

EAST BETHEL CITY COUNCIL MEETING

September 11, 2023

The East Bethel City Council met on September 11, 2023, at 7:00 p.m. for the regular City Council meeting at City Hall.

MEMBERS PRESENT: Kevin Lewis Brian Mundle Bob DeRoche
Tim Miller Jim Smith

ALSO PRESENT: Jack Davis, City Administrator
Christina Benson, City Attorney
Aaron Berg, Community Development Director
Nate Ayshford, Public Works Manager
Mike Jeziorski, Deputy City Administrator/Finance Director

1.0 Call to Order

The September 11, 2023, City Council meeting was called to order by Mayor Lewis at 7:00 p.m.

2.0 Pledge of Allegiance

The Pledge of Allegiance was recited.

The Council took a moment of silence in remembrance of September 11, 2001.

3.0 Adopt Agenda

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

4.0 Presentations and Public Hearings

4.0 A Anoka County Sheriff's Office 2024 Law Enforcement Contract Discussion

Davis presented a chronological summary of discussions with the ACSO regarding the 2024 ACSO Law Enforcement Contract through August 28, 2023. He stated per Lewis' request, Commander Lenzmeier provided the following information:

The PSDS and APS Maintenance Cost \$8,541

****PSDS (\$7,625)** is the annual cost for maintenance for our CAD (Computer aided dispatch) and FBR (Field Based Reporting). These are the platforms the deputies use to respond to calls and write reports. This cost is derived from calls for service and each city pays into the PSDS based on the number of calls for service.

****APS (\$916)** is the automated Pawn Service now known as LEEDS Online. This is a platform available to all our deputies to track and locate stolen property and identify suspects who frequently pawn items. Cost is divided among all deputies on patrol and charged based on deputies within the contract. Annual cost per deputy is approximately \$152.

Administrative, clerical, + substation computer line charge- \$121,107 (Error was identified in this calculation, less \$916 from original)

10% of all personnel costs. \$117,307

****This covers all levels of support services for the law enforcement contract.** Records Technicians, County CSO, Human resources, Supervision, Attorney, Accounting, admin assist., crime prevention, etc.

Substation Computer line \$3,800

**This is a charge for annual IT support and maintenance for the county computer lines. This cost is charged to the Sheriff's Office from Anoka County IT.

Davis indicated on August 29, 2023, Lewis requested additional clarification as to Administrative Costs. Lewis' questions pertained to benefits and proration method for cost calculations and were as follows (Commander Lenzmeier's response on August 30, 2023 are following the questions):

1. Do I understand correctly that P.E.R.A. contributions (pension account) are about 17-18% of salaries? Correct, PERA is calculated at 17.70%
2. What does "Severance Allowance" include again? Severance is 2.7%. Future fringe benefits after termination.
3. Health Insurance is a very large number; about 13% of salaries. Does this include the officers and their families only and do they pay any portion of their health insurance premiums? This does include deputies and their families or spouse. The cost for the county is approximately \$19,100 and of that cost, the deputy pays approximately 24%.
4. PRORATION METHODOLOGY: How exactly are the totals prorated out to the contracting cities? Simply according to the number of Sworn Deputy Sheriff Hours called for in the contract? As opposed to factoring in population or area or the recent contract period's history of calls for ACSO services? I am not sure what this question is asking.
If you would like to meet in person and discuss question 4 or other questions, please let me know. ~Paul.

Davis noted Mayor Lewis expressed his appreciation for Commander Lenzmeier's comments.

Davis stated on September 6, 2023 Lewis had a conversation with Commander Lenzmeier to discuss the proration methodology.

Davis noted the discussion on this item will be to explore options concerning cost reductions for the ACSO Law Enforcement Contract for 2024 or subsequent years. It is recommended that the amount included in the preliminary budget be considered for approval as presented in item 4.0 B, Preliminary 2024 Budget. The final budget can decrease, should there be any other movements on this matter, and can be adjusted to reflect any reductions prior to or as a part of the final budget approval on December 11, 2023.

Davis stated options to consider in the discussion could include but not be limited to:

- Reduction in contracted hours of service. If this option is considered it should be weighed heavily against the potential consequences of a reduction in public safety services;
- Exploration of regional contract that could potentially consolidate and reduce the administrative costs as opposed to individually contracting separate municipal agreements;
- Developing a new methodology to calculate administrative cost allocations that would factor in calls for service, population and other factors that may influence this line-item expense; and/or,
- Other alternatives that are related to the discussion.

Lewis stated he has had a number of discussions with the mayor of Ham Lake and one of their city councilmembers along with the mayor of Oak Grove regarding this. He indicated the costs were the same, but Ham Lake had 38 percent more population with 35 percent more calls for service than East Bethel. He noted East Bethel has 36 hours per day of Deputy services. He asked if Ham Lake had a lot more calls, why did they have the same number. He indicated it would make more sense if the allocations appropriations by City were based on the history of call service, or if they said it was due

to the larger size of East Bethel and there was more wear and tear on vehicles, more mileage, gas, etc.

Lewis stated the only way he could figure out them reducing costs was to reduce the hours. He noted a reduction of 36 hours to 32 was about 11 percent reduction in cost; a reduction to 30 hours was about a 17 percent reduction.

