

**CITY COUNCIL MEETING
CITY OF FRIDLEY
AUGUST 26, 2019**

The City Council meeting for the City of Fridley was called to order by Mayor Lund at 7:03 p.m.

ROLL CALL:

MEMBERS PRESENT: Mayor Lund
Councilmember Barnette
Councilmember Tillberry
Councilmember Eggert
Councilmember Bolkom

OTHERS PRESENT: Wally Wysopal, City Manager
Scott Hickok, Community Development Director
James Kosluchar, Public Works Director
Daniel Tienter, Finance Director
Jay Karlovich, City Attorney
Cassandra Wolfgram, Assistant City Attorney
Julie Jones, City Planner
Dan Cahill, Neighborhood Preservation Specialist
Mike Spencer, Fire Marshall/Chief
Carl Lind, Engineering Intern
Deb Skogen, City Clerk
Pam Reynolds, 1241 Norton Avenue NE
Terry McClellan, 7671 Brigadoon Place NE
Kevin Kennedy, Borgelt, Powell, Peterson & Frauen, S.C.,
Cleophas Omondi, Flying Eagle Auto Service
John Pederson, Owner of 1377 Building
Nyla Almansoub, Sky Auto Body, LLC
Michael Morris, Auto Body Shop, LLC
Sharon Sloper, Collective Harmony Massage and Healing Arts
Patrick Farley, Counsel 4 Veritas Law, LLC

PRESENTATION:

Engineering Update by Carl Lind, Engineering Intern

APPROVAL OF PROPOSED CONSENT AGENDA:

APPROVAL OF CITY COUNCIL MINUTES:

- 1. City Council Meeting of August 8, 2019.**

Councilmember Barnette stated on Pages 9 and 10, Mr. Holm should be spelled “Holum”.

APPROVED AS CORRECTED.

NEW BUSINESS:

2. **Resolution Authorizing Execution of Toward Zero Deaths (TZD) Enforcement Grant Agreement.**

ADOPTED RESOLUTION NO. 2019-38.

3. **Resolution Approving Gifts, Donations and Sponsorships for the City of Fridley.**

ADOPTED RESOLUTION NO. 2019-39.

4. **Approve Perpetual Storm Water Drainage and Access Agreement and a Storm Water Maintenance Agreement for the Fridley Station Village Development Project with Sherman Associates (Ward 3).**

Mayor Lund requested this item be removed.

THIS ITEM WAS REMOVED FROM THE CONSENT AGENDA AND PLACED ON THE REGULAR AGENDA.

5. **Approve Retaining Wall Easement and Encroachment Agreement between the City of Fridley and Townhomes at Locke Park Homeowners Association (Ward 1).**

Councilmember Bolkcom requested this item be removed.

THIS ITEM WAS REMOVED FROM THE CONSENT AGENDA AND PLACED ON THE REGULAR AGENDA.

6. **Claims (186168 – 186313)**

APPROVED.

ADOPTION OF PROPOSED CONSENT AGENDA:

MOTION by Councilmember Barnette to adopt the proposed consent agenda with the removal of Item Nos. 4 and 5. Seconded by Councilmember Eggert.

UPON A VOICE VOTE, ALL VOTING AYE, MAYOR LUND DECLARED THE MOTION CARRIED UNANIMOUSLY.

OPEN FORUM, VISITORS:

Pam Reynolds, 1241 Norton Avenue, referred to the August 12, 2019, City Council meeting when Michael Van Gorp made his update on Code enforcement, he made a statement about the recent change in the City Code where it is no longer acceptable to have any outside storage regardless of whether it is visible from the street or not. She said going back to when the Code was changed, both the memo and the minutes that meeting show that Ms. Jones made it clear that rear yard storage issues would be generated through a neighbor with concerns. The statement made by Mr. Van Gorp leads her to question if was he unaware the rear yard had to be via complaint because it sure did not sound like it.

Mayor Lund asked Julie Jones, Planning Manager, who was present at the meeting to respond more specifically.

Ms. Reynolds stated she wants to know when someone calls in a complaint, is it recorded as to who called it in, the property address, and whether they took action. She knows also when they debated this there was the need to determine whether it was a public or private nuisance.

Julie Jones, Planner, stated just to clarify, Mr. Van Gorp's task this summer was to do inspections on businesses. That was his primary goal, but he did assist Dan Cahill in doing Code enforcement and following up on complaints. Anything he was referring to was strictly on a complaint basis; he did not do systematic residential inspections this summer.

Ms. Jones stated by State statute, all complaints have to remain anonymous. The on-line system does require people to put contact information in as far as an e-mail address so the City can respond to them if they want to be contacted back. However, as far as telephone complaints coming in, the City may record those for the City's records, for staff's purposes, so they can get back to the complainant about the case, but there is no database that is kept.

Mayor Lund asked if someone called in and asked, who made the complaint, the City is not to disclose that information.

Ms. Jones replied, no, they have to be very careful about that.

Mayor Lund asked Ms. Reynolds if that answered her question.

Ms. Reynolds replied, yes.

Terry McClellan, 7671 Brigadoon Place NE, stated he has been in front of the Council before to talk about a provision that allows people to put big RVs in front of a house two times a week. Council was not sure what other communities were doing. With the Council's permission he can tell them what the City's neighbors do and he has a handout.

Mr. McClellan stated the one thing he did note is that no other community makes any provisions for any exceptional RV parking. Fridley is all by itself. With that being said, they

now have some more information. On the back are some editorial conclusions. The other side includes the facts as best as he could determine from the various city ordinances.

Councilmember Bolkcom stated the plan is to have City staff look at this and come back and see if there is any compromise or changes that make sense to make in the City ordinances.

ADOPTION OF AGENDA:

MOTION by Councilmember Bolkcom to adopt the agenda with the addition of Item Nos. 4 and 5. Seconded by Councilmember Tillberry.

UPON A VOICE VOTE, ALL VOTING AYE, MAYOR LUND DECLARED THE MOTION CARRIED UNANIMOUSLY.

PUBLIC HEARINGS:

- 7. Public Hearing to Declare 1340 Hillcrest Drive N.E. a Public Nuisance (Ward 2) (Continued July 22, 2019).**

MOTION by Councilmember Bolkcom to remove this item from the table. Seconded by Councilmember Barnette.

UPON A VOICE VOTE, ALL VOTING AYE, MAYOR LUND DECLARED THE MOTION CARRIED UNANIMOUSLY AND THE ITEM WAS REMOVED FROM THE TABLE AT 7:21 P.M.

Scott Hickok, Community Development Director, stated a contract for demolition has been signed for this property. The insurance company has indicated to the owner, Mr. Hamernick, that his payment has been approved and he should be getting it any day now. Once he receives it, the contractor will begin. He will pay the first half up front and the rest upon completion, which is pretty standard for demolition contracts.

Mr. Hickok stated staff 's recommendation would be to continue the public hearing and receive public comment and if Council deems it so appropriate, hold the hearing open until September 23. If adequate progress has been made towards completion, Council could do a couple of things: hold the hearing open until it is 100 percent completed or close the hearing and take no action on the nuisance determination. Mr. Hickok said he talked with Mr. Hamernick today and he is very optimistic. They have approved his proposal, the bid he has received, so now it is just a matter of check in hand and the project will start.

Mayor Lund asked, when he says, "they have approved" was he talking about the insurance company.

Mr. Hickok replied, yes.

