

EAST BETHEL CITY COUNCIL MEETING

OCTOBER 5, 2016

The East Bethel City Council met on October 5, 2016, at 7:00 p.m. for the regular City Council meeting at City Hall.

MEMBERS PRESENT: Steve Voss Ron Koller Tim Harrington
Brian Mundle Tom Ronning

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

1.0 The October 5, 2016, City Council meeting was called to order by Mayor Voss at 7:00 p.m.

Call to Order

2.0 The Pledge of Allegiance was recited.

Pledge of Allegiance

3.0 **Harrington stated I'll make a motion to adopt tonight's agenda. Mundle stated I'll second.** Voss asked any discussion? All in favor? **All in favor.** Voss asked opposed? Hearing none, that motion passes. **Motion passes unanimously.**

Adopt Agenda

4.0 Davis presented the staff report and the discussion of the Planning Commission, at its August 23, 2016, meeting about the need for an ordinance that would provide residency restriction requirement for Level III sexual predators. He noted that in recent months, many cities in Anoka County have adopted such an ordinance including Anoka, Andover, Columbia Heights, Coon Rapids, and St Francis. These ordinances have been in response to the potential release of sex offenders from civil commitment due to a Federal ruling that stated the State of Minnesota's Civil Commitment Program is unconstitutional.

Presentation 4.0A Level III Predatory Residence Restrictions

Davis reported that at the Planning Commission meeting on September 28, 2016, the Commission reviewed an Ordinance restricting residency of Level III sexual predators. This ordinance is identical to those adopted by Anoka and Andover. The Planning Commission is recommending approval of an ordinance that provides residency restrictions for released Level III sexual offenders, subject to legal opinion. He noted Taylor Falls in Chisago was the first city in the State of Minnesota to adopt a residency restriction requirement in 2006. Since that time, 45 communities and Chisago County have adopted residency restriction ordinances. Currently, both South St. Paul and Rogers are considering adoption of the residential restriction ordinances. Davis explained that these ordinances have never been through a judicial review process. The Council was provided with an article from the *Star Tribune* that discusses this issue.

Davis explained that on September 29, 2016, upon recommendation of the Anoka County Sheriff's Office, staff spoke with Mark Bliven of the Minnesota Department of Corrections to obtain additional information on this matter. The Department has a different and feels that adoption of these ordinances may create a false sense of security in a community and pose issues relating to tracking these persons. Davis noted Mr. Bliven is in attendance tonight and will present the Department's views and recommendations as it relates to this issue. This ordinance is scheduled to be presented to City Council at their October 19, 2016, pending other direction by Council.

4.0A Mark Bliven, Minnesota Department of Corrections, thanked the Council for the invitation

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to discuss these issues. He referenced copies of slides he had prepared, noting there is a lack of information about these ordinances and the effect of them once adopted and sometimes adoption of this type of ordinance is based on what other jurisdictions are doing.

Bliven stated that while he will be presenting information on some court cases, he does not intend to offer legal advice as it involves many issues. Instead, he will be presenting common knowledge about these residency restrictions. Bliven indicated that sex crimes are an important issue in our society, noting that 1 in every 5 women and 1 in every 59 men have been raped at some time in their lives and +27% of women and almost 11% of men have experienced unwanted sexual contact. For every 100 rapes in the United States, about 40% of them are reported and of those 100 rapes, only 10% lead to an arrest, only 8% are prosecuted, about 4% lead to a felony conviction, and 3% result in prison time. He noted this means that 97% of rapes don't result in prison time or being reviewed by the Department of Corrections to assign a risk level. The Department does review and assign a risk level to the 3% that are convicted before they get out of prison. He explained that violent crime rates have actually gone down in the last 20 years but there have always been sex offenders in our communities and probably always be. But the difference now is that we get more publicity about them and they are dealt with more specifically.

Bliven stated the Department started registration for these offenders in 1991 in response to the Jacob Wetterling case where law enforcement said they don't know where the convicted sex offenders are living so they wanted to start a registry identifying where they live, work, cars they drive, and how to track those who have been convicted of sex offenses in the past. However, it only addresses the 4% convicted of a felony and misses 86% who are not subject to registration because they are not convicted. Registration are required for sex offenses and crimes of false imprisonment and kidnapping. So far, the only Level IIIs in Minnesota are those involved with sex offenses.

Mundle asked if those convicted of kidnapping and false imprisonment have a different registration since they are not sex offenders. Bliven explained when the registration requirement started, it was just for sex offenders and called the Sex Offender Registry. Then when false imprisonment and kidnapping was added, the term was changed to Predatory Offender Registry to be more inclusive.

Bliven stated there are 17,700 registered offenders (charged or convicted of predatory offenses) and includes both adults and juveniles. Of those 17,700 registered offenders, 604 live in Anoka County and 20 of them live in East Bethel. Bliven stated that basically reflects the population as the offenders are fairly evenly distributed throughout the State. As a comparison, 167 live in Sherburne County, 362 in Sterns County, 1,282 in Ramsey County, and 2,544 in Hennepin County.

