

EAST BETHEL CITY COUNCIL MEETING

April 18, 2012

The East Bethel City Council met on April 18, 2012 at 7:30 PM for their regular meeting at City Hall.

MEMBERS PRESENT: Bill Boyer Bob DeRoche Richard Lawrence
 Heidi Moegerle Steve Voss

ALSO PRESENT: Jack Davis, City Administrator
 Mark Vierling, City Attorney

Call to Order **The April 18, 2012 City Council meeting was called to order by Mayor Lawrence at 7:30 PM.**

Adopt Agenda **Voss made a motion to adopt the April 18, 2012 City Council agenda. Lawrence seconded; all in favor, motion carries.**

Dangerous Dog Hearing – Lucas Ogborn – 20864

Davis explained that this hearing relates to a dog bite incident that occurred on March 11, 2012. The Anoka County Sherriff's office reported a three year old Husky- Labrador mix in the public right of way in front of 20864 Tippecanoe St. NE bit a resident.

Tippecanoe Street NE

The incident was unprovoked and it is now sufficient to issue a dangerous dog notice pursuant to Chapter 10 of the city code based on the sheriff's report and the past history of the animal. Staff has included a copy of the incident report. There has been no written appeal by the owners. A review of city records indicates that the dog was not licensed at the time of the incident but the owner obtained a license the following day, March 12, 2012. The dog is current with his rabies vaccinations. The owner of the dog paid the fees to release the dog from quarantine and is currently in the custody of the owner.

Pursuant to City Code Chapter 10, Section 10-72, the owner is to be granted a hearing before the city council.

The City Council pursuant to section 10-72 has several obligations and options regarding this matter.

1. Conduct the hearing allowing the owner to present reasons, if present, why the dangerous dog determination should be lifted or sustained.
2. If the dangerous dog determination is sustained, identify the action to be taken:
 - a. Dispose of the animal
 - b. Allow the owners to keep the animal with restrictions.
3. If the dangerous dog determination is not sustained, make a determination that the animal is to be released without further action from or by the City Council.

Staff has outlined the requirements for maintaining the animal should the dangerous dog determination be sustained. Per City Code these include:

- (a) If after a hearing, if a hearing is requested under section 10-72, the City Council finds the dog to be dangerous but does not order the destruction of the dog, the council shall order all of the following requirements for the keeping of the dog in the city, which, beginning six months after the dog is declared a dangerous dog, will be

reviewed on an annual basis by the city administrator. If, in reviewing the requirements for keeping a dangerous dog, the owner has provided the evidence required under Minn. Stats. §347.51, subd. 3a. and there have been no ordinance violations for a period of two years, the city administrator may use discretion in determining whether any of the requirements set forth below will still be required:

- 1) That the owner provide and maintain a proper enclosure for the dangerous dog as defined in section 10-70;
- 2) That the owner post the front and the rear of the premises with clearly visible warning signs, including a warning symbol, a copy of which will be furnished by the city, to inform children, that there is a dangerous dog on the property as specified in Minn. Stats. §347.51. The owner must pay a reasonable fee to cover the cost of the warning symbol;
- 3) That an easily identifiable, standardized tag identifying the dog as dangerous and containing the uniform dangerous dog symbol must be affixed to the dog's collar at all times as specified in Minn. Stats. §347.51;
- 4) That the owner provides and shows proof annually of public liability insurance paid in full in the minimum amount of \$300,000. The insurance must insure the owner for any personal injuries inflicted by the dangerous dog. The owner shall have 14 business days from the request to show proof of insurance, except that if the dog is impounded, proof of insurance must be demonstrated prior to the dog's release;
- 5) That if the dog is outside the proper enclosure, the dog must be muzzled and restrained by a substantial chain or leash (not to exceed six feet in length) and under the physical restraint of a person 18 years of age or older. The muzzle must be of such design as to prevent the dog from biting any person or animal but will not cause injury to the dog or interfere with its vision or respiration;
- 6) That the owner provides and shows proof of microchip identification implanted in the dog as required in Minn. Stats. §347.515;
- 7) That all dogs deemed dangerous by the City Council be registered with the city within 14 days after the date the dog was so deemed and provide satisfactory proof thereof to the city administrator;
- 8) That the dog be sterilized at the owner's expense;
- 9) The dog must have a lifetime license and be up to date on rabies vaccination; and
- 10) That the owner must allow a compliance official on the owner's property to conduct a site inspection within 14 days of determination of dangerous dog by the City Council.

(b) The animal control authority shall seize any dangerous dog if the owner(s) do(es) not meet each of the above requirements ordered by the city council within 14 days after the date notice is sent to the owner(s) that the dog is dangerous and no appeal has been filed.

(c) A dangerous dog seized under this section may be reclaimed by the owner(s) of the animal upon payment of impounding and boarding fees and presenting proof to the animal control authority that each of the requirements under this division of this Code have been met. An animal not reclaimed under this section within 14 days may be disposed of as provided under section 10-73, and the owner(s) is(are) liable to the animal control authority for costs incurred in confining and destroying the dog.

