

## EAST BETHEL CITY COUNCIL MEETING

February 15, 2012

The East Bethel City Council met on February 15, 2012 at 7:30 PM for their regular meeting at City Hall.

MEMBERS PRESENT:        Bob DeRoche                Richard Lawrence        Heidi Moegerle  
   Steve Voss

MEMBERS EXCUSED:        Bill Boyer

ALSO PRESENT:            Jack Davis, City Administrator  
   Mark Vierling, City Attorney  
   Craig Jochum, City Engineer

Call to Order        **The February 15, 2012 City Council meeting was called to order by Mayor Lawrence at 7:30 PM.**

Adopt Agenda        **Moegerle made a motion to adopt the February 15, 2012 City Council agenda with the amendment of adding to 7.0 Consent Agenda the following items: 9.0 B.1 Pay Estimate #1 Construction of the Elevated Storage Tank No. 1; 9.0 G.3 Aggressive Hydraulics Time Extension. Voss seconded; all in favor, motion carries.**

Presentation – Springsted, Inc. – Refunding 2005A GO Public Safety Bonds        Davis explained that a representative from Springsted, Inc will be available to review the proposed refunding of the 2005A GO Public Safety Bond issue. This bond issue financed the construction of Fire Station No. 1 on Viking Blvd. and installation of weather warning sirens. Debt payments are supported by a direct property tax levy.

   Kathy Aho explained that she is the President of Springsted, Inc. and that she has worked with the City of East Bethel previously. She periodically goes through debit issue with clients to see if we can lower the rate and reduce payments. Market rates currently are attractive for refinancing debt; the interest rates are historically low.

Aho explained that candidates for refunding have existing bonds with maturities that go out in time. They originally sold at rates higher than current market rates, and have a call date in advance of maturity. Aho showed a table of the bond rates for the last five years. The 2005A GO Public Safety Bonds that were issued in 2005 are approaching their call date on April 1, 2014. Current interest rates are from 3.5% to 4.3 %. These are paid by property taxes.

Aho explained the projected future savings. The estimate projected future savings is a net figure of approximately \$142,000. The projected present value savings is estimated at approximately \$125,000. The rate on the old bonds is 4.11% and the estimated rate on the new bonds is 1.69%. The first levy that would be reduced is 2013 for collection in 2014 with a estimated savings of \$13,000. Then there is a table where you can see what it is each year.

Aho explained the advantages and disadvantages of bond refunding.

Advantages: Debt service savings starting with 2013/2014 levy. Market conditions are at historically low levels.

Disadvantages: Issues can only be advance refunded once (Can be current refunded at call date of new bonds, about 10 years from now). There is negative arbitrage to the call date (savings shown are net of this number, about \$37k).

Aho explained the process. Council directs staff to work with Springsted and bond counsel to prepare the issue for sale. An official statement will be developed for distribution to potential purchasers. A bond rating will be requested (currently Moody's Aa3). Bids from purchasers will be received & presented for consideration by the Council (April 4 City Council meeting).

Lawrence asked "With the current debt that the City holds, how hard would it be to refinance these bonds?" Aho explained this should be very straight forward. Lawrence asked "So it doesn't really matter how much bond debt you hold?" Aho explained bond ratings: it does, but the Aaa3 was confirmed when the City sold their last transaction. That is reflective of all current debt the City has outstanding. There will be new questions, to extent of State Aid Cuts, Market Value Homestead Exclusions, recession, we are seeing a lot of those, but it has not been threatening the ratings so long as decisions have been made to reduce services, or cut so you have maintained a balanced budget.

Moegerle asked, "When you prepare information about our City are you going to indicate to them that with our bond from 2010 that we have gathered no ERUs to pay for those and we have no hookups. And will that negatively affect our bond rating?" Aho explained that the bonds that are outstanding are General Obligation bonds. The anticipation is that the City will pay those bonds. The City has not done anything at this time that would indicate that you would not pay those. They were rated at the time based on the City's General Obligation pledge. There was less attention paid to the finance plan, while it is something that is very key here. If you are anticipating a moment in time where you would not honor those bonds, we need to know that and that would probably be the end of this discussion.

DeRoche asked, "Say we say, "Go ahead, look it up and see what you can do." If we decided not to do it, how is that billed out?" Aho explained that expectations on our part would be that if the City agreed to go ahead tonight it would be based on results that are similar to what was presented. Fees that you would incur, that we would not be able to waive, would be after we receive the bond rating. A week or so prior to the issue itself being sold. After the bond agency has a conversation with us, they take it to their rating agency, and the committee will on the spot assign the rating to the bonds. At that point the City would be responsible for that rating fee.

DeRoche asked, "We are going to base tonight's decision on what is in our packet?" Chances are there will be more questions. He asked, "If we commit to it now, are we stuck with it or pay penalties?" Aho explained the process. If April 4<sup>th</sup> is the date selected for the sale, this would come back to you a month before that and have a full write up at that time of the terms and conditions of the sale. The analysis would be formalized. Council would then officially act to adopt those terms and conditions and put the issue out in front of the marketplace. At that time any specific questions would be addressed. DeRoche said, "He asks a lot of questions and he does a lot of reading and some of this looks just looks Greek to him. The more he reads it, the more it makes sense. But to just make a decision, based on what he has had since Friday, he doesn't feel comfortable doing that."

Moegerle asked, "What are the total fees for your services?" Aho explained in your report there was "Sources and Uses". When bonds are sold, there are two things that money goes for. Escrow account to pay bonds. The other is to pay for the cost of the transaction; cost of issuance and total underwriters discount. Final item is rounding amount because bonds are sold in \$5,000 denominations. Moegerle said, "So approximately \$50,000. If we spend

\$50,000 we save \$141,000 in the long term.”

Moegerle asked, “The bonds that we would be refunding are General Obligation bonds, would the new bonds be General Obligation bonds?” Aho explained they are General Obligation Bonds. Escrow will be adequate to pay the bonds at redemption. The securities that are in there will be U.S. Treasury Securities. The only purpose for which they can be used is to redeem the old bonds. Moegerle and the current bond is GO as well. Voss asked, “What specifically is staff looking for in direction?” Davis explained direction to staff to work with Springsted and bond counsel to prepare the GO Bonds for sale and bring it back to Council at the March meeting for discussion.

