

EAST BETHEL CITY COUNCIL MEETING

April 4, 2012

The East Bethel City Council met on April 4, 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
 Craig Jochum, City Engineer

Call to Order **The April 4, 2012 City Council meeting was called to order by Mayor Lawrence at 7:30 PM.**

Adopt Agenda **DeRoche made a motion to adopt the April 4, 2012 City Council Agenda. Voss seconded** Lawrence said he would like to add 7.0 G.6 Lowell Friday IUP Discussion. Moegerle said she would like to add 7.0 G.7 Scheduling Council Work Meeting to Discuss the Recommendations from Ady Voltedge. **DeRoche amended his motion to add the two items to the agenda. Voss seconded the amendment; all in favor, motion carries.**

Public Forum Lawrence opened the Public Forum for any comments or concerns that were not listed on the agenda

Taras Mertynenko of 2847 Viking Blvd NW, Oak Grove, wants to discuss the First State Tire property on the corner of Highway 65 and 229th Avenue. He wants to know if we can have a trucking company at this site because we are looking at purchasing it. The previous company (First State Tire) had a trucking company there but they were limited to fifteen (15) trucks at the site. DeRoche indicated that he should come to City Hall and discuss this with City Staff. Davis explained he received an e-mail from the attorney from First State Tire, and he told her that Mr. Mertynenko should schedule a meeting with him to discuss this. Davis gave Mertynenko his business card and explained that he could contact him during regular business hours and he would work with him on what the requirements would be regarding the property formerly used by First State Tire.

Doug Tierney of 4610 Viking Blvd. NE wants to thank staff for putting the “No Parking” sign on First Street. They block all those streets up so thank you. They have cleaned part of it up, but down by the waters edge they didn’t remove the grass clippings because there is a ridge. That should be cleaned out.

Tierney wants to make another comment and thank all three of you who okayed the ATVs. You have been by and seen my “No Trespassing” signs. A 4-wheeler came by and hooked a chain unto my sign and ripped it out right in front of me. Called the sheriff and he came and could see where the eyebolt was ripped right out. The Deputy said he was surprised the City passed that. The only thing he (4-wheeler) did do, which was kind of a disappointment, (usually when snowmobilers come by they let me know I am number one) when he came back, I had put a second chain across, he went underneath it. So I went and bought cameras. He seen me putting up the cameras and he hasn’t been back. When you go spend several hundred dollars then you get a little peace. And I want to thank you for allowing this.

DeRoche asked “One person on an ATV breaks the law, do you think if that ordinance hadn’t

been in place, do you think he still would have done it?” Tierney said, “We have had these problems for many years. He can remember years back when the 3-wheelers first come out. He knew who the kid was in the development behind Voss’s first house. He never laughed so hard. A squad car was chasing the kid and the squad car was bouncing all over. You just made it a lot easier for them to do it. It is just blatant.”

Tierney, “Also when you mentioned that one guy and how the sheriff picked on him. He has a bad leg and was delivering stuff for the lake association. He was on his 4-wheeler and got pulled over and he was nothing but nice to me.” When you made the ordinance to let them run loose, it is nothing but a pain. You have to put up fences, you have to put up cameras. What you did, didn’t help matters, it made it worse. DeRoche, “Are you going to be around when we discuss this tonight on the agenda? I have a lot of information on this.” Tierney explained when I was going around talking to people, they asked what is it benefitting the general public. The DNR might want to use this. Voss explained you realize we are not vacating the easement.

DeRoche explained that when the review of the ordinance on ATVs comes up later on the agenda he can explain more. He has been monitoring this since day one. He has been monitoring it through the sheriff and through DNR office, so he does know what is going on. It will come up on the agenda tonight. DeRoche, “Do you have a pamphlet on what the ATV Regulations are? Tierney explained he has two ATVs and he uses them like tractors, not to torment the neighbors; to try to make his place look better. Lawrence explained the one question he has, like DeRoche asked, “Without the ordinance would this have happened?” Tierney commented that the reason he is here is, Boyer said one time that someone was bothering him and Moegerle asked him if he called the sheriff, did he complain? And he said no. Tierney explained he called the sheriff both times, showed them the damage and he is here. He doesn’t want someone to say later on down the road, “Doug did you complain?” He is too darn old and arthritic to be doing the repairs.

Moegerle, “Could you answer the Mayor’s question about whether or not this would have happened if the ordinance was in place or not?” Tierney, “Sure this is going to happen, but it is happening more when you are allowing them on the streets. When you are allowing them, is he going to be over a mile away from his house where he can’t cut in, when you are allowing him. All he has to do is get back out on East Front and he is not breaking the law.”

DeRoche, “County Road 22 is a county road, correct?” Tierney, yes. DeRoche, “Legally in the State of Minnesota you cannot drive an ATV on a county road or a state highway.” Tierney, “This was on East Front Blvd. He came down East Front Blvd. onto 22.” DeRoche, “So he was breaking the law. He will go through all that when we get to the agenda item.” Tierney, “In his opinion you made it easier on them.”

There were no more comments so the Public Forum was closed.

Consent
Agenda

Voss made motion to approve the Consent Agenda including: A) Approve Bills; B) Meeting Minutes, March 21, Regular Meeting; C) Pay Estimate #1, Municipal Builders, Inc. for Water Treatment Plant No. 1; D) Pay Estimate #11, S.R. Weidema, Phase 1, Project 1, Utility Improvements; E) ~~Contract Addendum #8 Engineering Services for Castle Towers Sanitary Sewer Foremain Construction~~; F) JPA Street Maintenance Projects. Boyer asked to removed item E) Contract Addendum #8 Engineering Services for Castle Towers Sanitary Sewer Foremain Construction to be discussed separately. **Moegerle seconded; all in favor, motion carries.**

Item E –

Boyer asked the City Engineer to address this item. Jochum explained, “This item is as

Contract
Addendum #8
Engineering
Services for
Castle Towers
Sanitary
Sewer
Forcemain
Construction

required as per our engineering agreement, any project we need to do an addendum. This is #8 for the Castle Towers Sanitary Sewer Forcemain. This for the City portion only. This does include the cost of a meeting with the Met Council and there would likely be weekly meetings we would be involved with. In general, this includes the cost for work to complete the forcemain north of the Met Council project which will include construction, as we discussed. Also, we anticipate this will include right-of-way acquisition and an assessment process. This includes all those items.”

Voss said you state this is the City owned portion of this. So your services still include where we are in the same trenches? Jochum, “Correct. There will be some coordination, weekly meetings.” Voss said there is still some design. Jochum, “Yes.” Lawrence, “When he mentioned this was being proposed to be done, some of the residents felt that we could tap individual homes into these things. Or individual businesses. Is this the case, or not?” Jochum explained that you could physically, but it would not be economically feasible. Lawrence, “What do you think for dollars it would take to tap somebody in? Do you have a figure?” Jochum explained it would require a lift station, so at a minimum \$50,000.