(d) If an owner of a dog which has been declared dangerous and is subject to the requirements of this section has allegedly failed to comply with the requirements, the dog must be seized by the animal control authority. Notice shall be provided to the owner(s) of the basis for the seizure and the right to request a hearing before the City Council to determine whether the requirements were violated. A request for hearing must be made within 14 days of the seizure. If the owner(s) fail(s) to request a hearing within 14 days, or is (are) found to have violated the requirements, the council shall order the dog destroyed in a proper and humane manner and the owner(s) shall pay the costs of confining and destroying the dog. If the owner(s) is (are) found not to have violated the requirements, the owner(s) may reclaim the dog under the provisions of this section.

(e) The owner(s) of a dog that has been declared dangerous shall pay an annual registration fee to the city of \$500.00 in addition to any regular dog licensing fees and a reasonable fee to cover the city's administrative costs within 14 days of the declaration and again after annual anniversary dates. If the dog has been impounded, the fee must be paid prior to the dog's release. The animal control authority shall issue a certificate of registration to the owner of a dangerous dog if the owner presents sufficient evidence of compliance with the requirements of this section.

Staff seeks direction regarding the dangerous dog determination in this incident pursuant to City Code Chapter 10, and recommends opening the hearing. Lawrence asked the city attorney, "Do you have an opinion regarding the hearing on the dangerous dog?" Vierling, "If the owner of the dog in the case has not made application for a hearing, the animal is automatically deemed dangerous by the certification of the city administrator because it hasn't been challenged. The Council can go directly to determination of requirements or sanctions if you so choose." Mayor Lawrence asked, "Is the owner of Rocco (the animal referenced in the hearing documents) here?" There was no response. Lawrence, "There are residents that here that want to speak on this issue."

Jill Teetzel, 20913 Rendova Street NE, "My property abuts the property at 20864 Tippecanoe Street NE, where the referenced dog "Rocco" resides. I provided the Council a diagram showing our properties. On the map you will see the two previously referenced properties shown and Whispering Oaks Park. I have additionally noted two other areas on the diagram, my son's play area and a path. The play area is where my son sometimes plays. He will either bike through our property to get there or walk. The path (as it has been referenced before by city staff) is an area on our property that used to be the drive to an old farm house in the development. We frequently see kids biking and walking through this area. We have asked them to stay off our property and also posted no trespassing signs."

Teetzel, "The reason I am here tonight is my concerns over Rocco. I have three concerns, my son, my family's safety and persons walking on our property. First and foremost is my son's safety. My son is disabled. He functions at about a 3-4 year old level and cannot talk.

But like most kids, he likes to explore, ride his bike, and loves animals very much. We have to keep an eye on him at all times as he will wander off exploring. I have seen Rocco playing catch with a ball in their backyard unleashed. And, I know my son. He would be interested and bike or walk over to their property to watch. Rocco looks very similar to our dog, only our dog is yellow and Rocco is black. My concern is that Rocco would drop his ball and attack my son as he did with the boy in the street. If he did get attacked, my concern would be the long-lasting impact on him. He has issues due to his disability and he loves animals. I would hate for him to have an experience with an animal that wasn't positive and that may result in us having to get rid of our own animals because of Rocco.

Teetzel, "Secondly is my families safety on our property. I worry about riding our ATV on our property, walking or just in general doing our chores with Rocco playing next door. Lastly, there are a number of kids and adults that cut through our property. We do have it posted as "No Trespassing" but people cut through anyways. I am very worried that people passing through our property would get attacked by Rocco. This would cause us a lot of issues, starting with property insurance, potential lawsuits, etc. I don't want to have to worry about someone trespassing on my property getting bit by the next door neighbor's dog that has bitten a few other people already, all unprovoked. As an animal lover I don't think it is normal for animal to attack unprovoked and it causes concern. I hope the Council will take action and consider my concerns when considering the action.

Dino Perfetti, 20654 Austin St. NE, "I live ¼ mile from where the incident took place. I have a nine year old son who rides his bike all summer long right past that area, right by the park. I just want it to be known that I am very concerned about his safety and he is very afraid after hearing about this incident about riding his bike there without adult supervision. I don't have the details, but it has been said that this dog has had two other incidnets just like this in St. Paul. Reports of the same kind of thing. Again, I don't have the particulars, but would hope we would check into that further if we need to before making any decisions."

Wendy Borstner, 20754 Okinawa Street NE, "My son was the victim and I do have a concern for all the other children in the neighborhood. I see they do have a fence which isn't very tall. For a dog that size, it is not going to keep him in. I am looking out for the safety of others. My son was totally innocent riding his bike and got attacked by this dog. And if a dog has a incident in a different area, you need to keep him contained and not be throwing toys out in the street. It could have gone a lot further, but I took care of things myself. I could have taken him to the doctor and they could have bills." Boyer asked what was the size of this dog? Gimpl, "About 110 pounds. Borstner, "And my son had to push him off, he was still riding his bike and he had to push him away." Lawrence, "Is your son doing okay?" Borstner, "He is doing fine. It is just the whole aspect of them having an incident and then having it happen again."

