

# EAST BETHEL CITY COUNCIL MEETING

July 22, 2024

The East Bethel City Council met on July 22, 2024, 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: Matt Look, City Administrator  
Eric Larson, City Attorney  
Rodney Sanow, Fire Chief  
Aaron Berg, Community Development Director

## 1.0 Call to Order

The July 22, 2024, 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.

## 3.0 Adopt Agenda

**Mundle stated I'll make a motion to adopt tonight's 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.**

## 4.0 Presentations and Public Hearings

### 4.0 A Anoka County Sheriff's Report

Sergeant Scott Wickland presented the June 2024, Sheriff's Report, stating the Sheriff's Department responded to 422 calls for service including 4 thefts, 2 criminal sexual conduct, 6 assaults, 2 damage to property, 7 PI accidents, 2 PD accidents, 58 medicals, 30 animal complaints, 14 alarms, 6 felony arrests, 8 gross misdemeanor arrests, 7 misdemeanor arrests, 3 DUI arrests, 1 drug arrest, 5 warrant arrests, 186 traffic stops, and 49 traffic arrests.

DeRoche inquired if the Sheriff's Department was responding to fireworks complaints. Sergeant Wickland responded during the 4<sup>th</sup> of July weekend, they had so many complaints about fireworks that they were being more lenient with their responses. But how that the 4<sup>th</sup> of July was over, the Sheriff's Department officers were responding to the fireworks complaints.

**Informational; no action required.**

### 4.0 B Fire Department Monthly Report

Fire Chief Sanow presented the June 2024 report and noted that they responded to 83 calls, of which 55 were medicals, 7 crashes, 2 alarms, 2 burning/smoke, 14 other, 1 fire, and 2 mutual aid. He thanked CenterPoint Energy for the \$2,200 grant they gave to the Fire Department, which would be used for the purchase of AEDs.

**Informational; no action required.**

## 5.0 Public Forum

No comments were received.

## 6.0 Consent Agenda

~~Item A: Approve Bills~~

~~Item B: Approve Meeting Minutes July 8, 2024 City Council Meeting~~

Item C: Res. 2024-48, Accepting Donation from CenterPoint Energy

Mundle requested to pull Item B. Larson stated was not in attendance at that meeting, but Christina Benson was the attorney present in his place. Lewis requested to pull Item A.

**Mundle stated I'll make a motion to approve Consent Agenda 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 A Approve Bills

Lewis inquired about the EDA professional services fee to ECM Publishers for \$11,284. Look responded ECM Publishers was \$375.10 which was for legal notices, variance notices, candidate filing notices. And the charge Lewis was referring to of \$11,284 was for Civic Plus, which was the City's one time charge for the website. **Lewis stated I'll make a motion to approve Item A of the Consent 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.**

### 6.0 B Approve Meeting Minutes July 8, 2024 City Council Meeting

Mundle requested a correction to show Christina Benson replaced Eric Larson as the City Attorney who was present at the meeting. He indicated there were various places where that would need to be changed. **Mundle stated I'll make a motion to approve Item B of the Consent Agenda with the changes as noted. 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 Variance: 18164 Hwy 65 NE – Cedarwood Estates

Berg reviewed the staff report requesting the Council consider a variance request for the placement of manufactured homes on Lot 17 and Lot 125 for Cedarwood Estates.

Look noted the applicant and their attorney were in attendance at the meeting. He stated the City wanted to work with Cedarwood Estates and help them be as successful as possible, but public safety was also paramount. He believed it would be beneficial for everyone to try and find some common ground.

Brian Huntington, Attorney with Larkin Hoffman, stated he wanted to respond to the City Attorney's letter of July 19, 2024. He indicated Conditional Use Permits were of indefinite duration and this property received Special Use Permits in 1970 and 1971. He noted nobody had taken the position at any time there was a violation warranting the termination or rescission of those Special Use Permits; that the Special Use Permits were still alive today; and, it was not accurate to say that this was a non-conforming use. He noted this is a conforming use, those Special Use Permits were still there, and had never been terminated.

