

City of East Bethel

City Council Agenda

Regular Council Meeting – 7:30 p.m.

Date: October 5, 2011



Item

- 7:30 PM **1.0 Call to Order**
- 7:31 PM **2.0 Pledge of Allegiance**
- 7:32 PM **3.0 Adopt Agenda**
- 7:33 PM **4.0 Presentation**
Page 1 A. Anoka County Highway Department Signalization Project – 221st and Hwy. 65
- 8:00 PM **5.0 Public Forum**
Page 2-7 A. Dick Kable – 1439 221st Avenue NE
- 8:20 PM **6.0 Consent Agenda**
Any item on the consent agenda may be removed for consideration by request of any one Council Member and put on the regular agenda for discussion and consideration
- Page 11-15 A. Approve Bills
- Page 16-35 B. Meeting Minutes, September 21, 2011, Regular Meeting
- C. Purchase of Used F-150's
- Page 36 D. Resolution 2011-48 Declaring Surplus Property S-10
- Page 37 E. Resolution 2011-49 Declaring Surplus Property Olympian Generate
- Page 38 F. Resolution 2011-50 Declaring Surplus Property Playground Equipment
- Page 39 G. Resolution 2011-51 Accepting Donations for Schoolhouse Project
- New Business**
- 8:25 PM **7.0 Commission, Association and Task Force Reports**
- A. EDA Commission (**No Report**)
- B. Planning Commission
- Page 40-44 1. Dale A. Johnson – Interim Use Permit (IUP) – Horse – 24282 Skylark Drive NE
- Page 45-56 2. Alitsa & Patrick Schroeder – Interim Use Permit (IUP) – Kennel License – 22525 Durant St. NE
- Page 57-70 3. Gordon Hoppe – Variance – Building Expansion of Existing Business – 1861 Viking Blvd. NE
- C. Park Commission (**No Report**)
- D. Road Commission (**No Report**)
- 8.0 Department Reports**
- 9:00 PM A. Community Development
- Page 71-72 1. Consideration of Zoning Text Amendment to allow Open Sales Lot – Boats and Exterior Storage in the B2 Zoning District
- Page 73-75 2. Consideration of a Zoning Text Amendment to allow Open Sales Lot – Motor Vehicles in the B3 Zoning District
- 9:30 PM B. Engineer

Page 76-85

1. Pay Estimate #5 for Phase 1, Project 1, Utility Project

C. Attorney (**No Report**)

D. Finance (**No Report**)

E. Public Works (**No Report**)

F. Fire Department (**No Report**)

9:35 PM

G. City Administrator

Page 86-118

1. BDM Compensation Claim

Page 119-123

2. Ordinance 31, Second Series, Amending the Right of Way Management Ordinance

9.0 Other

10:00 PM

A. Council Reports

10:10 PM

B. Other

10:15 PM Page 124

C. Closed Session – Union Negotiations

10:15 PM Page 125

D. Closed Session – GRE Litigation

10:30 PM

10.0 Adjourn



City of East Bethel City Council Agenda Information

Date:

October 5, 2011

Agenda Item Number:

Item 4.0 A

Agenda Item:

Anoka County Highway Department Signalization Project – 221st and Hwy. 65

Requested Action:

Informational Only

Background Information:

Representatives from the Anoka County Highway Department will update the Council on the 221st Avenue NE and Hwy 65 Signalization Project that is scheduled for 2012.

Fiscal Impact:

None at this time

Recommendation(s):

Informational Only

City Council Action

Motion by:_____

Second by:_____

Vote Yes:_____

Vote No:_____

No Action Required:_____



City of East Bethel City Council Agenda Information

Date:

October 5, 2011

Agenda Item Number:

Item 5.0 A

Agenda Item:

Dick Kable Right of Way Issue—Public Forum

Requested Action:

Information Only

Background Information:

Mr. Kable desires to make a presentation for the Public Forum but may not be able to attend the meeting. Attached is correspondence relating to this matter.

Attachment(s):

Letters of interest

Location Map

Fiscal Impact:

N/A

Recommendation(s):

N/A

City Council Action

Motion by:_____

Second by:_____

Vote Yes:_____

Vote No:_____

No Action Required:_____



COUNTY OF ANOKA

Public Services Division

HIGHWAY DEPARTMENT

1440 BUNKER LAKE BLVD, NW, ANDOVER, MINNESOTA 55304
(763) 862-4200 FAX (763) 862-4201

September 19, 2011

Mr. Richard Kable
1439 221st Avenue N.E.
Bethel, MN 55011

Mr. Kable,

This letter is a follow-up to our previous meetings and will attempt to address your concerns about the signalization project at the intersection of County Road 74 (221st Avenue) at Trunk Highway 65. The County is aware that there will be impacts to your property adjacent to the project and want to re-assure you that we are doing everything possible to minimize any inconvenience to you and your family during the design and construction phase of this project. We appreciate your feedback and will incorporate your comments into the design wherever possible. We have appreciated the time you have taken to meet with us the many times that you have thus far. We anticipate ongoing and open discussions throughout the entire safety project. I can assure you that we are working to minimize the impacts to the residents on this much needed safety project, while being fiscal stewards of the taxpayers we serve.

With this project, a four-foot (4.0') median will be constructed approaching the intersection of TH 65 in order to channelize and further separate opposing vehicles. This median will terminate prior to your current driveway location, therefore leaving you with un-restricted access to your property with this construction project. You will enter and exit after construction just as you do currently. Additionally we want to assure you that access to your property will remain open to all vehicles, including all emergency vehicles during construction.

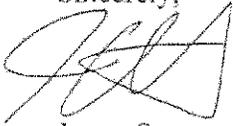
To this point, all design elements and right of way estimates have been preliminary and are subject to change. We will not be finalizing the design until after we have met with everyone on the project. To ensure that we have met with other impacted property owners, we will be holding **a public information meeting Monday, October 10th at the West Bethel United Methodist Church from 4:30 p.m. to 6:30 p.m.** We will be sending invitations to every resident within a half mile radius of the project area. This meeting is not limited to residents who receive an invitation but is open to anyone who wants to attend. Issues such as project ponding and right-

of-way impacts will be decided after the public meeting and after discussions with all affected property owners. You are welcome to give me a call at any time to discuss the status of these decisions.

Areas denoted as temporary easement will be restored back to their "original condition." The term "original condition" refers to restoring vegetation and sloping to a similar condition and function it was in prior to construction. The preliminary right of way information you have received to this point shows that only temporary easement will be required outside of the permanent right of way acquisition. As the design process moves forward and impacts further analyzed, these temporary easement areas may or may not be redefined as permanent easement. Permanent easements are areas that may or may not be able to be restored to their "original condition" due to roadway functions such as ditching or elevation changes.

The county recognizes that the concept of temporary and permanent easements is not something that the typical person deals with on a regular basis. If you have any questions about temporary or permanent easements, or anything else related to this project I encourage you to call me. I hope to see you at the public open house Monday, October 10th.

Sincerely,



Jason Orcutt
Engineering Design Supervisor
763-862-4258

Cc: Douglas W. Fischer, P.E.
Andrew Witter, P.E.
Curt Kobilarcsik, P.E.

September 20, 2011

City of East Bethel
Council, Mayor, Manager
And others:

To whom it may concern :

Thank you for letting me express my feelings and concerns with the road project affecting our property which we have lived on and farmed for 64 1/2 years.

As I have told County personal, City personal, and others, I am NOT opposed to a stop light on the corner of 221st (74) and Hwy.65.

My concerns are as follows;

1. That I have to give up all the land necessary for construction, both in permanent and temporary easement, while on the South side of 221st (74) they are giving up NOTHING!

2. I am willing to give up land with a 50/50 split of land acquisition off the existing centerline of 221st (74).

3. I am TOTALLY opposed to a storm water pond on my property. There has never been standing water in the city ditch. We have never been unable to drive in our field in the 64 years we have farmed it. I challenge anyone to tell me they have seen the field with water in it from a storm event. The only time I have ever seen water is sometimes in the early spring if the ground freezes PRIOR to snowfall . I have 5 area's on our land when water will stand for these reasons, one being our front yard.

4. I am very concerned about our fencing and keeping people off our property. I want a permanent fence installed before any of the existing fence is taken down. Our yard becomes a turnaround for many cars at night and people drove behind our buildings before we started utilizing a locked gate. We are fenced on all four sides to keep snowmobiles and 4-wheelers from ruining our crops.

5. I need 24/7 - 365 days access for my 90 year old mother in case of an emergency, who I provide 24 hr. care for. Most people would have moved her to a assisted living place , I will never do that as long as I can care for her. This is similar to what Randy Burns (our neighbor) does for

his mother.

I have expressed my concerns to many people. I have two signs in front of my yard trying to tell people how we are being treated. I have not talked to one person who disagrees with me.

6. I have no attorney active on my behalf at this time. I hope that you can understand my concerns and help us through this difficult time.

Every inch of this land is precious to us. I trap gophers to maintain our fields and try to keep our farm neat and respectful in appearance .

In closing I hope you can appreciate our concerns. I am sorry I could not tell you this in person, for this has taken a major toll on my physical well being, I am unable to sleep and I have lost 10 lbs. in the last 2 months, my nerves are shot and I need to be here.

Again I am not apposed to the stop light and road improvement, and as stated I can live with a Reasonable approach to dealing with problems at this intersection, there has been five fatals and several serious accidents at this corner, all were avoidable if people would just pay attention.

I have driven since I was 15 and have not had a single accident, I do not drink, use drugs or have a cell phone.

I am not interested in selling this property for development, this has been my home for going on 65 years, I plan on living here until my death!

Thank you,

Richard Kable

Richard Kable

1439-221st Ave. NE

Bethel, MN. 55005

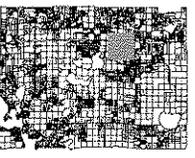
763-434-6547



CITY OF EAST BETHEL Civicsight Map

MAP LEGEND:

- WATER
- PARKS
- PARCELS/2



Reference Map

Map Scale: 1 inch = 815 feet

Map Date: 9/30/2011

Data Date: June 24, 2011

Sources: EAST BETHEL GIS AND ANOKA COUNTY



Disclaimer:
Enter Map Disclaimer Here



Payments for Council Approval October 5, 2011

Bills to be Approved for Payment	\$995,527.22
Electronic Payments	\$24,822.87
Payroll City Council - September 29, 2011	\$1,461.07
Payroll City Staff - September 29, 2011	\$36,325.22
Total to be Approved for Payment	\$1,058,136.38

City of East Bethel

October 5, 2011

Payment Summary

Department	Description	Invoice	Vendor	Fund	Dept	Amount
215-221st East 65 Service Rd	Architect/Engineering Fees	28402	Hakanson Anderson Assoc. Inc.	402	43125	6,682.25
Arena Operations	Bldgs/Facilities Repair/Maint	92111	Connexus Energy	615	49851	21.32
Arena Operations	Bldgs/Facilities Repair/Maint	74922	Menards Cambridge	615	49851	50.15
Arena Operations	Bldgs/Facilities Repair/Maint	73123	Menards Cambridge	615	49851	129.51
Arena Operations	Electric Utilities	92111	Connexus Energy	615	49851	791.96
Arena Operations	Gas Utilities	297338058	Xcel Energy	615	49851	62.55
Arena Operations	Refuse Removal	1502141	Walters Recycling, Inc.	615	49851	27.81
Arena Operations	Refuse Removal	1502138	Walters Recycling, Inc.	615	49851	154.65
Arena Operations	Repairs/Maint Machinery/Equip	028-344767	Batteries Plus #28	615	49851	353.50
Arena Operations	Repairs/Maint Machinery/Equip	48879	R & R Specialities, Inc.	615	49851	-2.90
Arena Operations	Repairs/Maint Machinery/Equip	48255-IN	R & R Specialities, Inc.	615	49851	707.07
Arena Operations	Repairs/Maint Machinery/Equip	48230-IN	R & R Specialities, Inc.	615	49851	222.04
Building Inspection	Telephone	332373310-118	Nextel Communications	101	42410	17.44
Central Services/Supplies	Office Equipment Rental	5896486-SP11	Pitney Bowes	101	48150	137.10
Central Services/Supplies	Office Supplies	10402	Norseman Awards	101	48150	84.27
Central Services/Supplies	Office Supplies	578258526001	Office Depot	101	48150	3.07
Central Services/Supplies	Office Supplies	578258424001	Office Depot	101	48150	9.35
Central Services/Supplies	Office Supplies	578921836001	Office Depot	101	48150	59.16
Central Services/Supplies	Telephone	8775475	Integra Telecom	101	48150	225.70
City Administration	Personnel Advertising	IQ 01789536	ECM Publishers, Inc.	101	41320	54.00
City Administration	Travel Expenses	92711	Jack Davis	101	41320	141.53
Economic Development Authority	Conferences/Meetings	92611	Stephanie Hanson	232	23200	15.00
Engineering	Architect/Engineering Fees	28396	Hakanson Anderson Assoc. Inc.	101	43110	14.36
Engineering	Architect/Engineering Fees	28403	Hakanson Anderson Assoc. Inc.	101	43110	1,594.00
Fire Department	Bldgs/Facilities Repair/Maint	92111	Connexus Energy	101	42210	5.32
Fire Department	Electric Utilities	92111	Connexus Energy	101	42210	864.45
Fire Department	Gas Utilities	297338058	Xcel Energy	101	42210	90.33
Fire Department	Information Systems	ZPP8434	CDW Government, Inc.	101	42210	79.62
Fire Department	Office Supplies	326925	Ham Lake Hardware	101	42210	65.18
Fire Department	Office Supplies	579628176001	Office Depot	101	42210	53.04
Fire Department	Professional Services Fees	91511	City of East Bethel	231	42210	1,666.67
Fire Department	Refuse Removal	1502139	Walters Recycling, Inc.	101	42210	39.41
Fire Department	Safety Supplies	112319	Aspen Mills, Inc.	101	42210	205.02
Fire Department	Safety Supplies	112314	Aspen Mills, Inc.	101	42210	195.32
Fire Department	Safety Supplies	112320	Aspen Mills, Inc.	101	42210	199.32
Fire Department	Safety Supplies	787778-IN	Heiman, Inc.	101	42210	322.26
Fire Department	Telephone	8775475	Integra Telecom	101	42210	141.07
Fire Department	Telephone	332373310-118	Nextel Communications	101	42210	103.22
General Govt Buildings/Plant	Electric Utilities	92111	Connexus Energy	101	41940	70.47
General Govt Buildings/Plant	Electric Utilities	92111	Connexus Energy	101	41940	1,240.56
General Govt Buildings/Plant	Gas Utilities	297338058	Xcel Energy	101	41940	54.05
General Govt Buildings/Plant	Refuse Removal	1502142	Walters Recycling, Inc.	101	41940	27.81
Mayor/City Council	Travel Expenses	92311	Heidi Moegerle	101	41110	26.64
MSA Street Construction	Architect/Engineering Fees	28394	Hakanson Anderson Assoc. Inc.	402	40200	34.32
Park Acquisition/Development	Architect/Engineering Fees	28394	Hakanson Anderson Assoc. Inc.	404	40400	114.37
Park Capital Projects	General Operating Supplies	17033	St. Croix Recreation, Inc.	407	40700	522.62
Park Maintenance	Bldg/Facility Repair Supplies	59234070	John Deere Landscapes	101	43201	16.26
Park Maintenance	Bldg/Facility Repair Supplies	59220004	John Deere Landscapes	101	43201	82.72
Park Maintenance	Bldgs/Facilities Repair/Maint	9393	Blaine Lock & Safe, Inc.	101	43201	195.00
Park Maintenance	Bldgs/Facilities Repair/Maint	71511	Hass Septic Cleaning	101	43201	200.00
Park Maintenance	Chemicals and Chem Products	452404	Federated Co-ops	101	43201	96.17
Park Maintenance	Chemicals and Chem Products	59114842	John Deere Landscapes	101	43201	35.93

City of East Bethel

October 5, 2011

Payment Summary

Department	Description	Invoice	Vendor	Fund	Dept	Amount
Park Maintenance	Clothing & Personal Equipment	470708507	Cintas Corporation #470	101	43201	47.58
Park Maintenance	Clothing & Personal Equipment	470705094	Cintas Corporation #470	101	43201	47.58
Park Maintenance	Conferences/Meetings	756-C-003060	First Student	101	43201	225.00
Park Maintenance	Electric Utilities	92111	Connexus Energy	101	43201	995.04
Park Maintenance	General Operating Supplies	2375484	Dalco	101	43201	221.19
Park Maintenance	Motor Vehicles Parts	201792	Lano Equipment, Inc.	101	43201	169.67
Park Maintenance	Office Supplies	579628176001	Office Depot	101	43201	32.31
Park Maintenance	Park/Landscaping Materials	8325	Great Northern Landscapes, Inc	101	43201	326.39
Park Maintenance	Small Tools and Minor Equip	11072	Access Lock & Key LLC	101	43201	115.00
Park Maintenance	Telephone	8775475	Integra Telecom	101	43201	51.72
Park Maintenance	Telephone	332373310-118	Nextel Communications	101	43201	69.76
Payroll	Insurance Premium	4692976	Delta Dental	101		584.30
Payroll	Insurance Premium	40817	Fort Dearborn Life Insurance	101		1,104.87
Payroll	Insurance Premium	C0025282911	Medica Health Plans	101		7,792.76
Planning and Zoning	Architect/Engineering Fees	28393	Hakanson Anderson Assoc. Inc.	929		487.20
Planning and Zoning	Architect/Engineering Fees	28392	Hakanson Anderson Assoc. Inc.	847		286.68
Planning and Zoning	Legal Notices	IQ 01789425	ECM Publishers, Inc.	101	41910	46.13
Planning and Zoning	Legal Notices	IQ 01789424	ECM Publishers, Inc.	101	41910	46.13
Planning and Zoning	Legal Notices	IQ 01789423	ECM Publishers, Inc.	101	41910	46.13
Planning and Zoning	Office Supplies	578478096001	Office Depot	101	41910	30.44
Planning and Zoning	Telephone	332373310-118	Nextel Communications	101	41910	17.44
Recycling Operations	Electric Utilities	92111	Connexus Energy	226	43235	120.44
Recycling Operations	Gas Utilities	297338058	Xcel Energy	226	43235	26.72
Recycling Operations	Refuse Removal	138844-IN	PPL Industries	226	43235	150.00
Recycling Operations	Refuse Removal	1502140	Walters Recycling, Inc.	226	43235	267.85
Recycling Operations	Repairs/Maint Machinery/Equip	101681	Rogers Electric	226	43235	165.00
Sewer Operations	Bldgs/Facilities Repair/Maint	92111	Connexus Energy	602	49451	24.53
Sewer Operations	Electric Utilities	92111	Connexus Energy	602	49451	650.26
Sewer Utility Capital Projects	Architect/Engineering Fees	38399	Hakanson Anderson Assoc. Inc.	434	49455	2,478.79
Sewer Utility Capital Projects	Architect/Engineering Fees	28398	Hakanson Anderson Assoc. Inc.	434	49455	1,688.97
Sewer Utility Capital Projects	Due From Other Gov'ts	Pay Est #5	S.R. Weidema Inc.	434		391,087.26
Sewer Utility Capital Projects	Due From Other Gov'ts	Pay Est #5	TCF Bank	434		20,583.54
Sewer Utility Capital Projects	Improvements Other Than Bldgs	Pay Est #5	S.R. Weidema Inc.	434	49455	313,878.85
Sewer Utility Capital Projects	Improvements Other Than Bldgs	Pay Est #5	TCF Bank	434	49455	16,552.11
Street Capital Projects	Architect/Engineering Fees	28394	Hakanson Anderson Assoc. Inc.	406	40600	197.90
Street Capital Projects	Street Maint Materials	8501175	Johnston Fargo Culvert, Inc.	406	40600	293.16
Street Capital Projects	Street Maint Services	28907	Northern Asphalt Inc.	406	40600	6,282.00
Street Maintenance	Bldgs/Facilities Repair/Maint	470705094	Cintas Corporation #470	101	43220	26.50
Street Maintenance	Bldgs/Facilities Repair/Maint	470708507	Cintas Corporation #470	101	43220	26.50
Street Maintenance	Bldgs/Facilities Repair/Maint	92111	Connexus Energy	101	43220	21.29
Street Maintenance	Clothing & Personal Equipment	470705094	Cintas Corporation #470	101	43220	47.01
Street Maintenance	Clothing & Personal Equipment	470708507	Cintas Corporation #470	101	43220	47.01
Street Maintenance	Conferences/Meetings	756-C-003060	First Student	101	43220	225.00
Street Maintenance	Electric Utilities	92111	Connexus Energy	101	43220	1,592.20
Street Maintenance	Equipment Parts	135445-IN	Zarnoth Brush Works, Inc.	101	43220	256.50
Street Maintenance	Gas Utilities	297338058	Xcel Energy	101	43220	21.38
Street Maintenance	Motor Vehicle Services (Lic'd)	894231	Auto Nation SSC	101	43220	3,477.90
Street Maintenance	Office Supplies	573683451001	Office Depot	101	43220	42.12
Street Maintenance	Refuse Removal	1502137	Walters Recycling, Inc.	101	43220	267.85
Street Maintenance	Sign/Striping Repair Materials	I377468	TAPCO	101	43220	364.66
Street Maintenance	Street Maint Materials	19167	Commercial Asphalt Co.	101	43220	109.88
Street Maintenance	Telephone	8775475	Integra Telecom	101	43220	51.72

City of East Bethel

October 5, 2011

Payment Summary

Department	Description	Invoice	Vendor	Fund	Dept	Amount
Street Maintenance	Telephone	332373310-118	Nextel Communications	101	43220	136.46
Street Maintenance	Travel Expenses	91511	Steve Howe	101	43220	31.64
Water Utility Capital Projects	Architect/Engineering Fees	28397	Hakanson Anderson Assoc. Inc.	433	49405	13,360.59
Water Utility Capital Projects	Architect/Engineering Fees	28401	Hakanson Anderson Assoc. Inc.	433	49405	29,456.44
Water Utility Capital Projects	Architect/Engineering Fees	28398	Hakanson Anderson Assoc. Inc.	433	49405	1,688.97
Water Utility Capital Projects	Electric Utilities	92111	Connexus Energy	433	49405	4.36
Water Utility Capital Projects	Improvements Other Than Bldgs	Pay Est #5	S.R. Weidema Inc.	433	49405	148,606.64
Water Utility Capital Projects	Improvements Other Than Bldgs	Pay Est #5	TCF Bank	433	49405	7,789.23
Water Utility Capital Projects	Legal Notices	IQ 01789666	ECM Publishers, Inc.	433	49405	184.50
Water Utility Capital Projects	Legal Notices	59787	SGC Horizon LLC	433	49405	133.00
Water Utility Capital Projects	Professional Services Fees	22524	Wilson Development Services	433	49405	1,759.25
Water Utility Operations	Bldgs/Facilities Repair/Maint	92111	Connexus Energy	601	49401	26.67
Water Utility Operations	Electric Utilities	92111	Connexus Energy	601	49401	266.38
Water Utility Operations	Gas Utilities	91611	CenterPoint Energy	601	49401	12.83
						\$995,527.22



City of East Bethel City Council Agenda Information

Date:

October 5, 2011

Agenda Item Number:

Item 6.0 A-G

Agenda Item:

Consent Agenda

Requested Action:

Consider approving Consent Agenda as presented

Background Information:

Item A

Bills/Claims

Item B

Meeting Minutes, September 21, 2011 Regular City Council

Meeting minutes from the September 21, 2011 Regular City Council Meeting are attached for your review and approval.

Item C

Purchase of Used F-150's

As part of the City's Equipment Replacement Program, the 1998 Chevrolet S-10 is scheduled for replacement in 2011. This is a regular replacement for this item. This pick-up has reached a stage in its life where the maintenance costs are becoming excessive and are approaching the value of the truck. With 146,827 miles and increasing maintenance issues, City staff recommends that we replace the 1998 Chevrolet S-10.

Staff has checked state contracts for new pick-ups and researched purchasing new or used trucks from other sources.

Trucks purchased on state contract will not be available until 2012 due to the end of the model year build dates.

The Minnesota Department of Transportation (MnDOT) offers lease return vehicles from their expansive fleet to other government agencies for direct purchase at discounted rates. MnDOT expects to have 10 lease returns for sale in the coming weeks. These pick-ups are 2007 extended cab 2X4 Ford F-150's with between 36,000 and 45,000 miles. Most of these vehicles are in outstanding condition and have had regularly scheduled maintenance. The MnDOT trucks are equipped with a V-8 engine, tow package, and have safety strobes, headache racks, and step bars already installed.

With a staff of up to 11 employees and only 5 pick-ups and light duty trucks, the Public Works Department regularly does not have enough vehicles to transport personnel to and from work sites without the use of larger, less fuel efficient, single-axle dump trucks.

Funds for the acquisition of new trucks are provided for in the Equipment Replacement Fund. Funding was budgeted at \$26,000 for the replacement of the Chevrolet S-10 in 2011. The MnDOT price on their vehicles is a flat rate of \$9,500. No additional costs would be included in the purchase. 2012 state contract prices are not yet available for new trucks, but based on 2011 prices would put the purchase close to the \$26,000 budgeted amount and would require the addition of safety strobes.

The sale of the 1998 Chevrolet S-10 will provide additional funds and be facilitated by an online auction using the State of Minnesota Department of Administration Surplus Auction website.

With the need for additional light duty trucks and the discounted rates from MnDOT, staff recommends purchasing two 2007 Ford F-150's from the fleet services division of MnDOT. The total cost for the purchase would be \$19,000.00, a savings of \$8,000 from the budgeted amount. These pick-ups should provide a minimum of 5-6 years of useful service to the City.

Item D

Resolution 2011-48 Declaring Surplus Property S-10

The 1998 Chevrolet has outlived its useful life. With over 147,000 miles and numerous repairs needed, the cost to maintain the vehicle has exceeded its value. This is a scheduled replacement and budgeted for in the Equipment Replacement Fund.

Staff recommends adoption of Resolution 2011-48 declaring it surplus equipment and directing the equipment to be auctioned.

Item E

Resolution 2011-49 Declaring Surplus Property Olympian Generator

The 1997 Olympian Generator was donated to the City of East Bethel in 2006. The generator is oversized for use in either the public works building or the proposed water treatment plant. Significant costs would be associated with installing, hooking up, and scaling down the generator to meet the City's needs.

Staff recommends the adoption of Resolution 2011-49 declaring it surplus equipment and directing the equipment to be auctioned.

Item F

Resolution 2011-50 Declaring Surplus Playground Equipment

The playground equipment located at Norseland Manor Park has been scheduled for replacement and budgeted for in the 2011 the Parks Capital Improvement Plan. The existing equipment will be donated to Kids Around the World, a non-profit organization, that will remove the equipment, refurbish the equipment, transport and install the equipment in locations all over the world for underprivileged children.

Staff recommends adoption of Resolution 2011-50 declaring the equipment surplus and directing removal and donation.

Item G

Resolution 2011-51 Accepting Donation for the School House Renovation

In order to preserve the historically significant structure that served as a one room school house beginning in 1873, the building was moved to Booster East Park in October 2010. Several organizations, businesses and individual have donated funds to renovate this building.

Staff is recommending adoption of Resolution 2011-51 Accepting Donation for the School House Renovation.

Fiscal Impact:

As noted above.

Recommendation(s):

Recommend approval of the Consent Agenda as presented.

City Council Action

Motion by:_____

Second by:_____

Vote Yes:_____

Vote No:_____

No Action Required:_____

EAST BETHEL CITY COUNCIL MEETING

September 21, 2011

The East Bethel City Council met on September 21, 2011 at 7:30 PM for their regular meeting at City Hall.

MEMBERS PRESENT: Bill Boyer Bob DeRoche Richard Lawrence
 Heidi Moegerle (7:40 PM) Steve Voss

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

Call to Order **The September 21, 2011 City Council meeting was called to order by Mayor Lawrence at 7:30 PM.**

Adopt Agenda **Boyer made a motion to adopt the September 21, 2011 City Council agenda. Voss seconded; all in favor, motion carries.**

Sheriff's Report Lieutenant Orlando gave the August 2011 report as follows:

DWI Arrests:

There were seven DUI arrests in August. Four of the arrests were a result of traffic violations. One arrest was the result of an equipment violation. One arrest came as a call in report of a possible drunk driver. One arrest was the result of a warrant attempt, where the deputies found an occupied vehicle, where the driver was intoxicated and the passenger was arrested for a warrant.

Burglaries:

During the month of August, there were ten burglaries. Two of the burglaries involved businesses. Three of the burglaries involved items being taken out of garages or vehicles parked in garages with the garage door left open. One involved a house under foreclosure and items removed from the home. One involved a house where the front door was forced open and items taken.

Property Damage:

There were ten reports of damage to property. Three reports stemmed from an assault that had occurred at a local business. One report was from Century Link where copper had been stolen from two telephone boxes, totaling an estimated \$10,000. One report was from a vehicle parked in a driveway that had been vandalized. Another report was from an attempted burglary where damage had been done while trying to access a house.

Thefts:

Eleven theft reports involved thefts from unlocked vehicles. Two reports involved thefts from locked vehicles. Four of the theft reports involved thefts from boats, either docked on a lake, or parked in a driveway.

On September 29th, the Sheriff's Office was advised by City Administrator, Jack Davis, that there was going to be a protest by animal rights activists in the area of 183rd and Greenbrook Drive. Jack Davis inquired as to whether we had been informed of this protest. The Sheriff's Office had no knowledge of the planned protest. Several deputies and a Sergeant went to the location and found that the Humane Society was bringing a veterinarian out to do

an inspection on the horses located at a nearby property. The inspection was not slated to happen for several hours. The deputies and Sergeant stood by to make sure the peace was kept. Over the next two days, ten horses were removed from the property. The case is being referred to the Sheriff's Office, from the Humane Society investigator. The case will then be forwarded to the Anoka County Attorney's Office for review and charging purposes. She will update you when she has have further information on this case, as it has gained a large amount of media attention and public outcry.

Information:

October 14th through 27th, Anoka County law enforcement agencies will be hosting saturation patrols aimed at seatbelt use. The reason we target seatbelt use is to end the senseless deaths and serious injuries that results from unbelted motorists. Nationwide, traffic crashes are the leading cause of death for people ages 2 to 33 years old. Traffic crashes are the leading cause of death for teenagers. 16-19 years olds are more likely to die in a crash than the next two leading causes combined (homicide and suicide). We do not want to locate your next of kin to tell them that you were involved in a crash and were not buckled up. Please buckle up – the life you save may be your own!

Boyer asked he is curious about the animal abuse case, because this is the second time is it not? He said and he was struggling to remember whether we brought charges the first time. Lt. Orlando said the first case that the sheriff's office and forwarded on was in 2007. She said but Humane Society is the one that is getting all the complaints on this one, so that the time this took place last month, Lowell Friday was on probation from the previous case. Lt. Orlando said so that is why they did not need a warrant to go on the property initially. Boyer said probably as you know, we amended our ordinance for larger horse operations that we always had the right to send a veterinarian on the property with like a 24 hour notice. Davis said that is correct, we have the right to do that, but we had to notice the owner. He said give them a day's notice.

Voss said he assumes the rest of you have been getting e-mails on this from citizens. He said in terms of city and what happened and what is going to happen, he asked what role the city has in all this. Vierling said the city has a couple different positions relative to the entire issue. He said first to a perspective of criminal law whether or not there is going to be a prosecution. Vierling said the matter has been referred first to the county attorney to determine whether or not there is any prosecution from a felony prospective. He said if the county attorney declines prosecution, then the city may then review the matter. Vierling said we will probably review the matter in terms of the city prosecutor's office to see if there are any gross misdemeanors or misdemeanor items that could or should be brought. He said that is from the criminal prospective.