**Voss made a motion to direction staff to work with Springsted, Inc. and bond counsel to prepare the refunding 2005 GO Bonds for sale and return to the March 7, 2012 City Council meeting. Lawrence seconded.**

Moegerle said, “As long as this doesn’t commit us to do this and it doesn’t cost us anything to proceed.” Davis explained that staff would work with Springsted; they will prepare the evaluation of the bond sale. We will bring this to you in March and if at that point you proceed further, then we would be obligated for the bond sale. Voss said, “We are going to save the taxpayers \$140,000.” He doesn’t know what more information we are going to have in March. If you are not going to support refinancing it in March, let’s not move staff forward to work with Springsted then.

Moegerle is looking at things further down the agenda that gravely concern her, which if they are on the agenda, they are published, they are open. Voss asked, “Are they on the bond issue?” Moegerle has big problems with these General Obligation Bonds. Voss commented that one thing to put out there, and he doesn’t know if she was here in 2005, but this is a public referendum bond, the voters put this in. Moegerle doesn’t dispute that. If you invest 50 cents to get \$1.50 back, that is basically what we are doing. Is that worth all the trouble? And she is going to average it out over those 4,000 households (to get the impact) \$3.00 a year. Fine, go ahead, but she is not sure she is going to vote for it in the end. Voss doesn’t know why we would waste staff’s time if you aren’t going to vote for it in the end. DeRoche doesn’t know that it is a waste of time trying to get some more information. He is not willing to go do this without all the information. Experience has showed him that there have been decisions made without a lot of information. He is not willing to do that. **All in favor, motion carries.**

#### Community Online Survey

The Mayor explained that East Bethel is looking for your ideas. Please visit the front page of the City website and complete the online community survey that will help with the City’s Marketing and Branding efforts. If you don’t have internet access, call City Hall and request a paper copy. Participation is very critical for the City, to help round out what we are looking for as a City.

#### Sheriff’s Report

Lieutenant Orlando gave the January 2012 report as follows:

**DWI Arrests:** There were four DWI arrests. Two were the result of traffic violations. One arrest involved a property damage accident. One arrest involved the driver being located at the wheel asleep.

**Burglaries:** There was one reported burglary of a motor home while it was parked in a storage facility.

**Property Damage:** There were six reports of damage to property. One incident involved a male coming to a residence to find a female and becoming angry when he was told that she was not going to come outside to talk to him. The male got into his vehicle, which was a tow truck, and pushed a vehicle that was parked in the driveway into the residence causing damage to both the vehicle and residence. The male has been charged with felony level damage to property.

**Thefts:** There were nine reported thefts in January. One involved an intoxicated male who was arrested after taking another patron's wallet from the bar in a local establishment. The intoxicated male denied taking the wallet but was recorded on video surveillance. The male was taken to jail. There were two identity theft situations, where people's credit or debit cards were used fraudulently. One theft report involved a vehicle that was in storage which had been stolen. Three theft reports involved purses and wallets being taken from parked vehicles at businesses.

**Information:** Back in March 2011 we had an assault situation that involved a firearm and a father who was severely beaten by his adult son. Reid Smith was found guilty of 1<sup>st</sup> degree assault, 2<sup>nd</sup> degree assault, 3<sup>rd</sup> degree assault and terroristic threats. The charge of attempted murder was dismissed. Sentencing will be on March 30<sup>th</sup>.

Introduction of  
Anoka County  
Deputies

Sherriff Jim Stuart appreciates the opportunity to be here tonight. With him is Chief Deputy Tom Wells. Want to say thank you for partnership. We also have your 2012 Deputy contingent. Fun to come here, both Wells and Stuart have been liaisons for East Bethel. Think it is important for the citizens to realize that as we hear more and more across the country about collaboration and cooperation and the spirit of finding ways to do things more efficiently, East Bethel has been part of that model for many, many years. Our infrastructure is supported by 21 communities. Our patrol division is supported by eight communities. Think we have phenomenal staff, appreciate them and want to publically thank them. They have all chosen this career, and ultimately they care about the citizens and the City of East Bethel and Anoka County. Very proud of them. We get a lot of positive feedback from the citizens.

Lieutenant Orlando introduced the 2012 East Bethel Deputies as follows:

Deputy Chris Beck has been with East Bethel for seven years. Well known fixture, he is very social. It is his 15<sup>th</sup> year with our office; he is a field training officer, member of the SWAT Team, and a hostage negotiator with the SWAT Team. Shawn Merit has been with East Bethel for two years. It is his 10<sup>th</sup> year our office. He is also a field officer and is a Taser instructor. Luke Kristofferson has been with East Bethel for six years. Has been with our office for seven years. Also on the dive team and an certified advanced diver. He is an Ice Rescue Technician and ATV safety instructor, Explorer Advisor and field training officer. Travis Wold has been with East Bethel for four years. It is his seventh year with our office. Thomas Quam has been with East Bethel for five years. It is his seventh year with our office. Ryan Rockets has been with East Bethel for two years. It is his fourth year with our office. He was a Detention Deputy in the jail so he is very knowledgeable.

Lieutenant Orlando said if you have any issues or questions, never hesitate to give them a call. They are there for you.

Introduction of

Fire Chief Mark DuCharme introduced the 2012 Fire Department Officers.

Ardie Anderson, Deputy Chief he runs day-to-day personnel issues, and he will have 30 years come March 1<sup>st</sup>. District Chief Todd Bennett from Station One, he has 16 years. Mark Prachar, Captain Station One, he has 10 years. Adam Arneson, Lieutenant Station One he has six years. Gary Schultz, Lieutenant Station One has 12 years. Dan Berry, District Chief Station Two could not be here, but he has been on the department 10-12 years. Captain Rod Sanow Station Two he has 12 years and Tammy Gimpl, Lieutenant Station Two and she has 7 years.