Lewis asked if anyone had ever seen the Special Use Permits he was referring to. Mr. Huntington responded he believed an investigation had been undertaken; however, he pointed out that according to the State Statutes, it was the City that records the Permits.

Lewis believed it was the property owner's responsibility to produce the Permit. Mr. Huntington responded he did not believe that was true and he had never encountered a situation where a City did not have a copy of a Permit that had been issued, so this was an unusual situation.

Mr. Huntington stated he believed this was significant because this property, for more than 50 years, has had a Special Use Permit. With respect to the comment made in the July 19, 2024, letter where it referred to the landowner's prior knowledge under Minnesota Law, he noted a landowner's prior knowledge of a non-conformity (which they disagree there is a non-conformity), could not be taken into account in acting on a variance. He quoted from *Schultz vs. Town of Duluth*, 2022 Westlaw 433255, Page 9, which held that the property owner did not create his own plight by purchasing property with knowledge of its nonconforming status, so the City should not be placing weight upon what it believed the landowner knew or should have known.

Mr. Huntington noted there had been a lot of discussion about MN Stat 62.357, Subd. 1(a) and it was significant in the context of the variance because the City should be deciding this based on the context.

Mr. Huntington indicated the statement in the July 19, 2024, letter that Statute neither changed or invalidated non-conforming law along with a citation to *Croy Holdings vs. City of Newport*. He stated he had reviewed that case, the case did not talk about this section of the Statute, and it was not about the specific question that the Council was being asked to decide on, which was could the City enforce Statutes subsequent to the adoption of the construction of the park if at the time it was constructed, it conformed with the existing Ordinance. He asked if it met the side lot and the density and all of those types of dimensional requirements, could the City enforce or even adopt subsequent Ordinances that seek to modify that. He stated the answer was no and this could not be done. He indicated the Statute was very clear and specific. He noted this was a very unique Statute regulation campground use, and it did not look at the landowner.

Mr. Huntington stated there has been a lot of discussion about whether there was continued use by the landowner and was there a year plus lapse of time. He indicated that was relevant under the non-conforming use section of the Statute and if not relevant to this section of the Statute as this section of the Statute looked at if it were confirming at the time it was constructed, and if so, the City could not adopt or enforce standards that seek to alter.

Mr. Huntington indicated this was a great example of why that must be the rule. He stated they have a campground where lots are being developed on either side of the subject lots they were discussing and these lots had existed for a long time. He noted this campground has seen many changes to the City's Ordinances, which have become more restrictive over time. He stated the City should not judge the campground from 1970 based on today's standards as that was not reasonable. He noted the City should be looking at what was the context. He stated the landowner did not create the situation and just acquired the property a few years ago, but they were stuck with a practical difficulty under the variance criteria.

Mr. Huntington stated it was very reasonable to approve these campsites when there is a variety of sizes and because this is a campground for five plus decades in terms of the dimensions, and if they looked at the letter from the EDA director that letter referenced a conversation with the Fire Chief, who said that 15 feet of separation was adequate. However, he indicated there were a lot of sites

which were 15 feet or less, so there was no fire safety concern. He stated nobody came before the Planning Commission and voiced any concern about public welfare or safety, as there was no basis for such a finding when this lot was very much in compliance with the campground as it exists.

Mr. Huntington requested the variance be approved to memorialize the fact that these lots may be used consistent with the application.

Mundle asked Mr. Huntington why he kept referring to the mobile home park as a campground. Mr. Huntington responded that was the correct terminology for a manufactured home park.

Larson stated as suspected Mr. Huntington has basically indicated that the Council had no choice but to grant the variance as a matter of law. However, he indicated, rarely does the City have an absolute obligation to grant a variance. He stated the standard was practical difficulties. He noted the Council needed to decide if there were facts to support the application, or if there were facts to deny the request, or approve the request with conditions. He stated the Council had quasi-judicial capacity in this matter. He acknowledged the Council did, at times, have the law constrain them, but a lot of times the law just provided some guidance.