DeRoche asked to hear from the city animal control officer, she picked the dog up. Boyer asked what the dog was like when she had him. Tammy Gimpl, East Bethel Animal Control Officer, "He was fine with the people that she picked him up from. And I know how not to get bit. But on the way to my place, there were bikers and walkers we went by and he went ballistic." Moegerle, "How did he behave when he was with you?" Gimpl, "Again, I know dogs so. I don't let him around other people or dogs. He was under quarantine." DeRoche, "What do you think are the chances to this dog biting again?" Gimpl, "Very good." Moegerle asked "What kind of conversations or discussions did you have with the owners?" Gimpl, "When I picked the dog up I had a discussion with Lucas and I asked him about whether the dog was deemed dangerous. If he had any incidents and he said no. And that

was it. So, when I got him home, I scanned his chip and found out he had incidnets in St. Paul and the owner wasn't very forthcoming with me." Moegerle, "When I read the information from St. Paul, the owner was different, do we know anything about this, why the ownership changed?" DeRoche, "Yes, there was three owners. I did contact St. Paul to address the other concerns on the other bites. And I wanted to know how you go from potentially dangerous, to dangerous, to potentially dangerous, to now the dog is up here. What they said is the first bite the dog was automatically classified as potentially dangerous automatically. If there are some real bad puncture marks, then they go before a hearing officer. The first incident he said it could have been a bite, or she could have scraped her leg when getting off the bike. The second incident, was two dogs, and neither parties came to the hearing so it was hard to determine if there as a bite in the incident. The third incident, the dog jumped up and bit. I needed to find out how bad is this dog, because this is a serous thing. Then the fourth bite. Unfortunately, do I think it is a bad dog? No, I think it is a bad owner. But that doesn't change what he dog is now and the propensity to do it again. And he checked with other people, spoke with Gimpl and unfortunately this dog doesn't have a whole lot of hope."

Borstner, "I want to add, when my son got bit, they asked him if he was okay, he said yes, and came home. He had a couple punctures in his back and was bleeding and I was pretty irritated so I went over there. I went up to the house and asked, "Who owns this dog?", and it took me three times saying it before I got a response. The one girl got up and said it was her mom's dog. I asked if she had proof of rabies. She said no, but trust me, he has his rabies. I said I wanted to see proof of rabies because I needed to know what I need to do with my child. I said my other option is to call the cops. She said please don't call the cops because the next incident will make the dog have to go down. And that triggered me to call the cops."

Deputy Shawn Merit, East Bethel Contract Day Shift, "I am the one that received the call for this dog bite and gathered all the information for the report." DeRoche, "When you got there was the dog under control?" Deputy Merit, "The dog was inside, and then somebody brought the dog outside. When the dog was around the right people he is fine, not aggressive. But that is not what we are seeing what happens in these situations. There was a younger female that said her aunt owned the dog when she lived in St. Paul, with Lucas, he also lived there. Apparently Lucas was going to be taking control of the dog, transferring ownership of the dog with the city and he hadn't done it yet at that point.

DeRoche asked, "Did they say anything to you about a lifetime license? Because according to St. Paul, this dog should have had a lifetime license." Deputy Merit, "Nothing was mentioned to me. There was a couple people outside when I got there. Lucas and two other individuals were outside when it happened. One of the other individuals had threw a ball into the street and the dog had run out to get it when the victim was riding a bike down the street. As the dog got up to the victim on the bike, they kind of happened to meet at the same time and the dog turned and bit him as he was riding the bike. The victim was able to get free from the dog and bike back home. Victim told his mom, who then called us. Borstner, who just spoke, told me the same thing about no one taking ownership of the dog. I didn't get that at first, but then Lucas said he was going to be the owner of the dog or in the process of. Spoke with the female whose aunt was the owner in St. Paul; she was visibly shaken because she was worried that the dog was going to be put down. The story matched up with the tow other individuals. When I got to house of the victim, I took photos. Lawrence, "He did draw blood?" Deputy Merit, "Yes, it was more dried blood that I saw."

DeRoche, "Kind of disappointed the owner is not here." Voss said in the same token, don't know what they could add or dispute. In this case, more so than any other, where we have had to deal with these dog instances, not only do we have an abundance of information, but we have quite a bit of recent documentation of unprovoked recent attacks in St. Paul and now those same problems have been relocated to East Bethel. Voss said and he fully agrees with DeRoche's comment, very seldom is it the animal; it is the way the animal has been raised. Also agree there is not going to be a means to change this animal's behavior. Voss said with all the licensure, all the insurance, signage, even fencing, he doesn't feel any comfort that this isn't going to happen again.

Moegerle made a motion that the dangerous dog determination for the dog owned by Lucas Ogborn at 20864 Tippecanoe Street NE named "Rocco" is sustained and the animal be ordered to be disposed of. Voss seconded. DeRoche, "His purpose for the statement, "Wish the owner would had been here" it goes to show the lack of care for animal, lack of control, animal, kids, you have to take responsibility. So being an animal person, one way or the other he would be there." Lawrence, "I know all dogs are trainable and retrainable. But I think this one would just take so much, it would just be way beyond the scope of taking care of the problem. And the owner didn't show up to say they wanted to do that kind of work. And he agrees with Voss that he doesn't think this dog will be contained and he thinks it will continue to be a problem.

