

EAST BETHEL CITY COUNCIL MEETING

February 1, 2012

The East Bethel City Council met on February 1, 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 February 1, 2012 City Council meeting was called to order by Mayor Lawrence at 7:30 PM.**

Adopt Agenda **Voss made a motion to adopt the February 1, 2012 City Council Agenda. Boyer seconded; all in favor, motion carries.**

Dale Voltin – Planning Commission Lawrence explained that Dale Voltin served on the Planning Commission in 2011 and Council would like to present him with a plaque and acknowledge his service. He said we thank you very much for the time that you have dedicated to the City, because he knows this takes a lot of work and a lot of time out of your day to do this. Voltin thanked the Council for the opportunity of serving. He said he enjoyed every meeting. He said you have an excellent commission and excellent staff.

Dan Butler – Park Commission Lawrence explained that Dan Butler served on the Park Commission from 2009 to 2011. He said he appreciates all the work Butler has done. He knows that Dan has gone above and beyond on some of the things we have asked you to do. Butler said “Mayor it was a pleasure working with you as our liaison the last year. Also working with Jack Davis before his current position as the public works manager.” Butler said “Thank you both.”

Dan Kretchmar – Park Commission Lawrence explained that Dan Kretchmar served on the Park Commission from 2009 to 2011 and Council thanks him for his service. Davis said Mr. Kretchmar could not make it here tonight, but we will make sure that his plaque is delivered to him.

Introduction of Fire Fighters Fire Chief Mark DuCharme said he would like to introduce some of our newest fire fighters. He said the first couple are fire fighters that have completed all their probationary requirements. Chief DuCharme said and the second group that you will get to meet is the new ones that have been approved to be probationary fire fighters. Plus, there are a couple on tonight’s agenda for approval.

Fire Fighters introduced themselves as follows: Wade Hoffman off probationary. He has been a resident of East Bethel for 5 years and he is proud to serve the City. Ryan Henry has been a resident going on 6 years and he is proud to serve the City. Hoffman said he would also like to speak for four members that are not present; Kalli Haapoja, Bill Folwarlski, Chad Fish and Stephanie Kirkham. Hoffman knows they all enjoy living working in the City and are proud to serve the City as well.

Chief DuCharme said the next group is our newest members. He said the one that is missing

is Mike Howe; he is working tonight. Chief DuCharme said Howe actually works with the Sheriff's Department. Andrew Dotseth said he has lived in East Bethel for a little over 2 years and "Thank you for the opportunity." Brody Rodenaugh said he has lived in East Bethel for 8 years now and "Thank you for the opportunity." Abby Vados said she has lived here for nearly all her life and "Thank you for the opportunity by becoming a probationary fire fighter." Joshua Sturman said he has been here since 1983; he appreciates the opportunity to do something positive in the community. He said he lives on Coon Lake.

Interview
EDA
Candidates

Davis explained that the term for one EDA Ad-Hoc Member, Tom Larson, expired on January 31, 2012. This was promoted to a full time member.

To fill this vacancy, we advertised on the City's website, on our community bulletin board and on Channel 10. The City received applications from Dan Butler and Greg Hunter in response to our ads. We have included copies of the applications as part of your agenda materials.

Staff is recommending Council interview the two candidates for the EDA vacancy. Greg Hunter could not be here tonight. Davis said at this time he would like to ask Dan Butler to come up for his interview.

Dan Butler said just a couple things; there is a change on his application. In the interest of saving paper and the Reduction of Paperwork Act, as of 2012, initiated by him on behalf of the City of East Bethel, he is no longer on the Park Commission. He said he moved to East Bethel in 1997, and has been a resident for 14 years. Butler said he has been an active member in the community, serving on the Ham Lake Area Chamber of Commerce as president for 2 years, and is currently the vice-president of that Chamber. He said he has a little bit of a different vision on the Chamber of Commerce and how that interacts with communities and he is pushing a less parochial approach for Chamber and to broaden its scope with neighboring communities. Butler said he also recently just gave up his position as a board member of the Beaverbrook Sportsmen Club. He said he is still an active member of the Club, but no longer on the Board of Directors.

Butler said he really thinks that the EDA is a great opportunity for him to lend his talents to the Council and the City - in terms of his 35 years in business and some of the challenges he has seen in the economy. He said he has worked with major corporations like Kohl's Department Stores, Macy's, before that Dayton Hudson, Marshall Fields, etc. and met with a lot of top people in his previous business experiences. Butler said in 2002 he went off and started his own business. One reason was the economy; he was pushed out in terms of downsizing. Retailing was getting smaller and smaller. He said being downsized was one of the challenges he had in 2002 and he started his own business. Butler said he now offices over off of 186th and Ulysses and he also has an office in Apple Valley that his son works in.

Butler said in terms of why he wants to serve on the EDA, he thinks it is important for people in the community to become active, whether serving on City Council, a commission or whatever. He thinks some of the experience and talent he has would lend itself well to being on the EDA.

DeRoche asked Butler what he thought of the meeting this morning. Butler said he wasn't involved in the meeting this morning. Moegerle explained that it was the Ady Voltedge Marketing and Branding Stakeholders Kick-Off meeting. Butler said he wasn't at the

meeting. He read through some of the proposals and he has been following the minutes of the EDA. Butler said he does have a degree in marketing and that also might lend itself well in terms of background. Moegerle said one of the things that are important to her is “participation and attendance”. We have a retreat scheduled for Saturday, February 11th from 9:00 am to about noon. She asked Butler if he would be able to attend. Butler said he knows that he has some prior commitments on that date. He has the Ham Lake Snow Bowl on that day (if that gets pulled off because of lack of snow) he plans on participating in the ice fishing contest, but if he needs to scratch that he could.

Moegerle said you have a very impressive resume and a history of participation in a positive manner with the City. That speaks very well for you. Lawrence said he knows you from before, so he knows what kind of person you are and what kind of work he can expect out of you on the EDA. Butler said he doesn’t tend to over-promise, but he tends to over-deliver. Moegerle said and you have given us examples of that.

Council voted by ballot. Butler received the majority of votes by ballot.

Appoint EDA Member **Voss made a motion to appoint Dan Butler to the Economic Development Authority (EDA) for a term from February 1, 2012 to January 31, 2012. Moegerle seconded; all in favor, motion carries.**

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

Tom Seefeld of 18822 5th Street NE said he is here to talk about Gordon Hoppe. “We have had several meetings about this. We want to know where it is going and how it is going to stop or make it better for the neighborhood.” Seefeld said, “You guys gave him an easement or whatever at the last meeting and nothing has been done over there. They gave us their words that they were going to be out of there. These last two weeks it has been really quiet. There were things said in the meeting about the trucks coming and leaving at a certain time. We had it logged. We just want to know where you are going with this and if it can be stopped.” Seefeld said it is a residential area and he personally doesn’t feel he should be here again with this complaint. “We went through this in 2004,” he said, “we came to the other meeting,” and he wants to know; “where it is going?”

DeRoche asked “Up until two weeks ago, was it pretty steady after that last meeting where you guys came in?” Seefeld said yes. DeRoche said, “It was a variance so Hoppe could do his shop over on 22.” Seefeld said yes and you gave him the variance. DeRoche asked “And are you saying after that he just kept on and on? Is that what you are saying?” Seefeld said “Nothing has been done.” Boyer asked “Do we have a time on the variance?” Seefeld said he thinks March. Moegerle said “It is May.” Seefeld said “If the weather was really nice”. He said you can’t talk about better weather than this.

Lawrence asked Davis, “Where we are on this?” He said he knows that Davis has talked to Mr. Hoppe several times. Davis said he has talked to Hoppe and the residents. He said he told them this would be brought before Council and they would give staff direction on how to proceed on this matter. Davis said he thinks there is another resident that would like to speak on behalf of the 189th neighborhood. He said “And Mr. Hoppe is also in the audience too. If we can hear from the rest of the residents then we can go over some of the issues that are involved here.”