Larson indicated there was nothing in the State Statute, nor was there any appellate Court (Court of Appeals or Minnesota Supreme Court) with such a holding. He stated he could not guarantee what the Courts would do, but he believed the Court would not ever hold that a city cannot rezone a mobile home park.

Larson stated a Special Use Permit was not a Conditional Use Permit and if they were, they would not have two different terms. He acknowledged a Special Use Permit was still valid as a matter of law, but the question was if some Special Use Permits run with the property. He indicated some Special Use Permits are very personal and only the holder could rely upon them.

Larson noted whether this is a Special Use Permit or a Conditional Use Permit is not the issue here, based on the facts this mobile home park has been operating fairly consistently with respect to the number of units, the number of lots, and the dimensions of those lots. He stated he had gone back to look from 1979 to the present and the zoning with respect to those lots had been fairly consistent, but now those lots are too small. He stated the State Statute said as long as they kept those lots and they continued to use them, the City had no choice and the owner got to have the mobile homes, with the size and structure in place into perpetuity. However, the Statute also said that when they are no longer conforming, then the property is subject to nonconforming use law.

Larson requested the Council focus on the variance requests which included an expansion, in which Council could deny because of the expansion or grant it. He indicated he represented the City and empowers the Council to make a choice, but he was not there to tell the Council what their choice should be. He stated the Council could accept the variance without any conditions, they could reject it outright, or they could do something in between. He requested the Council not have attorneys representing a single applicant tell them otherwise.

Mundle asked how long the Council had to act on this. Berg responded they needed to make a decision tonight unless they wanted to call a Special Session Meeting.

Larson noted the applicant could also wave the 120 days, but the City would need that in writing.

Look stated the applicant's attorney indicated that it would be difficult to find a manufacturer home of this size that was originally on there; however, it had been validated earlier through research that homes that size would be bought, but whether a customer wanted to live in that size of a home was not the responsibility of the City. He indicated while the City wanted this business to be successful,

that was independent of whether a home of the same size that was removed before could be placed safely in this location. He understood people wanted a larger home, but it needed to be taken into account the sight lines, the close proximity to the other homes, and the fire risk.

Smith stated his concern was if they were going to issue permits to do all of this stuff, they needed to pay attention to the setbacks as well because they were now being asked to do a variance. He did not understand why the other ones were approved and now they were sitting here with two new ones where the setbacks were different. Berg responded the reason he provided the memo for Lot 45 was that the Building Inspector at that time was questioning the standards and brought it to his Supervisor, who went to the City Administrator, and then went to the Fire Chief to come to the conclusion that it would be acceptable.

Berg noted not one City employee was allowed to change the City Code by making a decision in their office. He indicated that was an administrative decision and they didn't have the authority to do these replacements or to approve the replacements. He stated this should have been tackled years ago, but it was not.

Smith agreed, but noted other permits were approved for similar situations and asked why were they zeroing these out as an issue when the other ones were approved. He stated if the City was going to issue permits, they had to know what they were doing and he believed they should approve this variance because of the way the City handled it. Berg responded the difference between the past and now was that the City had a different Community Development Director who saw the Code in black and white as it was written whereas the other Community Development Director sought the approval of the City Administrator and the Fire Chief in their decision making.

DeRoche asked if all of the others were conforming or non-conforming when they were issued permits. Berg responded he could not answer that as he did not know whether there was a home on those lots and then the home was removed or if there was a permit issued. He noted he would need to research historical data to determine what happened.

Lewis stated he heard what Smith and Berg were saying and his position was that the City wanted to see this business succeed and they had seen the changes being made, which have been great. He indicated this was being well taken care of in the places that were being worked on. He stated he would not in good conscious approve this because of the way it was done and he did not think it should have been done that way. He did not want to create precedence that the City would have to follow. He recommended the City and the applicant work together to pursue a mutually acceptable and beneficial path, which would be his desire. He noted the way this had been handled in the past, was not the way it should have been handled.

Mundle stated he had an issue with expanding a non-conformity when it specifically said that could not be done. Lewis agreed.

Mundle recommended the applicant meet with the City to figure out how to replat everything so that it would fit and have clear expectations of setbacks, trailer size, etc. in the future so they do not have this situation again.