Public Forum

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

Christine Howell of 22314 7<sup>th</sup> Street NE commented on the Weidema issue that was on last week, extension, know it is coming up. She doesn't expect any comment from Council. She wants her voice to be heard as a taxpayer. Going to as you consider whether to allow this 11 month extension that they are asking for, and if you have to, what ways to go about it. Also noticed his fees did not decrease at all. First of all would ask that you say absolutely not, but know there are a lot of other things involved in this. Should you feel that you need to grant this extension, then he needs to be held financially accountable in some way or another. His fee went up, not down. He does this for a job; he should know the ins and outs. She believes the change order was requested due to mild weather conditions. If a contract was signed, it would be no different than someone that bought a plow at the beginning of the year, expecting that they had three or four wonderful months to pay on that plow and then Mother Nature didn't give us any snow. Financial loss, still on the hook, still signed a contract, still on the hook for that payment. Also, keep in mind, Weidema wasn't the one that stood up here, many times and was told, "I can't make it any simpler, if you don't hookup, you just won't pay." We were arguing somebody is going to have to pay. She doesn't think the taxpayers should have to be on the hook, due to mild winter conditions when we were told, "If you don't hookup, you don't have to pay."

Tom Ronning of 20941 Taylor Street NE, this Weidema thing is a puzzle to him. Was reading the packet on the internet today and there is something in there about this contract being written for two winters. Why would Weidema have a July 2012 due date and have two winters, that is a rhetorical question? No one is dumb enough to do something like that. This is the same guy we give \$350,000 for a change order on fuel. Do we have any oversight on this, or does he have any responsibility to make sure he is using it? Because as a taxpayer no one wants to just hand him the extra \$350,000. He could use some extra fuel too. Schmidt said, "We watch the equipment and he is burning that fuel, he can guarantee it." Ronning comment that the price that Weidema bid on the fuel and the price it was at the time. He remembers commenting then on the tax free status: state reimbursement and US reimbursement, that is what he means by oversight.

Ronning explained listening to the debt business and when we took on this recent debt, think we had \$3,000,000 or \$3,250,000 of debt. What is our obligation for debt that we are signed up to now? Davis said approximately \$22,000,000. Ronning asked, "What about the Met Council portion, who is going to pay them?" Davis explained User and SAC fees. Ronning noticed there are 50 or 55 commitments for next year and 50 or 55 for the year following. Then 200 for the year following that. Where are these 300 coming from, that is by 2016. That is part of the money we owe Met Council. If we don't produce these, we owe them about \$5,600 each. We have a project we have to meet with Met Council. Davis said, "It breaks down that we have an objective we have to meet with the Met Council. We have a

schedule set up. Starts out in 2013 have to meet 100 ERUs in two years. That rate goes up 10.6% annually. Goes up until we have to produce 650 per year by 2031. Levels out and stays at 650 until 2041. These are the numbers that are necessary to pay for cost of the wastewater treatment plant and other improvements they are making to the system. Ronning commented they said, "If we build they will come." He doesn't believe it. Beginning to end what is the total ERUs we are committed to. Davis answered 12,000. Ronning asked, "what is our current population?" Davis answered 11,600+.

Linda Larson commented doesn't know if there is much more that needs to be said (about the Hoppe situation), but she wanted the neighborhood to be represented tonight. Also, a neighbor is with her and she has video of this. Tammy McElwee of 18815 5<sup>th</sup> Street NE explained she has video on her camera that this isn't storage; it is a business coming in and out. Lawrence explained that he thinks we are well aware how the neighbors feel about the situation. Moegerle asked, "If they can get the video electronically to the City Administrator that would be best."

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

Consent  
Agenda

**Voss made a motion to approve the Consent Agenda including: A) Approve Bills; B) Meeting Minutes, February 1, 2012 Regular Meeting; C) Appointment of EDA Ad-Hoc Member; 9.0 B.1 Pay Estimate #1 Construction of the Elevated Storage Tank No. 1; 9.0 G.3 Aggressive Hydraulics Time Extension. DeRoche seconded; all in favor, motion carries.**

Planning  
Comm. Mtg.  
Minutes

Davis explained that the Planning Commission Meeting Minutes from January 24, 2012 are for information only. They are in draft form and have not been approved by the Planning Commission.

Motor Vehicle  
Sales – Ryan  
DiMuzio &  
Jordan Valder  
18803 Hwy 65  
NE

Davis explained that this item was presented at the January 24, 2012 Planning Commission meeting; at which time the Planning Commission made a recommendation to City Council to direct staff to move forward with a Zoning Text Amendment to amend the B3 – Highway Business District to allow open sales lots with an Interim Conditional Use Permit.

In order to consider a Zoning Text Amendment that would allow motor vehicle sales in the B-3 District and Zoning Code, Mark Vierling, City Attorney, has submitted additional criteria that could identify that this business is unique from others either in the manner of sale, point of sale, technical aspects of the sale or otherwise. Vierling's information provides justification that the business practices of Valder Motors are a different business model that has unique characteristics and objectively separates it from other car dealerships and it may qualify for other conditions under the City codes.

Vierling's definition, recommendations and conditions for this use as an Internet Distribution Sales are as follows:

Definition for Internet Distribution Sales: A business predicated on internet communication elements which consist of the following: 95% of sales are initiated and secured through internet communications between the buyer and seller with minimal or no need for on-site business negotiations between the buyer and seller. Pre-sale required inventory. All sales are substantially completed before the product is delivered to the customer. There is little or no need for business signage with the exception of basic identification signage. And there is no need for on-site advertising signage. There is minimal need for product storage on-site, with the exception of a product awaiting customer pick-up. There is limited need for outside

storage and no product being stored on site will require storage for more than 45 days. No product repair is conducted on-site unless it is required as a condition of the sale (this item is a staff recommendation, Vierling's original recommendation was that there be no product repair on site.) Mr. Valder has requested this be amended to permit product repair on-site as is required as a condition of the sale. As a condition of the above definition the following conditions may be considered to provide other controls for this use.

1. Outside storage space is limited to 5,000 square feet;
2. No more than 20 vehicles can be placed in outside storage at any time;
3. Arrangement and location of outside storage area would have to be approved by the City;
4. All ICUP permits would be issued for two (2) year periods upon issuance and renewal.
5. Any ICUP's issued as a result of this change would be subject to all other City Ordinances.

These definitions and conditions are presented for your consideration agenda item 8.0 B.2 Motor Vehicle Sales. Vierling's approach would allow Council to give this a different use designation in the B-3 zone and exercise a more protective set of controls for this use. Staff is seeking direction on proceeding with the zoning text amendment for this item.

