

REGULAR BROOKLYN PARK CITY COUNCIL MEETING

Monday, November 26, 2018
7:00 p.m.

Brooklyn Park Council Chambers
5200 85th Avenue North

CALL TO ORDER – Mayor Jeffrey Lunde

PRESENT: Mayor Jeffrey Lunde; Council Members Rich Gates, Susan Pha, Terry Parks, Mark Mata, Bob Mata and Lisa Jacobson; City Manager Jay Stroebel; City Attorney Jim Thomson; Community Development Director Kim Berggren; Finance Director LaTonia Green; Deputy Police Chief Todd Milburn and City Clerk Devin Montero.

ABSENT: None.

Mayor Lunde opened the meeting with the Pledge of Allegiance.

2A RESPONSE TO PRIOR PUBLIC COMMENT – None.

2B PUBLIC COMMENT

1. Jennifer Geisinger, 7701 Oxbow Creek Circle. Concerns with truck traffic on Winnetka between the small sort facility and proposed project Hotdish.

3A. MOTION GATES, SECOND PARKS TO APPROVE THE AGENDA AS SUBMITTED BY THE CITY CLERK. MOTION PASSED UNANIMOUSLY.

3B PUBLIC PRESENTATIONS/PROCLAMATIONS/RECEIPT OF GENERAL COMMUNICATIONS

3B1 Park and Building Maintenance Manager Greg Hoag briefed the Council on the contribution to the city from the Brooklyn Park Rotary Foundation.

3B1 MOTION JACOBSON, SECOND PHA TO WAIVE THE READING AND ADOPT RESOLUTION #2018-162 ACKNOWLEDGING CONTRIBUTIONS TO THE CITY OF BROOKLYN PARK OF \$3,500 FROM THE BROOKLYN PARK ROTARY FOUNDATION AND \$2,520 FROM TREE TRUST. MOTION PASSED UNANIMOUSLY.

3B2 Parks and Facilities Manager Brad Tullberg briefed the Council on the Partnership in Construction of Wheelchair Softball Field Storage Building at Northwoods Park.

3B3 Budget Advisory Commission Annual Verbal Report

Budget Advisory Commission Chair Eric Pone gave the Budget Advisory Commission Annual Report.

4.0 MOTION GATES, SECOND PARKS TO APPROVE THE FOLLOWING ADMINISTRATIVE CONSENT ITEMS:

- 4.1 TO WAIVE THE READING AND ADOPT RESOLUTION #2018-163 TO APPROVE STAFF TO ENTER INTO THE 2018-2019 AGREEMENT WITH THE LAW ENFORCEMENT LABOR SERVICES UNION, LOCAL 429.

4.2 TO APPROVE THE RETIREMENT HEALTH SAVINGS PLAN AS REVISED.

4.3 TO RELEASE THE REMAINING ENGINEERING ESCROW \$2,827.98 AND CASH BOND \$10,000 FOR SATISFACTORY COMPLETION OF THE 96TH AVENUE EXTENSION PROJECT #16-002 LOCATED NORTH OF 610 AT ZANE AVENUE FOR OPUS.

4.3 TO RELEASE THE ON-SITE PERFORMANCE BOND #106790526 (\$339,600), RELEASE THE OFF-SITE PERFORMANCE BOND #106790527 (\$13,500), REDUCE THE CASH BOND BY \$8,500 AND REDUCE THE ENGINEERING ESCROW \$8,780.62 FOR SATISFACTORY PROGRESS OF THE 610 ZANE RETAIL DEVELOPMENT PLAN AND PLAT PROJECT #17-113 FOR RYAN COMPANIES.

4.3 TO RELEASE THE ON-SITE PERFORMANCE BOND #106912911 POSTED BY TRAVELERS (\$171,000) FOR SATISFACTORY PROGRESS OF THE "610 ZANE RETAIL BUILDING" PROJECT #18-101 LOCATED AT 5901 94TH AVENUE FOR RYAN COMPANIES.

4.3 TO RELEASE THE ON-SITE PERFORMANCE BOND #106841456 POSTED BY TRAVELERS CASUALTY (\$145,600), REDUCE THE ENGINEERING ESCROW BY \$4,496.07, AND REDUCE THE CASH BOND BY \$4,600 FOR COMPLETION PROGRESS OF THE "MILL CITY CREDIT UNION" PROJECT #17-128 LOCATED AT 5941 94TH AVENUE N FOR MILL CITY CREDIT UNION.

4.3 TO RELEASE THE ON-SITE PERFORMANCE BOND #1068249 POSTED BY HANOVER INSURANCE (\$1,021,500), REDUCE THE ENGINEERING ESCROW BY \$30,147.62, AND REDUCE THE CASH BOND BY \$50,700 FOR COMPLETION PROGRESS OF THE "AMAZON" PROJECT #18-002 LOCATED AT 9100 WYOMING AVE N FOR BROOKLYN PARK PAPER LLC.

4.3 TO RELEASE THE SITE IMPROVEMENT BOND #268009352 POSTED BY LIBERTY MUTUAL (\$1,230,200), FOR SATISFACTORY PROGRESS OF THE "CAPSTONE QUADRANGE EAST AND WEST BUILDINGS" PROJECT #17-126 LOCATED AT 9301 AND 9315 WINNETKA AVE N FOR CQ BROOKLYN PARK LAND, LLC.