Moegerle asked Seefeld if he has photographs of these vehicles or a tape recording of the noise. Seefeld said no, he doesn't have either of those. His place is on 5th Street and 189th. He owns the corner. Seefeld said when he hears the trucks leave in the morning (especially in the winter, when it is cooler the sound effects are different) he hears it going through the front of his house and he looks out and can count the trucks. Then, when he hears them coming in off of University, he looks out his north window and he counts who is coming in. He said he is getting a double whammy from the trucks. Moegerle asked, "But you haven't had this trouble in the last two weeks?" Seefeld said, "There has just been one truck. It was a little truck that was brought in and never left. [He has] logged dates and times the trucks come in, what they were hauling, bobcats, backhoes, empty trailers. Some of them, they go out and then come back at 11:00 a.m. or noon and then 10 minutes later they are going back out empty. And it is the same trucks." He has it logged because he said he was going to do it. Seefeld said he knows there are pictures, other neighbors have them. Moegerle asked, "Does Mr. Davis have a copy of the log?" Seefeld said no, but he can give one to him. Moegerle said "That would be helpful."

Linda Larsen of 18727 5th Street NE said "Everyone keeps talking about how this came up previously so [she] has copies of minutes for you." Moegerle asked, "And these are from 2004?" Larsen said yes, they are from 2004. Right before [she and her husband] moved into the neighborhood. She said and then she has another bit of information that might be useful. Larsen said, "We work, we have hobbies, we are out of town so we can't log every time something comes in and out of the neighborhood." But she has a few pictures of the kind of machinery that comes in and out. And she has some logs.

Larsen said "The first handout shows the Hoppe property and where [her] property is. His big shed where most of the machinery is coming in and out is directly behind my house." She said so she thinks they get the brunt of it. Larsen said her husband works second shift and he gets woken up every morning around 7:00 a.m. Not always exactly that time. She said "So he hasn't had a full 8 hours sleep in about 9 months." Larsen said the next handout is the people on 189th, Jackson and 5th Streets who are not happy with the situation.

Larsen said she has been looking at City code, and she sees that (she knows they say they are not running a business out of their address, they don't use this address on their letterhead) they are pulling machinery in and out almost daily. "Sure there is a week here and there where it is lighter or they are on vacation, but overall every month since April there has been activity. There has been large machinery going in and out of this residence, disturbing us neighbors." Larsen said she has been reading some of the home occupation stuff and it says: "No traffic shall be generated by the home occupation." She said, "Well that has happened. It says: The home occupation shall not constitute, create or increase a nuisance to the criteria and standards..." Larsen said, "It is definitely creating a nuisance. It says: There shall be no outdoor display of goods or equipment." She said, "Of course he puts it away at night, but that is not what matters to us - that it is covered and in the shed at night - [it's] the wear and tear on the roads, the traffic, the noise. It says: There should be no detriments to the residential character of neighborhood." Larsen said, "We feel that it is [a detriment]." She said on this other ordinance it talks about structures, she is not sure how many square feet his sheds are. Larsen said there is one area where it says: 'Buildings greater than 3,000 should not be used for commercial or industrial activities.' She said, "And then it says the same for buildings greater than 1,000 square feet. This all sounds to [her] like it is not zoned for this type of activity."

Larsen said, "And the last thing is we are all zoned Rural Residential (RR) in this area. And

for RR it says it is supposed to 'promote the rural character and provide an environment of peace and tranquility for district residents.' That is why most of us moved out to East Bethel is to get away from the hustle and bustle of the city. Not to have to be exposed to this busy stuff going on everyday." She said she is starting to notice with the warm weather new cracks in the roads. "Which we, as residents, pay for those. We don't really need the big trucks going in and out ruining our roads." Larsen said she really feels, like what Seefeld was saying, "With the warm weather this fall, why hasn't anything started on this other building that they were supposed to be moving their business to? Very disappointed that it has taken this long, that you have to get us all riled up and in here."

Moegerle asked Larsen if she has noticed, in the last two weeks, that there has been abatement of noise, like Mr. Seefeld noticed. Larsen said, "Towards the end of January we were told he was out of town and it was very quiet that week," but Monday, she was leaving for work around 7:00 a.m. and she saw a big truck leave the property. Moegerle asked, "Did you see it or hear it?" Larsen said she saw it and heard it. Lawrence said, "Right now we are working with Mr. Hoppe to find out what is going on with his other place," and "to, hopefully, get this move going on so he is out of the neighborhood." Larsen said she hasn't seen his other property personally, but she hears it hardly looks big enough to even have the room to store all this large equipment. She assumes you know what you were doing when you passed that variance for him.

Voss asked Davis to briefly summarize the current status of Mr. Hoppe's property. Davis said on October 5th Council passed a variance allowing Mr. Hoppe to build two additions to his buildings at his Viking Boulevard location for the purpose of him totally transferring his all of his business operation and consolidating at this one address. One of the conditions that were granted as part of the variance was to allow him to store his equipment at his 604 189th Street residence until he completed these two additions. Davis explained that when his wife presented this to City Council, it was indicated that [Mr. Hoppe] should be in the building by maybe this fall, weather permitting, and there was a date of mid-May mentioned in the approval and motion for the variance to be in the building at Viking Boulevard. Voss said, "So the variance is pertaining to the property on Viking Boulevard, but the discussion was of the residential property?" Davis said that is correct.

DeRoche said he thought it was understood that the trucks were not going to be going in and out. That was a pretty large discussion, and he remembers the people standing up here talking about it, and it was going to be storage only. He said, "And they weren't going to be coming up and down the street, he wasn't going to be operating his business out of here." DeRoche said he remembers "... [Mr. Hoppe's] wife standing up here saying the exact same as Davis. Saying we are going to get going on it, and that is why we granted the variance." He said to his knowledge there haven't been any permits pulled or anything. DeRoche said he personally went through this in his neighborhood when his neighbors built at the end of the road, and it is pretty obnoxious. Voss asked, "Is there a CUP on the home business on 189th?" Davis said "No, there is not. There was an IUP granted in 2004 for one year."

Gordon Hoppe of 604 189th Street NE said, "It is amazing how she [Larsen] has seen a truck because [his] guys have been out of town for three weeks. The month of December they have been out of town." He told Davis he would give him hotel receipts. "All this noise they hear? There are three other businesses operating in our neighborhood. One of them has a semi that arrives three times a week. Next time her husband follows one of my trucks he will have the cops called, because he followed him clear to St. Louis Park." Moegerle asked "What other businesses are in this neighborhood, that are contributing to this problem?" Hoppe said he

doesn't really want to say. "You can look them up. One has an IUP and the others do not." He said there are other vehicles in this neighborhood also. Hoppe said he drives three diesel trucks and the guys never start before 7:00 a.m. He did that out of the kindness for the neighborhood. Moegerle said "And our noise ordinance requires that." Hoppe said yes. He said he has been out of the neighborhood for three weeks, and for the whole month of December they worked out of town. They left Monday morning and came home Friday, he has hotel receipts.

Voss asked what is going to happen between now and May. Hoppe said he will probably start on the building, but he was informed he had until May to get it done. That is what the paperwork says. Voss said "That is one issue, but in terms of what you are doing on your property on 189th." Hoppe said there will be trucks and equipment kept at his property for his life, because he uses them at home. Voss said "You said 'kept', you mean inside?" Hoppe said "They have never sat outside at night." Voss asked "But they are going to stay inside the building?" Hoppe said he took one out on Saturday because he had a diesel gel up. So he took one out of heated storage and put it into cold storage. Voss asked "But you are not going to job sites?" Hoppe said no. He said this is going to be his retirement home, so a couple of them will, for personal use; it will be his private carrier, not for hire. Voss asked "So for personal use that is the only expectation the City can have on going forward?" Hoppe said he has been informing Davis of this, he has talked to him on a regular basis. Hoppe said "But some of the neighbors should figure it out because the semi that leaves [his] business can't actually make the right hand turn out. So he has to make a left hand turn out and turn around in my cul-de-sac [the City's cul-de-sac] at the end of the street to leave. Two of the neighbors that are sitting here ran businesses out of their homes without IUPs or CUPs because they did work at my home." Lawrence said, "One of the issues is that your wife said weather permitting that you would have it done." Hoppe said he has been working out of town. There hasn't been any work here, so he has been working out of town. Lawrence said, "But she said weather permitting you would have it done this fall." Hoppe said he hasn't had time. Lawrence said he understands that.

Tom Eich said he owns some property south of Hoppe's. He said his daughter and son live there; three pieces of property. Eich said, "Most of [the] problem is with Hoppe's attitude; what you saw there, this is what he does. He doesn't go to be nice to a neighbor or respect them. They will jake break the truck, speed, make noise, blow off firecrackers, more than the City of Blaine does." Eich said, "This is zoned residential, not commercial. Until that is changed, he shouldn't be able to run a business there." He couldn't go to 65 and 22 and build a house. And if it was a small one man operation, fine. But you are talking about a big business; trucks coming in and out.