**Mundle stated I'll make a motion to deny the variance. Lewis stated I'll second.** Lewis asked any discussion?

Smith stated he had already expressed his opinion.

Miller stated this was a tough one as he did not like telling a business something when they are an established business. He indicated he understood where the Planning Commission was coming from

though. He did not think the City had handled this properly, but he did not think they should punish a business. He believed a business of this caliber should know exactly what it was doing though.

DeRoche stated he did not know what difference it would make if they approved these two variances and then make it clear that no more variances would be issued.

Lewis stated at the end of the day, it was two mobile homes that could be sold and other ones could be brought in that are the right size. He noted this was not life or death.

Miller stated he did not want to sit here 31 more times discussing the same thing. Lewis agreed and that was why he was recommending the City and the applicant come up with a plan that made sense for both parties.

Mundle stated at this specific moment, without have a Special Meeting, they need to make a decision. He noted they could work out things in the future, if needed.

Lewis stated he did not want to set a precedent. Mundle noted they also had other businesses where precedent could be applied if the Council approved this.

Larson noted they could approve the variance with the condition that the mobile home had to be of the same dimension as the last known mobile home as documented.

Mundle asked if anyone would be open to having an amendment to deny unless the mobile home was the same dimension.

Lewis asked if the lots have been vacant more than a year. Berg responded that both Lot 17 and Lot 125 have been vacant since 2008.

Lewis recommended this be denied and then the City and the applicant sit down to discuss this.

Smith responded the City had issued the permits and the City knew the size and gave the applicant permission to put them there. Lewis noted based on the information, that was not properly communicated and vetted by the Council at that time.

Smith stated the City cannot issue permits if they don't know the size that was going in, but they did. Lewis noted the lots had been vacant for a long time and he disagreed with Smith.

Miller asked how far off were the trailer setbacks. Larson responded that the setback requirements were in his report in the third column. Berg used a map to show the setbacks.

Miller asked if there would be an official survey of the site. Berg responded it was up to the City to make that request, which he would encourage if they were going to continue a conversation about future placements.

Lewis stated that might be a condition put on a future variance request. Berg noted he would need to explore this further. He stated a survey was required with any single-family construction project, but they do not do that in a manufactured home community. He indicated they could require a Certificate of Survey for every lot, for every placement, and some of these issues that showed up.

Lewis asked the City Attorney if this was a good idea. Larson agreed this was an excellent idea. Berg stated the Council could also make it a procedural requirement for an application for placement or the construction of a new single-family home which would apply to every single-family home in the City.

To the motion, all in favor say aye. **Mundle, DeRoche, Smith, and Lewis.** Lewis asked any opposed? **Smith.** That motion passes. **Motion passes 4-1.**

Larson believed this was a good opportunity for the City and the applicant to sit down and start thinking about what makes sense for the entire Cedar Estates as well as the adjacent properties owned by Continental Communities.

Mundle stated the City wanted the applicant to be successful and if this can be done within the rules the City had, he was absolutely open towards that. He suggested the City and applicant figure this out so the applicant never has to come forward with the variance again.

#### **8.0 A.2 Variance: 23558 Ulysses St NE – Dan Graff**

Berg reviewed the staff report requesting the Council consider a variance request for a setback reduction from the Shoreland Overlay standard for the placement of an in-ground pool at 23558 Ulysses Street NE.

**DeRoche stated I'll make a motion to open this up for discussion. Mundle stated I'll second.**

Mundle thanked Mr. Graff for his patience and in trying to work with the City. He believed the original submission was 64 feet into the 150-foot overlay and he thought Mr. Graff had done a very good job of reducing it down to 14.5 feet or 18.7 feet, which either one he would live with.

DeRoche stated the packet submitted today answered a lot of the questions. Lewis noted this information just showed up last minute and he had not had time to review this.

Lewis asked if there had been alternative places looked at for the pool.

**Look stated the motion was to approve the Resolution. Mundle stated it was his understanding the motion for discussion.**

**Look said the Council needs to vote on the amendment and then on the original motion.**

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

#### **8.0 B Engineer Report**

None.