4.3 TO REDUCE THE ENGINEERING ESCROW BY \$32,931.02, AND REDUCE THE CASH BOND BY \$49,800 FOR SATISFACTORY PROGRESS OF THE "COVE AT NORTHWOODS PARK" PROJECT #17-108 LOCATED AT THE SE CORNER OF WINNETKA AND 109TH AVENUES FOR LANDMARK 55 OF BROOKLYN PARK LLC.

4.4 TO WAIVE THE READING AND ADOPT RESOLUTION #2018-164 APPROVING A TIME EXTENSION FOR A TWO-BUILDING 16-BED RESIDENTIAL CARE FACILITY AT 9235 ZANE AVENUE NORTH.

4.5 TO WAIVE THE READING AND ADOPT RESOLUTION #2018-165 TO AUTHORIZE THE MAYOR AND CITY MANAGER TO ENTER INTO A CONTRACT WITH GAME TIME AND MINNESOTA/WISCONSIN PLAYGROUND FOR THE

REPLACEMENT OF THE PLAYGROUND EQUIPMENT AT NORTHERN TRAIL PARK FOR A TOTAL COST OF \$51,201.36.

4.6 TO WAIVE THE READING AND ADOPT RESOLUTION #2018-166 AMENDING LOAN DOCUMENTS EXECUTED IN CONNECTION WITH THE MULTIFAMILY HOUSING REVENUE NOTE ISSUED FOR THE BENEFIT OF AMORCE I LIMITED PARTNERSHIP; AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDMENT DOCUMENT IN CONNECTION.

MOTION PASSED UNANIMOUSLY.

6.1 Planning Director Cindy Sherman briefed the Council on the Shah Variance – Variance Request #18-124 to Allow Increase in Residential Garage Height to a Total Height that is Taller than the House.

The following individuals addressed the Council:

1. Dan Ekstrum, 7201 Idaho. Stated he was confused how they had an architect draft it, which was out of compliance before submitting it to the city. He asked why the builder didn't catch it before construction because he must have had the list of what the codes were and it still got built. He stated everyone was trying to minimize the size of the building and said that garage was out of size with the neighborhood and stood out. His concern was that it would affect his property value and that it sat 3.5 feet higher than his house not 9 inches and was way out of compliance.
2. Mike, Michellio, 7208 Idaho Avenue. He stated when learning of the process and how it was approved and construction began, that it never should have started because the plans called for an 18-foot structure in height. He was dismayed at the procedure of how they could get to that point. He stated there was a line in the resolution that said, "WHEREAS, the planned garage is consistent with other three car garages found in neighborhood and is not overly out of place." He stated he had a three-car garage across the street and the height was 16 feet and was not consistent with other three car garages in neighborhood. He stated it had been frustrating to know that there was a code in place and something like this happened and now was at the point where the Council was prepared to issue a variance. He stated it should never have happened and never at 18 feet in the first place, let alone 18 feet, 9 inches.

Planning Director Sherman stated mistakes were made. When the building permit came in, she looked at it and it said 18 feet and the ordinance said it could have 18 feet or the height of the house whichever was less. She stated most of the garages they looked at were accessory structures at properties where houses were taller than 18 feet. She stated it was her mistake to sign off on the permit and then it snowballed from there with the additional height that was added to the garage. She stated it was a lesson for her as they did thousands of permits a year and didn't have many mistakes. She stated it was on her and not on the Building Inspectors because they just reviewed the plans and staff reviewed and signed off on all the permit applications that came through.

Council Member Bob Mata stated he saw it a block away and saw a huge monstrosity from the backside in that neighborhood. He stated it was taller than a house and was up long before

it was brought before the Council tonight. He stated there were ordinances and needed to be followed. He stated there was an 18-foot garage height but they still went over and above it to bring it to another extra 9 inches. His recommendation was to get the builder back out there and cut the roof off and get it down to 18 feet. He stated he would like to see it at 16 feet, but if staff said okay on 18 feet, then they couldn't take it off for that. He stated it went over and above from what they originally had approval for and should take the roof down at least 9 inches if they couldn't get it down to 16. He stated it should have never proceeded without measuring and doing it right, especially after getting a variance. He stated he would not approve another 9-inch variance on the roof and knew it would cost the owner and they should take it out on the builder because the builder put it up and should have been able to do it right.

Council Member Parks stated he would not support it tonight. He stated they had a monstrosity too in his neighborhood and should have never been passed. He stated there were one-story houses down the block and now had a three story one that stood out. He didn't think a garage should be the tallest building in the neighborhood. He stated he knew a mistake was made and it happens and didn't know if it would cost the city down the line, but he would not support the 18-feet, 9-inch garage.

Council Member Mark Mata stated that on several street corners where a house sat on the corner that both sides were supposed to adhere to the one third stone, brick or stucco so it was architectural pleasing from both sides. He stated that several times it failed and didn't get caught and the house was now built. He stated the city had areas where design guidelines called for architectural shingles and someone put up three tab shingles on the roof. It was already up and didn't force them to take it down. He stated the ordinance said the auxiliary structure could not be taller than the house and didn't matter what was signed off on. He stated that unless it was the first garage they built, once they put up an eight foot door there, they should look over at the house where the roof line was going to be and they should know that. He stated the auxiliary structure was supposed to look like the house. He stated he couldn't support the variance and builders knew what they were doing. He suggested a way to figure out the checks and balances in the future in the Community Development and Planning Department where it didn't happen. He stated there were ordinances, and the past, present and future Councils expect them to be followed as did the citizens expect them to be followed.