Vierling said from the civil prospective of course the city does the Interim Use Permit (IUP) on that property and he believes it is slated for review in March. He said you may under the terms of that IUP go ahead and review it earlier. Vierling said but we will probably pursue that once the determination is made on the criminal matters. Voss said so if he understands it right if it is a felony action the county takes lead. Vierling said the county has jurisdiction over all felony actions within the county. Voss said so at this point there is nothing for the city to do but monitor what is going on. Vierling said we are waiting for some police reports if they were going to be coming our way, which they have not. He said we checked again today and obviously they are not with use, we presume they are in route to the county attorney's office. Vierling said in this matter and similar matters we will wait for the county attorney to make a determination before we are allowed to do anything.

Voss said he thinks everyone should be comfortable in the fact that we are aware of what is going on, we just need to let some of the legal process go. Lt. Orlando explained that one of the problems that have come up with charging it as a felony is that horses are not considered domesticated animals, they are considered livestock and there are different standards unfortunately and there are different standards for that. She said that is one of the issues we are seeing right off the bat with this. Lt. Orlando said that Investigator Wahl from our office is the one that is working with the investigator from the humane society, Keith Streff. She said so he is in the process of getting that sent up to the county attorney, but trying to tie up some loose ends that need to be tied up before we can send it forward. Voss asked and staff is being kept aware of what is going on. Davis said that is correct. He said we are also in contact with the group that organized the protest too, and they call in about once a week and inquire and bring us up to date on their end of this. Lawrence said this is going to be a long process for everyone.

Voss asked you mentioned in your report about how a citizen called in and it resulted in an arrest, a DUI and over the years there has been a couple times he has called in and his wife just did last week (actually two weeks ago). He asked how often does that happen and result in a good result, where they can actually find someone. Lt. Orlando said the key to having the call in result in a good result is if there are cars in the immediate area that are able to respond. She said or if it is a case where someone is following a vehicle, being able to update dispatch and let them know what way they are going, what way they are turning, is kind of dependent if and when an arrest could take place or a stop would take place. Lt. Orlando said she would say about ½ the time it will result in a stop. She said it might turn out that it is not a DUI, could be distracted drivers, elderly drivers, sleepy drivers, all kinds of things, they have the tendency to do the same kind of weaving in the lane and those same kind of things. Voss said so to the residents that are watching does this work or doesn't it work. Lt. Orlando said if you see somebody that you think is suspiciously driving, definitely call it in. She said if there is someone in the area that can stop that driver and make sure they are safe that is very important. Lt. Orlando said we don't want them going on and getting into a head on collision a few miles down the road because you didn't want to bother us or whatever. Voss said that is usually why he calls. He said he always thinks what if he doesn't call. Lt. Orlando said it is better to be safe than sorry.

Council Member Moegerle arrived.

Tanner
Belfany &
Brian
Bezanson for
Service on
Road
Commission

Davis explained that Mr. Belfany called and said he couldn't make it. Lawrence said he doesn't see Mr. Bezanson either. He said we have plaques for both of them for their service on the Road Commission. Lawrence asked should we do this now or wait. Davis said maybe we should read this and then keep it here now and give it to them at a later date.

Boyer said the City of East Bethel would like to recognize Tanner Belfany and Brian Bezanson for their service on the Road Commission and in recognition of that we made two plaques and will present them at a later date. Lawrence said we appreciate their service.

US Cable –
Steve Johnson
– Res. 2011-46
Allowing &
Approving the
Assignment of

Davis explained that Midcontinent Communications is purchasing US Cable. A franchise transfer between all existing US Cable franchisees is required for this transaction to become effective. Mark Vierling has reviewed the franchise transfer process and will provide comment and recommendation to Council. US Cable is requesting City Council rescind resolution 2011-25 which was adopted at the August 3, 2011 City Council meeting and adopt resolution 2011-46. The City Attorney has no objections to US Cable presenting this

request but feels confident that resolution 2011-25 addresses the City's issues in this matter.

Boyer said he didn't quite hear Davis. He asked so you want Council to pass 2011-46 and rescind 2011-25. Davis said that is not my recommendation, US Cable is asking that you pass resolution 2011-46 and repeal 2011-25. He said Mr. Vierling is confident that our existing resolution addresses our needs, but we are giving US Cable a chance to present their case.

Steve Johnson, US Cable said he has the privilege of bringing Dan Nielson, president of Government Affairs of MidContinent and he is going to let him speak to the issues that both companies have with the previous resolution and he can maybe answer some questions about the company as well.

Dan Nielson introduced himself. He said he has some information to pass out about MidContinent to pass out to the Council Members. Nielson said his office is in Sioux Falls, South Dakota. He said we are looking forward to being the new owners and servicing East Bethel. Nielson said and that is going to happen in fairly short order. He said we think this is going to be a good thing for our company and we pledge to make it a good thing for our customers. Nielson said our relationship with the community and the elected leadership is very important.

Nielson said the resolution that was passed previously, the difference between that one and the one we are presenting tonight is fairly simple. He said the previous resolution asks that US Cable guarantees that MidContinent in their ownership role. Nielson said what wasn't known in August, was that US Cable is dissolving. He said they are selling off all their assets across the county. Nielson said we are purchasing the Minnesota and Wisconsin assets, their assets in Colorado and other states are being sold to other companies.

Nielson said so there are two issues. The first one is that US Cable is not something that is able to guarantee future performance as US Cable has no future performance. He said and secondly, MidContinent has a copy of your franchise ordinance, here we come and embrace that, we are excited about coming to town, we really don't ask for anybody to guarantee our performance, we would like to do that ourselves. Nielson said as is the case with all the other communities we are picking up in this transaction. He said so, we are asking for a modification of the previous resolution based on those factors. Neilson said, let me restate and he can't emphasis enough, we are excited about coming here. He said we have provided the information about our company. Nielson said our history is in Minnesota. He said we are excited about expanding our other markets in Minnesota. Nielson said our other primary states or North Dakota and South Dakota. He said this is where we are from, this is where we want to serve, and this is where we want to be.

Vierling said what you have certainly the city adopted in early August. He said in this resolution approving the transfer you required that US Cable guaranteed MidContinent's performance under the existing franchise ordinance. Vierling said the revised language you have, as the gentlemen noted, they have deleted the word guarantee; however they haven't modified the resolution. He said so they haven't asked you to release US Cable. Vierling said as a matter of fact the resolution specifically says that you are not releasing US Cable, so one might ask what is the difference between having them guarantee and having them be released from the obligations of the original franchise ordinance and he personally thinks it is a difference without a distinction. He said so they have provided a resolution that modifies that language somewhat. Vierling said it still says that US Cable is obligated. He said if US

Cable is going out of business one might being the devil's advocate say why would they care, required to guarantee or being released, why would they care, one way or the other and he doesn't have an answer for that. Vierling said but from cities prospective, the resolution you passed is fine, but the resolution in front of you he doesn't have a whole lot of objection to either. He said the first resolution was a little stronger with the guarantee language, in either he doesn't have major problems with either one.

Voss said there must be a reason Mr. Neilson came the whole way over here for this one clause change, what does it mean. Neilson said he is working in the area on these transfer resolutions. He said but this is an important matter, because as we viewed, the guarantor was US Cable of our performance. Nielson said the explanation that US Cable is still liable for their own performance as long as they were here and the time that they were here, that is them and he is here representing MidContinent and from the point of takeover. He said in our mind, the distinction is the past and the future and US Cable is not the in position to be the guarantor of our future. Voss said he understands and appreciates that, the only situation he would see is just as of last month we were not aware, in fact we were presented as this was more of a merger, not a dissolution of US Cable, but in the next four weeks before this is final if that goes back, then we are stuck not having that guarantee. He said if you agree that guarantee is not going to be an issue, if the company is not there anymore.

Voss said he is still struggling why, is there a legal reason in terms of the transaction. Nielson said no, as he understands it, because there is a specification of a guarantee, then you might say to us, MidContinent, now lets go discuss about the guarantee. He said and then what we would say is it is much cleaner as to how we will interact with each other, it is in the franchise ordinance that we are transferring into. Nielson said the transfer resolution as required by law gets us to being bound by the franchise ordinance, and that is cleanly what we want. We don't want to be bound by the resolution and some clauses in that. He said if you didn't have a cable provider and we came here fresh, it would bind us to something like this.

Vierling said they will be bound to the franchise ordinance regardless, MidContinent will be. He said he will let the company interpret the resolution they way they wish, put we are not releasing US Cable from future performance under either document. Vierling said they are still responsible for their performance during the term of the franchise ordinance. He said MidContinent will step into their shoes and as long as we don't have any problems then this is fine, but if for any reason we want to cancel this, we would serve notice to both companies that we were cancelling. Voss asked but in terms of our exposure the guarantee is just a highlighter on a fact that they have to fulfill their obligations. Vierling said in his view it affirms not being released.

Moegerle asked but if US Cable no longer exists then we have preserved the right to sue a non-entity. Vierling said and under that circumstance it doesn't make a dimes difference if you have a guarantee or not. He said even under the non-release you are still chasing them down. Lawrence asked so US Cable is going away permanently, they are being liquidated out. Nelson said their assets are close to transferring like MidContinent or they have agreements by the first of the year to release all their other properties. Johnson said the difference is US Cable can't guarantee MidContinent's performance, because they have no control over MidContinent.

Boyer asked in the case of US Cable doing cash disbursements to us, to its principals, if they are guaranteeing performance and there is a problem with that performance in the future

can't the city chase the disbursements at that point. Vierling said depending on how that would all fold out, typically if a company dissolves and goes through the dissolution with the state of their incorporation and follows all of those requirements, they have the opportunity (he doesn't know if it is a Delaware Corporation) to set some times frames to limit their liability. He said he doesn't truthfully understand where the issue is with the company other than he can certainly see where US Cable would say, "We do want to go out of business, and we do want to wrap up our books and be done and out." Vierling said on the other hand that is there interests, that may or may not be the cities interests, but that is what you have.

Voss said the struggle he has, trying to draw a corollary with someone puts a guarantee on an oil filter and they go out of business and there is no one to go after to satisfy that guarantee anyways. He said but up until that time that the company is dissolved there is some recourse there. Voss said but more than a few transactions like this have hit a road bump and it gets dragged out longer. He said he understands your concern, what we are trying to do is protecting our interests to. Nielson said understandably so. He said MidContinent also recognizes that this type of transfer resolution is not required in every state in the country. Nielson said it is required in Minnesota and we understand that. He said and really what we are here saying from a MidContinent perspective, we want the relationship to be between us and you. Nielson said we are really asking permission for that. He said and when US Cable is listed as a guarantor of us, where it provides comfort he guesses, but we are saying look to your relationship directly with us for that assurance that everything is being done per the franchise and per a good relationship with a service provider and a given community.

Voss asked when this would become effective, when it is passed. Vierling said practically speaking, after it is passed and either resolution requires MidContinent to sign an affirmation that they are subject to the terms of franchise ordinance. Voss said he was just thinking if they are subject until the sale is completed, does that help at all. Nielson said it is a matter of days. He said the transaction will be completed at the end of this month. Moegerle asked is part of this a matter of insurance and insuring and guarantying, or is that a completely different issue. Nielson said no, it is more a matter of a clean sale. He said as the attorney correctly stated, US Cable is a company that is in the process of dissolving. Nielson said we are in the process of taking 100% control of the Minnesota assets of US Cable into MidContinent. He said the previous resolution 100% is somewhat less than 100%.

Voss said so to his point are we able to somehow craft this, that it be acceptable, that this becomes effective at such time when the dissolution process is completed. Vierling said he thinks from a practicable standpoint, there will be a sale/closing and then US Cable will close down a within several months after that. He said they are not going to close down on the date of the closing because they have to receive their proceeds, disburse to their shareholders, and do what they need to do. Vierling said so if you wanted to tie it to the actual closing, get a chicken and an egg type of thing, catch 22 going on, but that happens. Voss said he thinks we are making a lot out of this. Boyer said he does too, but he doesn't see why the city should give up the guarantee. Moegerle said whether it is worthless or not? Boyer said whether it is worthless or not, it might be worth something we don't know. He said while he appreciates Nielson comments and portrayal about what you believe US Cable's intentions are, US Cable isn't telling us that either. Nielson said but the issue where we asked for the change was US Cable guaranteeing MidContinent's performance. He said so we are in fact talking about MidContinent. Nielson said a company that doesn't exist can't guarantee our performance and we are not comfortable with another company guaranteeing our performance when we become the service provider in this town.

Boyer said he is sure you can appreciate it is our position to do what is best for the citizens of East Bethel. He said from his perspective he doesn't see any advantage to the City of East Bethel in giving up this guarantee. Boyer said he can't for the life of him see why we should. Lawrence asked the city attorney if this guarantee is pretty much void as soon as they are out of business. Vierling said if they are truly out of business, if someone goes bankrupt and they are gone, and out of business from a corporate standpoint and the pockets are empty you can't retrieve anything from them. He said this is a little bit different in a sense you have a company that is going to be selling out and receiving a payment, they are going to have cash assets. Vierling said from which they could certainly pay their creditors and take care of their obligations. He said he suspects that probably one of the reasons the guarantee is not wanted is that when they get to the table at the closing the buyer may require some type of escrow and have some issues with regard to the guarantee there.

Moegerle said this quarter's payment of franchise fees haven't been paid yet, so that might be what is guaranteed by the original resolution. Vierling said the resolution guaranteed not only the current, but the past and the future under the terms of the franchise ordinance. He said so you will still get your payment directly from MidContinent, as he understands it, they are taking over after the closing and making those payments, at least that is what has been reported. Vierling said in any event, the resolution is not releasing US Cable from obligations, past, present, or future.

Lawrence asked and MidContinent is taking on the past bills of US Cable. Nielson said after we become the operator we are responsible and we want to accept and take that responsibility. Moegerle said her thought is that is there a possibility of timing that after US Cable has dissolved, then we pass the resolution you are suggesting, or is this a condition precedent to the closing. Nielson said the attorney identified something, the way it is constructed right now; it has a little bit of a tail (for a lack of a better term) that has to be accounted for in the closing. He said whereas a clean break, a 100% transfer of assets going forward, US Cable still has the obligations for the time they were here. Nielson said nothing has to be accounted for, when US Cable was the cable company they are responsible, when MidContinent was the cable company they are responsible. He said from a business transaction standpoint, this is the simplest and easiest thing to do. Nielson said as you can imagine, there are 110 communities involved in this transaction, it is going to be a long complicated process. He said his job with MidContinent is relationships, it is not all the legalities and really where we could have come up and tried to lawyer this, our prospective is he came here to ask you for permission to be your cable provider going forward on a clean basis and demonstrate to you on our conduct that we want to be a first class service provider in your community.

DeRoche said he needs a little clarification here. He asked and why is it that this guarantee couldn't be satisfied at the closing? DeRoche said we set the timing up to where when the assets are transferred and everything is squared away, then the guarantee goes away. Voss said as he thinks about it more, he thinks part of the reason we had the guarantee there is because we had a little bit of payment issue with US Cable. He asked in the present situation where US Cable is being dissolved, MidContinent is an unknown to us, and what that guarantee does if we have those issues again, not only do we have the new entity to say we need to get this resolved, but if it doesn't get resolved, we have at least the ability on paper to pursue US Cable. Voss said and if there are still cash assets there then we have that. He said with this new resolution it doesn't seem to him that we would have the ability to go after US Cable anymore? Vierling said in his opinion you would, but the language has been

toned down. Voss said so we could still go after US Cable. Vierling said he thinks so. He said in truth, in reality, the city's first lever on default of payment is cancellation of the franchise. He said which is probably going to be your first step anyways should that ever happen.

Nielson said but again, we have talked about scenarios where MidContinent might owe money and US Cable might have some obligation, but you are asking US Cable a company that is not going to exist to carry a guarantee going forward. He said and the question from the Council Member about the closing and again he is not an expert in these processes, but in a closing when you make those adjustments you have to price everything. Nielson asked does anybody have an idea how we price what we are talking about here? Account for that in dollar terms so that the transaction can be completed? He said he thinks that is probably where the complication arises. How do we price this? Boyer said by performance bond he would assume, that is how most construction companies do it. Voss said we had an issue about lack of payment, there is a number right there. He said again he doesn't want to make a big deal out of this, but at the very least he hopes you appreciate why this is in there, we had an issue with non-payment of fees. Nielson said he understands. He said he appreciates the council's ample time. As a new service provider that is community minded, we are not standing up here to make a demand, but we are humbly making a request that you take us at our word as we enter the and begin to make investments and provide service in this community. Nielson said this is the footing that we would like to establish with you. We make this as a respectful request.

Voss made a motion to approve Resolution 2011-46 Allowing & Approving the Assignment of the Cable Franchise & System Now Operated by US Cable of Coastal Texas, LP to Midcontinent Communications and rescinding Resolution 2011-25.

Lawrence seconded. DeRoche said the only thing he is going to put in here is he has found that things that aren't on paper are tough to prove down the road. He said and it has gotten us in a pickle before. Boyer said to echo that, he doesn't see any reason to give up a stronger position for a weaker one for nothing. Voss said from what he is hearing, we are not substantially losing, and he has been involved in enough of these big transactions that there must be something here substantial enough that could alter the closing that they are concerned about. He said it seems like we parsed everything out in terms of the non-intended consequences here, so he would rather have them have a smooth transaction that has no effect on us. Lawrence said he knows that we have reviewed this quite heavily and one of the reasons why he will vote for it is according to Vierling it still maintains the city's strength with respect to US Cable and also MidContinent coming forward and that responsibility. He asked is that not correct? Vierling said he can live with either resolution. **DeRoche, nay; Boyer, nay; Voss, aye; Moegerle, aye; Lawrence; aye; motion carries.**

Public Forum

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

Doug Tierney of 4610 Viking Blvd. NE said he came to comment on the road vacation Tierney, came to comment on road evacuation you had down there. He said he brought along some minutes from Ham Lake, the Hiawatha Beach, December 21, 2009. He said instead of giving away valuable property they opened it up to four wheelers and snowmobilers. Tierney said in November he is going to be 69 years old and he has to put a fence up every year to keep the snowmobilers from charging through my place. He said he has had them cut my fence, do all kinds of crap.

Tierney said when he was a former employee of the Village of East Bethel he was one of four patrolmen. We kept the road open, the one you drive by everyday Council Member Voss, and now that road the neighbor has had his boat lift in the middle of the road, he has moved his dock and his boat in the water in front of it, so people can't use it in the summer. He said the next one down on Lake Street, they take and put it right in the center of the road, and other times they take their dock apart and put it in sections to block. Tierney said this isn't one road, this is one road being given away and the other ones just lining up. He said and if he lived next to one he would do the same thing, because they are still getting a \$1,000 a run foot. Tierney said look what happened a few years ago in Minnetrista, when they wanted to get rid of the riffraff and take back Lake Minnetonka. He said and the news media got a hold of it and they put a stop to it.

Tierney said when you talk about the different stuff on West Tri Oaks; they say no other ones were ever evacuated. He said has a plot map and when he said to the neighbor well right there they evacuated a road right there, he said no they didn't, I have been on here since 1936. Tierney said so he went to the courthouse and spent \$6 and came back and he went into total recall and said, "Oh yeah, I know about that."

Tierney said Ham Lake had three meetings, they started out in December, they got the people together and some of the people are friends of mine, they talk about how horrible it is to be next to that, how horrible it will be right through my front yard. He said last winter he took the kids and the dogs out and two of them came shooting through the gate, punched it, those new snowmobiles really go, they seen the fence, shot back out through the deal, and they overshot the ditch and were sitting out in the middle of the road and killed the engine. They should have this stuff, be able to use public access. He said and Boyer, you told me three times that it was only for fire trucks. Tierney said this is the fifth time since 1968 that he has been before the City Council over these roads and it says right on there: dedicated for public use forever, all streets, alleys, whatever and that was 1925. He said the councilmen in Ham Lake said that those paths were all for public use, none were this fire engine myth. Tierney said and he thinks it is disgusting if you're going to give something away, because this cuts down the number of paths that once you get on the lake you can't get off the lake. He said and the ones that live next to it, he would do the same thing, if he sees to get an extra 20 feet of frontage.

Moegerle said she is looking at the minutes from the December 9, 2009 Ham Lake, and it seems that they are talking about that these access paths are not park land. She said her question is what use is that land to the city? Moegerle asked are you more concerned about the residents getting a windfall or city losing a benefit that we actually need and can appreciate. Tierney said go down to Hiawatha Beach they call them paths, on Lakeview Point they call them lanes, on ours they call them street names. He said what he is really disgusted with you are cutting down ways for people to get off the lake. Tierney said they get on the lake at the main access and they want to get off the lake and they can't find a way, so they cut your fence, they go through your yard, and these lakes, paths, right-of-ways were for public use. He said they weren't to be given away. Tierney said he remembers when he was working for the Village of East Bethel, one Council Member was beating on the table and said, "If we give away one access to the lake, we will never give away another as long as I am on the council." He is obviously gone, but these should be for use for the people. Moegerle said so her understanding is that this is not currently being used, that particular one. She said and the other question she has is since that is not an official landing, does that bother the lake and cause more damage when it is used for that purpose.

Tierney said he went to many classes, training sessions, one in Duluth, one in Maple Grove and one in Minnetonka, he hears this myth, a friend down by Lake Point that says the DNR doesn't want them. He said at that training session on weeds the guy came up and said if you have any unmarked landings if you go and get a GPS reading, he would send him signage to put on that. Tierney said that way when they use it they will know what to look for. He said this myth about the DNR didn't want you to use that, they are there to use. Tierney said but like at Coon Lake it has an invasive species in it and there was none of this that the DNR doesn't want you to use it. He said Coon Lake Beach is listed as one gravel entrance you have two, one on Forest Road and one on Dogwood. Tierney said if you give this away, they are going to be coming through the yard. When he was a patrolman he had a guy went right through the yard and he tackled him right off the sled and he asked him what you are doing. These were school teachers from Ham Lake.

Voss said he thinks in your situation, you have had problems and it is because Viking is right there. He said but off of 1st Street, off the end of 195th, where he lives, that used to be plowed, not by the city, but by the users. Voss said it was a road. Tierney said this was when Mike Huseby was there, because he sold. He said and then when he sold people would come from Coon Lake Beach and use it as a shortcut to go to E.J.'s and there was a verbal confrontation between new guy and neighbor. Then we had a heavy snow and there was a big mound of snow and he came up and boom he stopped and got out and looked and he had put logs in the mound, poured ice over it, this was serious. That stuff shouldn't happen. Voss said he agrees. He said when the home was built off of 1st, they initially sloped it right across, and they got ahold of the city to fix it. Voss said the point he is trying to make is when that was used heavily, people shot right down 195th. He said if you think they shoot down your place, you should have seen what they did down 195th. Voss said but that is definitely an access no whether how heavily it gets used, it will always be an access and then another one further down, but kind of a compliance issue. He said if we get a complaint the city is going to take care of it. Those two are constructed, you could drive out there. Voss said but these other ones you can't. Tierney said you can with a snowmobile.

Tierney said when his friend on East Front didn't have the room to put in a septic they made him put in a holding tank. They said Council wouldn't give out any variances. Tierney said on the other hand of the issue, when he tried to get help from the city, he ended up hiring an attorney, because the guy on East Front moved the drainage ditch. He said now it is all straightened out, but he had to spend \$500 to get it done. Voss said the couple times there has been issues with that access he has called it in and the city has responded. He said he doesn't support giving away Sylvan, he is fine with them using it, but he is not supporting giving it away for those reasons. Tierney said but the attorney said it didn't meet the guidelines with the licensing. He said he read it on the computer. Tierney said you looked at what they were going to do, it was something like that. Voss said we can't sell it. Moegerle said and they use it at their own risk. Vierling said he thinks there was an issue with regard to what they were proposing. He said an encroachment of the septic system is different than putting in a structure. Vierling said he may have drawn the distinction between the two. Tierney said so they want to do something that isn't within the licensing.

DeRoche asked do you have a copy of that plat/paper from 1925. Tierney showed him what he had. Boyer said that is what the city wanted to keep them for, fire protection. Voss said it has been used twice for fire protection, he has seen it, actually three times since he has lived there. Tierney said that is not the main and only thing, that is one of the things. Boyer said they are recorded on the plat in the city. Tierney asked why is a boat lift in the middle of the road during the summer. Boyer said he believes there is a fence in one them also, isn't there?

Voss asked the city administrator to take a look at this. Davis said that has never been called in as a complaint, but he will take a look at this. Moegerle asked is there enforcement issues that Lt. Orlando can foresee that would be a problem or control these kinds of activities from going on. Lt. Orlando asked such as blocking off accesses? Moegerle asked yes, is there an enforcement issue, something you can take care of. Lt. Orlando said yes, she will look into this. DeRoche said he doesn't even know those roads are there, they are not signed in the winter time.

Scott Mork of 1141 80th Avenue NE said he is here on behalf of the group Standing With the Horses and also on behalf of his daughter Piper whom some of you might have seen or noticed from news stories before. He said also to make sure his family doesn't make the same mistakes that we have in the past. Mork said this about Lowell Friday, which he was happy to hear you guys discussed earlier. He said it sounds like maybe we will not renew the IUP in the future, but our concern is for horses and animals that are there now. Mork said there is a body score of 1-9 that the vet said many were at 3 and those were not ceased because they were healthy. He said but winter, if they are not at a 5 by winter, they wouldn't make it through the winter. Mork said it would be like someone that is supposed to weigh 150 lbs, weighing 90 lbs, going on survivor, they wouldn't take them.

DeRoche asked isn't that something we can go and check it on. Davis said according to the IUP the horses are to be checked twice a year, in April and October. DeRoche asked but didn't Voss say that was amended and with 24 hours notice we can go out and check. Davis said we can visit and inspect those upon notice. He said the score he is talking about, 1-9, and the horses meeting the 3, 2 is the requirement for being malnourished and 3 there is nothing the city can do if they meet the 3 because they meet the minimum threshold. Davis said and as Lt. Orlando stated we are not talking about domesticated animals, these are classified as livestock so it makes it a little more difficult to enforce. He said these are issues that should be reported immediately to the humane society, involve them in this.

Mork said in 2007 my family did a report to the humane society with pictures. He said they did nothing and that is when we went to Channel 9 news and he is sure some of you remember that story. Mork said we thought things were taken care of, so we did not follow up, which was the mistake he was talking about. He said so this time he is making sure for his daughter and for your children and communities children that they know once somebody does something wrong they are called up on it and are not going to be able to do it again, as Mr. Friday has done. DeRoche said he can understand what you are saying, because he thinks he told the city administrator after this little incident happened he went and had a chat with a couple vets and asked them just what does it mean. He said and they reiterated the fact that most animals if not up to par, come winter time they are in deep trouble.

Mork said so knowing that we are asking if there is anyway you can as a city review the IUP earlier than March to possibly revoke it and have some action taken. Mork said he is not an expert, not a vet, he stands before you as a man that usually avoids conflict, but at the persistence of his daughter, and her love for horses he is here. He said he wants to make sure that he teaches his children that if they stand for something and they are responsible for something that it is going to be followed up on and things are going to be taken care of by the government people.

Boyer said he wants to say one thing, he thinks he is very supportive of your position, but he doesn't think we want to put the city in the position giving the impression that we are prejudging this IUP at this point. He said and he thinks that is a very dangerous thing for the

city to be implying. Boyer said so he wants to say right out that he would expect in any IUP hearing that the city would conduct that it would be a fair hearing and we would know all the evidence. Mork said definitely.

Boyer said and he thinks that is also important he wanted to ask in the ordinance he doesn't think there is any limitation on number of times we can send a vet there with notice. Davis said you can send a vet there with notice everyday. Boyer said right and as winter was coming it would be fairly easy for the city to send a vet there every two weeks or once a month. Moegerle asked at whose cost. Vierling asked he was thinking the theoretical; we will let Anoka County complete their investigation before we do anything. He said it would be premature for us to take a position or discuss, we don't even have half the records that the county attorney does right now. Davis said as Vierling previously stated, the first step in this is to let the initial case run its course. He said Friday is due another semi-annual inspection in October. Davis said once we get the results of that and hopefully by that time we will know something about how charges are going to be handled in this case.

Boyer said but to answer Moegerle's question he believes a vet has already volunteered their services for this purpose, inspections. Moegerle said on behalf of the county presumably. Boyer said on behalf of the city. Davis said the semi-annual inspections are at the cost of Friday. He said if we order an inspection it is at the cost of the city. Lawrence said but basically as a city we have to wait for the legal thing to happen, right now it is in motion. He said he would say if anyone is watching the horses and he is sure people are watching them, if you were to see them stumbling or malnourished be sure and contact the human society, be sure and act on that based on it is an ongoing investigation. Mork said he is scared because they haven't done anything in the past. He said if they don't act on it (humane society) which direction do we go the sheriff's department. DeRoche said maybe this won't, maybe it will put your mind at ease, and this isn't something anybody up here takes lightly. He said but you have to remember, in this country it has to go through the system, maybe it takes a little bit, and everything is going through the system, believe me we are not just sitting back and not doing nothing about it. DeRoche said but until there is actual proof, there is not a whole lot we can do, until something comes in, believe me it is not going to be just left alone. Voss said as we discussed earlier, probably the most effective and most effective thing you and the other groups have done is not just raise the awareness, but you are pushing that awareness. He said that is the contrast he draws between what is going on now and what happened four years ago. Voss said we had to respond four years ago because of that in certain ways. He said but in this case it is a little more severe at least what has been reported. Voss said the issue is not going away on its own; folks like you are keeping it up. He said and it is not fanatical, he says that in a positive way, you are just making sure things are being followed through. Voss said there are legal things we have to do and the county has to do, rest assured it is not going to go away; we are going to get some resolution. Mork said we appreciate your concern and your time. He said if there is anything we can do or any help we can give, please let us know. Moegerle said you have done a good job of keeping us apprised of what is going on, this afternoon we got an e-mail that had 20 affidavits about this situation. She said she hasn't had time to go through every one of them, but there are issues of probable cause we have to deal with. Moegerle said but the land use issue is informed by what has happened, but will have to stand on its own. She said so this brings the context together for us and that is valuable and we will visit it again when we can.

There were no comments so the Public Forum was closed.

~~Meeting Minutes, September 7, 2011 Regular Meeting;~~ C) Meeting Minutes, August 24, 2011 Work Meeting; D) Resolution 2011-47 Setting Public Hearing Date – Delinquent Accounts; E) Accept Fire Fighter Resignations; F) Temporary Front Desk Assistance. Voss seconded. Moegerle has her usual changes of minutes. Boyer amended his motion include the items that were sent out later B) Meeting Minutes, September 7, 2011 Regular Meeting. Voss seconded the amendment. Moegerle asked can we pull item she has some word changes. Page 4. 2nd line, brightly, change to highly for DeRoche to say. DeRoche said that is fine. B) Meeting Minutes, September 7, 2011 Regular Meeting so she can comment on some changes. Voss said anyone can pull something from the consent agenda. Moegerle asked on page 15 the Country Inn and Suites bill. Davis said this bill was for Fire Marshall training for four fire fighters, for two rooms in Brainerd. This was paid from the SAFER Grant. Moegerle said they couldn't have driven back and forth for less expense. Voss said this is a two hour drive. Moegerle said she drove back and forth for a meeting in Rochester for the LMC; it is just making sure we are using our money well.

