Laws.** The permit holder must obtain all other necessary permits, licenses and approvals and pay all fees required. The permit holder shall comply with all requirements of local, state and federal laws, including Minn. Stat. Secs. 216D.01-.09 ("One Call Excavation Notice System"). A permit holder shall perform all work in conformance with all applicable codes and established rules and regulations and is responsible for all work done in the ROW pursuant to its permit, regardless of who does the work.

(b) **Prohibited Work.** Except in an emergency, and with the approval of the City, no ROW excavation or obstruction may be done when seasonally prohibited or when conditions are unreasonable for such work.

(c) **Interference with ROW.** A permit holder shall not so obstruct a ROW that the natural free and clear passage of water through the gutters or other waterways is or would be interfered with. Any physical observation of such obstruction shall be grounds to revoke a permit without further proceedings.

### **SEC. 32-15. DENIAL OF PERMIT.**

The City may deny a permit based on any of the following grounds:

- (a) Failure to register pursuant to requirements of this OrdinanceCode.
- (b) The applicant is subject to revocation of a prior permit issued pursuant to this OrdinanceArticle.
- (c) The proposed schedule for work would conflict or interfere with an exhibition, celebration, festival or any other similar event.
- (d) The proposed schedule conflicts with scheduled or total or partial reconstruction of the ROW.
- (e) The applicant fails to comply with the requirements of this OrdinanceArticle or other provisions of this Code.
- (f) The City determines that denial is necessary to protect the health, safety and welfare of the public or protect the ROW and its current use.

#### **SEC. 32-16. EMERGENCIES AND WORK DONE WITHOUT A PERMIT.**

Each registrant shall immediately notify the City and all other affected parties or property owners of any event regarding its facilities, which it considers to be **an emergency**. The registrant may proceed to take whatever actions are necessary to respond to the emergency. If the registrant has not been issued the required permit, the registrant shall, within two (2) business days after the occurrence of the emergency, apply for the necessary permits, pay the permit fees (where necessary) and fulfill the remaining requirements necessary to bring itself into compliance with this OrdinanceArticle 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 shall attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. The City may take whatever action deemed necessary to respond to the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.

Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a ROW must subsequently obtain a permit and (where appropriate) as a penalty, pay twice the normal fee for the permit and shall deposit with the City the fees determined to correct any damage to the ROW.

#### **SEC. 32-17. INSPECTION.**

(a) **Site Inspection.** The permit holder shall make the work site available to the City and to all others authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

(b) **Authority of City**

(1) 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.

(2) The City may issue a stop work order to the permit holder for any work which 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 within a stated deadline will be cause for revocation of the permit. If the violation is not corrected within the stated deadline, the City may revoke the permit.

**SEC. 32-18. REVOCATION OF PERMITS.**

(a) **Substantial Breach.** The City may revoke a ROW permit, without a fee refund, if there is a substantial breach of the terms or conditions of any statute, this Code, rule or regulation, or any condition of the permit. A substantial breach of a permit holder shall include, but not limited to, the following:

(1) The violation of any material provision of the permit.

(2) Any material misrepresentation of fact in the application for a permit.

(3) The failure to maintain the required bonds or other security and insurance.

(4) The failure to complete the work in a timely manner.

(5) The failure to correct, in a timely manner, work that does not conform to applicable standards, conditions or codes, upon inspection and notification by the City of the faulty condition.

(6) An evasion or attempt to evade any material provision of the ROW permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens.

(7) The failure to comply with the terms and conditions of any applicable federal, state and local laws, rules and regulations, including any provision of this Article.

(b) **Notice of Breach.** If the City determines that a permit holder has committed a substantial breach of a term or condition of any statute, this Ordinance Code, rule or regulation or any condition of the permit, the City shall make a written demand upon the permit holder to remedy such violation within a reasonable period of time or be subject to potential revocation of the permit. The City may impose additional or revised conditions on the permit to mitigate or remedy the breach.

(c) **Reimbursement of City Costs.** If a permit is revoked, the permit holder shall reimburse the City for its reasonable costs, including restoration costs and the costs of collection and reasonable attorney fees incurred in connection with the revocation.

