

EAST BETHEL CITY COUNCIL MEETING

May 4, 2011

The East Bethel City Council met on May 4, 2011 at 7:30 PM for their regular meeting at City Hall.

MEMBERS PRESENT: Bob DeRoche Richard Lawrence Heidi Moegerle
 Steve Voss (7:55 PM)

MEMBERS EXCUSED: Bill Boyer

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

Call to Order **The May 4, 2011 City Council meeting was called to order by Mayor Lawrence at 7:30 PM.**

Adopt Agenda **Moegerle made a motion to adopt the May 4, 2011 City Council Agenda with the deletion of 4.0 B Edward Reynoso, Met Council Representative (he could not attend tonight) and substitute under 4.0 B Steve Johnson, US Cable. DeRoche seconded; all in favor, motion carries.**

Presentation – Lawrence said we want to honor Barb Kunshier for her years of service as the Booster Day
Barb Kunshier Coordinator. He said even though she is not here, her work has been outstanding and we want to thank her very much. Barb Kunshier arrived and the Mayor presented her with a plaque and thanked her for her many years of dedicated service and commitment to excellence as the coordinator of Booster Day on behalf of the citizens of East Bethel. Lawrence said we want to thank you for your leadership and your many contributions to our community. Davis said and for all of us that have worked with Ms. Kunshier, it has been a pleasure and we will really miss her. He said we are extremely grateful for all the work she has done in the past. DeRoche said yes, you did a great job. Moegerle said yes, you did a great job.

Steve Johnson Steve Johnson of US Cable said he is here tonight to address a mistake we made. He said
– US Cable when we renewed the franchise with East Bethel there was a provision that allowed us to implement PEG access fees and somehow or another, it slipped his calendar and he came across it a few months ago and he started discussing it with Mr. Davis. Johnson said after a couple meetings it seemed to come to a conclusion that he should calculate the number of users and fees, it comes to \$12,828.20 and he is here with check and wants to express his apologies and present the check. He said he knows he should have come a few months ago, but he didn't do that. Johnson said he can answer any questions Council may have, he can explain what the PEG fees and franchise fees are for.

DeRoche said he can guess what the customers are going to think when they get this added on their bill. Johnson said franchise fees and PEG fees are a federal right by the franchise for the City to administer, so the City of East Bethel as well as many other cities collect franchise and PEG fees from subscribers. He said it amounts to about \$3.00 per subscriber. Johnson said the City has the right to do this, put it back into the system and could offset the access channel. He said since March of 2008 we have increased by about subscribers. Johnson said he failed to remember to incorporate this in his billing, but at the same time,

the City failed to remember this and missed it in their billing to US Cable, they were receiving the franchise fees, the PEG fees is a pass through, we are not passing this on to the rest of our customer base. He said he tried to make some recommendations to not make it so painful, but obviously we are paying you upfront and spreading over 39 months to reimburse. DeRoche said so the City activated the PEG fee, that is what you are saying. Johnson said yes, in franchise agreement.

Moegerle said she wants to thank you for admitting your mistake. She said the problem she has is when reading Page 8, it seems the contract limits the amount you can pass through to 40 cents, it seems to her to pass through the additional 35 cents and call it a PEG fee is a breach of contract, she wonders if we need to revisit this agreement between US Cable and the City. Johnson said we did recommend a resolution so it was on record. He said and by requesting the past payment we have a right to then increase this, in all reality, US Cable has a right to collect it. Johnson said if you are more comfortable to doing resolution or amendment, we can do this, but by no means are we violating federal law. Moegerle said she is not suggesting you are; you might be violating the agreement with the City that is her concern. She said we are trying to get harmony.