DeRoche said he wants to touch on the fire fighter resignation. He said up to them when they want to resign. DeRoche said the question he has is a concern he brought up a couple months ago, we bring people in and spend a lot of money to train them and now is that lost money, correct. Davis said that is correct. Voss said until they return. He said Ms. Novak was part of the explorer program. Davis said that is correct.

DeRoche said so if she does come back is she at the same level or do we go back and completely retrain her. Davis said he would have to check with the fire chief to see where she is in her training if there are certain steps she has completed and passed, then she could step in at that point. Boyer said he thinks it is good for five years. Voss said we used to have an issue with employees that used to fund their college education. He said we had problems that once they got it they left. He said what we ended up doing was whatever courses they took and we paid for had to be directly applicable to their job. So he is in engineering, they couldn't go take an art class to fulfill a degree program. Voss said in this case, this was a person when they joined the fire department had all the intention of joining the fire department, this isn't an education they are going to use somewhere else other than another fire department, just as if we had someone move into the area that worked for another fire department. DeRoche said he doesn't think she came in here to get the education and leave, but it had come up in previous meetings what we could do about people coming in and getting trained, you buy all this equipment, get all this training and this is absolutely nothing to make sure they stay here. Voss said in this case this person is going off to college. DeRoche said that is fine, he doesn't have an issue with that, he is talking in general. He said this is something that was brought up in the past and now this is a good example that it has happened. DeRoche said it could be John Smith, anyone that does it, in his mind he is trying to figure if there is anyway we could somehow if we are going to do all this training say you are going to have to make a commitment to the fire department. He said if you are a paramedic and you are going to become a nurse they will train you but you have to commit, to spend a year or two with that organization. Boyer asked can we get some input from our chief and come back with some information, that is a good question. DeRoche said we got to ask. **All in favor, motion carries.**

Meeting
Minutes,
September 7,
2011, City
Council

Moegerle said she has the usual punctuation and grammar changes to the September 7, 2011 Regular City Council meeting minutes. She said on page 4, second paragraph, it says might not look at that too brightly, she thinks he meant **highly**. DeRoche said he is fine with that. Moegerle said on page 18 final paragraph, Vierling is talking about Mr. Nelson, add that. Page 19, top of page, Lawrence said there is reliability, change to liability. Lawrence was

fine with that. Page 26, Council Reports, Lawrence talking about exiting, change to existing.

Moegerle made a motion to approve the September 7, 2011 City Council Regular Meeting Minutes as amended. DeRoche seconded. Boyer, abstained, DeRoche, Lawrence, Moegerle and Voss, aye; motion carries.

EDA By-law
Amendments

Davis explained that staff is proposing amendments to the EDA By-laws as directed by City Council. The EDA reviewed and suggested changes at the September 13, 2011 EDA special meeting.

Attached for your review are the proposed changes as suggested by the EDA.

EDA requests City Council approve the suggested changes to the EDA By-laws.

Boyer made a motion to approve the EDA By-laws as amended. DeRoche seconded. Moegerle asked can we amend the motion with regard to the recording secretary. She said you were there Council Member Boyer and we decided we were just going to have a secretary and that the recording secretary would be appointed. Moegerle said on page 36 we still have the word recording in there, we should strike recording. Voss asked who keeps the minutes then. Boyer said we will appoint someone. Moegerle said Jill Teetzel has been doing it. **Boyer accepted the amendment. DeRoche seconded the amendment.** Moegerle said it is also mentioned as a recording secretary in section 2.1. Boyer said how about we just strike recording anyplace that it occurs before secretary. Moegerle said she is fine with that. **Boyer amended his motion to strike recording anytime it appears before secretary. DeRoche seconded the amendment; all in favor, motion carries.**

RFP for Brand
and Marketing
Consulting
Services

Davis explained that presented with an opportunity to proactively address new growth, the community of East Bethel and its leaders are committed to shaping the future of the community in a way that compliments the existing important features and characteristics the City has to offer, yet provide for a strong economic base and amenities residents and business owners desire.

As part of the economic growth strategy, staff recommends the hiring of a consultant to identify a city wide brand and marketing strategy. As we seek to encourage and promote economic growth, a branding plan will send a strong, unified message for the city. A branding and marketing strategy will provide East Bethel with another resource in our tool box to guide and encourage economic growth and attract businesses and jobs to the community.

On September 13, 2011, the Economic Development Authority reviewed the proposed RFP and recommends approval of the RFP.

EDA recommends City Council approve the RFP for Brand and Marketing Consulting Services.

Boyer made a motion to approve the RFP for Brand and Marketing Consulting Services. Voss seconded. Boyer said at our EDA meeting we had talked about including in the RFP a developer's brochure to give to businesses and he sees this is kind of covered under item #8 but he would like that spelled out better for the prospective bidders. Moegerle said we could add that under #5 as Developers Brochure. Boyer said we can work with them to determine what should be included in it. **Boyer amended his motion to amend the RFP to include under #5 Expectations: f. Developers Brochure. Voss seconded the**

amendment. All in favor, motion carries.

Planning Comm. Minutes	Davis explained that the August 23, 2011 Planning Commission unapproved meeting minutes are provided for your review and information.
Park Comm. Minutes	Davis explained that the August 10, 2011 Park Commission unapproved meeting minutes are provided for your review and information.
BDM Compensation	Davis explained that Brian Mundle and the City of East Bethel entered into a purchase agreement on January 8, 2004 in which the City sold 75 acres of the property now know as Whispering Aspen to Mr. Mundle. As part of that agreement a fee was established for SAC (\$6,000) and WAC (\$500) charges for connection charges for each lot that is developed. The agreement further states that the contract may be amended only by a written instrument executed by both the City and Mr. Mundle.

The City raised the SAC fees for the Whispering Aspen Development in 2006 to cover the costs associated with the acquisition of the Castle Towers Sewer Treatment Plant. The SAC fees were raised from \$6,000 as specified in the Purchase Agreement to \$10,250 per Resolution 2006-48 as adopted on September 6, 2006 by City Council.

Mr. Mundle contends that this change in fees is not valid as he did not consent to the increase. Mr. Mundle also contends that he paid seven SAC fees based on the 2006 rate adopted by Council, under protest, and this resulted in an overcharge of \$29,435 in connection fees. Staff has verified that Mr. Mundle paid the \$10,250 SAC charges per lot for the seven properties in dispute.

Staff is recommending that Mr. Mundle be issued a credit for \$29,435.00 for future Whispering Aspen City SAC and WAC fees based on the overpayment as listed in the attachment. This recommendation includes no credit for any interest on the compensation claim or any credit for MCES sewer availability charges that may be applicable at any time in the future.

DeRoche made a motion to issue Brian Mundle a credit for future Whispering Aspen City SAC and WAC fees in the amount of \$29,435.00. This includes no credit for MCES fees in anytime in the future or for interest fees. Lawrence seconded.

Moegerle asked has Mundle provided any information on attempts to mitigate the damages by passing that one to the purchasers. She said she knows that you met with him and she didn't see that addressed on the issue of mitigation in the write-up. Davis said that was discussed, but it is our determination that is an issue not related to this, this is an contractual issue based on the original purchase agreement and the action of the city council on the resolution that was passed. Moegerle asked the city attorney would there be a duty of mitigation on this kind of situation should this get before the courts. Vierling said based upon the purchase agreement his answer is no.

Voss asked all we have before us is the resolution on the charges, there was quite a process the city went through on looking at the charges, it was a few meetings, Pierce was heavily involved and we really looked at cost. He said he thinks that think that information would have helped, a little bit of background in terms of why it was done. Voss said he doesn't recall how the existing agreement fit into the discussion, not without going through all the minutes and he tried to go online, but he didn't realize we weren't posting the old minutes.

DeRoche said didn't when the mayor, city administrator, myself and Mundle sat down at our meeting, didn't we have both the resolutions before us. Voss said well both resolutions, we had hours of meetings on this stuff, all the calculations, it was about the cost of the plant and everything. He said it is more the background of why this happened, it wasn't a resolution made in a vacuum. Voss said he is not saying it relates to how the contract is written; he just thinks we had to consider that at some point.

Lawrence said the contract is very clear. He said he thinks with Vierling reviewing the contract; we would be liable for the overpayment. Lawrence said and by offering him a credit issued on the overpayment is the best way to get Mundle his money back and make sure his SAC fees get reduced back to what his original contract had stated. Voss said he is fairly sure we had a legal review done back then to make sure it was okay. He said we don't have the background in front of us in terms to know why it was done. Voss said he is not suggesting one way or the other, it is nice to know the process we went through, assuming we knew it was an issue back then. He said Boyer and I voted on it back then. Voss said he honestly doesn't know which way he voted on it, but the current Council wasn't involved.

Moegerle said it is hard to understand that the only developments that are involved in this are Whispering Aspen and Castle Towers and that a review of the contract that was signed in 2004, it seems to her that you would automatically reference that because of that connection. She said and boy, to have all the legal reviews you suggest and for it to still get passed. Moegerle said her concern is we don't have any of these sleeping dogs ready to wake up and bite us again on this. She said and she doesn't know how we avoid that. Moegerle said because it sounds like there was some diligence on the people who made this ordinance. DeRoche said if he recalls from when Mundle had all his documentation with him, he not only had the contract, but he had the resolution that the city passed in 2006. He said the original contract said that neither side could do this without the other, and in 2006 the city went ahead and did it anyways. DeRoche said and then Mundle approached the council four times and there was a letter sent from his legal counsel on October 1, 2008 and the last sentence states: If you have any legal rationale for ignoring the purchase agreement I would like to here it, and there was no response. Voss said with the resolution, what you are reading is a set of statements that support that decision. He said what he is saying is those meetings were quite involved because we were having serious financial problems. Voss said there are a number of iterations and reasoning that went into that. DeRoche asked when resolution was drawn up in 2006 what was rationale for the city to increase the fees. Voss said that is what he is saying, it is in the minutes, and we haven't seen those. He said apologize, meant to ask for those earlier, not saying it changes what we may do. Voss said but to him that gives us the reasoning why the city did what they did. He said he has heard it directly if not indirectly that you don't understand what was done. DeRoche said from a common sense standpoint he doesn't. He said if it there was a contract, there was a contract.

Boyer made a motion to table until we get this information. Voss seconded. He said he apologizes again for not asking staff to get that stuff to us. Vierling said staff made need some clarification on what you are specifically looking for. Voss said there are minutes, a number of meetings we had, maybe even a work meeting that resulted in the changing of this. He said Davis must have been involved from a public works standpoint. Davis said no he wasn't involved. Voss said Pierce was involved. Boyer said yes, Pierce was involved. Voss said Pierce was at all the meetings. Boyer said he would suggest, Mr. Sell is still a consultant for the city is he not under the terms of the agreement. Voss said he would look at the minutes, there were meetings. Lawrence said he has a valid contract signed by the city and it is quite clear, it says you can't change it without him accepting the change. He said

and the city ignores it and yet Mundle is refusing to accept the change. Vierling said the issue is what was the rationale to make the change. He said a motion to table is procedurally proper and you should vote on that at this time. **DeRoche, Lawrence and Moegerle, nay; Boyer and Voss, aye; motion fails.**

Lawrence said whether you issue of minutes or not, the facts are the facts, we entered into a contract with Mundle. Voss said he is just suggesting we don't have all the facts in front of us. Moegerle said one thing we discussed last week was the reason it was done was there were some improvements that were made. Voss said that is why he is asking to see the minutes, he doesn't know. Voss said there is the Castle Towers litigation too; there is more than just the contract. Moegerle asked do you believe that additional information is going to subtly change this or is it going to prove legal malpractice or what do we attempt to gain getting that additional information. Voss said he is not afraid of looking at it. Boyer said from his perspective, he is not comfortable when we don't have all the information. He said he knows there is a lot of information about this, as Voss pointed out this took place over a lot of meetings; there was litigation involved and sorry been here long enough, don't differentiate between one meeting in September 2008 and November 2008 very well anymore.

Lawrence asked what bearing will that have on this contract. Boyer said it may have no bearing and it may have a lot of bearing, just like any set of facts. Lawrence said he has a very clear contract that was reviewed by the city attorney. Boyer said let me give you a what if, what if there was another agreement besides this; it is not like Mundle doesn't stand to profit from this. Moegerle said Vierlings point last meeting was he would note because it was in the packet that the resolution in issue references expenses the city incurred for the betterment and replacement of the wastewater treatment facility. She said and she thinks that is an important fact that is missing and hasn't been addressed unless she missed something. Moegerle asked were there expenses incurred for the betterment and replacement of the wastewater treatment facility back in 2006 that warranted the increase? Davis said the expenses that were incurred were to finalize the sale of the facility itself. He said there were no improvements associated at that time. Boyer said he thinks there were some improvements at that same time, to the structure. Davis said there were improvements that were done in 2003 and 2004.

Vierling said he made the commentary that he did obtain city your files with regard to Castle Towers and this transaction and he couldn't discern from there, whether there were any infrastructure improvements that were being made. Voss said what he recalls is it had to do with the fact of the cost of plant was established as a result of the litigation, which was an improvement, because we acquired a plant. Moegerle asked is there anything to be gained from searching the records in your opinion and gathering all that data exhaustively. Davis said it may benefit the council, we submitted about two boxes of data to the city attorney initially. He said as he understands it, Vierling scrutinized this very closely. Vierling said he did go through what you had and it was two boxes. He said the only thing that wouldn't have been in there is if finance has a record with regard to infrastructure improvements, personally he would not regard litigation costs as improvements. Vierling said but in any regard, if finance would have a running total of infrastructure improvements it might explain something, and he is not opposed to having a review of that being done. He said but from the records he received, the city he did not see any evidence of rationale for the reason why the increase was being implemented.

Moegerle said if Boyer would redo his motion to find those financial documents she could

find her way. Boyer said he still wants to see the minutes. Moegerle said certainly. Lawrence asked if there is an improvement does that impact. Vierling said if infrastructure improvement it does impact how the city decides to finance the infrastructure improvement. He said cities can finance infrastructure improvements in any number of ways one of which is to increase the user fees. So if there is a significant infrastructure improvement into the facility (not repair or maintenance) which renders it somewhat new then basically the city can redo their fee structure. Vierling said that is why he renders the opinion that if that plant was decommissioned and the city has the users hook in to the MCES plant that is a new system and you have every authority to have a new fee structure that is unique and different with regard to that. DeRoche asked wouldn't that have to be agreed upon by Mundle and the city. Vierling said not on a new infrastructure improvement to the plant. He said the agreement is only for the connection to that plant at that time. He said if there is a significant infrastructure investment to that plant, that changes it and then he is of the opinion the city could review and alter their fee structure.

Davis said what the improvements would mean is you could prove benefit then. He said however, and we will provide the minutes and whatever you request, there have been no improvements but maintenance since he has been employed by the city. Voss said sort of the same question Moegerle asked, what do we have to gain by getting this information, it is sort of the unknown. He said he will ask the other question, what do we have to lose by getting the minutes and the staff memo. Moegerle said she would also like to know if the terms of the contract were reviewed and noted. Vierling said there are multiple e-mails exchanged between the then city administrator and then city attorney and referencing this. Voss said he is more looking for minutes, staff memos, and he knows there were tables and stuff. Boyer asked wasn't former council member Hintz involved in this contract. Mundle said yes. Boyer said and let the record show he voted against the contract.

DeRoche amended his motion to table the BDM Compensation until the October 5, 2011 meeting and get the minutes from the Council meetings in 2006 and financial documentation on any infrastructure improvements. Lawrence seconded the amendment. DeRoche said it was his understanding that we had all the information at our meeting with Mundle, but he guesses we have to do this to get this done. **All in favor, motion carries.**

Council
Member
Report –
Boyer

Boyer said he was a little upset yesterday when he drove up Durant to Wild Rice (Clarence's subdivision) on Viking coming from Wyoming he can see guys driving graders and there were no road closed signs not even a 100 feet ahead of us. He said he drove up to them and talked to them and asked them what was going on. Boyer said they said the road is closed. He said to them that he could see that, but if you lived there how were you going to get in there. Boyer said that they told him you could go around. He said he was thankful he was the one given that direction from the workers and not someone that lives in Clarence's subdivision. Boyer asked why we didn't put detour signs up. Voss said they were up but the wind blew them down. Moegerle said they were up at Viking. Voss said at Viking and Wild Rice. Moegerle said her experience was she had gotten the e-mail notification about the road closure being delayed, the city had been told the contractor was not going to do it and then she drove past and they were doing it, so the communication was not the clearest on that. Davis said certain issues have been taken care of and the rest will be taken care of tomorrow.

Council
Member

DeRoche said for the record, he has a real problem with the minute and the agenda packets not being on the website before 2009. He said he looks stuff up from home and if it before

2009 there is no way to get it unless you contact someone at the city and if it is on the weekend you are just stuck. He said he has had a couple different explanations of why they are not on there, and if it is because we are going to get Laserfische, that is down the road. DeRoche said he thinks they need to be on there. He said it may be an inconvenience to get them back on there but he knows for a fact that people go out and do research on there. He said if it is city information and meetings and packets and what not, people need to be able to go back and look them up. Voss asked is this temporary? Davis said if we go back and add them on there we will need to add more storage space. He said if you want this information, we can put this on a flash drive for you. Davis said we have a notice on the website to call city hall if you need minutes or agendas prior to 2009. He said and we are working having a public computer for use to look them up. Davis said Roseville is upgrading their Laserfische service and it will be a much better service. He said the way this was approved previously was just a small scanner and we believe it was not the best way to go. Davis said we can provide this information to anyone that wants it.

DeRoche said his personal feelings are the animal control should be running through building official budget, not the general fund budget. He said they call them out; they are the ones that handle that situation so he thinks it should come out of their budget. DeRoche said that is the one who is dispatching gratitude farms. Davis said that is under public safety in the budget. Lt. Orlando said we get called by citizens. Davis said 90% of the calls go through the sheriff's department. DeRoche said he will have to revamp his source of information, sorry.

Council
Member
Report -
Moegerle

Moegerle said the city planner, city administrator and I went to the groundbreaking for Zayo at Connexus, which is the fiber optics project, and it was pretty exciting and very interesting. She said yesterday she had meetings about EDA issues and website issues. She said she hopes we can get more economic development information on the community development aspect of the website. Moegerle said we did discuss that not all the minutes are on there and it is a push/pull issue. She said and it is not her comfort level but that is where we are in the temporary development.

Moegerle said and she met yesterday with Dick Kable about his property which is on the northeast side of 221st and Highway 65. She said he is unable to be here tonight, but he did submit a letter. Moegerle said he is concerned about the county plan to put two lanes of highway and as well as a pond on his property. She said he wants to know what not divide it evenly. Moegerle said he has no opinion about the traffic signal going in at this corner, but why not divide it evenly. She said because he is the sole caretaker of his 90 year old mother he is unable to be here, but she thinks this is something we should take a look at. Moegerle said she would like to get this on the next agenda. She said she would like to get some background on this. Some information about addressing this with the county and the state on how they are going to do this intersection. Moegerle said the state and county don't have money to put the light there. She said federal government through the kindness and graciousness of the Chinese lenders has a grant to put light there. Moegerle said it is stimulus money, and it is a bigger issue than just two lanes going on his property.

Boyer said there will be a public informational meeting on this issue on October 10th at West Bethel Methodist Church from 4:30 to 6:30 p.m. Davis said if this site is not available we will have it here at the senior center. Moegerle said this is a good time to speak up about good use of government money.

Moegerle said we also had a confidential meeting with Great River Energy (GRE).

Council
Reports -
Lawrence

Lawrence said he also had a chat with Mr. Kable and talked to the city administrator about it and then talked to Commissioner Westerberg in length about this. He said that Westerberg said the main problem is if they shift the road to the south with a 50/50 split, it is a \$300,000 increase in cost for the project. Lawrence said that is why Westerberg is not in favor of doing that; it is going to impact the taxpayers.

Lawrence said he has also been talking to the business owners around the city about their needs.

Closed
Meeting

Vierling said pursuant to Minnesota Statute 13.D the Council is going to into closed session to discuss the Great River Energy (GRE) vs. City of East Bethel, Court File No. 02-CV-11-5638.

DeRoche made a motion to go into closed session regarding the Court case between GRE and the City of East Bethel. Moegerle seconded; all in favor, motion carries.

Vierling explained that we have concluded the closed session relative to GRE litigation. He said all Council Members were present. Council Member Boyer had to excuse himself at 10:40 p.m. Vierling said the city administrator was present, Mr. Jim Strommen, special counsel as appointed was present, along with myself. He said no motions or specific actions were taken during closed session but we did discuss strategy and issues relative to the issue.

Adjourn

DeRoche made a motion to adjourn at 11:03 PM. Moegerle seconded; all in favor, motion carries.

Attest:

Wendy Warren
Deputy City Clerk

**CITY OF EAST BETHEL
EAST BETHEL, MINNESOTA**

RESOLUTION NO. 2011-48

RESOLUTION DESIGNATING SURPLUS PROPERTY

WHEREAS, the City of East Bethel owns and operates a fleet of trucks and equipment for the purposes of maintaining its city streets and parks; and

WHEREAS, the City of East Bethel has adopted a plan for the replacement of trucks and equipment; and

WHEREAS, the 1998 Chevrolet S-10 pick-up has come to the end of its useful service life as a reliable and dependable piece of equipment; and

WHEREAS, the City Council of East Bethel has approved the purchase of replacement equipment pursuant to the Equipment Replacement Schedule; and

WHEREAS, the City of East Bethel will offer the 1998 Chevrolet S-10 up for auction.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF EAST BETHEL, MINNESOTA THAT: the 1998 Chevrolet S-10, is hereby declared as surplus property and direction to dispose of the property is hereby authorized.

Adopted this 5th day of October, 2011 by the City Council of the City of East Bethel.

CITY OF EAST BETHEL

Richard Lawrence, Mayor

ATTEST:

Jack Davis, City Administrator

**CITY OF EAST BETHEL
EAST BETHEL, MINNESOTA**

RESOLUTION NO. 2011-49

RESOLUTION DESIGNATING SURPLUS PROPERTY

WHEREAS, the City of East Bethel owns equipment for the purposes of serving its city buildings and infrastructure; and

WHEREAS, the City of East Bethel has adopted a plan for the replacement of equipment; and

WHEREAS, the City of East Bethel has found the 1997 Olympian Generator to be an improperly sized piece of equipment for use in the City's buildings; and

WHEREAS, the City of East Bethel acquired this piece of equipment as a donation from radio station WCCO with no conditions or prohibitions of resale; and

WHEREAS, the City of East Bethel will sell the 1997 Olympian Generator on State Auction;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF EAST BETHEL, MINNESOTA THAT: the 1997 Olympian Generator is hereby declared as surplus property and approved for auction sale.

Adopted this 5th day of October, 2011 by the City Council of the City of East Bethel.

CITY OF EAST BETHEL

Richard Lawrence, Mayor

ATTEST:

Jack Davis, City Administrator

**CITY OF EAST BETHEL
EAST BETHEL, MINNESOTA**

RESOLUTION NO. 2011-50

RESOLUTION DESIGNATING SURPLUS PLAYGROUND EQUIPMENT

WHEREAS, the City of East Bethel owns and maintains park and playground equipment for recreational purposes; and

WHEREAS, the City of East Bethel has adopted a Parks Capital Improvement Plan for the replacement of park and playground equipment; and

WHEREAS, the park and playground equipment located at Norseland Manor Park has been scheduled for replacement; and

WHEREAS, the City Council of East Bethel has approved the purchase of replacement equipment pursuant to the Parks Capital Improvement Plan; and

WHEREAS, the City of East Bethel will donate the equipment to Kids Around the World, a non-profit organization that will remove the equipment at a significant cost savings to the city, refurbish the equipment, and ship the equipment around the world to underprivileged children.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF EAST BETHEL, MINNESOTA THAT: the park and playground equipment located at Norseland Manor Park is hereby declared as surplus property and direction to dispose of the property is hereby authorized.

Adopted this 5th day of October, 2011 by the City Council of the City of East Bethel.

CITY OF EAST BETHEL

Richard Lawrence, Mayor

ATTEST:

Jack Davis, City Administrator

**CITY OF EAST BETHEL
EAST BETHEL, MINNESOTA**

RESOLUTION NO. 2011-51

**RESOLUTION ACKNOWLEDGING DONATIONS FOR THE SCHOOL HOUSE
RENOVATION**

WHEREAS, the City of East Bethel has received donations for the renovation of the school house that was relocated to Booster East Park in 2010.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF EAST BETHEL, MINNESOTA THAT: the City Council of the City of East Bethel acknowledges and accepts the following list donations for the renovation of the school house located in Booster East Park.

BE IT FURTHER RESOLVED THAT: the City Council of the City of East Bethel expresses its thanks and appreciation to the following list of contributors who have donated funds to the City for renovation of the school house.

Landmark Concrete, Inc.	\$250
Butler & Associates Insurance Agency, Inc	\$250
Audrey Schultz & Jolynn Erikson	\$ 50
U-Pull-R-Parts Co. II	\$100
Ham Lake Chamber of Commerce	\$100
Beaverbrook Tri-County Sportsmen, Inc.	\$100

Adopted this 21st day of September, 2011 by the City Council of the City of East Bethel.

CITY OF EAST BETHEL

Richard Lawrence, Mayor

ATTEST:

Jack Davis, City Administrator



City of East Bethel City Council Agenda Information

Date:

October 5, 2011

Agenda Item Number:

Item 7.0 B.1

Agenda Item:

Interim Use Permit for Domestic Farm Animals

Requested Action:

Consider Granting an Interim Use Permit (IUP) for Dale A. Johnson for Two (2) Horses in the RR – Rural Residential District.

Background Information:

Property Owner/Applicant:

Dale A. Johnson
24282 Skylark Drive NE
East Bethel, MN 55005

Property Location:

24282 Skylark Drive NE
PIN 30-34-23-12-0002

The applicant, Mr. Dale Johnson is requesting an IUP for the keeping of two (2) horses at his residence.

East Bethel City Code Section 10, Article V. Farm Animals, requires that no animals that are regulated by the code can be kept on a parcel of land located within a platted subdivision or on any parcel of land of less than three (3) acres (130,680 square feet). The 10-acre parcel is not located within a platted subdivision.

City Code has a limit on the number of animals per parcel. Two horses requires 2 acres of pastureland. Pasture land is defined as land with vegetation coverage used for grazing livestock. Pasture growth can consist of grasses, shrubs, deciduous trees or a mixture, not including wetlands. The property owner is in the process of fencing pasture land for the horses and constructing a lean-to type structure. The fencing and structure must be completed prior to the horses occupying the property.

The property is located in the shoreland overlay district. The pastureland is located approximately 75 feet from the edge of the wetlands surrounding Minard Lake. Staff contacted Anoka Conservation District (ACD) regarding grazing horses in the shoreland overlay district. ACD stated no special plans or permits are required since the horses will not be grazed in the wetlands.

City staff has conducted a site inspection. The property meets the requirements set forth in City Code for the keeping of farm animals.

Attachments:

- 1. Location Map
- 2. Application
- 3. Site Plan

Fiscal Impact:

Not Applicable

Recommendation:

Planning Commission recommends approval to the City Council of an IUP for the keeping of two (2) horses for Dale A. Johnson, located at 24282 Skylark Drive NE, East Bethel, PIN 30-34-23-12-0002 with the following conditions:

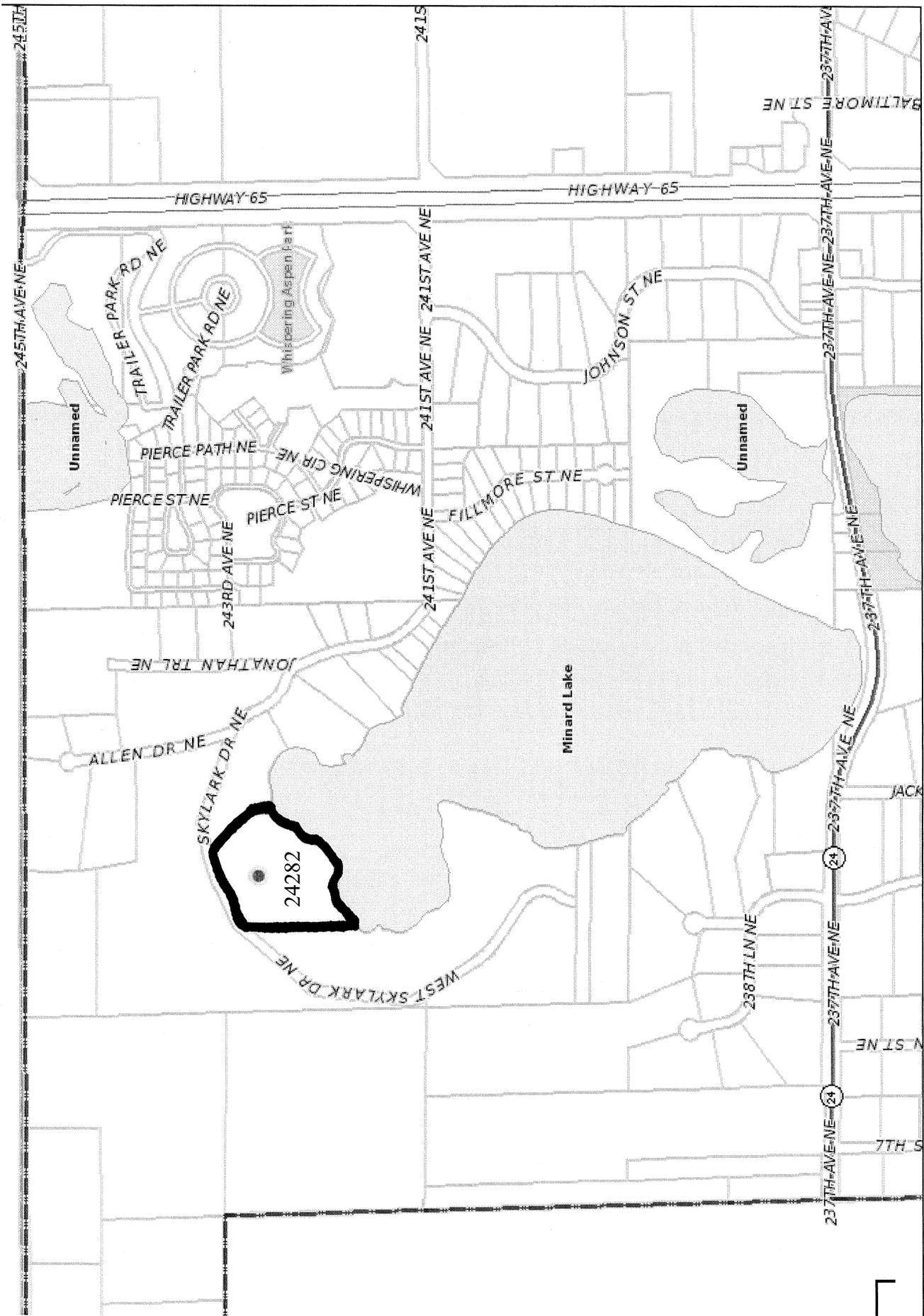
- 1. An Interim Use Permit Agreement must be signed and executed by the property owner and the City.
- 2. Property owner shall provide shelter and have a minimum of two (2) acres of pasture land for the horses.
- 3. Property owner must comply with City Code Section 10. Article V. Farm Animals.
- 4. Permit shall expire when:
 - a. The property is sold, or
 - b. Non-compliance of IUP conditions
- 5. Property owners shall have thirty (30) days to remove approved domestic farm animals upon expiration or termination of the IUP.
- 6. Property will be inspected and evaluated annually by city staff.
- 7. Conditions of the IUP must be met no later than December 5, 2011. IUP will not be issued until all conditions are met. Failure to meet conditions will result in the null and void of the IUP.