Bliven explained that most sex offenders who get convicted of a sex offense don't go to prison and may just get local probation or local jail time. The Department of Corrections reviews each of the cases individually if they go to prison and puts them into a category: Level I, Level II, Level III. This is saying the Department wants to identify the top 15% who are at risk. It is not saying they are highly likely to reoffend but they have the highest number of risk factors associated with them so the Department wants to focus attention on them, subject them to broad public notification, which started in 1997, so the public can assist in monitoring them and law enforcement knows about them. The purpose of the Level III designation is so the Department focuses its supervision and treatment resources on them and pay more attention to that group as they are at a higher risk. The goal is to

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lower their actual risk of sexual recidivism (re-offense) to about the same level as any other sex offender in the community. The purpose is not to put additional punishment on Level III offenders or make their life more miserable or destabilize them or to live as homeless. Those under the supervision of the Anoka County Community Corrections are essentially 0% for sexual re-offense, which is lower for those under this intensive supervision than it is for any other sex offender. He explained if that was taken away, the ability to focus resources on Level III, he thinks public safety would be at risk.

Bliven stated his job as Director of the unit is to organize a team to review the cases and make the designation so that person can be followed when they leave prison and go into the community. That information is then provided to the local law enforcement agency (Anoka County Sheriff's Office) and used to help manage them and do broad public notification so the entire community knows about that person and can hold them accountable. He felt that by taking away their anonymity, by making them a known presence in the community, it takes away a lot of their power because most sex offenders actually offend against people they are in acquaintance with.

Bliven stated as of October 6, 2016, there are 399 Level III offenders subject to broad community notification in Minnesota communities, 13 in Anoka County and 0 in East Bethel. He referenced the 2007 Residency Restriction Study because that is when Taylor Falls adopted the first ordinance in Minnesota. In reaction, the Department studied the issue of residency restrictions and looked at 3,100 (Levels I, II, and III) who were released from prison in a 12-year period. It was determined that 224 of them committed sexual re-offences. They closely looked at every one of those cases and learned not a single one had anything to do with residency near a school, park, or daycare. They saw it is about relationship and who people are involved with, finding it tends to be in about the 90% range that they offend against a family member/acquaintance.

Bliven stated all fear the stranger-type offense (i.e. Jacob Wetterling case) and while they are very rare, they get the publicity. He noted with the Wetterling case, it had nothing to do with an offender living near a park, school, or daycare as the offender who abducted Jacob Wetterling lived more than 30 miles from where he committed his crime, which is the common experience, to offend far from where they live because they want to do it in secrecy.

Bliven stated all talk about protecting daycares and while all have heard of offences at daycares, in his 12 years of research, he has not found a single one where a neighbor walked over to a local daycare and abducted a child or offended against the child. When you hear about daycare offences, it is somebody who works at the daycare or a family member of the daycare provider, etc., meaning the protection needs to be from inside the daycare.

Bliven stated with schools, it is usually either another student, teacher, staff member or through a social relationship, not geographic proximity. He stated there was mention about South St. Paul, which passed this ordinance and within a week or two, a story came out about a teacher who was involved with students. Again, it had nothing to do with his proximity to the school. Instead, it had to do with him working at the school and he was not a registered offender. Bliven stated when the Department looks at offenses committed, most offenders are not the registered offenders because the most important way to prevent recidivism is to catch them and hold them accountable. The ones who re-offend over and over again are the ones who get away with it, don't get turned in, and don't get caught.

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Bliven stated he wants to make this case before the Council because what's important for the Department as a supervising agency is to make sure they do not re-offend or waste the Department's time/resources on trying to find places for these people. He explained if somebody has a stable living situation, it is the best situation to prevent them from reoffending. But if they have communities saying, 'No, not in my back yard,' that will cause problems with the jobs they do.

Bliven stated the important thing to keep in mind is that Level III offenders account for 2% of the registered offenders in Minnesota and almost none of the re-offences. Even those who have reoffended, it is only a case of their offending against someone they have developed a relationship with. He stated it is unfortunate that people who know very well still get involved in a relationship with someone with a history.

Bliven stated Duluth passed this ordinance in 2010 so the Department looked at that three years before and three years afterwards and found the criminal sexual conduct convictions increased but he will not say it had anything to do with the ordinance. It showed there were 9 living in Duluth prior to the ordinance and there are 12 living there now: 2 are homeless, 3 are in transitional housing, 3 in a private flop house (run down motel), and 4 are in private residences. There were 51 new criminal sexual convictions in that time period before and after the ordinance and not a single one of those 51 was a registrant with a risk level. One was a resident with a risk level who offended against a child of a person he was living with. Bliven stated 0% were committed by Levels I, II or III, 1% or 2% were committed by a registrant, 50 or 98% were committed by those not previously registered, and 44 or 86% were committed by a family member or acquaintance. Only 7 of those were committed by somebody who hadn't had a long relationship. Bliven stated there is literally no evidence anywhere that they have been able to find that supports the idea that residency restrictions serve any public safety purpose. They do feel good, no question about that, but the only argument he has ever heard for supporting adopting an ordinance is that another town passed it. So, it is just copied.