Moegerle, “With regard to this proposal, it is based on upon assumptions. First one is that properties will be assessed. Does that have any specific meaning in terms of this? Why is it pulled out is it to say that it will be specially assessed?” Jochum, “No, just to say that all those costs are anticipated. This is a not to exceed, so it is our contract hourly rates, so we cannot exceed this amount. Davis explained as far as assessments go, the engineer has to prepare an assessment report and that is what this cost would be. Jochum, “Run the assessment hearings.” Boyer, “This has nothing to do with the original sewer project, correct?” Jochum, “Correct.” Boyer, “This is an extension of that project.” Jochum, “Correct.”

DeRoche explained it states in here, “That the City will be responsible for other costs, Soil work, Appraiser Fees and Easement Acquisition” estimated at \$20,000. He asked, “What are the chances of that coming in at about \$40,000?” Jochum explained that is just the overhead costs. The appraiser we are estimating will be about \$10,000, soils work probably another \$10,000. Easement acquisition was estimated at about \$150,000 but he has done some preliminary looking at this and thinks there are a lot of existing easements we can use on plats that we already have. DeRoche explained he is curious because, “All of a sudden we get slapped with a bigger bill then we are anticipating.” He understands that there could be a little bit of costs, but he would hate to see it go \$40,000 or \$50,000 than we are already anticipating. Jochum, “All these costs were included in the last write-up (approval), but previous we put 15% on it and right now we are at 11%. With our fee, the appraiser and the construction.” Voss asked this is the appraisal fee, it is the not the acquisition of properties, so the chance of that cost changing is minimal. Jochum explained that would be part of our scope, we would have to go out and negotiate after we get the appraisals.

Moegerle made a motion to approve Item E) Contract Addendum #8 Engineering Services for Castle Towers Sanitary Sewer Forcemain Construction. DeRoche seconded. Boyer, nay; DeRoche, Lawrence, Moegerle and Voss, aye; motion carries.

Ordinance 36,
Second Series,
Amending
Appendix A of
the City of

Davis explained that at the January 24 Planning Commission meeting, Ryan DiMuzio and Jordan Valder made a presentation discussing open sales lots. As a result of the presentation, Planning Commission recommended staff to propose a Zoning Text Amendment that would allow for open sales lots with regulations.

East Bethel
Zoning Code –
Zoning Text
Amendment –
Automotive
and/or
Motorcycle
Internet
Distribution
Sales

City Council discussed this same matter at their regular scheduled meeting on February 1 and again on February 15. It was the consensus of City Council, City Attorney, and Staff that the proposed business can be defined as “Internet Distribution Sales.” The City Attorney drafted a definition for “Internet Distribution Sales” and Staff and the City Attorney have developed draft language to regulate the use. The draft language was provided to City Council at the February 15 meeting. City Council directed staff to proceed with the zoning text amendment.

On February 28, 2012, Planning Commission discussed the proposed ZTA and directed staff to make some modifications. On March 27, 2012, a public hearing was held at the Planning Commission in which the public had an opportunity to comment on the proposed changes. There were no public comments.

The proposed Zoning Text Amendment as approved by City Council and amended by Planning Commission is in your write-up attachment.

Planning Commission recommends City Council approves the ZTA known as Ordinance XX, Second Series.

Voss made a motion to adopt Ordinance 36, Second Series, Amending Appendix A of the City of East Bethel Zoning Code – Zoning Text Amendment – Automotive and/or Motorcycle Internet Distribution Sales as amended. Lawrence seconded. DeRoche, “Are Valder and DiMuzio both doing this? It was his understanding one of these gentlemen was no longer doing this.” Jordan Valder of 180 184th Lane NE, East Bethel, explained that it is just him now. DeRoche asked “What the chances are that there will be twenty (20) vehicles sitting out front of the business?” Valder explained that it is not very likely right now. Lawrence, “Have you seen this Zoning Text Amendment? Can you live with this?” Valder, “He has and yes, he can.” DeRoche, “What kind of lease do you have with the property owner, Mr. Chies?” Valder, “Right now it is a year lease. He knows it is going to be redeveloped. After that we can re-sign for five years or whatever.” DeRoche asked the City Attorney for his thoughts and any concerns on the lease. Vierling, “The maximum term he can have on this is two years until renewal. Valder can certainly schedule his lease for his own term.” Boyer, “He was confused because he figured this going to be dead. Didn’t we have a problem with the number of vehicles?” Davis explained there was a limit placed on number of vehicles.

Moegerle, “With regard to definition of motorcycles. I think it impinges on the definition of ATV. So at the end of definition of motorcycles I would like to add after “tractors” insert: **vehicle designed and regulated by the State of Minnesota for operation on Highways** or in a place that makes it read well.” Boyer asked, “Along those lines aren’t we using the State Motor Vehicle definition of what a Motorcycle and ATV are? That has historically been our practice.” Moegerle, “I think that would be a good practice, but I didn’t see a reference to that in here.” Vierling explained this particular section has a separate definition for motorcycles so if you are not happy with this definition we need to refine it. Boyer commented that wouldn’t be a stronger ordinance if we used the State Motor Vehicle definition. Voss asked, and Moegerle’s concern is that it doesn’t include ATVs? Moegerle, “That is correct.” Voss read: not designed with more than three wheels and has contact with the ground, wouldn’t that do it? He asked do they still manufacture three-wheel ATVs? DeRoche said “No, those are illegal, you can’t sell them, not as a dealer.”

Moegerle, “If you look at our ordinance, 3-wheel ATVs are included.” Moegerle asked, “What would the City Attorney’s recommendation be on the definition of motorcycle?”

Vierling explained he has no problem if you want to add in the reference to the state statute on the motorcycle. If we include definition to the statutory reference of motorcycle should do what you want to do. DeRoche, "A lot of people are driving three-wheel trikes now." **Voss amended his motion adding the reference to the state statute to the definition of motorcycle. Lawrence seconded the amendment. Boyer, nay; DeRoche, Lawrence, Moegerle and Voss, aye; motion carries.**

Summary of Ordinance 36, Second Series and Direction to Publish

Davis explained that after the adoption of ordinances, the ordinance or a summary of the ordinance must be published in the City newspaper. Attached is the summary for Ordinance 36, Second Series.

Staff recommends Council adopt Ordinance 36, Second Series summary and give direction to publish.

Voss made a motion to adopt the Summary of Ordinance 36 Second Series and direction to publish. Lawrence seconded; all in favor, motion carries.

Dave Niven, 2731 225th Lane NE, IUP Renewal, Home Occupation, Screen Printing

Davis explained that Mr. Niven was approved on November 19, 2009 for an IUP for a home occupation. The business is known as Sierra Ink Screen Printing and Embroidery. The business is conducted out of the detached accessory structure. Product delivery and customer traffic is limited. Mr. Niven is the only employee.