#### **8.0 C City Attorney**

None.

#### **8.0 D Finance**

None.

#### **8.0 E Public Works**

None.

#### **8.0 F Fire Department**

None.

#### **8.0 G City Administrator Report**

##### **8.0 G.1 Blue Ribbon Festival**

Look stated the City had received some responses from the Deputies regarding the Blue Ribbon Festival. He noted five calls had been received with one confirmed noise violation on Friday, which Mr. Jordan was notified of and Mr. Jordan had remedied immediately. Look read emails he received into the record as follows: This is copied from an email I received from the deputies working on Friday. Decibel readings are below. Based on the L10 standard set by MN pollution control, we only had 1 confirmed noise violation on Friday which was remedied by telling Mr. Jordan to turn it down.

- 24161604 2217 hours, 1927 209<sup>th</sup> Ave NE - Dispatch had one additional caller that was also added to this case number.
- 24161622 2238 hours, 1828 209<sup>th</sup> Ct. NE
- 24161657 2306 hours, 20305 Hwy 65 Ne - Dispatch added one additional caller from 1727 207<sup>th</sup> Ln NE at 2330 hours to this ca24161602 2215 hours, 20915 Jenkins St NE

I took the following readings:

- 2245 hours, 49-53 decibels from 209/Jenkins
- 2308 hours, 50-53.7 decibels from 1828 209<sup>th</sup> Ct Ne
- 2320 hours, 58-62 decibels from 20305 Hwy 65

I went with the L10 standard for a residential area so 55 decibels would be over for nighttime. After I had the reading of 58-62 at 20305 Hwy 65 I went to Blue Ribbon and spoke to Ray Jordan. He was very quick to lower the music and after he did, we did not receive any additional complaints.

This is the second email I received about Saturday night which is copied below:

Less noise calls tonight.

- 24162665, 2347 hours 19926 Buchanan St NE
- 24162684, 0006 hours, 19926 Buchanan St NE

Both calls were the same caller, on the second call he was not cooperative with dispatch and hung up on them. He also told dispatch on the second call that he had called an hour prior when it was only 19 minutes. Mason was tied up on a DWI and I was on a medical at Blue Ribbon so we were not able to get a decibel reading. The music was turned off around 0005 hours.

Other than the noise there was only one call for the event, while I was working, which was a medical, 24162650.

Hopefully this helps. I'll be back in the office on Thursday and Friday of this week. Thanks,  
Derek

Lewis stated they had received complaints about the noise level, but also about the content with extreme profanity being used which did not need to be broadcast into everyone's homes, and would need to be addressed next year if this Festival took place.

DeRoche stated the use of profanity was the biggest complaint he received.

### **8.0 G.2 Computer update**

Look stated the City's laptops had been affected by the CrowdStrike computer update, which had been fixed on a timely basis.

**8.0 G.3 Booster Days Festival**

Look thanked everyone involved in the Booster Days Festival. He believed a parade might have drawn more people and suggested the Lions might want to participate in coordinating the parade next year. Mundle believed this might also get more volunteers.

**8.0 G.4 Voting Machines Public Accuracy Testing**

Look stated that voting machine public accuracy testing was scheduled for tomorrow at 9 a.m. He stated this was open to the public to come and view that accuracy test.

**9.0 – Other Items****9.0 A Staff Report**

None.

**9.0 B Council Reports**

Miller noted that all people involved in the Booster Day Committee were volunteers, they did a good job, and pulled off a nice event. He commended Stephanie Dorn for her great job. He also thanked Cub Scouts Pack 387 for picking up the park.

Mundle echoed Miller's comments and stated it was great to keep the tradition going, which brings the community together. He thanked Stephanie Dorn and all of the volunteers along with the City workers and Council Liaison Miller for their work.

Smith also thanked everyone for a successful Booster Days. He noted there were a lot of older people volunteering too.

**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 8:40 p.m.

Submitted by:

Kathy Altman

*TimeSaver Off Site Secretarial, Inc.*