Lewis indicated he had thought of an option which was to have residents of each City serve as a complement to the Sheriff's service, almost like community service officers but they would not have any legal interaction to stop crime. However, he indicated they would be the eyes and ears of the community and they would pay people with a vested interest in the well-being of their community because they lived in it as opposed to just being a paid service.

Lewis stated that person would have a background check and some training by the Sheriff's Department. He noted this was a way to augment the Sheriff's Department services without incurring the considerable cost per hour of sworn deputies.

Lewis indicated a couple of the other mayors thought this idea might have some merit and so they were going to talk about it some more. He noted they do not need to do this this year because of the public safety grants, which would more than offset the increase for this year's budget.

Lewis stated they needed to figure out a solution as either East Bethel is over protected or Ham Lake is under protected, so they needed to come up with another way to do this and still get the same safety result.

DeRoche stated he would not be agreeable to shortening the hours of public safety service. He indicated public safety, fire, and public works were the three key things they had to have. He acknowledged it was a lot of money, but he did not want less hours.

Mundle agreed and believed the important things were public protection, police protection, sheriff's office, and emergency services. He indicated life or death situations cost money but what was money versus a human life. He noted in the last Sheriff's report the crime statistics were increasing. He stated he would not agree with reducing the hours.

Miller stated he appreciated Lewis breaking down the numbers and they had a year to figure this out. He noted as long as other cities were paying high salaries for public safety services, it was going to be tough for East Bethel and they were going to have to make some decisions. He noted the residents were always going to be first, but they also had to know the numbers that were involved.

Smith stated he also appreciated Lewis breaking down the numbers, but he believed they could trim other areas in the City to cut costs. He indicated they had a year to figure this out and he was sure there were other ways to make up the difference. He noted they could trim things in different areas.

Lewis stated he was not in favor of cutting hours either, but he wanted to point out that things did not add up with Ham Lake having a larger population with more calls. He recommended the City Administrator and a Council Member meet with the Sheriff's Department at least twice a year, if not quarterly, to sit down and do a review. Davis stated that would give them a little bit more warning before things were thrown at the City.

Lewis stated communication with the Sheriff needed to be improved. Davis stated it was a good idea to sit down with the Sheriff's Department to see what they could do to work out and explore ways for cost savings in the contract.

Lewis noted this might mean meeting with all of the cities at one time to brainstorm and see what they could do to make a difference.

Informational; no action required.

4.0 B Adoption of 2024 Preliminary Levy and Budget and ACSO Contract Discussion

Davis stated that the 2024 budget was discussed at the July 5, August 7, August 14, and August 28, 2023 City Council Meetings. Based on the discussions from these meetings along with input from the City Department Supervisors, the 2024 Preliminary Budget was prepared for the Council's review and consideration for approval.

Presentation of the 2024 General Fund Expenditure Budget

Davis indicated the overall 2024 preliminary general fund expenditure budget is projected to increase by 5% or \$347,400—the following expenditure inputs are the primary drivers of the overall increase.

Staff - Salaries and Benefits

- Per Union Contract – 3.5% COLA increase per 9 union / 13 non-union employees (\$45K Aggregate increase)
- Per Union Contract - \$25 increase to \$1,450 per month cafeteria contribution per 9 union / 13 non-union employees (\$7K Aggregate increase)
- Contracted Services
- Election Services - \$17K increase
- City Assessor Contract – 0% or \$0K change (Contract ends 12/31/24)
- City Attorney Contract – 9% or \$15K increase (Contract ends 5/31/26)
- Law Enforcement Contract - 14% or \$174K increase (Anoka County Proposal)
- Insurance Agent Contract – 0% or \$0K change (Contract ends 12/31/24)
- League of MN Cities (Risk Management) – 10% or \$10K increase
- Metro Inet JPA (IT) - \$15K increase
- Transfers
- \$0K increase to Equipment Replacement (\$280K Transfer within the department budgets)
- \$50K increase to Street Capital (\$550K Transfer)
- \$0K increase to Building Capital (\$50K Transfer)
- \$0K increase to Park Capital (\$100K Transfer)

Davis stated the City has a fund balance policy that states that the City will maintain an unassigned fund balance in the General fund of at least 40% of next year's budgeted expenditures. In practice, the City has historically maintained and targeted 50% of next years budgeted expenditures to ensure the general fund has adequate cash flow in order to meet operational needs.

Davis indicated the City ended 2022 with a general fund balance of \$3,672,546. Given this amount, estimates for 2023 general fund financial performance and the 2024 preliminary expenditure budget it is projected the City could use \$225,000 in fund balance to offset the increase in 2024 expenditures in order to keep the levy increase at a modest 2% for 2024 and still be over the targeted 50%.

Davis stated the 2024 preliminary General Fund levy is proposed to increase by \$106,500 from \$5,144,600 in 2023 to \$5,251,100 in 2024. Davis noted the 2024 preliminary Debt Service levy is proposed to increase by \$18,000 from \$945,500 in 2023 to \$962,500 in 2024. The 2024 preliminary EDA levy is proposed to remain unchanged at \$136,200. Davis indicated the 2024 preliminary HRA levy is proposed to remain unchanged at \$77,000.

