

EAST BETHEL CITY COUNCIL MEETING

May 8, 2023

The East Bethel City Council met on May 8, 2023, at 7:00 p.m. for the regular City Council meeting at City Hall.

MEMBERS PRESENT: Tim Harrington Brian Mundle Kevin Lewis
 Tim Miller Jim Smith

ALSO PRESENT: Jack Davis, City Administrator
 Eric Larson, City Attorney
 Aaron Berg, Interim Community Development Director

1.0 Call to Order

The May 8, 2023, City Council meeting was called to order by Mayor Harrington at 7:00 p.m.

2.0 Pledge of Allegiance

The Pledge of Allegiance was recited.

3.0 Adopt Agenda

Mundle stated I'll make a motion to adopt tonight's agenda. Lewis stated I'll second. Harrington asked any discussion? To the motion, all in favor say aye. **All in favor.** Harrington asked any opposed? That motion passes. **Motion passes unanimously.**

4.0 Presentations and Public Hearings

4.0 A Res. 2023-34, Conduit Bonding for Nexus Diversified Community Services

Davis stated at the May 1, 2023 Work Meeting, City Council received a presentation from the City's bond counsel, Dorsey Whitney, and financial advisors, Ehlers, regarding the request for the City's participation in conduit bond financing for the proposed purchase of the Cambia Hills facility by Nexus Family Healing.

Davis indicated the presentation by Dorsey Whitney and Ehlers reviewed the process and procedures for the issuance of the conduit bonds. He indicated both representatives explained the legal considerations and assured that the City would have no liability exposure if the City should decide to be the host city for this issue.

Davis stated ISD 15 School Superintendent, Karsten Anderson, spoke in support of the need for the service to be provided by Nexus, but had concerns regarding charges for rent, state reimbursement, ISDS 15 cost for out of district students, and staffing for district provided services. He stated City Council members questioned if there would be additional costs borne by the School District to support the services and urged Nexus to work with ISD 15.

Davis indicated to remedy these matters, Nexus and ISD are scheduling meetings for this week to discuss these items. The City had a meeting with the Nexus officials on Friday and discussed some of these points and he thought their first meeting with the School District is on Thursday of this week. After discussion of the proposed participation of the City in this matter, City Council directed staff to schedule the consideration of Resolution 2023, a Resolution relating to financing under Minnesota State Statute Section 469.152 through 469.165 as amended, on behalf of Nexus Diversified Community Services, calling for a public hearing on the agenda for tonight's meeting.

Davis indicated this Resolution authorizes the preparation and publication of the public hearing notice, schedule a public hearing for June 12, 2023, and engages Dorsey Whitney as the City's bond counsel. The Resolution does not authorize the financing or bond issuance for the project. The vote for final approval will come after the public hearing on June 12. Issues with ISD 50 and Nexus will tend to be remedied during the interval between the two meetings.

Davis stated the fee a city can charge the borrower for conduit bond assistance and expenses is negotiable and will be discussed once all of the costs for this project are known.

Davis recommended the City Council consider approval of Resolution 2023-34, a Resolution relating to the financing under Minnesota Statutes Section 469.152 through 469.165 as amended on behalf of Nexus Diversified Community Services, calling for a public hearing as exhibited as Attachment 1 to Council's packet.

Lewis stated I'll make a motion to adopt Resolution 2023-34, a Resolution relating to the financing under Minnesota Statutes Section 469.152 through 469.165 as amended on behalf of Nexus Diversified Community Services, calling for a public hearing. Mundle stated I'll second. Harrington asked any discussion? To the motion, all in favor say aye. **Mundle, Lewis, Miller, and Harrington.** Harrington asked any opposed? **Smith. That motion passes. Motion passes 4-1.**

Davis stated that Michelle Murray, President, and CEO of Nexus, along with Scott McGuire, Nexus Chief Finance Officer, were in attendance at this meeting if anyone had any questions for them.

Lewis asked why Smith voted no. Smith responded he thought there were a lot of questions that were unanswered, and until they had the answers, he did not agree with it.

Lewis asked Smith, "Even while having a public hearing on the matter." Smith responded yes.

Harrington asked if anyone had any questions for Mr. McGuire.

Miller asked had any of the numbers come in yet for anything relating to the taxpayers impact on anything. Davis responded they had a meeting Friday with Nexus and he had talked to the School District, whose business manager was out last week on military leave. He indicated they did say that Nexus had reached out to him. He noted they do have meetings scheduled with the School District beginning this Thursday to discuss those matters that were brought up in their last meeting.

Lewis stated he agreed there are outstanding questions. He indicated he was at the meeting on Friday. He noted the meeting related very specifically to putting minds at ease that if East Bethel were to go forward with the conduit bonding it would not obligate the taxpayers of the City to pay those bonds. He stated the people who borrowed the money were the ones obligated to pay it back, and those people were just using the City's ability to issue tax exempt bonds.

Lewis indicated what they don't want is any impact on taxpayers of having an increase in the school levy that is related to their unanticipated costs, or something with the services they provide to the Nexus facility if it goes forward.

Smith noted that is what his concern is, but he's "in the camp" that he thought they can at least have a public hearing and give people an opportunity to discuss it, and hopefully by then have some more information also.

Davis indicated he had spoken with Dorsey Whitney today and they would like to appear before the May 22 Council meeting to do a presentation to give an update and hopefully provide some of those answers at that time.

Lewis stated in anticipation of that presentation by Dorsey Whitney, he asked Davis to send copies of the Agreement between the City and Dorsey Whitney so the Councilmembers can review it before that meeting. Davis responded he would.

Mundle stated to be clear, what they approved tonight was only approval for conducting a public hearing and it is not an approval for the conduit bond. He noted East Bethel is not committed to approving it, and this is the next step. Davis responded that is correct and this Resolution only authorized the calling for the public hearing and nothing else.

4.0 B A-Blast Conditional Use Permit – 21473 Johnson St

Berg stated that Council Classic Construction, Inc. on behalf of Our Family Holding LLC has submitted an application for the expansion to A-Blast, INC located at 21473 Johnson Street NE. Our Family Holdings, LLC owns Curiosity Coatings, a powder coating business currently operating in Elk River.