Mayor Lund stated, good, because on page 67, bottom line, it says the contractors are ready to go pending authorization from Mr. Hamernick's insurance company to cover the agreed-upon cost. He was going to put on public record that, regardless of whether they come to an agreement or not, he is going to be hard pressed to add another extension onto September 23. He feels very bad about Mr. Hamernick's situation with the mix up of the insurance and that he had a fire, losing basically all his contents, but the neighborhood has put up with an awful lot over the last six months; and it is time they get closure on this.

Councilmember Eggert stated he was thinking along the same lines because if you look at the timetable, this started February 23. They are now six months down the road. The neighborhood and the City have been very patient on working with this. He said he also agrees they should continue and keep the hearing open for September 23 to manage a conclusion on this.

Councilmember Bolkcom asked Mr. Hickok what he definition of adequate was and what would he anticipate happening by September 23 if they hold it open that long?

Mr. Hickok replied, he would like to say adequate means with a little bit of rain they would be able to mow it. No foundation, finished graded, seeded, and that is where he would hope they would be on September 23. Once a demolition contractor gets going, it is a fairly quick process, and the fire has taken care of a lot of the work on this site. If they do not see it graded and seeded by September 23, he would say, no more extensions.

Councilmember Eggert stated the HRA has quite a bit of experience in doing this very same thing with homes they have taken over and done the demolition. It can be a very quick process. What Mr. Hickok is saying is truly possible, but they do not need a delay for a contractor who can no longer do it.

Councilmember Bolkcom stated there was a tragic fire in her ward and they had their house demolished and rebuilt in less than six months, so this is crazy to her.

Councilmember Bolkcom asked that it be made part of the public record the condition that the property has to be in--down, graded, and seeded by September 23.

MOTION by Councilmember Eggert to continue the public hearing to September 23, 2019. Seconded by Councilmember Bolkcom.

UPON A VOICE VOTE, ALL VOTING AYE, MAYOR LUND DECLARED THE MOTION CARRIED UNANIMOUSLY.

8. Public Hearing to Consider Revocation of the Auto Body Repair License for Flying Eagle Auto Service Located at 15 – 77th Avenue N.E. (Continued August 12, 2019).

MOTION by Councilmember Bolkcom to remove this item from the table. Seconded by Councilmember Barnette.

UPON A VOICE VOTE, ALL VOTING AYE, MAYOR LUND DECLARED THE MOTION CARRIED UNANIMOUSLY AND THE PUBLIC HEARING WAS REMOVED FROM THE TABLE AT 7:28 P.M.

Dan Cahill, Neighborhood Preservation Specialist, stated there have been a lot of complaints since 2013 for outside storage and illegal street parking . He presented photos from June 24 and August 8 of the parking lot and other junk vehicles. He presented a photo of a Flying Eagle vehicle parked on the street and a photo of a vehicle belonging to John Pederson. He is the actual owner of the building and is parking on the street as well. Mr. Cahill presented another photo of junk vehicles in the parking lot as of this morning and took a picture of another vehicle from Flying Eagle parked on the street today.

Mr. Cahill stated there are still junk vehicles on site. They are still using the street as a parking lot. Staff recommends the City Council revoke the Flying Eagle Auto Body license. Staff has prepared a resolution. If Council chooses to revoke, the business will be unable to reapply for another license for two years. Council also has the option to suspend the license or take no action.

Councilmember Bolkcom asked the City Attorney if they were to suspend the license, what kind of conditions can they put on that suspension.

Jay Karlovich, City Attorney, replied if they turn to page 73 it might be helpful to see some of the language in the City Code regarding revocation whereby it recommends that if you revoke a license, they are not supposed to come back unless there is competent evidence of sufficient rehabilitation and present fitness to perform the duties of the business. With regards to a suspension, it is up to the City Council. This is a *quasi* judicial proceeding and they can do nothing, suspend, or revoke.

Attorney Karlovich stated they do have to give their legal counsel due process. The City Council is the judge and the jury in this one.

Councilmember Bolkcom stated they all have a three-ring binder. She asked it be explained what it contained and whether they need to move it into the record.

Mr. Cahill stated the binder is from the City Attorney and it gives an overview of what Flying Eagle Auto Service's violations are: (1) they failed to comply with the application's zoning laws; (2) junk vehicles on the property; (3) outside storage; (4) provide off-street parking for clients and employees; (5) all inoperable vehicles, unlicensed vehicles inside the building. If they are working on a vehicle, they can work on it inside the garage, and if they do not get it done that day they have to keep it inside the garage. They cannot store any junk vehicles outside the garage at night. It also contains correspondence from the City Attorney.

Councilmember Bolkcom asked but Tab 1 relates only to Flying Eagle.

Attorney Karlovich stated that's correct. Tab 2 is Item No. 9, Tab 3 is Item No. 10, Tab 4 is the letter they received from opposing legal counsel together with pictures that he submitted. This was done to create a record of the proceedings here today.

Councilmember Bolkcom asked if they had the letter in their Council agenda packet.

Attorney Karlovich replied it is not in the Council agenda packet.

MOTION by Councilmember Bolkcom to receive into the record a three-ring binder with a table of contents for Flying Eagle, Sky High, Auto Body, Defense's Response, and August 26 photos. Seconded by Councilmember Tillberry.

UPON A VOICE VOTE, ALL VOTING AYE, MAYOR LUND DECLARED THE MOTION CARRIED UNANIMOUSLY.

Attorney Kevin Kennedy, Borgelt, Powell, Peterson & Frauen, S.C., stated John Pederson is his client and owner of the building in question. It came to his attention from going through some of the earlier submissions that the real complaints about the building have to do with junk vehicles. He asked Council to understand this is an industrial location with body shops. The first time he ran into Mr. Pederson and came out to his building, he looked at it and thought it looks like any other industrial location in any city in Minnesota. Not to say there is not legitimate concerns about junk vehicles or parking locations, but it did not seem that particularly egregious to him. He read the paperwork and talked to Mr. Pederson who does not have an office there. The tenants do. There are four tenants, one of which is not subject to the motion for revocation of a license. It is a company called High Tech Auto.

Attorney Kennedy said he met with the tenants and all three of them are at this meeting. They are running their own separate businesses out of the building. He said he told each one of them, the City had concerns about the vehicles they were working on and where they are and whose vehicles they are. He said he got the same answer--for the most part, the problem tenant is High Tech Auto. He also talked Cassandra Wolfgram, the Assistant City Attorney, and she told him they did not have a license to run a business out of this building. The other three tenants did.

Attorney Kennedy stated Council should know that on behalf of Mr. Pederson he talked to representatives of High Tech. He did not talk to the owner, Gordon Larson. The representatives said they are in the process of vacating the premises and they would be out by August 28. He said he went by there today and you can definitely see they are in the process of moving out. On behalf of Mr. Pederson he sent a letter to Mr. Larson with a notice to vacate by the end of the month. When he spoke with the tenants, he asked what was going on. They told him High Tech was the one with the junk vehicles and parking vehicles on the streets. They are parking anywhere they can and are selling cars when they should not be. Vehicles are coming and going.

Attorney Kennedy stated when High Tech Auto vacates the premises, he thought the problems would be solved. They are going to have more space because the fourth tenant is gone.

Attorney Kennedy stated revocation is an aggressive approach to this situation for a number of reasons. Mr. Pederson owns the building. This is a revenue generation for him. If they revoke the three licenses, the income is gone. He said they are doing it because of parking on the street. He said when he drives up to the building, he parks on the street. There is nothing wrong with that. He said he did get what the City was saying but he has driven around the area, and he does not see any difference on the streets. He does not know whose car is whose. Mr. Pederson cannot call a tow truck and say, hey, I want this car off. He has already tried that. He has talked with the Police Department and they told him he could not do that. He does not own the streets.