Vierling said the issue is the language says they shall pay to the City the fee according to schedule which they didn't do. He said he thinks your question is does this limit them from collecting a larger fee from that which they are supposed to pay to the City, you can certainly read it that way. Vierling said he thinks within the context of that, certainly they have their own attorneys that are advising them to what they can and cannot do, and he is not going to offer an opinion on that one, but they are certainly making a good faith effort to catch up and he appreciates that. He said he thinks they may have a larger issue with their customer base, in terms of their customers saying, when this fee was earned I wasn't one of your customers and now I am making up the back fee for that time. Vierling said he doesn't know how they wrestle with that one, but that is an issue they will have with their customers. Johnson said he has an issue with that also. He said they are collecting this amount of money, so you can make improvements or investments in the channel. Johnson said whether it was collected in the last 39 months or now, the customers that were customers now are going to benefit. He said he doesn't think if you look at it from that aspect, why is it on one hand tremendously wrong if they are going to benefit. Lawrence said that is probably something you are going to have to work out with you customers. Johnson said this is a line item on the bill, everything has to be uniform. He said we hope that the product you are providing on the access channel will be looked at as worth the money.

Moegerle said so you will be charging 75 cents per customer but paying 40 cents to the City. Johnson said correct, and he is making this payment tonight, and then June 1 you will get another payment which will be in a separate check for capital improvements. Moegerle said she appreciates this, thank you for your time. Johnson said he has been doing this since 1985 and cable is getting more and more complicated, he should have put this on his calendar.

Public Forum Lawrence opened the Public Forum for any comments or concerns that were not listed on the agenda. There were no comments so the Public Forum was closed.

Consent Agenda **Moegerle made motion to approve the Consent Agenda including: A) Approve Bills; B) Meeting Minutes, April 20, 2011, Regular Meeting (with Grammatical Changes); C) Meeting Minutes, April 20, 2011 Local Board of Appeals and Equalization; D)Resolution 2011-14 Accepting Donation from Hakanson Anderson Assoc. Inc.; E)**

Cedar/East Bethel Lions – Booster Day – July 16, 2011 – One Day Temporary Consumption & Display Permit. DeRoche seconded; all in favor, motion carries.

S.R. Weidema
Change Order
#1

Davis explained that S. R. Weidema is requesting consideration of the attached change order due to the temporary suspension of the Phase 1 Project 1 Utility Improvements due to the inability to place orders and secure contracts with subcontractors. A majority of the cost is due to the increase in fuel costs for construction machinery and the High Density Polyethylene (HDPE) Pipe, which is a petroleum based product. Change Order No. 1 is attached. A summary of the Change Order costs are as follows:

1.	Machinery Fuel	\$215,566.69
2.	HDPE Pipe	\$113,102.70
3.	Structure Castings	\$ 3,378.52
4.	Piling and Grade Beam Construction	<u>\$ 47,861.55</u>
	Total	\$379,909.46

Funds available from the bond proceeds which are intended to finance this project along with the water tower, wells, and water treatment plant include reserve funds of \$1.8 million. These funds are available and appropriate for this use.

Staff recommends Council approve Change Order No. 1 to S.R. Weidema in the amount of \$379,909.46.

Davis said Kreg Schmidt, Bolton and Menk are present tonight with more documentation. Schmidt said Davis covered the basics. He said he we have a change order related to fuel cost and the polyethylene piping. Schmidt said he handed out a quote based on fuel prices; the vendor is Energy Solutions Consultants. He said the fuel price on 12/6/2010 was \$2.846 and on 4/12/2011 was \$3.777, which is a pretty significant item since there is 234,609 gallons of fuel in this project. Schmidt said in general if you increase this, by the time you add sales tax and the bond, it is .9188 cents per gallon in summary which is what S.R. Weidema used to break this out. He said in addition was the fuel breakout summary used. Schmidt said there are quotes from Ferguson Waterworks for piping which is the difference between bid time and when the price was locked in. He said basically the PVC pipe industry has declared a force majeure, which is like an act of god that is affecting their pricing, so to get the pipe locked in at this price at this time would be very good for the City. He said in general, he can go through the details; there is an 8% increase in piping. Schmidt said there is also an increase in castings, materials based increase, there are quotes from S. Brothers to put in castings, and this is a steel based increase. He said there is a 4% increase in the piling system from MBI who is the subcontractor on the project, we included documentation, it is rebar and concrete and mobilization. Schmidt said one thing to keep in mind in regard to that is it is the Met Council portion of the project, so the portion that will affect the City is the polyethylene piping and fuel costs.