Moegerle, "Should this dog be removed from City of East Bethel, what can we do, is there any way to enforce this?" Voss asked what is the process from here? Vierling, "The City will document their order of destruction. If the animal appears in another jurisdiction, and because it is chipped, he is sure you will get word of where it is." Moegerle, "So we have a way of connecting the order of destruction to the chip? Or is that something Animal Control does, or how does that work?" Davis, "The only way you can relate it to the chip is if the dog is picked up for some other violation." Voss asked so we are ordering the animal to be disposed. So is it our active action to get the animal from the owner. Vierling, "Your action will be within the boundaries of your city. There isn't a database on animals like there is on people." Voss asked more directly, if this passes tonight will the city go out and contact the owner and are they to dispose of the animal? Or is that up to the owner? Davis, "The animal control officer takes control of the animal and does the euthanasia. There is a fourteen (14) day of appeal. In the meantime we will contact the owner and let them know the decision." Voss asked isn't this really an action against the owner. So if they fail to follow through or provide documentation, they are in trouble? Vierling, "We have opportunities to file a criminal charge against the owner if there is an issue. We can take that opportunity if we have to." Voss said it would seem from Deputy Merit's statement that Lucas made the statement that he is the owner. DeRoche, "If he is not mistaken the owner is responsible to pay for the euthanasia." Vierling, "Under the ordinance, that is right." **All in favor, motion carries.**

Sheriff's
Report

Lieutenant Orlando gave the March 2012 report as follows:

DWI Arrests: There were two DWI arrests. One DWI arrest occurred as a result of an anonymous caller reporting a possible intoxicated driver. The vehicle was located, driving conduct was observed and the driver was arrested for driving under the influence. The second arrest was the result of a traffic stop for equipment violation. The driver smelled of alcohol and failed field sobriety tests. The driver was arrested and taken to jail.

Burglaries: There were three burglaries. Two of the burglaries involved items being stolen

from sheds. One burglary involved a garage being broken into and several tools being taken.

Property Damage: There were three reports of damage to property. One involved damage to a slide at Booster Park. Two involved damage to cable boxes outside of homes.

Thefts: There were twenty (20) theft reports for the month. Ten reports involved items being taken from parked vehicles, either with unlocked doors or by breaking a window. One theft report involved a catalytic converter being cut off a vehicle. One theft report involved a skid steer loader that was taken from a construction site. There were three theft cases involving fraud. One involved a savings account that had been accessed by unknown suspects and money had been transferred out. One embezzlement case was received that is currently under investigation involving an employee stealing business checks and writing them out to herself.

Lieutenant Orlando, "And just a friendly reminder that tomorrow is distracted driving day. State-wide, looking for texting and driving, not paying attention to what you are doing." DeRoche, "Has the next of kin been notified from the accident last night." Lieutenant Orlando, "There was a fatal accident at Viking Blvd. and Breezy Point Drive last night with a bicycle and a car. Unfortunately the bicyclist did succumb to injuries after being hit. Voss said they are both East Bethel residents.

DeRoche asked, "Are you aware there are some things missing from boats out on Coon Lake? Back in the old days they would come in from Olsen's Resort at night. They have been cruising." Moegerle asked, "Is there a certain area where the theft of sheds and breaking car windows is going on so we can notify people?" Lieutenant Orlando, "They are really all over the city, a lot will happen in business parking lots. But a lot are in residential driveways and people are leaving GPS in cars." Moegerle, "How are investigation going on that?" Lieutenant Orlando, "Investigator puts out any information we can so we can watch the pawn shops, and we watch for items to be pawned." Lawrence, "It is important to remember to remove these items from your car." DeRoche asked "DWIs are down?" Lieutenant Orlando, "Yes, not sure why. But it did take a little cold spell."

Public Forum Lawrence opened the Public Forum for any comments or concerns that were not listed on the agenda. There were no comments so the Public Forum was closed.

Consent Agenda **Boyer made a motion to approve the Consent Agenda including: A) Approve Bills; B) ~~Meeting Minutes, April 4, 2012 Regular Meeting;~~ C) Accept Resignation of Cable Technician; D) Authorize Staff to Advertise for Cable Technician Position; E) ~~Resolution 2012-22 With No Waiting Period for Exempt Permit for Midwest Animal Rescue & Services to Hold a Raffle at Fat Boys Bar & Grill;~~ F) Appoint Seasonal Maintenance Workers; G) Approve Barter Agreement with Sprint/Nextel for Cellular Communications Services.** Voss said he would like to pull the Meeting Minutes, April 4, 2012 Regular meeting for discussion. Davis asked to make comments on Item E) Resolution 2012-22 With No Waiting Period for Exempt Permit for Midwest Animal Rescue & Services to Hold a Raffle at Fat Boys Bar & Grill. **Voss seconded with the two items pulled for discussion; all in favor, motion carries.**

Meeting Minutes, April 4, 2012 Voss explained he wanted the meeting minutes pulled and he raised this question at the last meeting also. He thought more and more about this in regards to the quotes within the minutes and he does not feel comfortable approving these minutes with the quotes in them. Voss said there is no way for him to approve the minutes with these quotes. Moegerle

asked, "Are you concerned that they haven't been transcribed properly?" Voss said no, I am not going to sit and watch the tape and I am certifying that this was what was said because it is in quotes and I can't certify that because it is in quotes. I don't feel comfortable in doing that. Personally I don't see a need to have that. Moegerle, "I really like it. I have read a lot of minutes. And the minutes from 2006 forward, you would read them, and some were direct quotes and some of them weren't direct quotes and reading our minutes was very difficult. I like it because it is proper punctuation and it says what people said. I trust Warren to transcribe what is being said, but more importantly, it is easier to read. That's what I like about it." Voss said if you want to certify that those were the statements that were made, then go ahead and vote. I am just saying that I can't sit here and say these statements were made. If it is written as a statement, I don't have a problem with that.