During the screening process, the type of ink used is soy-based and biodegradable. The majority of the water used is recycled as well. Mr. Niven disposes of the end product off site. In 2009, Anoka County did not require Mr. Niven to have a Hazardous Waste Permit. However, staff has contacted Anoka County Environmental Services to ensure regulations have not changed. Anoka County will schedule an inspection and will notify the City if one is required. In the event Mr. Niven needs a permit from Anoka County, he will be required to submit the approved permit to the City no later than September 1, 2012.

Staff has inspected the site and has determined it is in compliance with City codes. Home occupations are a permitted use as long as the regulations set forth in the zoning code and IUP conditions are met. Mr. Niven has remained in compliance with the City code and approved conditions from the 2009 approved IUP.

Staff recommends approval of an IUP Renewal to allow the continuation of the home occupation known as Sierra Ink Screen Printing and Embroidery for Mr. Niven, located at 2731 225 Lane NE, East Bethel, PIN 03-33-23-23-0019 with the conditions as listed in your packet.

DeRoche made a motion to approve the request of Dave Niven for an Interim Use Permit (IUP) for the continuation of the home occupation known as Sierra Ink Screen Printing and Embroidery at 2731 225 Lane NE, East Bethel (PIN 03-33-23-23-0019) with the following conditions: 1) Home Occupation shall meet the specific home occupation standards set forth in the City Code Appendix A Section 10-18; 2) No more than three (3) persons, at least one (1) of whom shall reside within the principal dwelling, shall be employed by the Home Occupation; 3) No traffic shall be generated by any home occupation in a significantly greater volume than would normally be expected from a single-family residence; 4) Any sign associated with the home occupation shall be in compliance with the East Bethel City Code Chapter 54, Signs; 5) A home occupation at a dwelling with an on-site sewage treatment system shall only

generate normal domestic household waste unless a plan for off-site disposal of the waste is approved. If Anoka County Environmental Services determines a Hazardous Waste Generator’s license is required, Mr. Niven is responsible for obtaining and providing a copy to the City no later than September 1, 2012; 6) There shall be no outdoor display or storage of goods, equipment, or materials for the home occupation; 7) Parking needs generated by the home occupation shall be provided on-site; 8) There shall be no detriments to the residential character of the neighborhood due to the emission of noise, odor, smoke, dust, gas, heat, glare, vibration, electrical interference, traffic congestion, or any other nuisance resulting from the home occupation; 9) Parking of the work related vehicles must be on a designated driveway; 10) The IUP shall be for a term of three (3) years, expiring April 4, 2015, at which time, the applicant will be required to re-apply for an IUP; 11) Violation of conditions and any City Codes shall result in the revocation of the IUP. Boyer seconded.

Voss asked how the business is doing. Niven, “Good, keep as part-time business. This summer he plans on applying for a permit to get a holding tank out there so he doesn’t have to keep running things off-site. Then the holding tank will just be pumped out whenever it is full. Don’t think I have moved more than 200 gallons of waste since 2008 or 2009, when I started. I do recycle a lot of the water once the sediment settles to the bottom. As far as cleaning chemicals, may be using a teaspoon to tablespoon of the ink cleaner to a gallon of water. So it is very diluted. I was in Nevada prior to this and everything went into the City sewer and septic. And it was all checked out then too.” **All in favor, motion carries.**

S.R.
Weidema,
Change Order
6, Phase 1,
Project 1,
Utility
Improvements

Jochum explained that S. R. Weidema and MCES are requesting consideration of the attached change order for the Phase 1, Project 1 Utility Improvements. Change Order No. 6 is attached to your packet. A summary of the Change Order costs are as follows:

A. Contract Add Items:

1. 24” Time and Materials Work: Due to differing site conditions, this item pays for additional work to install the 24” pipe with open cut methods on a time and material basis where subcut depths exceeded 10 feet under the pipe invert between MH 113 and MH 114.
2. 42” Time and Materials Work: Due to differing site conditions, this item pays for additional work to install the 42 inch pipe with open cut methods where soft peat and organic silt soils were too unstable to perform with normal construction methods.
3. Swamp Excavation Spoil Pile Handling Claim: Due to differing site conditions, this item pays for additional work to minimize lateral soil movement by locating spoil piles further away from the excavation in areas where normal construction methods could not be utilized.
4. 187th Crossing Additional Dewater Claim: Due to differing site conditions, this item pays for additional dewatering costs needed to complete the tunnel.
5. Discharge Pipe Material Claim: The total amount of this claim, as shown in the table below, is the final negotiated settlement amount for additional costs to provide the purple colored 16 inch C905 PVC DR 14 pipe for the MCES forcemain.

B. Contract Deduct Items:

- 6. Deduct for Unused 42” Piling: This item includes deleting the unused contract items shown below for Items 6 through 8.

C. Summary of Costs

<u>Item Number</u>	<u>Item Description</u>	<u>Total</u>
1.	24” T & M work	\$ 47,276.55
2.	42” T & M work	\$117,723.21
3.	Soil handling claim	\$ 30,166.00
4.	Dewatering claim for 187 th Avenue	\$ 37,550.14
5.	Discharge pipe claim	\$ 27,318.00
6.	12.75” piling driven	-\$139,847.68
7.	Piling concrete	-\$219,626.55
8.	Piling steel	-\$ 37,902.00
Total Deduct		-\$137,342.33

Change Order No. 6 results in a net decrease in the Contract amount of \$137,342.33.

Staff recommends Council consider approval of Change Order No. 6 to S.R. Weidema with a net deduct amount of \$137,342.33.

Boyer made a motion to approve Change Order #6 for S.R. Weidema, Phase 1, Project 1, Utility Improvements in the amount of \$137,342.33. DeRoche seconded. DeRoche, “The unused contract items shown below, because of this change and when we get to the end of this project, will we be rebilled for this? Or is this a permanent change?” Jochum, “This is a permanent change. They went deeper and put in more rock. So in everyone’s opinion this is better than putting in the piling.”

Lawrence asked, “For the general public here, where is the area that we didn’t have to put the pilings down?” Jochum, “Midway between north of the big bank pond and Viking Blvd.” Moegerle, “It is the tale of legend these days about how many people and businesses did soil borings over there.” She understands Weidema did some, but not as much as others. But now we have a change order due to differing site conditions. Were these not able to be anticipated through a thorough boring sample of those areas? Why wasn’t it a part of the original bid on this area? Jochum explained, “In general limited borings are done when the bid is done. And then the plan is to do a lot more borings when construction begins. It is kind of a grey area. The soils had less sheer strength once tested than anticipated at first. Basically it was sloppier.” Moegerle, “But could that have been anticipated from those borings?” Jochum, “Maybe, if they did a lot of them from the beginning and maybe more excavation. Some of the testing basically you find out as you’re digging. Drilling a little 4” hole it is difficult to tell. Weidema got their Geo-tech involved. In general, part of this is not all due to differing soil conditions. They had two options, they went deeper, it created additional work for them.”

Lawrence, “On the first two items, is that time and material work?” Jochum, “That is correct.” Lawrence asked, “What is this about? Prelude to saving money?” Jochum, “Part of it is that and part of it is what was somewhat proved. That the conditions (soil shear) was less than anticipated. Soils as dug out had to be brought all the way out and to the back. They typically would not have to do that.”