Council Member Voss arrived. Davis said he would like to add two other items to Schmidt's presentation, we had three meetings with S.R. Weidema prior to this presentation, and he was informed that he needed to have everything that he would consider that would be delayed or require a change order before you this one time, because we only wanted to do this once. He said we told him we recognize there are things that would happen in the course of the project that we have to deal with. Davis said the other thing is Met Council will not participate with the change order because it was not caused by their doing. Schmidt said

in summary we have been through the documentation and think it is a fair representation, we have indicated to S.R. Weidema that we want this to be behind us and get the job done.

Lawrence asked the price of fuel at the beginning on 12/6/10 was \$2.84 roughly and now it is what level. Schmidt said as of 4/12/2011 it is \$3.707, but we used we used for the change order \$3.70. Moegerle asked when they locked in their fuel prices. Schmidt said on 4/12/2011. Lawrence asked why did they take so long. Schmidt asked to lock the price in. Lawrence said yes. Schmidt said we did have a discussion with them on this and he thinks overall there was still a lot of detail on the project to work out. He said and there were things that still needed to be discussed, there was change in representation so they were uncomfortable with locking this in, if they had done it immediately there was a difference, but if they had done it then it was only a slight difference like 10 cents a gallon. Schmidt said when you look at this you can see how much of an issue this is for the contractor, fair amount of money in the increase, what a contractor would derive from his project. He said to have expected S.R. Weidema to have locked in immediately would have been a significant expectation.

Moegerle asked what date did they lock this in. Schmidt said 4/12. Moegerle said that is more than a month later, this is five weeks later. Schmidt said that is correct. Lawrence said according to your gas price on 4/12 that is only one penny higher than what they originally figured the price of gas at, is he seeing something wrong. Voss said you are looking at 2010. Lawrence said it says 2011. Voss said that has to be wrong. Schmidt said they are buying fuel for the future here, so they are buying fuel at that rate. He said this is the months in 2010 when they are buying the fuel and the rate. Schmidt said they are giving you the new May price of 2011 on the next table, buying over a course of time, for a moment in time. Voss said the next two pages is the same as the table on the front, it is not tabulated. Schmidt said it is the new basis for purchasing the fuel. He said it is all based on current pricing.

Moegerle said here is what her problem is, by May 5th or whenever they received their letter, it is very clear gas prices are going up and going up quickly, so she has a problem with that kind of situation and then them waiting five weeks to lock in the fuel price, that doesn't seem reasonable to her. She said she needs a better reason; this doesn't seem like a good business decision. Moegerle said she needs a better explanation and understanding if you have one, and she realizes it is their explanation to make not yours. Schmidt said he would say the explanation for that is the uniqueness of the situation that occurred, at the time there was still trepidation on the contractor's part that they may or may not want to move forward with the contract on the contractor's part. Moegerle said they had signed a contract. Schmidt said they had. He said there are contractual ways they could have gotten out of this, their concept was until they had an approved signed order for some of these items and we have since expanded that to include as many of the delay items as we could, that we can reasonably anticipate right now, their concept was that until they had that approved, until they had that taken care of, they were still in the decision making process of whether they were going to build the project for the City.

Schmidt said what we have been trying to work through with them is first of all, that we want to build the job, second that we want to be fair about what had occurred, it was a situation unique enough that there wasn't anyone that had been through negotiations thought something like that, this includes the people in the City and Met Council and what we were trying to accomplish is that we got these things behind us. He said from his personal

perspective, it would have been hard for him to anticipate that given the scenario, after March 5th that they would have locked that in and gone forth with it. Schmidt said he really strongly believes it is in the best interest of the City that S.R. Weidema builds this, just based on we would not see these types of numbers if we had to go through the bidding process again. Voss asked what would have happened if S.R. Weidema would have locked in the price for the fuel a while ago and the City would have canceled the project, what contractual obligation does S.R. Weidema have. Schmidt said they would have had a contractual obligation to take deliver of the fuel and in this case that is a lot. Voss said and he thought that would have been the case, but to him that is not apples to apples, you are buying a commodity of fuel, it is not going to go to waste, suppliers would purchase it, it would be used somewhere else. Schmidt said yes, an obligation to purchase it.