City Council Action

Motion by: _____ Second by: _____

Vote Yes: _____ Vote No: _____

No Action Required: _____



Attachment #1



LAND USE APPLICATION

OFFICE USE ONLY
 Date Rec'd 8/25/11
 By Slawg
 Fee \$ 150 app
\$300 escrow
CK#9010

Check appropriate box: VARIANCE CUP IUP FINAL PLAT

BUSINESS CONCEPT PLAN PRELIMINARY PLAN SITE PLAN REVIEW OTHER _____

Application shall include the following items and be submitted thirty (30) days prior to scheduled meeting date.

Application is hereby made for Horse (provide narrative below describing proposed use).

Keeping a horse on the property

LOCATION: PID 30-34-23-12-0002 Legal: Lot _____ Block _____ Subdivision _____

PROPERTY ADDRESS: 24282 Skylark Drive PRESENT ZONING: RR

PROPERTY OWNER

CONTACT NAME Dale A. Johnson PHONE (763) 434-8754

ADDRESS 24282 Skylark Drive NE FAX _____

CITY/STATE/ZIP East Bethel, Mn. 55005 E-MAIL northpointelectronics@yahoo.com

APPLICANT

CONTACT NAME Dale A. Johnson PHONE _____

ADDRESS 24282 Skylark Dr FAX _____

CITY/STATE/ZIP East Bethel, Mn. 55005 E-MAIL _____

I fully understand that I must meet with City Staff to review all submission requirements and conditions prior to official submission, and that all of the required information must be submitted at least thirty (30) days prior to the Planning/Zoning Commission and City Council scheduled meeting dates to ensure review by City Staff.

Dale A. Johnson
 Property Owner's Signature

Dale A. Johnson
 Printed Name

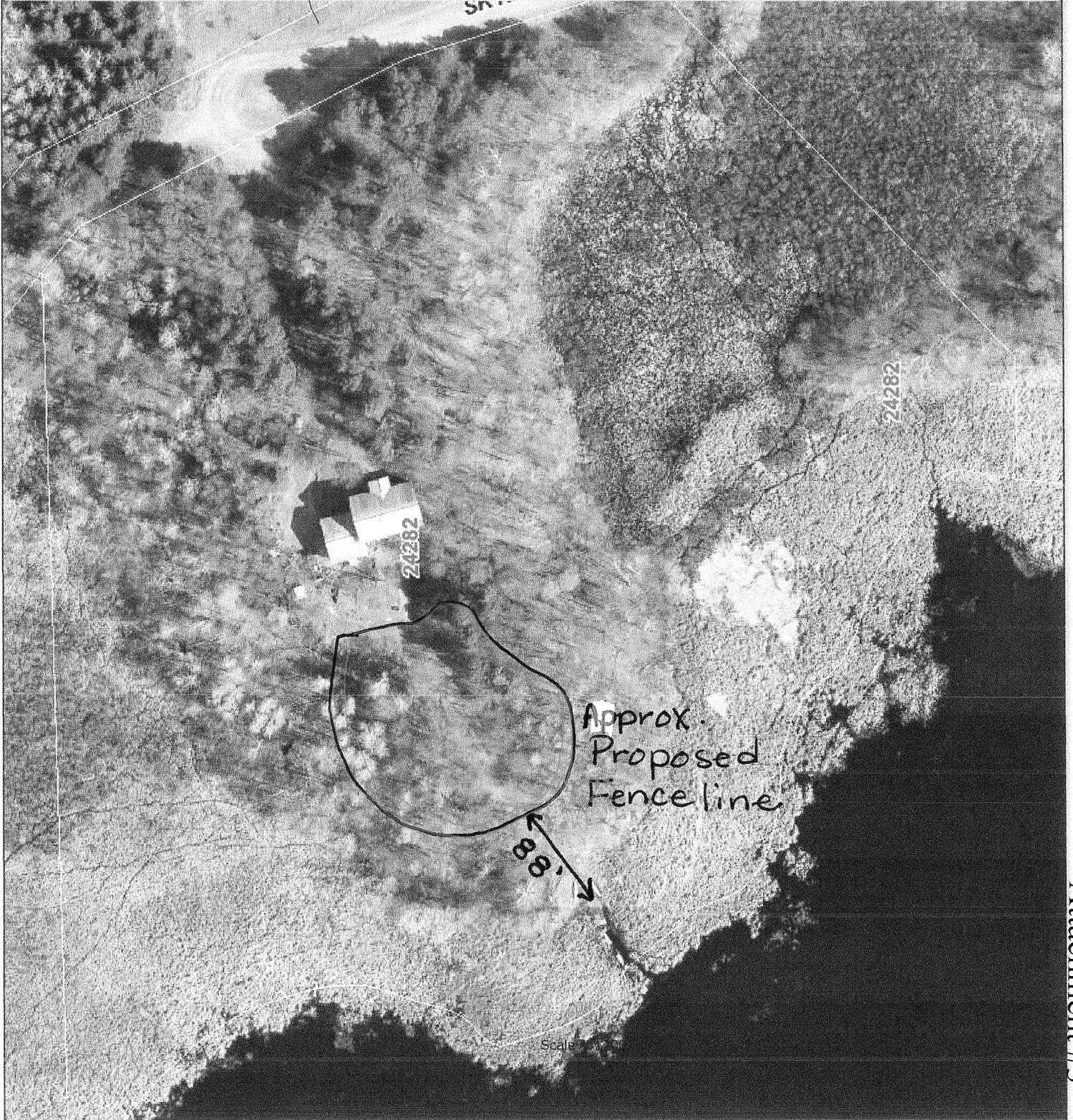
8/24/11
 Date

Attachment #2

OFFICE USE ONLY - DO NOT COMPLETE			
	Received	Approved/Denied	Notes
Community Dvlp. 7pm Planning Commission	<u>9/27/11</u>	_____	
7:30pm City Council	<u>10/5/11</u>	_____	
<u>10/24/11</u> 60 Day _____ 120 Day			

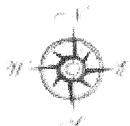


24282 Skylark Dr



1" = 100'

Aerial Photo: Flown Spring 2008



Anoka County GIS
 Department Disclaimer:
 This is a compilation of records as they appear in the Anoka County Office affecting the area shown. This drawing is to be used for reference purposes only and the County is not responsible for any inaccuracies contained herein.

Attachment #3



City of East Bethel City Council Agenda Information

Date:

October 5, 2011

Agenda Item Number:

Item 7.0 B.2

Agenda Item:

Interim Use Permit for a Private Kennel License

Requested Action:

Consider Granting an Interim Use Permit (IUP) for Patrick & Alitsa Schroeder for a Private Kennel License

Background Information:

Owner/Property Location:

Patrick & Alitsa Schroeder
22525 Durant Street NE
East Bethel, MN 55011
PIN 013323230005

Mr. and Mrs. Schroeder are requesting an IUP for a private kennel license for the keeping of five (5) dogs on the 9.91 acre parcel they have owned since 1996. Currently, they have four (4) golden retrievers and one (1) Jack Russell terrier. The dogs are not kenneled outdoors; rather they are housed in the home. There is a large fenced area where the dogs are kept when they are outdoors alone; otherwise, the property owners are typically outside with the animals. The Schroeder's breed the golden retrievers to have two (2) litters of pups each year.

East Bethel City Code Chapter 10, Article II. Dogs, allows up to six (6) dogs on parcels five (5) acres or more but less than ten (10) acres with an approved private kennel license. Code requires dogs be confined to the property, outdoor housing facilities must not encroach on any setbacks, housing and shelter must be provided, feces shall be removed in a timely manner, and accumulation of feces must not be located within 200 feet for any well.

City staff has conducted a site inspection. The property meets the requirements set forth in City Code for the keeping of dogs.

Fiscal Impact:

Not Applicable

Recommendation(s):

Planning Commission recommends approval to the City Council of an IUP/Private Kennel License for no more than five (5) dogs for Mr. & Mrs. Schroeder, located at 22525 Durant Street NE, East Bethel, PIN 01-33-23-23-0005 with the following conditions:

1. The initial term of the private kennel license shall be one (1) year; subsequent licenses, if so granted, will be for a term up to three (3) years.
2. An Interim Use Permit Agreement/Private Kennel License must be signed and executed by the applicants and the City.
3. Applicants must comply with City Code Chapter 10, Division II, Dogs.
4. Permit shall expire when:
 - a. The property is sold,
 - b. The IUP expires, or
 - c. Non-compliance of IUP conditions
5. Property owner shall have thirty (30) days to remove dogs upon expiration or termination of the IUP/Private Kennel License.
6. Property will be inspected and evaluated annually by city staff.

Attachments:

1. Location Map
2. Application
3. City Code Chapter 10, Division II, Dogs
4. Letter from Gerald & Michelle Maas

City Council Action

Motion by: _____ Second by: _____

Vote Yes: _____

Vote No: _____

No Action Required: _____



LAND USE APPLICATION

IUP-11-05

OFFICE USE ONLY	
Date Rec'd	8/30/11
By	<i>[Signature]</i>
Fee \$	150 app.
CHK#	4268

Check appropriate box:

VARIANCE

CUP

Kennel
 IUP

FINAL PLAT

BUSINESS CONCEPT PLAN

PRELIMINARY PLAN

SITE PLAN REVIEW

OTHER _____

Application shall include the following items and be submitted thirty (30) days prior to scheduled meeting date.

Application is hereby made for S22 ATTACHMENT (provide narrative below describing proposed use).

LOCATION: PID 01-33-23-23-0005 Legal: Lot _____ Block _____ Subdivision _____

PROPERTY ADDRESS: 22525 Durant St NE PRESENT ZONING: RR

PROPERTY OWNER

CONTACT NAME Pat & Aritsa Schroeder PHONE 763.227.5270

ADDRESS 22525 Durant St FAX _____

CITY/STATE/ZIP EAST BETHEL, MN 55011 E-MAIL my4ponies@msn.com

APPLICANT

CONTACT NAME Pat & Aritsa Schroeder PHONE 763.227.5270

ADDRESS 22525 Durant St FAX _____

CITY/STATE/ZIP EAST BETHEL, MN. 55011 E-MAIL my4ponies@msn.com

I fully understand that I must meet with City Staff to review all submission requirements and conditions prior to official submission, and that all of the required information must be submitted at least thirty (30) days prior to the Planning/Zoning Commission and City Council scheduled meeting dates to ensure review by City Staff.

[Signature]
Property Owner's Signature

Aritsa Schroeder
Printed Name

8.27.11
Date

Attachment #2

OFFICE USE ONLY - DO NOT COMPLETE			
	Received	Approved/Denied	Notes
Community Dvlp.			
Planning Commission	9/27/11		
City Council	10/19/11		
	10/29/11 60 Day	120 Day	

We live on our hobby farm of ten acres. We have five dogs and have them in the house with us. Four of which are golden Retrievers, and one very small Jack Russell. When we are outside they are out running with us in the yard and working in the barn with us as well. One is getting really old and the others are younger. We breed to have two litters a year and raise and sell those at 8 weeks of age. We do not have outside kennels. We have one fenced in area that is a very large area for them to be safe in if needed but the majority of the time they are with us in the house. They are considered family and are cared for deeply.

- (3) The dog is vicious or shows vicious habits or molests pedestrians or interferes with vehicles on the public rights-of-way or highways.
 - (4) The dog is a nuisance as defined by Minnesota Statutes.
 - (5) The dog is running at large in violation of this article.
- (b) The summons shall be returnable not less than two or more than six days from the date of service thereof and shall be served at least two days before the time of the appearance mentioned therein. Upon hearing and finding the facts true as complained of, the court may either order the dog destroyed or order the owner or custodian to remove it from the city, or may order the owner or custodian to keep it confined to a designated place. If the owner or custodian violates such order any police or agent of the city may impound or destroy any dog described in such order.
- (c) Costs of the proceedings authorized by this section shall be assessed against the owner or custodian of the dog if the facts in the complaint are found to be true, or to the complainant if the facts are found to be untrue.
(Ord. No. 101b, § 11, 3-6-2002; Ord. No. 101D, § 11, 5-16-2007)

Secs. 10-26—10-53. Reserved.

DIVISION 2. KENNELS

Sec. 10-54. Kennel license.

- (a) The maximum number of dogs allowed without a kennel license is two. The maximum number of dogs allowed with a private kennel license is to be determined by the number of acres:
- (1) Greater than 2.5 acres but less than three acres: three dogs.
 - (2) Three acres or more but less than five acres: four dogs.
 - (3) Five acres or more but less than ten acres: six dogs.
 - (4) Ten acres or more: maximum ten dogs.
- (b) No private kennel licenses shall be issued on parcels of 2½ acres or less. No commercial kennel licenses shall be issued in zoning districts other than commercial and industrial districts. The city shall not approve variances to allow private kennel licenses on parcels of less than 2½ acres, and shall not approve variances or other zoning devices to allow commercial kennel licenses in zones other than commercial and industrial districts.
- (c) No person shall maintain a private or commercial kennel in the city without securing a license therefor from the city council. The fee for the license shall be as established by resolution of the city council.

(d) Prior to issuance of a private kennel license from the city council, a hearing before the planning and zoning commission must be held. Notice must be given to all affected property owners within one-quarter mile of the outside dimensions of the parcel where the kennel is contemplated. The planning and zoning commission will make a recommendation to the city council on the request.

(e) Prior to issuance of a commercial kennel license from the city council, a hearing before the planning and zoning commission requesting an interim use permit must be held. Notice must be given to all affected property owners within 500 feet of the outside dimensions of the parcel where the kennel is contemplated, and published in the city's official newspaper at least ten days before the public hearing. The planning and zoning commission will make a recommendation to the city council on the request.

(f) Private kennel licenses do not confer any property rights upon the licensee, and the issuance of said licenses does not assume that future licenses will be granted. Licensees will need to independently assess whether any improvements made in relation to city requirements will be amortized during the initial time period of the license. Licenses will be issued for a set number of dogs, which shall not be exceeded. Licensees who wish to add a dog need to reapply for a private kennel license. Licensees who relocate to another area of the city need to reapply for a private kennel license. Licenses are not assignable to other parties.

(g) The initial term for a private kennel license shall be one year; subsequent licenses, if so granted, will be for a term of up to three years.

(h) Licensees authorize city staff to perform periodic, random inspections of the kennel for the purpose of determining compliance with the conditions of their license.

(i) No party, person, corporation, or other entity will be allowed more than one private kennel license.

(j) Kennel licenses in effect on residential property at the time of adoption of the ordinance from which this article is derived that do not meet the requirements of this article are considered legal, nonconforming licenses and can continue to keep up to the number of dogs authorized by the kennel license at the time of adoption of the ordinance from which this article is derived. Adding more dogs to an existing license would require meeting the requirements of subsection (f) of this section.

(Ord. No. 101a, § 3, 3-6-2002; Ord. No. 101b, § 3, 3-6-2002; Ord. No. 201, § 3, 12-7-2005; Ord. No. 101D, § 3, 5-16-2007)

Sec. 10-55. Conditions for issuance of a private kennel license.

The following conditions are mandatory for the issuance of a private kennel license:

- (1) Housing enclosures shall be located as not to create a nuisance and shall not encroach upon any setback area.
- (2) Dogs shall be confined to their own property by a provable means.

- (3) Housing and shelter must be provided which will keep animals comfortable and protected from the elements.
- (4) Accumulations of feces shall be located at least 200 feet from any well.
- (5) All accumulations of feces shall be removed at such periods as will ensure that no leaching or objectionable odors exist, and the premises shall not be allowed to become unsightly.
- (6) All dogs shall have access to indoor housing from the hours of 10:00 p.m. to 6:00 a.m.
- (7) The city council reserves the right to issue additional conditions on a case-by-case basis in order to maintain the public repose.
- (8) Kennels shall be considered an accessory structure for setback purposes.
(Ord. No. 101a, § 4, 3-6-2002; Ord. No. 101b, § 4, 3-6-2002; Ord. No. 101D, § 4, 5-16-2007)

Sec. 10-56. Conditions for issuance of a commercial kennel license.

The following conditions are mandatory for the issuance of a commercial kennel license:

- (1) Outdoor animal exercise shall be conducted within the confines of the property, and limited to leashed animals under the direct supervision of their owners or commercial kennel staff.
- (2) Indoor housing facilities must be structurally sound with ample heat, light, soundproofing and ventilation. The applicant must submit a soundproofing inspection certifying that the structure will keep the sound of the dogs undetectable from a distance of ten feet.
- (3) Dogs kept outside must have continual access so animals can get in and out of shelter and protect them from the elements.
- (4) If dogs are confined by chains, such chains must be attached so as not to become entangled with chains of other dogs.
- (5) Individual animal enclosures must be of a size to allow each dog to turn around fully, stand, sit and lie in a comfortable condition.
- (6) The temperature of indoor housing facilities shall not be less than 50 degrees Fahrenheit for dogs not accustomed to lower temperatures.
- (7) Disposal facilities are provided to minimize virus infestation, odors and disease hazards.
- (8) Adequate storage and refrigeration is provided to protect food supplies against contamination and deterioration.
- (9) The city council reserves the right to issue additional conditions on a case-by-case basis in order to maintain the public repose.

- (10) All applicable county and state laws pertaining to the operation of a commercial kennel business are hereby incorporated by reference.
 - (11) Commercial kennels in commercial and industrial districts shall meet the underlying zoning regulations.
 - (12) Commercial kennels shall be connected to public sewer or an on-site treatment system to handle waste.
- (Ord. No. 101a, § 5, 3-6-2002; Ord. No. 101b, § 5, 3-6-2002; Ord. No. 101D, § 5, 5-16-2007)

Sec. 10-57. Revocation of kennel licenses.

(a) Upon observation that one or more of the conditions issued by the city council on a private or commercial kennel license holder is not observed, the city will notify the licensee that the city intends to revoke the private or commercial kennel license. A hearing before the planning and zoning commission will be held prior to making a decision. A recommendation to the city council to revoke a private kennel license will require a majority of those members present and voting. A decision by the city council to revoke a private kennel license will require a majority vote of those members present and voting. The decisions of the city council pertaining to private kennel licenses are final and not appealable; the decisions of the city council on commercial kennel licenses are appealable to the county district court.

(b) Upon evidence that the decision of the city council has not been followed by the licensee, and in the case of commercial kennel licensees an appeal has not been filed in county district court, the city will contact the animal control officer to pick up the dog and arrange for compliance with the city council's decision. All costs associated with compliance will be billed to the real property owner where the dog resides. Unpaid bills will be certified to the county and placed as a lien on the property.

(Ord. No. 101b, § 10, 3-6-2002; Ord. No. 101D, § 10, 5-16-2007)

Secs. 10-58—10-69. Reserved.

DIVISION 3. POTENTIALLY DANGEROUS AND DANGEROUS DOGS*

Sec. 10-70. Definitions.

Is amended to provide as follows:

For the purpose of this division the following terms have the meanings given them.

***Editor's note**—Ord. No. 3, Second Series, adopted Sept. 3, 2008, repealed the former Div. 3, §§ 10-70—10-77, and enacted a new Div. 3 as set out herein. The former Div. 3 pertained to potentially dangerous and dangerous dogs and derived from Ord. No. 101E, § 1(16—20), 9-19-2007; Ord. No. 101F, § 2, 4-16-2008.

No Action Required: _____

Ronald & Michelle Mas
22530 Jewell St. N.E.
Bethel, MN. 55005

RECEIVED

SEP 21 2011

BY: QSB

Sept 21, 2011

To whom it may concern;

My husband and I aren't able to attend the public hearing for a (Interim) use Permit on Sept. 27. The hearing is for a Private Kennel License for Patrick and Alitsa Schroeder. We are not able to attend because we both work 2nd shift in Roseville. Patrick and Alitsa's property is in the back of our property line. We have 6 acres and share the woods with them. Because of our past experience with them as a neighbor and the fact that we feel that they would abuse a Private Kennel License, my husband and I are not giving our consent. We are in fact

RECEIVED

NOV 1

very against it. I have made
some phone calls about the
situation. One phone call was
to the mayor. We are not mean
and cruel neighbors but we do
have our reasons for feeling
this way.

Leah Mays
Michelle Reed



City of East Bethel City Council Agenda Information

Date:

October 5, 2011

Agenda Item Number:

Item 7.0 B.3

Agenda Item:

Variance Request to Allow a Building Expansion for an Existing Business Known as Gordy's Custom Cabinets

Requested Action:

Consider Approval of a Variance to Allow a Building Expansion at Existing Business

Background Information:

Property Owner/Applicant:

Gordon Hoppe
604 189th Ave. NE
East Bethel, MN 55011

Property Location:

1861 Viking Blvd. NE
PIN 28-33-23-23-0011
Zoning: R-2 Single Family Residential
and Townhome, and R-1 Single Family Residential

Mr. Hoppe is requesting variances for two (2) building expansions at his existing business and a possible side yard setback variance for the business known as Gordy's Custom Cabinets. He also has a snow removal and excavation business operating from the property. Commercial vehicles and equipment for the cabinet and snow removal businesses are stored within the existing structures. However, Mr. Hoppe would also like to store the commercial vehicles for the excavation business on site as well.

The property is zoned residential and the existing use is commercial, therefore it is considered a legal nonconforming use; meaning the existing use was lawful when established but which no longer meets all ordinance requirements. City Code Appendix A, Zoning, Section 05.1 states that nonconforming uses may be expanded only after city approval of a variance.

Mr. Hoppe would like to continue operating his businesses in the City of East Bethel. However, the businesses are in need of additional storage for the commercial vehicles. A site plan of the proposed additions has been attached for your review as attachment #3. The first 20'x 50' (1,000 square feet) addition would be part of the existing principal building located on the northwestern corner of the building. The area would be additional storage space of materials needed to continue with the cabinet aspect of the business.

The second would be a 30'x 40' (1,200 square feet) addition to an existing detached structure on the western side of the property. This building is used for the storage of commercial vehicles.

Mr. Hoppe is proposing an addition to the northern side of the building (known as B) or to the western side of the building (known as A) abutting Isanti Street; however, he prefers an addition on the western side of the building. Mr. Hoppe has included a letter with his intentions as part of the application and is attachment #2.

Staff has evaluated proposed additions A and B. Addition A would make the best use of the land by being located the furthest away from the residential property to the north, it would require the least amount of vegetation removal, and it would not require additional hard surfaced driveway. However, addition A would require an additional variance for a side yard setback to a city street to be reduced from forty (40) feet to nineteen (19) feet. The addition would sit approximately 20 feet behind the existing fence.

Addition B would be located closer to the residential property to the north. More vegetation would need to be removed, thus the addition would be more visible to the neighboring property owner. Also, addition B would require Mr. Hoppe to expand the hard surfacing of the existing parking lot.

The northern portion of the land consists of a dense vegetation of mature trees and understory shrubs/brush. When the vegetation is leafed out, the buildings are almost invisible from the residential property to the north, therefore, the existing vegetation seems to be an adequate barrier. Adding a fence along the northern property line would require extensive removal of vegetation thus making the buildings more visible. There is a six (6) foot privacy fence along the western and eastern property lines.

Mr. Hoppe would like to continue operating his businesses in the City of East Bethel, however, he needs more space to store additional commercial vehicles that already have a presence on the property. The commercial vehicles include two (2) dump trucks, two (2) backhoes, and one (1) bobcat. Currently, the commercial vehicles are stored at his residential property in East Bethel.

Staff has received numerous complaints regarding the storage of the commercial vehicles at his residence. Mr. Hoppe has been sent noncompliant notices and has been cooperatively working with staff to correct the issue. In the event the variances are approved, staff suggests Mr. Hoppe be given permission to continue to store the commercial vehicles at his residence until construction is complete.

Mr. Hoppe's intentions are to complete the project yet this fall, weather permitting. If the weather does not cooperate, he plans to continue the project in mid-April of 2012, with a completion in mid-May 2012.

Variance Findings of Fact

1. The property owner proposes to continue the legal, nonconforming use of the property. The existing use of the property is considered a reasonable use and is allowed by city code as a legal, nonconforming use. Mr. Hoppe would like to expand the structures so he can continue to operate his businesses efficiently by storing the commercial vehicles on site.
2. The plight of the landowner is due to circumstances unique to the property not created by the landowner. Mr. Hoppe has been operating a business from the property since 1991, at which time the property was zoned commercial and the business was a permitted use. In approximately 2002, the zoning and land use was changed to residential which caused the business to become a legal, nonconforming use. The business can only be expanded with an approved variance.

3. The variance(s) will not alter the essential character of the locality. The business has been at this property since 1991. The existing detached accessory structures and commercial vehicles have been a mainstay of the business. The commercial vehicles proposed to be stored on the property frequent the property. The presence of the commercial vehicles and the expansion of the buildings will not alter the character of what already exists on the property.

Attachments:

- 1. Site Location
- 2. Variance Application
- 3. Site Plan
- 4. Appendix A, Zoning, Section 05.1

Fiscal Impact:

Undetermined at this time

Staff Recommendations:

Planning Commission recommends variances approval, based on the findings of fact, to City Council for the following variances:

- 1. A variance for a 1,000 square foot expansion to the northwestern corner of the principal structure.
- 2. A variance for a 1,200 square foot expansion to the western side of the detached accessory structure.
- 3. A variance to reduce the side yard setback to a city street from forty (40) feet to nineteen (19) feet.

The variances being for the property located at 1861 Viking Blvd, East Bethel MN, PIN 28-33-23-23-0011, with the following conditions:

- 1. Variance agreement must be signed and executed prior to the issuance of building permits.
- 2. Building permits must be issued prior to the start of construction.
- 3. Additions must be comparable in materials to the existing structures.
- 4. In the event vegetation is removed to an extent where the operation is visible from the northern residential property, a minimum of a six (6) foot wooden privacy fence must be erected on the northern property line.
- 5. Commercial vehicles stored on Mr. Hoppe’s residential property, located at 604 189th Ave. NE, East Bethel, may remain on the property until the completion of the additions to the commercial buildings located at 1861 Viking Blvd., East Bethel. Commercial vehicles must be removed from the residential property within one (1) week of the issuance of the Certificate of Occupancy but no later than May 2012.

City Council Action

Motion by: _____

Second by: _____

Vote Yes: _____

Vote No: _____

No Action Required: _____



LAND USE APPLICATION

OFFICE USE ONLY	
Date Rec'd	8/31/11
By	[Signature]
Fee \$	300 app. 500 escrow
CK #	2103

Check appropriate box: VARIANCE CUP IUP FINAL PLAT

BUSINESS CONCEPT PLAN PRELIMINARY PLAN SITE PLAN REVIEW OTHER _____

Application shall include the following items and be submitted thirty (30) days prior to scheduled meeting date.

Application is hereby made for _____ (provide narrative below describing proposed use).

Gordy's Custom Cabinets to expand at its current location so as to include Gordy's Excavation which is owned by Gordy's Custom Cabinets.

LOCATION: PID 28-33-23-23-0011 Legal: Lot _____ Block _____ Subdivision _____

PROPERTY ADDRESS: 1861 VIKING BLVD. PRESENT ZONING: R1 and R-2

PROPERTY OWNER

CONTACT NAME Gordon Hoppe PHONE 612-282-9141

ADDRESS 1861 VIKING BLVD FAX 763-434-7566

CITY/STATE/ZIP EAST BETHEL MN 55011 E-MAIL gcccex@aol.com

APPLICANT

CONTACT NAME Gordon Hoppe PHONE 612-282-9141

ADDRESS 604 189th Ave NE FAX 763-434-7566

CITY/STATE/ZIP East Bethel MN 55011 E-MAIL gcccex@aol.com

I fully understand that I must meet with City Staff to review all submission requirements and conditions prior to official submission, and that all of the required information must be submitted at least thirty (30) days prior to the Planning/Zoning Commission and City Council scheduled meeting dates to ensure review by City Staff.

Property Owner's Signature

Gordon Hoppe
Printed Name

8-31-11
Date

OFFICE USE ONLY - DO NOT COMPLETE			
	Received	Approved/Denied	Notes
Community Dvlp.			
Planning Commission	<u>9/27/11</u>		
City Council	<u>10/5/11</u>		
<u>10/30/11</u> 60 Day _____ 120 Day			

Attachment #2

To whom it May Concern,

Gordy's Custom Cabinets is applying for a variance at 1861 Viking Blvd., so that we may combine the current businesses we operate under one facility. We recently sold our facility located at 18530 Buchanan Street, in East Bethel, as this facility no longer met the needs of our company in this economic time. We were up front with the city with what our potential plans were for relocation of this company. We understand that our current situation, with storing our equipment indoors at our home, has brought up several concerns amongst our neighbors, which brings me to apply for a variance to add on to my current business to store our equipment indoors there.

Our current business, at 1861 Viking Blvd., is a custom cabinet business, which is also the owner of Gordy's Excavation. We would like to add on to our current detached structure a 30 x 40 structure (labeled "A") that would make the current structure an "L" shape. This would currently make the best use of the current land, without having to remove trees, would keep the trucks the furthest distance from the neighboring homes, and would be the least noticeable from any current view point. This would also make the best utilization of space, so we could maximize this structure for the storage of most of our heavy equipment. We could also do option "B", which would consist of adding on to the current structure, however going out the back of the building. Although this is an option, it requires the removal of approx. 5 trees, and places us closer to the residents whom live directly behind the building. This option also restricts us from best utilizing the space, thus requiring us to find other storage for some heavy equipment.

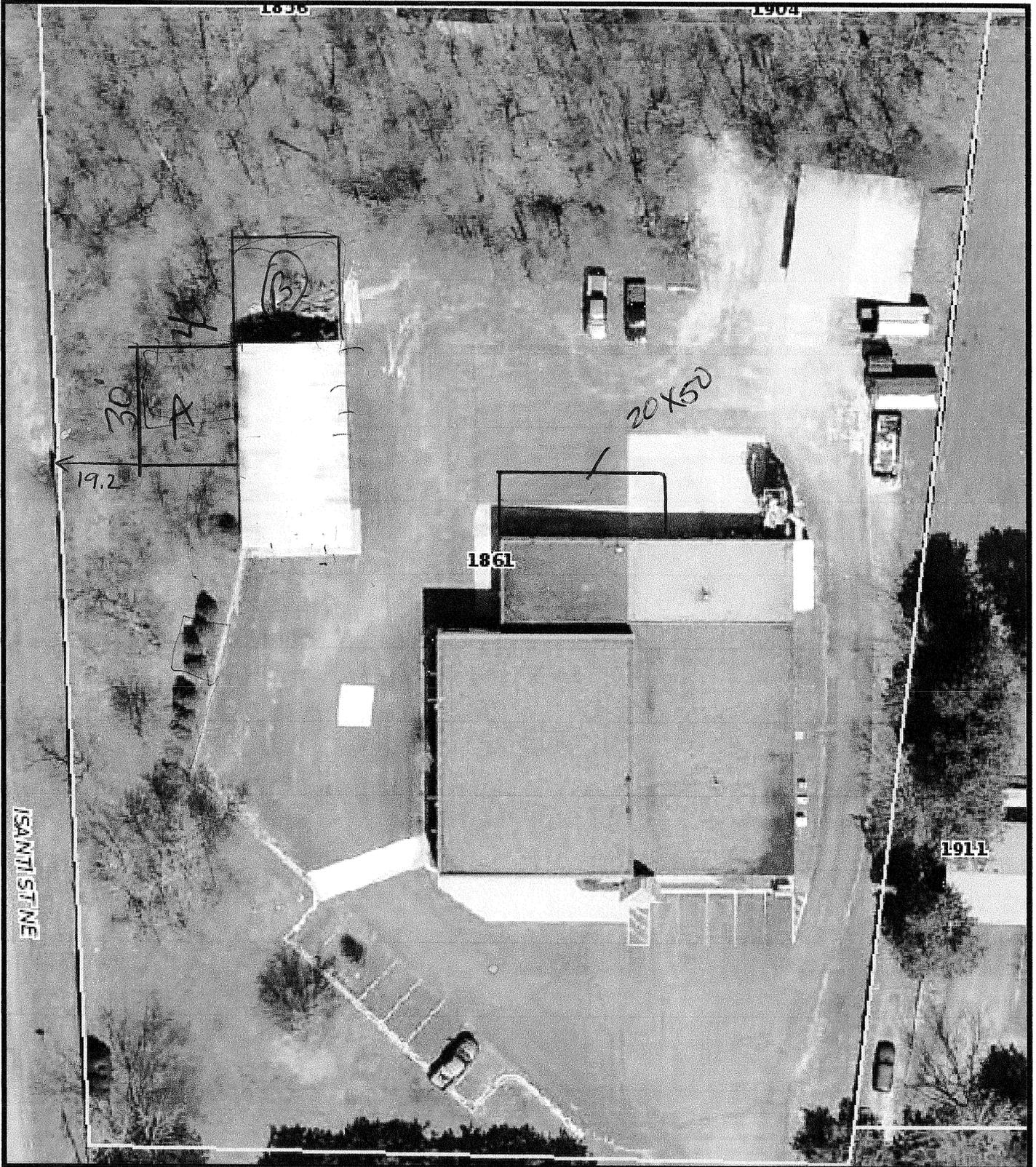
The third option would be to apply for an IUP, and run the business from our home. I realize the neighbors have made comments, however my employees leave at 7 AM, and do not return until 4PM in the evening. Granted, some day's their arrival is earlier or later, and some days due to the weather they do not leave at all. This option I have left open, for now. I would prefer to add on and continue from my current business site.