Ann Dalagher of 418 189th Street NE said she has nothing against Mr. and Mrs. Hoppe, they are probably fine people. "It is just what they are doing here. Your ordinances say it is wrong. Your City Administrator agreed with us that it is wrong. And here we are again." Dalagher said, "And now you have people that are ready to duke it out. Well, what do you expect? This is what you get when you keep coddling a situation."

DeRoche said, "But the group that is up here was not here in 2004, so we haven't been dealing with this issue since 2004. The first we heard about it was when he came here for variance and then people came in and spoke out. And that is why we gave him the variance to build the other building." DeRoche said he understands the frustration. Dalagher said, "Yes. And we have been in to see Jack. We have had good conversations and then everything turns

around. Point is: what do we do?"

Moegerle asked, "When is the noise? Our ordinance says from 7:00 a.m. to 10:00 p.m. it isn't as strict. Are you talking about that time of day?" Dalagher said, "In the morning they go and a lot of time in the middle of the day they come back. Davis asked people to do logs and take pictures and that doesn't feel right either, quite frankly." Moegerle said, "But you have to do that." Dalagher said "It happens throughout the day, quite frankly. It is a safety issue also, that is not a freeway, it is a cul-de-sac. Some kid is going to dart out of a driveway and get plastered by one of those trucks and then what? And it feels like, even tonight, Gordy's tone is like a bully, trying to bully the neighborhood; bully the Council. Just because he is big and strong and he's got a business. Dalagher said, "Well we got that same guy that is about 10 years old in our school pushing people around and we can't even get that under control." She said, "If we can't even control this type of action and attitude as adults how do we ever hope to get our arms around bullying?"

DeRoche said everything has to happen in a certain order, because everyone in this country has rights. And if we were to go in there and just shut him down, how many lawsuits do you think we would come out with? Dalagher said she doesn't think you would have any, because, obviously, you have given him forever to get this done. She said there are other attorneys. DeRoche said he understands that. But we, as a group, haven't been dealing with this forever. Dalagher said, "We have given you information to take this seriously so that something actually does get resolved once and for all." Voss said your statements tonight and the other statements are what he considers the beginning to another step in this. 2004 there was an Interim Use Permit issued for one year. He said the meeting last fall, which he is sorry he wasn't at, which was for actually something different. Voss said and this became part of it, so it wasn't official, but we took notice. And now we are here again tonight. He said he appreciates your frustration; it is not that Council is stonewalling; this is going to be another step in the process.

Dalagher said she will leave you with another fun thought. "Say you lived at the back of that property and you have people that backed up to that property before he [Hoppe] ever came. Their property has dropped 50/60% in the last of couple years. Do you think they could even sell their property with that there?"

Moegerle asked the City Attorney to help [Council] with the issue of enforcement of the Noise Ordinance. "Because noise seems to be the primary concern and how difficult is [the order] to enforce? [She] had asked Davis to get some patrols along there to document and so far we haven't. What is involved with this for the city?" Vierling said "It is like any other ordinance-based violation. If the city receives written notice from residents or neighbors that there is a violation of the ordinance, or we have our police officers that observe it, we can tag those and go forward based upon those terms and whether or not a misdemeanor violation has occurred. Everything we do is based upon a complaint from a citizen or a report from one of our police officers."

Hoppe said "And you guys that say you didn't know about this?" The day he sold his building he came in to the Council at a meeting and said he would be moving his stuff to his home and would be buying a building. He said that he would be buying in East Bethel or trying to build in East Bethel. Hoppe said it took him six months (he applied in April) to get a building permit for his cabinet shop. DeRoche said he remembers a conversation last October and you were frustrated about the sewer and water project because you were going to have X amount of ERUs with your building and that you were going to move out of that area. Hoppe

said he came in (and you can look it up in the minutes in April) and said he sold his building and he was going to be moving his equipment to his home and would be looking to either buy or build in East Bethel. And he asked to put an addition on the cabinet shop at that time, but was told it didn't meet the zoning because the past council zoned it residential. Moegerle said "That is why we did that Comprehensive Plan Amendment. We are putting you back to commercial." Hoppe said "It took me 6 months and \$1,500 to get to a variance at that point. [He] can't store anything at the cabinet shop because Ordinance 137B says 'No outside storage.'" Moegerle asked "Is there a possibility for outside storage?" Hoppe said he doesn't store his stuff outside anyways, but for them to say he is bullying, he has been upfront with you people from day one.

Tom Ronning of 20941 Taylor Street NE said he wanted to ask questions about the sewer and water. He has been following this project for roughly 6 years. He said he thinks we are about eleven months into the project and there should be some answers to some of these questions now. Ronning said personally he has spoke in opposition to this project and has watched numerous others speak in opposition as well. "During this time we have asked about our obligations to this project and what is it going to cost us. About September 2009 we kept getting the answer: Don't worry. Don't worry. Don't worry." He said so he could see something coming. So he asked, "What is the most it will cost us if we do not connect?" Ronning said he got some surprised looks and was told it wouldn't cost us anything. Mayor Hunter was consistent in his answers with at least dozens of us and told us, "If you don't want it, you won't get it and if you don't connect you will have no cost." It is his [Ronning's] recollection that there was a citizen in here one night that asked about the obligation of the council to get approval from the taxpayers and believes the Mayor asked the attorney at the time; "What is the answer?" [The Attorney] said, "The council can do anything it wants."

Ronning said, "Mayor Hunter assured me and numerous others many times that this would not cost us anything if we didn't want it. But when you look at the bond issue, these are general obligation bonds. And most people don't understand this: if there is a monetary default that goes on us. I am going to pay. You are going to pay. Everybody out there is going to pay. Anybody out there is going to pay it." Ronning said, "In [his] opinion, this is beyond misrepresentation. They have been willfully and deliberately lied to for years now. At the time this was started we had about a 3.5 million of bond issue that we owed and then we took on 18 million or so dollars in addition to that. The lame duck session, in November/December 2010 hurried this bond issue through and hurried the contract assignments. Rush. Rush. Rush. And forget what anybody else thinks or wants. Forget that we all voted against three members. Mayor Greg Hunter, Council Members Kathy Paavola, Steve Voss, Bill Boyer and Steve Channer ran this through unanimously. Regardless of what any of us said."

Ronning said he has some questions too, please. "What is the city tax revenue for 2011 and what is budgeted for 2012?" (Ronning said he doesn't know if he will get answers to these as we go or what.) "What have we paid to date for construction and is anything completing ahead of schedule or on schedule? What are the foreseeable payment obligations for the next 3-5 and beyond years?" Lawrence said, "Unfortunately most of these questions you are asking will only be forecasted. We can't give you an actual answer. It is just an outlook. We don't know." Ronning said, "That is understandable." Davis said, "As far as tax revenues go, we are looking at 1.7 million. Revenues for 2012 are approximately \$176,000 less than for 2011. Construction costs to date (he has a very, very rough figure.)" Jochum said, "It is \$5,768,869 approximately." Davis said as far as the construction schedule, approximately 53% of the pipe has been laid and the project may be a little behind schedule but he will

reserve comment on that.

Ronning asked, "What will we owe to repay bonds in the next 3-5 years and beyond?" Davis said, "We know what the payments are; we don't know what the revenues are. The bond payment we have scheduled for this year is \$798,904, for 2013, 2014 and 2015 it is \$708,388. In 2016, the payment is \$1,493,388 and the reason that jumps up is there is a Schedule C bond that half is due in 2016 and half is due in 2017. But these bonds can be refinanced." Moegerle said, "At an additional cost to us. Is that correct?" Davis said, "Yes, at an additional cost to us to refinance it."

Ronning asked, "What are our commitments to the Met Council with this?" He said he hasn't heard or seen anything about this since this started. Davis said, "They have a schedule set up that requires us to generate X number of SAC or ERU connections per year. [He thinks] the first year is 100 and then [he thinks] it goes up correspondingly 10% each year. Up through the 20 year plan of the bond payout." Lawrence said, "We have a complete plan of that and can get that to you." Ronning asked, "What are our plans to meet the obligation?" Davis said, "Our plans are to be extremely attractive to development. We have done several things to put the mechanisms in place to make [East Bethel] more attractive for businesses. We are currently working with one prospect and hope to have some type of announcement in the next 4 to 6 weeks. We are using every means we have to get as many hook-ups as possible." Ronning said he doesn't doubt that you are and he hopes that you are successful and he is sure that every one that is watching this also hopes you are successful.