Davis stated overall, the 2024 general fund expenditure increase along with the strategic use of fund balance would then result in a corresponding levy increase (general tax levy, debt service levy, EDA levy, and HRA levy) of 2.0% or \$123,500 in order to balance the 2024 budget.

Davis recommended Council approve the following:

Motion I: Staff requests Council consider approval of Resolution 2023-62, Set Final Levy & Budget Date.

Motion II: Staff requests Council consider approval of Resolution 2023-63, Setting the Preliminary Property Tax Levy and Budget for 2024.

Motion III: Staff requests Council consider approval of Resolution 2023-64, Setting the Preliminary 2024 EDA Levy & Budget.

Motion IV: Staff requests Council consider approval of Resolution 2023-65, Setting the Preliminary 2024 HRA Levy and Budget.

4.0 B.1 Preliminary 2024 Budget

4.0 B.2 Res. 2023-62, Set Final 2024 Levy and Budget Date

Mundle stated I'll make a motion to adopt Resolution 2023-62 Resolution Setting Date for Final Budget and Tax Levy Hearing. DeRoche stated I'll second. Lewis asked any discussion?

Smith asked how was the date determined. Davis responded it was in the Resolution.

Lewis asked if the actual amount of the levy increase was 1.6 percent. Jeziorski responded it was 2 percent. Lewis questioned the 2 percent. Jeziorski responded he believed the consensus was to prepare the preliminary budget at 2 percent, and then they would have the opportunity to lower it at the final budget meeting in December if they wanted.

Lewis inquired where the \$100,000 administrative fee for the conduit bond showed up. Jeziorski explained that was taken in July and got rolled into the fund balance. He pointed out it was a line item labeled a conduit bond. He stated that was going to be rolled right into the fund balance as they end 2023.

Lewis inquired about the \$515,000. Jeziorski responded that the \$515,000 should be arriving to the City sometime in December and it would be put into the fund balance again and be allocated as restricted. He indicated when they opened up 2024, they would allocate that entire amount to the Police contract.

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

4.0 B.3 Res. 2023-63, Set the Preliminary 2024 Levy & Budget

Mundle stated I'll make a motion to adopt Resolution 2023-63, Resolution Setting the Preliminary Property Tax Levy and Budget for 2024. Miller stated I'll second. Lewis asked any discussion? To the motion, all in favor say aye. **All in favor.** Lewis asked any opposed? That motion passes. **Motion passes unanimously.**

4.0 B.4 Res. 2023-64, Set the Preliminary 2024 EDA Levy & Budget

Smith stated I'll make a motion to adopt Resolution 2023-64, Resolution Setting the Preliminary Economic Development Authority Property Tax Levy and Budget for 2024. Miller stated I'll second. Lewis asked any discussion? To the motion, all in favor say aye. **All in favor.** Lewis asked any opposed? That motion passes. **Motion passes unanimously.**

4.0 B.5 Res. 2023-65, Set the Preliminary 2024 HRA Levy & Budget

Mundle stated I'll make a motion to adopt Resolution 2023-65, Resolution Setting the Preliminary Housing and Redevelopment Authority Property Tax Levy and Budget for 2024. Miller stated I'll second. Lewis asked any discussion? To the motion, all in favor say aye. **All in favor.** Lewis asked any opposed? That motion passes. **Motion passes unanimously.**

5.0 Public Forum

Ray Jordan, owner of Ray Jordan and Sons Landscaping and Blue Ribbon Pines Disc Golf, stated he had made a mistake with the City. He indicated they have a frisbee golf course which was going very well. He noted they have tried to incorporate a lot of things with the disc golf, including music and ultimate frisbee events in an attempt to try and attract more people to their place and get more exposure.

Mr. Jordan indicated they had four reoccurring events this year and when he scanned over the permits, he realized he had only received one permit from the City. He explained issues with his businesses were busy and he got a little "disjointed" this year. He indicated they were having an upcoming event and did not have a permit, but everything was in compliance such as having sufficient bathrooms, fire alleys, security, etc.

Mr. Jordan stated he "dropped the ball" this year and did not communicate with the City. He indicated he thought the applications had been submitted, but they were not.

Lewis stated they had heard a lot of complaints from residents about the sound level and the lateness of his event. He stated that was the reason he and DeRoche came over. Mr. Jordan stated the person who runs his office reached out to every resident that they know of in the area. He indicated they were trying to do the right thing. He noted on the second day, they tried to change speakers and tried to do things differently.

Mr. Jordan stated they were having another event this weekend as a benefit for a family who had a child with cancer. He indicated they had worked on this event for nine months. He acknowledged he had put the City in a bad position.

Lewis stated he did not believe this was malevolent on Mr. Jordan's part, but it had to be equal treatment under the law. He believed the noise should have been kept down after 10 p.m.

Mr. Jordan indicated the next event was easy listening rock n' roll music and it was a free show. He requested instead of having the music turned off at 10 p.m., they would like to have it go until midnight.

Lewis asked what happened to the headphone system Mr. Jordan had told him about. Mr. Jordan responded that would be difficult for this event because of the coordination with the sound.