Boyer said I tend to agree with Voss on this. The bigger problem is we put in a quote but it is taken out of context from the discussion. So then there is a quote sitting there by itself and which is meaningless by itself, from a discussion that might have gone on for fifteen minutes. Voss said and if there is an issue we are going to go back to the tapes. DeRoche, "We are always going to go back to the tapes anyway if it is something that is litigated. Correct Mr. Vierling?" Vierling, "I presume."

Moegerle, "I trust Warren." Boyer said it is not a question of trusting Warren, it's not. Moegerle, "I think you are asking that because you are saying she might take something out of context, isn't that what you just said?" Boyer said no, that is not exactly what I said, but if you want to interpret it as such he is sorry. Lawrence, "You were saying it could allude to something that wasn't really said. That would be out of context." Boyer said there is one in there that says, "We have had tobacco and liquor ones that have appealed to the courts." What is that really alluding to? On page 60. He said it becomes kind of meaningless. In the middle paragraph. Boyer said he can assume what "ones" are, but it becomes kind of meaningless. Voss said I don't have a problem with something that needs to be in a quote, in a particular case and it is an important statement. But not throughout the whole meeting. He said it diminishes any kind of relevance or important to the quote. And it becomes did I really say it and I have to go watch the tapes. If it is a statement, there is a little more latitude. Voss said if someone pick this up and reads this it looks bad. Moegerle, "It looks equally bad if there are no quotes in there." Voss said, he has said that before take the quotes out. Moegerle, "It looks equally bad, it doesn't clean it up any." Voss said he is not talking about cleaning it up. Not talking about whether it is clean or not, just easy to take this out of context.

Davis said, "As a matter of point, if Council could give staff direction as to how they would like the minutes presented then we will certainly do that." Voss said don't remember ever having quotes in here. Boyer said neither do I. DeRoche, "Would like them to stay the way they are." Lawrence asked the city attorney, "As for minute taking, what is the normal process used?" Vierling, "Some cities use minutes as a verbatim record, most cities do not. Most cities have a summary for the critical elements of the meeting, motions, seconds, what the motions were, and things of that nature. Some cities do a hybrid of both, some summary, some quotes. It is supposed to be record of your meeting. Can be bullets, seen it that concise." Voss said he thinks they are a little long, but he is fine with what is presented. Lawrence, "He likes the discussion part and then the summary of the action at the end. I am not sure quotable is necessary." Voss said if someone wants to know the quotes they can watch the tapes. Moegerle, "But here is the thing, I read from 2006, "Moegerle said", where it is a direct quote it is "I think". More accuracy if it is a direct quote. Old minutes had a mix and she thinks it makes more sense." Boyer said this is a mix.

Moegerle made a motion to approve the April 4 City Council meeting minutes. DeRoche seconded; all in favor, motion carries.

Res. 2012-22
With No
Waiting
Period for
Exempt
Permit for
Midwest
Animal
Rescue &
Services to
Hold a Raffle
Permit at Fat
Boys Bar &
Grill

Davis, "One thing about the permit for Fat Boys is in it there is a proposed Motorcycle Stunt Show. We didn't get the Notice of Event until today. We have been trying to get some more clarification on this stunt show, but he wasn't able to get back to us on this, so we don't know what that involves. If you want to approve that, you might want to consider setting some hours for that portion of the application so it doesn't go on until the wee hours. Voss said this is for the raffle right? Davis, "This is for the raffle, a tent part and a stunt show." Boyer said there is plenty of time. DeRoche, "Then we have to be in contact with Troy." Voss said the event permit doesn't have to go in from of Council that is done at staff level.

Voss made a motion to approve E) Resolution 2012-22 With No Waiting Period for Exempt Permit for Midwest Animal Rescue & Services to Hold a Raffle at Fat Boys Bar & Grill. Moegerle seconded; all in favor, motion carries.

Planning
Comm. Mtg.
Minutes

Davis explained that the Planning Commission Meeting Minutes from March 27, 2012 are for information only. They are in draft form and have not been approved by the Planning Commission.

Road Comm.
Mtg. Minutes

Davis explained that the Road Commission Meeting Minutes from March 13, 2012 are for information only. These minutes have not been approved by the Road Commission.

Roads CIP
Amendment
and Coon
Lake Beach
Road
Improvement
Project

Davis explained as part of the Roads Capital Improvement Plan, the City has planned and budgeted for completing road improvements in the Coon Lake Beach area to address deteriorating road conditions. Staff and the Road Commission have been reviewing possible options and have determined that an overlay with corrective measures is the best option.