Berg indicated the proposal consisted of relocating the powder coating operation to the East Bethel site and constructing an 80x58 warehouse and storage addition to their existing building. The proposed addition would house interior storage and be the staging area for products either waiting to be powder coated and are waiting for pickup.

Berg noted this property is Zoned B3 Highway Commercial business, which allowed uses associated with general retail shopping. A-Blast was and is permitted to operate by Conditional Use Permit 2004-15 approved on November 17, 2004. As a part of this conditional use, exterior storage was limited to essential business-related material as a condition. An amendment to the original CUP is required for the following reasons: The business is legal non-conforming, which means that the business is legal because it has a Conditional Use Permit that was previously approved. However, currently City Code does not allow for this type of business in the B3 Highway Commercial Business District. Therefore, it is non-conforming. City Council has the authority to determine if a legal non-conforming use can be expanded. When a conditional use, it intends on expanding its hours of operation, number of employees, expansion of structure and/or premise for the operational modifications resulting in an increased activities or traffic, an amendment to the original CUP is required.

Berg stated the Planning Commission held a public hearing on April 25 and recommended the City Council approve the Conditional Use Permit Amendment with the conditions set forth in Resolution 2023-27.

Mundle stated I'll make a motion to adopt Resolution 2023-27, A Resolution Approving a Conditional Use permit Amendment to Allow the Expansion of Legal Non-Conforming Use at 21473 Johnson Street NE, East Bethel, PIN 08-33-23-0006 with conditions. Miller stated I'll second.

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

4.0 C A-Blast Site Plan Review – 21473 Johnson St

Berg stated a site plan review is required prior to issuance of a building permit for new construction or additions to commercial buildings greater than 25% of their existing building footprint.

Berg indicated the existing building footprint for A-Blast is 5000 square feet, and the proposed addition is approximately 4700 square feet. So Classic Construction again on behalf of Our Family Holdings, LLC has submitted an application for site plan review, as required by the expansion for A-Blast INC.

Berg noted he could give Council all the same details about where this is located and what business zone it is in, but because Council had already just heard all of this information he would not repeat it

again. However, he assured the Council staff had looked through the site plan that was submitted; it had been sent to the City Engineer for his comment and all conditions as required by the City Engineer would be met before permits were issued.

Berg stated at the April 25, 2023 Planning Commission meeting, this site plan was reviewed and the Commission recommended approval to the City Council with conditions set forth and Resolution 2023-28.

Mundle stated I'll make a motion to adopt Resolution 2023-28, Approving the Site Plan Review for the Expansion of a Legal Nonconforming use at 21473 Johnson St NE, East Bethel, PIN 08-33-23-34-0006. Lewis stated I'll second. Harrington asked any discussion?

Miller asked if there was going to be any problems with this business if it ever sells because it's non-conforming. Larson responded he suspected Miller was wondering if there would be any problems given its non-conformity in one location as zoned and then the permitted in the B3. He stated it was legal then and it would be legal to new owners. He noted obviously with that there would issues again, just like here, if there was going to be another expansion and if this would happen, they would need to go through the same process they have gone through for this Site Plan Review.

Berg stated an existing non-conforming or a conditional use would be permitted. However, its underlying zoning could still be also used. He noted it could be any one of the City's permitted uses in the B3 Highway Commercial should A-Blast not continue operation. He indicated any of the approved items are approved can uses in any of the City's businesses - business zones B2, B3, light industrial may be an option for this this area as well. He noted the conditional use does stay with the land, so if A-Blast were to relocate or move somewhere else, that parcel of property does have the right to be under this conditional use whatever the operation was, so there's a pretty wide variety of things that could actually happen should A-Blast leaves the City.

Harrington thanked A-Blast for bringing the remainder of their business to the City.

To the motion, all in favor say aye. **All in favor.** Harrington asked any opposed? That motion passes. **Motion passes unanimously.**

5.0 Public Forum

Suzanne Erkel, Okinawa Street, stated she was volunteering for the East Bethel seniors and they are having a fundraiser of raffle tickets for to be drawn on Booster Days. She indicated the raffle is for a beautiful quilt for the first place and second place is a diamond art print. She passed out flyers to the Council. She stated she had tickets available if anybody would like them, or if someone knew of a business willing to post a flyer, she would appreciate a phone call on that also.

6.0 Consent Agenda

~~Item A: Approve Bills~~

~~Item B: Approve Meeting Minutes April 24, 2023 City Council Work Meeting~~

Item C: Approve Abdo Proposal for Audit Services 2023-2025

~~Item D: Approval of Planning Commission Member Appointment~~

Item E: Approval of Tobacco License and Cannabinoid Edibles Vendor License Applications 18429 Hwy 65

Mundle stated I'll make a motion to approve the Consent Agenda. Harrington stated I'll second.

Harrington asked any discussion? Harrington and Lewis requested to pull Item B. Miller requested to pull Item A. Smith requested to pull Item D. To the motion, all in favor say aye. **All in favor.**

Harrington asked any opposed? That motion passes as amended. **Motion passes unanimously.**

6.0 A Approve Bills

Miller asked what the Metro-Inet bills were for. Davis responded they were for the City's internet service. He indicated they provided everything that the City does, and their total bill for the year is about \$55,000 to \$60,000. He stated the City had been in a JPA with 30 different cities, but this group broke up so Metro Ethernet took over those services. He noted as a result of this, Metro-Inet has one staff member that houses at the City two days a week. He indicated this person is their IT person, so the City has access to that individual.

Miller asked why there was differences in the billings. Davis responded that the bills were broken down by the number of computers in each department.

Miller stated I'll make a motion to approve Item A of the Consent Agenda. Lewis stated I'll second. Harrington asked any discussion? To the motion, all in favor say aye. **All in favor.** Harrington asked any opposed? That motion passes. **Motion passes unanimously.**

6.0 B Approve Meeting Minutes April 24, 2023 City Council Work Meeting

Harrington noted there was a typo on the agenda. He indicated the April 24, 2023 meeting was not a Work Meeting, but just a Council meeting.