Attorney Kennedy stated as to the space that is being vacated, one of the tenants is interested in taking over that space. Again, they have only three tenants using the space currently. He asked the Council to consider their options. The other piece is the junk vehicles issue. They have a body shop. They are not all body shops, but the three that are subject to revocation today are. When you are a body shop, you have cars to work on and there is obvious damage, some of which may render the vehicle inoperable; but the work has to be done. If they are operating a business that is in compliance with zoning, it is just an issue of are the cars in the right place at the right time; and whose cars are they. He asked if revocation for two years' minimum was really what they saw here.

Attorney Kennedy stated the photographs he submitted are part of the booklet in the defense tab, Tab 4, and he took them last week. No one knew he was going to be there. He took photographs of the parking area from both sides and, all three streets that are at issue. It looked pretty good to him. It looked like things were moving in the right direction. He asked the tenants if they had designated spots in their parking lot that they knew were for them vs. the other tenants. They told him they did but High Tech did what they wanted.

Attorney Kennedy stated he asked Council, respectfully, to give them an opportunity to communicate with the tenants, give High Tech an opportunity to vacate, and then see what happened. Everyone knows Council is watching. To go to revocation seems a little aggressive. He would give consideration to maybe a 30-day notice or a 90-day warning period. But for Mr. Pederson and the tenants, his suggestion is to tread a little more lightly.

Mayor Lund stated it is their last resort to have to revoke, suspend, or do anything else that is detrimental to these three businesses. They embrace business in the community. He said he is pro-business, and he believes the rest of the Council would say the same. Having said that, they have done nothing. This has been festering for years. They are zoned okay as far as a body shop there, but they do not screen it. Put up screening and hide the unsightly parts and junk cars. They do not have the room to do that as well as have their employees parking in their own parking lot. There is just not enough room. They have outgrown their businesses.

Mayor Lund stated he would have preferred it if Attorney Kennedy would have come to him as representing the owner of the property and said are the changes they plan to make. High Tech is not the only culprit. They are all guilty of violating the City's storage requirements. They need to screen it.

Mayor Lund asked why the owner was not present talking to them since High Tech is moving out, about utilizing that fourth space and using that for the other businesses to do indoor storage or create some screening. He is not hearing any of that. In addition, they have already continued this public hearing 30 days and virtually nothing has changed. They should already be very concerned that they are in the 11th hour. He said he was not one to continue and continue in the hopes they were going to do something. They need to come before Council and tell them what they are going to do to get into compliance.

Attorney Kennedy replied, he understands that.

Mayor Lund stated and attorney Kennedy raised his eyebrows like what he said something wrong. He does not think so. They should be here telling them what they are going to do so they do not have to revoke. He does not want to have to do that. They are forcing him into a position where he does not have any choice.

Attorney Kennedy replied, he raised his eyebrows because Mr. Pederson was present and would be happy to speak.

Mayor Lund stated it was not brought to his attention that he was in the audience.

Attorney Kennedy stated if Council has made their minds up, they have made their minds up. He cannot change that.

Mayor Lund stated he is only making up his mind because he has not heard a single word about what changes they are going to do to get into compliance. Attorney Kennedy's response was that High Tech is the only problem and that life will go on with no changes by the other three tenants.

Attorney Kennedy replied, he looked at the photos and if you look at Tab Nos. 1, 2, and 3 it is the same set of photos from the City. There is this general accusation, well, there are junk vehicles. Whose are they? There is no presentation saying whose they are. It is just lumped together, and all three of them are going to have their license revoked. They are here to talk today, too.

Mayor Lund stated Attorney Kennedy is trying to paint the picture that they are using the exact same photos, whether what date is on there or not.

Councilmember Tillberry asked whether he heard in Mr. Cahill's presentation this was going back to 2013.

Mr. Cahill replied, yes, it is. It has been continuous with very little changes. This was his last resort. He started with Fridley in January and has continuously worked on this.

Councilmember Tillberry stated so six years.

Mr. Cahill stated prior to this there was even another owner that had similar issues. This site does not fit their needs. Even as of today he went over there. He referred to the photos he took today. There are junk vehicles in the parking lot. Flying Eagle has their business logo on there, and they are still parking in the street.

Mayor Lund stated and this was not the only issue that these three have. He strongly believed there are other violations than just the parking or storing junk vehicles in the parking lot without screening and without having adequate parking for these vehicles plus the employees. It is also about illegal, inappropriate, paint booths that one or more of them have which has been ongoing. As they just reiterated, it made his case even stronger, this has been going on and on. It is leaving them very little recourse for those who do not seem to want to change.

Attorney Kennedy stated the tenants can speak for themselves. One of them is a recent tenant. There is nothing you can hold a tenant against since 2013 when they first moved into the building last March.

Councilmember Bolkcom stated they do not have to go back that far. They can just go back to March 26, 2019. They applied for a motor vehicle repair license at that time. The City approved the license on conditions that no exterior storage occur on the property. All inoperable or unlicensed vehicles must be stored in the building and no storage of fleet vehicles should occur on the property. That happened back in April when that license was issued in March and then approved by the City on April 18. For not saying if it is their junk vehicles, then there was an inspection on June 19. The same issues on and on and on.

Mayor Lund asked if this was regarding Flying Eagle?

Councilmember Bolkcom stated yes, referring to the first tab, and the license and what the conditions were for that license. If those are not your cars, why would you not say something. If the crashed up white car was not their car, she would call the police and have it towed away. To say they are not even sure they are their vehicles there is something wrong and it should not be stored there to begin with. If they were not their automobiles, and they were not thinking of fixing them, they definitely should be taken away from the property.

Councilmember Bolkcom stated they are just talking about this year and not being in compliance since the new license. As to the other comment, about it being an industrial area, it is still their City with people driving by there. Why should they allow this business to have this happen and they do not let other businesses do the same thing? They have had these issues in other parts of the City and they have been taken care of. They do not have to come down to the 11th hour. It is not fair. There is a license and there are conditions that go along with it. Play by the rules.

Attorney Kennedy stated given Councilmember Bolkcom's comments and the vehicles, the tenants would be better to answer those questions.

Cleophas Omondi, Flying Eagle Auto Service, stated he started operating in this area in February 2018. He is aware about the challenges that have been in that area, but he wanted to

take them back to when the issue was first brought to their attention. When the gentleman came to them a few times and he had a conversation with him. There were a couple of vehicles cited to be out of compliance. They have made significant progress. He asked Mr. Cahill if he agreed.

Mr. Cahill replied, he agreed. They have done quite a bit of work there. Unfortunately, they have not completely complied.

Mr. Omondi stated first of all he wanted to make Council aware about the improvements that have been done since 2013.

Councilmember Bolkcom asked Mr. Omondi if he could tell her since his license was approved on April 18.

Mr. Omondi replied, the way he understood storage was defined is on the basis a vehicle was covered. How did they end up with a vehicle that was covered? Somebody from the City came there and talked to his manager about a vehicle that appeared with a lot of damage and they told him you need to use a cover. That is how he ended up buying a cover to put on the vehicle. Then the City came back again and said, no, if you have a cover on the vehicle it is a sign of storage. They had a vehicle sitting there because of an insurance dispute going on. Because they came and said they cannot have it out there with a cover, he decided to cut that vehicle into pieces. The vehicle had a lien on it. He kept pieces inside the shop. The vehicle he could dispose of he did for free without getting any money out of it.