Moegerle asked, "With regard to the six items listed on page 52 for us, in the conditions, number 2 says "No more than 20 vehicles can be placed in outside storage at any time". Is that "can" or "may?" Vierling explained that is a staff recommendation and that is can. That is a limit; there is not an opportunity to exceed it. What we have here is not for automobile use or sales, but think beyond that to any type of business that uses the internet to fundamentally complete their transactions and the site is simply a pick-up for their product. Moegerle commented with regard to number four, she was wondering if we should put and cannot return to lot after thirty days (30) days. She said so they can't go away for five days and then come back. Vierling said "I don't know if that will be feasible for this type of product, as well as other types of products that do have warranties. They would have to be monitored; even a used car could have a warranty for a certain period of time." Moegerle commented that for the sales lot, if it doesn't sell after thirty (30) days, then it goes to a different lot and then comes back. Vierling said, "The intent of the other provision was that there is no outside storage beyond forty-five (45) days for any outside vehicles."

DeRoche has concerns about setting a precedent. You call this an internet business, but Saxton Ford advertises on the internet; any dealership, does that mean they can also do that? Once we do this, you can bet there will be more than one other person that will want to do this. Voss commented that this question is pointed at Vierling; he is the one that is going to have to defend this. Vierling said, "The key to that is the demonstration that the sale is initiated and substantially completed through electronic media. The preclusion, if you will, of any advertising signage on the property with exception of identification signage only distinguishes that type of retail sale from any other sale. Is it a fine line that can be crossed from time to time? Certainly. But you have this under an Interim Conditional Use Permit (ICUP) and under a time limit. The fundamental premise, of which we are going on, is this is a business that could well, and should well, grow off the site. If it does, that is fine. In the meantime, this is a temporary time permit for the business to be there, which is fundamentally operating as an internet business. If it grows beyond that, then they need to look for another site. With the ICUP on a two year renewal, where the Council is going to hold discretionary authority in terms of whether or not it renews and to determine whether or not the business is fundamentally compliant. You have the significant leverage you will need

to make sure the business hasn't grown beyond what they represented it is or what it will be."

DeRoche asked, "We have had discussions about possibly getting (sewer and water) connections off of the east side of Highway 65. So if we do that, how will this affect any ERUs?" Voss said, "That is why it is a two year." DeRoche commented that hopefully the EDA continues on the course it is on and we get more people to come up here and look and grab at that. If they were to hook up, what would the ERUs be two? Davis said, "No, they would be one, but from a timeline standpoint, by the time we could get service established on the east side of Highway 65 it would be a year from now. That would put this ICUP halfway through its expiration. Especially on a vacant piece of property like that, by the time you do a deal and complete all the negotiations to acquire property, go through all the permitting processes, and actually do construction, you are probably looking at another year. The two years would probably not prevent or preclude any that property for a higher use in his opinion."

Voss said, "Really it comes down to this piece, it is not us, it is the property owner, which is their landlord. So if their landlord decides that now it is time to build, it is their relationship with the business that is there. They have a lease and if they cancel the lease, it is not us stopping any development. We are not saying they have to be there. Whoever owns the land wants to develop it, that is their decision, not ours."

DeRoche asked, "So why aren't they the ones going for the ICUP, being as they are the legal owners of the property?" Davis explained because they are not the ones running the business. This is related to the business. Your point is well taken though about the ERUs and that is why we are looking at this with the very limited time on it. This is in the sewer district, and we want it to be used to its maximum use in terms of market potential and what it can do to generate the income to finance the sewer project.

Moegerle was very concerned about setting a precedent as well. When she looks at this situation, while she is understanding and sympathetic to it, she is also concerned about setting precedent. So if we have code enforcement, have zero tolerance to some of our other nuisance ordinances (where things are usually followed for a period of time), that would make her feel more confident that this is not setting a precedent. This is being business friendly in an extremely limited situation.

DeRoche explained that he is all for being business friendly and he doesn't think coming in they had all the information on what they needed to do. For whatever reason that just didn't happen. He asked, "Has Valder been using the building for this now, while he is working with staff?" Valder explained that he still has his license in Spring Lake Park. It is still current, because when you move your license carries with you until the expiration. Valder said, "But the vehicles that have been there have been sold off the internet site using the license from Spring Lake Park. So in all honesty, yes." Since he has moved there, (the sales) haven't been noticeable; he doesn't have a sign up. It is hard for people to find him, but he cannot sit and do nothing, this is his income, this is his business.

Voss asked Davis, "In condition number seven it talks about repair, can you explain what types of repair we are talking about?" Davis explained that Valder is stating if they take a vehicle in for internet resale, there are certain things they have to check on it and there might be some minor repairs they have to do on it before it goes out the door to their customers, such as oil changes, minor repairs. Voss asked, "Are these repairs done indoors?" Valder

said, "There is a shop and I think it was actually built for that. These are used vehicles, not new. So it might be brakes, he has to do a safety inspection for all of his customers as soon as I get the vehicle."

Voss said, "To the extent that we augment the recommendation that it is designated to indoors, that would satisfy him. And one suggestion he has and he thinks it would help on tracking and enforcement, is they obviously keep records of sales. Is there a way that on some periodic basis, that you can share the records of how cars coming in, cars going out and how they are being sold? That is one way to make sure it is not being used as a traditional car lot."

Valder said, "It is more like networking of car sales." He doesn't want that look; he doesn't want that style of a regular used car lot. He worked at Friendly Chevrolet when he was 15 years old, did sales since he was 17 years old. When he left he said if he can build a client base and find them a vehicle that they want, and feel very comfortable selling them the vehicle that they want and then they would be coming back. And then their family members, their friends, their kids, they come back and it is kind of like a network. Plus he has the internet as well. The reason why he would sell to public would be he would say he thinks they would like it, but guess what they come back and say, "I really don't like that color Jordan, I just can't spend that money on it". So, guess what. Now he has that vehicle, he has to clean it up and sell it on the internet. He won't advertise it on the street, that is what the storage would be for. There would be no hang tags in it, there would be no banners, flags, writing in the window, nothing like that, because it doesn't look clean and presentable in his opinion.