Council Member Jacobson stated she struggled that the builder was asking for forgiveness after the fact rather than following the rules, which was 18 feet versus 18 feet 9 inches. She asked if the city had situations in the past where the builder did what they wanted and the city said no and they needed to go back and fix it.

Planning Director Sherman stated in her 16 years, it was the first building permit mistake they signed off on that was incorrect. She stated they had covenants in neighborhoods and sometimes that became an issue. She recalled two other garages built without permits that ended up being taller than the houses. In those cases, one applied for a variance and did not get it and refused to remove the structure. Without going through a long protracted court case, the city couldn't make them do it unless they sold their house or refinanced it, or they wouldn't be able to get a zoning letter that said they were in compliance. She stated the other case was unresolved because they knew the city would be acquiring the property for a future interchange. She stated those cases were for accessory structures and tonight's case, the garage size was fine and that was not going to change. What would have to be modified was the roof design to make it meet the ordinance at 16 feet, 3 inches.

Council Member Gates stated that since the city made the mistake and said it was okay at 18, and the city denied it tonight, asked if there was any recourse from the homeowner against the city because the city made the original mistake.

City Attorney Thomson stated there could be and would have to look into it because it could get complicated. He stated there were precedent cases going both ways on cases like tonight's item. He stated one was where the city was stopped from enforcing the regulations because they had taken steps to do it, and the another was where they said no, it was a mistake, but they were governed by it. He stated he would need to take a longer look at it to make sure of all the facts on it.

Council Member Gates stated that by not having an answer to that question if the city was liable for part of it, because it was the city's fault to begin with, that it changed the game for him. He stated if the city was liable and if the city had to pay in some way or another or the court said the city made a mistake and it could stay like that, he didn't know what the answer was.

Planning Director Sherman stated the city made a mistake, but they exacerbated it by making it even taller and did not build it according to the permit.

Council Member Gates stated the city said 18 feet and was liable up to 18 feet and not what they were asking for. He stated the variance was for the difference and the city was still liable for part of it.

City Attorney Thomson stated the city wouldn't be liable for monetary damages. He stated the only thing a court might say was the city was prevented from enforcing the regulation under the facts of this case. He stated the options for Council tonight was to grant the request, which was 18 feet, 9 inches, or granting only to 18 feet, or if the Council's preference was not to do either one of those two, suggested to direct staff to come back with a resolution for denial because there was no resolution for denial before the Council tonight and assumed they were still within 60 days provision on it.

Planning Director Sherman clarified that the structure was at 18 feet, 9 inches in height, but it was 3 feet, 6 inches taller than the house. She stated the variance was for 3 feet, 6 inches.

6.1 MOTION MARK MATA TO DENY THE VARIANCE FOR A RESIDENTIAL GARAGE HEIGHT WITH AN INCREASE OF.

Mayor Lunde stated they could vote it down and staff would come back to the Council with that motion. He stated the Council had to have findings for the denial.

Council Member Mark Mata withdrew the motion.

City Attorney Thomson stated he was not sure if Council Member Mata was going to deny the variance at 18 feet, 9 inches, but allow it at 18 inches, or deny it at its entirety. He stated he wasn't quite sure what the result was going to be.

Council Member Mark Mata stated he was going to deny it at 18 feet, 9 inches, and then go back to what it should have been because the ordinance said the house could not be taller than the garage.

City Attorney Thomson stated if that was the wishes of the Council, the appropriate motion would be to direct staff to come back with a resolution for denial.

6.1 MOTION M. MATA, TO DENY THE VARIANCE TO RESIDENTIAL GARAGE HEIGHT INCREASE ABOVE HOUSE HEIGHT AT 7209 IDAHO AVENUE NORTH.

6.1 THE MOTION FAILED FOR A LACK OF A SECOND.

Planning Director Sherman stated what they were asking for was to have Council direct staff to come back with the findings to deny the variance and and would bring it back December 3 with findings to deny it.

City Attorney Thomson stated a variance was a variance from the ordinance standards. The ordinance standard tonight was the garage could not be any higher than the house. He stated if a majority of the Council did not want to grant the variance to allow the garage to be taller than house, they should direct staff to prepare a resolution to that affect and come back at the next meeting. He stated if the majority of the Council was to allow a variance up to 18 feet, they could take that action tonight.

Council Member Bob Mata stated that even though it was a mistake to give them the 18 feet height on their plans, they violated it by going 9 inches taller, so now all bets were off and now had to go back to the original one. He asked if the Council could put the motion on the floor and then vote it down.

City Attorney Thomson suggested the motion to direct staff to come back with a resolution for denial with the appropriate findings.

6.1 MOTION B. MATA, SECOND PARKS TO DIRECT STAFF TO COME BACK WITH A RESOLUTION FOR DENIAL ON ANY VARIANCE ON THE HEIGHT TO THIS GARAGE.

Mayor Lunde stated he would not support the motion. He stated the city made a mistake and owned up to the mistake. He stated it was 9 inches over and knew they approved fence lines that had been inches closer than they should have been to the street and other things that had been down to the inches. He stated he knew it was 3 feet and it was still 9 inches over what staff told them. He stated he would not know what the ordinance would be of his house if he was going to build a garage. He stated he would go to City Hall and ask staff and would get his information and that was what they did. He stated he believed they were in good faith and did 18 feet. He stated he was not willing to punish residents because of what the city had done, and could think of driveways, a fence on Edinbrook Parkway, a fence on Oxbow Creek Parkway where it was inches. He stated they were approved at 18 feet and they went 9 inches over and didn't think it would affect the house value. He stated he did not notice it was taller and to him it was about 9 inches and not about 3 feet, 6 inches. He stated that person had invested in their house and spent money on their property and acted in good faith at every step of the way. He stated he would not support the motion.