The 2012-2016 Roads CIP has \$307,000 budgeted for 2012 and proposes \$305,000 be budgeted for 2013 for a total two-year budget of \$612,000 for this project. Staff and the Road Commission have recommended advance funding the 2013 portion of the project for 2012 to complete the work at one time and to save money and inconvenience to the residents compared to dividing the project over a two-year time span. The \$205,000 budgeted for Whispering Aspen in 2012 would be moved to 2013. The change would result in 2012 ending balance of \$617,962 compared to the projected ending balance as currently proposed of \$712,962. After 2013, the ending balance would offset and be back inline with the projected amount planned for in the 2012-2016 Roads CIP.

The City Engineer and staff have provided construction cost estimates for multiple options with a range of \$545,960 to \$651,289 that would include performing work in the entire area. The portions of Laurel Rd and Lakeshore Drive that have more recent improvements and the MSA portion of Lincoln Dr., Laurel Rd, and Longfellow Dr. would not be included in this portion of the project.

In addition moving the Whispering Aspen Project, scheduled for 2012 to 2013, would eliminate the risk of any street damage that could occur as a result of the Castle Towers/Whispering Aspen MCES Sewer Connection Project that will be completed by early 2013.

Alternative 1- Would consist of a 1½ inch bituminous overlay. It was assumed that 30 percent of the existing pavement area would be patched prior to the overlay. The expected life of the alternative is 8-12 years. Moderate isolated patching would likely be required throughout the expected life of this alternative. The estimated construction cost is \$545,960.

Alternative 2- Would consist of a 2 inch bituminous overlay. It was assumed that 20 percent of the existing pavement area would be patched prior to the overlay. The expected life of the alternative is 10-15 years. Minor to moderate isolated patching would likely be required throughout the expected life of this alternative. The estimated construction cost is \$604,506.

Alternative 3- Would consist of a 2½ inch bituminous overlay. It was assumed that 5 percent of the existing pavement area would be patched prior to the overlay. The expected life of the alternative is 12-18 years. Minor isolated patching would likely be required throughout the expected life of this alternative. The estimated construction cost is \$633,908.

Alternative 4- Would consist of reclaiming 70 percent of the streets and then constructing a 2½ inch overlay. The expected life of this alternative is 15-20 years. Minor isolated patching would likely be required throughout the life of this alternative. The estimated cost is \$651,289.

Alternative 5- Would consist of reclaiming 10 percent of the streets and then constructing a 2½ inch overlay over those portions and a 2 inch overlay over the remaining 90 percent of the street surfaces previously identified. It is planned that the sections scheduled for the 2” overlay will be patched prior to re-paving. The expected life of this alternative is 12-15 years. However, due to the low volume and speed of traffic in these areas, it is anticipated that a longer life can be expected. Minor isolated patching would likely be required throughout the life of this alternative. The estimated cost is \$601,035. There is sufficient funding in the Streets Capital Fund to cover the costs of this project.

After reviewing alternatives 1-4, staff prepared alternative 5 to address specific locations where the placement of additional base material from in-place reclaiming would be beneficial to the thicker bituminous overlay and to insure that each street was addressed as to its own needs. The additional 10 percent of patching would be in areas where a leveling course is needed to create a level surface for the final overlay. Staff believes that a 2 inch overlay would sufficiently provide the desired finished road surface for the remaining 80 percent of the development.

If the City Council approves the CIP amendment, staff recommends Alternative 5 as the alternative for the road improvements.

Staff and Road Commission recommend advancing the 2013 portion of the Roads Capital Improvement Fund for Coon Lake Beach street improvements to the 2012 Roads Capital Improvement Fund and moving the 2012 Whispering Aspen street improvements from the 2012 schedule to 2013.

Staff also recommends selecting Alternative 5 and to direct the City Engineer to prepare the bidding documents for the road improvements.

Boyer made a motion to approve Alternative 5 and direct the City Engineer to prepare the bidding documents for the road improvements (which is long overdue). Voss seconded. DeRoche, “The streets aren’t consistent over there, could be ½ inch left, 1 inch,

2 inches left. I don't want to see them go down to the sand. So, how do we gauge how thick the asphalt is already? Also, in research he did, someone recommended using millings more than just patch and overlay, said millings would stick better, is this effective?"

Davis said, "There are three streets that will require more than just the overlay. There will be field adjustments based on conditions encountered in field. Some will require more asphalt. It would complicate the bid process if we adjusted these and included it in the bid process."

Boyer said in the past the water runoff has been a big issue. What are the plans to control water runoff into the lake? Moegerle, "The best would be a curb around Lakeshore, but Lakeshore isn't a part of this." Boyer said the other thing he thought about is he has seen where they have put the narrow grates at the bottom of the hill to catch the water, goes down the pipes, and pumps it out. Voss said the problem is who wants the water. Davis, "The best solution is a grading system to collect the runoff. We couldn't come up with a reasonable solution to collect the runoff. This is a very restricted area. The best thing we can do is to work with the Coon Lake Improvement Association and District to keep what is of the filter strip vegetated and to promote letting it grow up as much as possible instead of mowing it. That barrier will do as much as anything to improve the water quality. We have gone down and put in some curbing in certain sections to minimize runoff where there are boat landings and it erodes in there.