Councilmember Bolkcom stated, going back to April 18, when this was approved, it states no exterior storage shall occur. All inoperable or unlicensed vehicles must be stored in the building. That is pretty clear to her.

Mr. Omondi replied, yes, it is. The pictures were taken during the day. He had a real time surveillance photo right now. They will see those vehicles are not there. The City took them during the day, normal business hours. That BMW they see there with no license plate, it is inside the building. It is actually moved at 10 when it was raining because they were painting the front bumper. It is not even there if he shows them the surveillance video right now.

Councilmember Bolkcom replied, but they are still out there during the day. It does not matter. They had a similar business which moved all their stuff outside and then moved it all in at night. Then they said they were in compliance. It was because they did not have enough space in their similar business to be able to work on vehicles and store them.

Mr. Omondi stated he is confused then. The guidance they have been given is, when the vehicles are not being operated on, they should be moved back in. They should not store them outside. Because you cannot have all the vehicles in the building and work on them at the same time. So they take them in and out. That is the part he is confused about. Are they not allowed to move the vehicles in and out?

Mayor Lund asked for clarification from staff. He thought that was permissible.

Councilmember Bolkcom stated, no, it came down to either you have enough room to put inoperable vehicles or ones that need to be repaired in your building. She asked Mr. Hickok to respond to that.

Scott Hickok, Community Development Director, replied as to programming the repair of the vehicles, you have so much space. In another situation they had, they had a group that would bring their cars in that night, take them out during the day so they would have time and place to work on the vehicles inside. It is an inappropriate match here. In one way or another it is an inappropriate match by virtue by their own scheduling and programming of the repair of the vehicles or it is an inappropriate match as to how much space they have compared to how much space they need. If they have only room for fixing three vehicles inside, program it. If they have three vehicles to fix, send them on their way, bring in three more vehicles, and you will be fine. The problem here is whether it is this operator or one of the other two operators, the combination of uses completely fill the parking lot, and they leave absolutely no space for guests or employees to park; and, again, pull it back to programming. If you had three vehicles you are working on, you send them on the road, you have room for three more, you still have room for your employees to park. It is not more complicated than that.

Mr. Omondi stated he knows the picture that is presented to them shows a very bad image, but it does not reflect what the reality is. The blue vehicle they see out there. Yes, you see the Flying Eagle logo on it. It is not a Flying Eagle out of service vehicle. It is a Flying Eagle transportation vehicle that was dropped there by a driver who did not know they had to put it in the back. They dropped it at the front because they were leaving work. If they look at the surveillance right now, the vehicle is not there. The vehicle right in front of it is still there right now. It is not their vehicle. They do not even know the owner. Surveillance right now shows that place is clear. If they look at those pictures right now, that BMW is not even there.

Mayor Lund stated this still alludes to Councilmember Bolkcom's point that they are moving vehicles in at night, cramming them in, and they are putting all those vehicles back out again during the work day. It is an unattainable mix of having too many vehicles and not scheduling cars to come in. There should be an external site for storage of all these vehicles.

Councilmember Bolkcom asked in previous businesses they have said there is a vehicle here and they have no idea whose it is. Does he know of any experience where they have called the police, and then the police run the plates, and do something about it? Is there not an opportunity for any one of these businesses to say there is some type of vehicle in my parking lot, it has been sitting here, and I want to know why it is here? Is that something a business owner could do?

Mr. Hickok replied as they know, every site is to be self-sustainable in terms of the parking they provide. There is a provision in every district including this one saying, at its discretion Council can require that additional parking be installed on site in order for them to meet their requirements. If they cannot meet their requirements, then it is incumbent upon them to figure out what it is that they need to do in order to come into compliance. Maybe there is a lot somewhere else that allows them to store vehicles.

Mr. Hickok stated with respect to police cars checking this out, their Police Department has been good about working with Mr. Cahill on this; but it gets very cumbersome because you are looking at that car today and a different one tomorrow. If there are other industries out there, they are being notified also. This one is so complicated in terms of the number of vehicles that park out there in a large way by virtue of the fact they have so many vehicles in the parking stalls. The police would be out there all the time marking vehicles. Here is where they have to start being efficient with taxpayers' dollars and say, how much of this are we going to put up with.

Councilmember Bolkcom asked, if there was a vehicle where they had no idea of who the owner was, they could call the police and ask them to run the plate on it. It could even be a stolen vehicle someone left there. To use it, well, it is not a car that does not belong here and they have no idea. It does not seem like a good reason not to take care of it.

Mr. Hickok stated, she is right, the police would be good at running that and helping find its owner.

Mr. Omondi stated as to the amount of parking that is provided, they do have 11 parking spots that based on the feedback they got because initially they are doing double parking because they have a lot of space, they were told they cannot do that. Right now, they have enough space. They have 11 parking spots. He does not know what the ideal number is. The only number of vehicles they can actually put inside are no more than four, and those are the vehicles they are going to find inside the shop right now. At the moment there are several parking spots that are open.

Mr. Omondi stated the Mayor asked what they are going to do to make improvements. He said he did ask if they could have annual audits that would happen for their businesses because at this time, they are given a license. He operates another business that he is regulated by the State and DVS. They are audited annually. That is not the case here. They get audited by fire marshalls. They have actually told them they have done a very good job transforming that place significantly.

Councilmember Bolkcom stated this is a City license related to his business about keeping his vehicles that are inoperable and need repair inside a building. He said he can only have four vehicles inside the building. If he can only have four vehicles he can work on, these other vehicles need to find another home and it is not in his parking lot. There may be some misunderstanding there, but he has a license, he has a copy of the license, and that is what it says.

Mr. Omondi stated, when he said, four vehicles that are inside the shop right now, he did not mean those are the only vehicles they can work on. They have two lifts, they have a frame machine, they have a paint booth inside. You have four vehicles you can work on simultaneously, but they still have extra space that you can work on a vehicle that does not need a lift, a frame, or painting so there is more space inside they can work in. When they talk about inoperable vehicles, all those vehicles are inoperable. The only question is the degree of the definition of "operable." Is it operable because that vehicle does not have a license? They do need some education on this.

Councilmember Bolkcom stated, going back to that it sounds like he is not understanding the license itself. They have had conversations about what they do need him to do.

Mr. Omondi replied, he would not say they have had conversations. He came to the City when he got this letter. That is when they started a conversation. They had not had any prior.

Councilmember Bolkcom asked when he received the letter.

Mr. Omondi replied he believed it was July 8.

Councilmember Bolkcom asked when he received that letter what did he do to make his business compliant.

Mr. Omondi stated the things that were cited, vehicles that were there that were cited, they are not there. They have moved them. He disposed of four vehicles. The one that he retained that is inoperable is actually inside the shop because it has a lien issue. It is a vehicle they cannot dispose of. A towing company can never take your vehicle when it has a lien attached to it. That white one they see just came the other day because it was involved in an accident but somebody who hit it had a stolen vehicle. There is an insurance dispute.

Councilmember Bolkcom asked if the white vehicle was inoperable.

Mr. Omondi stated all the vehicles are operable. One of the vehicles came on Friday. The BMW came on Thursday and is actually being released tomorrow. The blue car came yesterday at night. It is not there. It belongs to Flying Eagle. The car in front of it is there right now. If the City goes to tow it, they can tow it, because they do not know the owner. It has been sitting there a couple of days. The other Flying Eagle vehicle on the further end is operable. They are all operable vehicles.

Councilmember Bolkcom asked if the car can legally be driven on the street. It does not look like the headlights work.