Lewis stated he also had a question on Item B. He stated on the April 24, City Council meeting minutes, page 13 of 14, his point was missed. He noted that when Ms. Wirth was here he mentioned two things – one was typos and the other was where the point was being missed when the transcription was being done. He indicated that the point he made at that time wasn't regarding meetings of Jack Davis and Mayor Harrington, but it was regarding the Council needing to be informed when either or both Davis or Harrington have meetings with outside people on City related business. He indicated the Council needed to be updated as to interaction with outside parties on City-related business when the Mayor and Davis are representing the City. He said the Minutes said his concern was Davis talking with Harrington and that was not the point at all. He requested this be corrected for the record.

Smith stated when Ms. Wirth was here, he asked her if numbers could be put on the Minutes so it would be easier for the Council to decipher when things needed correction. He stated that did not happen. Davis responded that would be on the next set of Minutes.

Lewis stated I'll make a motion to approve Item B of the Consent Agenda. Smith stated I'll second. Harrington asked any discussion? To the motion, all in favor say aye. **All in favor.** Harrington asked any opposed? That motion passes. **Motion passes unanimously.**

6.0 D Approval of Planning Commission Member Appointment

Smith requested Berg pull up the April 25 Planning Commission Meeting video and to start the video where the interviews began.

Smith stated he has had a lot of people calling him, and this meeting was such a mess that they couldn't even watch the video, and that was why he was asking Berg to bring up the video of the interviews for Planning Commissioner. He indicated the people who called him had asked to watch the video, so they will watch it now.

At the request of Smith, the Council watched the video recording of the Planning Commission interviewing candidates Reiter and Holmes.

Smith thanked Berg for playing the interviews. He indicated he had received a lot of calls because nobody knew what went on at the interviews, and he hoped now everyone could figure out the right decision that he has in mind after watching the two interviews.

Smith stated I'll make a motion to deny Eldon Holmes as Planning Commissioner. Lewis stated I'll second. Harrington asked any discussion?

Smith stated this was nothing against Mr. Holmes, and he knew Mr. Holmes had given a lot of years to the City and he thanked him for that. He indicated it was vision that Mr. Reiter had different outlooks, like they all do, and that was why he made this decision.

To the motion, all in favor say aye. **All in favor – Lewis, Miller, and Smith.** Harrington asked any opposed? **Mundle and Harrington.** That motion passes. **Motion passes 3-2.**

Smith stated I'll make a motion to put Joe Reiter on the Planning Commission effective immediately. Lewis stated I'll second. Harrington asked any discussion?

Mundle asked why Mr. Reiter. Lewis responded Mr. Reiter is an extraordinarily sharp young man, one of the sharpest young people he's met. He noted Mr. Reiter is a naval veteran, disabled Navy vet, and Mr. Reiter just impressed him a lot with his research skills. He stated Mr. Reiter was an analyst in the Navy, he did intelligence work, and Mr. Reiter's research skills were second to none among people he's run across. He stated increasingly, those skills were going to be valuable to the Planning Commission, if the Commission does what it's supposed to do in the future.

Miller stated he was taking Mundle's advice when Mundle talked about interviews and how important they were for making decisions. He indicated he had given this a lot of thought, and he was impressed with Mr. Reiter's interview and that was a big part of his decision.

Mundle asked them to address Mr. Reiter's online postings. Harrington stated most of Mr. Reiter's online postings are not fact; there is a lot of fiction in them and not a lot of truth.

Lewis stated he disagreed. Harrington stated Mr. Reiter just did it this weekend. Lewis again stated he disagreed.

Mundle stated there was one thing he wanted to bring up. He indicated Ms. Krepis was denied the seat because of things she apparently said about City Council. He indicated Mr. Reiter made a post accusing the City Administrator and the City Attorney of ghostwriting newspaper articles for the local newspaper. He stated one resident did email the writer, and the writer said "No, the City Administrator or City Attorney is not writing my articles." He asked the City Attorney if he ghost wrote any articles. Lewis stated this isn't about City Attorney Larson, they would have to go back to former City Attorney Chris Nelson, or it was the attorney after Mr. Nelson.

Lewis stated he would address Mundle's question. He indicated he understood Mundle's question and they are not appointing Mr. Reiter to the Planning Commission because he's the second coming of Christ, or is the perfect person. Mundle stated he did not say that.

Lewis pointed out that Mr. Reiter's capable and Mr. Reiter had a significant interest in working in this field. He believed Mr. Reiter should be given an opportunity to do so. He indicated he had talked to Mr. Reiter and Mr. Reiter did go over the top a little bit sometimes. He stated he was one of those people who was occasionally accused of doing the same thing so he could relate. He stated that didn't take away from a person's other qualities.

Mundle stated it apparently did for Ms. Krepis. Lewis responded no, I can't believe we're six months later, five months later, and we're still rehashing this thing. Mundle indicated Lewis keeps bringing

up sewer and water and that was 12 years ago. Mundle stated Mr. Reiter accused the City Attorney and the City Administrator. Lewis stated Mundle brought up Ms. Krepis. Mundle stated this was the same thing.

Mundle stated Mr. Reiter apparently was not true when he accused the City Administrator. Lewis responded so says the writer of the article and asked if Mundle ever has questions about articles read in the newspaper. Mundle stated he doesn't go online and accuse anybody of ghostwriting anything.

Lewis stated well, you got a reaction out of him and maybe that's what he was going for. Lewis noted Mr. Reiter was not a Planning Commissioner – he was a guy on Facebook. Lewis stated he sees a lot of stuff and if you want to talk about accusations being made, he can attest to the fact that it's unpleasant. But it comes with the job. Yeah, grow up, deal with it. Lewis stated you don't see him getting on there and having a fit over people.

Mundle stated neither does he but this is something that Mr. Reiter lied about the City; he lied about City employees. Lewis responded that Mr. Reiter exaggerated. Mundle stated no.

Lewis responded Mundle is saying it's a lie because the guy who wrote the article says so. Lewis stated he didn't talk to Jack. Mundle asked Jack, did you write any of the articles. Davis responded no. Mundle noted staff could get in touch with the previous City Attorney. He stated the previous City Attorney would deny it as well.

Lewis stated they did talk to the writer and we have evidence of that.

Mundle stated there's talking, and then there's ghostwriting and ghostwriting said that they wrote the articles. Lewis noted maybe the term was incorrect. Mundle replied he didn't think so.