Voss asked who owns the other strip of Lakeshore down there. Moegerle, "The Community Center. The efforts need to be addressed at the community center." Boyer asked as an alternative, know it is a narrow strip there, he can visualize in places. But what about doing rain garden type ditching. Voss said part of problem of rain gardens is it is to promote filtration. And those nutrients are going to infiltrate very quickly into the groundwater which is essentially the lake at that point. Davis passed out a report on the water quality at Coon Lake, indicates it is not an impaired body of water. Davis, "But what Boyer is suggesting are ways we can address this in the future." Boyer said he is more worried about the salt getting into the lake. Moegerle, "But if you had curbing for it to soak in, that might help." Voss said but you are essentially in the lake there.

Lawrence asked, "When they do the overlay, do they strip the top off?" Davis explained that they strip some, but some are patched, topped and leveled. It depends on the street. Voss said and we are planning on do the MSA projects this year also correct? Davis, "That south Jackson Street this year." **All in favor, motion carries.**

Castle Towers
Waste Water
Treatment
Plant Notice
of Violation

Davis explained the City has been issued a Notice of Violation (NOV) by the Minnesota Pollution Control Agency (MPCA) for the Castle Towers Wastewater Treatment Facility. The NOV dated April 4, 2012 is attached. The NOV is in regards to the solids drying beds. The beds are over 25 years old and beyond their design life.

The drying beds consist of 4 bunkers with wood dividing walls. Each bunker is lined with an impervious material and each has an under drain system. Concentrated solids that settle to the bottom of the treatment tank are discharged to the drying beds. The liquid is decanted and returned to the treatment plant. The solids are removed from the beds and stored in the outside bunker until they are eventually disposed of offsite.

Both the drying bed walls and liners need to be replaced or repaired. The NOV indicate that the City must have a plan within 30 days and must complete the replacement or repairs

within 90 days.

Staff has contacted the MPCA regarding the NOV. The MPCA has indicated that they would consider an interim repair since the plant will be decommissioned in 2013. Staff needs to identify and present the proposed interim repairs to the MPCA on or before May 4, 2012. Staff will provide a plan for Councils consideration at the May 2, 2012 meeting.

Davis, "We hope to present a plan to decommission one of the cells in the drying beds. The other three we hope will get adequate consideration for use and do some minor patch ups stuff. Hopefully these repairs will be inexpensive or at no cost to the city. The PCA has indicated that they will work with us on this matter." Voss asked are we still having issues with storm water discharge into our sanitary? Davis, "We have had no significant increase of infiltration to our inflow during the last two storms. The last problem was around this time last year when we suspect there was some draining of surface water into our system to alleviate a flooding problem (this was denied) at Castle Towers." Council directed staff to come up with a solution for this problem.

Fire Dept.
Report

Davis explained that the fire department reports are attached for your information.

Ordinance 34,
Second Series,
Notice,
Hearings and
Appeals

Davis explained in the amending of the Alcohol and Tobacco Ordinances, the hearing portions of these was removed and is presented as a new Ordinance to provide consistency and uniformity for this process. This Ordinance addresses Notices, Hearings, Appeals, Fines and Penalties under one title and will be used to address these actions that relate to other enforcement issues.

This ordinance should be approved prior to the future consideration of amending the Alcohol and Tobacco Ordinance in order to have a hearings process included in their amendments

The draft presented in the attachment is a clean copy only. The redlining became a distraction to the point where it became less confusing to read the black and white copy anew.

Staff is seeking direction as to approval or additional modification of this ordinance.

Voss made a motion to adopt Ordinance 34, Second Series, Notice, Hearings and Appeals. Boyer seconded. Vierling, "There was one proposal by Council Member Moegerle regarding the decision on the hearing officer. The provision provided for a 10 day return on the decision and an opportunity to go to a 15 day if he/she required. The proposal is to give that up to 21 days, he doesn't have a problem with that. Moegerle, "Typos, under "Failure to Pay Fines" page 124, should say *within* 14 days. Under "Determination of Fines and Penalties", 2nd paragraph in matters where the hearing officer has been assigned authority and it continues on to make findings and recommendations to the City Council, the fine and penalty, shouldn't that be *penalty* instead of *sanction*?" Vierling, "Sanction can include penalty." Moegerle, "Looking for this being parallel." Vierling, "I would normally use sanction inclusive of penalty." Voss said sanction is a little broader. Vierling, "If you want to add the word penalty in there, he doesn't have a problem with that." Moegerle, "So change to Fines, Penalties and Sanctions." **All in favor, motion carries.**

DeRoche would like to make a motion to do a Resolution to nominate Jack Davis, City Administrator for the LMC 2012 Leadership Award. This award goes out to individuals who go above and beyond what the job is. Personally I think Jack walked into a hornets nest. Jack has had to do a lot of negotiation between council members, contractors, other cities. City is moving in the right direction gotten a lot done, takes a lot of patience, a lot of tenacity, lot of hits. He could work regular hours, but he is here at 5:30 a.m. and on his days off. He doesn't know how to take a day off. My personal thoughts, is for people that don't have a personal vested in the City, he thinks to put that much effort in, I think he needs to go in for this award. Moegerle, "Part of this application process is Council support for this award. Are you asking if there is Council support of that nomination?" Voss said he made it as a Resolution. **Voss seconded.** Boyer asked since this was not on the agenda and is a resolution, it should be on the agenda. Not suitable for council reports. Voss said he made that comment at the beginning of the meeting also. **All in favor, motion carries.**