Voss explained what he is suggesting at least showing staff your breakdown of sales for the month, our building inspector will be by from time to time. In terms of the sales and how the sales are going. It is an easier way for staff to track. Such as you had 20 cars sold that month and 16 were prearranged and four crashed and you had to sell otherwise. Voss asked Valder, "Are you familiar with the conditions that are laid out here?" Valder said, "Yes, they were e-mailed to me this morning."

**Moegerle made a motion to direct staff to proceed with the Zoning Text Amendment.** Vierling suggested what you want to do is direct staff to formalize the zoning text amendment and bring it back for the public hearing process. **Moegerle amended her motion to direct staff to proceed with the Zoning Text Amendment and bring it back for the public hearing process. Voss seconded with the suggestion that the repairs be done indoors.** Moegerle was fine with the amendment. DeRoche asked, "Is this changing the Zoning text or is this just a one time amendment?" Vierling explained this is a text amendment that would be there until and unless the Council amends it or takes it out in the future. An ICUP authorized under this zoning text change would be a two (2) year limited permit. Davis explained and this does apply to all the B-3 zones in the City.

DeRoche commented that he thinks we are opening a can of worms. Voss said, "If this turns out to be a good use for the City, then we have two or three more business come in and do the same thing." DeRoche said, "But it is the changing of the text being permanent." Voss explained but it is very specific. Vierling said, "If the Council has this out there on a trial basis, finds you don't like it and you repeal it and the ICUPs go away at the end of their two year period." Voss commented that you can't envision every situation that is going to happen, but if all a sudden someone wants to do the same business with an off-road 20 yard dump trucks and park them we are going to have another discussion about it. There are

other internet businesses but they are not going to have outdoor storage. **All in favor, motion carries.**

Park Comm.  
Mtg. Minutes

Davis explained that the Park Commission Meeting Minutes from January 11, 2012 are for information only. These minutes have been approved by the Park Commission.

Road Comm.  
Mtg. Minutes

Davis explained that the Road Commission Meeting Minutes from January 10, 2012 are for information only. These minutes have not been approved by the Road Commission.

Gordon Hoppe  
– 1861 Viking  
Blvd.,  
Variance  
Conditions  
Amendment

Davis explained that on October 5, 2011, City Council approved Mr. Hoppe's request for a variance to allow the expansion of two (2) commercial buildings at 1861 Viking Blvd. As a result of this variance a condition was added that permitted storage of his vehicles at his 604 189<sup>th</sup> Avenue NE residence. On December 14, 2011 and again on January 9, 2012 received complaints from neighbors stating Mr. Hoppe was conducting business from his 189<sup>th</sup> Street address and creating a noise and traffic nuisance. Staff met with the neighbors at which time they provided information about Mr. Hoppe's activities. Staff met with Mr. Hoppe after both of the registered complaints and in both instances Mr. Hoppe denied the accusations.

Because of the continuing nature of this dispute and the assumption that Mr. Hoppe may have been operating a business at the 189<sup>th</sup> Ave NE without an Interim Use Permit (IUP), staff and Mr. Vierling, City Attorney, request City Council to consider amending the approved variance conditions. The consideration is to delete condition #5 that reads:

“Commercial vehicles stored on Mr. Hoppe's residential property, located at 604 189<sup>th</sup> Ave. NE, East Bethel, may remain on the property until the completion of the additions to the commercial buildings located at 1861 Viking Blvd., East Bethel. Commercial vehicles must be removed from the residential property within one (1) week of the issuance of the Certificate of Occupancy”. Mr. Hoppe would be subject to the storage requirements as set forth in City Code for Rural Residential Zones.

This condition is not applicable to the variance for 1861 Viking Boulevard. Additionally, Mr. Hoppe has not asked for nor does he acknowledge any needed permissions for his residential property relative to this activity. If staff determines that a home occupation is being operated from the property, Mr. Hoppe will be required to apply for an IUP.

Staff recommends City Council amend the original conditions of the approved variance by deleting condition #5.

Moegerle asked, “Because I made the original motion, do I have to make the amended motion?” Davis answered correct. Moegerle commented if this will solve the problem. Davis said, “That will be up to the neighborhood. This will solve it at the City standpoint; it will remove the storage requirement. Then the Rural Residential (RR) Zone will apply. If there is a complaint, the neighbors can file that with the City. And the City can take appropriate action.” Moegerle asked, “Is the City investigating this at this time based upon the information that has been provided to you?” Davis said, “The City has investigated the complaints. We have had three (3) meetings with the neighbors, spoken with Mr. Hoppe on a number of occasions. As indicated by the resident that spoke at public forum, there is some evidence of activities that have taken place. This has been an issue since October 5, 2011.”

Moegerle asked if this matter could be referred to the mediation services at Anoka County. Davis explained that it is possible it could come to that if this doesn't clear it up, if the

parties wish to pursue. Moegerle asked, "Do we have the authority to refer them to mediation services?" Davis said, "No we do not. That is totally voluntary."

DeRoche's understanding when this was passed was that it was only supposed to be storage at Mr. Hoppe's residence anyways. Davis concurred that is what the condition read. DeRoche said, "What he is reading here is he can store this stuff at his residence, which he has been doing, only it has gone beyond that. What is to say this is not going to keep going?" Davis said, "That is up to the individual. What this does is removes the condition and then if there is a complaint, we can see how it falls within the regulations of the Rural Residential (RR) Zone.

Vierling explained that this is not going to solve any issues between Hoppe and his neighbors. This will clarify the variance. There was a variance relative to doing work on a commercial property. There was no variance request, nor was there any application made to the City relative to doing anything on the home site. The application/presentation that was made at the time said they were not doing anything illegal on the home site; not operating a business, not doing anything in violation to City ordinances. He thinks the Council at that time added that condition because of what was being recited by the applicant at that time. His position from the technical aspects of the variance permit is that condition #5 doesn't belong there. It has nothing to do with the commercial site. The variance condition doesn't belong there, has nothing to do with the commercial site. It is going to clarify, because he doesn't want the language in condition #5 being used to defend what is or isn't going on at the site. So whatever is going on the site, or not going on the site, will have to be justified under the existing ordinance. And if the neighbors have a complaint in regard to what is going on there, they can file that with City staff. Or get it to the Anoka County Sheriff's Department. If we feel there is an ordinance violation, we will pursue it.