## **SEC. 32-19. APPEAL.**

(a) **Filing of Appeal.** Any person aggrieved by, (i) the denial of a permit application; (ii) the denial of a registration; (iii) the revocation of a permit, or (iv) the application of the fee schedule imposed by this Code, may appeal to the City Council by filing a written notice of appeal with the City Clerk or Administrator. Said notice must be filed within twenty (20) days of the action causing the appeal.

(b) **Notice of Hearing.** The City Council shall hear the appeal at its next regularly scheduled meeting, unless the time is extended by agreement of the parties. Notice of the date, time, place and purpose of the hearing shall be mailed to the appellant.

(c) **Hearing and Decision.** The City Council shall, at the hearing, consider any evidence offered by the appellant, the City and any other person wishing to be heard. The Council shall issue a written decision within thirty (30) days of the completion of the hearing.

## **SEC. 32-20. MAPPING DATA.**

(a) **Information Required.** Each registrant shall provide mapping as required by the City and which shall include the following information:

(1) Location and approximate depth of registrant's mains, cables, conduits, switches and related equipment and facilities, with the location based on:

- (A) offsets from property lines, distances from the centerline of the public ROW and curb lines as determined by the City; or
- (B) Washington County Coordinate System; or
- (C) Any other system agreed upon by the ROW user and the City;

(2) The type and size of the utility;

(3) A description showing above-ground appurtenances;

(4) A legend explaining symbols, characters, abbreviations, scale and other data shown on the map; and

(5) Any facilities to be abandoned, if applicable, in conformance with Minnesota Statutes, Section 216D.04, subdivision 3.

(b) **Submittal Requirement.**

(1) Within two (2) years after the effective date of this ordinance, all telecommunication

ROW users shall submit comprehensive detailed maps for review, if available, in accordance with Subsection (a) of this Section, for all facilities and equipment installed, used or abandoned within the public ROW.

(2) Subsequent to providing the required comprehensive facility map, interim mapping data shall be submitted by all registrants for all equipment and facilities which are to be installed or constructed after the effective date of this ordinance at such time as permits are sought pursuant to this ordinance.

(c) **Trade Secret Information.** At the request of any registrant, information requested by the City which qualifies as "trade secret" data under Minnesota Statutes, Sec. 13.37(b) shall be treated as trade secret information as detailed therein.

### **SEC. 32-21. RELOCATION OF FACILITIES.**

A ROW user shall promptly and at its own expense, with due regard for seasonal working conditions, remove and relocate their facilities in the ROW when it is necessary to prevent interference or obstruction, but not merely for the convenience of the City, in connection with: (1) a present or future City use of the ROW for a public project or facility, (2) the public health or safety; or (3) the safety and convenience of travel over the ROW. The registrant shall restore any ROW to the condition it was in prior to removal and relocation.

### **SEC. 32-22. DAMAGE TO OTHER FACILITIES.**

When the City does work in the ROW and finds it necessary to maintain, support, or move registrant's facilities to protect it, the City shall notify the registrant as soon as possible. The costs associated therewith shall be billed to the 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 ROW 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.

### **SEC. 32-23. ROW VACATION.**

(a) **Reservation of Right.** If the City vacates a ROW which contains the equipment or facilities of a registrant or permit holder, and if the vacation does not require the relocation of the registrant's or permit holder's equipment or facilities, the City shall reserve, to and for itself and all registrants or permit holders having equipment and facilities in the vacated ROW, a public easement for the right to install, maintain and operate any equipment and facilities in the vacated ROW and to enter upon such ROW at any time for the purpose of reconstruction, inspecting, maintaining or repairing the same.

(b) **Relocation of Facilities.** If the vacation requires the relocation of the registrant's or permit holder's equipment or facilities; and (i) if the vacation proceedings are initiated by the registrant or permit holder, the registrant or permit holder must pay the relocation costs; or (ii) if the vacation proceedings are initiated by the City, the registrant or permit holder must pay the relocation costs unless otherwise agreed to by the City and the registrant or permit holder; or (iii) if the vacation proceedings are initiated by a person or persons other than the registrant or permit holder, such person or persons must pay the relocation costs.