Moegerle asked, "But wouldn't that be anticipated by the very sandy soils we have here? Her understanding is part of that was anticipated by the other companies that bid here. That is her understanding, she could be wrong." Jochum, "Can't answer that, he doesn't know what other companies bid." Voss said he wants to make clear this portion of the work is fully funded through MCES, so not a City cost, not is it a City credit. Jochum, "That is correct, other than some of this piling you were responsible for in Change Order #1. So since we are not doing the piling, you are getting a credit." Lawrence, "Can we get it documented what that would be?" Jochum explained he can get that to Council. Moegerle, "We pay a percentage of this when hopefully businesses pay a connection or access fees. So it is not completely fair to say that MCES is paying this, because eventually it is passed on to East Bethel, and hopefully not East Bethel residents." Boyer, "Actually it is passed onto every metropolitan user." Voss said this doesn't change the rate that MCES is going to charge. Davis, "This doesn't change the rate, but if it reduces the project cost it could have some affect on the final assessment too." **Moegerle, nay; Boyer, DeRoche, Lawrence, Voss, aye; motion carries.**

Davis explained that in the amending of the Alcohol and Tobacco Ordinances, the hearing portions of these were 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 consideration of amending the Alcohol and Tobacco Ordinance in order to have a hearings process included in their amendments. Additional updates and revisions would be forthcoming from the City Attorney concerning the content of the proposed Ordinance. But the City Attorney has issued his opinion as submitted.

Staff is recommending the approval of the hearings ordinance.

Moegerle made a motion to adopt Ordinance XX, Second Series, Notice, Hearings and Appeals. DeRoche seconded. Boyer, "I am going to vote against this, because I don't think Council should act as the hearing officer. Think it is time the City hires a professional to act as the hearing officer for dog bites and things like this." Moegerle explained she doesn't disagree, however the definition of hearing officer is: The City Council or an appointed board, commission or representative. So that covers your objection. Moegerle asked, "What other objections do you have?" Boyer, "That is his objection and it goes back a long time."

Voss asked the City Attorney, how do other communities work, how do they use a hearing officers. When we talked about this before it was retired judges, etc. Vierling, "There are a number of retired attorneys and judges. You can always engage the State Department of Appeals, they have to send a hearing official up. There is a price to pay for that. They will conduct your hearing for you. You can hire an individual with background, retired attorney, judge, magistrate to conduct that. A number of communities do have contracted officers to conduct these hearings. The role of the hearing officer, you have to be able to separate a little bit. If you have administrative penalties in a hearings ordinance, which specifically assigns penalties and fines, let's say for mowing violations or community type violations through the hearing officer, that hearing officer can render a final decision. Usually a monetary fine, no more than a \$100 or something of that nature."

Vierling, “In terms of license violations, permit violations, uniformly those hearing officers don’t normally render final decisions. This is some of the text that I am having problems with. The hearing officer will conduct the hearing, make the findings and then make the recommendation. The recommendation will go to the City Council either to adopt, modify or reject. If you read the first sentence it says any violation of the code, don’t think you really intend that or want that. Then you really don’t have the opportunity to impose an administrative penalty for any violation of your code. Don’t want this to be confused for other items in your code, such as items that are charged out as misdemeanors.”

Moegerle, “Referring to Section 18.180 of our Code, which is regarding tobacco, this section on hearing officer is taken directly from that without change. She read this section. Vierling explained he doesn’t have a problem with the hearing officer or the definition of the hearing officer. But, you have to know what the hearing officer is there to hear. Are they there to make a final decision or to make a recommendation. Moegerle, “I agree, but at this point she doesn’t think the City has the wherewithal to hire a hearing officer. So for the foreseeable future the hearing officer is the City Council. At the point where the hearing officer is no longer the Council then amendments would be appropriate. Would that solve your concern?” Vierling, “No, that doesn’t solve it. To some extent there are going to be matters where he is going to recommend that you order a hearing officer. There is going to be one later tonight where he is going to recommend that you do order a hearing officer. Because of volume or complexity, the hearing process that would really be taxing on your Planning Commission or Council if you intended on doing it yourselves.”

Voss said the reason he is asking perhaps a way to address this is it says representative and that seems vague. Suppose we add an additional identifier there such as “Professional Hearing Officer.” Voss said and then think we would want to set some parameters around who we would want to appoint in that position. Vierling asked, “But, do you really want to do that in the ordinance which he would suggest you don’t do. Or do you want to do that when you get around to hiring or engaging someone for the position and then build what you want for qualifications, professionally.” Boyer, “We have had tobacco and liquor ones that have appealed to the courts. Think the City would be better served to have a professional holding the hearings and making recommendations to the Council.”

Vierling, “The major feature you have in some of these issues is making sure the record is preserved. Prepared correctly, all the evidence comes in. The documents are numbered and they do their job to make sure the record is complete.” Voss’s vision of it is irregardless whether we have an appointed hearing officer or Council as hearing officer, do believe Council will have the same examination as before. DeRoche, “Doesn’t have a problem with using a hearing officer in extreme cases. But I think part of the job of being up here is having to make some hard decisions and using a little discretion. A hearing officer doesn’t know everyone in the City. And is this going to be for certain ordinance violations or are we going to just write through the book. He is more for working with people and he doesn’t know that a hearing officer is going to do that.”

Voss asked would the hearing still happen here at Council? Vierling, “More often than not, the hearing officer conducts the hearing themselves, the record is preserved, it is open to the public. Those hearings are typically not conducted before Council. Then the hearing officer after the hearing is closed, develops a written record, makes a set of findings and makes a recommendation to the Council. Based on that, Council either adopts, modifies it or rejects it. Voss asked so Council wouldn’t have the opportunity to hear any direct testimony. Vierling, “The role of the Council is not to reopen and open the hearing.” Voss said he

agrees, it is removing that personal touch. But there are times we would almost want that. DeRoche asked, "Who pays for this?" Vierling, "There is a reference here to a court transcript and if one of the parties wants to engage that, they would need to pay for it. Most of your hearing officers are going to conduct their hearing by audio tape."

Moegerle, "When you search for hearing officer in our code, it says the City Council shall serve as the hearing officer, under "excavation", under "dog bites" and other issues. It is riddled throughout our Code of Ordinances that the City Council is the hearing officer. So to get away from that, we would have to amend all those things as well." Vierling, "That goes to the initial sentence of this. It says it applies to all. Think you can draft the language so the Council can determine on a case-by-case basis which one they are going to use. That is not an automatic default right to an outside person. Probably what you are going to want to do at least until you have developed some history over the issue, until you have a comfort level." Voss asked do you have concern over this? He thought this came from you. Vierling, "He would like to wordsmith a few of the items on this."