We are also applying for a variance to add on a storage area to our current block structure (20 X 50) as with any additions or modifications to the detached structure (as we have proposed) we loose space for storing materials needed to continue with the cabinet aspect of business.

If we are not granted a variance or an IUP, this business will end up closing and our employees will be terminated. They are a great group of workers who have been with our company here in East Bethel, for 10 plus years. With these economic times, we again have been up front and are trying to best meet the needs of all people involved.

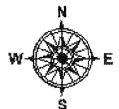
Sincerely,

Gordon Hoppe
Gordy's Custom Cabinets / Gordy's Excavation



Attachment #3

Disclaimer: This information is being distributed as demonstration data only. You should not use the data for any other purposes at this time. This information is to be used for reference purposes only.
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Caine & Associates Land Surveyors, Inc.

17720 Highway 65 N.E. - Ham Lake, Minnesota 55304
434-7646

10 copies
4/6/94

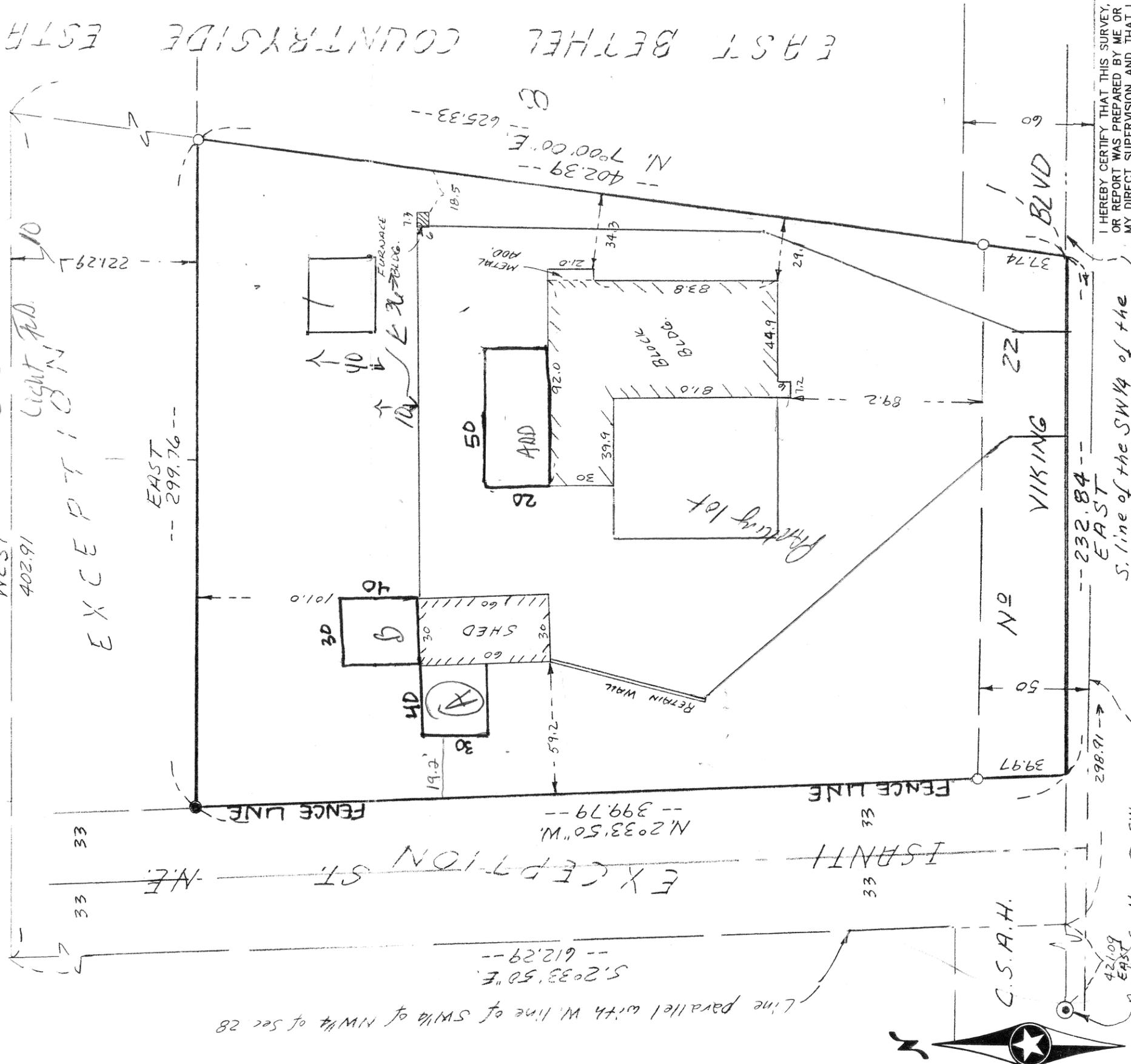
CERTIFICATE OF SURVEY FOR: Gordy's Custom Cabinets 1861 Viking Blvd NE

LEGAL DESCRIPTION: That part of the Southwest Quarter of Section 28, Township 33, Range 23, Anoka County, Minnesota, described as follows: Commencing at a point on the South line of said Southwest Quarter of the Northwest Quarter distant 421.09 feet East from the Southwest corner of said Southwest Quarter of the Northwest Quarter; thence on a bearing of East along said South line a distance of 298.91 feet; thence North 7 degrees 0 minutes East a distance of 625.33 feet; thence on a bearing West and parallel with the South line of said Southwest Quarter of the Northwest Quarter a distance of 402.91 feet; thence South 2 degrees 33 minutes 50 seconds East and parallel with the West line of said Southwest Quarter of the Northwest Quarter a distance of 612.29 feet to the point of commencement, EXCEPT the West 66 feet and the North 221.29 feet thereof.

Subject to an easement for highway purposes over a strip of land 50 feet in width lying North and adjacent to the center line of County State Highway No. 22 as now laid out and constructed.

Subject to other valid easements, if any.

B-1 - City - 40'
B-2
B-3 3/0



I HEREBY CERTIFY THAT THIS SURVEY, PLAN, OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY REGISTERED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF MINNESOTA.

Jeffrey M. Caine
DATE: June 27, 1994 REG. NO. 1225

S. line of the SW 1/4 of the NW 1/4 of Sec. 28, T. 33, R. 23.
Center line of C.S.A.H. N. 22 as travelled

SCALE: 1 INCH = 50 FEET.
O DENOTES 1/2 INCH IRON PIPE SET.
● DENOTES FOUND IRON MONUMENT.
BEARINGS SHOWN ARE ASSUMED.

East Bethel, Minnesota, Code of Ordinances >> - CODE OF ORDINANCES >> APPENDIX A - ZONING
>> SECTION 05. - NONCONFORMITIES >>

SECTION 05. - NONCONFORMITIES

- 1. - Purpose.
- 2. - Nonconforming use.
- 3. - Nonconforming lot of record.
- 4. - Nonconforming structures.
- 5. - Nonconforming site improvements.

1. - Purpose.

Within the zoning districts established by this chapter, or amendments that may later be adopted, situations may occur where, as a result of the requirements contained in this chapter, an existing lot, structure, site improvement, or use does not conform to one or more of the requirements of this chapter. It is the intent of this section to regulate such nonconforming situations to accomplish the following:

- A.** Recognize the existence of uses and structures which were lawful when established but which no longer meet all ordinance requirements.
- B.** Discourage the enlargement, expansion, intensification, or extension of any nonconforming use or structure and discourage any increase in the impact of a nonconforming use or structure on adjacent properties. Only exceptional cases of any expansion or intensification of a nonconforming use will be permitted and only after city approval of a variance.
- C.** Encourage the elimination of nonconforming uses and structures or reduce their impact on adjacent properties.

2. - Nonconforming use.

A nonconforming use may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion unless:

- A.** The nonconforming [use] or occupancy is discontinued for a period of more than one year.
- B.** Any nonconforming use is destroyed by fire to the extent of 50 percent of its market value, and no building permit has been applied for within 180 days of when the property is damaged. In such a case, any such building permit shall be subject to reasonable conditions in order to mitigate any newly created impact on adjacent property.
- C.** A nonconforming use may not be changed to another nonconforming use.
- D.** When any nonconforming use has been changed to a conforming use, it may not be later changed to a nonconforming use.
- E.** A nonconforming use may be changed to lessen the nonconformity, but once lessened, the use may not be changed to increase the nonconformity.

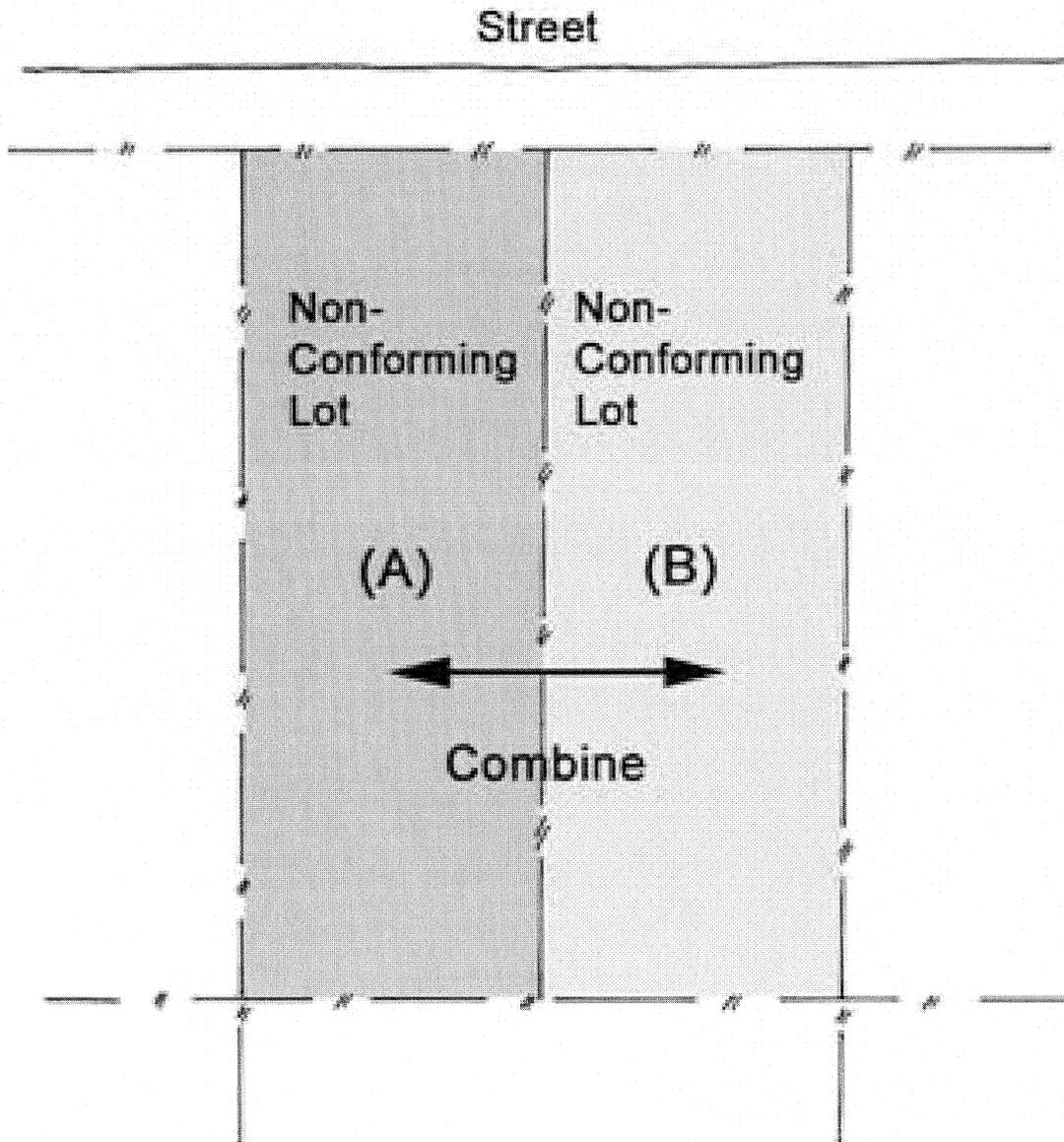
3. - Nonconforming lot of record.

Any separate lot or parcel that was legally created and is of record with the Anoka County Recorder's Office, but became nonconforming as a result of the adoption of this chapter, may be used for the legal use for which it is zoned subject to the following:

- A.** The lot shall have frontage on an improved public road or on a private road approved by the city council. The city council must, by resolution, specify the private road, verify that the private road is capable of supporting emergency vehicles, and specify that provisions exist for ongoing maintenance of the private road.
- B.** Vacant lots of record may be allowed as building sites without variances from lot size requirements provided the use is permitted in the zoning district, the lot(s) was created compliant with official controls in effect at the time, sewage treatment is in compliance with MPCA

subsurface sewage treatment system, MN Rules 7080-7083, and setback requirements of this ordinance are met.

- C. A vacant lot or parcel not served by public sewer may be used for a permitted use provided it has at least one acre of buildable area, and it can be demonstrated that a safe and adequate sewage treatment system can be installed to serve such use and meet required setbacks and lot coverage.
- D. If in the case of two or more contiguous lots or parcels of land under single ownership, any individual lot or parcel does not meet the minimum requirements of this ordinance, such individual lot or parcel shall not be considered as a separate parcel of land for purposes of sale or development, but must be combined with adjacent lots so the combination of lots will equal one or more parcels of land meeting the full requirements of this section or the provisions of the zoning district in which the property is located, whichever is more restrictive. In no circumstances will there be approval of any proposal for multiple lot developments based upon lots of record that do not conform to the provisions of the existing zoning district.



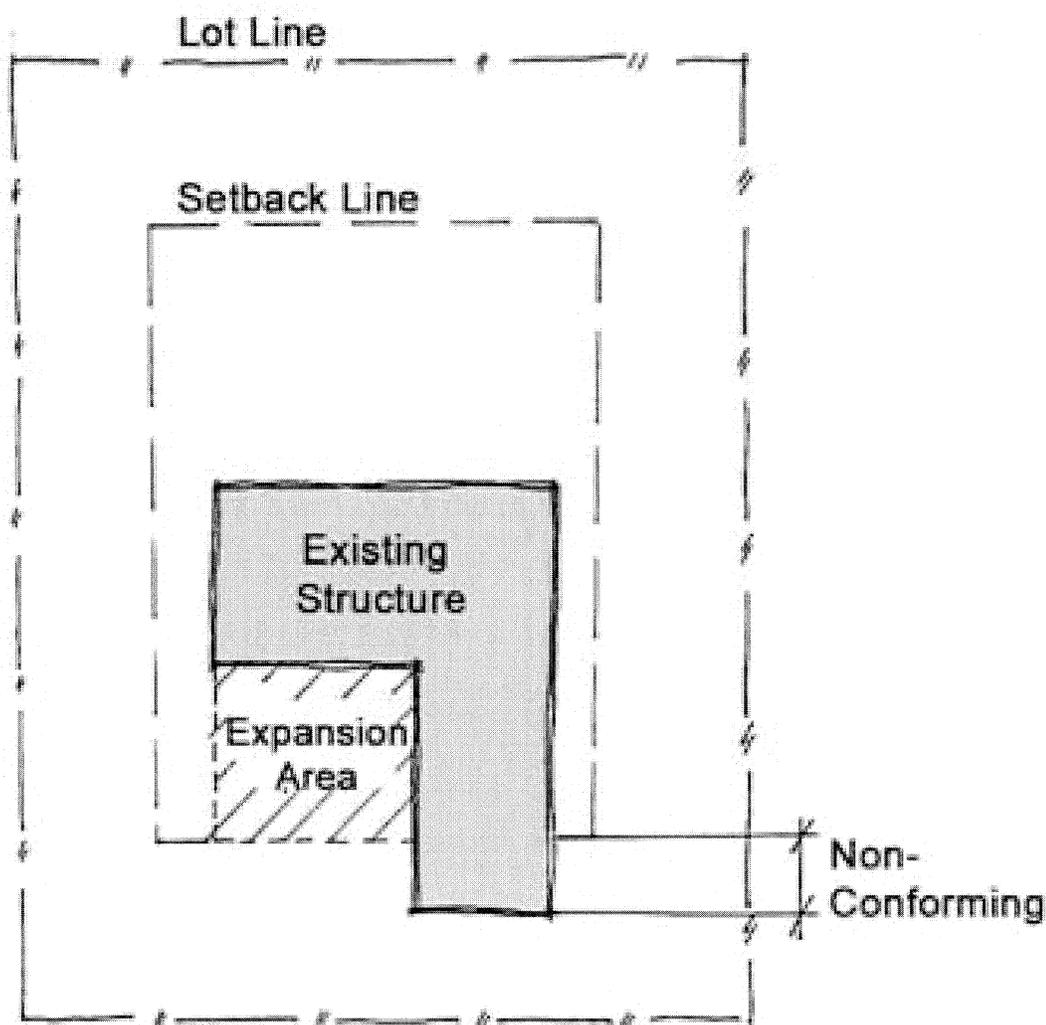
- E. A conforming lot shall not be reduced in size so that it becomes nonconforming in any respect under the conditions of this chapter. A nonconforming lot may be reduced in size but only if it is combined with other existing lots of record. Any lot currently nonconforming or that would become nonconforming due to a split, the property owner would cede property rights.
- F.

Additions to principal or accessory buildings or structures located on nonconforming lots may be permitted without a variance provided that any such addition meets all minimum setback and lot coverage requirements of the zoning district in which it is located, and that long-term sewage disposal needs can be met.

- G.** Nonconforming lots may be combined for tax purposes with a contiguous lot or lots, but may not be re-subdivided into a nonconforming lot even if the division is consistent with the original lot configuration.

4. - Nonconforming structures.

- A.** Nonconforming structures may not be enlarged or altered in a way that increases their nonconformity. They must comply with the following:
- 1) Expansion or alteration of a nonconforming structure may be permitted provided the expansion meets the required setbacks from the public right-of-way, side and rear lot lines, wetlands, lakes, sewer treatment system, well, and all other requirements of this chapter.
 - 2) Long-term sewage disposal needs can be met on lots that are not served by public sewer.



- B.** All construction projects for which a valid building permit was granted before the effective date of this chapter may be completed even if the structure will not meet the newly adopted provisions of this chapter.
- C.** Any nonconforming use is destroyed by fire to the extent of 50 percent of its market value, and no building permit has been applied for within 180 days of when the property is damaged. In such a case,

any such building permit shall be subject to reasonable conditions in order to mitigate any newly created impact on adjacent property.

5. - Nonconforming site improvements.

- A.** Upon any change in occupancy, nonconforming paved parking areas may continue to be used without improvement if the number of parking spaces supplied remains adequate according to the regulations of this chapter, and the surface has not, in the city's judgment, deteriorated so as to be beyond repair. If the parking lot is beyond repair or not paved, then the parking lot surface must be paved and otherwise brought into conformance with this chapter.
- B.** Multiple occupancy building. If the nonconformity is not increased, a building permit may be issued for a portion of a multiple occupancy building without bringing the existing site conditions into compliance.
- C.** When expanding an existing nonconforming site, the newly constructed portion of the site shall meet all requirements of this chapter.
- D.** If a multiple occupancy building becomes completely vacant, the existing site conditions shall be brought into compliance with this chapter prior to future occupancy.

(Ord. No. 19, Second Series, 5-5-2010)



City of East Bethel City Council Agenda Information

Date:

October 5, 2011

Agenda Item Number:

Item 8.0 A.1

Agenda Item:

Consideration of a Zoning Text Amendment (ZTA) to Allow Open Sales Lot – Boats and Expand Allowed Exterior Storage Area in the B2 – Zoning District

Requested Action:

Staff Seeks Direction to Possibly Pursue a ZTA to allow Open Sales Lots – Boats and Expand the Exterior Storage Area in the B2 – Zoning District

Background Information:

Staff has been approached by Mr. Wayne Howe to open a boat repair, winterization, and sales business in the B2 zoning district at the property located at 21058 Davenport Street (Flex Fitness Building).

Although retail sales and services conducted completely within the structure is allowed in the B2 district, it specifically states large items such as motor vehicles or open sale lots are not included in this category of uses. Also, exterior storage is limited to 100 square feet with an approved conditional use permit (CUP). Mr. Howe’s proposed business would require more than 100 square feet for the storage of boats waiting for repair and winter storage. An exterior display area not exceeding ten (10) percent of the gross floor area of the principal building is allowed.

Currently, boat sales and exterior storage are conditional uses in the B3 zoning district. If City Council directs staff to prepare a ZTA, staff recommends boat sales and an increased exterior storage area be allowed with approved CUP’s.

Fiscal Impact:

A ZTA for this proposed use in the B-2 zone would not be exclusive to Mr. Howe’s request but would open this entire zoning classification to this exemption.

Recommendation:

Staff seeks direction from City Council regarding a ZTA to allow Open Sales Lots – Boats Sales and to increase the allowable exterior storage area as conditional uses in the B2 zoning district.

City Council Action

Motion by: _____

Second by: _____

Vote Yes:_____

Vote No:_____

No Action Required:_____



City of East Bethel City Council Agenda Information

Date:

October 5, 2011

Agenda Item Number:

Item 8.0 A.2

Agenda Item:

Consideration of a Zoning Text Amendment (ZTA) to Allow Open Sales Lot – Motor Vehicles in the B3 – Zoning District

Requested Action:

Staff Seeks Direction to Possibly Pursue a ZTA to allow Open Sales Lots – Motor Vehicles in the B3 – Zoning District

Background Information:

Staff has been approached by Mr. Timothy Chies, property owner at 18803 Highway 65, East Bethel to allow an open sales lot – motor vehicles in the B3 – zoning district. Current zoning code does not permit open sales lot – motor vehicles in any zoning district.

Prior to three (3) years ago, Ham Lake Motors sold vehicles from this property as a legal, nonconforming use. However, since open sales has not occurred within the last three (3) years it is no longer a permitted use. 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. Statutes 462.357, Subd.1e. Nonconformities.

Attachment #1 is an email from Mr. Chies requesting City Council to allow motor vehicles sales in the B3 zoning district.

Attachment:

- 1. Email from Property Owner, Mr. Timothy Chies

Fiscal Impact:

A ZTA for this proposed use in the B-3 zone would not be exclusive to Mr. Chies’s request but would open this entire zoning classification to this exemption.

Recommendation:

Staff seeks direction from City Council to regarding a ZTA to allow Open Sales Lots – Motor Vehicles as a conditional use in the B3 zoning district.

City Council Action

Motion by:_____

Second by:_____

Vote Yes:_____

Vote No:_____

No Action Required:_____

Stephanie Hanson

From: Jack Davis
Sent: Tuesday, September 27, 2011 1:47 PM
To: Stephanie Hanson
Subject: FW: Zoning at 18803 Highway 65

From: tw.chies [<mailto:tw.chies@ableproperty.com>]
Sent: Tuesday, September 20, 2011 10:44 AM
To: Jack Davis
Cc: Jordan Valder; ryandimuzio@gmail.com; Stephanie Hanson
Subject: Zoning at 18803 Highway 65

Dear Mr. Davis

I am the owner of the property at 18803 Highway 65 in East Bethel. As you probably are aware, I have a tenant (Jordan Valder) that would like to sell Motor Vehicles there. He has a great business plan and would be a good business in the City. He is a resident of East Bethel. Your current zoning does not allow Motor Vehicles sales there or anywhere in East Bethel. I am not certain why that would be as all the neighboring Cities have several motor vehicle lots and no such restriction. I find it strange that you can put a bar on every corner in the City – but you can't sell a car. As far as I can tell – there is only one car sales lot in the City – which clearly gives someone an unfair advantage. Is there some hidden arrangement that allows that monopoly? Does the City have a listing of complaints against cars sales lots? How is it that other Cities allow and manage car lots and East Bethel can't?

My property has had a car sales lot on it since the early 1980's. It is a multi-tenant building. I have sent several people to the City trying to rent the space only to receive little or no help from staff. They all report that the City is anti-business. With the City water and sewer coming, eventually my property (55 acres) will be developed and the existing building will be demolished and the businesses relocated. With this economy that will not happen for a while.

I am asking that you put us on the October 5th City Council meeting to allow motor vehicle sales again on this property – at least until it is redevelopment. If you would like to discuss this with me – please feel free to call me at 763-286-2798 at your convenience.

Sincerely,

Timothy Chies
President
Able Property Management Inc.
7651 Old Central Avenue
Fridley, MN 55432
763-754-0743 Office
763-754-62888 Fax
763-286-2798 Cell
tw.chies@ableproperty.com

Attachment #1



City of East Bethel City Council Agenda Information

Date:

October 5, 2011

Agenda Item Number:

Item 8.0 B.1

Agenda Item:

Pay Estimate #5 for the Phase 1, Project 1 Utility Improvements

Requested Action:

Consider approval of Pay Estimate #5

Background Information:

Attached is a copy of Pay Estimate #5 to S.R. Weidema for the construction of the Phase 1, Project 1 Utility Improvements. The major pay items for this pay request include interceptor sewer construction along TH 65, sewer and water crossings of TH 65, street construction on 185th Avenue and Ulysses Street and sod and restoration on Buchanan Street. 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 \$898,497.63. A summary of the recommended payment breakdown is as follows:

Contractor Payment Summary			
	Totals to Date	Less Previous Payments	Amount Due this Estimate
MCES	\$2,231,700.04	\$1,840,612.78	\$391,087.26
City	\$1,701,493.83	\$1,239,008.34	\$462,485.49
Total	\$3,933,193.87	\$3,079,621.12	\$853,572.75
Escrow Payment Summary			
	Totals to Date	Less Previous Payments	Amount Due this Estimate
MCES	\$117,457.90	\$96,874.36	\$20,583.54
City	\$89,552.31	\$65,210.97	\$24,341.34
Total	\$207,010.20	\$162,085.33	\$44,924.88

Attachments:

1. Pay Estimate #5

Fiscal Impact:

This estimate includes payment of \$853,572.75 to S.R. Weidema and \$44,924.88 to the escrow account for a total of \$898,497.63. Payment for this project will be financed from the bond proceeds. Funds, as noted above, are available and appropriate for this project.

Recommendation(s):

Staff recommends Council consider approval of Pay Estimate #5 in the amount of \$898,497.63 for the Phase 1, Project 1 Utility Improvements.

City Council Action

Motion by:_____

Second by:_____

Vote Yes:_____

Vote No:_____

No Action Required:_____

CONTRACTOR'S PAY REQUEST		DISTRIBUTION:
East Bethel Gravity Interceptor & Discharge & Utility Infrastructure Project		CONTRACTOR (1)
CITY OF EAST BETHEL, MN		OWNER (1)
PROJECT NO. C12.100028		ENGINEER (1)
Pay Estimate No. 5		BONDING CO. (1)
TOTAL AMOUNT BID		\$11,686,468.20
CHANGE ORDER NO. 1 (REVISED)		\$324,949.43
CHANGE ORDER NO. 2		\$43,536.10
EXTRA WORK		\$2,492.00
TOTAL AMOUNT BID PLUS APPROVED CHANGE ORDERS		\$12,057,445.73
MCES STORED MATERIALS TO DATE		\$817,668.50
EAST BETHEL STORED MATERIALS TO DATE		\$326,983.25
TOTAL, STORED MATERIALS TO DATE		\$1,144,651.75
DEDUCTION FOR MCES STORED MATERIALS USED IN WORK COMPLETED		\$570,666.99
DEDUCTION FOR EAST BETHEL STORED MATERIALS USED IN WORK COMPLETED		\$129,482.76
TOTAL DEDUCTION FOR STORED MATERIALS USED IN WORK COMPLETED		\$700,149.75
TOTAL DUE MCES STORED MATERIALS TO DATE		\$247,001.51
TOTAL DUE EAST BETHEL STORED MATERIALS TO DATE		\$197,500.49
TOTAL DUE, STORED MATERIALS TO DATE		\$444,502.00
TOTAL, MCES COMPLETED WORK TO DATE		\$2,102,156.43
TOTAL, EAST BETHEL COMPLETED WORK TO DATE		\$1,593,545.65
TOTAL, COMPLETED WORK TO DATE		\$3,695,702.07
TOTAL, COMPLETED MCES WORK & STORED MATERIALS		\$2,349,157.94
TOTAL, COMPLETED EAST BETHEL WORK & STORED MATERIALS		\$1,791,046.14
TOTAL, COMPLETED WORK & STORED MATERIALS		\$4,140,204.07
MCES RETAINED PERCENTAGE (5%)		\$117,457.90
EAST BETHEL RETAINED PERCENTAGE (5%)		\$89,552.31
TOTAL RETAINED PERCENTAGE (5%)		\$207,010.20
TOTAL EARNED LESS RETAINAGE MCES TO DATE		\$2,231,700.04
TOTAL EARNED LESS RETAINAGE EAST BETHEL TO DATE		\$1,701,493.83
TOTAL EARNED LESS RETAINAGE TO DATE		\$3,933,193.87
TOTAL, MCES AMOUNT PAID ON PREVIOUS ESTIMATES		\$1,840,612.78
TOTAL EAST BETHEL AMOUNT PAID ON PREVIOUS ESTIMATES		\$1,239,008.34
TOTAL AMOUNT PAID ON PREVIOUS ESTIMATES		\$3,079,621.12
MCES THIS ESTIMATE		\$391,087.26
EAST BETHEL THIS ESTIMATE		\$462,485.49
PAY CONTRACTOR AS ESTIMATE NO. 5		\$853,572.75

Certificate for Partial Payment

I hereby certify that, to the best of my knowledge and belief, all items quantities and prices of work and material shown on this Estimate are correct and that all work has been performed in full accordance with the terms and conditions of the Contract for this project between the Owner and the undersigned Contractor, and as amended by any

authorized changes, and that the foregoing is a true and correct statement of the contract amount for the period covered by this Estimate.