Ronning said, "Maintenance and manpower. Is there an estimate of maintenance and manpower needed? Davis said, "Maintenance on the system, initially, will be minimal since there will be very few customers. That is something we will have to wait and see. We will have to project. That will be part of the rate schedule we try to develop. Here again, you have to have X number of customers and X number of dollars to meet the maintenance and operation." Ronning asked, "If you have two customers compared to if you had 100 customers, does one get 50% and the other get 50%?" Davis said, "It doesn't work that way. This just puts more pressure on the City to get more customers for a bigger base to spread those costs over a larger number of customers." Ronning asked, "What is the anticipated break even or positive cash flow of this system? In the best case scenario?" Davis said, "That we would have to look up because there are so many scenarios with so many different projections and they are all based on the number of connections per year." Ronning asked, "Just as an opinion, do you think we have a glimmer of hope?" Davis said yes, he does or he wouldn't be sitting up here.

Ronning asked, "What is the interest obligation on the bonds? What are we paying when they are due?" Davis said he would have to check and see what rates we are paying on those. He said, "They are at a very attractive interest rate, plus there is also a federal credit on two of them that allows us to get a lower payback on them." Davis said he would have to check them to see what the rate is current. Ronning said, "Thank you for your time and input and answers."

Joshua Sturman of 226 Elm Road said he wanted to keep you in the loop regarding a proposal he was putting together for the Coon Lake Improvement Association (CLIA). "There is a DNR grant program where they offer matching funds for a public awareness program. You put out information and CLIA has approved matching funds up to the maximum of the DNR grant which is \$7,500. This wouldn't be an immediate budget concern of the City. He recently spoke with Kathy Paavola, President of the Coon Lake Community & Senior Center.

She was in support of it; also the owners of the Coon Lake Market as a bait shop. [This] was one of the DNR requirements; that you talk with your bait shops to get the information out.

Sturman said, "The biggest concern is to prevent the intervention of zebra mussels which have kind of taken over Lake Minnetonka. And the amount of traffic that we get into Coon Lake (just from around the general metropolitan area), once they get in, there is no way of getting them out. This is a way to put some real solid boots on the ground helping people to know what to look for and to actually inspect them. As part of this grant funding to work (they have two different pay scales) [the work would be done] for \$12 an hour and CLIA was okay with paying that.

Sturman said he is looking for Council to address the enforceability of some of these inspection regulations. "What we would actually be able to do if people are violating them? If they are just dumping in the lake without passing through the wash areas? Just something simple that says: This is a City Ordinance. So we can get on the radio and the sheriff's or the DNR and tell them; 'We have people that are not complying.' Otherwise, this would be a voluntary process." DeRoche said he has been trying to do this for 30 years because he lives on Coon Lake. What he was told was because in the old days someone would inspect trailers and vehicles when they came in and out. He said for some reason they did away with that program. Then when the CLIA started charging all the homeowners \$300 a lot we asked "Why don't you put people out there then?" and they said, "Because it is a county park they can't." DeRoche said he doesn't quite understand that, if the lake is in jeopardy, because of Milfoil and Curly Leaf. He said, "And you are right, the zebra mussels are pretty much dominating everything," but as a City he doesn't think we can do that. He thinks it has to be a DNR thing. Somebody can probably call the recreational deputy and say, 'We are having some violations,' and write down the license number.

Sturman said, "You are pretty much right. As far as the CLID, they pretty much have the same authority as the City or state. They are a taxing authority. The accesses, [he] believes the one on the north side is owned by the state. The one on the east side is part of the county park and the other little accesses around the lake are not really regulated by anybody. That would be where the Coon Lake Community & Senior Center would come in. This is a program that is in cooperation with the DNR, which would contribute to the north side one, and, as a political subdivision, Coon Lake Improvement District (CLID) in collaboration with the county would do a monitoring program. It is just a matter of getting everyone together and who is going to fund it." DeRoche said he was also told they were going to limit the bass tournaments out there. He has gone over there and not been able to launch his own boat because of the parking over there. He said he has taken pictures of milfoil on people's trailers and no one did anything about it.

Voss said maybe something you want to look into is the DNR is starting monitoring on certain lakes. There is obviously cost associated with it, would be helpful to know the costs. Sturman said, "There are two different programs. One is just public awareness and the other is where you have to be certified." Moegerle asked if he could get the application and more information. "Then we would be able to address this in a more informed way. And, maybe, process it through our attorney, so we could have a more informed opinion for you on what we want to do to go forward." Sturman said he was just in the process of filling it out. CLIA wanted him to turn it in to them yesterday so they could review it before he submitted it to the DNR. He said there is just an area on there that indicates cooperating organizations so he listed CLID, SRWMO, and he was throwing this out there to see if he could put the City of East Bethel on there. Voss said as our largest natural resource in the City he would think the

City would be supportive of doing what we can. Moegerle said, "Certainly in general. It is the financials we would have to look at in more details before we make a commitment. But absolutely." Voss said for the City as well, there is in kind contribution. DeRoche said there are monitor tubes out there. About 25 of them.

Ronning asked, "Along Hwy. 65 is S.R. Weidema doing the digging?" Lawrence said yes. Ronning said, "They seem to have taken a month or so off, everything is parked over there. Are we on schedule?" Voss said, "They are working today." Ronning said, "They were working Monday morning. They had all the lights on, trying to catch something up. Have you been informed yet that there is a dip at the north digging point and do they have a fix for that?" Davis said, "We were informed of that. It is a MnDOT issue. They will have to take that up with them. They will be responsible for it." Ronning said, "As much as my grumbling sounds like grumbling, we are all in the same damn boat. And if this thing sinks, it is going to cost us a fortune. [He] thought it was irresponsible when it was done, and [he] hopes it doesn't cost us what he is afraid it will." Voss asked the dip on 65, is that where the jacking point was or is that where every year there is a dip? Davis said, "It may be a coincidence but, it is where the bore was done."

Troy Parker from Fatboys Bar and Grill asked, "When does the bond payment go up to a 1.5 million?" Davis said, "2016." Troy said he is on the mailing list for the City and when he sees taxes are going up, he wakes up. He asked, "So are we at 'Build it and they will come'? You said you have projects that might have some interest." Davis said, "We are working on that constantly." Parker said he thought he saw something on this. "That you hired somebody to go out and do this, to bring businesses to the community. Is that a city position or a consultant?" Davis said, "We hired a marketing and branding consultant and will be following a basic plan to find businesses that are suitable for East Bethel. They will be able to advise us in ways that we probably haven't considered, directions to go. But, in the meantime, we are going to follow the basic plan that is in place to contact businesses, work with county and work with the state." Parker asked, "Who is doing that now?" Davis said, "Council members, myself, and the City Planner." Parker said, "It has been a while since anything has been built out here." Davis said, "It has. And one of the reasons is probably the lack of services. We have had a lot of interest and a lot of inquiries since this project has been started. So [he] thinks that is a positive sign." Parker said, "The first 500 cheeseburgers he sells a month pay his taxes. Are you looking for big boxes?" Davis said, "We are looking for anything that is suitable for East Bethel and that we think will be positive for the community. Not to say we are going to be real picky and exclude anybody. The consultant will come up with strong recommendations to attract businesses and [he] feels like it will be a very worthwhile product to give us some additional guidance to attract businesses."

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

Lawrence said we have a survey that we are looking for residents, businesses and visitors to fill out. It is on the front page of the website. If you don't have a computer, call City Hall at 763-367-7840.

Consent
Agenda

Boyer made motion to approve the Consent Agenda as amended including: A) Approve Bills; B) Meeting Minutes, January 18, 2012, Regular Meeting; C) Resolution 2012-15 Amending the Fee Schedule; D) Appoint Fire Fighters; E) Completion of Probation of Fire Fighters; F) GRE Mediation Representatives; G) Resolution 2012-16 Approving an Application with No Waiting Period for An Exempt Period for Cedar Creek Community School PTO to Hold a Raffle. DeRoche seconded; all in favor, motion

carries.