DeRoche made a motion to table Ordinance XX, Second Series, Notices, Hearings and Appeals. Voss seconded. Davis explained as part of your motion to table, the next two ordinances are dependent on this ordinance being adopted. Vierling explained that they are connected, he thinks you will have to. Voss asked can we treat them as separate so we can raise some issues. **All in favor, motion carries.**

Ordinance XX, Second Series, Amending Chapter Alcoholic Beverages

Davis explained that per Council direction, staff was instructed to review Section 6-93 of the above ordinance, and recommend changes to Council that would provide additional clarification and discretion in the administration of penalties and fines under the ordinance.

Staff recommends City Council discuss the proposed amendments to Chapter 6, Article IV, Section 6-93 of the City Code and other changes as presented in the draft attachments.

Voss asked when we discussed this last time, he thought the consensus was on the first violation we were going to change the language so it was may. And in this version, the second violation is may, but he thought we were just going to deal with just the first violation to have the flexibility. Moegerle, "As she reads it, the first violation is may, second violation is may. So when we get to the second violation both of them will, is that what you are suggesting?" Voss said he thought we were just changing the first violation, and now both the first and second are "may". That is what we are discussing. Voss said the first violation okay, you made a mistake. The second violation, shame on you, you knew better. Moegerle, "Second violation could be your second violation in five years, does that mean "may"? Voss said he got a speeding ticket and it took him 30 years to get another one. Moegerle. "But you got another one. Your point is taken." Voss said he didn't think we discussed it and it is in here.

Lawrence, "He doesn't see a problem with "may", there might be a special circumstance. Probably not, but if you take it out then you take out the leeway. If you put in "shall", then you take out the leeway." Voss said especially when they are here for their first violation and we remind them that if they have a second violation they will get fined, they will lose their license. He said that is setting a standard for the community Moegerle, "What standard would someone have to meet to evoke the may? It would have to be a high standard. It will be the standard of the community, which the five us, as the hearing officers set. There is nothing wrong with may, the penalty is out there. If you give them a very firm lecture at the first violation, whether it says "may" or "hall", the penalty is still out there."

Boyer, “He doesn’t see a problem with “may”. He has a larger problem with additional fines and violations. You could have violated this four times, but that doesn’t mean you are going to get your license revoked. Would like to see this may result in we suspend your license.” Moegerle, “This says the same thing, we just don’t repeat it over and over again.” Voss said this was hard to follow there was so many changes. Moegerle, “The idea was to simplify it and make it clear. Some paragraphs were ten (10) lines long.” DeRoche, “How about we add an E to #2 so you can do a suspension.” Moegerle, “But you can, under this.” Boyer, “Appreciate this, he sees how it is structured. If someone walked in here and had two violations in a month, don’t think they are taking this seriously.” Moegerle, “You have the suspension you can add under “E”.

Voss asked in terms of violations, does our current ordinance state within these categories a suspension of license? Davis said, “Yes, it does.” Voss said then it should be listed under each of these. He remembers when it happened to Tom Thumb, it was much more an impact to lose the license. DeRoche, “As long as it stays “may” instead of “shall.” Boyer, “What is the opinion of the City Attorney?” Vierling, “Structure of this draft can be confusing. “May/shall” think Council can give direction of what they want there. Would like to see the opportunity within each section as far as totality of what the fines and sanctions can be, they don’t have to be. At least that way every violation when you are reading it and enforcing it, you know what there is. He grants you there is duplication there. Voss said we talked about this many times, thought the last discussion was about “may/shall”. Moegerle, “Thinks this simplifies this, but if it’s not the consensus, it’s not the consensus.” Boyer, “Don’t think there is anything wrong with it, but.” Moegerle, “Think you and I read things like this more than the others.” Voss said that has nothing to do with this. Moegerle, “It has to do with our familiarity with these types of documents.”

Vierling, “What he is hearing you would like to do, is go back to the draft you had before and just change the “may/shall” thing.” Voss said if the consensus is to have “may” in the second violation we can discuss that at the next meeting. Boyer, “Correct me if I am wrong, but if we go with “shall”, there is no going back.” Lawrence, “If they are a repeat offender, that “may” will be a “shall” right away.”

Voss made a motion to table Ordinance XX, Second Series, Amending Chapter Alcoholic Beverages to allow staff to redraft. DeRoche seconded; all in favor, motion carries.

Ordinance 35,
Second Series,
Amending
Chapter 18,
Article IV
Regulating the
Sale of
Tobacco

Davis explained that this proposed Ordinance amendment would amend Sections 18-180 and 18-181 of the Code of Ordinances of the City of East Bethel as submitted in the attachments and remain consistent with Council directives as to the administration of penalties and fines under the ordinance.

Boyer, “He has the same comments as the Alcohol ordinance for the terms of fines and penalties.”

Voss made a motion to table Ordinance 35, Second Series, Amending Chapter 18, Article IV Regulating the Sale of Tobacco to allow staff to redraft with the same comments as the Alcoholic Beverages Ordinance. DeRoche seconded, all in favor, motion carries.

Davis explained that City Council approved a revision of the ATV Ordinance on December 21, 2011 and permitted ATV's to operate within the City Right of Way under certain conditions. As part of the motion approving the revisions, a review of any adverse implications that may have resulted as a result of the revision would be conducted in 90 days.

The time period required for initiating the review is now in effect and Council may wish to address this matter. To date, staff has received two complaints regarding the policy and these are as follows:

1. An anonymous caller complained about the revision to the Ordinance and expressed her thoughts as to what might occur as a result of the revision; and
2. A property owner complained about a group of ATV riders cutting the chain across his driveway to access Coon Lake.

Other than these two calls, there have been no additional complaints at this time.

Staff recommends Council review any affects due to the Ordinance revision as required in the motion for approval.

Voss said he has heard from some of the deputies. Asked has he talked to Lt. Orlando. Davis, "He had a discussion with some of the deputies and none of them had any real issues at the time." DeRoche, "He had a discussion with Lt. Orlando this afternoon and talked to the DNR and asked if there were any issues. Both said no, nothing out of the ordinary. Like he explained he put books and CDs out here and at Coon Lake Market. And they have a sign where they can change the letters, that has the rules. Anybody that rides an ATV in the State of Minnesota, born after June of 1987 has to take an ATV Safety class. And if they are riding and they don't then they are violating the law, no matter what. He has also stopped and talked to deputies at Public Works and they have told him there haven't been any problems."

DeRoche, "I understand that an ATV rode through and cut Doug Tierney's fence. But you can't ride on a county road unless you have a Class II. If you regulated it, (there are probably 40,000 ATVs in the State of Minnesota, he knows that because he was one of the first instructors in the state), there are numerous safety classes out there and he hasn't seen people just driving down the middle of the road. When I see people riding on the right hand side of the road, I just refresh their memory about wearing helmets or having a license. This City ordinance doesn't supersede any state laws. Deputy has stopped people and told them when they can and can't ride. This ordinance has nothing to do with people driving up and down the ditch."