Lewis stated maybe 'collaborative' would have been a better word. Mundle responded, no, that was not the intent of that.

Lewis stated either way, Mr. Reiter was going to be appointed and if it turns out to be some kind of debacle, he can be removed too.

Mundle asked Lewis, in the interest of transparency, and he knows Lewis has talked about nepotism and cronyism, did Joe Reiter work in your campaign. Lewis responded that Mr. Reiter provided Facebook consulting because none of them were glib with Facebook. Lewis stated he had never been on Facebook in his life and never wanted to be.

Mundle stated so Mr. Reiter worked on Lewis' campaign. Lewis responded that Mr. Reiter consulted on Facebook and Mr. Reiter didn't design his campaign. Mundle noted Mr. Reiter had made a post on Facebook saying, 'I literally worked on their campaign'.

Lewis stated maybe Mundle spent his whole life on Facebook and asked Mundle if he wanted to drag this off the topic. Mundle stated he was only asking. Lewis stated whether Mundle liked it or not, Mr. Reiter is going to be appointed to the Planning Commission.

Mundle stated he was asking because Lewis doesn't like nepotism. Mundle indicated Lewis had stated he doesn't like nepotism/cronyism. He asked Lewis if that was correct. Lewis responded, "Enough of you. I've had it with your crap."

Larson stated he recalled that there had been some sessions where Council had wanted to have clear Minutes and in order to have clear Minutes, the Council needed to make sure that they don't talk over each other.

Larson stated while he had the floor and since the question was posed to him, he wanted to make it clear for the record that he has not done ghostwriting for anyone, at least during his tenure with this body, which has been two and a half months.

Larson believed this was a good opportunity for him to interrupt and bring the floor back to this Council. Harrington and Lewis thanked him.

Mundle stated he was just making the point that so far, the only people that had been appointed was Ms. Erkel, who was Lewis's running mate, and now Mr. Reiter, who worked on Lewis' campaign. Lewis responded, what a shock that people would want to work with people who they are in agreement with.

Mundle asked if that doesn't fit the definition of nepotism or cronyism, yes or no. He asked again if it fit the definition or not. Lewis replied to Mundle that he did not know what's going on in that head of yours. Mundle stated this was a yes or no question.

Smith called the question and stated let's vote.

To the motion, all in favor say aye. **All in favor – Lewis, Miller, and Smith.** Harrington asked any opposed? **Mundle and Harrington.** That motion passes. **Motion passes 3-2.**

7.0 New Business. Commission, Association, and Task Force Reports

7.0 A Planning Commission

7.0 A.1 Variance Request – 19141 East Front Blvd

Berg stated on May 16, of 2022, the City of East Bethel, prior to his employment with the City, received an application from the owner of the property at 19141 East front Boulevard NE to allow the upgrade of an existing outhouse to a type three sub sewer subsurface sewage treatment system to make a cabin a future habitable residence.

Berg stated due to the size of this .17-acre lot, the proposed system design included the placement of a box mound, which encroached on property lines and required the City's permission for a variance for its use. City staff subsequently approved the permit, and the system was installed in July of 2022.

Berg indicated during the final inspection, it was noted by the inspector that the installed septic box mound was constructed within the required setbacks, and that a variance for a reduction of the side in front yard setback should have been sought and approved prior to its installation.

Berg stated as the new City Planner in the end of July, at his request, the applicant applied for a variance after the fact for the setback encroachments. He noted City staff began to gather information in preparation for the variance public hearing.

Berg stated inconsistencies were discovered in the existing survey from 2004, which was on file and the drawing submitted with the septic system permit application and what was actually built. A site visit was conducted for the purpose of confirming measurements, and City staff concluded that the site didn't match either the 2004 survey or the drawings submitted by the septic designer and applicant.

Berg stated City staff contacted the applicant and requested a new Certificate of Survey be completed. The new survey identified that the septic box was not only encroaching on the front and side yard setbacks, but a portion of it was also constructed in the City's right-of-way.

Berg indicated City staff consulted with the then City Attorney Nelson to determine the best course of action to address the circumstances. Nelson recommended that in addition to requesting variance

approval that a license and use agreement would need to be drafted to authorize the use of the portion of East Front Boulevard in the City right-of-way.

Berg stated the applicant was requesting a variance to reduce the south side yard setback standard from 10 feet to zero to 3 feet. The north side yard setback from 10 feet to 6 or 7 feet, and the western front property line setback from 10 feet to minus half a foot to 1.7 feet for the placement of the septic box mound. The system meets setback requirements for neighboring wells.

Berg stated consideration of a variance required a three-factor test for practical difficulty. The first factor was a test of reasonableness, which meant that the landowner would likely use the property in a practical way but could not do so under rules of the Ordinance. And this case, septic systems were required for a home to be considered habitable. The approval of the variance would allow this property to be used for residential use.

Berg noted the second factor was a test of uniqueness. The issue for the variance was due to circumstances unique to the property and not caused by the landowner. The uniqueness generally relates to the physical characteristics of a particular property. In this case, the property had limited space for a drain field due to lot sizes created by a 1920s era plat. There was an eight-foot change in elevation from the front lot line the East front Boulevard to the ordinary high water level mark at the shoreline. Minnesota Statute required that a sub-surface sewage treatment system constructed in the shoreland area must have at least three foot of vertical separation distance between the redox features or evidence of groundwater and wastewater saturated soils of the distribution medium. This property's redox feature was located at 1.5 feet or 18 inches below the existing grade at this location at East front Boulevard. The current setback requirements for wells and structures, as well as the DNR Lakeshore regulations, also make it unique.

Berg indicated the third factor was that the variants would not alter the essential character of the neighborhood. This factor was used to consider whether the resulting structure or improvement would be on a scale out of place or otherwise inconsistent with surroundings. When applying this test to a setback reduction, the visual impact or use of a building or an improvement related to surrounding dwellings is the emphasis of this assessment. For example, when thinking about a variance for an encroachment into a setback, the focus was how the particular building would look closer to a lot line. And if that fit the character of the neighborhood. The Coon Lake Residential District has had significant number of variances issued due to smaller lot size and the age of the neighborhood. Zoning and setback changes have occurred since this neighborhood was originally planned in 1925, which has led to a variety of placements of structures, fences, and landscaping. As an example, a neighboring property at 4640 East Front Boulevard was granted a license in 2012 to use a portion of Sylvan Street for placement of a septic tank piping and the new deep well in order to upgrade a failing septic system on the property due to limited lot size. And in 2012, the setback requirements were narrower than today's current regulations.