Moegerle asked about procedure. Vierling explained you are amending an action that has already been taken by Council by deleting condition #5, per Roberts Rules of Order. DeRoche said, "He hates to beat a dead horse but, he can understand the frustration because he went through this with his neighbors. These people have been complaining for quite a while. Sure now at a point where they say, "We complain. We bring pictures. We bring video and nothing happens. We would like an explanation of why not." He would like an explanation why not. Are we going to continue to say ghee whiz, you have to continue to monitor this; you have to do this and that? They have been doing everything that Council told them to do."

Voss asked, "Is staff putting anything together regarding the issues and this recommendation?" Davis said, "The recommendation I make to Council is to follow what the City Attorney has described and delete this condition. We have had numerous complaints and calls. This has occupied a lot of staff energy and time, needs to go away. If we have a better way of enforcing this, which he thinks the storage issue clouds the whole matter. If it is deleted, he thinks we will have a means and way to address this. As far as a report, we have had two meetings with the neighborhood groups. After each one we had discussions with Hoppe, either in person and in addition had six to seven calls with Hoppe and about five or six calls with the neighbors. Other staff deals with some of these calls also.

Voss explained what he was getting at is cleaned up, variance on the commercial property, wants to see where we are going officially on the uses on the residential property. Vierling suggests that staff gather reports and complaints and we will report back to Council. Davis explained that Hoppe has indicated he is getting out of the excavation business, so that will

alleviate a lot of this. Moegerle commented we have eight (8) ordinances with the word noise in there; we do have some power here.

**Moegerle made a motion to amend the motion that was approved on October 5, 2011 for a variance for Gordon Hoppe at 1861 Viking Blvd. NE to allow two (2) building expansions onto existing structures and to reduce the side yard setback to a City street for a legal nonconforming business. Condition #5 as follows is deleted/removed from the variance: 5) Commercial vehicles stored on Mr. Hoppe's residential property, located at 604 189<sup>th</sup> Ave. NE, East Bethel, may remain on the property until the completion of the additions to the commercial buildings located at 1861 Viking Blvd., East Bethel. Commercial vehicles must be removed from the residential property within one (1) week of the issuance of the Certificate of Occupancy. Voss seconded. DeRoche nay; Lawrence, Moegerle and Voss; aye; motion carries.**

2011 Building  
Department  
Report

Davis explained that Mr. Larry Martin will deliver a report on 2011 Building Division activities and projections for 2012.

Martin said, "I want to apologize." He and Davis crossed paths last week. He said, "He has been taking a family member down to the U of M and he didn't get this thrown together until the last minute. If there are any specifics Council would like, let him know, e-mail him or call him and he will pull them together."

Martin explained that building permits issued last year were 509. They were valued at \$2,000,906. We collected fees at barely over \$100,000. Martin said, "Inspectors conducted approximately 1,023 site inspections, which would include an additional 12-15% for return site inspections."

Martin said, "I expect a slight increase in 2012. This week I have two more homes coming in; one is going to Bear Hollow and the other to Dellwood Estates." Moegerle commented that would be a total of three (3) which is our increase for the year. Martin explained that late this afternoon he was told by Mundle that he is doing 15 new homes up at his site, this year. Mundle was up there this afternoon and he finalized a model.

Martin said, "For commercial, myself and the City Planner have talked to G & K Machining in the south end and he is looking at approximately a 10,000 square foot addition to his facility. He wants to do that this year. Size will depend on sewer and water and whether or not he has to sprinkler his facility. About all he sees for commercial." Moegerle asked, "How has the trend been from 2009 until today?" Martin said, "Personally, and he has been doing this for a long time, he doesn't see anything happening until after the election. Just his personal opinion."

Martin said, "For code enforcement, as a City as a whole, we didn't do as much as previous years. We concentrated a lot, had probably 60+ letters to Castle Towers alone. Have a lot of man hours dealing with Castle Towers. I have gone to night meetings, dealing with the association, APAC." There are things going on with the ownership. He said, "Part of the ownership was appointed by court to take over site management. They have started some improvements such as filling in holes in the roads." Moegerle asked, "Wasn't that supposed to be done months ago? What can we do to expedite this. Don't we have tools for this?" Martin said, "It is private property. Because of the ownership switching over, we could have dragged them in to court and but he thinks we would have the same outcome. Think the court would give them so much time."

DeRoche said, "State law says they have to (because of emergency, fire and police), the roads have to be to a certain standard. Lawrence explained they don't list that exact standard unfortunately. DeRoche explained you have a two foot hole and you have a \$300,000 truck falling apart because of it. Martin explained the battle they are fighting and it sounds like they are making some headway is the entrance off of Highway 65 to their drive belongs to MnDOT. That is not theirs. Haven't talked to the owner since September, that is what he was told. He wants to keep on their back through the winter; supposedly they were going to work with MnDOT. Sounds like the north half of the road belongs to Isanti County. They have talked to Fire Chief and myself and want to change the roads in there.

Lawrence asked, "Where are we at on the code enforcement on Sims Road?" Martin said, "I have to get out and take some new pictures. This is at the top of my list." Lawrence explained he is still getting calls. Martin explained a lot of these code enforcement are our septic compliance letters.

DeRoche asked, "It says the last couple years, staff issued 509 permits valued at ...." Martin said, "That is last year, 2011, again this was his mistake" DeRoche commented so we issued permits for almost \$3,000,000 and took in only \$100,000. Martin said, "That is the way evaluation works on it." He gave examples of previous years. Moegerle commented that it would be great to have this information in a table. Martin said, "He will provide this to Council in an e-mail." DeRoche asked, "You said there were 102 systems that failed?" Martin said, "That was another mistake. Those were 102 compliance inspections that were submitted. Thirty of them failed." DeRoche asked, "Any particular area?" Martin said, "I can get that information to Council. We do break up the areas around the lake." Moegerle asked, "Out of those thirty, are they all in compliance now?" Martin said, "No they are not. I will have to get a number to you. Most of these come in during the summer and that. Here is where we struggle. If we have a property that went vacant two years ago, have a compliance inspection from the lender, it failed, house is still vacant. Nothing has been done with the system yet, just one we are tracking out there."