Boyer, "His point in this, he voted against this, we pass ordinances not because a majority of people do things, it is but because of idiots. We use ordinances and laws to regulate idiotic behavior." Voss asked on County Road 22 are ATVs allowed to drive on the shoulder during nesting time? DeRoche, "No, county road, Class I, can't drive down side of road." Voss asked, so the instances where they are allowed to ride on the ditch, can they ride on shoulder to get around? DeRoche, "You are allowed to come up on the shoulder to get around." Voss said the reason he is asking is, in his area, there are a lot of driveways and they have to come up on shoulder. He said the way this is written now, ATVs can ride in right-of-way. And he would rather see it written like our snowmobile ordinance is written, have to be on City street. Voss said he would rather have the ATVs on the City street. Because in residential neighborhoods that right-of-way is as good as a person's yard. Haven't heard an issue yet, but if going to tweak this at all, would rather see them riding in streets.

Voss said back to original question about sheriff's office, haven't heard any comments either. But the comments he has heard, is right or wrong, or ordinance is most lenient of all. He has noticed more, never seen ATVs riding on Wild Rice before. That particular one bothers him because we just widened it for pedestrians. Lawrence, "One comment he heard from our sheriff's office was our ordinance was so vague and misleading, they couldn't enforce anything on it." Voss said that is a reason to clean up the ordinance. He said his only suggestion is to change it from "right-of-way" to "City street". Moegerle asked, "Where do you want to change that?" Voss said page 99 of the packet. Lawrence, "Do we have a licensing plan so if someone violates this we can turn them in?" DeRoche explained it is a state requirement to be licensed. He explained the license requirements. Boyer, "He has gotten a lot of complaints." Moegerle explained she has gotten an e-mail or two about issues. However she lives right at Coon Lake and hasn't seen any violations by adults. The violation she saw was at the pavilion and it was a kid. And she has heard complaints about the fact of the ordinance, but not heard (violation) complaints besides Doug Tierney's.

Sylvan Street
License
Agreement

Davis explained that on September 7, 2011 City Council approved a license agreement for Andy Nelson to utilize a portion of the Sylvan Street right-of-way for use as a septic tank and well location. Mr. Nelson appeared before Council on December 21, 2011 and expressed concern that the license did not address any terms of duration on the use. Mr. Nelson further requested that Council consider vacating the street or amending the agreement to include a fixed term for the license.

Per Council direction on December 21, 2011, staff was instructed to work with Andy Nelson at 4640 East Front Boulevard to prepare a license agreement amendment that would address the issues of the use and term for a portion of the Sylvan Street right-of-way for a septic tank and well location. Staff was also instructed to work with the MPCA to determine if there were any programs that were applicable to this situation.

In addition, a public hearing was held to consider vacating the street but the petition for vacation was denied by Council. As a matter of concern for this issue, Council agreed to work with Mr. Nelson to attempt to resolve the question of a term for the license. This license agreement would serve a dual function, as it would permit Mr. Nelson to relocate his systems, which in turn, would permit Doug and Linda Foster, adjacent property owners on the east to Mr. Nelson, the space to correct deficiencies in their system. Staff checked with MPCA to see if there were any available programs that might address this type of situation. Staff was told by MPCA that they had no programs that dealt with small scale issues of this nature and that their programs were directed toward public infrastructure projects.

City Attorney, Mark Vierling, has reviewed Mr. Nelson's submittal and recommends the changes that are presented in Attachment #2 to address the terms of the license and are summarized as follows:

"The term of this License Agreement and the License shall begin on the date stated in the first paragraph of this License Agreement and shall continue until the earlier of the following dates (which earlier date is herein referred to as the "Termination Date", namely: a) the date on which public sanitary sewer service has been extended to and is available for immediate connection to the residence located on License Holder's property or b) the date on which the City has decided to open and improve the right-of-way of Sylvan Street as it abuts License Holder's Property by the construction of public street improvements within the right-of-way; (c) the date upon which the City Council decides to vacate the right-of-way pursuant to Minn. Stat. 412.851; or (d) the date upon which the City Council determines that it has a

public use to which the land needs to be applied which is determined by the City Council to be inconsistent with the purpose of this License Agreement.”

Staff recommends approval of the amended license with the definition as to the terms of the agreement as presented.

Boyer, “This seems to definitely have a term unless a, b, c or d happens.” Vierling, “It doesn’t have a definite term. Understand the applicants’ concerns. In reality, the City can issue a license in this nature, but this is not really under state law, is not your property. You hold it in benefit for trust for the public, you have to have it available to the public so the conditions especially “c” and “d” keep with the City the authority to revoke the license at will. So it really comes down to a judgment call by the property owner as to whether or not they feel there is undue risk for them making that investment under those conditions.

Voss made a motion to approve the license agreement for Mr. Andy Nelson at 4640 East Front Blvd. NE as amended by the City Attorney. DeRoche seconded. Voss said this is essentially what we talked about last time, correct? Vierling, “Yes it is.” Moegerle, “What about the issue of removal of trees? I know that Mr. Nelson has said he is not going to remove any trees but then he may not be there for as long as this license agreement is in place. Or is this specific to him and not to any successors?” Vierling, “The purpose of the license agreement is only for him to install his facility there. He doesn’t have authority to do anything other than that. And he will have to coordinate with City Staff if there is a tree in the way of where he has to place a line. He doesn’t have authority to do anything other than place it and maintain it.” Moegerle asked “Does this move on to his successor and interest should he sell it?” Vierling said, “Yes.” Boyer asked, “Mr. Nelson, since your neighbor needs land for theirs and you need land for yours, why don’t you just swap some land?” Andy Nelson of 4640 East Front Blvd. NE, “The neighbor that needs to address his system, doesn’t have land to give. Really a puzzle tightly to fit into the land.” Boyer, “So you are saying you don’t have the land to give.” **All in favor, motion carries.**

Lowell Friday
– IUP
Discussion

Lowell Friday of 18215 Greenbrook Drive NE, “We propose the agreement with the Council. We had first met with the City Administrator to try to carry on a renewal. We ended up late. Got my paperwork filed two days before the deadline. Basically trying to solve the problem. Agreed in meeting with City Administrator and Mayor to cease my operation with horses, keep horses there, but wouldn’t do boarding or stallion breeding. Can’t move stallions because state law requires a 5’6” fence and some people are afraid of stallions. None of boarding places will take stallions, don’t have facilities for them. Little kids in neighborhood come and play with mine. Have a stack of okays of neighbors that kids that can come play with mine. Got pictures of horses that were taken.

Vierling asked, “Mr. Friday, I don’t mean to interrupt you, but can we frame the issue for the Council here? I received a call from your attorney today, Mr. Al Johns?” Friday, “That is one of his attorneys.” Vierling explained, “As everyone is aware we have criminal matters pending in this matter. Mr. Friday’s Interim Use Permit (IUP) expired on the 18th of March. He applied for a new one two days prior. City staff had been sending out letters to him regarding renewal. The old IUP, I’ve determined, and as I’ve instructed staff, has lapsed. Mr. Friday certainly has every right to apply for a new one. He has applied for a new one and will go through and have the hearings for that.”