Voss said one thing would be helpful for one date in particular, when the suspension was lifted on February 19, 2011 do you know what the price was on February 19, 2011 as opposed to April 12, 2011. Schmidt said he does not have that number, he thinks the only comparison we have is that was related to this was first part of March. Davis said this was March 5th, 15 cents more a gallon. Lawrence asked what did they do from December 15th to January 5th, did they lock up anything. Schmidt said no. Lawrence said they didn't do anything. Schmidt said no. Lawrence asked when would they have started. Schmidt said he would have guessed they would have started in January. He said there were still a number of things up in the air, easements and such that are on the agenda tonight, they wouldn't have been starting wholesale construction until later anyways, so he is guessing it would have been sometime in January that they would have locked this up. Schmidt said it is really hard for him to, communicate perhaps, that these are not easy decisions for contractor to make; these are very significant or dire decisions if they don't go well, it is not easy for the contractor to absorb and he doesn't want to discount that. He said it is easy to say they should have done this or that; the question is what a reasonable expectation was. Schmidt said he can see he should have locked things in March, not March 5th but later in March. He said he is not trying to advocate for that, he is trying to communicate the discussions we have had.

Lawrence said obviously they were not going to start right away, however they weren't going to be working anyhow, then the billing would have been going to Met Council, not East Bethel. Schmidt said but they would have had a contract to purchase at these rates. Lawrence asked were they buying it at that time. Schmidt said no, but they had an agreement that this is what they would have been able to do. Jochum said as it was explained at a meeting, they would have had it locked in for a year at a time. He said after that year it is a whole new negotiations with their sub. Schmidt said that is this 12 month period on here, commodity concept, risk concept taken out of equation, purchasing at that rate.

DeRoche said the problem he has if the suspension was lifted on February 19th and they lock in on April 12th, which is almost two months, did they think we were going to suspend it again. Schmidt said he doesn't know when they received written notification that the suspension was lifted. Davis said March 5th. Voss asked and when did they purchase. Schmidt said on April 12th. Lawrence said you are telling us they would have locked in on the 5th of January and they were notified on March 5th the suspension was lifted, that is the price then that East Bethel would have to take care of, and the rest they would have to go to the Met Council because this is pretty much their project. Voss said he agrees, there are two parts. He said there is a delay caused by the City, if the letter went out March 5th, whatever

reasonable time after that, maybe March 15th, and more reasonable the City caused the delay, he will frame this as the contractor made some business decisions as when they locked in based on trepidation on what the Council would do next, not a reasonable choice, but as Moegerle said, they should have brought the City into discussion at that time. Moegerle said as of March 15, buying fuel then would have been a great business decision even if they weren't going to use it on this project it would have been a good idea to buy, and she thought the commitment on February 19 was real clear. Lawrence said he thought they should have bought on December 15th, they got the contract and they knew the price of fuel was going up, he wouldn't have waited. Voss said when the suspension went on in January; he doesn't know if we got a letter from S.R. Weidema, we got letters from the other contractors saying they needed to lock in on prices. He asked did we get a letter from S.R. Weidema. Vierling said he doesn't think we did. Lawrence said he thinks we need to sit down with S.R. Weidema and go over these issues. He said he buys materials all the time and when they are low you buy. Moegerle asked is this a time sensitive issue, do we need to make this decision today. Schmidt said it is time sensitive, he doesn't know how else to explain this, if the Council is not comfortable with this, he is not sure how S.R. Weidema will take it.