Council Member Pha agreed with what the Mayor had said and for her it was the 9 inches. She stated she would support bringing it back to 18 feet and asking the builders to go back and fix it, but to go below that would not be fair to the homeowners who came to the city for the permit. She stated she couldn't support anything that would be asking for anything lower than 18 feet.

Mayor Lunde called for a roll call vote.

6.1 THE MOTION FAILED ON A ROLL CALL VOTE AS FOLLOWS: YES – PARKS, M. MATA, B. MATA; NO – PHA, JACOBSON, GATES, LUNDE.

Mayor Lunde asked the City Attorney if the Council wanted to go back to the 18 feet, what the next steps would be.

City Attorney Thomson stated if the wishes of the Council were to approve the variance but only up to 18 feet, they should add that to the resolve clause that it shall be approved up to a height of 18 feet to allow a garage that was taller, etc. and just add the words up a maximum height of 18 feet.

6.1 MOTION LUNDE, SECOND PHA TO WAIVE THE READING AND ADOPT RESOLUTION #2018 APPROVING VARIANCE TO RESIDENTIAL GARAGE HEIGHT INCREASE ABOVE HOUSE HEIGHT AT 7209 IDAHO AVENUE NORTH NOT TO EXCEED A MAXIMUM HEIGHT OF 18 FEET.

Council Member Bob Mata stated the Council was asking to cut another 9 inches off the roof and it would not make a difference if they cut 9 inches off or cut two feet off. He stated they would just have to build new trusses for it. He stated the Council was still asking them to spend money and hopefully the builder would have to do it because he was the one that made the mistake. He felt by allowing it, the city ordinance meant nothing, and they could go ahead and do what they wanted and it didn't matter because the Council let them do whatever they wanted. He stated he would not support it because he was irritated that it went 9 inches more and took advantage of the 18 feet that they did get. He stated he wouldn't support it without it coming all the way down where it was supposed to be originally.

Council Member Mark Mata stated he wanted to be clear on the motion made by the Mayor. He stated the previous motion was going to entail taking the trusses off the roof and bring it back down to city ordinance but failed. He stated his motion was to remove 9 inches, which meant they had to take off the truss of the roof again. He stated either way they had to take off the roof but the issue was, was it going to be brought back to compliance to the code?

Mayor Lunde stated that 9 inches was the fault of builder and architect and the builder and architect owned that mistake. He stated that gave the home owner the right to go back to them and ask them to fix it.

Mayor Lunde called for a roll call vote.

6.1 THE MOTION FAILED ON A ROLL CALL VOTE AS FOLLOWS: YES – PHA, JACOBSON, LUNDE; NO – M. MATA, GATES, B. MATA, PARKS.

Mayor Lunde stated if the Council did nothing tonight that sometimes state law said if they did nothing, things would happen.

City Attorney Thomson stated if the Council did nothing, that by operational of law at some point in the future, the application would be deemed approved because it had to be acted upon within 60 or 120 days depending on the time frame.

He stated if there was no majority vote one way or the other on it, the last vote on the motion to approve the variance failed, if that was going to be the last vote of the Council, the Members of the Council who voted no should state on the record why they voted no. He stated that would be deemed the denial unless there was another motion someone wanted to make.

Council Member Pha stated there were two options, whether they did 18 feet or 18 feet, 9 inches or deny it because she voted yes to it and no to the other motion. She stated she would like to ask the Council Members who voted no if there was another scenario they were trying to get at that they didn't discuss and why they voted no because she was open to other suggestions.

Council Member Mark Mata stated there were three votes on one side to remove it down to code. He stated that no matter what, they had to remove the roof to get there. He stated there were six votes to remove it down to 9 inches and still had to remove the roof to get there. He stated that in both situations the roof was coming off, and it was a matter of, did the Council want to get down to what the code was in the first place where it should have been or not. He stated that was where he was at, that if they had to take the roof off anyway, put it back to code so the Council didn't have to have someone else come in front of the Council and say, it was done before and now the Council had set a precedent. He stated he would be willing to offer up funds for the city mistake of allowing the 18 feet in the first place to say if there was a deductible or something in there that was going to be burden by the homeowner, that the city would put it in there. He stated there were already funds they gave to people for doing the front of their house, yards, cleanup things, and they had programs for it. He thought there were five of the Council that said yes to tear roof off and redo it, and was asking for a fourth vote to say if they were going to have to tear the roof off anyway and to come into compliance.

Council Member Parks stated his no vote was for the same reason, that they had to take the roof off anyway and should get it back into compliance. He stated what was going to happen was that someone else would come forward with the same thing. He stated the Council had people that built things, like sheds and other things, had that discussion on the River Road and they came to the Council later and asked for a permit because they didn't know they needed a permit. He stated the roof was coming off anyway and should go back to where it supposed to be.

Council Member Gates stated he voted no on both motions because they should leave it. He stated the city said 18 feet, which was a mistake, and read why it was at 9 inches. He stated the Council made variances for fences for inches like the Mayor had said. He stated he voted no twice because he thought they should leave it and that was why he voted that way.

6.1 MOTION PHA, SECOND GATES TO WAIVE THE READING AND ADOPT RESOLUTION #2018-APPROVING VARIANCE TO RESIDENTIAL GARAGE HEIGHT INCREASE ABOVE HOUSE HEIGHT AT 7209 IDAHO AVENUE NORTH TO 18 FEET, 9 INCHES.