DeRoche, "There are still a lot of fires. People are still having big fires in their yards and when it is windy it is not a good idea to burn. Also, there are a lot of thefts on Coon Lake. I have been to a lot of meetings, but that is alright. I did a little tour with Jack and Nate. I personally think in the past Coon Lake has been blown off. When the Ady Voltedge study came out, Coon Lake wasn't mentioned a whole lot and that is unfortunate. There are nice homes there and a nice little market. It is a treat to go out there and drive around. It is a nice little community, and it still has a backwoods feel."

Moegerle, "With regard to today, we went to another GRE Mediation meeting that we will be discussing in closed meeting. I brought up their website and how it has a lot of the pleadings on it that are rather denigrating of the city. I asked them now that we are in mediation working together whether that denigration could be softened with some of the more positive correspondence that has gone back and forth. Every step that raises East Bethel's reputation within the community at large is a good thing. City Hall doesn't have any lights on sign at 221st Street. The first few night meetings I came to, I almost turned at the Public Works building. I asked Jack to look into getting a street light out here, so we can show our pride in City Hall. The League of Minnesota Cities (LMC) is having annual meeting at the end of June. I would like to attend as my role in the EDA, and was particularly intrigued by something I received from the LMC today, "If you build it will they come?" I thought that was part of the issues we were facing. And as part of what Bob was saying, with regard to Ady Voltedge, they specifically excluded Coon Lake Beach from travel times and financial investment in the economic development over at Viking and 65. It is a significant exclusion of an important part of our community and something we have to look at.

Voss said two things. Along the lines of what Bob said, crime issues long Coon Lake. Twice in the last week we had issues in our neighborhood. One was an abandoned truck a block from his house. Someone stole a contractor's truck and stripped it. Voss said and we have had meat vendors going around, first time had someone get testy with him. He asked if they had a license. Long story short, asked them to go to City Hall and get license. What recourse do residents have when that happens? Davis, "Call in with identification of tag number, we can go from there." Voss said it wasn't even a refrigerated truck. Bring up so residents are aware of that.

Davis, "We need to schedule a Finance Committee meeting. Can I get some feedback from Council Member DeRoche and Boyer on when we can schedule a meeting?" Boyer said I will have to look at my schedule.

Council Member Report – Lawrence

Lawrence, “We had a meeting this morning with GRE. And we had a meeting the other morning and we are working with the Sheriff regarding our contract to see what we can do for reduction there without reducing the coverage. It’s been a challenge; we have had a lot of things going on in the city. One thing I did notice after talking to Sheriff Stuart is we are having a little rise in crime, so watch your neighbors and if you see something wrong, give them a call. You can prevent something from happening. On the line with what Steve had said, anyone coming around wanting to do something to your property or selling goods, most have some kind of permit or license.”

Closed Session – League of Minnesota Cities (LMC) Litigation and Great River Energy vs. City of East Bethel

Vierling explained that for the benefit of the public and the public record, Council has recommended we go into closed session per Minnesota Statute 13D regarding two matters, Great River Energy (GRE) vs. the City of East Bethel, District Court File # 02-CV-115638 and Council will also review with Counsel from the League of Minnesota Cities a claim Relative to Employment filed by Larry Martin. After the closed session, Council will return into open session to announce any motions or actions.

Voss made a motion to go into closed session to discuss the two issues: League of Minnesota Cities (LMC) Relative to an Employment Issue Filed by Larry Martin and Great River Energy vs. the City of East Bethel. DeRoche seconded; all in favor, motion carries.

Vierling explained the Council has concluded the two closed sessions dealing with the two items. The first item, Employment Issue, attending were Counsel from the LMC Pat Beety, Council Member DeRoche, Council Member Voss, Council Member Boyer, Council Member Moegerle and Mayor Lawrence. Also attending were Jack Davis, City Administrator and myself, City Attorney. Council got input and discussion from the LMC Counsel on mediation, but no vote was taken. On the second matter, GRE, Council Member Boyer excused himself from that meeting, the rest were in attendance. Council reviewed the issue, gave instruction to our offices regarding the settlement but no vote was taken.

Vierling, “I do have one item to bring up. At the last meeting there was discussion regarding hiring hearing officers. I have been able to secure retired Judge John Edward Cass for the Lowell Friday hearing and can secure dates from him in May. Council needs to know the fee to do that will be \$250 an hour and it will probably be a half day for the hearing. He (Judge Cass) would also appreciate a sheriff’s deputy in attendance at the hearing.”

Voss made a motion to authorize moving forward with securing the services of Judge John Cass as a hearing officer at the rate of \$250 per hour for the Lowell Friday public hearing and also authorizing having a deputy in attendance at the hearing. DeRoche seconded; all in favor, motion carries.

Adjourn

Lawrence made a motion to adjourn at 9:45 PM. DeRoche seconded; all in favor, motion carries.

Attest:

Wendy Warren
Deputy City Clerk