Lewis stated even with a permit, the law was still 10 pm. Mr. Jordan noted his permit said 12:30 am for the weekend outdoor permit. Davis noted 10 p.m. was a noise ordinance.

Lewis asked if that related to the noise ordinance. Mr. Jordan responded they had done it until 12 a.m. every year they have had the concert.

Berg stated outdoor entertainment permits allowed for the function to happen until midnight. He noted the outdoor entertainment permit also had a stipulation that says they needed to follow the noise ordinance.

Mr. Jordan stated the other event went until 3 a.m. and every permit he had from the City was always 12 am. Lewis noted they had received a lot of calls about this.

Lewis stated as long as they complied with the noise ordinance and turned the music down at 10 p.m., then everything would be okay.

Mundle noted for Booster Days, the fireworks started around 10 p.m. and the band played until 11 p.m. or 12 p.m. Lewis noted that was a municipal event and not a private one.

Lewis asked Mr. Jordan what he wanted them to do. Mr. Jordan responded this was their 14th year of doing this, but it was up to the City.

Mr. Jordan stated everything was set up for 12 am. Lewis stated it was 10 p.m. for the noise ordinance. He indicated if they cut their noise down, it would probably eliminate the noise issue.

Mundle asked about the bars where they had tent parties and bands, and did those establishments fall under a similar permit as Mr. Jordan's permit. Davis responded they did.

Mundle asked what time the bands stopped playing at those events. Davis responded he did not know. He indicated most of those event were with Route 65.

DeRoche asked what if this came with the understanding that if there were problems or complaints, it would get shut down. Davis responded the Sheriff's Department could address this as being a public nuisance or disturbance. He noted it was difficult to enforce the noise ordinance standards because they would need to use a decibel meter. He stated if Council wanted to change that portion of the application in the permit, he suggested they add that as an agenda item to follow this discussion where it can be discussed and any amendments they wanted could be added.

DeRoche stated maybe there would not be any complaints with this event because bass music did travel. Lewis stated the simple solution was to turn the music down.

Mr. Jordan stated the music at this event was different than what they did at the other event. Lewis stated he was concerned about the residents who lived in the immediate area. Mr. Jordan stated they had spoken with everyone in the area. Lewis suggested if the Sheriff's Department received complaints and showed up, then the music had to be turned down.

Davis recommended if Council wanted to continue discussing this, they add it to the agenda and conclude the public forum.

DeRoche stated I'll make a motion to add this item as Item F, Ray Jordan Disc Golf. Smith stated I'll second. Lewis asked any discussion?

Mundle asked what area was DeRoche adding Item F under. DeRoche stated under the Consent Agenda as Item I.

DeRoche stated I'll amend the motion to add this as Item I to the Consent Agenda. Smith stated I'll second. Lewis asked any discussion? To the motion, all in favor say aye. **All in favor.** Lewis asked any opposed? That motion passes. **Motion passes unanimously.**

6.0 Consent Agenda

Item A: Approve Bills

~~Item B: Approve Meeting Minutes August 28, 2023 City Council Work Meeting~~

Item C: Public Works Technician Successful Probation Completion

Item D: Ice Arena Rental Agreement – SFYHA 9-15-23 Fundraiser

~~Item E: Purchase of Single Axle Snowplow~~

~~Item F: Pay Estimate No. 1 for the 2023 Street Improvement Project~~

~~Item G: Pay Estimate No. 1 for the 183rd Avenue Surface Reconstruction Project~~

~~Item H: Capstone Traffic Study Request~~

~~Item I: Blue Ribbon Pines Pending Event~~

The following items were pulled from the Consent Agenda: Items B, E, F, G, H, and I.

Mundle stated I'll make a motion to approve Consent Agenda Items as amended. DeRoche stated I'll second. Lewis asked any discussion? To the motion, all in favor say aye. **All in favor.** Lewis asked any opposed? That motion passes. **Motion passes unanimously.**

6.0 B Approve Meeting Minutes August 28, 2023 City Council Work Meeting

Lewis asked if they had found out from Ehlers how much had to be paid on the three TIF parcels they decertified. Davis responded they have not.

Lewis requested on Page 131, line 12, change 30 percent to 30 hours. DeRoche noted he had a couple of corrections that he had sent to the City Administrator. Smith noted he also had a change on a name that would be taken care of.

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

6.0 E Purchase of Single Axle Snowplow

Lewis asked if the purchase of the snowplow was a MAC unit. Ayshford responded that was correct. Lewis stated this sounded like a smart choice, even though it was expensive.

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

6.0 F Pay Estimate No. 1 for the 2023 Street Improvement Project**6.0 G Pay Estimate No. 1 for the 183rd Avenue Surface Reconstruction Project**

Lewis asked for an explanation of the projects. Ayshford responded the 2023 Street Improvement Project was for the annual overlays. He indicated this was for two neighborhoods that were repaved. With respect to Pay Estimate No. 1 for the 183rd Avenue Surface Reconstruction Project, that was also a reconstruction and this was the first bill for dirt work. He stated another invoice would be coming in for this project.

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

6.0 H Capstone Traffic Study Proposal

Smith asked on page 157 if that should be Davenport instead of Sandhill Crane. Davis responded that was correct.