Linda
Gutzkow –
IUP
Amendment –
20825 Tyler
Street NE

Davis explained that Ms. Gutzkow is requesting an amendment to her IUP to expand her home occupation. In 2006, an IUP was approved to allow an FDA approved electrology business known as “Linda Gutzkow’s Permanent Cosmetics.” Ms. Gutzkow would like to include the following services as part of the home occupation: teeth whitening, facial sculpting, permanent makeup (eyebrows, eyeliner, eyeshadow, lips), and micropigmentation.

Currently, Ms. Gutzkow practices permanent cosmetics at two spa locations (Andover and Crystal), and performs electrolysis from her residence. She is licensed by the Department of Health, so she is able to provide the services. Staff has received updated copies of the licenses. In order to perform permanent cosmetics from the residence, Ms. Gutzkow must obtain a license from Anoka County Community Health and Environmental Services Department. Ms. Gutzkow has applied for the license and staff has been in contact with Mr. Daniel Disrud regarding the license. Ms. Gutzkow is working with Anoka County to address the concerns that need to be addressed and must submit an approved license prior to performing services.

The hours of operation are Monday - Friday, 8:00 am - 9:00 pm, and Saturday, 9:00 am - 5:00 pm. The duration of the treatments last between 15 minutes to 2 hours.

Parking needs generated from the home occupation shall be provided on-site, in the designated driveway.

Planning Commission recommends approval to the City Council of an amendment to the IUP for a home occupation to include permanent cosmetics applied to the face, teeth whitening, and facial treatments for Linda Gutzkow (d.b.a. Linda Gutzkow’s Permanent Cosmetics), located at 20825 Tyler Street NE, PIN 183323410033, with the conditions as listed in your packet.

DeRoche made a motion to approve the request of Linda Gutzkow dba: Linda Gutzkow’s Permanent Cosmetics for an additional Interim Use Permit located at 20825 Tyler Street NE (PIN 18 33 23 41 0033) with the following conditions: 1) Home Occupation shall meet standards in East Bethel City Code, Appendix A, Zoning, Section 10.19 Home Occupations; 2) The IUP excludes body art tattooing and piercings; 3) The IUP includes electrolysis, permanent cosmetics applied to the facial area (eyebrows, eyes, cheeks, and lips), teeth whitening, and facial treatments. Other services, not covered, require an amendment to the IUP; 4) Hours of operation will be Monday - Friday, 8:00 am - 9:00 pm, and Saturday, 9:00 am - 5:00 pm; 5) Client parking must be on the residence driveway; 6) IUP must be executed prior to performing cosmetic services; 7) Property owner/Applicant must submit copy of certification from the American Institute of Education and required permit from Anoka County Community Health and Environmental Services Department prior to performing cosmetic services; 8) Violations of conditions and City Ordinances will result in the revocation of the IUP. Boyer seconded.

Moegerle said, “At Planning Commission you indicated that you were not working forty hours at this business.” Gutzkow said, “Correct.” Moegerle asked, “And you indicated that at some point you might consolidate your business to this location?” Gutzkow said it depends on whether she gets approved by the county to do the permanent makeup at that location. If

she gets a permit from the city then the rest of that will get submitted to the county and then they come out and do an inspection. This is new territory. They have not approved this type of work in a residence so far, so she can't really answer that. Gutzkow said if she gets approved she is likely to drop the Andover location, if she doesn't get approved, she has to have some place to work. Lawrence asked, "How many people will be working with you?" Gutzkow said just herself. Moegerle asked, "How often do these get rechecked and renewed?" Davis said, "It can have any term you want put on it." Gutzkow said she tracked the amount of traffic coming in and out and there was a total of 23.25 hours where there were business cars in her driveway. It does not affect the street a lot. She went around and did a survey. Got 8 back and all were positive. Gutzkow said a big reason for asking to have business in one location: it is tough to provide part of your services in one spot and part of your services in another spot. She said also when she works in Salons she has to make sure she has everything coordinated. It ends up to be a lot of work. It has gotten to be a little bit difficult and time consuming.

Boyer said he would like to amend this to have the two IUPs run concurrent. Voss said he was looking at the IUP and it has run out, but it is being reviewed by staff. Lawrence asked do you have a neighbor here? Neighbor said he is all for it. Moegerle said she reviewed [Gutzkow's] website and she liked what [Gutzkow] is doing with people with chemotherapy. DeRoche asked, "Do you plan on adding someone on to work with you?" Gutzkow said no, she hopes to not have to. She wants to be busy enough to work part-time and take care of her family. **DeRoche accepted the amendment. Boyer seconded the amendment. Boyer, DeRoche, Lawrence and Moegerle, aye. Voss abstained.** Voss said the amendment made it sound like there are two IUPs. He said there is no expiration on the IUP, so until it is removed there is no expiration on it. Moegerle said, "Yes. We see an annual review and then a biannual review under the conditions of the permit." Voss said, "This is just adding onto the conditions of the IUP, it is not a new IUP. He said he didn't vote, because he doesn't want to do anything procedurally wrong and have it come back to us. Vierling said, "With the amendment to the motion, the amendment was to run the two IUPs concurrent, thinking that there were two IUPs. If we want to have just a motion to approve the IUP as presented tonight, for the record, he thinks that is fine."

Boyer made a motion to approve the request of Linda Gutzkow d/b/a Linda Gutzkow's Permanent Cosmetics to amend the Interim Use Permit located at 20825 Tyler Street NE (PIN 18 33 23 41 0033) with the following conditions: 1) Home occupation shall meet standards in East Bethel City Code, Appendix A, Zoning, Section 10.19 Home Occupations; 2) The IUP excludes body art tattooing and piercings; 3) The IUP includes electrolysis, permanent cosmetics applied to the facial area (eyebrows, eyes, cheeks, and lips), teeth whitening, and facial treatments. Other services not covered require an amendment to the IUP; 4) Hours of operation will be Monday - Friday, 8:00 am - 9:00 pm, and Saturday, 9:00 am - 5:00 pm; 5) Client parking must be on the residence driveway; 6) IUP must be executed prior to performing cosmetic services; 7) Property owner/Applicant must submit copy of certification from the American Institute of Education and required permit from Anoka County Community Health and Environmental Services Department prior to performing cosmetic services; 8) Violations of conditions and city ordinances will result in the revocation of the IUP. DeRoche seconded; all in favor, motion carries.

Motor Vehicle
Sales – Ryan
DiMuzio &

Davis explained Ham Lake Motors has an active Motor Vehicle Dealer's License from the state, however, it has not operated an open sales lot in East Bethel for at least the last three years. Since City Code does not allow this type of use, an Open Sales Lot is considered

nonconforming. City Code Appendix A, Zoning, Section 5.2 states that "nonconforming uses may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion, unless the nonconforming use or occupancy is discontinued for a period of more than one year." This language is in conformance with Minn. Statute 462.357, Subd.1e. Nonconformities.

The only possible way for an Open Sales Lot to operate from the property would be with a Zoning Text Amendment to allow this type of use in the B3 – Highway Business district. Staff has approached the City Attorney asking for options to address the issue. The City Attorney stated that the City Council could amend the Zoning Code to allow an interim conditional use permit for such uses that would terminate as the property is transitioning to another use and to put a timeframe on the permit. Zoning Text Amendments require the formal process of a public hearing at Planning Commission and approval of City Council. The process is typically 8 – 12 weeks.

This particular issue has been in discussion among Staff and the tenants of the property since fall 2011. In September of 2011, staff sent a letter to the property owner, Tim Chies. The letter explained the Zoning Text Amendment (ZTA) process. Mr. Chies, being the property owner, could apply for a ZTA. Staff recommended he submit a letter to the City Administrator with the request. Staff has not had contact with Mr. Chies.

Mr. DiMuzio would like to present his proposal of operating an open sales lot at 18803 Highway 65. Again, an Open Sale Lot would only be allowed with an approved ZTA and permit.

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.

Planning Commission has some concerns such as limiting the number of automobiles on the lot. If directed to continue with the ZTA, staff will work with the City Attorney on the amendment language and to address the concerns. If directed to continue, staff plans to have a draft for review at the February 28, 2012 Planning Commission meeting.