Mayor Lunde called for a roll call vote.

6.1 THE MOTION FAILED ON A ROLL CALL VOTE AS FOLLOWS: YES – GATES, PHA, LUNDE; NO – M. MATA, JACOBSON, B. MATA, PARKS.

Mayor Lunde asked the City Attorney since they were at a stalemate, was the last motion that did not pass, be the one that staff would present.

City Attorney Thomson stated that based on everything that was done, suggested tabling it and come back. He stated the effect of the last motion was to deny it, but they didn't have a resolution of denial in front of the Council. He stated there were four votes against approving the variance application and didn't need to direct staff, they would just do it. He stated if they tabled it, they would come back to the Council with a resolution for denial with findings they could act on.

6.1 MOTION LUNDE, SECOND B. MATA TO TABLE ITEM 6.1.

Council Member Parks stated that if the Council had staff come back a denial, asked if there was an opportunity for them to go back to the homeowner and discuss what the issue was and if they could get it corrected.

Planning Director Sherman stated what they would do was reach out to the property owner and the builder and ask what the best solution was in their mind, knowing that they were not going to get a variance for the 18 feet 9 inches. She stated that was the message she got tonight and they had to figure out how to get the structure down to the height of the house.

6.1 THE MOTION PASSED. (6 TO 1) GATES VOTED NO.

6.2 Planning Director Cindy Sherman briefed the Council on the Minnesota Muslim Community Center (Said Ibrahim) – Conditional Use Permit #18-123 for a Religious Institution at 8568 Edinburgh Centre Drive North.

6.2 MOTION PHA, SECOND PARKS TO WAIVE THE READING AND ADOPT RESOLUTION #2018-167 APPROVING A CONDITIONAL USE PERMIT TO ALLOW A RELIGIOUS INSTITUTION AT 8568 EDINBURGH CENTRE DRIVE NORTH.

Council Member Mark Mata stated it was a permitted use but that was why it still came through the Council to make that decision whether they wanted that permitted use inside a retail space.

Planning Director Sherman stated the application was for a conditional use permit that was a requirement for all uses in the PCDD zoning district. She stated the city's zoning district had a couple of specialty districts like PCDD and Town Center that allowed all uses subject to the process. She stated when a building got built, it was not just specifically for retail uses, but it allowed the other uses that were allowed in that zoning category.

Council Member Mark Mata stated a normal retail would not need to come through a special process because it was already designed for the use in that area. He stated that building had a lot of vacancy space in it, and at first the city was told it was going to be similar to a Mathnasium where math was taught there. After that, the windows were all covered, no one could see inside, there were no signs, and cars were there until midnight. He stated at that point it drew awareness to the city and it should ask more questions and it now had different intended use than what was originally proposed to be there. He stated he was not a fan of strip malls, changing what would be a retail area use and having a different type of use. He stated he would not be supporting it for that purpose.

Mayor Lunde stated he supported the motion knowing it was a special district. He asked what control they had if someone wanted to expand it to two more stalls or buy the building and it went off the tax rolls. He stated it was not what the district was planned for and was meant for retail to specifically drive retail. He asked if there was a moment where they could say no and didn't want it to come off the tax rolls.

Planning Director Sherman stated any expansion of the facility would require further action. She stated what they applied for was just the space. She stated there were federal regulations about religious institutions and had to be careful when they didn't allow them and when they did allow them. She stated they had a moratorium on religious institutions a few years ago to allow them to amend their purpose statement in the business park district and the town center district to be a taxed based generating district in order to be able to not allow religious institutions that didn't pay taxes in those areas protecting the TH610 corridor because they had some large facilities looking to build tax exempt properties along there. She stated they could talk to the City Attorney about doing similar language in the PCDD.

City Attorney Thomson stated if the application was triggering an issue that was a concern of the Council that the particular district and the other change they made, that it wasn't just based on religious institutions, it was based on that they wanted any use in there to be property taxed, whether it was a school and not solely a religious institution. He stated if they Council wanted them to look into it, he suggested the Council to direct staff to look into it and come back to the Council at a future time. He stated right now, that particular use was an allowable use in that district subject to a conditional use permit. He stated if it was a concern they should have staff look at it and come back to the Council.

Mayor Lunde stated the Council would at least like to have that discussion and was worthy of looking at what the intent of that area was to be. He stated there had been more restaurants in there in the last five years.

6.2 THE MOTION PASSED. (6 TO 1) M. MATA VOTED NO.

6.3 Planning Director Cindy Sherman briefed the Council on the Conditional Use Permit for a Wendy's Restaurant with a Drive-Thru at 5931 94th Avenue North.

6.3 MOTION JACOBSON, SECOND GATES TO WAIVE THE READING AND ADOPT RESOLUTION #2018-168 APPROVING A CONDITIONAL USE PERMIT FOR A CLASS-I RESTAURANT WITH A DRIVE-THRU AT 5931 94TH AVENUE NORTH. MOTION PASSED UNANIMOUSLY.

6.4 Planning Director Cindy Sherman briefed the Council on the 10214 Regent Avenue North/Rush Creek Regional Trail Access Potential Sale of Park Land.

6.4 MOTION B. MATA, SECOND PARKS TO DIRECT STAFF TO PURSUE A REPLAT AND LAND SALE OF A PORTION OF THE RUSH CREEK REGIONAL TRAIL ACCESS. MOTION PASSED UNANIMOUSLY.

