

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 with 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 time 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 their interest. That may or may not be the city's 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) but up until the 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? Are those 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, so 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 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 into 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 asked 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's 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 can 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 of 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 matter 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 of 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 asked 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 humane 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 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. It 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 any 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 the 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 I apologize, I 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, is it going to prove legal malpractice? 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 Vierling's 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 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 from 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 to get behind it. Boyer said he still wants to see the minutes. Moegerle said certainly. Lawrence asked if there is an improvement what 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 to 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 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