Davis said things that were discussed the last time we met with them was that March 5th would have been a reasonable date to lock in, they explained they didn't do it because of some trepidation, they weren't sure who the engineers were, they weren't sure of other things such as the City's commitment to it. He said is that a valid justification, probably not. Davis said our reason for recommending approval of the change order is we have a fear that this contractor may be looking for reasons to void his contract, and if he can do so and walk out then we have to rebid this and we anticipate the bidding will start at a million dollars higher. He said that is the reason for considering the change order. Davis said is there a reason for him not locking in the fuel prices is that a reason to reject it, certainly, but the bigger factor is it may be a bigger savings to the City to do the change order and keep the bid. Voss asked is it possible tonight to in terms of approving of what they have here, to agree as a Council the price as comparison, that the price should be a the price that fuel was a week after March 5th, then that gap is what we have left to work out. He said say for example it is \$100,000 less, there is also mediation for these contracts. Schmidt said he would like to have something like that worked out and a date, then he could go back to them and have a discussion and come back with the results. Moegerle asked what if we came back with a partial amount and this is rough but she came up with 30 cents, as the change between prices for those two dates, this is very ballpark, but we withhold that amount and approve a substantial portion of this amount, would that be an acceptable alternative. Schmidt said yes, he would say if the total was .70 cents a gallon increase and work out an agreement.

DeRoche asked how much time are you looking at, 3 or 4 days, he understands this thing has to move, how long do you think it would take you to sit down with S.R. Weidema and say this is where we are at what do you think. Schmidt said probably 3-4 days before everyone comes to a conclusion on it. Voss said but again, if we have a consensus on the date after March 5 and just say we can be conservative on it say half of it we can adjust the change order to what we think you should have locked it in. DeRoche said that make sense, and leave the door open that in two weeks after you have had a chance to have the discussions come back and see what he says. Voss said at 30 cents that is roughly \$30,000. Davis said he thinks that is a reasonable proposition and that way we can see how serious he is about negotiating this again. DeRoche said and then at least we are moving forward with it and not cutting him off and giving him a reason to get out of the contract. Schmidt said he thinks

that is good step ahead. Jochum said he would like to say, the contractor was adamant that if he doesn't get this change order, he will walk away from this contract. He said and the contractor thinks he has a basis to. Jochum said and he thinks this can be negotiated, the actual price, but he will want to see the actual change order approved and he has been pretty sincere. Voss said and it would be, and it is not to say they wouldn't get the \$100,000, but at least it keeps the project moving and if he is confident that this amount is due him and we don't come to resolution, then it can go to mediation. He said you know how mediation goes in these things. Jochum said but his point is he doesn't want to start the project until this change order is approved, and he thinks he is sincere and he doesn't want to fight the City, that is why he is anxious to get this behind this. DeRoche said this is kind of behind us.

Schmidt said what makes the most sense to him is we understand you weren't going to do it on March 5th but we think you should have done it a week after so we will agree to the pricing on that date, and then we can negotiate between that price and the price on April 12th. Voss said that is what he is trying to say. Schmidt said logically that make sense to him. Lawrence said one other question he has is what if the price of fuel goes down. Schmidt said they are not asking for an extension of completion of date. He said he just doesn't even want to deal with that, he is locking in on a one year period. Moegerle said March 5th was a Saturday, March 18th was almost two weeks.

Davis said on March 25 the contractor sent us a letter with a proposed change order in the amount of \$312,000. He said this is the date he would use. Voss said they would have based it on the price of fuel at that time. DeRoche asked so how did it go up a \$100,000. Voss said because they waited until April 12th. DeRoche asked in the future if the prices go up, is that Met Council or us. Schmidt said this should not be an issue from here on out for the duration of the project. Voss said it appears we can do one of two things, we can send this back and tell them to work it out, or we can move on what we have been discussing and he thinks the claim they had on March 25th, \$312,000, is a better starting point with the understanding we are not closing the door on further discussions, they don't have to accept it. DeRoche said that is a pretty good offer since the City didn't do anything wrong. Voss said the City stopped the contract. DeRoche said that was in good faith, it wasn't to stop it; it was stopped to take a look at it. Lawrence said they weren't planning on working on it anyhow. DeRoche said let's go with \$312,000 and open discussions.