Bliven stated they have never had a case on residence restrictions in Minnesota but around the country there have been cases. The New York Supreme Court decided in 2015 the following: 'The State has created a comprehensive and detailed regulatory scheme with regard to the subject matter that the local law attempts to regulate. The local interest must yield to that of the State in regulating that field. We hold that the State's comprehensive and detailed statutory and regulatory framework for the identification, regulation, and monitoring of sex offenders prohibits enactment of a residence restriction law.'

Bliven stated that is the important thing, that if cities start playing this 'game' of 'we're going to kick them out of our town and we've got to do it first before somebody else does.' It's going to be a complete mess and the State or court will have to jump in. He asked what would be the results for East Bethel, which is important to keep in mind. He suggested the best thing the City would get is that the State sets standard residency restrictions all over. That means places like East Bethel, on the outside ring of the metropolitan area, have the only land available for Level IIIs to live. He suggested that if Minneapolis and St. Paul were to pass the same ordinance East Bethel is considering, there would not be a single inch in those cities for Level IIIs to live. Now East Bethel has zero Level III offenders but in North Minneapolis alone, they have 42 Level IIIs living in that area. Bliven stated in Iowa, the State got rid of all the local ordinances, said they need consistency, and set 2,000 feet, meaning well populated Des Moines areas are off limits so the only areas available are the outskirts. Reality is that East Bethel is on the outskirts until it becomes an overly developed

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city.

Bliven stated Brooklyn Center 'drew the circle' so not a single inch of their city is available, which means they are pushing Level III offenders to the edges. He stated if Minneapolis passed a similar ordinance, it would not mean all Level III offenders would leave Minneapolis. But that just means Level IIIs are not complying with the ordinance and would go underground so law enforcement would not know where they are living. He noted that East Bethel may have some Level III offenders living in the City who are registered as homeless in Minneapolis because he can't find a place to live in Minneapolis. Bliven explained that if the State ceded its authority for this regulation to the cities, and the cities set one-half mile around parks then in St. Paul the only place a Level III offender could live is the airport runways. He suggested if these ordinances are put into place by East Bethel or the State Legislature, all it will do is force Level III offenders into the rings and drive them underground.

Bliven reviewed recent cases in Milwaukee and California to restrict residency and explained that Miami Beach is the origin of this ordinance, noting the findings and intent section is the same (boilerplate) in every ordinance adopted by Minnesota cities. He noted that in 2005, five years later, the county preempted Miami Beach and overturned its local ordinance so it was replaced by an ordinance that only restricted residence from parks.

Bliven stated Florida and Iowa have the most extensive Statewide restrictions that pushed offenders to the outer areas of their metropolitan areas, creating colonies with gathering places occurring at rest stops. He concluded his presentation by stating the number one thing for the Department of Corrections is public safety and they don't want cities to undermine their ability to do their jobs by saying, 'Not in my back yard.'

Ronning thanked Bliven for the interesting presentation. He stated he had lived in the Detroit, Michigan area and one of the hardcore prisons is in Jackson where they get over full with murders, homicides, and drug dealers because there is no registration for them. Bliven stated that is correct and he can honestly say, as a St. Paul resident, that if he had the choice between some of the people who are left out of prison, like the drug dealers, and a Level III that has been caught and identified, he would always take a Level III because they try to stay out of trouble as they know everyone knows about them.

Ronning asked about the Minnesota statute relating to registry. Bliven explained in Minnesota, you can be charged and then if convicted of something arising out of the same set of circumstances, you still have to register and can't plead out of registration in Minnesota, which is unique. In Michigan, if charged with a sex offense and you plead to assault, you don't have to register but Michigan still has a registry of over 50,000.

Voss asked about the process for placement. Bliven explained when somebody gets out of prison, it is their responsibility to find a place to live. If they say they have a friend in East Bethel that is going to help him transition into the community, the Department of Corrections sends that information/request to the Anoka County Community Corrections and they are then responsible for supervising this person and will also go out to that property, review it, and make sure it is an appropriate place (i.e., no alcohol, drugs, children present). But if the Level III is moving in with a friend and there are no children there and the friend is willing to cut off the internet connection, not have alcohol, firearms, drugs, on their premises and it is okayed by Anoka County Corrections, then the Level III will be allowed to move there and will be monitored. The Department of Corrections does not

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place Level IIIs but there are cases where it is so difficult for a person to find a place that they finally say to Anoka County Community Corrections that they need to assist to find a place for them to live.

Bliven stated if a Level III who used to live in East Bethel comes up with a plan, has a job, finds a place to live and receive treatment, and wants to live in Carlton County the Department of Corrections will approve that move because it would be the best place for that person to transition into the community. And, the opposite is also true if they are from somewhere else and want to move to East Bethel. He clarified it is up to the offender to come up with transitional housing but when forced, Anoka County Community Corrections will get involved. He noted that in some cases, a county jail had been used for transitional housing but so far that has not been done in Anoka County.

Ronning asked what level a person would be who has porn on their computer but never touched anybody. Bliven explained that depending on what it is, it could also be a Level III. He stated they look at every case individually including the offender's behavior. It is a combination of the seriousness of their behavior and the likelihood they will re-offend.