Contractor: S.R. Weidema, Inc.
17600 113th Avenue North
Maple Grove, MN 55369

By *Amie Rauh* Name *Project Manager* Title

Date *9/28/11*

CHECKED AND APPROVED AS TO QUANTITIES AND AMOUNT:

ENGINEER: BOLTON & MENK, INC., 2638 SHADOW LANE SUITE 200 CHASKA, MN 55318

By *[Signature]*, PROJECT ENGINEER

Date *9/28/11*

APPROVED FOR PAYMENT:

OWNER:

By _____
Name Title Date

And _____
Name Title Date

CITY BOND SPLIT CALCULATIONS

SECTION	SUBTOTALS	SEWER	WATER	DESCRIPTION	CHECK TOTALS
MOBILIZATION	\$77,786.11	\$45,859.89	\$31,926.22	Apportioned	
REMOVALS	\$20,608.28	\$12,149.90	\$8,458.38	Apportioned	
DISCHARGE PIPING	\$0.00	\$0.00	\$0.00	Apportioned	
STREET & STORM SEWER	\$189,091.96	\$111,481.82	\$77,610.14	Apportioned	
EROSION CONTROL & RESTORATION	\$23,120.88	\$13,631.24	\$9,489.64	Apportioned	
OPTION 1 PILING	\$0.00	\$0.00	\$0.00	Apportioned	
OPTION 2 PILING	\$0.00	\$0.00	\$0.00	Apportioned	
 CHANGE ORDERS	 \$237,866.97	 \$118,933.48	 \$118,933.48	 50%	
STORED MATERIALS	\$197,500.49	\$35,408.09	\$162,092.40	By Type	
	\$ -				
SANITARY SEWER	\$616,136.55	\$616,136.55			
WATERMAIN	\$428,934.90		\$428,934.90		\$197,500.49
TOTALS		\$953,600.98	\$837,445.16		\$1,593,545.65
Total - Retainage		\$905,920.93	\$795,572.90		\$1,701,493.83
PREVIOUS ESTIMATE 1		\$69,994.94	\$50,473.59		\$120,468.53
PREVIOUS ESTIMATE 2		\$286,687.28	\$276,737.92		\$563,425.20
PREVIOUS ESTIMATE 3		\$44,077.24	\$84,713.16		\$128,790.40
PREVIOUS ESTIMATE 4		\$191,282.62	\$235,041.58		\$426,324.20
THIS ESTIMATE		\$313,878.85	\$148,606.65		\$462,485.49
		Sewer Total	Water Total		Check Total

STORED MATERIALS

East Bethel Gravity Interceptor & Discharge & Utility Infrastructure Project
 CITY OF EAST BETHEL, MN
 PROJECT NO. C.12.100028

PAY ESTIMATE NO. 5

SUMMARY OF STORED MATERIALS: PAYMENT FOR APPROVED MATERIALS STORED ON SITE:	Invoice Unit Price	MCEs		CITY		MCEs		CITY		MCEs		CITY		CURRENT STORED MATERIALS ON HAND	MCEs STORED MATERIALS ON HAND	CITY STORED MATERIALS ON HAND
		TOTAL STORED MATERIALS Quantity	Amount	TOTAL STORED MATERIALS Quantity	Amount	MATERIALS USED IN PROJECT Quantity	Amount	MATERIALS USED IN PROJECT Quantity	Amount	MATERIALS USED IN PROJECT Quantity	Amount	MATERIALS USED IN PROJECT Quantity	Amount			
8" PVC SEWER PIPE SDR 35	\$ 2.84		\$ -	1232 LF	\$ 3,498.88		\$ -	1232 LF	\$ 3,498.88		\$ -		\$ -			
8" PVC SEWER PIPE SDR 26	\$ 3.79		\$ -	2940 LF	\$ 11,142.60		\$ -	1490 LF	\$ 5,647.10		\$ -		\$ 5,495.50		\$ -	\$ 5,495.50
12" PVC SEWER PIPE SDR 26	\$ 6.74		\$ -	672 LF	\$ 5,673.28		\$ -	168 LF	\$ 1,488.32		\$ -		\$ 4,404.96		\$ -	\$ 4,404.96
15" PVC SEWER PIPE SDR 26	\$ 12.92		\$ -	168 LF	\$ 2,170.56		\$ -		\$ -		\$ -		\$ 2,170.56		\$ -	\$ 2,170.56
15" PVC SEWER PIPE SDR 35	\$ 9.53		\$ -	1428 LF	\$ 13,608.84		\$ -		\$ -		\$ -		\$ 13,608.84		\$ -	\$ 13,608.84
24" PVC SEWER PIPE SDR 26	\$ 34.77		\$ 121,695.00	3500 LF	\$ 121,695.00		\$ -	53 LF	\$ 1,842.61		\$ -		\$ 131,048.13		\$ 121,695.00	\$ 9,353.13
24" PVC SEWER PIPE PS46	\$ 25.22		\$ 14,123.20	560 LF	\$ 14,123.20		\$ -		\$ -		\$ -		\$ 14,123.20		\$ -	\$ -
6" PVC SEWER PIPE SDR 26	\$ 2.42		\$ -	854 LF	\$ 2,066.68		\$ -	689 LF	\$ 1,691.58		\$ -		\$ 375.10		\$ -	\$ 375.10
60" SN72/FN25 GRAVITY SEWER PIPE WFWC	\$ 255.00		\$ 302,850.75	1187.65 LF	\$ 302,850.75		\$ -		\$ -		\$ -		\$ -		\$ -	\$ -
24" PVC C905 DR 21 WM	\$ 49.02		\$ -	1780 LF	\$ 87,255.60		\$ -	298.5 LF	\$ 14,632.47		\$ -		\$ 72,623.13		\$ -	\$ 72,623.13
12" PVC C900 DR 18 WM	\$ 13.17		\$ -	820 LF	\$ 10,799.40		\$ -	820 LF	\$ 10,799.40		\$ -		\$ -		\$ -	\$ -
8" PVC C900 DR 25 WM	\$ 4.45		\$ -	2400 LF	\$ 10,680.00		\$ -	2191 LF	\$ 9,749.95		\$ -		\$ 930.05		\$ -	\$ 930.05
16" PVC C905 PIPE DR 21 WM	\$ 19.61		\$ -	4220 LF	\$ 82,754.20		\$ -	1492 LF	\$ 29,258.12		\$ -		\$ 53,496.08		\$ -	\$ 53,496.08
4" GATE VALVE	\$ 411.05		\$ -	17 EA	\$ 6,987.85		\$ -	17 EA	\$ 6,987.85		\$ -		\$ -		\$ -	\$ -
6" GATE VALVE	\$ 524.88		\$ -	23 EA	\$ 12,072.24		\$ -	16 EA	\$ 8,398.08		\$ -		\$ 3,674.16		\$ -	\$ 3,674.16
8" GATE VALVE	\$ 835.46		\$ -	10 EA	\$ 8,354.60		\$ -	9 EA	\$ 7,519.14		\$ -		\$ 835.46		\$ -	\$ 835.46
HYDRANT	\$ 2,544.46		\$ -	23 EA	\$ 58,522.58		\$ -	11 EA	\$ 27,989.06		\$ -		\$ 30,533.52		\$ -	\$ 30,533.52
16" PVC C905 DR 14 DISCHARGE PIPING	\$ 44.46		\$ 180,507.60	4060 LF	\$ 180,507.60		\$ 100,212.84	2254 LF	\$ 100,212.84		\$ -		\$ 80,294.76		\$ -	\$ 80,294.76
42" / 72" SN 25 PN GRAVITY SEWER PIPE WFWC	\$ 113.00		\$ 135,526.55	1199.35 LF	\$ 135,526.55		\$ -	926 LF	\$ 104,638.00		\$ -		\$ 30,888.55		\$ -	\$ 30,888.55
48" / 72" SN 25 PN GRAVITY SEWER PIPE WFWC	\$ 136.00		\$ 2,740.40	20.15 LF	\$ 2,740.40		\$ -	20.15 LF	\$ 2,740.40		\$ -		\$ -		\$ -	\$ -
42" / 100" SN 25 PN GRAVITY SEWER PIPE WFWC	\$ 125.00		\$ 60,225.00	481.8 LF	\$ 60,225.00		\$ -	481.8 LF	\$ 60,225.00		\$ -		\$ -		\$ -	\$ -
TOTAL:			\$ 817,688.90		\$ 326,983.25		\$ 570,666.99		\$ 129,482.76		\$ 700,149.75		\$ 444,502.00		\$ 247,001.51	\$ 197,500.49
			\$ 1,144,651.75		\$ 1,144,651.75		\$ -		\$ 700,149.75		\$ -		\$ 444,502.00		\$ -	\$ 444,502.00

Partial Pay Estimate No.:

East Bethel Gravity Interceptor & Discharge & Utility Infrastructure Project
 CITY OF EAST BETHEL, MN
 PROJECT NO. C12.100028
 METROPOLITAN COUNCIL ENVIRONMENTAL SERVICES Project No. 801602
 WORK COMPLETED THROUGH SEPTEMBER 23 2011

ITEM NO.	ITEM	UNIT PRICE	CURRENT ESTIMATE		CURRENT ESTIMATE - CITY		CURRENT ESTIMATE - MCES		COMPLETED TO DATE		COMPLETED TO DATE - CITY		COMPLETED TO DATE - MCES							
			ESTIMATED QUANTITY	ESTIMATED AMOUNT	ESTIMATED QUANTITY	ESTIMATED AMOUNT	ESTIMATED QUANTITY	ESTIMATED AMOUNT	ESTIMATED QUANTITY	ESTIMATED AMOUNT	ESTIMATED QUANTITY	ESTIMATED AMOUNT	ESTIMATED QUANTITY	ESTIMATED AMOUNT						
81	02530 6" PVC SDR 26 SERVICE PIPE	\$19.00								584.50	LF	\$11,105.50	584.50	LF	\$11,105.50					
82	02530 6" PVC SDR 26 SERVICE RISER	\$13.30								114.50	LF	\$1,522.85	114.50	LF	\$1,522.85					
83	02530 8" X 6" PVC SDR 26 WYE	\$145.00								18.00	EACH	\$2,610.00	18.00	EACH	\$2,610.00					
84	02240 DEWATERING (0-10 FEET)	\$35.00								80.00	LF	\$2,800.00	80.00	LF	\$2,800.00					
85	02240 DEWATERING (10-15 FEET)	\$45.00								1,578.00	LF	\$71,010.00	1,578.00	LF	\$71,010.00					
86	02240 DEWATERING (15-20 FEET)	\$50.00	168.00	LF	\$8,400.00	168.00	LF	\$8,400.00		1,103.00	LF	\$55,150.00	1,103.00	LF	\$55,150.00					
87	02240 DEWATERING (20-25 FEET)	\$65.00	97.00	LF	\$6,305.00	97.00	LF	\$6,305.00		892.00	LF	\$57,980.00	892.00	LF	\$57,980.00					
88	02240 DEWATERING (25-30 FEET)	\$65.00	968.00	LF	\$62,920.00	197.00	LF	\$12,805.00	771.00	LF	\$50,115.00	968.00	LF	\$62,920.00	197.00	LF	\$12,805.00	771.00	LF	\$50,115.00
89	02240 DEWATERING (30-35 FEET)	\$70.00	473.50	LF	\$33,145.00	32.50	LF	\$2,275.00	441.00	LF	\$30,870.00	1,631.50	LF	\$128,205.00	32.50	LF	\$2,275.00	1,799.00	LF	\$125,930.00
90	02530 PIPE SUBGRADE EXCAVATION (EV) - TYPE A BEDDING	\$7.35	402.67	CY	\$2,959.62	18.66	CY	\$137.15	384.01	CY	\$2,822.47	402.67	CY	\$2,959.62	18.66	CY	\$137.15	384.01	CY	\$2,822.47
91	02530 PIPE SUBGRADE EXCAVATION (EV) - TYPE B1 BEDDING	\$8.60		CY			CY							CY			CY			
92	02530 PIPE SUBGRADE EXCAVATION (EV) - TYPE B2 BEDDING	\$10.00		CY			CY							CY			CY			
93	02530 AGGREGATE BEDDING - TYPE A BEDDING	\$24.00	922.92	TON	\$22,150.08	90.39	TON	\$2,169.36	832.53	TON	\$19,980.72	922.92	TON	\$22,150.08	90.39	TON	\$2,169.36	832.53	TON	\$19,980.72
94	02530 AGGREGATE BEDDING - TYPE B1 BEDDING	\$28.00		TON			TON							TON			TON			
95	02530 AGGREGATE BEDDING - TYPE B2 BEDDING	\$29.00		TON			TON							TON			TON			
96	20341 GEOTEXTILE FABRIC - TYPE B1 BEDDING	\$1.00		SY			SY							SY			SY			
97	02341 GEOTEXTILE FABRIC - TYPE B2 BEDDING	\$1.00		SY			SY							SY			SY			
98	02530 EXPLORATION EXCAVATIONS	\$7,300.00		EACH			EACH							EACH			EACH			
99	01160 TEMPORARY ACCESS DRIVEWAY - BANK	\$3.35	1,683.00	SY	\$5,638.05	1,122.00	SY	\$3,758.70	561.00	SY	\$1,879.35	1,683.00	SY	\$5,638.05	1,122.00	SY	\$3,758.70	561.00	SY	\$1,879.35
100	02320 POND BERM RESTORATION	\$7,600.00		LUMP SUM			LUMP SUM							LUMP SUM			LUMP SUM			
101	02530 SANITARY SEWER STANDARD CASTING	\$280.00	4.00	EACH	\$1,120.00	4.00	EACH	\$1,120.00		8.00	EACH	\$2,240.00	8.00	EACH	\$2,240.00		8.00	EACH	\$2,240.00	
102	02530 WATER TIGHT CASTING	\$1,470.00		EACH			EACH							EACH			EACH			
103	02530 CHIMNEY SEAL	\$252.00		EACH			EACH							EACH			EACH			
104	02530 MANHOLE MARKER SIGN	\$57.00		EACH			EACH							EACH			EACH			
105	02705 ADJUST CASTING	\$300.00		EACH			EACH							EACH			EACH			
106	02310 MANHOLE ACCESS GRADING (CV)	\$12.25		CY			CY							CY			CY			
107	02310 MANHOLE ACCESS SUBGRADE EXCAVATION (EV)	\$9.00		CY			CY							CY			CY			
108	02310 MANHOLE ACCESS GEOTEXTILE FABRIC	\$1.60		SY			SY							SY			SY			
109	02310 MANHOLE ACCESS COMMON EXCAVATION (P)	\$2.00		CY			CY							CY			CY			
110	02310 MANHOLE ACCESS GRANULAR SUB BASE	\$7.00		TON			TON							TON			TON			
111	02730 MANHOLE ACCESS AGGREGATE SURFACE	\$13.20		TON			TON							TON			TON			
112	02535 6" PVC C905 DR 14 DISCHARGE PIPING	\$31.00		LF			LF			128.00	LF	\$3,968.00		LF			128.00	LF	\$3,968.00	
113	02535 16" PVC C905 DR 14 DISCHARGE PIPING	\$58.00		LF			LF			2,254.00	LF	\$130,732.00		LF			2,254.00	LF	\$130,732.00	
114	02535 21.6" OD HDPE DR 7 DIPS DISCHARGE PIPING	\$110.00		LF			LF							LF						
115	02535 6" GATE VALVE	\$1,100.00		EACH			EACH			4.00	EACH	\$4,400.00		EACH			4.00	EACH	\$4,400.00	
116	02445 DISCHARGE PIPE BORING - 16" CARRIER PIPE	\$328.00		LF			LF							LF						
117	02445 SET UP BORING PIT (10-15 FEET)	\$16,850.00		EACH			EACH							EACH			EACH			
118	02240 DEWATERING (10-15 FEET)	\$1.00		LF			LF							LF						
119	02535 MAINTENANCE MANHOLE	\$3,100.00		LF			LF			5.77	LF	\$17,887.00		LF			5.77	LF	\$17,887.00	
120	02535 AIR / VACUUM RELEASE MANHOLE	\$25,365.00		EACH			EACH			1.00	EACH	\$25,365.00		EACH			1.00	EACH	\$25,365.00	
121	02530 72" DIAMETER MANHOLE BOUYANCY COLLAR	\$1,520.00		EACH			EACH			1.00	EACH	\$1,520.00		EACH			1.00	EACH	\$1,520.00	
122	02530 108" DIAMETER MANHOLE BOUYANCY COLLAR	\$2,575.00		EACH			EACH							EACH			EACH			
123	02535 MANHOLE MARKER SIGN	\$60.00		EACH			EACH							EACH			EACH			
124	02535 4" INSULATION	\$3.70		SF			SF							SF			SF			
125	02535 TEMPORARY HYDRANT ASSEMBLY	\$3,160.00		EACH			EACH			1.00	EACH	\$3,160.00		EACH			1.00	EACH	\$3,160.00	
126	02510 HYDRANT EXTENSION	\$500.00		LF			LF							LF						
127	02510 VALVE BOX EXTENSION	\$75.00		LF			LF							LF						
128	02530 CHIMNEY SEAL	\$265.00		EACH			EACH							EACH			EACH			
129	02535 FORCEMAIN FITTINGS	\$6.00		POUND			POUND			968.00	POUND	\$5,808.00		POUND			968.00	POUND	\$5,808.00	
130	02705 ADJUST CASTING	\$300.00		EACH			EACH							EACH			EACH			
131	02705 ADJUST VALVE BOX	\$236.00		EACH			EACH							EACH			EACH			
132	02510 HYDRANT & VALVE SUPPORT & FITING BLOCKING IN POOR SOILS	\$41.00		LF			LF							LF						
133	02510 8" PVC C900 DR 25 WATERMAIN	\$27.00		LF			LF			2,191.00	LF	\$59,157.00	2,191.00	LF	\$59,157.00		2,191.00	LF	\$59,157.00	
134	02510 12" PVC C900 DR 18 WATERMAIN	\$37.00		LF			LF			822.00	LF	\$30,414.00	822.00	LF	\$30,414.00		822.00	LF	\$30,414.00	
135	02510 16" PVC C905 DR 21 WATERMAIN	\$44.00		LF			LF			1,492.00	LF	\$65,648.00	1,492.00	LF	\$65,648.00		1,492.00	LF	\$65,648.00	
136	02510 24" PVC C905 DR 21 WATERMAIN	\$75.00		LF			LF							LF						
137	02510 19.5" O.D. HDPE DR 11 DIPS WATERMAIN	\$75.00		LF			LF							LF						
138	02510 32" O.D. HDPE DR 11 DIPS WATERMAIN	\$150.00		LF			LF							LF						
139	02445 WATERMAIN BORING - 16" CARRIER PIPE	\$326.00	288.00	LF	\$93,888.00	288.00	LF	\$93,888.00		288.00	LF	\$93,888.00	288.00	LF	\$93,888.00		288.00	LF	\$93,888.00	
140	02445 WATERMAIN BORING - 24" CARRIER PIPE	\$437.00		LF			LF							LF						
141	02445 SET UP BORING PIT (0-10 FEET)	\$10,400.00		EACH			EACH							EACH			EACH			
142	02445 SET UP BORING PIT (10-15 FEET)	\$15,400.00	1.00	EACH	\$15,400.00	1.00	EACH	\$15,400.00		1.00	EACH	\$15,400.00	1.00	EACH	\$15,400.00		1.00	EACH	\$15,400.00	
143	02510 4" PVC C900 DR 25 WATER SERVICE	\$15.00		LF			LF			174.00	LF	\$2,610.00	174.00	LF	\$2,610.00		174.00	LF	\$2,610.00	
144	02510 4" PVC C900 DR 18 WATER SERVICE	\$15.00		LF			LF			365.00	LF	\$5,475.00	365.00	LF	\$5,475.00		365.00	LF	\$5,475.00	
145	02510 6" PVC C900 DR 18 WATER SERVICE	\$22.00		LF			LF			22.00	LF	\$484.00	22.00	LF	\$484.00		22.00	LF	\$484.00	
146	02510 6" PVC C900 DR 25 WATER SERVICE	\$18.00		LF			LF			119.00	LF	\$2,142.00	119.00	LF	\$2,142.00		119.00	LF	\$2,142.00	
147	02510 6" PVC C900 DR 18 HYDRANT LEAD	\$22.00		LF			LF			75.00	LF	\$1,650.00	75.00	LF	\$1,650.00		75.00	LF	\$1,650.00	
148	02510 6" PVC C900 DR 25 HYDRANT LEAD	\$22.00		LF			LF			80.00	LF	\$1,760.00	80.00	LF	\$1,760.00		80.00	LF	\$1,760.00	
149	02510 4" GATE VALVE	\$1,000.00		EACH			EACH			17.00	EACH	\$17,000.00	17.00	EACH	\$17,000.00		17.00	EACH	\$17,000.00	
150	02510 6" GATE VALVE	\$1,100.00		EACH			EACH			15.00	EACH	\$16,500.00	15.00	EACH	\$16,500.00		15.00	EACH	\$16,500.00	
151	02510 8" GATE VALVE	\$1,520.00		EACH			EACH			9.00	EACH	\$13,680.00	9.00	EACH	\$13,680.0					

Partial Pay Estimate No.:

East Bethel Gravity Interceptor & Discharge & Utility Infrastructure Project
 CITY OF EAST BETHEL, MN
 PROJECT NO. C12.100028
 METROPOLITAN COUNCIL ENVIRONMENTAL SERVICES Project No. 801602
 WORK COMPLETED THROUGH SEPTEMBER 23, 2011

ITEM NO.	ITEM	UNIT PRICE	CURRENT ESTIMATE		CURRENT ESTIMATE - CITY		CURRENT ESTIMATE - MCES		COMPLETED TO DATE		COMPLETED TO DATE - CITY		COMPLETED TO DATE - MCES	
			ESTIMATED QUANTITY	ESTIMATED AMOUNT	ESTIMATED QUANTITY	ESTIMATED AMOUNT	ESTIMATED QUANTITY	ESTIMATED AMOUNT	ESTIMATED QUANTITY	ESTIMATED AMOUNT	ESTIMATED QUANTITY	ESTIMATED AMOUNT	ESTIMATED QUANTITY	ESTIMATED AMOUNT
238	2740 BITUMINOUS CURB	\$1.65												
239	2770 B618 CONCRETE CURB AND GUTTER	\$12.50												
241	MH 500 & 501 Inverts	\$1,012.00	1.00	\$1,012.00	1.00	\$1,012.00			1.00	\$1,012.00	1.00	\$1,012.00		
242	Modify Storm Structures on Ulysses & Buchannon	\$1,480.00	1.00	\$1,480.00	1.00	\$1,480.00			1.00	\$1,480.00	1.00	\$1,480.00		
243														
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275														
TOTAL AMOUNT:				\$1,067,639.98		\$504,770.44		\$562,869.55		\$3,695,702.07		\$1,593,545.65		\$2,102,156.43



City of East Bethel City Council Agenda Information

Date:

October 5, 2011

Agenda Item Number:

Item 8.0 G.1

Agenda Item:

BDM Compensation Claim

Requested Action:

Council is requested to consider a claim of SAC connection fee overpayment by BDM Construction to the City of East Bethel

Background Information:

Brian Mundle and the City of East Bethel entered into a purchase agreement on January 8, 2004 in which the City sold 75 acres of the property now know as Whispering Aspen to Mr. Mundle. As part of that agreement, a fee was established for SAC (\$6,000) and WAC (\$500) charges for connection charges for each lot that is developed. The agreement further states that the contract may be amended only by a written instrument executed by both the City and Mr. Mundle.

The City raised the SAC fees for the Whispering Aspen Development in 2006 to cover the costs associated with the acquisition of the Castle Towers Sewer Treatment Plant. The SAC fees were raised from \$6,000 as specified in the Purchase Agreement to \$10,250 per Resolution 2006-48 as adopted on September 6, 2006 by City Council.

Mr. Mundle contends that this change in fees is not valid as he did not consent to the increase. Mr. Mundle also contends that he paid seven SAC fees based on the 2006 rate adopted by Council, under protest, and this resulted in an overcharge of \$29,435 in connection fees. Staff has verified that Mr. Mundle paid the \$10,250 SAC charges per lot for the seven properties in dispute.

The City Attorney has reviewed this issue and in his opinion the SAC fees (\$6,000) as set forth in the 2004 Amended and Restated Purchase Agreement “have application until and unless the wastewater treatment plant at the Castle Towers facility is decommissioned.”

Attached is the 2004 Amended and Restated Purchase Agreement which outlines the terms of the origination of the \$6,000 SAC fee, Ordinance 2006-48 which changes the SAC fee to \$10,250, correspondence from Mr. Mundle and his attorney indicating opposition to the City Council’s passage of new SAC fee, and letters from the City Attorney advising that 2004 SAC rates are the valid basis for charges up and until the time the wastewater treatment plant is decommissioned.

Mr. Mundle is also seeking interest charges on the overpayment claim of \$10,689.90 or a total of \$40,124.90 as repayment from the City. Mayor Richard Lawrence, Council Member Bob

DeRoche and staff met with Mr. Mundle on Monday, September 12, 2011 and advised Mr. Mundle that the City did not pay interest on funds that are escrowed. Mr. Mundle's overpayment was initially put into a SAC fund but these monies were eventually used to pay off a portion of the sewer indebtedness for Whispering Aspen/Castle Towers.

Mr. Mundle has indicated that he would consider negotiating SAC and WAC credits for future development for his claim.

Attachment(s):

1. Amended and Restated Purchase Agreement
2. Ordinance 2006-48
3. Correspondence from Mr. Mundle
4. City Attorney Recommendations
5. Overcharge claim by Brian Mundle
6. Council Minutes 2004-2006

Fiscal Impact:

As noted above

Recommendation(s):

Staff is recommending that Mr. Mundle be issued a credit for \$29,435.00 for future Whispering Aspen City SAC and WAC fees based on the overpayment as listed in the attachment. This recommendation includes no credit for any interest on the compensation claim or any credit for MCES sewer availability charges that may be applicable at any time in the future.

City Council Action

Motion by: _____

Second by: _____

Vote Yes: _____

Vote No: _____

No Action Required: _____

AMENDED AND RESTATED
PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (hereinafter referred to as "Contract", "Agreement", and/or "Purchase Agreement") is entered into effective the 8th day of January, 2004, by and between the City of East Bethel (hereinafter referred to as "Seller"), whose postal address for purposes of this Contract is 2241 - 221st Avenue N.E., East Bethel, MN 55011, and Firebird Land, LLC, or its assigns (hereinafter referred to as "Purchaser"), whose postal address for the purposes of this Contract is 4091 County Rd. 5 N.E., Isanti, MN 55040.

WHEREAS, Seller is the owner of the real property legally described on Exhibit "A" attached hereto and incorporated herein; and

WHEREAS, Purchaser wishes to purchase approximately 75 acres of real property legally described on Exhibit "A" and develop the same as single-family residences (with some commercial) (hereinafter referred to as "Lot" or "Lots") and Seller wishes to sell the same to Purchaser upon the terms and conditions stated herein.

NOW, THEREFORE, the parties hereto hereby agree as follows:

ARTICLE I
Purchase and Sale

1.1 For and in consideration of the undertakings, and mutual covenants of the parties set forth herein, Seller hereby agrees to sell and convey to Purchaser and Purchaser hereby agrees to buy and pay for the following:

- (a) The real property legally described on Exhibit "A" situated in Anoka County, Minnesota, together with all and singular the rights and appurtenances pertaining to such Real Property, including any right, title and interest of Seller in and to easements, water and sanitary sewer and storm sewer rights (hereinafter referred to as the "Property").
- (b) City shall make an effort to resolve with owner of adjacent property that will involve no more than 25 feet into Exhibit "A", and new survey work shall be completed and legal description to be re-written.

1.2 The legal description on Exhibit "A" is based upon the legal description for the Property at the courthouse. The precise legal description shall be based upon deeds and title certificates of record with the County Recorder and/or Registrar of Titles.

1.3. The Seller shall install a fence at Purchaser's expense between Minard Lake Estates and Castle Towers and Highway 65. This fence shall be of the same type and size as the fence that surrounds the remaining perimeter of the Property.

1.4 The Seller will resurface, retrofit and reconstruct existing streets within Phase I of Minard Lake Estates, at the expense of the Purchaser, or its successor(s) in title, as hereinafter set forth. The scope of this work is set forth in the Pavement Evaluation Report For Minard Lake Estates by Hakanson Anderson Associates, Inc. dated January 29, 2002, Table One, which is

incorporated herein by reference. The Purchaser, and/or its successor(s) in title, will pay for this work as follows:

- (a) at the time each building permit for a new home within the Property is issued, the amount of \$2,000.00, in addition to the building permit fees, will be collected by the Seller from the owner of the Property for which the permit is issued.
- (b) Each \$2,000.00 amount collected will be deposited into an interest bearing account for the resurfacing, retrofitting and reconstruction of existing streets in Phase I of Minard Lake Estates in accordance with the Hakanson Anderson Associates, Inc. Report.
- (c) Funds for repair work pursuant to ARTICLE IV, paragraph 4.1(j) of this agreement will be added to this account.
- (d) Excess funds will be returned to Firebird Land LLC when final resurfacing is completed.
- (e) The timing of this work will be pursuant to the Schedule of Improvements in the Hakanson Anderson Associates, Inc. Report, but the Seller will have absolute discretion as to the specific date of commencement of any part of the work (so long as performance of the work does not unreasonably interfere with the Purchaser's intended use of the Property). If on the date of commencement of any part of the work, in the City Engineer's estimation there are not sufficient funds in the account established pursuant to this paragraph 1.4 to cover the cost of that part of the work, then the Purchaser will deposit additional funds in the account to cover any such deficiency. Any such deposit will be offset against the \$2,000.00 amounts to be collected at the time building permits are issued.

ARTICLE II Purchase Price

2.1 All of the Property, identified in Paragraph 1, above, Seller has this day sold to Purchaser for the sum of One Million Seven Hundred Thousand and No/100 Dollars (\$1,700,000.00) (the "Purchase Price") and upon the terms hereinafter specified:

- (a) \$125,000.00 Earnest Money shall be paid, the receipt and sufficiency of which is acknowledged by Seller, and shall serve as consideration for this Agreement. This Earnest Money shall be deposited in an interest-bearing account and Purchaser shall receive this interest.
- (b) \$1,575,000.00 By Purchaser receiving, on or before the Closing Date, a commitment acceptable to Purchaser for the proceeds of financing necessary and sufficient in Purchaser's opinion to implement Purchaser's plans for and complete the purchase of the Property. See Exhibit "B" attached hereto and made a part hereof.

ARTICLE III Covenants, Agreements and Possession

3.1 Seller hereby covenants and agrees with Purchaser as follows:

(a) Seller agrees to permit Purchaser, at Purchaser's sole cost and expense, at any time prior to the Closing Date, through its employees and representatives, to conduct such investigations and examinations of the Real Property as it deems necessary or advisable. Such investigation may include, but is not limited to, surveying, soil testing, hazardous waste testing, and other various studies.

3.2 Possession of the Property shall be delivered to Purchaser on the Date of Closing provided, however:

(a) Purchaser and Purchaser's employees, agents and representatives shall have the right to enter on the Real Property before the Date of Closing for the purpose of making soil tests, environmental tests, percolation tests, examining and surveying the Real Property, and preparing preliminary architectural, engineering and other plans and studies.

(b) Purchaser shall be allowed to commence construction of model homes before the Date of Closing, if all conditions have been met and waived. Purchaser shall be allowed to construct model homes after contract for deed is signed on lots needed for construction of the model homes. Purchaser shall post a notice that provides that the Seller is not responsible for construction costs and to look to Purchaser for payment of all improvements. Purchaser shall provide line of credit information in the amount of 150% of actual construction costs of each unit built prior to construction.