Voss made a motion to adjust the total amount of the change order to the March 25, 2011 value approximately \$312,000, with the understanding that the City and S.R. Weidema with continue discussions between the difference of the \$312,000 and what was provided to us tonight. DeRoche seconded. Moegerle said would like more documentation on this so when it comes up again so we would have more ideas of what the discussions were between the engineer and the contractor, we just don't have enough information before us. Vierling asked did S.R. Weidema withdrawal the change order in writing from March 25th. Davis said no. Vierling said the other option would be to approve the change order from March 25th. Jochum said it wasn't in a change order format. Voss said he thinks there are timelines for change orders. **All in favor, motion carries.**

Utility Fire
Vehicle Bids

Davis explained that bid specifications were approved by the Council at their March 16, 2011 meeting. The specifications were advertised in the City's official newspaper, on the City's web site and on the LMC web site. Bids were accepted on 11:00 am on April 22, 2011 and included the following:

Kirvida	\$ 71,300.00
General Safety Fire Apparatus	\$ 56,987.00

Staff has reviewed each bid proposal comparing the proposal to the specification to ensure each vendor met the specification.

This vehicle/project has been budgeted for in the current capital equipment fund. Should the award be made to General Safety Fire Apparatus in the amount of \$56,987.00, the bid award would be at the estimated project cost of \$65,000.00 which includes a topper for the truck and trailer. The topper and trailer have not been purchased at this time, but have been priced. The total project will not exceed the budgeted \$65,000.

Staff recommends the acceptance of the General Safety Fire Apparatus’s bid of \$56,987.00 and direction to execute the contract for purchase with an anticipated delivery 120 days from the date of the order. Under this proposal, the City will acquire the chassis through the state contract price and pay for the chassis upon delivery to the vendor.

Lawrence said he had a chance to talk to the fire chief and discussed the truck and why they are replacing the other truck and he said every time they use the other truck they are pretty much towing it back.

Lawrence made a motion to approve the bid from General Safety Fire in the amount of \$56,987.00 for the Fire Utility Truck. Voss seconded. Voss asked the demise of the existing truck. Davis said it will be sold on the state auction site. **All in favor, motion carries.**

City
Administrator
Position

Davis explained that he was appointed interim City Administrator on March 2, 2011. At this time it was agreed by Mr. Davis and City Council that this position would be evaluated in 60 days to determine if Mr. Davis and the City Council would be interested in having Mr. Davis filling this position on a permanent basis. Attached are the minutes of March 2, 2011 meeting that outline the discussion on this matter.

The 60 day term for the interim appointment of Mr. Davis will expire on May 2, 2011. Mr. Davis is seeking direction for his duties and is requesting appointment to the position. Mr. Davis requests the following in relation to the appointment:

1. An annual salary of \$118,000;
2. The appointment would require no probationary period nor be subject to any probationary review;
3. City Council would approve an employment agreement for this position for Mr. Davis that is mutually satisfactory to both parties by June 1, 2011. The appointment would become effective at the approval of the agreement; and
4. Approval to advertise for a new Public Works Manager at a salary which would range from \$75,000 to 90,000 depending on qualifications and experience.

The interim City Administrator is requesting appointment to the position of City Administrator as per the terms described above. If Council desires to pursue other options for this position the Interim City Administrator/Public Works Manager requests reassignment to his previous position as Public Works Manager as per Council directive as described in the minutes of the March 2, 2011 meeting.

Davis said he does have a few copies of his resume he submitted when he applied for the Public Works Manager position; it hasn't been updated to reflect some of his previous experience it was more slanted towards that. Davis said he used to work for a four county, eleven town service authority in the State of Virginia. He said we lived in very rural depressed area, 30 miles from the interstate with a very serious migration problem. Davis said as a matter of fact, we realized had to create a lot of job opportunities and we embarked on a very ambitious economic development program. He said we created an economic development authority that encompassed one county and two towns; we laid the framework for coordinating the activities among these political groups. Davis said we got the county to appropriate money/funds for an industrial park and in the fourteen years we did this, we created three industrial parks, 2500 jobs, 5 Fortune 500 Companies (AT&T and others). He said we were also involved in a Wal-Mart commercial project which included a Wal-Mart superstore (160,000 square foot building), a strip mall and out parcels for fast food restaurants. Davis said he said this was a very interesting project and one that was very educational. He said so he has a background in economic development.