Mr. Cahill stated per the City Code they would have to have all vehicles licensed and operable to the degree of being able to be driven down the street. It would have to have current tabs, the lights would have to work, you should be able to drive off the lot. Unfortunately, the white one would not work. It would be a safety hazard. The bumper is broke and could fly off--especially on the freeway. There is also no license plate.

Mr. Omondi stated as to the Mayor's request about recommendation, one of them is if they could get direct communication with the City. At the moment, the communication goes direct to the landlord and not with them. There was a question about double parking, and it was said they cannot do double parking. At the time the City said they needed to be able to have a fire truck turn and needed a space of 30 feet. They have more than 30 feet there. For that they need clarification.

Councilmember Bolkcom asked Mr. Hickok if the City allows anyone to double park in any parking lot whether it is striped or not.

Mr. Hickok stated there was a time in this lot where they were trying early to work together. There was a tenant in the end that parked neatly, but they were employees and vehicles where they were controlling who comes and go and when they do. It was an area that actually could be double parked where it still left a drive lane. Generally speaking, they do not allow them to be double parked. In a situation where it would interfere with the safety of an emergency vehicle getting in, they would say, no, it would not be appropriate.

Councilmember Bolkcom asked if the City is treating this business any different than anyone else who has a parking lot.

Mr. Hickok replied they are not. The owner is present at the meeting. They have worked a long time with Mr. Pederson saying he needed to manage his building. He needed to assign parking stalls. He needed to know that when there was an issue here, he would know which tenant had the issues. They can see the problem they have here. Mr. Omondi is saying he has 11 stalls and that is probably true according to his lease. He would suggest that what is not used by employees and his customers could be used by cars that are to the average eye, operable. They are licensed and they are there, and they need to be buffed or something but they are not inoperable, smashed, or wrecked. Those should be inside, so the parking lot does not look like a storage yard or does not look like the beginning of a salvage yard. It should look like a business that has vehicles there and those vehicles should be street operable and licensed.

John Pederson, owner of the 1377 Building, stated he owns the building and has also been a resident and working out of the two buildings on that corner for over 30 years. He has only had the building now for 4 ½ years and would like that to be his retirement. It is operated under the same conditions. They have had ups and downs with their tenants. In the leases it states that it is per the ordinances of the City, and they want to be good tenants of the City as well. They have had issues with the parking and it is very important to understand that when they first had it, the majority of the problems which became a grievance issue with an individual tenant that warnings would go out indicating they had to quit doing this, the city did not approve of this, and they wanted it stopped. It got to the point that it was an eviction. The individual he evicted is kind of a scary guy. He is going to be out at the end of the month. He was a hard northsider who needed to be handled gingerly.

Mr. Pederson stated he has had the Police Department in the parking lot there to remove cars. They said, no, it was a civil issue. He has had them there to remove the cars in the street, and they said, no, you do not own the street. He has tried to manage and do some of the things, and he has worked diligently with Ms. Jones, and he has had a couple of shortcomings as well. They are trying to work towards having businesses that work within the ordinances of the City and are productive members of the City. They pay a lot of taxes and try to do their best. There are going to be ups and downs with tenants who do work along with the City and if they do not, they will be removed and leases will be cancelled as well.

Mr. Pederson stated they would like the opportunity for the City to see what it is like with this one individual gone. He was buying cars and bringing them in. Their lot was full of cars. It was a nuisance. He could not do anything except warn and evict. They are diligently trying to do what the ordinance is asking them to do. They are licensed auto body shops. Three have paint booths. There are only four spots in the bay. Sometimes they buy parts and the parts are not coming for a week. They cannot only have three then in the lot that they are making money off of and try to pay rent and employees. There has to be some reasonable in and out with the cars. They do not want it to look like a junk yard; and they thought about screening in the car lot but both sides of their lot are on large hills. That becomes a nuisance for deliveries. CK Grinding is in there. It has been in there 20 something years. He has to be able to get deliveries in there and they cannot have gates on the outside of it because deliveries are coming and going all the time.

Mr. Pederson stated in over the 30 years he has been there, and only owned it for four years, they are talking about since 2013 this has been the nature of this building. He had no idea when he purchased the building there were these problems with the building. He would have thought twice about purchasing it. He is sure the tenants here, if there had known there were these types of problems with the City and they were at this point, they would have had second thoughts about even renting.

Mr. Pederson stated if they put them all out of business, he is going to bring more people in and they will start over again with new tenants. People have invested \$100,000 to put in a paint booth. It is a long process to get that done. They have all their savings into putting these businesses together. They deserve the opportunity to show the City they can make it work within reason of doing an auto body business they were given their city license for.

Mr. Pederson stated with this one tenant out, there is going to be a huge difference. Every one of these guys who are here are here only because they are concerned, and they do want to make sure that they do appease and can figure out a way to work within the ordinances.

Councilmember Bolkcom stated, for the record, that other tenant moves out and they if they look at tabling or continuing this for another month, what would the City see happening here and does it seem reasonable? Mr. Pederson knows what the stipulations are and he knows what the conditions are. She is sorry they have so much business that they cannot take care of it. She asked if there was a way for his three tenants to figure this out. What plan does he have to get his tenants into compliance? This has been going on for months now. What kind of promises or conditions does he plan on moving forward after that tenant leaves on the 30th?

Mr. Pederson stated first of all, he believed there will be half of the cars there. He understands this is very important and they are going to lose their license. It is going to cost them, if not put them out of business. They are going to have to work within that. The Council and the City are going to see a huge difference, and they would like to show it to them. One of the tenants is going to rent the other bay. That means they are not going to bring in another tenant and there will be more parking. And that tenant understands the guidelines and what they are trying to accomplish as well. The property is in such a fashion that they cannot put up a fence along with gates.

Mayor Lund said Councilmember Bolkcom is asking for some specifics as to what improvements he is going to do. Mr. Pederson is telling them things he cannot do but then he cannot be renting two small spaces to auto body businesses, and they cannot find additional screening someplace else to put in a screen fence to store the vehicles in. He takes it Mr. Pederson is an absentee landlord, and he is not addressing the issue his tenants have which is he cannot do anything about people parking in there. Mr. Pederson assigns so many parking stalls on the exterior for each one of his tenants, and they abide by that or he tells them they are parking on someone else's property. The tenants should be saying, I am paying rent for that space, that is my space, get out of my space. Mayor Lund does not think Mr. Pederson is doing that because that is why they here tonight and it has been going on for a number of years.

Mayor Lund stated as far Mr. Pederson only owning this property for four plus years, he has been in that area for 30 years. If he had not been aware of this, he should have done due diligence before he bought the property so he knew what the benefits and liabilities for the property were. He is not hearing anything from Mr. Pederson that would change his mind. He feels bad for the tenants because apparently, they have not been able to reach him most of the time and to tell him they have issues there. Mr. Pederson is the landlord, and he should deal with those issues. He wants to hear from Mr. Pederson how he is planning to remedy the problem so they can move on.

Mayor Lund stated it is expensive for the City staff to be dealing with one property time after time after time. They need to come to a resolution. If there is no resolution that is going to be viable that Mr. Pederson can promise them that he is going to do, then the City needs to revoke those licenses. Yes, that puts them out of business in that location. Hopefully, they find better accommodations elsewhere. If not in Fridley, in a different city. They do not wish that upon the tenants. This is a hardship for them

Mr. Pederson stated they are going to limit it to less than half the cars there now. The tenants who do not abide by the ordinance are going to be evicted. They are going to look for outside parking.