#### **SEC. 32-24. ABANDONED AND UNUSABLE EQUIPMENT AND FACILITIES.**

(a) **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 ROW under this chapter have been lawfully assumed by another registrant.

(b) **Removal of Abandoned Facilities.** Any registrant who has abandoned facilities in any ROW shall remove it from that ROW to the extent such facilities interfere with another ROW repair, excavation, or construction, unless this requirement is waived by the City.

#### **SEC. 32-25. INDEMNIFICATION AND LIABILITY.**

By registering with the City or by accepting a permit granted under this Article, a registrant or permit holder agrees as follows:

(a) **Limitation of Liability.** By reason of the acceptance of a registration or the grant of a ROW permit, the City does not assume any liability (i) for injuries to persons, damage to property or loss of service claims by parties other than the registrant or the City, or (ii) for claims or penalties of any sort resulting from the installation, presence, maintenance or operation of equipment or facilities by registrants or permit holders or activities of registrants or permit holders.

(b) **Indemnification.** A registrant or permit holder shall indemnify, keep and hold the City, its officials, employees and agents, free and harmless from any and all costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its equipment and facilities, or out of any activity undertaken in or near a ROW, whether or not any act or omission complained of is authorized, allowed or prohibited by a ROW permit. The foregoing does not indemnify the City for its own negligence except for claims arising out of or alleging the City's negligence in issuing the permit or in failing to properly or adequately inspect or enforce compliance with a term, condition or purpose of a permit. This section is not, as to third

parties, a waiver of any defense or immunity otherwise available to the registrant, permit holder or the City, and the registrant or permit holder, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert on its own behalf.

If the registrant or permit holder is required to indemnify and defend, it shall thereafter have control of the litigation, but the registrant or permit holder may not settle the litigation without the consent of the City. Such consent will not be unreasonably withheld.

**SEC. 32-26. FRANCHISE HOLDERS.**

If there is a conflict in language between the franchise of a person holding a franchise agreement with the City or the Water Service Agreement (White Bear Lake) with the City and this Ordinance Article, the terms of the franchise or Water Service Agreement shall prevail.

**SEC. 32-27. SEVERABILITY.**

If any section, subsection, sentence, clause, phrase or portion of this Ordinance Article is for any reason held invalid or unconstitutional by any court or administrative agency 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.

*APPENDIX I ESSENTIAL MUNICIPAL SERVICES*

Special conditions and provisions to regulate and control ROW intrusions by essential service providers for which previous agreements or ordinances have been enacted and approved by the City in concurrence with the respective service providers.

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**Participating Municipal Provider:**

City of White Bear Lake?

White Bear Township?

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**"AMENDED BY ORDINANCE 2005-1; APRIL 12, 2005."**

# MEMORANDUM

DATE: November 2, 2017

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TO: Birchwood Planning Commission  
FROM: Tobin Lay, City Administrator  
SUBJECT: Review Draft Planning Commission Bylaws



**Birchwood Village**

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Dear Commissioners,

During the last Planning Commission meeting, Commissioners discussed using sections of Alan Mitchell's 303 draft to create Planning Commission Bylaws. Enclosed is a draft of those bylaws.

Staff recommends Commissioners consider reducing the number of notice days stipulated in Section I: Notice of Meetings from five days to three. The law requires three days notice and even the Birchwood City Council Rules of Procedure stipulates three days.

### **Request/Recommendation**

Staff requests Commissioners:

- 1) Review and discuss the enclosed proposed bylaws; and
- 2) Make a recommendation for City Council to approve.

Thanks!

Regards,  
Tobin Lay

**CITY OF BIRCHWOOD VILLAGE  
PLANNING COMMISSION BYLAWS**

**I. NOTICE OF MEETINGS**

The Planning Commission shall give at least five (5) days notice of all regular and special meetings. The notice must include a copy of the agenda for the meeting.

**II. OPEN MEETINGS**

All meetings of the Planning Commission shall be open to the public, unless closure is authorized by the City Council.

**III. QUORUM**

A quorum is required to hold a meeting and to take any action. A quorum is a majority of the members.

**IV. MINUTES**

Written minutes of all Planning Commission meetings, regular and special, shall be kept and filed with the City Administrator-Clerk and posted on the City webpage.