Davis said he also has a previous background with the Met Council, as the city administrator with Prescott, WI, one of the tasks he took on was to see if we could hook on to the Met Council system. He said we were facing the problem of no room for expansion in our sewer plant, so we had to build a new plant and it was going to cost between 8 and 10 million dollars. Davis said he approached Met Council and that is how he met Bill Cook, to see about joining as an out of state. He said he met with Bill Cook several times and we discussed the technical feasibility of the project which would have been very easy to accomplish and then we started working on some of the legal and the other aspects. Davis said it would have been a daunting task to accomplish, but there was some encouragement it could happen. He said however, he resigned and moved up here before that could be accomplished and after he left the project was dropped. He said but he did work with Met Council with a unique prospective from a neighboring state and he does have a strong background in economic development.

Davis said he has also been involved in at least a dozen sewer projects from there beginning to completion. He said he thinks he has a definite skills set for some of the unique challenges of this position that aren't associated with just the daily operations of a City and he has enjoyed his stint for the last 60 days. Davis said it has been very challenging and he hopes to have an opportunity to continue in this position, it is his desire to serve the citizens of the City of East Bethel.

DeRoche made a motion to appoint Jack Davis as the City Administrator. DeRoche said he has shown what he can do, this was quite a hornet's nest, there were quite a lot of things that were wrong and he has proven he can do the job. He said personality is a big part, we could get people in here with all kinds of credentials, but if they can't work with people they can't do the job. DeRoche said he would agree we need to get in a public works person and Davis should be instrumental in doing that. **Lawrence seconded.** Moegerle asked would it be fair to conclude that your motion includes all the conditions listed here. DeRoche said yes.

Moegerle said the only question she has is the date of effectiveness, what are we going to do between this date or until then. Davis said he would be interim city administrator until the contract gets approved. Voss said the understanding then would be you would have to do

both jobs until we get someone to fill this other position. Davis said he understands that. DeRoche said he recommends we start looking for the public works manager immediately. Voss said he is very glad about what he is hearing. He said this whole situation is unique in what we have been dealing with the last four months. Voss said we were faced with filling the city administrator position and the typical process is you go through a search, and find someone whether regional or national, have to get to know someone in a short time frame, and it is not often a community gets in situation like this. He said not only are we looking at someone that we have had on staff for a while, but someone that has done the job for a while, someone that is spearheading economic development and can promote this thing, Voss said also what you said about relationships is very important, everyone he has talked to on staff gets along with Davis very well. He said he still remembers when we interviewed Davis and he filled it well then. Voss said he and Boyer spoke about a due process to fill this process, but the uniqueness is good, and he challenges anyone to say there hasn't been more stability in the past two months. **All in favor, motion carries.** Davis said he appreciates your support.

Council
Reports -
DeRoche

DeRoche said he sat down the fire chief and he has a list from him to report on. He said seven fire fighters passed their EMT, and three more will be ready. DeRoche said they will be water training and chain saw training, OSHA. He said the grass trucks are ready. DeRoche said the DNR lifted the fire ban, this becomes effective Friday. He said the fire fighters did a recruitment and they are interviewing tonight, the names will be forwarded the city administrator to be brought to Council. DeRoche said \$250,000 remains from the Safer Grant for the next two years.

DeRoche said the fire chief is asking for direction on getting the ISO rating from a 7 to a 5. Davis said we talked and we feel with some of the improvements that have been made, and access to wells and sewer coming in; we would like to ask for direction from Council to pursue this. Voss said just so everyone understands when we did this and the ISO went from a 9 to a 7, everyone's homeowners insurance went down significantly. He said when this happened; he did ask what we do next to get it down further. Voss said what he recalls is the answer was we had to hydrant the City. He said he would ask to make sure we examine the issue about the hydrants. Davis said we have checked that, the fire chief has done some research on this and we feel we can make a good case on that now. He said we currently have hydrants on the north side in Whispering Aspen and will have on the south side in two years and we will have larger production wells. DeRoche said he thinks he wanted to research some things on this.