Smith asked if 187th Lane should be included as well. Davis stated that it will be, and the current statement was just an example.

Smith asked how would they know what they were going to do. Davis responded the City Engineer would contact firms who would send the City their proposals and after the proposals were reviewed, the City would know exactly what they were going to do. He noted this would take Capstone out of the picture they would have no real input into the study and an independent contractor would prepare the study.

Smith noted Capstone paid for this and asked how much money would be escrowed. Davis responded Capstone would pay for this, but they would not know how much would be escrowed until they received the estimate for the study.

Lewis stated this should include 187 Street and Greenbrook both north and south as the traffic flows that way as far as developing the traffic model, along with Briarwood Lane, and most importantly Crosstown east and west as that traffic would “bleed out” the back way onto Crosstown and go both directions. He stated Elevage traffic had to have at least some recognition and be taken into consideration with respect to the traffic otherwise it was not a real study.

Lewis stated he had warned everybody that he would be paying close attention to this and would be a “pain in the neck” as much as he had to. He stated he wanted a good traffic study as the one for Elevage was not a good traffic study. Davis stated staff would make sure those points were identified and would be included in the proposal.

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

6.0 I Blue Ribbon Pines Pending Event

Mundle stated he pulled this one to make a recommendation that they allow the event to go until midnight with the caveat that if complaints were received and the Sheriff’s Department came out, that Mr. Jordan would make adjustments depending on the nature of the complaints. He stated in the future, they would need to have discussions about future events, but believed this one could proceed.

Lewis stated if noise complaints were received, the volume should be turned down, but if the complaints continue, the Sheriff’s Department could feel free to shut the event down.

Mundle stated I’ll make a motion to approve Item I of the Consent Agenda subject to the conditions as noted above. DeRoche stated I’ll second. Lewis asked any discussion? To the motion, all in favor say aye. **All in favor.** Lewis asked any opposed? That motion passes. **Motion passes unanimously.**

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

No reports given.

8.0 Department Reports

8.0 A Community Development

8.0 A.1 Ordinance 2023 – 18, Storage Containers

Berg stated Councilmember Miller had proposed amendments to City Ordinance Appendix A – Zoning, Section 10-4, Accessory Storage Containers.

Berg indicated the Planning Commission reviewed the amendment proposal at its August 22, 2023 meeting. At the conclusion of its review, which included a lengthy discussion the Planning Commission made a recommendation, by a 4-3 vote of approval to the City Council of the proposed amendment with the inclusion, modification or addition of a 5-acre minimum lot size requirement, a minimum of a Class 5 base or pad for placement and to require that storage containers meet the zoning setback regulations contained in Section 14. - Detached Accessory Structures. It should be noted that additions recommended by the Planning Commission do conflict with language in the original amendment proposal, which was also included in the approval. Additional modification to the Planning Commission recommendation would be necessary to clarify the conflict.

Berg noted the recommendation was presented at the August 28, 2023 City Council meeting. After the public hearing and further discussion staff was directed to work with Councilmember Miller to modify the proposed amendment to incorporate some items proposed by the Planning Commission, staff recommendations and council discussion.

Berg stated after conversations with Miller, they were still ironing out some extra details for the Ordinance revision that would be brought to the Council in its final form on September 25 for potential approval. He recommended this item be tabled to that Council meeting.

DeRoche stated I'll make a motion to table to the September 25, 2023 meeting. Mundle stated I'll second. Lewis asked to the motion, all in favor say aye. **All in favor.** Lewis asked any opposed? That motion passes. **Motion passes unanimously.**

8.0 A.2 1311 229th Avenue N – Legal Nonconforming Expansion Discussion

Berg noted this item was for discussion only. He asked for Council direction as to how to advise the applicants.

Berg stated in 2012, B & T Trucking, an over the road trucking company that has been in business for over 20 years, purchased 1311 229th Avenue NE and relocated a truck/motor freight terminal to the city. The property is located in a Light Industrial (I) District and according to Section 48 – 6 A. Trucking and Motor Freight Terminals are a prohibited use. As truck/motor freight terminals are not permitted in any zone of the City, in 2021 B & T Trucking was required to obtain an IUP as they were a legal nonconforming use to ensure compliance for continued use in the City.

Berg indicated the property owners have recently approached the city inquiring about building an additional 50-foot by 60-foot storage building to the property. An existing slab with foundation exists immediately west of their existing building on the property. Although an IUP (Res. 2021-28) was granted on May 10, 2021, the use of the property remains legally nonconforming. Expansion of legal nonconforming uses have been approved by previous City Councils albeit under differing permissions (existing CUPs or previously approved plats prior to zoning changes).

Berg indicated according to Section 05 - Nonconformities - It is the intent of this section to regulate such nonconforming situations to accomplish the following:

Recognize the existence of uses and structures which were lawful when established but which no longer meet all ordinance requirements.

Discourage the enlargement, expansion, intensification, or extension of any nonconforming use or structure and discourage any increase in the impact of a nonconforming use or structure on adjacent properties. Only exceptional cases of any expansion or intensification of a nonconforming use will be permitted and only after city approval of a variance.