Staff and Planning Commission have the following requests:

A request to allow Mr. DiMuzio and Mr. Valder to present their concept for an open sales lot at 18803 Highway 65, East Bethel, and Planning Commission requests City Council direct staff to move forward with a Zoning Text Amendment to amend the B3 – Highway Business District to allow open sales lots as an Interim Conditional Use Permit.

DiMuzio said, "We do understand that the property will be sold when the City moves forward." Moegerle said, "You made a presentation to the Planning Commission on what you are anticipating. Can you repeat that here?" DiMuzio said, "It is not going to be an Open Sales Lot. We are a broker, get the vehicles for people. So it looks like a regular store. Unfortunately, we have to float some of these, so we might have up to 20 vehicles on the lot. But it is a regular store, trying to get away from the used car lot image. Not open to 9:00 p.m. Sign can be inside. We need to differentiate between the businesses." Voss asked, "Are you planning on having signage on highway?" DiMuzio said, "We just need an address sign, to

make it seem more professional. We have revamped it on the inside.” Davis said staff met with Ryan and Jordan and discussed this possibility. “We did discuss that this property is in the sewer district and will probably have a higher use or value in the future. So we explained that we would probably put a specific time limit on this or when the property is sold it would go away. That way, if there were other uses for that property that were more beneficial in terms of our sewer project, they would be able to proceed along those lines.”

Boyer asked, “Was a building permit pulled on the improvements? Did staff inspect the improvements?” He said because in the past there have been issues with this building with the Fire Marshall. Moegerle said, “The City Planner did go through this building and she has been through there also.” Davis said, “He would have to check on that.” DiMuzio said, “We had a certified electrician come in and redo the wiring. We have done quite a bit of work on it.” DiMuzio said, “We would like to move to the other side of the highway, to the business district in a pole building and keep all the cars inside.” Voss asked, “So this is a new endeavor? And you would be utilizing a property that is underused right now, but that would have a different use in the future. What kind of time frame or period of IUP would you be comfortable with? And more importantly, what kind of transition period would you need, as a business, if the city decides at some point it is time for a different use for this property? How much time would you need?” DiMuzio said, “We could be out in 60 days.” Voss said because if there is a way to keep you in the city we would like to do that. DiMuzio said, “We do have plans. We have talked to others that lease space because we just found out that we are looking at maybe a one or two year window. And we are at the Council’s mercy. If we just have an opportunity to recoup the money that we put into the building so we can stay in business to provide for our families and then move forward, that is all we are asking.

Moegerle said, “You might also advise council of your respective experience in car sales.” DiMuzio said he has 14 years with the Luther Group as a manager, 5 years as a salesman. Lawrence asked, “A Zoning Text Amendment, would this open it up to all categories, all businesses under the B-3 zone?” Davis said, “That is correct.” Lawrence asked, “Do they all have to have an IUP to get the license to operate?” Davis said, “No, if we did a Zoning Text Amendment, then it would allow Open Sales Car Lots.” Voss said it would be a permitted use. He said we don’t have a zoning map in front of us to understand the effects of this. Davis explained where B-3 zoning is. Boyer said he thinks everything south of Klondike is B-3.

Moegerle said, “In our zoning ordinance we don’t allow open car lot sales. So can they request a variance or is the Zoning Text Amendment their only alternative?” Vierling said, “There is no variance from a prohibited use. You can’t vary from uses, you can vary from dimensional requirements.” DiMuzio said, “A brighter note is for the area we are talking about is we know it is all filled up. A conventional car lot wants to be right along the Highway, so there is not a spot left to put it.” Voss said, “It seemed that the point here, was it was a non-conforming use and it hadn’t been used for more than a period of a year, at least in the staff write up that is what it says, state statute.” Vierling said, “It was both a common provision in the state statute and your ordinance with regard to discontinuance of that use, once it has gone dormant for over a year, that use is gone.” Voss said, “Given what we have gone through in the economy, can the City change that to a longer period? Vierling said, “But we can’t make it effective to a prior date.” Moegerle asked, “If we make a Zoning Text Amendment, can we later vacate it?” Vierling said, “You can always amend your Zoning Code, but property rights do accrue. Even though you would choose to amend, delete or modify your Zoning Code with regard to a permitted use in an area, to say make it non-permitted in an area, you could not take away the real estate rights that had been acquired by

people that were in place.”

Davis asked, “What amount of outside storage space would you require?” DiMuzio said, “Just enough room for what we handed out to you. And we do park a maximum two cars out back.” Moegerle asked, “Can we say internet sales?” Vierling said, “You ultimately have car sales.” Voss said, “The purpose is not to sell cars, it is the product. This is wholesale, not retail.” Vierling said, “It is retail, because the sale hasn’t happened until the customer comes in and makes a payment.” Boyer asked, “If we tabled this for two weeks would it really be a big deal for you?” Valder said his license expires next month in Spring Lake Park and he doesn’t really want to renew it there because then he would have to get in a lease with that guy and he is already in a lease with this guy. Boyer said he is saying for two weeks. Valder said, “That is fine.”

Voss made a motion to table the Zoning Text Amendment to amend the B3 – Highway Business District to allow open sales lots to allow staff to work with the applicants to find a create alternative to the Zoning Text Amendment with the understanding of the consequences that could happen for two weeks. Moegerle seconded; all in favor, motion carries.

Pay Est. #9,
S.R.
Weidema,
Project 1,
Utilities

Jochum explained that attached is a copy of Pay Estimate #9 to S.R. Weidema for the construction of the Phase 1, Project 1 Utility Improvements. The major pay items for this pay request include sanitary sewer construction along TH 65 and sewer and water lateral construction under TH 65. Two separate payments will be made. One payment will be to S.R. Weidema and the other will be to the escrow account established at TCF Bank. We recommend partial payment of \$37,264.52. A summary of the recommended payment breakdown is as follows:

Contractor Payment Summary			
	Totals to Date	Less Previous Payments	Amount Due this Estimate
MCES	\$3,348,815.56	\$3,324,841.78	\$23,973.79
City	\$2,420,053.76	\$2,408,626.26	\$11,427.50
Total	\$5,768,869.32	\$5,733,468.03	\$35,401.29
Escrow Payment Summary			
	Totals to Date	Less Previous Payments	Amount Due this Estimate
MCES	\$176,253.45	\$174,991.67	\$1,261.78
City	\$127,371.25	\$126,769.80	\$601.45
Total	\$303,624.70	\$301,761.47	\$1,863.23

This estimate includes payment of \$35,401.29 to S.R. Weidema and \$1,863.23 to the escrow account for a total of \$37,264.52. Payment for this project will be financed from the bond proceeds. Funds, as noted above, are available and appropriate for this project.

Staff recommends Council consider approval of Pay Estimate #9 in the amount of \$35,401.29 to S.R. Weidema and \$1,863.23 to the TCF Bank escrow account for the Phase 1, Project 1 Utility Improvements.

DeRoche made a motion to approve Pay Estimate #9 in the amount of \$35,401.29 to S.R. Weidema and \$1,863.23 to the TCF Bank escrow account for the Phase 1, Project 1 Utility Improvements. Boyer seconded; all in favor, motion carries.

2012 Joint Powers Agreement Street Maintenance Program

Davis explained that the Cities of Coon Rapids, Andover, Brooklyn Center, Columbia Heights and Fridley entered into a Joint Powers Agreement on February 1, 2005 for the purpose of joint bidding for certain street maintenance services. This Joint Powers Agreement allows smaller cities to achieve more economies of scale in the bidding process and potentially achieve lower bids from contractors for crack sealing, seal coating and striping. The City East Bethel joined the group in February, 2008.

The City of Coon Rapids is the lead agency by the agreement for this group. As the lead agency, they draft the specifications, solicit bids and provide the necessary documents for member cities to sign to participate in the program. The agreement is structured such that it permits each member city to accept or reject the bids for their portion of the proposed contract. Each city will pay the contractor directly for their share of the work and contracts will be awarded separately for the various items.

The process is as follows:

- 1) The City of East Bethel submits the quantities for crack sealing, seal coating and striping to the City of Coon Rapids for inclusion in the collective bid.
- 2) The City of Coon Rapids develops all bid specifications and solicits bids for all quantities submitted by member cities. Bid specifications follow MnDOT guidelines requirements.
- 3) Each City may modify the quantities they have submitted to maintain budgets for these projects after the low bid has been identified.
- 4) Bids for these projects will be opened on March 2, 2012. The City of East Bethel is required to submit a letter of concurrence to the City of Coon Rapids by March 22, 2012 authorizing the City's level of participation in the program for 2012. The bid award date will be April 3, 2012.