Ronning stated this sounds like it involves definitions and asked Bliven if he is part of the regulatory. Bliven stated it is both a State and Federal crime and the Federal crime is more serious. He explained that often child pornography is charged Federally because it is a higher level crime. Bliven stated they don't deal with the sentencing and care more about the seriousness of the offending behavior and the likelihood to re-offend. They look at characteristics that have been shown in the past such as less stability and/or domestic assaults to determine if they are more likely to re-offend.

Bliven clarified that the Department of Corrections is not involved with the Federal case against the Minnesota Sexual Offender Program and while there have been statements that the 'doors are going to open and they (Level IIIs) are going to flood out,' that is absolutely not true. He stated even the judge who ruled on that case, which is currently being appealed, is not rushing anything.

Ronning stated with the amount of time available tonight, Bliven can't educate the Council about what's in the pools and levels, and someone could have something on their computer but never even looked at a child, but are still bad people. He felt there was a perception that something needs to be done but maybe that is misperception.

Bliven stated the more important thing is monitoring their internet use, which is more difficult all the time but they have more tools now to do that checking. He explained that pornography doesn't usually end up as a Level III and if interfamilial offending is fairly limited and focused only within the family, they don't tend to be Level IIIs either. The cases they are looking at are Level IIIs who have demonstrated a higher number of risk factors and they are often younger. He stated they never guess and it is only after the committee gathers that the decision is made. There is a committee at every prison that takes on that duty to review by strict standards using an assessment tool that works well in assessing risk.

Voss stated he remembers 12-13 years ago when two Level IIIs were planning to move to East Bethel and the public meetings were held at Cedar School. So many residents turned out that they had to turn people away and held a second meeting and also had to turn people away from that meeting. He stated the overwhelming concern was the public being told

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there is nothing they can do and the Level III has to be allowed in. That was the hardest 'pill to swallow' by the public. Voss stated he can sense from the ordinances adopted by other cities that the reaction is wanting and trying to do something about it.

Bliven stated one of the problems they have with this information is that they grew up getting a bad idea of what sex offending was and always taught, 'stranger danger,' never paying attention to where most of the offenses were happening and that's the circle of people you know in your lives. He stated Patty Wetterling had stated that everyone wants to find Jacob but they don't want to find the abductor in their own family, church, school. That's where we have to be more aware of what's going on because when we don't pay attention to those signs when someone in our lives is being abused, that helps the offender.

Voss stated in this case, not only the public took notice but those two individuals didn't move to East Bethel after that. Bliven stated they often find that somebody coming out of prison as a Level III needs to get their lives in order, get a job, and then find a place to live. Then, once the offender is stabilized, they often move elsewhere. The problem is with the offender who does not stabilize and is 'running' all the time.

Ronning stated the Level III designation has a fear factor attached to it, which is why he asked about the Jackson prison that includes homicides, murderers, and multiple offences where they get out and reoffend. He noted Bliven is saying that the population should be more aware of things. Bliven stated it is not just Level IIIs but all registered, noting some of the 17,000 registered offenders do commit new offences but they are less than 10% of the ones who commit offences. Most of the people, 93% of all who are convicted of criminal sexual conduct, have never been in the system before. Bliven stated they are doing a good job for the Level IIIs and want to continue to do that but also want to make sure communities are paying attention to the real threats and that's the need for awareness. He stated in his experience of 15 years of doing this, community notification meetings should be more about a community conversation in how to really be safe. It is unfortunate that fear drives that and there is not an opportunity to talk about rational steps at that point. He commented on the importance of looking at the real issues.

The Mayor and Council thanked Bliven for his presentation.

Davis asked for Council direction on whether to include this item on the next agenda. Ronning stated he was not aware the Council was even entertaining the adoption of an ordinance to restrict residency. Davis explained the Planning Commission has reviewed this matter and indicated support for an ordinance of this type. The Council was provided with a draft ordinance in the meeting packet and Mr. Bliven has provided additional background information.

Mundle supported adding this topic to a Work Meeting agenda. Ronning asked how this topic came before the Planning Commission. Davis explained the Planning Commission had some discussions with staff and at two previous meetings. He noted this ordinance has been adopted by other cities and it seemed it may be of interest to the City of East Bethel to create a tool and gathering information is part of the process. Voss agreed the Council needs to have more discussion on this topic.

Davis stated the October 26th Work Meeting is the same night as a Meet the Candidates event, which will be held at City Hall, so the Council's Work Meeting would have to be rescheduled to another night. He suggested staff and the Council consider alternate dates

and set the Work Meeting at the next Council Meeting.