Mayor Lund asked how much time he needed to make this successful. He is talking about a different lot probably with screened fencing that they can bring their vehicles in to store. Because Mr. Pederson is right, if they have to wait for a week for parts, they are going to put it outside and get some other vehicle in there. However, they need to come to a better resolution. How much time does Mr. Pederson honestly need before he could get some of the things he mentioned done? First of all the parking issues—he needs to hammer down on his tenants. They park specifically in these spots and that is it. If they need additional parking, if Mr. Pederson does not want to lose those tenants and hurt his income on the property, then he needs to find outdoor or indoor storage. He would think it has to be fairly close because the further away the more inconvenient and lends to cheating again. He said he had a very nice discussion with Mr. Omondi when he received his letter and he is very consciously trying to make improvements so he can stay.

Mr. Pederson stated all the tenants are.

Mayor Lund stated to Mr. Pederson he needs to be a part of the solution. It is his property.

Councilmember Bolkcom asked what the timeframe was.

Mr. Pederson asked for at least until the end of next month or for two months for outside parking if it is an issue and needs to be addressed. If they need more parking outside, the tenants will have to find it.

Councilmember Bolkcom stated so within two months or the end of October. Mr. Pederson will have everything that is not right with this property, from inoperable vehicles on down addressed and will work closely with City staff to make sure that happens. By the last meeting in October, this property will be brought into compliance.

Mr. Pederson replied that would be perfect but they are going to be so close the City will be very happy with them.

Councilmember Bolkcom asked Mr. Hickok if that seemed reasonable.

Mr. Hickok replied, the important thing is there are three different operations. They have heard from one. There are other elements here that are going on. There is painting inside without paint booths. There are a number of other issues.

Councilmember Bolkcom stated they are talking about the Flying Eagle that is in front of them.

Mr. Hickok stated if he is hearing movement towards just the facility allowing additional time, then he thinks it important, they have the Fire Chief who can talk about conditions inside. He just wants to make sure that if they are talking about setting aside a certain time, it is not just about parking outside.

Councilmember Bolkcom replied, right, that is why she said all of the conditions that they needed to meet.

Mayor Lund stated he directs Mr. Hickok to page 71 of the Council packet relating to just this public hearing. On the bottom of the page it says, "Findings of Fact". Would that be the list of items that need to be corrected to satisfy Flying Eagle?

Mr. Hickok replied correct.

Mayor Lund referred Mr. Pederson to page 71 of the agenda book on the podium. Towards the bottom are the Findings of Fact. He asked Mr. Pederson to give him a reasonably short timeline, because they are not going to drag this on for months upon months. Mr. Pederson told them three items he proposed to do, two of them he said 30 days, and 60 days for the third item for finding outdoor storage. He wants specifics from Mr. Pederson that these are the things he is going to accomplish. If Mr. Pederson has some problems with his tenants, then it is time for him to have some strong discussion with his tenants and get to the point where they have to be evicted. Maybe the site is just too small for them.

Mayor Lund stated as to the first item regarding no exterior storage occurring on the property, he asked Mr. Pederson whether that was the item he was basically talking about he wanted up to 60 days if it continued to be a problem once High Tech was moved out?

Mr. Pederson replied, yes, it is.

Councilmember Bolkcom asked if they say, all those Findings of Fact have to be completed by the end of October?

Mayor Lund stated basically the second meeting in October. He hopes Mr. Pederson does not wait until the 59th day to try and achieve some of this stuff and then say, I need an extension of time. They have already given him 30 days from the beginning of this public hearing.

Mr. Pederson replied, he believed they can make the City happy by the 60 days.

Councilmember Bolkcom asked the City Attorney, would the proper thing be to continue the public hearing until October 28 with the understanding there be no violations of the Findings of Fact. She asked what the best way to handle it would be.

Attorney Karlovich replied, Council can make a motion that all of the Findings of Fact on pages 71 and 72 essentially go away. Council would want to at least continue the public hearing until a date certain. Their second meeting in October is on Monday, October 28.

Mr. Pederson asked for a copy of the Council packet or that it be provided to Attorney Kennedy. He was provided with a copy.

MOTION by Councilmember Bolkcom to continue the public hearing, with the Findings of Fact to be completed, until October 28, 2019, and advise City staff if they have any questions about those Findings of Fact. The City will not solve their issue, but they can give them some information if they feel they are not understanding any of the Findings of Fact found on Pages 71 and 72 of the Council agenda. Seconded by Councilmember Tillberry.

Mayor Lund asked if the City Attorney was okay with the motion?

Attorney Karlovich replied, yes.

UPON A VOICE VOTE, ALL VOTING AYE, MAYOR LUND DECLARED THE MOTION CARRIED UNANIMOUSLY AND THE PUBLIC HEARING WAS CONTINUED AT 8:37 P.M.

9. Public Hearing to Consider Revocation of the Auto Body Repair License for Sky Auto Body, LLC, Located at 17W – 77th Avenue NE (Continued August 12, 2019).

and

Resolution Revoking the Motor Vehicle Body Repair Business License for Fowzi Khulidi, Sky Automotive, Located at 17W – 77th Avenue N.E. (Ward 3).

MOTION by Councilmember Bolkcom removing the item from the table. Seconded by Councilmember Tillberry.

UPON A VOICE VOTE, ALL VOTING AYE, MAYOR LUND DECLARED THE MOTION CARRIED UNANIMOUSLY AND THE ITEM WAS REMOVED FROM THE TABLE AT 8:37 P.M.

Mr. Cahill stated this is a new tenant who came in May 2019. He has been dealing with John Pederson with his other tenants and he added a new tenant in 2019. After all of Mr. Cahill's notifications of all the other issues, he started adding more tenants. Same issues: junk vehicles, illegal street parking, their employees or vehicles spilling out onto the streets. They have a spray booth that has never been finalized, and they are using the spray booth without proper ventilation. All the hazardous materials are getting into the air, and the Fire Marshall will be talking more about that.

Councilmember Bolkcom asked what the date was of the pictures that Mr. Cahill was showing them.

Mr. Cahill replied, they were taken on June 24.

Mike Spencer, Fire Marshall/Chief, stated the Sky Auto paint booth it has been installed. It has a permit that just came in to have a fire suppression system installed on it, which he believes is supposed to happen this week. This is a non-sprinkled building, so it is not protected. They are running auto repair out of there, so it is very imperative that fire protection is added to the booth. They had been using the booth without the fire protection in there as late as last Friday. They stopped by and got that straightened out. It is installed now. He does not know the status of the exhaust on it. That would be a building official or mechanical issue.

Councilmember Bolkcom stated they have been painting and using this without fire suppression because there is no sprinkling in the building. She asked if someone from the Fire Department had to do another inspection , or could they use it at this point.

Fire Chief Spencer replied, no. He will be contacted by the company who installs the fire suppression for him to do an acceptance test on it. They have to prove to the City that it works.

Councilmember Bolkcom asked before they can use it.

Fire Chief Spencer replied, correct. The building official would be out there to inspect the exhaust portion of it and do an acceptance test.

Councilmember Bolkcom asked and again until that inspection happens it cannot be used?

Fire Chief Spencer replied, correct. The booth has been under construction for a few months.

Councilmember Bolkcom asked whether it has been being used while it was being constructed?

Fire Chief Spencer replied, correct, and they have also been painting outside of the both.

Councilmember Bolkcom stated which has also not been permitted. They were well aware that was not permitted.

Mayor Lund stated that is a violation which the tenant or the property owner should be tagged for, so they will cease and desist that illegal activity.