The City of East Bethel realized savings of at least 20% over previous costs for these services through participation in the JPA Street Maintenance program. The savings were due to the pricing in the current construction market and the larger base of purchasing power afforded by the group bid.

The following projects are recommended to bid as part of the 2012 JPA Street Maintenance program. These projects have been identified in the 2012 Street Capital Improvement Plan (CIP) and recommended by the Roads Commission.

1. Seal coat and crack seal Hupp St, 239th Ave, 231st LN, 233 Ave, Erskine St, Kissel St, 234th LN, Isetta St, 224th Ave.
2. Crack-seal 150,000 LF as part of the annual street maintenance program. Crack sealing will be performed prior to any seal coating applications.
3. Stripe 60,000 LF of striping on University, Briarwood, Palisade, and other roads to be determined.

Bidding the item does not obligate the City to accept the bid. The bid for individual items can be rejected or amended as to quantities to accommodate the project budget.

The estimate for seal coating and crack sealing the above listed streets is \$191,377. These

projects will be funded from the Street Capital Fund as identified the 2012-2016 Capital Improvement Plan.

Staff recommends the approval of these projects to be bid as part of the City's JPA Street Maintenance Agreement. Bids for the work will be presented to City Council for final approval at the March 20, 2012 meeting.

Boyer made a motion to approve the 2012 Joint Powers Agreement Street Maintenance Program. Lawrence seconded; all in favor, motion carries.

Boyer said he is curious; what was the Road Commission rationale for not continuing the farthest northern 1/3 of Durant Street. He asked, "Was that done at a different time?" Connects to Erskine. Davis said, "That section of Durant to 229th north to the dirt road to Cedar Creek was done two years ago." Boyer asked, "Is this the same program we have been doing the last couple years?" Davis said, "That is correct."

Annual Fire
Dept. Report

Davis explained that Fire Chief Mark DuCharme will present the report and be available to answer questions.

Chief DuCharme said in 2011 the East Bethel Fire Department responded to 521 calls, a slight decrease from 2010. He said well over half of the emergency calls are medical related. "One of the reasons we did not have an increase of calls was a wet spring and summer and lack of increase in wild land fires. Right now DNR is talking to fire departments and not sure how much support they will be able to give us because of conditions. [He] included a list of all calls. One of things [he] did want to let you know is we do track calls, and we do grids in the city. That way we know where we are providing services in the city. Surprisingly, the higher the density in the area, the higher services we provide." He has also included a map on how those are laid out and some data that goes with that. Chief DuCharme said, "Not surprisingly, our busy hours are from 4:00 p.m. to 8:00 p.m. and Tuesday, Fridays and Saturdays are our busiest days. He said and when you look at the whole year, July and August are our busiest months when the heavy storms came through."

Chief DuCharme said illegal burns are big issues and he will be bringing that up to Council member DeRoche. We had a fire loss in 2011 of \$350,000, which is pretty good. Moegerle asked, "The total personal property loss was \$350,000? Because you say that is good." Chief DuCharme said, "Yes, it is relatively speaking. Some departments have millions. We have fire fighters that do a lot of training, and a lot of this is non-paid hours. We have on average about 195 hours of paid time a year and non-paid hours, 126 hour per year. So average pay is about \$6.26 per hour when you figure that out. We do have a fire safety inspection program. We have a very part time fire inspector, Mark Duchene who does the fire inspections. Of the 110 businesses that the fire department has to inspect, he did 75 of them, 45 of them he did in one inspection, 25 had two inspection and handful three or more times. So, all together, he did about 110 inspections, working about 4 hours a week. And the last page is our seniority list. [I] want Council to be aware our fire fighters are vested at 10 years and about half of our Department is vested and two of our fire fighters will have 30 years this year."

DeRoche asked, "Are those fire inspection violations, are most of them just blocking fire exits and those types of things?" Chief DuCharme said, "Yes, or fire extinguishers, etc. Businesses we don't go to are the home based businesses because we really don't have that database, nor do we have the manpower (the way we are organized)." DeRoche asked, "Are

there friendly reminders when these violations are found?" Chief DuCharme said, "Yes. They are mailed a notice and mandatory compliance." DeRoche asked, "If you keep going back and back and it is the same violation, are they issued a citation?" Chief DuCharme said, "They could be, if we have an issue where they are not coming in compliance." DeRoche asked, "Do most of these buildings have the alarms up in the ceilings?" Chief DuCharme said a lot of them do. And a lot of them are monitored. DeRoche asked, "Is this required in any commercial structure?" Chief DuCharme said, "Not necessarily, it depends on square footage, structure and occupancy."

Moegerle said she saw you have couple of animal rescues on here; "Do you still rescue cats in trees?" DuCharme said those are actually dogs. Moegerle said she did an eight minute cut off on response times. 8B, C and D, and 1B, C and D, in Coon Lake Beach [we have longer response times]. How do we address the longer response times? We have a fire barn at Coon Lake Beach but it is not manned at this time. Chief DuCharme said, "Our goal for the coming year is that is where our focus for recruiting will be. We want to make sure that station is properly staffed so that responses are adequate." Moegerle asked, "Because the large amount of calls are EMS issues, should we have an ambulance out here in the City to relieve the stress on you doing that?" Chief DuCharme said, "That comes down to community values and services. We think that the EMS business we provide a good service to the people, we also assist our sheriff deputies and Allina having our patient packaged and ready to go, a quicker response. Don't think our relationship between the Sheriff, Allina and ourselves has never been better."

Boyer asked the chart says hazardous conditions, no fire. He assumes those will be weather related. Chief DuCharme said, "It could be, or can be carbon monoxide related." Boyer asked, "Do you have a rough idea what the percentage is weather related or other?" Chief DuCharme said probably 50/50. Boyer asked, "Are you included in these charts? Call pay vs. hours?" Chief DuCharme said no.

Voss said earlier this year we had a brief discussion of review of the fire rating. He asked have we done anything on that. Chief DuCharme said, "We just completed working with Bethel and Oak Grove on their fire rating. As soon as we get the water system on line, that will get us a lot more water." Voss asked, "So that will help us get our rating reduced?" Chief DuCharme said, "It will be a split rating 5/7." Voss said we had asked that previously. Chief DuCharme said, "They do split that now. Not all insurance companies use ISO for ratings. He takes a dozen calls a week from insurance companies. Questions are all the same."

Review City
Code Chapter
6. Alcoholic
Beverages

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

Mr. Vierling's office was also contacted to provide information on why the licensee was charged and not the clerk. He has provided a memo with information tonight. At this time it is staff's recommendation to do a rewrite of the other section of this code.

Moegerle made a motion to table the review of City Code Chapter 6, Alcoholic Beverages. DeRoche seconded. Lawrence asked, "Can you also check on the charges in this." Davis said, "That is also part of what we will be doing with Vierling's review on the other part of this." **All in favor, motion carries.**

City Council
Representatives
for Local 320
Subcommittee
Meeting

Davis explained that staff has conducted four meetings with Mr. Mike O'Donnell, Local 320 Business Agent, to discuss the 2011 Wage Re-Opener for the City's union contract employees. To date there has been no resolution of the matter. Mr. O'Donnell has requested a meeting with two City Council members to continue this discussion.

Staff recommends the designation of two City Council members to meet with Mr. Mike O'Donnell at the East Bethel City Hall at a time to be arranged.

Boyer asked, "What time will the meetings be held?" Davis said he will furnish us some dates and we will arrange some times and it will be arranged at your convenience. Voss said they are not pleased with how it is going with staff, so they want to meet with council (or he assumes this since they want to set up a meeting).

Boyer and DeRoche said they would volunteer. **Moegerle made a motion to designate the finance committee to meet with Mike O'Donnell, Local 320 regarding the wage reopener. Voss seconded; all in favor, motion carries.**

S.R. Weidema
Contract
Extension

Davis explained in your packet there is a rather lengthy write-up on this. He said however, there are some things that occurred today that may alter the recommendations of staff. And due to matters of potential litigation on this, he is recommending we table this part of the write-up and address this in the closed session that is scheduled for later on at the last of the meeting.