3.3 In the event Purchaser enters into possession prior to Closing for the purposes specified above, Purchaser agrees to indemnify and hold Seller harmless from all costs, damages and expenses (including reasonable attorney's fees) arising out of entry on the Property by Purchaser, its employees, agents and contractors, including, but not limited to liabilities, costs, damages and expenses arising out of personal injury, death or property damage, the filing of any lien against the Property, or the release or threatened release of any pollutants, contaminant or hazardous waste in connection with Purchaser's entry.

3.4 Seller hereby covenants and agrees that Seller will cooperate with Purchaser in the preparation, execution, and prosecution of applications for necessary development agreements, conditional use permits, variances, plats, building permits, environmental permits, wetland permits, and all other necessary permits for the development of the Real Property as Purchaser may determine to be necessary or as required of Purchaser by applicable governmental units to enable Purchaser to put the Real Property to the intended use. All expenses in order to develop the Real Property shall be paid for by the Purchaser.

ARTICLE IV

Representations and Warranties of Seller and Purchaser

4.1 Seller represents and warrants to Purchaser as follows:

- (a) This Agreement is valid and binding upon Seller in accordance with its terms.
- (b) Seller has the authority and power to enter into this Agreement and to consummate the transaction contemplated hereby, and neither the execution or delivery of this Agreement by Seller nor its performance by Seller will conflict with or result in a violation or breach of any law, regulation, order, writ, or injunction of any court or governmental agency, applicable to Seller or to the Real Property nor of any term, condition, or any indenture, or other contract or agreement to which Seller is a party nor cause a default thereunder nor result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever on the Real Property pursuant to the terms of any such agreement.
- (c) That Seller will convey good and marketable fee simple title to the Real Property, free and clear of any and all liens, mortgages, pledges, security interests, leases, charges, encumbrances, easements, joint ownerships, or restrictions of any kind.
- (d) To the best of Seller's actual knowledge, with no duty to investigate, the Real Property does not currently violate any federal, state, local or other governmental building, zoning, health, safety, platting, land use, environmental, subdivision or other law, ordinance or regulation, or any applicable private restrictions in a manner which would prevent development of the Real Property for single family residences. No written or oral notice of the violation of any of said laws, ordinances, regulations or restrictions has been received by Seller.
- (e) No portion of the Real Property is subject to any leasehold interest nor are there any existing contracts or agreements affecting the Real Property.
- (f) To the best of Seller's knowledge, with no duty to investigate, there is no significant deposit of hazardous substance, as defined in Minn. Stat. Section 115B.02, Subd. 8, located anywhere in or on the Real Property, nor contamination of ground water under the Real Property, including any facility, as defined in Minn. Stat. Section 115B.02, Subd. 5, that is located in or on the Real Property or in conjunction with any improvements to the Real Property.
- (g) There are no private restrictions which effect the use of the Real Property, including, but not limited to: size or cost of buildings or structures; limitations on use or restriction in regard to fences, roofs, garages, and heights of buildings or structures; agreements to submit architectural plans to an association or other group; provisions requiring improvements; or provisions requiring the joining of others in group actions.
- (h) To the best of Seller's actual knowledge, with no duty to investigate, there are no private wells or individual sewage treatment systems located on or about the Real Property, except as noted on the attached Well and Septic Disclosures.
- (i) The Seller shall hold Purchaser harmless from all costs relating to the original development of the Real Property for any and all pollution or environmental issues, including, but not limited to, storm water runoff from the pond on the Property (any additional ponding or piping for storm water runoff will be paid for by Seller). Any ponding or retrofitting of storm water system in entire Property

shall be Sellers cost. Any new piping of storm water system in any new phase of development within the Property shall be the Purchasers cost.

- (j) Since the Property is subject to a bond obligation of the City of East Bethel (Seller), which cannot be paid off in full, but must be paid annually, the Seller will deposit the entire Purchase Price of \$1,700,000.00 into an interest-bearing account designed to pay down this bond. The interest from this escrow account shall be used to effect repairs to the streets, curbs, sewer and/or water within the Property. The escrow will be released to the Seller when the bonds have been paid in full and the Property released from same.
- (k) The Seller agrees not to require a letter of credit or bond from the Purchaser for platting and installation of any improvements to the Property. No park dedication fee shall be required of Purchaser in the platting process, since parks are already included in the project.
- (l) The Seller will provide to Purchaser, as-built drawings showing the location of water and sewer stub connections.
- (m) The second phase of this development will maintain street widths and other similar design concepts to current existing streets in first phase. This clause will survive closing.

4.2 Purchaser represents and warrants to Seller:

- (a) That Purchaser has the authority and power to enter into this Agreement and to consummate the transaction contemplated hereby, and neither the execution or delivery of this Agreement by Purchaser nor its performance by Purchaser will conflict with or result in a violation or breach of any law, regulation, order, writ, or injunction, of any court or governmental agency, applicable to Purchaser or to the Real Property nor of any term, condition or any indenture, mortgage, leases or other contract or agreement to which Purchaser is a party nor cause a default thereunder nor result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever on the Real Property pursuant to the terms of any such agreement.
- (b) Purchaser shall, prior to entering into possession of the Real Property, procure and maintain at its expense, but for the mutual benefit of Seller and Purchaser general public liability insurance and hazard insurance. These insurance policies shall cover claims for personal injuries, wrongful death and property damage occurring in or on the premises sold hereby to Purchaser. Such insurance is to afford protection to a limit of not less than \$500,000.00 with respect to injuries or death to a single person; to a limit of not less than \$1,000,000.00 with respect to any one accident; and to a limit of not less than \$300,000.00 with respect to property damage.
- (c) That Purchaser will defend and indemnify Seller from and against any and all claims, demands, causes of action, liability, injuries, damages, judgments, decrees, fines, penalties, expenses, costs and fees and attorneys' fees of

whatsoever nature arising out of or in any way connected with any act or omission of Purchaser, its agents or employees, under this Agreement with respect to the Property.

- (d) After this Purchase Agreement is consummated, Purchaser agrees to install street lighting for the Property. The cost of the operation and maintenance of street lighting shall be charged to the property owners of the plat and applied to the utility bills sent out for sewer and water charges.
- (e) Seller will retain ownership of streets, curbs, sidewalks, potable water system to curb stop, sanitary sewer system to water curb stop, storm sewer, and Outlots A, B, C, D, as designated on Preliminary Plat of Whispering Aspen dated October 13, 2003, (Exhibit C). City of East Bethel shall have incidental use of the Community Center and the exclusive use of one of the offices, but other use of the Community Center will be primarily for the residents of Whispering Aspen Plat. The Purchaser shall have use of office space in the Community Center until the Whispering Aspen plat is completed.

ARTICLE V Title Examination

5.1 Within a reasonable time after acceptance of this Agreement, Seller shall provide to Purchaser an Abstract of Title to the Property certified to date, including proper searches covering bankruptcies, state and federal judgments and liens, and levied and pending special assessments. Purchaser shall be allowed twenty (20) days after receipt of said Abstract of Title for examination of title and the making of any objections thereto, such objections (exclusive of any of the Permitted Title Exceptions) to be made in writing or deemed to be waived. If any objections are so made, the Seller shall be allowed one hundred twenty (120) days to make such title marketable. If title is not marketable and is not made so within said time period, this Agreement shall become null and void, at the option of Purchaser, and neither party hereto shall be liable for damages hereunder to the other party. All Earnest Money previously paid by Purchaser shall be immediately refunded. If the title to the Real Property is found marketable or is made so within said time, and said Purchaser shall default in any of the agreements and continue in default for a period of thirty (30) days, then in that case the Seller may terminate this Agreement, and on such termination the Earnest Money previously paid upon this Agreement shall be retained by the Seller as liquidated damages. Nothing contained herein shall be deemed to limit either party's ability to seek specific performance of this Agreement.

ARTICLE VI Closing

6.1 The consummation of the purchase and sale contemplated hereby (herein referred to as the "Closing") shall be held on January 23, 2004, or ten (10) days after final plat approval, whichever is later. The date and hour of Closing are herein referred to as the "Date of Closing".

6.2 At the Closing, the following shall occur:

- (a) Purchaser shall deliver and/or execute the following:

- (i) The cash portion of the Purchase Price.
 - (b) Seller shall deliver to Purchaser a Warranty Deed for the Real Property fully executed and acknowledged. The Warranty Deed conveying the Real Property shall be subject to the following "Permitted Title Exceptions":
 - (i) Restrictions of use:
 - (1) Building and zoning laws, ordinances, state and federal regulations;
 - (2) Restrictions relating to use or improvements consistent with Purchaser's intended use;
 - (3) Reservation of any minerals or mineral rights to the State of Minnesota; and
 - (4) Utility, road and drainage easements which do not adversely affect the development of the Real Property.
 - (ii) Any liens, encumbrances, easements, or rights, including but not limited to, mechanic's lien rights, created, or permitted to be created by Purchaser;
 - (iii) Exceptions to title which are not found objectionable after title examination;
 - (iv) Exceptions to title which constitute encumbrances, restrictions or easements which will be removed at or prior to Closing.
 - (c) Seller shall deliver an Affidavit certifying that as of the date of Closing there are no outstanding unsatisfied judgments, tax liens or bankruptcies against or involving Seller, that there has been no skill, labor or material furnished to the Real Property by Seller for which mechanic's liens could be filed, that there are no other unrecorded interests in the Real Property of any kind, and that Seller, under the penalty of perjury, is not for federal income tax purposes, a non-resident alien, or a foreign corporation, partnership, trust or estate.
 - (d) Seller shall deliver to the Purchaser the abstract(s) of title to the Real Property purchased pursuant to the terms of this Purchase Agreement.
- 6.3 At Closing, costs associated with this Agreement shall be prorated as follows:
- (a) Seller shall pay all costs incurred in connection with abstracting. Purchaser will pay all premiums required for the issuance of any Owner's or Mortgagee's Title Insurance Commitment and Policy required by Purchaser.
 - (b) Seller shall pay all state deed tax required for the Warranty Deed to be delivered by Seller under this Agreement.
 - (c) Seller will pay the cost of recording all documents necessary to place of record title to the Real Property in the condition warranted and represented by Seller in this Agreement.

- (d) Purchaser shall pay the mortgage registration tax and the recording fees for the Warranty Deed and Mortgage.

ARTICLE VII
Taxes and Assessments

7.1 Real estate taxes due and payable in the year 2002, if any, shall be pro-rated between Seller and Purchaser as of the date of Closing based upon number of days elapsed in a calendar year commenced January 1, 2002. Special assessments certified to be paid along with the 2002 real estate taxes shall be paid by Seller.

7.2 All real estate taxes due and payable in the year following the year of Closing and thereafter shall be paid by Purchaser.

7.3 Except as provided herein, Seller shall pay all deferred real estate taxes against the Real Property up to the time of Closing. ~~Any special assessments related to Purchaser's development of the Real Property shall be paid by Purchaser.~~ Seller shall pay all levied special assessments. Seller shall pay all pending special assessments and deferred as of the date of this Agreement.

7.4 If the Real Property has been or is now valued and assessed in accordance with "Minnesota Agricultural Property Tax Law" (Green Acres), Seller agrees to pay the additional taxes when extended as specified in Minn. Stat. Section 273.111, Subd. 9, as amended. The Green Acres tax restoration for the year of Closing shall be prorated between Seller and Purchaser as of the Date of Closing.

ARTICLE VIII
Conditions

8.1 The obligation of Purchaser to consummate the transaction contemplated hereby is subject to the following conditions:

- (a) The representations and warranties made by Seller herein shall be true and correct as of the date of the execution of this Contract and as of the Closing Date with the same force and effect as though such representations and warranties had been made as of the Closing Date, and Seller shall have performed all covenants and obligations and complied with all conditions required by this Contract to be performed or complied with by Seller prior to the Closing Date.
- (b) Purchaser determining in its reasonable discretion that every governmental approval necessary for development of the Real Property for a single family residential use and commercial use according to Purchaser's proposed development plan will be obtained in a timely manner and in no event later than the Date of Closing.
- (c) Purchaser determining in its reasonable discretion that all the well water on the Property is potable per Minnesota State Statutes.

- * (d) Seller shall obtain title to wastewater treatment facility and operate this wastewater treatment facility charging a reasonable fee for operation charges for water and sewer. The Seller shall charge a water connection charge of \$500.00 per Single Family Residential lot and a sewer connection charge of \$6,000.00 per Single Family Residential lot at the time the building permit for each Single Family Residential lot is issued. Seller agrees to continue to work on wastewater treatment plant Agreement with Buyer until all issues are resolved. For all commercial lots the charge for the water and sewer will be based on the facility types on each lot. The Seller shall charge 1 (one) water and sewer connection charge of \$6500.00 per 1(one) "Service Availability Charge" (SAC). The total number of SACs for each commercial facility will be calculated based on the "Service Availability Charge Procedures Manual" dated January 2000 by the Metropolitan Council Environmental Services. Each commercial will be charged a minimum of 1 (one) SAC.
- (e) The water and sanitary sewer service to the Property shall be public service.
- (f) The City of East Bethel agreeing to rezone the Property for single-family residential and to leave as commercial zoning for the southeast section of the Property of approximately 15 to 16 acres.
- (g) Purchaser obtaining necessary financing for the purchase of the Property as described on Exhibit B attached hereto.
- (h) The Property must be realigned or replatted to allow up to 157 single family residential lots of a 10,000 sq. ft. minimum lot size; street frontage of 75 feet and up, except for cul-de-sac lots, corner lots and flag lots; set back requirements of front-28 feet, side-10 feet, rear-20 feet; the houses to be build will be wood construction with minimum foot prints of 1,100 sq. ft. for splits and ramblers and 960 sq. ft. for two stories and with three-stall garages.
- (i) The Seller will allow realignment of lot lines, and vacating streets as shown on Purchaser's Concept Plan dated October 13, 2003, without any fees for parks or other costs relating to the replatting process over the entire Property.
- (j) Johnson Street entrance to remain for commercial plat.

ARTICLE IX
Commissions

- 9.1 Seller hereby warrants to Purchaser and Purchaser hereby warrants to Seller that:
- (a) No broker's commissions, finder's fees or like charges (hereinafter collectively called a "Commission") have been incurred in connection with this transaction by the party so warranting herein;
 - (b) The foregoing warranties shall survive the Closing specified, and shall inure to the benefit of the successors and assigns of Purchaser and Seller; and

- (c) Purchaser and Seller further agree to give testimony in accordance with these warranties in case any action or proceeding shall be instituted by any purported broker, licensed or otherwise, or any other person claiming a commission in connection with this transaction.

9.2 Seller and Purchaser hereby agree to indemnify and to hold each other harmless from any alleged claim for any commission that may be claimed by any third party through either of them against the other party.

ARTICLE X Termination and Remedies

10.1 Purchaser's Remedies. If Seller defaults in performing any of Seller's Closing obligations under the terms of this Contract on the Closing Date for any reason, other than Purchaser's default, Purchaser shall be entitled to terminate this Contract or to enforce specific performance of this Contract as its exclusive remedies.

10.2 Seller's Remedies. If Purchaser defaults in performing any of Purchaser's Closing obligations under the terms of this Contract on the Closing Date for any reason other than the Seller's default, Seller shall be entitled to terminate this Contract and retain the Earnest Money or to enforce specific performance of this Contract as its exclusive remedies.

ARTICLE XI Condemnation

11.1 Condemnation. If all or any portion of the Real Property is condemned prior to Closing, Seller or Purchaser may elect to do any of the following:

- (a) If the condemnation is of the fee title to a portion of the Real Property or includes a portion or interest in the Real Property, at Closing, Seller or Purchaser shall receive the condemnation award as may be paid or payable;
- (b) Cancel this Agreement and Purchaser shall receive a refund of the Earnest Money paid by Purchaser to Seller.

Seller's or Purchaser's election under this Paragraph shall be exercised by written notice to the other party given within ten (10) days after receipt of written notice from Seller of such taking or of the amount of condemnation award payable with respect to such taken, whichever notice is given later.

ARTICLE XII Miscellaneous

12.1 This Contract embodies the entire agreement between the parties and cannot be waived except by the written agreement of the parties.

12.2 The representations, warranties and covenants of Seller and Purchaser herein contained shall survive the Closing and shall not be merged into the Closing.

12.3 Any notice required or permitted hereunder shall be deposited in the United States Mail, postage prepaid, registered or certified mail, return receipt requested, addressed to Seller or Purchaser, as the case may be, at the address set forth in the first paragraph of this Contract.

12.4 The captions used in connection with the Articles of this Contract are for convenience only and shall not be deemed to construe or to limit the meaning of the language of this Contract.

* 12.5 This Contract may be amended only by a written instrument executed by Seller and Purchaser.

12.6 This Contract embodies the entire agreement between the parties with relation to the transactions contemplated hereby, and there have been and are no covenants, agreements, representations, warranties or restrictions between the parties with regard thereto other than those set forth herein or herein provided for.

12.7 This Contract may be executed in any number of counterparts, each of which shall be an original, but such counterparts together shall constitute one and the same instrument.

12.8 This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

IN WITNESS WHEREOF, this Contract has been signed and sealed on the day and year first above written.

SELLER:

PURCHASER:

CITY OF EAST BETHEL

FIREBIRD LAND, LLC

By [Signature]
Its Mayor 1/8/04

By [Signature]
Its President 1-8-04

By [Signature]
Its City Clerk

By _____
Its _____

**AN AMENDMENT TO THE AMENDED
AND RESTATED PURCHASE AGREEMENT**

The Amended and Restated Purchase Agreement between the City of East Bethel ("Seller") and Firebird Land, LLC ("Purchaser") effective date of 8th day of January, 2004 is further amended by the addition of the following paragraph to ARTICLE IV, 4.1 (c):

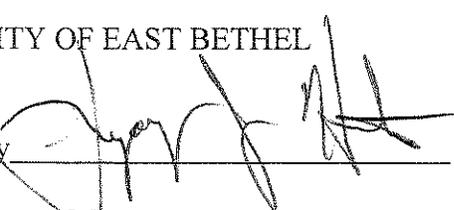
4.1 (c)

- (1) The parties acknowledge that several homes belonging to tenants of the adjacent Castle Towers Mobile Home Park encroach onto the Property along the common boundary line between the mobile home park and the Property. Seller, at its expense, the expense of the owner of the mobile home park, or Seller's and such owner's shared expense, will have the boundary line resurveyed and reconfigured in those areas where such encroachments exist so as to provide at least 25 feet of set back easterly and/or northerly, as the case may be, of the boundary line for each existing home in the mobile home park. In addition, Seller will arrange for the fence located along the boundary line to be relocated along the reconfigured line, also at Seller's expense, the expense of the owner of the mobile home park, or Seller's and such owner's shared expense. Seller will attempt to negotiate a land exchange with the owner of the mobile home park to offset the reduced area of the Property as a result of reconfiguration of the common boundary line. If a land exchange cannot be negotiated, the Purchase price for the Property will be reduced by \$10,000.00 multiplied by the number of acres or fraction of an acre by which the area of the Property is reduced as a result of reconfiguration of the boundary line.

This Amendment is effective the 8th day of January, 2004.

SELLER:

CITY OF EAST BETHEL

By 

Its Mayor

By 

Its City Clerk

PURCHASER:

FIREBIRD LAND, LLC

By 

Its President Firebird Land LLC

By _____

Its _____

**CITY OF EAST BETHEL
EAST BETHEL, MINNESOTA**

RESOLUTION NO. 2006-48

RESOLUTION ESTABLISHING SEWER AVAILABILITY CHARGES (SAC)

WHEREAS, Minnesota Statutes section 444.075 provides the basis for setting certain fees and charges relating to municipal utility services; and

WHEREAS, the City has determined that a Sewer Availability Charge (hereinafter SAC fee) is an appropriate charge for residents that connect to municipal utility services; and

WHEREAS, Pursuant to Ordinance 200, as amended, Resolution 2005-59 set SAC fees at \$10,205 for all units connected as of January 31, 2004, for service provided by the Waste Water Treatment Facility acquired by the City in January, 2004 (hereinafter the Facility); and

WHEREAS, SAC fees set pursuant to Resolution 2005-59 will not be increased to pay for future maintenance or replacement of the Facility for those units connected as of January, 2004; and

WHEREAS, the charge for initial connections to the Facility for properties located within the Whispering Aspen plat, filed with the Anoka County Recorder as document number 771791, is \$6,000 per connection; provided, however, that such connections, and any future connections, must provide sufficient funds to pay for the maintenance, betterment and replacement of the Facility and that increased SAC; and

WHEREAS, the City has determined that SAC fees may be increased for units connected after January 31, 2004 to pay increased costs for maintenance, betterment and replacement of the Facility; and

WHEREAS, the City has determined that expenses relating to maintenance, betterment and replacement of the waste water treatment facility will meet or exceed funds raised from the imposition of a \$4,205 charge, in addition to the \$6,000 initial connection charge, per unit not initially connected to the Facility as of January, 2004; and

WHEREAS, the City will continue to study costs for plant maintenance, betterment and replacement.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF EAST BETHEL, MINNESOTA THAT: the SAC fee for each new connection to the City's municipal waste water treatment facility is hereby set at \$10,205.

Adopted this 6th day of September, 2006 by the City Council of the City of East Bethel.

CITY OF EAST BETHEL

Greg Hunter, Mayor

ATTEST:

Douglas Sell, City Administrator



Doug Sell
Administrator
City of East Bethel

March 30, 2007

This letter is to inform you that I do not agree with the City of East Bethels decision to raise the SAC fee in the contract that is in effect between the city and myself. I will be paying the new SAC fee each time I pick up a permit. I would ask that the city put the excess funds over the contracted SAC fee in a separate fund. I will set up a meeting with the city in the future to discuss this issue.

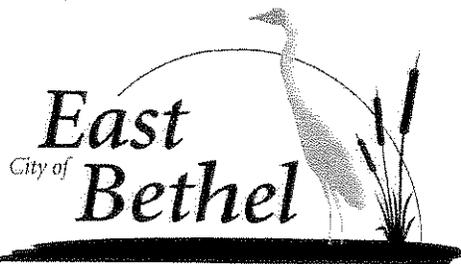


I have received this letter
Doug Sell

Thank You



Brian Mundle
BDM Construction, Inc



August 29, 2008

Mr. Brian Mundle
BDM Construction
4091 County Road 5 NE
Isanti, MN 55040

RE: SAC Fees

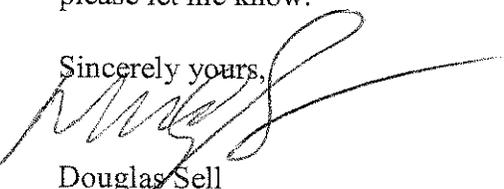
Dear Mr. Mundle;

At the work session on Thursday evening, staff asked Council how they would like to respond to your request for a meeting to discuss the SAC fee issue you have raised. Council asked if you would be agreeable to the following regarding a meeting with the City:

1. Would a meeting with two Council Members rather than the entire Council be acceptable? If the meeting was with the entire Council it would be a public meeting. Gathering the entire Council for a special meeting of this nature is extremely difficult and not practical. However, it may be more useful to meet and work with two Council Members who would or could make a recommendation to the full Council on the matter.
2. One point the Council would insist on is that the matter be revenue neutral. That is, any reduction or consideration of a reduction to the fees would have to be generated with increased fees in those areas that have yet to be platted, re-zoned or otherwise developed. The total fees generated would have to be sufficient to retire the bonds issued to acquire the plant that services the Whispering Aspen development or other development that may connect to this facility.
3. Your proposal must be written and provided at least one week in advance of any meeting.
4. Should the City Council or a committee of the Council determine that the City Attorney is to be involved; the City Attorney will be present.

If these conditions for a meeting are acceptable, please let me know and we will ensure a two member committee of the Council will be available to meet with you. If you have any questions, please let me know.

Sincerely yours,


Douglas Sell
City Administrator

OCT. 1. 2008 4:49PM

BARNA, GUZY, & STEFFEN

NO. 2156 P. 2

RICHARD A. MERRILL
DARRELL A. JENSEN
JEFFREY S. JOHNSON
RUSSELL H. CROWDER
JON P. ERICKSON
THOMAS P. MALONE
MICHAEL F. HURLEY
DOUGLAS G. SAUTER
HERMAN L. TALLE
CHARLES M. SEYKORA
DANIEL D. GANTYER, JR.
BEVERLY K. DODGE
JAMES D. HOEFT
JOAN M. QUADE
JOHN T. BUCHMAN
SCOTT M. LEPAK
STEVEN G. THORSON

BGS

Barna, Guzy & Steffen, Ltd.

ATTORNEYS AT LAW
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ELIZABETH A. SCHADING
WILLIAM F. HUEFNER
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DOUGLAS J. DEHN
KRISTI R. RILEY
WILLIAM D. SIEGEL
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KIP R. PETERSON
THOMAS J. KETTLESON
KRISTIN N. STOWELL
TAMMY J. SCHEMMELE
SUSAN E. TECT

Writer's Direct Line: (763) 783-5136
Internet E-Mail Address: djensen@bgs.com

October 1, 2008

City of East Bethel
Attention: Douglas Sell, City Administrator
2241 221st Avenue NE
East Bethel, MN 55011

RE: SAC fees/Whispering Aspen
Our File No. 51178-006

Dear Mr. Sell:

We represent Brian Mundle with respect to the SAC fee issue in Whispering Aspen subdivision.

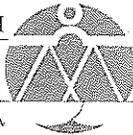
I have reviewed correspondence connected with that issue, including your email to Mr. Mundle dated September 17, 2008 and the purchase agreement between the City and Mr. Mundle.

It is my understanding that you take the position that the SAC fees should be \$11,687.00 per connection. As I read the purchase agreement, however, the sewer and water connection charge is to be \$6,500.00 per single family residential lot. Mr. Mundle indicated to you in his letter of March 30, 2007, that he did not agree with the decision to raise the SAC fees to \$10,205.00 in 2006, but did pay that amount for seven (7) lots under protest, so he could get permits, and indicated that he expected there to be a credit in the future for the excess payment. While the City generally may have the authority to change the cost of the improvements to the benefited parcels, the City may also limit that authority by contract. We believe the City has done that in this case. If you have a legal rationale for ignoring the purchase agreement, we would like to hear it.

Please contact me at your earliest convenience.

Yours truly,
BARNA, GUZY & STEFFEN, LTD.

Darrell A. Jensen
DAJ/mmk



Writer's Direct Dial:
(651) 351-2118

Writer's E-mail:
mvierling@eckberglammers.com

Stillwater Office:
1809 Northwestern Avenue
Stillwater, Minnesota 55082
(651) 439-2878
Fax (651) 439-2923

August 29, 2011

Hudson Office:
430 Second Street
Hudson, Wisconsin 54016
(715) 386-3733
Fax (715) 386-6456

Jack Davis
City of East Bethel
2241 - 221st Avenue NE
East Bethel, MN 55011

www.eckberglammers.com

Re: *Brian Mundle – BDM Construction*
Our File No.: 23746-21687

Dear Jack:

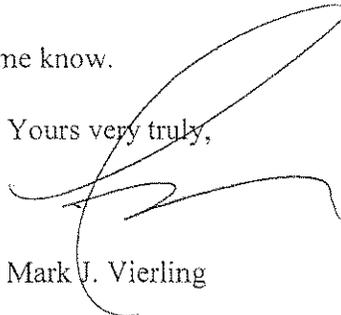
Relative to the City's agreement, contained within the Amended and Restated Purchase Agreement of January 2004, there is a provision which provides as follows:

"Seller (City) shall obtain title to wastewater treatment facility and operate this wastewater treatment facility charging a reasonable fee for operation charges for water and sewer. The Seller shall charge a water connection charge of \$500 per Single Family Residential lot, and a sewer connection charge of \$6,000 per Single Family Residential lot at the time the building permit for each Single Family Residential lot is issued. Seller agrees to continue to work on wastewater treatment plant Agreement with Buyer until all issues are resolved. For all commercial lots the charge for the water and sewer will be based on the facility types on each lot. The Seller shall charge 1 (one) water and sewer connection charge of \$6500.00 per 1 (one) "Service Availability Charge" (SAC). The total number of SACs for each commercial facility will be calculated based on the "Service Availability Charge Procedures Manual" dated January 2000 by the Metropolitan Council Environmental Services. Each commercial will be charged a minimum of 1 (one) SAC."

It is my opinion that this provision would have application until and unless the wastewater treatment plant at the Castle Towers facility is decommissioned.

If you have any further questions, please let me know.

Yours very truly,


Mark J. Vierling

MJV/ndf

Writer's Direct Dial:
(651) 351-2118

Writer's E-mail:
mvierling@eckbergammers.com

Stillwater Office:
1809 Northwestern Avenue
Stillwater, Minnesota 55082
(651) 439-2878
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August 25, 2011

Hudson Office:
430 Second Street
Hudson, Wisconsin 54016
(715) 386-3733
Fax (715) 386-6456

Jack Davis
City Administrator
2241 - 221st Avenue NE
East Bethel, MN 55011

www.eckbergammers.com

Re: *Castle Tower*
Our File No.: 23746-21687

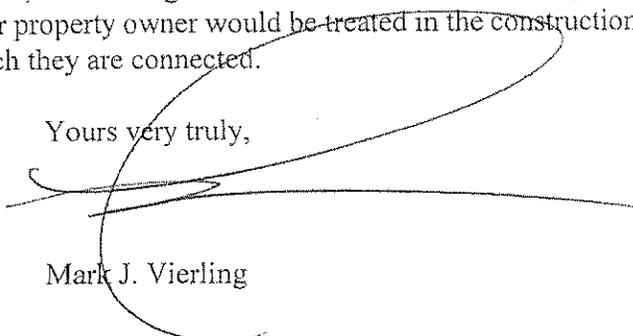
Dear Jack:

You have asked our opinion on the ability of the City to institute new charges and/or assessments to affected properties and users relative to the decommissioning of the existing sewage treatment facility. The City Engineer has opined that the Castle Towers sewage treatment plant has reached the end of its useful life, and must either be completely rebuilt or alternate disposal options need to be pursued.

Relative to the infrastructure costs that will be incurred, you have asked if those costs can be recovered by assessment to benefitted lands and properties, and/or new or adjusted user charges to those same lands, users and properties can be implemented to assist in the recapture of those new infrastructure costs.

We have reviewed the City's files relative to the transactions and litigation that was involved in the City's acquisition of this facility, and we are of the opinion that the lands and users that are served by this facility are subject to any reasonable and lawful mechanisms to facilitate the payment of the City's costs to replace the infrastructure in any one of the two options the City Engineer outlined, i.e. rebuild the plant or decommission and extend trunk lines to the Met Council system now being constructed to serve other areas within the City. In essence, the existing users of the Castle Tower Sewage Treatment Plant will be treated as any city resident or property owner would be treated in the construction of new facilities benefitting their lands or to which they are connected.

Yours very truly,


Mark J. Vierling

MJV/ndf



4091 County Road 5 NE
Isanti, Minnesota 55040
License #20630734

Aug 1st, 2011

To:
Jack Davis
City of East Bethel
2241 221st Ave NE
East Bethel, Mn. 55011

RE: Sac and Wac Fees

Jack,

After checking what I have actually paid to the city for the Sac fees the total is \$29,435.00. The address for each \$4205.00 overcharge fee is:

Added interest at 10.75% first year and 6.75% the following years to Sept 15, 2011. First year is \$2047.95, 2nd year is \$2125.10, 3rd year is \$2268.54, 4th year is \$2421.67, To Sept 15, 2011 \$1826.64. Total now is \$40,124.90.