Encourage the elimination of nonconforming uses and structures or reduce their impact on adjacent properties.

Berg noted according to Section 05 -2 A. - A nonconforming use may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion.

Berg stated sometimes a landowner seeks a variance to allow a use of their property that is not permissible under the existing zoning ordinance. Such variances are often termed "use variances" as opposed to "area variances" from dimensional standards. Use variances are not generally allowed in Minnesota. State law prohibits a city from permitting by variance any use that is not permitted under the ordinance for the zoning district where the property is located (Minn. Stat. § 462.357, subd. 6).

Berg indicated according to Minnesota State Statute 462.357 OFFICIAL CONTROLS: ZONING ORDINANCE. Subd. 6. Appeals and Adjustments. The Board of Appeals and Adjustments or the governing body as the case may be, may not permit as a variance any use that is not allowed under the zoning ordinance for property in the zone where the affected person's land is located.

Berg stated staff is seeking direction to provide the property owners a recommendation as to the expansion of the Truck/Motor Freight Terminal. If City Council gives a positive recommendation to move forward, City staff will work with the property owners to begin the process for formal approval.

Lewis asked what the building was intended to be used for. Berg responded they planned on storing semi-tractors. He indicated their interim use permit gave them the right to have no more than 15 trailers on the property. He noted the intended use was to remain neat, orderly, and the trucks and trailers shall be screened from the public right-of-way.

Mundle asked if they had an existing slab and an existing foundation. Berg responded that the slab and foundation was there when the applicant purchased the property and there was an intent to put a building there, but he did not believe a building was ever built according to the current owner.

Lewis asked what the previous use of the property was. Mundle responded that before B & T purchased, it was owned by a tire recycling manufacturer so they had lots of trailers that had shredded and old tires in them. He stated that company has since moved to Isanti. He stated what was there before that he was not sure, but he believed it had always been some sort of trucking-related business.

Lewis asked if this business was a cross-dock facility where you break bulk truck freight, where you come in one side and you have truck trailers on the other side, and you basically rearrange the freight from this bunch of trucks for delivery. Berg responded it was his understanding that this is just the place where drivers pick up and drop off their trucks and they do not handle any freight here. He indicated this would be empty truck storage.

Miller noted where the white roof was, that was basically open to one side. He asked if there was a wall on the backside and on the east side. He noted there was already a high fence there. Berg responded their whole property was actually fenced very nicely and if it would not be for their signage, someone could barely tell it was a trucking company.

Mundle stated they had done a good job. Berg stated the City has not had any complaints that he was aware of and when they came in for the IUP in 2021, they had mentioned that they were an existing business for 8 years and there were no complaints noted prior to that. He stated since he had been with the City, no complaints had been received so that meant they had at least nine years of operation without any complaints.

Smith stated they have been really good and when he was on the Planning Commission and went out there to look at it, everything was in order and they kept it up well.

Lewis asked if there were any traffic problems at that intersection with trucks entering and existing Highway 65. Davis responded there had been no reported issues of any traffic problems with trucks or the volume of trucks at that intersection.

Lewis stated the law was pretty clear about not wanting to do this, but they wanted to be pro-business as much as possible, so how did they work this.

Mundle stated that was why he was asking the question about the existing slab and foundation, if there was an existing building there because reading this said according to Section 05-2A that a non-confirming use may be continued through repair, replacement, restoration, maintenance, or

improvement. He indicated if there had been a portion there, would that fall under any of those items.

Lewis noted it said specifically no expansion though. Berg responded that was why this item was before the Council. He noted his definition of expansion might be different than the Council's definition of expansion. He stated if he interpreted this a different way than Council did and he gave the applicant a no answer and if it came to the Council on appeal, the Council could grant the applicant permission.

DeRoche stated this was not an expansion of this building, but it was an entirely different building that might have been there and was destroyed.

Benson stated in legal nonconformities, there was a discontinuance law. So even if there was a building there at some point, that legal nonconforming right was discontinued after a year. He noted the proper way to allow them to move forward with this expansion would be a variance where the applicant would make an application, it would be reviewed typically at the Planning Commission level, and then it would come before the Council to approve the variance which would then allow the applicant to expand.

Lewis stated it looked like it was specifically State law that said they could not get around this by granting a variance. Benson responded she had spoken with City Attorney Larson about this and he reviewed the laws and the specific facts and felt that was at the discretion of the Council to allow this to move forward if they wanted.

Lewis asked if that was a better approach than reissuing an IUP. Benson responded that was correct.

Berg noted the applicant was not asking for an expansion of the number of trucks, but rather were looking to put up this building as a shelter. He indicated they were not asking for an IUP. He noted the applicant came in and stated they wanted to add this building and in his opinion, that was an expansion.

Mundle asked if they allowed this, would that set any precedence for any other legal non-conforming requests. Benson responded when it came to variances, it was very property- and use-specific. She indicated if the City had another specific situation like this, then there might be some sort of argument someone could raise, but she did not believe that argument would be successful. She stated it would be super narrow and there was a lot of discretion when it came to granting a variance for things like this.