DeRoche explained that from an HRA standpoint, we are trying to look at, and he has been researching any grants available for people that don't have a lot of money. Martin explained he has talked to the county and they have those wellhead protection grants. Sackey will be finished up soon; he is pulling all the files on the south side of the lake. Moegerle commented that is for a grant he is doing. What is the average time of rehabilitating a non-compliant or failed system of a house that is inhabited? Martin explained if it is foreclosed and bought, we have good luck with them. Now we get into what time of year it is, because the ground is froze. Your average house, for instance, ten months is what you have.

Moegerle said, "Tell us about the City of Bethel?" Martin said, "The City of Bethel has been after him for a couple years. I was up there before Council. Come to find out that the City Administrator received an e-mail, I think before Christmas. A couple years ago, they wanted us to do code enforcement for them, but they never told us that. Was there on the 19<sup>th</sup>, attended their Council Meeting. Forwarded them a proposal for building inspections. I wouldn't expect a lot of revenue. Maybe 15-20 permits, \$2,000-\$3,000 at best. I talked to the City Attorney and he suggested a typical contract. It would give the City an avenue to get out of it, in case something were to change here. They still want us to do the code enforcement, and just waiting to hear from them. They were concerned about revenues from permits; they thought it was an additional fee."

Martin explained that he talked about a couple ordinances, one was tall grass. Our intent was for foreclosed properties if we had to go in and mow them. We talked about the rental

ordinance. Had a call the other day, a tenant complaining. We try to take care of them and give them direction, and it is City time, staff time we are spending here. He talked to the City Attorney about this. And as he said, "Do we want to create another bureaucracy here?" Noise ordinance, what is the definition of noise. Have had several discussions with Lt. Orlando about this. The way our ordinance is written now it is hard for the deputies to enforce on site. We have to revert to state statute, the decibels. DeRoche repeated, noise ordinances, what's the definition of noise? Martin explained that typically you will see other jurisdictions, when the officers get on site, if he feels it is a nuisance, (there is a 100 people partying, at 2:00 a.m.) it gives them the authority to shut them down. DeRoche said, "We have had noise complaints where people said they heard things two miles away." Moegerle asked, "Can we get this information in tables, so we can compare with previous years to see where we are? That would be very helpful." Martin said, "Definitely." Council thanked Mr. Martin.

Ordinance 34,  
Second Series,  
Amending  
Chapter 6,  
Alcoholic  
Beverages

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

This proposed Ordinance amendment would amend Section 6-93 of the Code of Ordinances of the City of East Bethel as submitted in the attachments and remain consistent with Council directives.

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

Staff recommends City Council consider the approval of the amendments to Chapter 6, Article IV, Section 6-93 of the City Code as presented in the attachments.

Moegerle commented that she thought we wanted some flexibility in sentencing (for lack of a better term) and she sees "will" and "shall" still in there. She hoped to see "may" in there or some alternatives. She is looking for a way to waive the penalty for first offenses. Vierling explained if you want to build in further discretion, we can certainly go back and do that. The primary intent he thought was to delete the opportunity for administrative fines on clerks.

Moegerle's other question is about the fourth violation in 24 months and they are still in business? Kindness the first time, second time lay down the law, the third time; I don't know why they're still in business or selling those things. So she doesn't know how everyone else feels about this, but she would like to see the penalties go from kindness to draconian. Are there other cities that have this kindness or are we breaking new ground? Vierling explained he doesn't think you are breaking new ground. He thinks you are going to find there are a number of communities that are on either side of that issue. And when you get to three or four, some on the more conservative/stronger side are pulling the license. Others are leaving it for an opportunity to Council, but not mandating it. Moegerle thinks we have to have the flexibility. Voss commented but the third violation is a minimum of a 30 day suspension. Can go longer than that.

Moegerle wondered about the tobacco violations, and community service. Does that have to be done at East Bethel? Vierling said yes. Moegerle asked, "Do we have enough work to do?" Davis explained it depends on the person being sentenced. He said sometimes it is difficult to find community service work that matches the person. Vierling explained sometimes the work is not public, not always on public grounds. Sometimes it is done at nursing homes, churches, hospitals, other properties within the community that are non-

profits and needing some assistance.

Moegerle commented she has the same concerns about the tobacco ordinance, with “shall”. Again we should have some discretion on the first violation.

**Moegerle made a motion to table Ordinance 34, Second Series, Amending Chapter 6, Alcoholic Beverages and Ordinance 35, Second Series, Amending Chapter 18, Article IV Regulating the Sale of Tobacco.** She would like to get the details tweaked and bring it back. **DeRoche seconded; all in favor, motion carries.**

S.R. Weidema Contract Extension Davis explained due to matters of some pending litigation, he would recommend this item be tabled and be taken up in the closed session that is scheduled later in the meeting.

**Voss made a motion to table the S.R. Weidema Contract Extension for discussion in closed session. Lawrence seconded.**

Council Member Report – DeRoche DeRoche said “Thank goodness, nobody has gone through the ice at Coon Lake Beach yet. He did attend the fire department quarterly meeting. A lot of those guys put in a lot of time that they are not paid for. If someone asks what they do, he can explain. He is going to go watch the training. Lakes are really, really bad. Stay off them. Coon Lake froze weird to begin with.” Did attend the fire dept. quarterly meeting. A lot of those guys put in a lot of time that they

Council Member Report - Moegerle Moegerle said, “We had the Economic Development Authority (EDA) retreat on Saturday. That was interesting. EDA got the full story of where we are on the infrastructure, and the conservative result of what would happen if an extension is awarded. After that we talked in a roundtable on some issues. One issue was whether we should have a mission statement. We talked about what we could do with the website. We are up to 460 responses on the survey. EDA is discussing a question of what can we do. In some respects, Council needs to have a philosophical discussion about what we can do, about getting and securing customers on infrastructure. I’d like to get that set up sometime.