Berg indicated the Planning Commission had held a public hearing on April 25 of 2023. City staff took numerous phone calls as a result of the public hearing notices publication and its distribution. There were various levels of support and opposition for the septic box. The Planning Commission held their public hearing for the variance request for the installation of the septic box mound within the side in front yard setbacks.

Berg stated the applicant spoke of the incompleteness of the project and their intent to continue to improve the property. Five residents spoke at the public hearing in opposition to the variance for a variety of reasons.

Berg noted the Planning Commission's unanimous recommendation was that the City Council deny the variance request.

Berg stated staff was requesting that Council make a determination on the variance request for the standard to allow the installation, or to allow the septic box mound to remain at the south side yard setback standard from 10 feet to zero to three feet. The northern side yard setback from 10 feet to six to seven feet in the western front property line from 10 feet to a half a foot to 1.7 feet for placement of the septic box mound with conditions.

Berg noted they did have a current certificate a survey, which indicated the location of the current septic system.

Lewis stated I'll make a motion to approve Resolution 2023-19 denying the variance. Miller stated I'll second. Harrington asked any discussion?

Lewis acknowledged former Mayor Steve Voss was in the audience and Mr. Voss was probably the best person in the Chamber to answer some questions. He asked with Mr. Voss's background, had there been any progress, new solutions, and new ways of approaching this that would make it better for all the people

Steve Voss responded he had not been involved with this at all.

Harrington asked how they got this far along in the process without a variance being requested. Berg responded he did not know as he was not employed with the City in May when the application came in. He noted he was hired as an intern at the end of June and by the end of July he was made the City Planner when the final inspection was done.

Lewis stated Davis was with the City at the time and he asked Davis what was his read on how this happened. Davis responded after this was approved and he didn't know anything about it or there was an issue it until the construction had been started.

Lewis asked how was this approved and what happened. Davis responded the City had an inspector go out and looked at it and approved it. He indicated there was a misinterpretation by the inspector on the setbacks. He stated the inspector made an error. He noted it was approved, and that was in the lap of the City.

Smith asked if there was a site plan review on this before the permit was issued. Davis responded there was an inspection done later by another member of the building department. He indicated it was approved. He believed the inspector thought there had been a variance issued. He noted, apparently there was a miscommunication and that was how they wound up where they are now.

Smith inquired about the timing of the Certificate of Survey. Davis responded the Certificate of Survey was done after. Smith noted it should have been done before.

Berg stated the survey that was on file, which was submitted by the septic designer, the numbers did not match up after he had a chance to review it. He stated then he requested a third Certificate of Survey to try and determine which one was right, which one was wrong, and where the error might have come up. He indicated there were some differences in measurements between all three of the surveys. He stated he could only venture that today's surveys were done through GPS versus the old-fashioned transom and stick that were probably even done back in 2004. He believed as they progress, the City would see more accurate measurements than they've ever seen before with GPS options. He noted that was his assumption as to the difference.

Lewis asked if Berg had heard anything about somebody moving a surveyor stick as part of this whole process. Berg responded one of the residents who spoke at the public hearing made a reference to the septic installation company moving a stake.

Berg showed the Council pictures of what the property looked like prior to the current owners purchasing the property and what it looked like today. He noted there was a pink flag on a stake. He assumed the property pin was right at that corner. He indicated likely it would have possibly had to have been moved in order for the box to be right on the property corner, but he wasn't there when it happened.

Lewis asked staff if they had any sense of how this was going to turn out based on their experience. He stated it was an unfortunate situation. Berg agreed this was an unfortunate situation. He indicated the septic box design was submitted by the designer, because a traditional mound system would not work. He noted the location where the deepest soils, the 1.5 foot or 18 inches of soil was found at the top of the hill. He indicated that's the prime location to install something so a variance would be needed for that.

Berg noted alternatively, there are other potentials, though much more costly, which included holding tanks. He noted holding tanks also required a variance because they are not a type two system that's accepted by the MPCA. He indicated the applicants would be back here for another variance hearing, should this box mound be removed and the applicants have to move to a tank system.

Berg stated he had some information on costs associated with pumping tanks and those kinds of things. He indicated there are some additional costs beyond what a mound or box mound would provide the homeowners. He noted there would be additional pumping requirements, maybe from every couple of years to possibly every three weeks depending on use based on the size.

Berg indicated he had taken a drive through the neighborhood and took some photos of some other structures and or vegetation that were located in the right-of-way along East Front as maybe potential options for camouflage. He showed photographs of various screening currently being used in the area.

Lewis indicated Mr. Voss lived on the road for a long time and he knew the neighbors involved. He asked Mr. Voss what he saw as a resolution for this that was going to make everyone happy. He asked if the applicants were just out of luck. Voss responded the one issue that hasn't been discussed is the fact that the septic eliminated the ability to have a driveway.

Harrington stated they are grabbing up a City easement. Lewis stated he had forgotten about the driveway.

Voss stated the access to the lot had to be from East Front Boulevard.

Harrington asked if there were a lot of holding tanks on these smaller properties in the City. Davis responded there were several holding tanks in the City.

Lewis asked if the holding tanks were on Front Street. Davis responded he did not know about Front Street, but there was probably more holding tanks in the Coon Lake Beach area. He indicated holding tanks were used where there was not enough room for a septic system because of the setbacks or other constraints. He indicated holding tanks were used on the smaller lots.

Lewis stated this sounded like one of those situations where it just a "damn shame." He indicated he could not imagine how Council was going to satisfy everyone.

To the motion, all in favor say aye. **All in favor.** Harrington asked any opposed? That motion passes. **Motion passes unanimously.**

Lewis stated that was a tough one.