6.5 Cindy Sherman, Planning Director, Jeff Holstein, Transportation Engineer and Doug Arnold, Kimley-Horn briefed the Council on the North Park Business Center Alternative Urban Area-Wide Review (AUAR) Update.

The following individuals addressed the Council:

1. Jeff Shuman, 7403 103rd Avenue. Asked if traffic studies mattered and why did traffic studies matter especially when considering what they were representing. He asked if they were just numbers or thinking of the people impacted when something was done wrong. He stated traffic studies were done because they wanted to make sure they were protecting the community, protecting the roads, residents understanding when a road system was overwhelmed, that very real consequences could happen. He stated when he thought of the proposed project and the scale of it, the scale alone should have drawn a different set of eyes on the consideration of the traffic impact, let alone the unknown of the impacts of something that size. He stated the thought of it casting a shadow over numerous communities, neighborhoods and homeowners and not just businesses and roads should have drawn a separate level of attention. He asked what happened when a traffic study failed, when it was not taken seriously and spilled over and the consequences. He stated the city of Champlin conducted an independent study and was not aware the city did one and didn't understand when they did their study, they saw numbers significantly different to the ones in the proposal and not asking questions about making a bad decision and thinking about the serious impact that could happen.
2. Michael Kisch, 7413 Oxbow Creek. Stated at the Planning Commission meeting on September 26 there were some questions on the AUAR and the analysis. He stated he looked at the October AUAR and some of those questions were still not clarified. He stated a lot of questions were around the general inconsistencies of data compared from 2013 to 2018 and how the math for 2013 was done with a separate data point than in 2018. He stated the formula was different for the two when looking at the land use code designation for each different component. He stated in 2013, the traffic counts as noted in the new AUAR were based on a land use code 134 Industrial Park, and in the 2018 AUAR update, did decrease from .87 to .40 per thousand square feet. He stated what was not noted as it looked at the overall traffic reduction was that when in the traffic count, the fulfillment center had an ITLUC that was not noted in the general summary. He stated that in the basic AUAR, they didn't know if that data was from a land use code 130, but until digging further, it was land use code 155, which was a high bay warehouse, which was a significantly reduced traffic generation number. He stated that data was not clear and consistent in terms of what was being compared in terms of reduction.

He stated that to bring everything and aggregate it to the same baseline for comparison, was to take the ratio for 2013 and update it with the new 2018 numbers, the actual 2013 AUAR with the 10th addition data generated, 14,991 daily trips as opposed to the 2013 8th addition data of 25,388. He stated that just changing the formula and having it comparable showed that reduction. He stated it was 14,991 when comparing it against a new proposed AUAR in 2018 data was a baseline for saying, did the new proposal actually reduce traffic from the previous scenario. He stated there were other inconsistencies in the summary table that was referenced. The land use type itself for scenario 2018C with housing asked why that was in there if it was not something on the table for consideration. He stated changing a 15-inch sanitary to 12-inch sanitary line impacted the city's future capacity from an infrastructure standpoint. He asked why the little changes were made and buried in there. He stated there were a lot of details in there that meant a lot to the sustainability and longevity of the city.

Council Member Bob Mata stated the AUAR went down an old country road and could not vote for any development going in that area without the expansion of Winnetka Avenue. He stated it needed to be four lanes, have turn lanes and have stops lights. He stated it couldn't handle the current traffic now without any development even if they put a small building in there. He stated that before they went to construction, they needed to be proactive. He stated it was a county road and needed to get Hennepin County involved and get that road widened and get it prepared before construction started. He stated if they waited until after, it was too late and construction would make it a bigger problem.

Planning Director Sherman stated the environmental review process was to set the stage for development. It was not approving anything to move forward. She stated that in order for any development to happen it had to come back to the Planning Commission and Council. She stated the first two buildings that had been built there, they went through a site plan review process and they approved installing an extension of Oxbow Creek Drive and a portion of Xylon Avenue. She stated those were the pieces required to allow that level of development. She stated the environmental review was intended to identify those other mitigations that were required to allow some portions or all development to happen. She stated that going back to the original 2013 AUAR, it talked about a threshold where at some point the Highway 169 and 101st Avenue interchange would be required for full build out. She stated they were still going through that same process. She stated it did not give anyone rights to build as shown on any of those scenarios without coming back and going through site plan review, conditional use permit, and platting of the land. She stated when they got those applications in, they weighed them against the environmental review to be sure it was within those parameters.

Council Member Jacobson stated she was interested in hearing about the formula not being the same, and the traffic numbers they were getting for 2013 and 2018 were based on a different formula.

Planning Director Sherman stated Kimley Horn completed the study and they had full vetting of it. She stated the Traffic Transportation Engineer and City Engineer both reviewed it. She stated they went through them and reviewed them based on their concerns and their needs.

City Engineer Jeff Holstein stated the question on the rates was correct. He stated if they applied version 10 of the IT Trip Generation manual instead of version 8, that would lower rates from 2013. He stated the point was, there was a set of mitigations, do the traffic impact study to determine what the mitigation should be, what roadway improvements should be done, what traffic signals should be installed and what type of TDM measure should be implemented. He stated there was a set of mitigations that came out of the earlier study and they looked independently at the new traffic numbers of version 10 and they came up with a different set of mitigations and were very similar. He stated one of the key components was the new interchange, Highway 169 and 101st Avenue and the connection of Xylon down to that interchange. He stated the majority of traffic was expected to go to and from the south and the city was in the northwest corner of the metro and most of the traffic wanted to go south of Highway 169 or Winnetka and continued to Highway 169 where they wanted to get on TH610 and disperse east or west. He stated 70 to 75 percent of the traffic wanted to go south and the mitigations were very similar, except an interchange and connection of Xylon down to the interchange.