Mundle stated I'll make a motion to add this topic to a future Work Meeting with the date to be set at the next Council Meeting. Ronning stated second. Voss asked any discussion? To the motion, all in favor say aye? **All in favor.** Voss asked opposed? That motion passes. **Motion passes unanimously.**

**5.0
Public
Forum**

Parked
Trailer with
Signs

Eldon Holmes, 2773 222nd Lane NE, stated he is on the Planning Commission and when he took the oath of office, said he would do whatever he could for East Bethel in accordance with the Codes. He explained that he travels down Highway 65 quite often and one day saw a trailer at Lynn's Grocery so he looked at the City's Code and found it is against Code. Instead of bothering staff, he sent an e-mail, as a resident of East Bethel, and said he thought the trailer was illegal and should be removed. Holmes stated he received an e-mail back and told, in so many words, to 'stick it.' He stated this bothered him so on June 6th he sent an e-mail to Colleen Winter and Jack Davis about the trailer, which he felt was illegal according to the Sign Ordinance. He did not hear anything back so on July 15th he e-mailed Ms. Winter asking what was going on with the trailer and saying it was not a political deal, it was City Code. He again received no answer so now he is before the Council because he does not know what has happened or if the City has written a removal order according to the Enforcement Code. Holmes stated at a Planning & Zoning Commission meeting, he had asked to review the Sign Ordinance because he thinks it needs some changes.

Holmes stated he noticed other violations such as flags for the church at the East Bethel Theater, flags at Boat World, Tattoo Parlor, and the used car lot. He stated he respects the residents but the CST signs require a temporary sign permit and he thinks they have been up long enough since it appears CST will not be coming to East Bethel. Another problem is that the City sign by Hoffmann Sod is actually illegal according to the Sign Code so it needs to be changed. Holmes stated he also brought up the issue of billboard signs, noting the City has quite a few and is not supposed to have any at all. He stated he would like the City to either enforce its Code or change it because it is wrong to have something illegal in the City and just ignore it.

Voss stated there have been discussions about needing to look at the Sign Ordinance. He asked Davis how staff follows up when a resident has a complaint this specific. Davis stated staff investigates and is supposed to respond back to the complainant. In the case of the trailer Mr. Holmes talked about, staff had discussions with the gentleman and is attempting to resolve that issue. He stated he agrees with Holmes that part of the issue is with the Sign Ordinance itself and it needs to be revised but if that is done, other ordinances will also have to be addressed. The issue is the City's limited resources to take on mass Code enforcement.

Koller asked whether it is a sign or a trailer. Holmes replied it is a trailer with signs on all four sides. Koller asked if the trailer is licensed. Holmes stated he had not looked to see if it is licensed, which involves another ordinance. Koller stated if it is a licensed trailer, it does not fall under the sign category. Voss clarified there is provision in the Sign Ordinance for signs on trailers.

Parked

Koller noted the State Department of Transportation (DOT) requires commercial vehicles to have signs on them for owners, DOT numbers, and asked if that wouldn't also be illegal. Holmes stated it is supposed to be moved, not sit in place like a sign. He quoted the Sign Ordinance, Section 54, Para. 7, Prohibited Signs and Advertising Devices, and Para. 8,

Portable Trailer Signs, noting the trailer is portable but sitting in that location for over a year so it is prohibited. In addition, it is not a company sign but is an informational sign.

Voss stated when the original ordinance was written, it was geared towards large construction trailers with a company name because too many times they were left by the highway and no construction was occurring.

With regard to having no resources, Holmes stated in a few minutes he can drive by and stop in to say, 'Hey, you know what, this is against the ordinance. Here's a letter on it.' Voss stated if all enforcement cases were that easy, it would be a lot easier. Holmes stated after written notice, the Code says if it is not resolved after 30 the City can take over that item and charge back to the person the costs and administrative fees.

Davis stated Code Enforcement is very labor intensive and while he agreed the first part of the process does not take very long, the follow-up takes quite a while and involves the City Attorney and a different set of circumstances. Holmes stated then maybe the Code should be changed.

Voss stated he remembers when the original Sign Ordinance was passed, it was only weeks before signs were let in that did not meet the new ordinance so it was not even enforced when it was first started. The ordinance was then re-written six to seven years ago. Davis stated that occurred in 2008. Voss stated obviously, there are a lot of signs in the City that don't fit that ordinance as well.

Holmes stated his concern that at some point, the signs will appear trashy so something needs to be done. Voss asked if staff has the Sign Ordinance update in the queue. Davis stated it has been discussed but after tonight, will assume a much higher priority.

Koller asked why the City's sign is not up to Code. Voss noted the Council passed a variance for that sign. Davis stated that is correct and explained there is a difference between a commercial sign and a sign intended for public information. Holmes noted the Code doesn't say that and the message can only be changed every three minutes and cannot be flashing. Davis stated the City's sign was approved through a revision for public use signs since it is not for commercial advertisement. He agreed the Sign Code is out of date but clarified that the City's sign is legal.

Davis stated staff will look at the Sign Ordinance and it be placed on the Planning Commission's October or November agenda.

Prevue of City
Commissioner

Robert DeRoche, 158 Collen Street NE, stated his concern with a Commissioner making contact with another resident as an enforcement person. He found that to be out of line because that is the job of the City. DeRoche stated he has been involved with East Bethel for +30 years and knows there are a lot of other things going on and people don't always understand City government and legal costs. He believed these things should be weighed out and whether or not the Sign Ordinance needs to be redone, the more important thing is having a Commissioner go out and even address this. He asked what would have happened if that contact had resulted in a big dispute with a call to the Deputy. DeRoche asked whether Mr. Holmes identified himself as being on the Planning Commissioner and if he did, he believes that would have been inappropriate.