7.0 A.2 Ordinance Amendments, Section 74-95 and Appendix A, Zoning Section 14

Berg stated on April 25 2023, the Planning Commission held a public hearing and reviewed proposed amendments to the Zoning Code at the request of the East Bethel City Council. The Planning Commission discussed suggested amendments and had the following recommendations:

Article 4, Section 74-95 - There was a proposed amendment to the septic identification or septic. Identification and upgrade of sub-standard sewage treatment facility or facilities. The Planning Commission discussed the proposal of the City Council and the recommendation was only to alter suggestion Subsection C.

Berg indicated In the staff report, the conversation surrounding the subsection C basically revolved around the proposed language that "if a property owner," the concern was that this would dissuade owners from applying for any building permits, under the premise that the property owners would risk not applying for a permit, because the word "if" is suggestive. Therefore, the recommendation was to strike "if a property owner" and replace it with "when a building permit or variance is applied for that affects the capacity of a subsurface treatment system. It must be evaluated. If the system is substandard, it must be upgraded before the permit or variance is issued." That was the only suggested change to the proposed amendment to that Article 4, Section 74-95.

Smith stated he liked the wording the Commissioners put in there versus "if a property owner." He indicated that is good. He asked if Council could add this tonight, and could Council get this approved tonight as well. Berg responded they could as there was already a public hearing held. He indicated Council could make the motion to approve based on the recommendation and the completion of the public hearing.

Smith stated I'll make a motion to approve Article 4, Section 74-95. Miller stated I'll second.

Harrington asked any discussion? Berg asked for clarification if that was with the recommendation of the Planning Commission change. Smith responded it was. To the motion, all in favor say aye. **All in favor.** Harrington asked any opposed? That motion passes. **Motion passes unanimously.**

Berg stated the next one was Article Four, Section 14, subsection 5 on detached accessory structures. He indicated after discussion of the proposed amendment, the removal of Section 5a was agreeable to the members of the Planning Commission, or just striking out the temporary storage for an agricultural zone. He stated the Planning Commission agreed that that change was acceptable.

Miller stated I'll make a motion to approve Article 4, Zoning Section 14, subd. 5. Smith stated I'll second. Harrington asked any discussion? To the motion, all in favor say aye. **All in favor.**

Harrington asked any opposed? That motion passes. Motion passes unanimously.

Berg stated in regard to the last two proposed amendments to the Zoning Code. The Planning Commission had reached nearly the four-hour time window and there was a lot of ongoing back and forth conversation regarding these two proposals. He noted he could not get a read on any one of the Planning Commission members to determine if any of them were even making a recommendation at that point. He noted there was a lot of yawning, and so without any formal recommendation, his recommendation would be to bring these two back to the Planning Commission for further discussion and a formal recommendation on the proposed changes when the Commissioners have a fresh mind and have not been sitting for four hours.

Lewis stated I'll make a motion to send the proposed changes to Section 24, Exterior Storage Light Industrial B2 and B3 District and Article 4, Zoning Section 28-Architectural Standards back to the Planning Commission for further consideration. Miller stated I'll second. Harrington asked any discussion? To the motion, all in favor say aye. **All in favor.** Harrington asked any opposed? That motion passes. **Motion passes unanimously.**

Mr. Brian Bezanson asked if he could speak. Harrington invited Mr. Bezanson to approach the podium. Mr. Bezanson stated he was on the EDA and he believed this had an impact on economic development. He indicated he had not spoken with the other EDA members, but he believed the EDA should look at this also.

Lewis asked if it was possible for Mr. Bezanson to consult with the Planning Commission because Mr. Bezanson had experience with this, which might expedite everything because both the EDA and the Planning Commission met only once a month. Mr. Bezanson responded he believed that was possible.

Miller stated he was not opposed to that and the more advice they can get on it, the better especially from people with knowledge of this.

Lewis thanked Mr. Bezanson for his useful input. Mr. Bezanson stated he had 30 years of commercial construction experience.

Harrington asked if Lewis wanted to amend his motion to include the EDA's review also. Berg indicated the EDA met before the Planning Commission, so any formal recommendations could be given to the Planning Commission for their review and input.

Davis stated staff can just set this as an agenda item on the EDA agenda and no notification was needed. He indicated if the EDA didn't want to discuss it then, they can set it for another day, but he believed it would help expedite this.

Lewis asked if he needed to amend his motion. Harrington responded no.

Bezanson asked if an email could be sent out to the EDA. Davis responded this would be added to the agenda and if the EDA didn't want to discuss it then, they could pull it. But at least the EDA would have the heads up about this.

7.0 B Economic Development Authority

None.

7.0 C Park Commission

None.

8.0 Department Reports

8.0 A Community Development

None.

8.0 B Engineer Report

None.

8.0 C City Attorney

None.

8.0 D Finance

None.

8.0 E Public Works

8.0 E.1 2024 Parks Capital Improvement Plan

Davis stated the Parks Commission prepares an annual Capital Improvement Plan (CIP) which updates needs and costs, proposed projects, evaluates priorities, and establishes funding for the coming year and for each of the subsequent years for a five-year period. This plan was presented to City Council for their approval and using the preparation of the 2024 budget. This plan was reviewed by City Council at the Work Meeting on May 1.

Davis indicated the approval of the plan only committed the City for projects identified in 2024 and projects beyond 2024 were for planning purposes and would be reevaluated annually for funding prioritization.

Davis stated the budget included a proposed general fund transfer of \$100,000 for parks capital projects for 2024. This was subject to City Council approval. It was anticipated the parks dedication fee from developers will provide an additional \$40,000 to the Park's Acquisition and Development Fund for 2024. The Parks Commission voted unanimously to recommend the 2024-2028 Parks Capital Improvement Plan for approval by City Council.

Miller stated I'll make a motion to approve the Parks Capital Improvement Plan. Lewis stated I'll second. Harrington asked any discussion? To the motion, all in favor say aye. **All in favor.** Harrington asked any opposed? That motion passes. **Motion passes unanimously.**

8.0 E.2 2024 Roads Capital Improvement Plan

Davis stated staff prepares an annual Capital Improvement Plan (CIP) which updated needs and costs of proposed projects, evaluates priorities, and establishes funding for the coming year and for each of the subsequent years for a five-year period. This plan was presented to City Council for their approval and used in the preparation of the 2024 budget.