Council Member Parks stated he got emails, phone calls and talked to a resident tonight, who stated there were rumors on the project and that the Council was secretly voting on it tonight.

Planning Director Sherman stated the action tonight was to approve the environmental review and only set the stage for future development to happen. She stated the ordinances required that every application, with a few exceptions, to go to the Planning Commission and Council. She stated it didn't get changed by adopting an environmental review. She stated she heard similar rumors about the comprehensive plan that somehow the action they took on the comprehensive plan was suddenly going to grant that property different rights than they had today and that was false. She stated the property was subject to zoning and land use that was in place today. She stated the land use they were proposing didn't change anything. She stated it was subject to the development plan approval that was in place and part of the action that had been requested was to modify, it but that still had to come back to the Council no matter what happened. She stated there was nothing going on under the table and it was a timeliness issue. She stated that environmental review had a timeline and they had requirements to meet for deadlines and publications and taking action within a certain time period of the comment period closing. She stated that was what they were trying to follow as they indicated to the email that went out talking about tabling the project that was under consideration when they had a schedule. She stated they were going to email that schedule to everyone they had an email address for.

City Attorney Thomson stated the AUAR process was different than what they typically saw. He stated it was a substitute for either and kind of a crossover between an environmental impact statement and environmental assessment worksheet, but the purpose of those environmental reviews, and the one tonight, required cities to consider the environmental impact of a project before Council acted on it. He stated the Council couldn't vote on any application on that land until after they took action tonight. He stated it was a condition preceding to even voting on a development application because what they were seeing tonight was to consider the environmental impacts, approving the study and they would be considering them if and when they had a vote on an application. He stated they couldn't be voting on an application tonight and couldn't do it until after taking action on the environmental component of it.

Council Member Mark Mata asked about the amphitheater in 2005. He stated there was discussion of the Environmental review process and impacts and was one of the reasons why the project did not come through besides a lot of concerned residents. He asked if they recalled anything on it and what was different from that from what the Council was doing now.

City Attorney Thomson stated it was an environmental review and believed it was the impact statement, which was the highest level of environmental review. He stated the process was followed, was approved, and environmental impact statement was approved. When the application came to the Council, it was approved, but the environmental considerations were taken into effect before they made the decision to act on the amphitheater and it never went forward. He stated it was the exact same process being followed now except it was an AUAR instead of EIS. He stated the Council was taking the environmental step tonight. If and when any development application came back, the Council would consider the environmental impact when they acted on that application, which was the exact same process followed with the amphitheater process.

Council Member Mark Mata stated when he looked at the Winnetka and Oxbow Creek Drive intersection, it was no different than Noble Parkway and Edinbrook Parkway. He stated it was a three way, had residential on one side and people trying to get to Noble Parkway. He stated they had to put a stop light there because there were a lot of complaints from the residents and the County had no plans to put a stop light there. He stated the light on 114th Avenue, cared less about it because it was in Champlin and didn't do anything for the Brooklyn Park residents. He stated it was mentioned that traffic was going to come out of that development and go south. He stated that a lot would go east and if the traffic went south and a lot went east on TH 610, it would not go anywhere, which meant the traffic would cut through neighborhoods. He stated Highway 252 was terrible and had cut through traffic on Humboldt, West River Road, Xerxes, Logan and Brookdale Drive. He stated they had signs that didn't want them to turn into the neighborhoods.

He stated if they were going to build there, they had to over build the road system. He stated it would pass tonight because it was a document that said to move forward to the next step and they were not denying anything. He stated the Council would deal with the building when they came because tonight's action wasn't stopping that process, but it clearly talked about traffic all over it and it was terrible. He stated they were making concessions on a bridge on 101st Avenue because it was still going to be undersized and it should be a clover leaf in all four directions and be massive. He stated he didn't know if it was the place to say no tonight or just before another development came in front of the Council. He stated that until he saw the roads up to where they could drive on them, he wouldn't approve any development to come forward and was the first one to say he wanted big buildings because he wanted the tax base. He stated he wanted offices because that was people and they would come for sit down restaurants that were needed and have traffic to move those people.

City Engineer Holstein stated he had completed and prepared reviews for well over 100 traffic impact studies and several had been very large. He stated he had worked on the Mall of America traffic impact study, Riverdale shopping center, National Sports Center in Blaine, the Fargo Dome, Performing Arts Center, Target North Campus and several others in the city, including the North Park traffic impact study. He stated there was a process to be followed preparing a traffic impact study. He stated he had reviewed the traffic impact study and all elements were there. He stated there was a process for designing roadways. He stated they develop some forecast then look at the level of roadway, the level of traffic needed to accommodate that forecast and that was done. He stated everything was done that should have been done and the mitigation in the report was reasonable. He stated it would adequately accommodate the level of traffic to and from the development and the long range of the rest of the city being built out and general traffic in that area up to 2040.

Council Member Mark Mata stated he was allowed to say no and the reality was to watch the back up traffic and he saw it. He stated it was human nature for people to cut through and find the shortest way and didn't think that model took that into consideration or didn't take in the volumes; otherwise, they would not have those problems in different areas of the city where people were taking the cut through roads to get somewhere quicker.