DeRoche made a motion to table the S.R. Weidema Contract Extension. Voss seconded. Moegerle asked, "Could we hear the presentation, and then do actions in the closed session?" Vierling said, "You can certainly have presentation here." Moegerle said, "It is the last item we have, and there are quite a few people from the public here and it might be of interest to them." Davis said he has no problem presenting the issue, but any discussion, we should limit it severely. **All in favor, motion carries.**

Davis explained that "S.R. Weidema ceased work on the interceptor pipe installation portion of the Municipal Utilities Project due to soil migration issues being experienced in the section of the project north of 189th Avenue on December 9, 2011. There was no direction given to Weidema by the engineer, MCES or the City to stop work. The decision to stop was made solely on their own."

The issue, that S.R. Weidema based their decision to stop work, was a claim of a design problem associated with the construction methods detailed in the specifications of the contract. The engineer and MCES contend that the specifications and design are appropriate and it is the contractor's responsibility to install the pipe using the necessary means and methods for proper installation and protection of the pipe. The engineer and MCES further contend that pipe has not been installed in accordance with the plans and specifications for the 80' section of pipe and a manhole that is in contention and is located just north of 189th Avenue (this is the only portion of the project that is in question for what has been installed to date.)

The engineer directed S. R. Weidema on December 19, 2011 to resume work on the project, replace the work that is considered defective and be advised that no additional compensation

will be paid for this claim (design questions) as the work termination was directed by S.R. Weidema.

Since the issuance of that letter there have been numerous meetings with S.R. Weidema to resolve this matter. S.R. Weidema's request for additional compensation and a time and materials approach for payment for the remainder of the project were reviewed and summarily rejected by the City, MCES and the project engineer. A final letter was sent to S.R. Weidema on January 20, 2012 instructing them to:

- 1.) Promptly proceed with the work in accordance with the Contract Documents;
- 2.) Remove and reinstall the pipe north of manhole 109 and reinstall manhole 110; and
- 3.) Continue to work according to the schedule on all uncompleted work south of manhole 109, along 189th Avenue and all other items as previously identified.

S.R. Weidema returned to work on the project on January 24, 2012.

S.R. Weidema has submitted a change order request to extend the project completion date from July 31, 2012 to June 30, 2013 due to the mild winter weather that has prevented efficient and effective maneuverability of equipment in the swamp section of the project. This project was designed to have the installation of this section completed during a normal winter with deep frost conditions that would allow the operation of heavy equipment on a firm and stable base. The change order reflects no additional increase in the cost of the project. The attached letter from Bolton and Menk indicates that the enclosed Change Order No. 4 does not include any increased contract amount related to City water main facilities located in the subject area.

Even though S.R. Weidema did not perform any pipe installation work on the interceptor line for approximately 45 days, this delay may not have any material affect on the original completion date of the project. This contract was designed and bid with 2 "normal" winters factored for completion. With these considerations in mind, denial of the time extension request for the change order would be difficult to defend. This opinion is shared by both the project engineer and the MCES.

If the change order is approved the pipe completion date should be much earlier than the June 30, 2013 deadline. The additional time between the pipe and the contract completion date would be needed to finalize the project after the frost goes out of the ground. Activities such as final project cleanup, grading, completion of the service road to the manholes and revegetation would be completed in May and June of 2013.

MCES signed the change order on to grant the extension on January 26, 2012.

There would be no increased costs to the City for the water main portion of the contract if the change order is approved. Any additional cost would be on the sewer portion of the work and this would be borne by MCES, as indicated in previous documentation that was sent to City Council. MCES would re-open discussions regarding the City's responsibility to MCES for payment of the 100 SAC units for 2012, the individual SAC charges of \$3,300 which are to begin in 2012 and the flow requirements that are contractual obligations.

If the change order is approved, our bond cash flow projections would be altered under the assumptions presented in the attachment, Water Sewer Bond Cash Flows Projection 2. These projections reflect a deficit of \$557,092 in 2013 with continuing and increasing deficits

throughout the 5 year projection period. Please keep in mind that this cash flow scenario is a conservative estimate of the effect of the delay in the project and varying conditions or changes in the economic development process and/or the economy could substantially change this presentation of conditions.

Other items of potential additional cost to the City would relate to the provision of water service to users in the project area that would require this service prior to the extended project completion date of June 30, 2013. The request for service would have to be analyzed on a case-by-case basis to determine costs for alternative water supplies for a period of up to one year, should connections be required to the system during this time period. Sewer service could still be provided in the area south of 189th Avenue.

One remaining item that must be resolved is the scheduling of the extension of utilities to the water treatment plant. These services are in S.R. Weidema's contract and must be in place to permit the construction and execution of the contract of the water treatment plant. Normally, this would be one of the last segments of the project to be completed, but that is under the condition that the project would have been completed as originally contracted. Under the current circumstances, a time extension will necessitate skipping the order of the normal progression of the line extension to prevent any delays on the City's contract with MBI for the water treatment plant.

Denial of the change order could place the City at risk for additional project time delays, potential increases in project costs, the risks and costs associated with litigation and the further delay of revenues required for bond payments for the project.

Council
Reports –
DeRoche

DeRoche said there was a slight accident; someone burned their house down. Word he got is someone cleaned their fireplace and the ashes ended up in plastic trash can next to their garage. He said if you are going to clean your fireplace, make sure you know where the hot ashes are going. On Coon Lake there are a lot of people fishing; he doesn't know if he would trust the ice.

Council
Reports -
Moegerle

Moegerle said on Saturday she attended the Leadership Conference put on by the League of Minnesota Cities. The nugget that came from that is: all cities should be focusing on strategic planning for the future. She thinks this is something we need to look at; strategic planning. "Today we had the EDA Kick-Off on Branding and Marketing with Ady Voltedge, with the stakeholders in attendance." She thought that was very beneficial. Moegerle said, "We also started the interviews with stakeholders." She said be sure to complete the survey, "We need 600 people to complete the survey." Moegerle said she visited with the principal at the East Bethel Community School and she needs to visit with the principal from the Cedar Creek Community School. "Also we have the EDA Retreat on Saturday, February 11th. It is a busy, busy time."

Council
Reports –
Voss

Voss said on that survey, we got an e-mail notification this afternoon, and he did immediately. He thinks it was very well written and it was very easy get through and fairly easy to understand what they are asking too. He asked with reference to the stakeholder meetings with Ady Voltedge are there going to be evening meetings. There is no way he can get away from work during the say like that. Davis said no. Moegerle said there will be follow up meeting when it is done. Voss said he cannot make the Park Commission meeting, he will be out of town next week will someone cover for me. DeRoche will cover for him.

Council

Reports –
Boyer

Boyer said he wants to mention the political caucuses are next Tuesday at 7:00 p.m. He said we have more information on the locations at City Hall, and a link on the website. They are at Our Savior's and at the Community School.

Rental Ord.

Davis asked, "Is City Council interested in looking at a rental ordinance?" Council said yes.

Closed
Session –
Project 1,
Utility
Improvements

Vierling explained, "Pursuant to Minnesota Statute 13D.05, Subd. 3, he recommends that Council adjourn to a closed session to review possible litigation for an Attorney/Client discussion of the Project 1, Utility Improvements between the City of East Bethel and Metropolitan Council Environmental Services (MCES) and S.R. Weidema in the matters of contract dispute. When we come back we will summarize any actions taken or motions made during the closed session."

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

Vierling said, "For the record, the City Council adjourned to closed session to review matters of possible litigation for an Attorney/Client discussion of the Project 1, Utility Improvements between the City of East Bethel and Metropolitan Council Environmental Services (MCES) and S.R. Weidema in the matters of contract dispute. Present were the council; Mayor Lawrence, Council Members Boyer, DeRoche, Lawrence, Moegerle and Voss, Jack Davis, Craig Jochum, Kreg Schmidt and myself. During the course of the meeting the Council was updated by the consulting engineer on the status of the dealings with the contractor on the site, and the Council was provided suggestions and opinions from the engineers and legal staff with regard to how to proceed. Staff received Council discussion and benefits of their discussions on how they wish to proceed. There were no specific actions taken at the closed session. Staff was instructed to have future discussion with the contractor, Mr. Weidema, and it is expected that this item will be on the next agenda."

Adjourn

Boyer made a motion to adjourn at 11:07 PM. Moegerle seconded; all in favor, motion carries.

Attest:

Wendy Warren
Deputy City Clerk