24347 Polk Street on 4-9-07

24333 Pierce Path on 5-3-07

1080 Fillmore Circle on 4-9-07

24120 Pierce Street on 4-9-07

24282 Fillmore Circle 5-9-07

1094 244th Ave NE on 6-14-07

24159 Pierce Street on 7-2-07

I have not paid any Wac fee overcharge at this time.

Brian Mundle
President BDM Construction, Inc.
Cell 612-751-0170
Office 763-444-0296

Approve
Payment of
Castle
Towers
WWTP
Quick Take

Randall said he is asking for approval for execution and payment of Castle Towers WWTP Quick Take Check in the amount of \$179,500 to Bethel Properties. Hunter **made the motion to approve execution and payment of the check in the amount of \$179,500 made out to Bethel Properties for the Castle Towers WWTP Quick Take.** Landborg seconded; all in favor, motion carries.

Purchase
Agreement
for Minard
Lake
Property

Randall said Jochum is advising that council doesn't commit to 157 lots at this time. He said if council wants, he can go through the changes that were made. Randall asked Mundel if he has any comments about the changes or the number of lots. Mundel said everything looks good to me on the new purchase agreement. Mundel said there is a mistake on the SAC and WAC charge, it should be \$6500. He said he would like to get 157 lots, but he thinks we should just state that it could be up to 157 lots. Mundel said Jochum came up with different calculations that he did, and he thinks it is because he didn't include pond 2. He said as far as dead water storage, the main ponds 1 & 2 will hold the water. Winegar asked what happens if it turns out that the calculation is wrong and we can't get 157 lots. Mundel said that is why he said he would be okay with changing this to up to 157 lots.

Anderson asked if the city would be responsible for any extra ponding. Mundel said yes, his understanding is the city will be responsible for any extra ponding that is required. He explained that his additional pond is for live water, not dead water. He said he needs to get back to Jochum to make sure he was not including pond 2. Winegar said she is afraid of this whole thing because we don't know what we are going to pay for the WWTP. Hunter said he thinks Jochum and LeTourneau have done a good job on coming up with the SAC and WAC charges to cover the costs of the WWTP. He said there are no guarantees ever. Winegar said she has a lot of faith in Mundel and Jochum and LeTourneau, but here we are thinking we are getting rid of a problem, but we could potentially be taking on a bigger problem. She said it is a big expense. Landborg said he also is nervous, not knowing where Peterson is going to come in.

Randall said we will have to pay Peterson the money; he has some concerns about us not treating his wastewater and charging reasonable prices. Winegar asked Mundel if he is sure his engineer is correct, and the city will not need to do another pond or purchase land for the pond. Mundel said he has the land if we need to do another pond, and if he wants to, he can maintain the 157 residential lots and cut out a section of the commercial lots. Winegar asked if additional ponding is needed, will the city have to pay for it and shouldn't that be part of the budget. Mundel said that is correct. Winegar said we really need a budget for this, and she has said that over and over and it never gets done. She doesn't understand where council thinks this money is going to come.

Anderson said Winegar is right though, we shouldn't be putting the cart before the horse; if we use a full time person, it will eat up \$36,000 and another 33% for benefits of the estimated cost for 2004 of \$64,600. LeTourneau said the biggest portion of the cost is labor. LeTourneau said he is so confident with his numbers he will stake his reputation on them.

Landborg said he doesn't want to agree to the purchase agreement until we find out about the ponding. Winegar said Jochum's recommendation is to not commit to 157 lots. Hunter asked if the other council members would approve the purchase agreement if these issues that the engineer addressed were worked out. Landborg said he wants to know the cost of the ponding. He wants to put a maximum amount to be paid for the ponding and he will be fine with this. Mundel said what happens when he gives the city back the water system and

building and throws in \$500 per WAC to upgrade the system. He said all he asked from the city for all of this was to use the building for the residents and an office space. Mundel said he doesn't think we should be changing anything on the ponding. He said Jochum put figures in for what the dead storage is for the main pond, but did not address the other pond at all. Mundel doesn't believe there is an issue with the ponding.

LeTourneau said if the city were placed on the line to build a pond, the Wargo Pond development has a place we could use. He said that is a natural wetland that can take more water. He said he doesn't feel that the city is being put into a bind or under any pressure because of the ponding issues. LeTourneau said Mundel has to plat the outlots. He said the whole southwest area has been graded to drain there. He explained that the only problem might be southeast area, and we could drain this to the pond in Wargo Pond, but he strongly believes this is not going to happen. Mundel said we had already decided that northern pond was going to be our main pond.

Winegar said she has a concern with the interest going back to Mundel. Hunter said the interest is ours to use as a city for the roads, and if we don't use it in repairing the streets, we give it back. He said he didn't think that if we gave LeTourneau money to use for the roads, he would have a hard time finding a way to spend it.

Approve
Amended
Purchase
Agreement

Winegar made the motion to approve amended purchase agreement between the City of East Bethel and Firebird Land, LLC for the Minard Lakes property with changes as follows: 1) Change 8.1 H to read up to 157 lots; 2) Change SAC & WAC charges to \$6,500. Paavola seconded; all in favor, motion carries. Hunter and Mundel will meet at city hall tomorrow at 2:30 p.m. to sign the purchase agreement. Mundel asked if he was also getting final plat approval tonight. Anderson and Randall said if everything is ready and approved by the city engineer, we can have final plat approval on the next city council agenda. Randall said we will need to do something with the title. Randall asked Mundel to fax him the information he needs for final plat.

Yearly
Appoint-
ments

Mayor Hunter proceeded with yearly appointments as follows: - a) Acting Mayor – Sandy Winegar; b) Depository – Peoples State Bank, 21st Century, Community Pride & 4M Fund; c) Newspaper – Anoka Union; d) Attorney - Randall e) Engineer – Hakanson, pending satisfactory rate schedule be submitted f) Civil Defense Director – Director of Public Works and Fire Chief; g) Committee Liaisons: P & Z Commission – Tim Landborg; Board of Appeals – Kathy Paavola; Parks Committee – Bill Boyer; Roads Committee – Greg Hunter; Police Liaison – Kathy Paavola; WMO Liaison – Sandy Winegar; Employee Liaison – Greg Hunter; Fire Liaison – Sandy Winegar; Sand Hill Crane Natural Resource Center – Bill Boyer; Sewer District Task Force – Greg Hunter and Tim Landborg. Hunter made the motion to approve yearly appointments. Paavola seconded. Winegar said she doesn't think Boyer should stay on parks. She said he has been on that committee for 2 years and she thinks that is long enough. Winegar, nay; Hunter, Paavola, and Landborg, aye; motion carries.

Approve
Consent
Agenda

Anderson said she has LMCIT workers comp premium on the consent agenda. She said in the past, we have used managed care for workers comp claims and we have received a break in our premiums because of that. Anderson explained that LeTourneau had some concerns about using managed care; he said some of the employees may not be getting enough treatment for their injuries. She checked with the League and they said the industry has changed overall and part of the savings comes from eliminating unnecessary or optional treatment. They said they have found that those that are on managed care have a better experience rating.



City of East Bethel City Council Agenda Information

Date:

September 21, 2005

Agenda Item Number:

Item 8.0 F.1

Agenda Item:

Sewer Availability Charges (SAC)

Requested Action:

Consider adopting Resolution 2005-59 setting Sewer Availability Charges (SAC)

Background Information:

Sewer Availability Charges (SAC) are fees authorized in State Statute whereby a local government unit is permitted to charge benefiting properties for sewer services when those services become available. Traditionally, the SAC fee is set based on estimated costs for plant and related infrastructure to include the processing plant, trunk lines, lift stations and the like. It does not include the lateral services that provide sewer service to individual parcels nor does it provide for individual services that are constructed.

The City has not set SAC fees that relate to Castle Towers as the City did not have a basis for setting the fees. The cost of acquiring the plant and related infrastructure was not determined until August of 2005. Further, the City did not have a replacement cost for the waste water treatment plant when the current plant that is more than 30 years old requires replacing.

Acquisition of the existing plant has been identified at \$1.6 million for the facility, \$46,037 in legal costs, \$27,165 in appraisal costs, engineering costs of \$58,843, Commissioners stipends at \$8,000 and award interest of \$198,870 for a total of \$1,938,915. This is acquisition cost for the existing facility and is the basis for establishing the SAC fee.

Replacement of the plant at the time it fails or requires replacement is estimated at \$1.6 million. SAC fees from future connection must generate sufficient revenue to pay for the replacement as the new connections are the basis for a new plant.

The current facility has a normal capacity of 105,000 Gallons Per Day (GPD). A replacement plant could not be constructed for a capacity in excess of the current capacity. Based on a 105,000 GPD plant, and an average of 250 GPD per connection, the existing plant and any replacement plant would have 420 total connections available. The trailer park has 190 spaces that are connected to the sanitary sewer system (see attached map). This would leave 230 additional connections for use outside the trailer park.

The 190 current connections must provide for the initial plant cost of \$1,938,915 million, or \$10,205 per SAC unit. The remaining 230 connections must provide \$1.6 million for plant

replacement. The SAC fee for a replacement plant would be \$6,956 per connection. Should the City be required to bond for the plant replacement, the SAC fee would increase to cover the interest cost and additional costs relating to bonding.

The ordinance that sets the basis for SAC fees requires the calculation to determine the appropriate charge.

Fiscal Impact:

As noted above.

Recommendation(s):

Staff recommends adoption of a SAC fee for existing connection at \$10,205 per unit and \$6,956 per unit for additional connections beyond the 190 services in Castle Towers. Resolution 2005-59 sets these fees.

City Council Action

Motion by: _____

Second by: _____

Vote Yes: _____

Vote No: _____

No Action Required: _____

Sell said there was concern expressed about submission time for the application. The suggestion was 30 days in advance for commercial and 15 days for non-commercial. **Voss made a motion to amend the motion to change Section 4, Subd. 1 as follows: Any person conducting or sponsoring an outdoor entertainment activity shall make application for a permit by filing a completed application with the City Administrator at least 30 days in advance for a Commercially Zoned or 15 days for a Residentially Zoned, of the date on which the event is to occur. Paavola seconded; all in favor, motion carries.**

Voss said under Section 2, subd. 6 Outdoor Entertainment – Nonprofit can we insert language in this definition to make it non specific to types of property that these events can be held on. **Voss made a motion to amend the motion to change Section 2, subd. 6 Outdoor Entertainment – Nonprofit to insert language to make it non specific to types of property that these events can be held on.** Sell said he has suggested that nonprofit be defined as being held on public/institutional zoned property. Voss said but a lot of the nonprofits don't have an establishment to hold the event. Landborg said he thinks we put in the site requirements specifically to limit events.

Hunter asked if Council wants to form a committee to work on this ordinance, or hold work sessions. Sell said he would suggest staff make the changes as suggested, give us your last advice and we will bring back a revised copy to the next Council meeting. Boyer said he is in favor of forming a committee. Paavola said she doesn't think it will help us get any more done. She said we should have our City attorney go over this and go from there. Landborg said he doesn't know if a committee will do much good because of the differences. Voss said his amendment is to send this back to staff incorporate nonprofit use into the ordinance as non-limited. Landborg said he isn't sure we want to leave the number open ended. **Motion died for lack of second.**

Sell said he would suggest Council table this ordinance, there are a lot of changes and he would like to give them a new draft with the changes incorporated before they approve it. Randall said he would be hesitant to adopt this ordinance tonight without seeing the changes incorporated. Boyer said he thinks we should vote on this tonight, instead of dragging all these folks back for the vote. Voss said he doesn't want businesses to be restricted on community involvement through having non-profit events. Boyer said the amendment died. Voss said he can offer the amendment again if he wants. **The vote was taken on the motion to adopt Ordinance 199 with amendments as noted. All opposed, motion fails.**

Voss made a motion to table Ordinance 199, staff should make the changes as noted and Council will address the amended ordinance on October 5, 2005. Paavola seconded. Hunter said written comments can be submitted, but he is not promising to open the floor up for comments at the next Council meeting. McGee asked if an officer will be available when needed with the decibel meter to measure the noise. He said the officer that is trained doesn't work in the evening. Sell said he has addressed this with the deputies. Boyer, nay; Hunter, Paavola, Landborg and Voss, aye; motion carries.

Sewer
Availability
Charges –
Res. 2005-
59

Sell explained that Sewer Availability Charges (SAC) are fees authorized in State Statute whereby a local government unit is permitted to charge benefiting properties for sewer services when those services become available. Traditionally, the SAC fee is set based on estimated costs for plant and related infrastructure to include the processing plant, trunk lines, lift stations and the like. It does not include the lateral services that provide sewer service to individual parcels nor does it provide for individual services that are constructed.

Sell said the City has not set SAC fees that relate to Castle Towers. The delay in setting these fees was directly related to the condemnation. The City did not have a basis for setting the fees as it did not have an acquisition cost for plant and related facilities. The cost of acquiring the plant and related infrastructure was not determined until August of 2005.

Acquisition of the existing plant has been identified at \$1.6 million for the facility alone. In addition, the City has \$46,037 in legal costs, \$27,165 in appraisal costs, engineering costs of \$58,843, Commissioners stipends at \$8,000 and award interest of \$198,870 for a total of \$1,938,915. This is acquisition cost for the existing facility and is the basis for establishing the SAC fee. Replacement of the plant at the time it fails or requires replacement is estimated at \$1.6 million. SAC fees from future connections must generate sufficient revenue to pay for the replacement as the new connections are the basis for a new plant.

Sell explained that the current facility has a normal capacity of 105,000 Gallons Per Day (GPD). A replacement plant could not be constructed for a capacity in excess of the current capacity. Based on a 105,000 GPD plant, and an average of 250 GPD per connection, the existing plant and any replacement plant would have 420 total connections available. The trailer park has 190 spaces that are connected to the sanitary sewer system according to the plat data. This would leave 230 additional connections for use outside the trailer park based on the calculation.

The 190 current connections must provide for the initial plant cost of \$1,938,915 million, or \$10,205 per SAC unit. The remaining 230 connections must provide \$1.6 million for plant replacement. The SAC fee for a replacement plant would be \$6,956 per connection. Should the City be required to bond for the plant replacement, the SAC fee would increase to cover the interest cost and additional costs relating to bonding.

The resolution proposed sets the basis for SAC fees required to cover the initial acquisition and future replacement of the waste water plant. Staff recommends adoption of a SAC fee for existing connection at \$10,205 per unit and \$6,956 per unit for additional connections beyond the 190 services in Castle Towers. Resolution 2005-59 sets these fees.

Voss made a motion to adopt Resolution 2005-59 Setting SAC Fees at existing connection \$10,205 per connection and \$6,956 for additional connections. Landborg seconded. Landborg asked if these are defendable numbers. Sell said yes, they are the actual expenses and future replacement numbers. Landborg asked if staff is sure there isn't anymore that should be included. He asked if this will cover operation and replacement. Sell said operations are paid out of user charges. Boyer said he thinks this is unfair to the owner. Landborg said if we built a plant across the street we could charge these fees tomorrow and they would have to hook on to it. Boyer, nay; Paavola, Hunter, Landborg and Voss, aye; motion carries.

Fire Relief
Assn. By
Laws
Continued

Chief Anderson explained that most of the changes in the By Laws we had to do as a requirement of receiving state aid. We also had to do this last year. He said he can see this coming more and more each year. Boyer said in the future he would like to see a highlighted copy of changes like Sell gives us. That way any changes are very obvious for us to see. Hunter said under Article II, Board of Trustees he believes you have too many people assigned as trustees. Hunter said it should be a total of seven people.

Hunter asked if the changes to the By Laws need to be adopted tonight. Anderson said he was

**CITY OF EAST BETHEL
EAST BETHEL, MINNESOTA**

RESOLUTION NO. 2005-59

RESOLUTION ESTABLISHING SEWER AVAILABILITY CHARGES (SAC)

WHEREAS, Minnesota Statutes provides the basis for setting certain fees and charges as they relate to municipal utility services; and

WHEREAS, the City has determined that a Sewer Availability Charge or SAC Fee is an appropriate charge for residents that connect to municipal utility services; and

WHEREAS, the cost of acquiring and/or constructing a waste water treatment plant to service the Castle Towers Manufactured Home Park was recently determined to be \$1,938,915; and

WHEREAS, there are 190 units at the Castle Towers Manufactured Home Park; and

WHEREAS, the SAC Fee for all units connected to the City's municipal waste water treatment system on the day the system was acquired and/or constructed is \$10,205.

WHEREAS, the September 21, 2005 Agenda Information cover sheet for Agenda Item Number: Item 8.0 F.1, a copy of which is attached, is incorporated herein by reference.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF EAST BETHEL, MINNESOTA THAT: the SAC Fee for all units connected to the City's municipal waste water treatment system as of January 31, 2004 is hereby set at \$10,205 per unit.

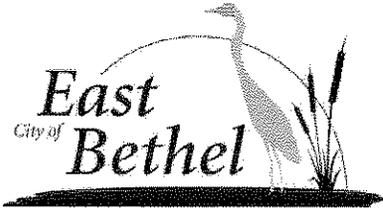
Adopted this 21st day of September, 2005 by the City Council of the City of East Bethel.

CITY OF EAST BETHEL

Greg Hunter, Mayor

ATTEST:

Douglas Sell, City Administrator



City of East Bethel City Council Agenda Information

Date:

September 6, 2006

Agenda Item Number:

Item 7.0 G.3

Agenda Item:

SAC Charges Resolution 2006-48

Requested Action:

Consider adopting Resolution 2006-48 confirming SAC Charges for the Castle Towers WWTF

Background Information:

At the time the WWTF was taken as part of the process involving the City and the owners of Castle Towers, the City established a Sewer Availability Charge (SAC) fee for all units connected to the system at the time of the taking. The fee was set at \$10,205 per unit. The resolution, 2005-59, that set this fee did not specify that this would be the only charge existing connections would pay regardless of additional plat requirements.

Resolution 2006-48 clarifies the City's position on the SAC fee imposed on existing connections at the time the City took the WWTF. It clearly indicates under the fourth WHEREAS, that additional fees will not be charged to connections of record as of January, 2004.

The City's attorney representing the City in this matter has suggested adoption to clarify the City's position on the SAC fees charged for connections of record as of January, 2004.

Fiscal Impact:

As noted.

Recommendation(s):

Staff recommends the adoption of Resolution 2006-48 clarifying the City's position on SAC fees for connections of record as of January, 2004.

City Council Action

Motion by: _____

Second by: _____

Vote Yes: _____

Vote No: _____

No Action Required: _____

explore the cost of this. Voss asked what color we are going to paint the arena. Sell said on the back and north side of building there is blue colored sheet metal. He said where there is most of the visibility, on the front, it is all black. Sell said we are exploring matching the colors of the fire station building, tan with a dark red stripe. Voss asked is there a guarantee on the paint. Sell said he thinks it is five years. **All in favor, motion carries.**

Res. 2006-48 –
Confirming
SAC
Charges for
Castle
Towers
WWTF

Sell explained that at the time the WWTF was taken as part of the process involving the City and the owners of Castle Towers, the City established a Sewer Availability Charge (SAC) fee for all units connected to the system at the time of the taking. The fee was set at \$10,205 per unit. The resolution (2005-59) that set this fee, did not specify that this would be the only charge existing connections would pay regardless of additional plant requirements.

Resolution 2006-48 clarifies the City's position on the SAC fee imposed on existing connections at the time the City took the WWTF. It clearly indicates under the fourth WHEREAS, that additional fees will not be charged to connections of record as of January 2004 in the then enacted SAC fee of \$10,205 per unit is collected.

The City's attorney representing the City in this matter has suggested adoption to clarify the City's position on the SAC fees charged for connections of record as of January 2004.

Staff recommends the adoption of Resolution 2006-48 clarifying the City's position on SAC fees for connections of record as of January, 2004.

Hunter made a motion to adopt Resolution 2006-48 – Clarifying the City's Position on SAC Fees for Connections of Record as of January 2004. Paavola seconded; all in favor, motion carries.

City Hall
Remodel
Project

Sell explained that we have provided a copy of a revised sketch plan for the remodel project at City Hall. We have incorporated the changes in the location of the receptionist, enlarged the vestibule outside Council chambers and enlarged the entry way. We have provided direction to proceed with the plans and specifications that will be submitted to Council for approval and direction to solicit bids.

Voss asked what is being done to chambers. Sell said they will strip the walls, paint and wall coverings, new carpeting, clouds in ceiling, new lighting; we have asked for pricing on another door leading out to entryway area, chairs, resurface dais, sound system, and new technology. He said if you have suggestions let him know.

Closed
Session

Boyer made a motion to move to closed session to discuss the possible acquisition or interest in real property, the Gombold parcel. Paavola seconded, all in favor, motion carries.

Paavola made a motion to adjourn the closed session. Landborg seconded; all in favor, motion carries.

Landborg made a motion to reconvene. Paavola seconded; all in favor, motion carries. Randall said Council discussed possible acquisition of the Gombold property.

Gombold –
Sketch Plan
– Klondike

Sell explained that William Gombold, at the August 16, 2006 City Council meeting, presented a sketch plan for five lots on a parcel located along Klondike Drive one-quarter mile west of County Road #15. His request for a metes and bounds subdivision and variance request was

ORDINANCE NO. 31, Second Series

**AN ORDINANCE RELATING TO THE ADMINISTRATION
AND REGULATION OF PUBLIC RIGHTS-OF-WAY
AND THE REGULATION PUBLIC WAY PERMITS
GOVERNING RIGHT-OF-WAY USERS PROVIDING UTILITY SERVICE.**

The City Council of the City of East Bethel, Anoka County, Minnesota does hereby ordain as follows:

Section 1. Amendment. That Section 62-140 is hereby amended to add the following provisions:

This Section shall be interpreted consistently with 1997 Session Laws, Chapter 123, substantially codified in Minnesota Statutes Sections 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the “Act”) and the other laws governing applicable rights of the City and users of the right-of-way. This Section shall also be interpreted consistent with Minnesota Rules 7819.0050 – 7819.9950 where possible. To the extent that any provision of this Section cannot be interpreted consistently with the Minnesota Rules, the interpretation most consistent with the full delegation of statutory and common law police power to the City is intended.

Section 2. Amendment. Chapter 62 of the Code of Ordinances of the City of East Bethel is hereby amended to add Section 62-140A, providing as follows:

“Election to Manage the Public Rights-of-Way.

Pursuant to the authority granted to the City under state and federal statutory, administrative and common law, the City elects and has previously elected pursuant to Minnesota Statutes, section 237.163 subdivision 2(b), to manage rights-of-way within its jurisdiction.”

Section 3. Amendment. Section 62-141 of the Code of Ordinances for the City of East Bethel is hereby amended to add definitions for:

“Right-of-Way User” means (1) a telecommunications right-of-way user as defined by Minnesota Statutes, section 237.162, subdivision 4; or (2) a person owning or controlling a facility in the right-of-way that is used or intended to be used for providing utility service, and who has a right under law, franchise, or ordinance to use the public right-of-way.

“Utility Permit” means the permit which, pursuant to this Section, must be obtained before a person may excavate in a right-of-way. A Utility permit allows the holder to excavate that part of the right-of-way described in such permit.

Section 4. Amendment. Section 62-141 of the Code of Ordinances for the City of East Bethel is hereby amended to delete the definition for “Service or Utility Service” and to replace the definition with:

“Service or Utility Service” means and includes (1) those services provided by a public utility as defined in Minnesota Statutes 216B.02, subdivisions 4 and 6; (2) services of a telecommunications right-of-way user, including transporting of voice or data information; (3) services of a cable communications system as defined in Minnesota Statutes, chapter. 238.02, subdivision 3; (4) natural gas or electric energy or telecommunications services provided by the city; (5) services provided by a cooperative electric association organized under Minnesota Statutes, Chapter 308A; and (6) water, sewer, including service laterals, steam, cooling or heating services.”

Section 5. Amendment. That Section 62-147 Permit-Requirements, of the Code of Ordinances of the City of East Bethel is hereby amended to add the following provision as subpart (3) under paragraph (a):

“**Overhead Facilities.** Permits for installation, repair or other work on above-ground facilities within the meaning of Minn. Stat. § 237.163, subd. 6(b)(4) will be obstruction permits, notwithstanding the need for excavation, provided the excavation is augured or hand dug for the purpose of placing a pole type structure.”

Section 6. Amendment. That Section 62-162 of the Code of Ordinances of the City of East Bethel is hereby amended to delete the same in its entirety, substituting the following:

Undergrounding.

Subd. 1. Purpose. The purpose of this section is to promote the health, safety and general welfare of the public and is intended to foster (i) safe travel over the right-of-way, (ii) non-travel related safety around homes and buildings where overhead feeds are connected and (iii) orderly development in the City consistent with its Comprehensive Plan. Location and relocation, installation and reinstallation of Facilities in the right-of-way or in or on other public ground must be made in accordance with this section and is intended to be enforced consistently with state and federal law regulating right-of-way users, to the fullest extent of the City’s statutory and common law authority.

Subd. 2. Undergrounding of Facilities. All Facilities newly installed, constructed or otherwise placed in the public right-of-way or in other public property held in common for public use must be located and maintained underground pursuant to the terms and conditions of this section and in accordance with applicable construction standards, subject to the exceptions below. Above-ground installation, construction, modification, or replacement of existing meters, gauges, transformers, street lighting, pad mount switches,

capacitor banks, re-closers and service connection pedestals shall be allowed. These requirements shall apply equally outside of the corporate limits of the City coincident with City jurisdiction of platting, subdivision regulation or comprehensive planning as may now or in the future be allowed by law.

Subd. 3. Undergrounding of Permanent Replacement, Relocated or Reconstructed Facilities. If the City finds that one or more of the purposes set forth in section 62-162 subd. 1 would be promoted, the City may require a permanent replacement, relocation or reconstruction of a Facility to be located, and maintained underground, with due regard for seasonal working conditions. For purposes of this subdivision, reconstruction means any substantial repair of or any improvement to existing Facilities. Undergrounding may be required whether a replacement, relocation or reconstruction is initiated by the right-of-way user owning or operating the Facilities, or by the City in connection with (1) the present or future use by the City or other local government unit of the right-of-way or other public ground for a public project, (2) the public health or safety, or (3) the safety and convenience of travel over the right-of-way. Subject to Subdivision 4 below, all relocations from previously placed underground facilities shall be to another underground location.

Subd. 4. Exceptions to Undergrounding. The following exceptions to the strict application of this Subdivision shall be allowed upon the conditions stated:

A. Technical Feasibility; Promotion of Policy. Above-ground installation, construction, or placement of Facilities shall be allowed in residential, commercial and industrial areas where the council, following consideration and recommendation by the planning commission, finds that:

1. Underground placement is not technically feasible due to topographical, subsoil or other existing conditions which significantly and adversely affect underground Facilities placement; or,
2. Failure to promote the purposes of undergrounding. The right-of-way user clearly and convincingly demonstrates that none of the purposes under Section 62-162 Subd. 1 would be advanced by underground placement of Facilities on the project in question, or the City determines on its own review that undergrounding is not warranted based on the circumstances of the proposed undergrounding.

B. Temporary Service. Above-ground installation, construction, or placement of temporary service lines shall only be allowed:

1. During new construction of any project for a period not to exceed three (3) months;

2. During an emergency in order to safeguard lives or property within the City;
3. For a period of not more than seven (7) months when soil conditions make excavation impractical.

C. Facilities Subject to Preemptive Public Utilities Commission Siting and Routing Jurisdiction. Facilities that are subject to certificate of need and siting and routing requirements of the Minnesota Public Utilities Commission are exempted from this section 62-162 to the extent that the City's undergrounding authority is preempted by law.

Subd. 5. Developer Responsibility. All owners, platters, or developers are responsible for complying with the requirements of this Subdivision, and prior to final approval of any plat or development plan, shall submit to the Director written instruments from the appropriate right-of-way users showing that all necessary arrangements with said users for installation of such Facilities have been made.

Section 7. Effective Date. This Ordinance shall be in full force and effect from and after its passage and publication according to law.

Adopted by the City Council of the City of East Bethel, Anoka County, Minnesota, on this 5th day of October, 2011.

For the City:

:

Richard Lawrence, Mayor

Attest:

Jack Davis, City Administrator

Adopted: October 5, 2011
Published: October 21, 2011
Effective: October 21, 2011



City of East Bethel City Council Agenda Information

Date:

October 5, 2011

Agenda Item Number:

Item 8.0 G.2

Agenda Item:

Right of Way Ordinance Amendment

Requested Action:

Consider approving Ordinance 31, Second Series, Amending the Right of Way Management Ordinance

Background Information:

The attached ordinance will amend Section 62-141 of the existing Right of Way Ordinance and address the issue of requiring conditions of undergrounding utilities in the public right of way.

Attachment(s):

Ordinance 31, Second Series Amending the Right of Way Management Ordinance

Fiscal Impact:

To be determined

Recommendation(s):

Staff and LMC Attorney, Jim Strommen, recommend adoption of Ordinance 31, Second Series Amending the Right of Way Management Ordinance.

City Council Action

Motion by:_____

Second by:_____

Vote Yes:_____

Vote No:_____

No Action Required:_____



City of East Bethel City Council Agenda Information

Date:

October 5, 2011

Agenda Item Number:

Item 9.0 C

Agenda Item:

Closed Session – Union Negotiations

Requested Action:

Consider closing the regular session for an Attorney/Client discussion regarding the Union Negotiations.

Background Information:

The session is closed pursuant to Minnesota Statutes 13D.05, Subd. 3.

Fiscal Impact:

None

Recommendation(s):

Staff is recommending closing the regular session to closed session pursuant to Minnesota Statutes 13D.05, Subd 3 for a discussion of the Union Negotiations.

City Council Action

Motion by:_____

Second by:_____

Vote Yes:_____

Vote No:_____

No Action Required:_____



City of East Bethel City Council Agenda Information

Date:

October 5, 2011

Agenda Item Number:

Item 9.0 D

Agenda Item:

Closed Session GRE Settlement Negotiations

Requested Action:

Consider closing the regular session for an Attorney/Client discussion regarding the GRE settlement suit.

Background Information:

The session is closed pursuant to Minnesota Statutes 13D.05, Subd. 3.

Fiscal Impact:

None

Recommendation(s):

Staff is recommending closing the regular session to closed session pursuant to Minnesota Statutes 13D.05, Subd 3 for a discussion of the GRE settlement suit.

City Council Action

Motion by:_____

Second by:_____

Vote Yes:_____

Vote No:_____

No Action Required:_____



PUBLIC FORUM SIGN UP SHEET

October 5, 2011

The East Bethel City Council welcomes residents and property owners to the Public Forum. The purpose of the forum is to provide residents and property owners an opportunity to respectfully inform the Council of issues they are concerned about.

The following guidelines apply to the Public Forum:

1. A resident/property owner may address the Council on any matter not on the agenda during the Public Forum portion of the agenda.
2. A person desiring to speak must sign up prior to the time the Council reaches the Forum on the agenda.
3. The Mayor will invite speakers up to the podium/microphone.
4. Once the Mayor has recognized the speaker, the speaker should state his/her name, address, and phone number.
5. Each speaker should attempt to limit their presentation to 3 minutes.
6. If a group of persons wish to address the Council regarding the same issue, the group should elect a spokesperson to present the group's issue to the Council.
7. The Council will listen to the issue but will not engage in dialogue or a Q & A session. If a majority of the Council would like to address the issue in more detail, it can be added to the agenda or can be addressed during the regular agenda of a future meeting.

NAME	ADDRESS	PHONE NUMBER	TOPIC