Vierling explained he thinks the issue that Mr. Friday wants to bring to you today is, “Is he going to be allowed to keep the animals he has on site now, or will he will be required to

remove them before we get to the issue of applied IUP. And he has recommended to staff that because the old IUP as far as he has determined has lapsed, those horses should be removed and taken off the property. We will be scheduling the public hearing on the IUP soon, which is one of the other issues we will be discussing tonight. But this singular issue he wants to present to you is, "Does he have to remove the animals from the site or can he keep them their until such time as you rule on his IUP request?"

Friday, "That is basically correct, we made a gentleman's agreement that he would stop his operations." Davis, "Excuse me, Mr. Friday. You say there was a gentleman's agreement with whom?" Friday, "When we talked with you and the Mayor." Davis, "There was no agreement, let me make that perfectly clear." Friday, "The agreement was that we would take this to the lawyers and let them look at it, but the agreement was that this would possibly work out." Davis, "No, there were no guarantees. Let's make that abundantly clear, there were no agreements made on the City's behalf." Friday, "You gave me a written deal that you wanted the operation stopped but I could keep the horses." Davis, "That is totally incorrect, I told you to have your attorney contact Mr. Vierling so we could get clarification in this matter. It was my opinion that your IUP had lapsed and that you were not entitled to continue your operations. That is why we are here tonight."

Voss said he thinks we understand there is a disagreement about the timing here. Lawrence asked, "How many horses are on Friday's property now?" Friday, "I have 27 horses, can move mares off, if that is a necessity. But the stallions would just be ridiculous." Lawrence, "So your request is to keep the horses on the property until the court case?" Friday, "Yes, I won't board, I won't do any breeding, I won't do anything. Just going to keep the horses there. But, will move all the mares out to pasture, because contrary to East Bethel, Ham Lake grandfathers me in and because I am a farm and have been a farm for 168 years. Lawrence asked, "So how many horses total?" Friday, "I could cut it down to six total. I have to have them, because you are required to have so much shelter and a 5'6" fence and most people do not even have a place where you can legally take one of these stallions. I have gotten down on my number of stallions, my permit allows for fourteen (14) and now I am down to six."

Moegerle, "I am very concerned about this from the standpoint that, if we allow him knowingly to operate, to have these animals on his property in East Bethel without the proper permit, the precedent of that will overwhelm us with people doing this. We need to abide by our ordinances and the ordinance says you can't have those animals without a permit. Plenty of notice was provided to Mr. Friday, well in advance of expiration of his permit, in an unusual way (because she doesn't think we usually give people notice that their permits are about to expire). I am not inclined to afford him a special dispensation from the operation of our ordinances that wouldn't be given to other permit holders.

Voss said he wants to hear legal. Vierling, "He concurs with Council Member Moegerle. We have enough irons in the fire with both the criminal and potential civil with the IUP coming up. There has been plenty of time afforded. Adequate notice was given, even though notice wasn't required. He realizes Mr. Friday disputes that, and he has every right to dispute that. His recommendation to the Council is that he is instructed to remove the animals."

Voss asked is that the process when an IUP expires? Vierling, "That there is no longer any permit. You can (if you so wish) allow the animals to be there while the matter is being heard for the IUP, that is your call. Voss asked when is that scheduled for? Vierling, "That is one of the things we are going to be discussing. I am going to be asking to schedule this in the next four to six weeks." Voss asked if Mr. Friday continues to have horses on the

property, it then becomes a non-compliance issue, and then we have to start proceedings on that, correct? Vierling said, "Yes." Voss asked and how long does that take, four to six weeks? Vierling said, "Yes." Voss said that seems like an odd situation.

DeRoche, "We have had people come in and had to get permits for two horses and had to get IUPs and were questioned on it." Vierling, "The other part that comes into play here, is some Council's don't agree to move the matter down the road and don't require the applicant to come into compliance. They have the applicant post some kind of financial bond to assure prompt compliance if the Council determines that they are not going to issue. Voss asked Mr. Friday, are you suggesting you reduce your current herd from twenty seven (27) to about six? So it is a substantial reduction and at that point we would be pursuing something for six horses, instead of 100, at conclusion of that just six more horses, doesn't seem as monumental, even if it is twenty seven (27) that it is now. To him to the extent we can take efforts to address the permit without substantial costs. Vierling, "I think you are looking at substantial costs potentially either way. What he is concerned about is Mr. Friday has his property in East Bethel, his property in Ham Lake. He has twenty seven (27) horses now and those horses can migrate back and forth hourly across the line in any which way you have." Friday, "Some of these horses are at a different facility in Ham Lake. Also, have Mary here who can tell you the horses are in Ham Lake under her. The stallions cannot run loose. I am about the only facility set up for stallions."

Voss asked if he can make a suggestion to staff, recognize Mr. Friday is operating without a permit at this time. Would like staff to take a look and see if there are issues with boarding the stallions. If there are other options, then he needs to move the stallions. Boyer, "I don't think Mr. Friday took this seriously. I am not interested in a compromise." Moegerle agrees. "There is not an amount of a bond that satisfies this. If there was a gun club that was expired, we wouldn't allow that to continue."

Vierling, "He would like authorization to move forward with a hearing officer. This type of hearing would be a real burden for the Planning Commission and staff. He has several retired judges he would like to check with. Otherwise he can go to the State Office of Appeals." Voss asked in terms of IUP appeals ordinance, who bears the cost of the hearing officer? Vierling, "The cost would more than likely be borne by the City."

Voss made a motion to direct staff to move forward with acquiring a hearing officer in the matter of the application for an Interim Use Permit (IUP) for Mr. Lowell Friday, 18215 Greenbrook Drive NE, East Bethel, MN 55092. DeRoche seconded. Boyer "Do you want a budget for this?" Vierling, "He would be more comfortable coming back with this." Voss said he would like to suggest that the hearing is held here. Vierling, "It will be held in this building." **All in favor, motion carries.**

Moegerle made a motion to direct staff to proceed with the regular method of dealing with permit and ordinance violations, regarding the Interim Use Permit (IUP) expiration for Mr. Lowell Friday at 18215 Greenbrook Drive NE, East Bethel, MN for horses. Boyer seconded; all in favor, motion carries.

Schedule
Council Work
Meeting –
Discuss
Recommen-

Moegerle, "There was a substantial amount of documents sent out and presentations, so the meeting could be lengthy." Voss said he was at the meeting the other night. Does the EDA have recommendations and do they want to present those to us? Davis, "We presented this to the EDA at the last meeting in case they didn't have the opportunity to come." Voss said what he means is from what he understands you want to do is start to implement some of

these things and he would think that the EDA would make the recommendations to Council. Or do it as a joint session. Moegerle, “We are having an issue with getting everyone to attend joint sessions. The other issue is Council timelines, Council priorities. This needs to be coordinated with the EDA as well. There may be a priority that Council sees that the EDA doesn’t see or vice-versa. It would be valuable to have all twelve of us together, but we haven’t been able to get all five of us together. So, it’s something that needs to be discussed to mutually inform each other. Voss asked and the EDA doesn’t have any inkling to make a recommendation to Council? Moegerle explained that, “Our last discussion was what Ady Voltedge had come up with, at our March meeting. Our next monthly meeting will be the end of April. We frequently have meetings in between, but attendance is spotty because it is not a scheduled permanently set date. So again, facing the problem of getting everyone together for meaningful dialogue, where we are likely to be able to get together even before the EDA meets.”