Status of CST

Mike Biljan, 23600 Goodhue Street NE, stated he lives in the best neighborhood in East

Application

Bethel and asked for an update on the CST application. He noted that Mr. Holmes had mentioned that CST was not coming to East Bethel and asked if that was true. Voss suggested he address that question to Mr. Holmes who had made that comment.

**6.0
Consent
Agenda**

- Item A Approve Bills
- Item B September 21, 2016 City Council Minutes
- Item C Resolution 2016-49 Setting Public Hearing Date – Delinquent Accounts
- Item D Approval of Election Judge Roster for the 2016 General Election

Harrington stated I’ll make a motion to adopt tonight’s Consent Agenda. Koller stated I’ll second. Voss asked any discussion? All in favor? **All in favor.** Voss asked opposed? Hearing none, that motion passes. **Motion passes unanimously.**

**7.0
New Business**

Commission, Association and Task Force Reports

7.0A
Planning
Commission

None.

7.0B
Economic
Development
Authority

None.

7.0C
Park
Commission

None.

7.0D
Road
Commission

Davis presented the staff report, indicating a petition, from 66.7 percent of the property owners of the Tolzmann’s Whispering Pines Plat, was presented to the City Council requesting that the City consider paving Fillmore Street NE from 189th Avenue NE to the north cul-de-sac. If Fillmore Street is paved, it is assumed it would be bid with the proposed service road project from 187th Lane to Viking Boulevard.

7.0D.1
Fillmore St.
Paving &
Utility Ext.
Project

Davis explained it is anticipated that a portion of the construction cost to pave Fillmore Street will be assessed to the benefited property owners per Minnesota Statutes, Chapter 429. He noted two steps in the assessment process include: 1) preparation of a feasibility report on the improvement; and, 2) providing notice to the benefiting property owners regarding the hearing which will review the report. Per Minnesota Statutes, Chapter 429 the report will address whether the proposed improvement is necessary, cost effective, and feasible and whether it should best be made as proposed or in connection with some other improvements. The report will provide estimated costs of the improvement and a description of the methodology used to calculate individual assessments for affected parcels. Davis stated staff recommends Council approve Resolution 2016-50, Ordering Preparation of Report and Calling Hearing on Improvement.

Harrington stated I’ll make a motion to approve Resolution 2016-50, Ordering Preparation of Report and Calling Hearing on Improvement. Koller stated I’ll second. Voss asked any discussion? Hearing none, to the motion all in favor say aye? **All in favor.** Voss asked any opposed? That motion passes. **Motion passes unanimously.**

7.0D.2
Fillmore
Street
Utility
Extension

Davis presented the staff report, indicating as part of the Phase I Service Road Project, a number of residents on Fillmore Street had expressed an interest in the extension of water and sewer service for their neighborhood. All residents of this neighborhood were invited to a meeting on September 28th to discuss the details of a proposed service extension. Four of the six residents attended the meeting and alternatives for assessments were presented for their review. Upon review of the costs of the projects, all four residents in attendance stated they had no further desire to pursue this matter. One resident, who was absent, submitted an e-mail objecting to the extension of the service. Estimates for providing water and sewer service ranged from \$34,500 to \$61,600 depending on the method of assessment. These costs include SAC and WAC fees.

Davis explained that unless there is a reconsideration of this matter, the installation of residential service stubs for those lots fronting 189th Avenue and 8-inch water and sewer stubs at the intersection of 189th Avenue and Fillmore Street will be the only utilities provided for the Fillmore Street neighborhood. As these stubs are for future connections, they will be included within the project costs for the Service Road Utilities bid.

Davis stated due to a lack of petition for the extension of water and sewer service for that portion of Fillmore Street north of 189th Avenue, staff recommends that Council consider utility extension along this street as part of the Phase I Service Road Project be concluded and not be part of this project.

Voss asked if there is no petition. Davis stated that is correct and explained the service stubs will be included, as previously discussed, but not include the services north of 189th Avenue for individual residential connections. The service stubs would be for a future connection of two residents and potential subdivision of two lots that front Fillmore Street. Voss stated based on past discussion, it makes sense investment wise to do that. He noted a final decision can be made once the costs are in and the Council has already given that staff direction. **The consensus of the Council was to not change direction already given to staff.**

7.0D.3
October
Roads
Commission
RCI Report

Davis presented the Roads Commission report and update on the work of East Bethel and Ham Lake with MnDOT to develop a Highway 65 Access Management Plan. He advised of MnDOT's Principal Arterial Intersection to Interchange Conversion Study for Highway 65 that will be completed February 2017, noting preliminary information confirms that separated grade interchanges north of Bunker Lake Boulevard will be considered as low to medium priorities in MnDOT plans. Since even the highest rated intersections, based on traffic volumes and crash data, will unlikely see funding within the next 10-20 years, it is vital that phased improvements to those East Bethel Highway 65 intersections, particularly 181st Avenue, 187th Lane, Viking Boulevard, and Klondike Drive, be included as locations for progression upgrades as MnDOT attempts to convert Highway 65 from an expressway to a hybrid freeway.