Council Member Pha asked if there was any modification that could be built on that lot with the adoption, what they currently had now to the new one.

Planning Director Sherman stated the zoning in the land use remained the same. She stated the

analysis was looking at a bigger building, but that didn't guarantee approval of a bigger building.

She stated it was being analyzed and the developer still had to complete the process for the development application that was underway. She stated it didn't give them any rights to anything different than they had today. She stated it was updating the analysis for traffic and for the other environmental impacts.

Council Member Pha wanted to clarify and make sure that was the case because what she didn't want to do was to approve it and make it seem that she would be in favor of approving that the Council was agreeing to an approval of a fulfillment center or something like a Hotdish. She stated it was merely an update environmental review and a scenario based on a possible fulfillment center for that size and what kind of impacts it would have, but not saying they would be accepting and approving it.

Planning Director Sherman stated that she was correct and one of the scenarios that was analyzed in 2013 included a large user in the middle and then the development plan changed and were smaller buildings. She stated there was still the development review process, the site plan review process and all those other things that for any building would have to come back to the Council whether a large user or small user, and it didn't require Council to approve any of them that were inconsistent with the development plan.

6.5 MOTION LUNDE, SECOND GATES TO WAIVE THE READING AND ADOPT RESOLUTION #2018-169 APPROVING THE NORTH PARK BUSINESS CENTER ALTERNATIVE URBAN AREA-WIDE REVIEW (AUAR) UPDATE.

Mayor Lunde stated Highway 252 was funded to get done and they talked about getting rid of lights and about the traffic jam. He stated the County would never do the road unless there was development. He stated he talked to the County Commissioner and they were interested in what they could do to do it, and interested in working with the city, but the city did not have anything before the Council right now. He stated they only had an environmental review, which didn't have a project attached to it. He stated the County was interested, and as of right now, there was no reason to do anything on Winnetka and knew the traffic was horrible, but there was nothing the County would do because under their rules, the road was adequate for the existing traffic. He stated that until anything was approaching approvals, or anything like that, the County would say thanks, but no thanks, until they saw things going forward.

He stated people wanted it to be green, to leave it as pumpkin field and corn patch but it would get developed and had been in the plans for a long time. He stated the action tonight just laid out the parameters of what the Council was looking at. He stated what they approved had talked about mitigation, whether it was a small or big building, they would have to address the mitigation at every step to make sure they were crossing a threshold that was required. He stated the city and state would be investing \$32 million on 101st Avenue and did think that something would go in there and would drive traffic. He stated he wanted it to develop and tonight was the next step and set the ground work for other things. He stated if the project came back, they would have a spirited discussion, but it might not come back because people took developments elsewhere and things changed. He stated what was before the Council tonight was just part of that process going forward. He stated that process also helped the city lobby for money when it had traffic counts, environmental studies, and things to go and talk about the traffic that it expected and helped when talking with legislators about bonding for money.

Mayor Lunde called for a roll call vote.

6.5 THE MOTION PASSED ON A ROLL CALL VOTE AS FOLLOWS: YES – GATES, B. MATA, PARKS, PHA, JACOBSON, LUNDE; NO – M. MATA.

7.1 Mayor Jeffrey Lunde briefed the Council on the appointments to Commissions.

7.1 MOTION LUNDE, SECOND JACOBSON TO APPOINT TRELAWNY GRANT TO THE COMMUNITY LONG-RANGE IMPROVEMENT COMMISSION REPRESENTING THE CITY AT-LARGE EFFECTIVE IMMEDIATELY FOR THE BALANCE OF A TERM TO EXPIRE APRIL 1, 2019. MOTION PASSED UNANIMOUSLY.

7.1 MOTION LUNDE, SECOND PARKS TO APPOINT LAURA SELL TO THE COMMUNITY LONG-RANGE IMPROVEMENT COMMISSION REPRESENTING THE CENTRAL DISTRICT EFFECTIVE IMMEDIATELY FOR THE BALANCE OF A TERM TO EXPIRE APRIL 1, 2021. MOTION PASSED UNANIMOUSLY.

7.1 MOTION LUNDE, SECOND M. MATA TO APPOINT DEBORAH LEWIS TO THE HUMAN RIGHTS COMMISSION REPRESENTING THE CENTRAL DISTRICT EFFECTIVE IMMEDIATELY FOR THE BALANCE OF A TERM TO EXPIRE APRIL 1, 2021. MOTION PASSED UNANIMOUSLY.

9A COUNCIL MEMBER REPORTS AND ANNOUNCEMENTS – None.

9B CITY MANAGER REPORTS AND ANNOUNCEMENTS

City Manager Stroebel stated there was an opportunity for the community tomorrow evening on a presentation and discussion about universal design living in a home fit for you in the Council Chambers at 6 p.m. On Thursday, November 29, there was an open house on the Highway 169 and 101st Avenue interchange in Council Chambers from 5 to 6:30 p.m. On Saturday and Sunday, December 1 and 2, at Ediem Farm there was going to be a Norwegian Christmas, from 1 to 4 p. m. each day. He stated that CEAP was having a toy drive, December 1 through December 14 and could bring in unwrapped toys to City Hall and the Community Activity Center. He thanked Council Member Pha for the invitation and opportunity to participate in the Hmong New Year celebration event.

ADJOURNMENT – With consensus of the Council, Mayor Lunde adjourned the meeting at 9:52 p.m.

JEFFREY JONEAL LUNDE, MAYOR

DEVIN MONTERO, CITY CLERK