Mundle stated it was his opinion that this was a good business and this business was a night and day difference from what was there before. He believed the applicant was a good corporate citizen where they cleaned up their property and kept it proper. He stated with this being an IUP, that was unique to just their business as opposed to a CUP that would run with the property. So, the City had control that if they did allow this, it was not allowing for future issues with the same type of business. He indicated if another business wanted to come in and the property was sold, that person would have to come in and apply under their own merits. He did not believe that it would allow a trucking business to be there forever, but it would be an improvement to the applicant's business and in his opinion, it would be a proper move to allow them to continue with applying for a variance.

Lewis stated as a result of the answers he received from Berg, he felt the same way.

Smith stated he believed this was a good business, the City had no issues with them at all, and he would definitely support a variance request.

Berg stated staff would inform the applicant.

Informational; no action required.

8.0 B Engineer Report

None.

8.0 C City Attorney

8.0 C.1 Cannabis Ordinance Discussion

Benson stated she was the person in their firm who worked on the cannabis issues for all of their cities. She indicated at the Council's last meeting, the Council had given direction to have some consistency added within the Ordinance to add intoxicating cannabinoid beverages to the prohibition of intoxicating liquor beverages within the Ordinance. She noted tonight's discussion was only intoxicating cannabinoid beverages and if Council wanted to add on smoking, there had been a big variance across the State of whether there was a prohibition at all and most cities had chosen to add onto their beverages so that action was very consistent across the State thus far. She stated this was entirely up to the Council if they wanted to adopt what was presented, table it for further discussion, or direct them to add some sort of smoking ordinance of cannabis products.

Mundle stated he believed they had discussed something with Larson with respect to smoking in public places such as City properties. He asked if that would be a part of this. Benson responded that would probably be added to the environmental portion of their Ordinances, so it would not be into the alcohol portion. She noted they had a lot of samples for ways to regulate that and the scope of whether it was public property, streets, sidewalks, parks specific to places where there was youth-oriented facilities. She indicated there was a lot of discussion on regulation of both smoking and drinking.

Mundle asked if there would be more information forthcoming. Benson responded there was no clarity on whether they were ready to proceed with the smoking Ordinance at this time, but if they were ready, it could be drafted up quickly.

Mundle asked if there would be any other areas to this with respect to locations. He indicated he was trying to think how to take all of this on, whether they want to approve each section as it came, or each Ordinance as it comes in front of them, or give tentative approval as they discuss each one. He stated once they have it all laid out, they can read everything to make sure everything aligns and then approve everything at once. Benson responded most cities who had more extensive adoption of regulations of users, did adopt everything at the same time, but they are in different sections. She stated it would make sense if they wanted to move forward with alcohol for now and then next time move onto smoking, but they could also have the option of adopting them on the same evening. She noted they would be separate Ordinances and they would belong in different portions of the Code, but that was entirely up to the Council.

Benson stated with respect to scope options, some cities had considered having it to be as extensive as possible and they had identified it as public places, which included places that were open to the public, but that were private property. This allowed the private property owner to say no that they wanted to allow this on their property and the City could not do anything about that, but some property owners do not want it allowed on their property and that way it would allow the Sheriff's Department to issue a ticket for using cannabis products on this private property owners property.

Benson stated this allowed the private businesses to decide whether they wanted to make it legal or illegal on their property or not legal on their private property. She indicated having that expansion option has been something that cities have proceeded with in order to allow the law enforcement to

enforce what the business owner desired for their parking lots and patios. She indicated other cities had limited it to public parks, while others had limited the scope to where there was a pavilion.

Benson indicated there was a lot of options the Council had on what type of parks and recreation facilities they limit the use of such products and whether it be more broad or very specific.

DeRoche asked if they should be discussing this without a motion. Davis stated it would be best to have a motion with a second and then have a discussion. Mundle noted the staff report stated Council was requested to discuss the proposed amendment and provide direction to staff.

Lewis stated he heard people smoked and ate cannabis in brownies, etc., but he had never heard of anyone drinking it. He stated they did not want to spend \$80,000 coming up with continuous legal work products to reduce this to every possible way cannabis could be done. He asked if there was some comprehensive way that would cover all the different types, places, etc.

Benson stated Larson wanted to make her aware, for her to be very specific when conveying to Council, and that they kept it very limited in scope to smoking and await Council's direction on that before incurring additional legal fees. She stated they kept it very limited and if the Council wanted to add onto the Ordinances, it would be ready for them the next time so that the Council was not having to direct them to come back and forth with an Ordinance and there would not be additional time incurred on any types of additional items.

DeRoche stated he was confused as at the last meeting he was not under the impression that they were to go down this road with the liquid. Lewis stated the whole liquid thing was new to him when he read it in the packet.

DeRoche stated what the Attorney was saying was that it was legal to drink this in East Bethel now and they want to create an Ordinance that says they cannot do that any longer. Benson stated the City currently had an Ordinance that said they cannot have intoxicating liquors at certain places, and this was essentially another intoxicating beverage. What this did, was provide consistency when they go to the liquor store they could not skirt the Ordinance in getting intoxicating beverages in these public places by picking up a THC beverage off the shelf instead of a beer beverage off the shelf.

Lewis asked if it was Benson's expectation that it would be liquor stores who sold this. Benson responded that was what they were primarily seeing right now.