Davis stated these items will be on the Roads Commission Meeting agenda of October 11, 2016. At that meeting, MnDOT will present the findings of their Viking Boulevard and Highway 65 intersection improvement report and request the Roads Commission's review of the Highway 65 Access Management Plan. In addition, MnDOT will present a new video that will demonstrate the functions of the Reduced Conflict Intersections and discuss those applications that would be unique to Viking Boulevard/Highway 65. Davis noted this meeting will start at 6:30 p.m. **Informational; no action required at this time.**

8.0

None.

Department Reports

8.0A

Community Development

8.0B

Engineer

8.0B.1

WWTP

De-Comm.

Project

Change Order

Davis presented the staff report, indicating that on July 20, 2016, Professional Ground Maintenance, Inc. (PGM) was selected as the contractor for the demolition of the Castle Towers Wastewater Treatment Plant with a low quote of \$19,650. PGM has completed the removal of all the structures on the site per the contract requirements with the exception of the concrete pad that supported the 30-foot diameter treatment tank.

Davis explained that upon removal of the treatment tank and clarifier, it was discovered the concrete base beneath the tank consisted of high strength, reinforced concrete up to three feet thick. The contractor attempted to remove the base with their equipment but were not able to accomplish this portion of the work due to the strength of the concrete mix, the thickness of the slab, and the equipment they had available. While the contractor bid this work as a lump sum project, the bid plans did not provide any information on the thickness of the concrete for the tank base nor any specifications that addressed the type of mix in the construction of this item. The omission of this information was not an oversight but a detail that was not available from the records on file for the facility.

Davis presented the contractor’s change order request in the range of \$6,200 to \$7,500 to cover the cost of renting a large excavator with a hydraulic hammer capable of breaking up the concrete tank base and clarifier pad. Staff has checked with local Caterpillar and Case dealers and found that an excavator of sufficient size with a hydraulic hammer perform the demolition rents for \$2,000/day or \$7,100 per week.

Davis explained since the amount of the change order exceeds 25% of the contract cost, it would have to be re-bid/quoted as a separate work item. The maximum amount a change order that could be approved would be \$4,912.49. Another option is to delete this item from the contract and leave the slab in place as there is ample material to cover the slab and the savings realized by deletion of this work and cost savings due to the rejection of any change order request can be applied to other bond eligible projects.

Davis noted the area of the pad is only 450 square feet on this 10 acre site. Since the concrete pad is not a required removal item by the MPCA and future developers working on this site would have proper sized equipment to deal with the removal, staff recommends the demolition and removal of the tank pad be deleted as a work item of the contract, that the slab’s location be properly documented for future location, the slab be covered with available material, and the surface reclaimed to match the existing grades adjacent to the pad.

Ronning stated I’ll make a motion to approve the demolition and removal of the tank pad being deleted as a work item of the contract, that the slab’s location be properly documented for future location, the slab be covered with available material, the surface reclaimed to match the existing grades adjacent to the pad, and direct staff to work with the contractor for a credit to the City. Harrington stated I’ll second. Voss asked any discussion?

8.0B.1
WWTP
De-Comm.
Project
Change Order

Voss stated he would agree it is definitely a changed condition to the contractor. Ronning asked how much fill would go over the pad. Davis stated it would not require a lot, probably 40-50 cubic yards would be needed to match the existing grade. He stated this was not anticipated as there were no details or drawings to reveal this condition. Voss agreed that three feet of concrete was unexpected and asked if the slab would be marked if it remained. Davis stated it would be surveyed and GPS coordinates determined but it would not be staked out. Then, if sold, it would be assumed water and sewer would be installed and the contractor would have ample sized equipment on site to efficiently demolish the pad, if need be.

Voss asked any further discussion? If not, to the motion all in favor say aye? **Harrington, Koller, Ronning, and Voss-Aye; Mundle-Abstain, motion passes 4-0-1 (Mundle).**

8.0C
City Attorney

None.

8.0D
Finance

None.

8.0E
Public Works

None.

8.0F
Fire
Department

None.

8.0G
City
Administrator
8.0G.1
Amendment
to Special
Assessment
Policy

Davis presented the staff report, indicating the City’s Special Assessment Policy outlines the process and the financial obligations of residences that request paving of gravel roads. The burden of the costs of resurfacing these streets is entirely on those residents receiving benefits of the improvement. He noted that with 16 miles of gravel roads within the City and maintenance costs of these unpaved streets 29% higher than that of paved roads, the Roads Commission has discussed, since 2007, ways and means to improve the City Road Paving Policy but there has never been a formal recommendation to City Council.