Councilmember Bolkcom asked if it was putting their employees and the public at risk.

Mayor Lund replied it is also putting the City at risk. If they do not hammer down on them, it is like the City did not push it. They have some culpability because all of a sudden there was an explosion or a fire or somebody got asphyxiated because they did not have the exhaust or ventilation.

Fire Chief Spencer replied, yes, it does put all these people at risk and the employees also.

Mr. Cahill presented photos of the parking lot as of June 24. They can still see some junk and unlicensed vehicles, double parking, kind of working on vehicles outside the premises in the parking lot. He presented photos of more junk vehicles on August 1 and August 8. In another photograph, they are spraying. There is parking on Main Street. He cannot tell whose vehicles they are.

Councilmember Bolkcom stated because normal people would just drive here and leave their car. Most likely it is a vehicle that is being worked on by one of these three tenants.

Mr. Cahill replied, yes, most likely because it is damaged. It is close to an auto body shop. He showed more photos. One vehicle had expired tabs plus no bumper. There is a photo of what the street normally looks like on 77th. Most of the vehicles are just packed back to back. Mr. Pederson parks his vehicles on the street, too. He does have a surplus of his own vehicles and runs a construction business. He does have a few other trucks that are inoperable on the site that Mr. Cahill has told him to move as well. Mr. Cahill presented a photo of 77th on August 1. He stated this is what it usually looks like there. Packed. Mostly inoperable vehicles. Here are recent findings as of today: more junk vehicles in the parking lot.

Mr. Cahill stated as an overview of all the violations there are still junk vehicles on site and use of the spray booth without approval of the Fire Marshall. Staff recommendations are for the City

to revoke the business license of Sky Auto. Staff has prepared a resolution on pages 77-79 if the Council chooses to revoke the license. If Council chooses to revoke the license, the business is unable to reapply for the next two years. Council also has options to suspend the license or take no action.

MOTION by Councilmember Bolkom receiving into the record a three-ring binder with a table of contents for Flying Eagle, Sky High, Auto Body, Defense Response, and August 26 photos. Seconded by Councilmember Tillberry.

UPON A VOICE VOTE, ALL VOTING AYE, MAYOR LUND DECLARED THE MOTION CARRIED UNANIMOUSLY.

Nael Almansoub, Sky Auto Body, LLC, stated he is the co-owner of Sky Auto Body and he manages this business. They took over this location in March. They applied for the license and got it in May. In July they got the letter about all these issues that has been going on since 2013, and some of them have been going on since even 2009. As to the pictures they just saw, some cars are his and some are not his. In regard to the paint booth, he has the receipts. They bought the paint booth and the fire suppression system back March. The local company that has the fire suppression system took forever to do that installation. They have not done any painting outside of the paint booth.

Mayor Lund asked Mr. Almansoub if he said they have not done any painting outside of the paint booth.

Mr. Almansoub replied, no.

Mayor Lund asked Mr. Almansoub then if he is saying the person who just told them they were is lying?

Mr. Almansoub replied next door they do a lot of painting without having a paint booth, and they might have that mixed up.

Mayor Lund stated to Mr. Almansoub he is saying it is not us, it is the neighbor.

Mr. Almansoub replied, everybody knows it. If you ask the other businesses or if you ask the Fire Marshall. They have not done any painting outside the booth.

Mayor Lund asked but they are painting in a paint booth that has not been approved yet.

Mayor Lund asked Mr. Almansoub if he said they have not done any painting outside of the paint booth.

Mr. Almansoub replied, they just did that last week and that is so wrong.

Councilmember Bolkcom asked Mr. Almansoub so why did he do it last week? Was he just practicing or repairing vehicles?

Mr. Almansoub stated they repair vehicles, but they do not paint. They had that paint booth and they did not even get a chance to use it. It has just been back and forth between them and the fire suppression company, so they just painted two cars.

Councilmember Bolkcom asked and how does that become the City's issue.

Mr. Almansoub replied, it really is not. It is his issue and he is working on that.

Councilmember Bolkcom stated she wanted to go back to when he applied for a license in April. The license was approved and all this information was part of that license and Mr. Almansoub is saying some of those vehicles are his and some are not. So, he is aware of all the things that were related to his license. She asked what he planned on doing, especially since he is saying, well, they just wanted to try it out. Would he say it is okay for his 12-year old to try it out because he just wanted to try it out. He is putting his people and others at risk using something that has not been inspected, approved, and does not have the exhaust and everything readily being used. How do you respond to that?

Mr. Almansoub replied he knows it is so wrong and they have stopped using it. They are not going to use it until it is completed. He wanted to go back to the junk vehicles. This is very confusing because when they first applied and when Mr. Cahill came and looked at the cars, he said they were okay except the one that was badly damaged. In the car industry a junk vehicle is one that cannot be repaired and can only be sold as parts. What they will do is they usually have cars inside which are being repaired and they will have parts for the cars that are outside to be put inside and repaired. They have 13 designated parking spots. He said he needs to understand more about the junk vehicles. What are junk vehicles?

Councilmember Bolkcom asked staff to explain the difference as to what is okay to be outside versus what the City Code says?

Mr. Cahill replied, the City Code does say that any vehicle that is not operational to the street is usually the easiest way to explain it. You would need a front bumper, current tabs, and be able to drive the vehicle. Even headlights are a requirement. He said he went and personally talked to talked to every single tenant and explained the current City ordinances and how the City defines junk vehicles.

Councilmember Bolkcom asked Mr. Cahill whether the City's definition of junk or inoperable vehicle is any different than any other community.

Mr. Cahill replied he has worked in other communities. They are about the same. He worked previously with White Bear Lake which has exactly the same ordinance. Minneapolis was different.

Councilmember Bolkcom stated it could be as simple as would you let any of your family members leave this parking lot with any one of those vehicles that are out there?

Mr. Almansoub replied, no. The silver vehicle is not his. He called Mr. Cahill about it on Thursday and left him a voicemail. He called about it on Friday and left a voicemail. That vehicle belongs to High Tech Motors and it is parked right next to his spot, and he did not want the City to get confused.

Councilmember Bolkcom asked and what about calling the owner of the property that you pay rent to. She asked why no one was calling Mr. Pederson or has he in the past.

Mr. Almansoub replied they have been talking about all these issues in the past. However, what can he do about this. It is not in his parking spot. He called the City to let him know it is not his.

Councilmember Tillberry stated he had mentioned about inoperable vehicles but he stores them out there because he uses parts. Really, he is storing parts.

Mr. Almansoub replied, no. The parts are inside but the way they run the operation is they would have like four or five cars inside that are being repaired and once they are done they leave. They have parts that need to be replaced with parts in the cars waiting outside. They come in, they put in the parts and fix them, then they leave. It is a rotation.

Councilmember Bolkcom stated but again he does realize that is not legal.

Councilmember Tillberry stated he is just going around in circles, because what he is doing is not legal.

Mr. Almansoub asked what is not legal. To put the cars outside?

Councilmember Tillberry replied, he is not supposed to have inoperable vehicles in those parking spots. It is pretty simple or clear to him.

Mr. Almansoub stated, yes. When they started and the City came and looked at the cars outside, they said it was fine. Later, they said it was not fine. If he knew it was not fine, he would not have taken the place and signed a five-year lease and spent like \$80,000.

Councilmember Bolkcom stated to Mr. Almansoub he called Mr. Cahill about the one there so he knew at least then that was not legal. So, he did know about it.

Mr. Almansoub replied, yes, about the silver one. What he is planning on doing now is taking over next door so he can have more inside storage. Also, if the City allows him to do it, he is willing to fence his parking spots so he can have his cars in there.