Lewis asked would tobacco stores handle the smoking version. Benson responded yes.

Lewis asked who would handle the brownies. Benson responded probably the smoke shops.

Berg stated for clarification that the moratorium was on sales of cannabis and this was about consumption. He noted that was the difference between two weeks ago and tonight.

DeRoche stated they are taking something that was now legal and are saying that now they cannot do it. He asked when would this stop. He understood some people didn't like cannabis, some people don't like drinking, some people don't like cigarettes, but it was not his job to judge somebody to say, "Well, I don't like it, so you can't do it." If it is not affecting public health and public safety, he has not seen anything – he noted alcohol killed a lot of people, yet in his experiences he had not heard of one case of overdose on cannabis.

Lewis stated it was the same thing as the laws regarding smoking tobacco. He noted he was a former smoker and he found it egregious that he had to leave a restaurant to smoke, but now as a former smoker he couldn't understand how anybody ever put up with smoking when they are spending \$80 for a meal and all they could taste and smell was smoke. He stated now they had laws as to where

people could and could not smoke, and he would not have found that believable or possible 20 years ago.

DeRoche stated when they discussed the moratorium, he must have missed something because he did not recall directing staff to look into cannabinoids and liquid and attach it to the intoxicating liquor.

Smith agreed with DeRoche and thought it was done at the last meeting. He asked who instructed the attorney to do this.

DeRoche stated he wanted to see if there was going to be an Ordinance on any of this to have Council be a part of discussing and formulating what was coming up. He did not think it was staff's job to do this and he wanted the Council to be a part of creating anything that came up. He stated he wanted to know ahead of time when things came up and let Council put in their suggestions.

Lewis agreed it should be more collaborative and they should not be in a situation where none of them could understand why this came back in this form since they had the last vote. He believed they should table this item until Larson was present.

Lewis stated this was all new and they needed to talk to each other about how to approach this. He noted tobacco did not get you high, but it was noxious; alcohol destroyed lives and people have died as a result of alcohol poisoning.

Lewis stated I'll make a motion to table. DeRoche stated I'll second. Lewis asked any discussion?

Smith stated he wanted Council to decide what was going to be on the agenda instead of staff doing it. Lewis indicated it should be collaboratively worked on and not be forced upon Council.

DeRoche stated it was the Council's decision to have the discussions and make the decisions.

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

Motion passes unanimously.

Mundle requested the City Attorney have a list of what could be upcoming that Council would need to have to deal with on this topic. Benson responded that one had already been drafted for other cities that she would share. She noted there were a lot of items and issues that have been coming up and Minnesota had some unique items.

DeRoche asked if Benson had looked at Colorado. Benson responded that Colorado had a very different approach that was opt out and actually not opt in so sales were not legal in a city unless they opted into it. She noted that is not the way Minnesota was set up and Minnesota was kind of backwards in legalizing it. She noted Minnesota was the only State that has done it this way.

Lewis stated they did not want to have 85 different resolutions with every possibility. Benson noted the cannabis regulations were 320 pages, which she had practically memorized because of questions cities had. She noted the League of Minnesota Cities had also put together an extensive FAQ on their website if the Council wanted to look into any of the information prior to the next meeting.

8.0 D Finance

None.

8.0 E Public Works

None.

8.0 F Fire Department

None.

8.0 G City Administrator Report

None.

9.0 – Other Items

9.0 A Staff Report

Davis stated the date for the dissolution of the Sunrise River WMO was coming up quickly. He noted Linwood was adamant that they would not support anything other than the new funding formula. He indicated under the old formula, Linwood would be paying quite a bit more. He stated Ham Lake was still insisting on keeping the old funding formula in which they pay less.

Davis stated Linwood paid more under the funding formula mainly because their entire township was in the Sunrise River WMO, while East Bethel was only about 40 percent in the Sunrise River WMO. He indicated Columbus was about half in the Sunrise River WMO.

Lewis stated he would much rather reach a resolution than pay attorneys. He believed part of the attorney's job was to "stir up conflict between people" as they did not make any money if everybody just got along. Davis responded he did not think the attorney stirred this conflict.

Lewis noted there had to be a better way to handle this. He stated if there was a meeting, he wanted to be involved. Davis stated that had been the process for the last year and they were still at an impasse. He understood Ham Lake's position, but there were three other entities involved. He stated staff hoped to have a full-detailed report to give to the Council at their next meeting.

Mundle noted the next Sunrise meeting was on Thursday. Lewis requested an update be given to the Council by email after that meeting.

9.0 B Council Reports

Miller stated there will be a Parks Commission meeting tomorrow night at 6:00 p.m.

Lewis asked if the residents near the Nexus site would be charged for the paving of 189th. Davis responded that was only for residents on the north side. He noted they were given a deferred assessment which would not kick in until they either sell or developed the property.

Lewis asked what the amounts were. Davis responded Cambia was assessed \$270,000. One individual property owner was assessed approximately \$60,000, and the church was assessed the balance which was approximately \$210,000.

9.0 C Other

None.

10.0 Adjourn

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

Meeting adjourned at 8:51 PM.

Submitted by:

Kathy Altman

TimeSaver Off Site Secretarial, Inc.