Davis reviewed the savings in annual maintenance costs and benefits that would be provided by paving gravel roads. He stated staff requests City Council consider directing the Roads Commission to prepare recommendations for modification of the assessment computations provided in Section X of the Policy and review the Petition Policy as detailed in the staff report. Davis explained this change to the Policy could provide an incentive for petitions for paving of gravel roads that have population densities to support the assessments for the non-City costs of the projects. The costs for this incentive would be covered as part of the City’s existing maintenance program of these streets over their life cycle. Staff recommends that City Council consider directing to the Roads Commission to provide recommendations for amending the City of East Bethel Special Assessment Policies, Section X, A.3 – Gravel Roads and the Petition Policy for Paving City Gravel Roads.

Mundle stated make a motion to direct to the Roads Commission to provide recommendations for amending the City of East Bethel Special Assessment Policies, Section X, A.3 – Gravel Roads and the Petition Policy for Paving Gravel Roads. Ronning stated second. Voss asked any discussion?

8.0G.1
Amendment
to Special
Assessment
Policy

Mundle asked if only one project is done per year, roughly how many years would it take until all the gravel roads are paved. Davis answered it would take more than 16 years, noting Klondike Drive is a gravel road that's a mile and three-quarters, would require a number of things not considered City general maintenance, has a low population density, and will probably never be done until there is other development along that road. Davis stated he would like the Roads Commission to take a good look at the Policy and determine the cost factor that could be deducted over the life cycle of the road to encourage petitioning for paving. He noted the last time the City considered the petition for pavement, the cost was about \$12,000 per lot, which tends to discourage consideration.

Voss asked whether, once the City has no public gravel roads, would the City still have the need for its road grader. Davis stated the City would no longer need a road grader because it is only used for gravel roads and other minor grading projects that could be accomplished with other equipment. The road grader has not been used for snow plowing in the past 2-3 years.

Ronning noted that some paving improvements would be of benefit to the entire City and considering that, maybe the entire City should bear some of the costs. Voss concurred, noting some gravel roads are through streets. Davis stated there has been a lot of requests on Xylite and Zumbrota, just off 221st Avenue, which is not a through street but has two miles of gravel road to access almost 30 homes. He noted there are two to three weeks in the spring when the frost comes out of the ground during which it is almost impossible to do any maintenance and in the summer there are requests for chloride (to eliminate dust) that cost \$2-3,000. He felt there would be ample savings to benefit the City in trying to convert its gravel roads to paved roads and to contribute some of the costs associated now with general maintenance.

Voss asked if there is other equipment dedicated/used to maintain gravel roads that the City would not otherwise need. Davis stated there are some implements used behind the tractor, a reclaimer, that is used on gravel roads but not needing the 1996 road grader would be the biggest cost savings as it is scheduled for replacement in 2017 at a cost of about \$200,000.

Ronning stated there is a 2013 precedence when the City capped the assessment on sewer connections in the commercial park and that is how the City will have to get some things done. Davis stated the way it is now on gravel roads, there is much lower densities than on paved roads so there are fewer people to bear the assessment cost. He noted that about four years ago with Naples Street, the cost came in at about \$12,000 per lot. Ronning pointed out that in 2015, unpaved road maintenance costs were 21% of the City's roads maintenance budget so it is well worth investing something as a community. Davis noted that cost included snow plowing too.

Harrington asked whether the project would still need a majority of the neighborhood supporting the petition. Davis explained the Policy requires a 'good majority' but does not specify a number and explained what would change is the City's participation and how the general maintenance costs can be applied to lessen the assessment cost to residents should they petition for the road to be paved.

Voss asked any other discussion? To the motion, all in favor say? **All in favor.** Voss asked opposed? That motion passes. **Motion passes unanimously.**

9.0 Other

None.

9.0A

Staff Reports

9.0B

Council
Report –

Member

Harrington

Council

Member

Ronning

Harrington announced the Fire Department Open House on October 6, 5-7:30 p.m. He stated the new tanker looks nice and will be on display. In addition, there will be the Chili Cook Off.

None.

Council

Member

Koller

None.

Council

Member

Mundle

Mundle stated the Sunrise River Water Management Organization (WMO) conducted a Performance Review and Assistance Program (PRAP) survey, which is conducted by the Board of Water and Soil Resources (BWSR). The draft Plan reviews came back favorably so now the Sunrise River WMO Board will review that information and respond back to BWSR prior to the results being shared with the general public. He explained next Plan review for the Sunrise River WMO will begin in 2019 but BWSR likes to conduct a review of how well a WMO is accomplishing its Plan and determine if any tweaks or help is needed to accomplish the Plan. That is the purpose of the PRAP survey.

Sunrise River

WMO

PRAP

Survey

Mayor Voss

Candidate

Forum

Voss announced the three candidate forum dates and stated this information is on the City's website. These forums will be tape recorded for rebroadcast. Davis noted there will be another forum at the Coon Lake Beach Community Center with a date to be determined.

9.0C

None.

Other

10.0**Adjourn**

Harrington stated I'll make a motion to adjourn. Mundle stated I'll second. Voss asked any discussion? All in favor? All in favor. Voss asked opposed? Hearing none, that motion passes. Motion passes unanimously.

Meeting adjourned at 8:50 p.m.

Submitted by:

Carla Wirth

TimeSaver Off Site Secretarial, Inc.