Davis noted approval of the plan only commits the City for the projects identified for 2024. Projects beyond 2024 are for planning purposes and would be reevaluated annually for funding prioritization during the capital improvement needs assessment and planning process.

Davis indicated the budget included a proposed general fund transfer increase of \$50,000 for road improvement projects for 2024 subject to City Council approval.

Davis recommended the 2024-2028 Roads Capital Improvement Plan to the City Council for their consideration and approval.

Lewis stated I'll make a motion to approve 2024-2028 Roads Capital Improvement Plan. Miller stated I'll second. Harrington asked any discussion? To the motion, all in favor say aye. **All in favor.** Harrington asked any opposed? That motion passes. **Motion passes unanimously.**

8.0 F Fire Department

None.

8.0 G City Administrator Report

8.0 G.1 Opioid Settlement

Davis stated the City's participation in the National Opioid Settlement was reviewed at the April 3, 2023 Work Meeting. This discussion was prompted by the League of Minnesota Cities (LMC) as part of their follow up to urge cities to sign on to the settlement agreement. The City contacted the LMC

requesting background information on this matter to support a presentation to City Council. The comments submitted by the Minnesota Attorney General's Office to bring this matter to City Council were insufficient at that time to justify this request as an agenda item.

Davis indicated this response was relayed to Council by email on April 13, 2023.

Davis stated Rhonda Sivarajah, Anoka County Administrator, contacted the City on May 3, 2023 and requested that East Bethel consider signing the National Opioids Settlement Participation Agreement to ensure maximum funding for the County allocation of this program.

Davis noted that even though East Bethel would not receive money from the settlements, they are being encouraged to approve and sign the agreements to maximize the County's share of the funds. If all cities over a population of 10,000 sign on to the settlements or otherwise release their claims against the particular 5 parties (Teva, Allergan, Walgreens, CVS, and Walmart) stipulated in the agreement, it increased the pool of money that these parties must pay to the State of Minnesota. Funds allocated to the State would then be distributed to the County. This money would then be used for County public health programs, embedded social workers in city police departments, naloxone purchases, and many other efforts to remediate the effects of the opioid epidemic.

Davis stated the City of East Bethel had no mechanisms in place, experience or means to implement any use of the funds from the settlement but would benefit from having these programs available for the residents. He indicated staff had been informed that East Bethel would bear no expense for endorsing the program or allocating the City's share of these funds to the County.

Davis indicated it was intended that this round of settlements would be the last time City Council would have to approve a Memorandum of Agreement (MOA). Following an approval of this new MOA, City Councils would have the ability to simply authorize staff to join or not join opioid settlements as they appear, subject to all the terms of the agreement.

Davis stated the deadline for signing had been extended to May 9, 2023 and to accommodate the County request to have all the cities be a signatory to the settlement agreement.

Davis indicated the City Attorney had stated that, "I discern no reason why the City can't or should not sign the documents, and if settlement monies become allocated to the City, then the City can take appropriate action to accept/allocate as it deems appropriate."

Davis noted the State of Minnesota was projected to receive approximately \$245 million from the settlement and of that amount Anoka County would receive approximately \$8.5 million. East Bethel would not receive any direct allocation, but by signing, East Bethel potentially become eligible to apply for State grants and/or County grants if the County decides to go in that direction in the future. He indicated more importantly, it could increase additional funds the County could use to provide locally available services and resources for those in need of treatment.

Davis gave the following recommendations:

Recommendation 1 - Staff recommends that City Council consider the approval of Resolution

2023-35, Resolution Authorizing the City of East Bethel to Execute All Necessary Documents to

Ensure the City of East Bethel Participation in the Multistate Settlements Relating to Opioid Supply Chain Participants and in the Minnesota Opioids State- Subdivision Memorandum of Agreement as exhibited in Attachment 1 to Council's packet, and;

Recommendation 2 – Staff recommends that City Council consider approval of Amended

Minnesota Opioids State Subdivision Memorandum of Agreement as exhibited as Attachment 2 to Council's packet.

Mundle stated I'll make a motion to adopt Resolution 2023-35, Resolution Authorizing the City of East Bethel to Execute all Necessary Documents to Ensure the City of East Bethel's Participation in the Multistate Settlements Related to Opioid Supply Chain Participants and in the Minnesota Opioids States – Subdivision Memorandum of Agreement as exhibited in Attachment 1. Lewis stated I'll second. Harrington asked any discussion? To the motion, all in favor say aye. **All in favor.** Harrington asked any opposed? That motion passes. **Motion passes unanimously.**

Mundle stated I'll make a motion to approve Amended Minnesota Opioids State Subdivision Memorandum of Agreement as exhibited as Attachment 2. Miller stated I'll second. Harrington asked any discussion?

Mundle stated he was glad even though East Bethel could not administer this program themselves, that the City can have some small part in helping out some people in that area. He indicated he was happy that the City can take advantage of this so that some citizens might get help that they need.

Davis noted that this was something the City had needed. He indicated this was better allocated to the County to take advantage of economies of scale in their existing systems put in place to make sure this happened.

To the motion, all in favor say aye. **All in favor.** Harrington asked any opposed? That motion passes. **Motion passes unanimously.**

9.0 – Other Items

9.0 A Staff Report

Davis stated there was another Local Government Association meeting on May 31 at the Bunker Hills Activity Center at 6pm. He noted this was a gathering of all the mayors and city councilmembers that wish to attend, along with certain City staff and County organizations like the Highway Department and other groups in the County that can join together. He indicated they have a meal and a program presentation and this was a chance to talk to some fellow City members and the County. He asked if anyone wanted to attend to let him know and he would get them signed up.

9.0 B Council Reports

Mundle stated the Mayor and he attended the highway cleanup. He stated they volunteered with the East Bethel Fire Department Auxiliary to do roadside cleanup from Cooper's corner, down to 221st. He indicated they filled two large pickup trucks full of bagged garbage, which was an incredible amount. He thanked the Fire Department Auxiliary for putting this together and giving him the opportunity to volunteer with them.

Lewis requested staff let him know if the Special Planning Commission meeting tomorrow night was going to be held. He also asked if Mr. Reiter could be sworn in as a Planning Commissioner at that meeting.