DeRoche asked, “Asked who would be best suited to do that. Go to McDonalds and ask would you be willing to extend that to East Bethel? Who is best suited in staff to go pound doors.” Davis said right now it would be pretty hard for staff to do that. Think we are going to find out from Ady what kind of activity to pursue. If we want to pursue this kind of activity, we might want to look at doing some contract work on. Not only do you have to send out letters, the follow ups are the important things. Staff could devote some time to it, but would think we might need to look for some outside assistance to help us with this. DeRoche asked, “Is there anything to prevent if he gets bored. If he had something on letterhead to give them. This is where we are going. This is what we are doing.” Davis said, “It is something to discuss, we might all have to break up and do some Saturday work on this.” Moegerle said that is something we tussled around at the retreat. We also had the GRE discussion; it is still an ongoing project.

Council Member Report - Lawrence Lawrence said, “He was also at EDA meeting, it was very interesting. He thinks they will be key to help us pay for the City sewer and water. So we can attract new business to East Bethel. That is what the City has to do to begin with. He was also at GRE meeting. It shocked him and hopefully that will go well. He got one call for code enforcement on Sims Road

Closed  
Session-  
Project 1,  
Utility  
Improvements  
Contract

Vierling explained that pursuant to Minnesota Statutes Section 13.D he recommends that the City Council recess to a closed session to discuss the matter of possible litigation being the City of East Bethel on behalf of itself and the Metropolitan Council Environmental Services vs. S.R. Weidema regarding pending contract dispute. Following closed session we will summarize any discussion or actions that took place during the closed session.

**DeRoche made a motion to adjourn to closed session. Moegerle seconded; all in favor, motion carries.**

Vierling said, "This will serve as a recap for the benefit of the public. Three Council Members and the Mayor were present at the closed session, DeRoche, Lawrence, Moegerle and Voss and staff, Consulting Engineer, Kreg Schmidt, City Engineer, Craig Jochum, City Administrator, Jack Davis and myself for the purpose of discussion of possible litigation between the City of East Bethel on behalf of the Metropolitan Council Environmental Services vs. S.R. Weidema regarding a contract dispute. Council took input from staff regarding engineering and other issues, but took no actions during the closed session.

Davis explained that staff is seeking direction in regards to approval of Change Order #5 for S.R. Weidema with the conditions that were sent to Council yesterday.

Vierling read the conditions as follows:

- A. The change order must be approved by the Metropolitan Council in accordance with the Construction Cooperation Agreement between the Metropolitan Council and the City of East Bethel.
- B. Completion of the sewer and water facilities in the vicinity of the City Water Treatment Facility (north of manhole 402) to facilitate the connection of the Water Treatment Facility to the water distribution system must be achieved by June 30, 2012.
- C. Substantial completion of the water distribution system such that the water system is charged and fully operational by December 1, 2012.
- D. Should the Water Distribution System not be fully operational by December 1, 2012, the contractor must provide at his expense temporary water service to all properties ready to connect or connected to the City water system with a flow rate of 2,000 gpm and with a residual pressure of 60 PSI until such time as the City water distribution system is made fully operational. Should circumstances arise such that the City determines it is not necessary to have the water distribution system operational by December 1, 2012, the contractor can request an extension to completion of this date.
- E. It is understood by all parties associated with this project that it is desired that the project be completed as early as practicable and that the completion date extensions associated with this change order are viewed as maximum dates.
- F. It is hereby acknowledged and agreed by all associated parties that the alignment of the sewer and water facilities along Viking Boulevard will be evaluated.
- G. It is hereby acknowledged and agreed by all associated parties that no party relinquishes their contractually prescribed rights through approval of this change order.

**Voss made a motion to approve Change Order #5, S.R. Weidema, Phase 1, Project 1 with the conditions as follows: A) The change order must be approved by the Metropolitan Council in accordance with the Construction Cooperation Agreement**

**between the Metropolitan Council and the City of East Bethel; B) Completion of the sewer and water facilities in the vicinity of the City Water Treatment Facility (north of manhole 402) to facilitate the connection of the Water Treatment Facility to the water distribution system must be achieved by June 30, 2012; C) Substantial completion of the water distribution system such that the water system is charged and fully operational by December 1, 2012; D) Should the Water Distribution System not be fully operational by December 1, 2012, the contractor must provide at his expense temporary water service to all properties ready to connect or connected to the City water system with a flow rate of 2,000 gpm and with a residual pressure of 60 PSI until such time as the City water distribution system is made fully operational. Should circumstances arise such that the City determines it is not necessary to have the water distribution system operational by December 1, 2012, the contractor can request an extension to completion of this date; E) It is understood by all parties associated with this project that it is desired that the project be completed as early as practicable and that the completion date extensions associated with this change order are viewed as maximum dates; F) It is hereby acknowledged and agreed by all associated parties that the alignment of the sewer and water facilities along Viking Boulevard will be evaluated; G) It is hereby acknowledged and agreed by all associated parties that no party relinquishes their contractually prescribed rights through approval of this change order. He said in essence this allows for an extension of completion time. Lawrence seconded.**

Voss asked, "We state the water distribution system will be operational this year, does that meet our goals?" Davis replied yes. Voss commented he doesn't see anything in this about an increase in costs. Davis said, "There are no increases in costs in here." Moegerle commented that it doesn't mean there won't be some coming in the future. Vierling suggested that the City Administrator read the letter from Weidema into the record.

Davis read the letter from S.R. Weidema dated February 21, 2012, RE: Change Order #5, Phase 1, Project 1, Utility Improvements, East Bethel, MN as follows:

*Dear Mr. Davis: This letter is in regard to Change Order #5 for the above mentioned project. In exchange for the time extension granted in Change Order #5, S.R. Weidema agrees not to ask the City for any extra money for delays in completing the watermain in the swamp area. Thank you. Signed, Nicholas Holtz, Project Manager, S.R. Weidema, Incorporated.*

Davis explained we also have an e-mail from Bryce Pickart, MCES that was included in the City Council packet that indicates any cost borne from this would be the responsibility of MCES. Vierling would recommend a roll call vote be taken on this issue.

Mayor Lawrence asked for the roll call. **DeRoche nay; Lawrence, aye; Voss, aye; Moegerle, aye; motion carries.**

Adjourn

**Voss made a motion to adjourn at 10:23 PM. Lawrence seconded; all in favor, motion carries.**

Attest:

Wendy Warren  
Deputy City Clerk