Voss said his point is that is why we have commissions, he would like to hear the EDAs thoughts on this. Davis said then we should schedule a joint meeting with the EDA. Moegerle said, “And my sense of what happened at the meeting of the EDA was acceptance and consensus of the Ady Voltedge report. This was not formally voted on.” Voss asked can we get the minutes so we can see the discussion? So they had discussion about the report? Davis explained we presented an overview of the report. This was a meeting that Council was invited to. We can provide you with the minutes.

Moegerle asked, “Is a joint meeting what you would prefer?” Voss said he would like for them to have their meeting first and then have them present this to us. Moegerle, “Would you like to have a joint meeting after that?” Voss said we can have a joint meeting after that. Moegerle asked, “Can we all attend the EDA meeting on April 25th?” Voss said we can do this on April 25th as a joint meeting, just be discussion, and then we can meet again on May 2nd before the Council meeting at 6:30 p.m. if needed. Moegerle, “I feel there is a greater urgency than this timeline reflects.” DeRoche cannot attend on the 25th. Voss asked the documents, know we got them in pieces by e-mail. Davis, “He has a copy of the plan. Anyone that wants a copy, we can get one to you. We will get you a copy electronically and a hard copy to those that want one.”

Council
Reports –
DeRoche

DeRoche, “There have been a lot of fires. Chief DuCharme sent out a couple maps today on the fire danger. Burning ban still on. Can have recreational fires. I attended the stakeholder’s meeting on Monday, and it was very good.”

Council
Reports –
Moegerle

Moegerle, “We have a lot to do with the Ady Voltedge issue. They have given us an action plan and we need to sort that all out. There was a great meeting with the Sandhill Crane on March 23rd. We had representatives from Linwood Township with their ecological, environmental concerns. The whole group is interested in doing a regional plan to an area of eco-tourism, eco-recreation and eco-education including Coon Lake, Martin Lake, Typo Lake and circling around to Cedar Creek and East Bethel Blvd. There is a lot of grant money available for regional environmental development. The idea is it would be a bike, walk, educational experience. I discovered in the City ordinances that “highways” are defined as “public places”, “public places” are cemeteries and school yards, so our cemeteries and school yards are “highways”. Also, it is spring and we need to remember our dogs need to be on leashes or under control.

Council
Reports –

Voss asked have we heard anything from the DNR when burning will be lifted. Davis, “As DeRoche said the Fire Chief sent out some information that this area was in the high incident

for fire danger.” Voss asked can we get an update on the project on 221st and 65. Davis, “The project will be bid on the later part of July. It will start in August. MnDOT will be done white-topping by Labor Day. Voss asked when will temporary lights go up? Davis, “Maybe by next month.” Voss asked at what point do IUP renewals become a staff item. Davis, “They have always come back to Council. They way it is currently set up.” DeRoche, “Think it is a good idea.” Boyer, “It could be put in the consent agenda.” Voss asked in the minutes we had tonight and the last meeting, seemed like we had a lot of quotes, quotation marks. Question he has if down the road there is a case, to him it reads like these are verbatim, and because Council approved them, they are certified. Vierling, “Your official record by statute and law is the minutes. He can tell you in the last five to ten years with cablecasting, and tapes, whenever we have had issues with civil litigation, the tapes are replayed and transcribed. Davis, “Just a matter of cleaning it up and putting it in proper grammatical form.” Voss said that is fine, but if approving these, he wanted to bring this up. He said it seems odd and cumbersome.

Council
Reports -

Lawrence, “Talked to a few residents that were having a hard time getting ahold of staff at City Hall.” Davis, “This staff person is the only staff person in this department right now and is very busy. Generally, these staff members are involved in enforcement type activities of Council. And a lot of times when people don’t hear what they want to hear from them, they automatically speak negatively of these staff members. Springtime, in the building department, a lot of improvements are going on, and our staff is out doing a lot of inspections.” Lawrence, “A resident asked about the sirens down at Coon Lake Beach, if they worked.” DeRoche and Moegerle both indicated that the sirens work, they went off today at 1:00 p.m.

Closed Session
– 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 a matter of litigation, Great River Energy (GRE) vs. the City of East Bethel, District Court File # 02-CV-115638. After the closed session, Council will return into open session to announce any motions or actions.

DeRoche made a motion to go into closed session to discuss Great River Energy vs. the City of East Bethel. Voss seconded; all in favor, motion carries.

Vierling explained that the Council has concluded the closed session. Attending were Council Members Moegerle, Voss, and DeRoche and Mayor Lawrence. Council Member Boyer was not able to be there. Also attending were Jack Davis, City Administrator and myself, City Attorney. Council and the Mayor received an update from staff regarding possible terms of a settlement and gave advice to staff, but no specific actions or motions were made.

Davis explained that staff is recommending that Council consider working towards a settlement on the Great River Energy issue. In working with Athens Township, they have agreed to consider the approval of a Conditional Use Permit (CUP) for Route E1 with the condition that East Bethel participates in the improvements for the repair of some boundary streets that are commonly shared by both Athens Township and the City of East Bethel. This involves 245th Avenue NE, east of University Avenue, including re-grading and Class V and 245th Avenue NE and Highway 65 (entrance to Castle Towers), and west 700 feet. It is recommended that Council approve participation in this project in an attempt to work towards the settlement of the GRE issue.

Voss made a motion to approve participation with Athens Township on the improvements for the repair of some boundary streets that are commonly shared by both Athens Township and the City of East Bethel. This involves 245th Avenue NE, east of University Avenue, including re-grading and Class V and 245th Avenue NE and Highway 65 (entrance to Castle Towers), and west 700 feet. This participation is an attempt to work towards the settlement of the GRE issue. DeRoche seconded; all in favor, motion carries.

Vierling, “There is an issue that Athens Township has with regard to potential annexation. The concern they have affects the binding of both this community and that community. Because the principles involved potentially have conflict with a number of legal requirements he requests that the Council allow him to contact Athens Townships legal representative and see if we can work cooperatively to come up with terms and conditions that meet the requirements of law and to satisfy both of our clients.

Moegerle made a motion to direct our City Attorney to work with Athens Township’s legal representative to cooperatively come up with terms and conditions that meet the requirements of law and satisfy both Athens Township and the City of East Bethel. Lawrence seconded; all in favor, motion carries.

Adjourn **DeRoche made a motion to adjourn at 10:25 PM. Lawrence seconded; all in favor, motion carries.**

Attest:

Wendy Warren
Deputy City Clerk