Council
Reports –
Moegerle

Moegerle said the suit Anoka County HRA vs. East Bethel HRA in the lower court was affirmed, technically we have won the lawsuit and we will have to see if they will appeal to Supreme Court. She said also today the variance bill was passed at the state house. Moegerle said it should be signed tomorrow, and then it would be effective the day after, then we will have to update our ordinances, then we can give variances again. She said this is good news for people who want variances.

Moegerle said the Coon Lake Beach community center will be celebrating Cinco De Mayo on Saturday with a big bash and the East Bethel Seniors will be serving Kookie's pancakes on Sunday and knowing Kookie they will be great, so get out there and support your community centers.

Council

Voss said he is assuming that having the sheriff deputy at meetings is not special duty; it is a

Reports -
Voss

contract deputy that is normally on the road. Davis said that is correct. Voss said he asked last time and he is going to plead this time, he would rather have the deputies on our roads, that is what the residents want, that is what they pay for, rather than have them sitting here at the back of the room. He said this is three to four hours off the road; he would rather have them on the road. Voss said he understands this is at the Mayor's direction, and he doesn't understand how he has the discretion to do that, it certainly wasn't a Council directive. He said he is asking to have the deputy back on the road. Lawrence said he will take that under advisement.

Council
Reports -
Lawrence

Lawrence said he had a call from a resident on Front Blvd., and when the sirens went off today, he said he was not sure they are rotating. He said we had this problem last year. Davis said we have continual problems with sirens, that is why we test, he is glad someone noticed there was an issue. Voss said he thinks this is the Thielen Beach siren, right off Viking Blvd. Lawrence said this resident would also like a cat ordinance.

Lawrence said he also had a meeting with Sheriff Stuart, Davis and I met with him about a new program that was offered up. He said since then he has met with Mark Korin from Oak Grove, the mayor there and they are also pretty excited about this. Lawrence said this would help us to maintain our coverage and lower our costs.

Closed
Session -
Land
Acquisition,
Service Roads
and Utility
Projects and
Closed
Session -
MBI

Vierling said we are going into closed session per Minnesota Statute 13D to consider three issues, review matters of land acquisition for the service road, land acquisition, Phase 1, Project 1, and a closed session to discuss matters between the City and MBI contract. Vierling stated that the properties for land acquisition need to be identified for record before going into closed session. He said the properties we will be discussing in regards to the service road from 221st to 215th Avenue NE are the following: PID# 08-33-23-13-0001; 08-33-23-42-0001 (1450 217th Avenue NE); 08-33-23-11-0003 (1742 221st Avenue NE); 08-33-23-12-0006; & 05-33-23-44-0001. Vierling said the properties we will be discussing regarding the Utility Project, Phase One, Project 1 are the following: PID# 29-33-23-23-0006; 29-33-23-24-0003; 29-33-23-32-0004; 29-33-23-31-0001; 29-33-23-34-0001; 32-33-23-21-0008; 32-33-23-21-0006; 32-33-23-21-0005; 32-33-23-24-0017; 32-33-23-24-0014; 32-33-23-24-0015; 32-33-23-24-0016; 32-33-23-31-0002.

Moegerle made a motion to go into closed session to discuss land acquisition for the service road from 221st to 215th Avenue NE, land acquisition for the utility project, Phase 1, Project 1 and MBI contract discussion. DeRoche seconded; all in favor, motion carries.

Vierling said the time is 10:19 p.m. approximately, the Council concluded the closed session at 10:18 p.m. He said Council reviewed three matters, land acquisition for the service road, land acquisition for the utility project and the City contract with Municipal Builders. He said the Council reviewed all three matters with a tape recording taken as required by statute; they took no specific actions, but gave staff direction on strategy and will have staff return with information in the next couple Council meetings.

Adjourn

Voss made a motion to adjourn at 10:21 PM. DeRoche seconded; all in favor, motion carries.

Attest:
Wendy Warren
Deputy City Clerk