Lewis requested the process of verifying residency of everyone on the Council, Commissions, and authorities. He noted he had turned in a copy of his driver's license at one of the last meetings showing his residency. He believed that was an important addition to the Municipal Code to actually have a definition of what a resident was.

Berg stated Mr. Larson can confirm it, but that the Ordinance change would go into effect 10 days after the Ordinance is changed. He indicated the City cannot obligate anyone who had an existing situation prior to the Ordinance change.

Lewis asked Berg if he had discussed this with the City Attorney. Berg responded he had not, but he was asking the City Attorney now if an Ordinance was passed, could it be retroactive.

Larson responded the Berg had been accurate on all points tonight, including this last one. He stated if people wanted to voluntarily submit to the City Administrator and staff proof of residency showing that they meet that Code residency requirement before the fact, they can, but it would take effect for essentially those individuals post effective date.

Larson stated while he had the floor, he wanted say he was pleased with the opioid settlement vote because of the things that it did. He indicated he had reviewed the settlement documents because this would be something that the City had to sign. He stated he wanted to make sure that the City was not unduly harming itself by some type of contractual obligation. He noted this did take a little time because sometimes things could be hidden, but he didn't find anything and therefore, City Administrator Davis was correct.

Larson indicated he did not see any reason for the City not to enter into this, but he wanted to underscore that part of the requirements is that each County must consult annually with the municipalities in the County regarding future use of the settlement funds in the County. So this vote had given the City that least that persuasive seat at the table.

Smith stated he had a couple of things. He indicated at the Council Meeting of April 24, 2023, they agreed to extend the one-year IUP extension for the B-Roc's, Inc., which a mechanic, which was good. He indicated during the meeting he was surprised that the applicant wasn't there. Smith stated if it was his business and this was going to be approved or not approved, he would have definitely have wanted to be there to speak about it.

Smith stated his curiosity got to him and he went in to see the applicant on Saturday, April 29. He indicated he met with him and his wife, and talked to them. He stated they are great people and have a good operation. He noted everything was clean and in order. In talking to them, he asked why he wasn't at the meeting, and was told that he had a conversation with Davis and that Davis was supposed to get ahold of him and let him know, but he never heard back from Davis. Davis responded he thought they had notified him of the date previously.

Smith stated he never heard a word from Davis. Smith indicated to him that is important, especially on something like this because if Council would have denied this, he would have been kicked out of there. He stated that is not right and staff really has to follow up on stuff like that.

Smith asked when Council received their packets, why was the reporter, Ian, receiving them also. Davis responded he received a packet because he had requested a copy.

Smith stated he didn't agree with that, and if Ian wanted a copy, he could find it himself. He did not think the City should be supplying it to Ian because what he's seen their newspaper is one-sided when it came to the Council and they don't really care. He stated this was his thought that the City should not be sending that to Ian.

Smith asked if he needed to do a Motion to stop this, or could it just be stopped. Davis responded this would be up to the rest of the Council. Smith asked the rest of the Council for their thoughts.

Harrington stated he didn't care if Ian received a packet as he knew he watched it on TV, so it didn't matter if he got a packet or not. Smith stated he didn't think they should supply it. Harrington stated if they don't supply it, they might as well not supply anybody else.

Mundle stated they could just sign up for the email blast and they would get it anyway, so what's the difference. Smith responded that was fine and let them sign up for the email blast.

Lewis stated he had a real fundamental view of such things and things that are going to happen are going to happen one way or another. He noted that it is kind of like why he doesn't respond to all the crap, frankly, on Facebook. And he doesn't bother thinking about it much. It just comes with the job. He stated he has a strong belief that in the end truth usually winds up you know, so, but that's just his view.

Berg stated it is posted to the website on Friday and accessible to the public at that point also.

Smith stated the guy doesn't do his homework anyways so let him do his homework and get it himself. Smith stated that was his opinion. Smith stated so whether it is or not, how are we going to do it. Berg replied, sure.

Smith stated he noticed a lot of email responses went to the City Attorney. He asked if it cost the residents money every time the City Attorney opened an email. Davis responded the City Attorney charged the City for his services, but he did not know what Smith was talking about regarding these emails.

Smith stated if Davis looked at the cc's, a lot of them would be going to the City Attorney. He asked if it was necessary they go to the City Attorney. Davis responded staff kept the City Attorney in the loop. He noted those emails are sent to the City Attorney if the City Attorney wanted to respond to anything we ask him directly to address the matter.

Smith asked if it was something that was not serious, was it necessary that they do that. Davis responded he would let the City Attorney answer that question, but it was good to keep the City Attorney in the loop, and he believed it made the City Attorney's job easier.

Larson stated he tried to make sure that at the time his bill was sent to the City that the City had received value. He indicated there were times where the cc is such where it is clear that he will say in legal terms of de minimis, which is an FYI kind of information to keep things up, and if it is something that's going to need his attention, he already knows what has occurred. He believed that was helpful for the City. He noted there were times when he does not bill the City, but other times where the cc's are such that in his judgment as the City Attorney, it is his role to look after all of the legal needs and provide counsel for and on behalf of the City where that seems appropriate. He stated he would have to review his bills since February, but his recollection was that the cc's started a string of emails and therefore, it was not a one off.

Smith stated if he was understanding this right, if it's something that the City Attorney just looked at, and it doesn't really matter and if it's not something critical, then he wouldn't bill the City for that. Larson stated he could give an example. He noted there was a series of emails today where he did not bill for those. However, he did bill for looking at today's agenda.

Smith stated that was fine. He indicated he was just looking out for the residents, and he wanted to make sure the City was not paying any more than they have to.

Miller stated he had met with the Upper Rum River Watershed where they reviewed their budget for the year and elected the officers. He stated the Parks Commission meeting for May had been cancelled.

Harrington thanked the Auxiliary. He noted they picked up a lot of stuff.

9.0 C Other

None

10.0 Adjourn

Mundle stated I'll make a motion to adjourn. Lewis stated I'll second. To the motion, all in favor say aye. **All in favor.** Harrington asked any opposed? That motion passes. **Motion passes unanimously.**

Meeting adjourned at 8:53 PM.

Submitted by:

Kathy Altman

TimeSaver Off Site Secretarial, Inc.