Mr. Almansoub stated about the letter he got, he has been there only operating for two months and then he was surprised to receive the letter regarding revocation. He was not given any

warning like the other guys. It has been going since 2013, and some issues have been going on since 2009.

Councilmember Bolkcom stated to Mr. Almansoub he applied for a license and it was approved in May, so he knew what the stipulations were.

Mr. Almansoub replied, he only knew recently about the junk vehicles where he could not put any vehicles in his spots. Right now, he is trying to do something about it where he takes next door and parks the cars inside until they are ready to be fixed and ready to leave or fence his area so he can keep the cars that are waiting to be fixed there, if the City will allow him to do that.

Councilmember Bolkcom asked staff whether they would have to be screened or just fenced in.

Mr. Hickok replied, staff would have to take a look at the site and how that would work exactly. He would hate to give any false indication tonight without seeing it. Typically, outdoor storage needs to be properly screened so it is not viewed from the public right-of-way and when you look down behind this building, you would see either operable cars or something that is a nice screening detail that would not leave evidence to the street of inoperability.

Mayor Lund stated he would be surprised if Mr. Almansoub could create proper screening and then still have room for his employees and customer vehicles, etc. He asked how many spots he had.

Mr. Almansoub replied, he has about 13 outside spots and he can fit five cars inside. He does not deal with any customers because he repairs the cars. He repairs his own cars because he has a dealership where he sells cars. He just buys them, fixes them, and then sells them.

Councilmember Bolkcom stated what he is trying to do is give them a plan of what he wants to have happen and be given the same opportunity of October 28 to work with the City. Is there a way for him to fence it in? He is going to store some inside and work with the property owner, be very educated on his own on what can be outside and stick to it, and not use the paint booth until it is totally inspected and approved and make sure the exhaust system is working for everyone's safety. Does he feel that is something he can do by October 28?

Mr. Almansoub replied, yes.

Mayor Lund stated there are Findings of Fact on pages 78 and 79. In addition he wrote down over and above the seven items about not operating an illegal paint booth before it has been approved, it has the ventilation, and everything else that needs to be done with it. He is going to add on, which would be very simple and inexpensive, each of those businesses put in laminated parking permits hanging on the front windshields that designates whose vehicles they are. Staff cannot even distinguish whose cars are parking where. Somebody should be complaining if somebody is parking in his stalls.

Mr. Almansoub replied, he does not let anybody park in his stalls.

Mayor Lund stated they should have an identification which is very simple in his mind. Everybody has laminated parking permits that say, this is a Sky High Parking Permit and it is just an internal thing so his vehicles are in the right stalls and someone can take a glance and see that these are in the right spot. It makes it very simple. It is little things like that which may go a long way to try and correct some of these issues. It is just a suggestion but if they do not have some kind of clarity here, he is concerned that in two months they are going to be right back here.

Councilmember Bolkcom stated she would like to use the Findings of Fact on pages 78 and 79 but she would like the Fire Chief to give them verbiage on what they would like it to say as far as the paint booth and exhaust.

Councilmember Eggert asked what kind of work can be done if you cannot paint.

Fire Chief Spencer stated to clarify, the Code does allow for painting. That is a latex-based paint. There is a stipulation in there. He would have to research it to give them exactly what they can do. They can use spray cans, but he cannot imagine they are spray painting anybody's vehicle. The verbiage they are looking for is the acceptance, testing, and inspection of the paint booth suppression system. If he can speak on behalf of the Building Official, the acceptance testing of the ventilation system. That would cover the mechanical and electrical portion of it.

Wally Wysopal, City Manager, stated without a fully functional spray booth, that is certainly going to curtail the work that can be done should they grant an extension for them.

Fire Chief Spencer stated they should still be able to do some of their body work. They just will have to stop short of applying any paint.

Councilmember Bolkcom stated so it behooves them to immediately get both of these taken care of.

Fire Chief Spencer stated they are just waiting for the contractor who installed it to set up the appointments.

Mayor Lund stated they are still going to continue to use it whether they get the acceptance or not. There should be a much greater restriction on the ability to use the paint booth. As of tonight, he cannot use it, and he better get acceptance within the next five business days. He thinks the City should be out there to check if they have it within five business days.

Councilmember Bolkcom stated the City should be out there doing an inspection every day until he gets it to make sure they are not using it. That is a lot of extra work for our staff, and it is tough to think they have to do this.

Fire Chief Spencer replied, in all fairness you have to give the contractor time to notify the City. That is out of Mr. Almansoub's hands.

Councilmember Bolkcom stated but not using it is in his hands.

Mr. Wysopal stated he just wanted to make it clear this Council is not granting any authority to use that spray booth or anything else with regard to that spray booth. If it is used it is an unlawful use.

Councilmember Eggert asked what the recourse is if he does use it. She asked what the Fire Chief could do.

Fire Chief Spencer replied, a violation of a Fire Code is a misdemeanor charge so there are charges associated with that. They would cite them, and it would be handled in the court system.

Councilmember Bolkcom asked if it was anything more than a misdemeanor if you do it again.

Fire Chief Spencer replied, he cannot answer that question here today. He has never had anyone go beyond once.

Councilmember Bolkcom asked Mr. Almansoub to look at pages 78 and 79 of the Council agenda book which are the Findings of Fact. Does he agree to take care of all 7 of those with an additional 2 items. The addition two would be inspection and acceptance of a paint booth suppression and inspection, and acceptance of exhaust ventilation system.

MOTION by Councilmember Bolkcom to table the Public Hearing to Consider Revocation of the Auto Body Repair License for Sky Auto Body, LLC, located at 17W – 77th Avenue NE, with the Finding of Fact found on pages 78 and 79 with the addition of the inspection and acceptance of paint booth suppression and exhaust ventilation system, to October 28, 2019. Seconded by Councilmember Barnette.

UPON A VOICE VOTE, ALL VOTING AYE, MAYOR LUND DECLARED THE MOTION CARRIED UNANIMOUSLY AND THE ITEM WAS TABLED AT 9:10 P.M.

10. Public Hearing to Consider Revocation of the Auto Body Repair License for Auto Body Shop, Located at 13 – 77th Avenue N.E. (Continued August 12, 2010);

and

Resolution Revoking the Motor Vehicle Body Repair Business License for Michael Morris, Auto Body Shop, LLC, Located at 13W – 77th Avenue N.E. (Ward 3).

MOTION by Councilmember Bolkcom to remove the item from the table. Seconded by Councilmember Eggert.

UPON A VOICE VOTE, ALL VOTING AYE, MAYOR LUND DECLARED THE MOTION CARRIED UNANIMOUSLY AND THE ITEM WAS REMOVED FROM THE TABLE AT 9:10 P.M.

MOTION by Councilmember Bolkcom to receive into the record a three-ring binder with a table of contents for Flying Eagle, Sky High, Auto Body, and Defense Response, and August 26 photos. Seconded by Councilmember Eggert.

UPON A VOICE VOTE, ALL VOTING AYE, MAYOR LUND DECLARED THE MOTION CARRIED UNANIMOUSLY.

Mr. Cahill stated there has been no license for this business since April 30, 2019. The owner did not submit the new license which required certification of liability insurance, Anoka County form with hazardous waste generation license number, and a license fee. The City Clerk notified the business on February 11, 2019, that their current license would expire on April 30.

Mr. Cahill stated as to Code violations, there have been junk vehicles since 2013, outside storage since 2013, parking on the street since 2013, and the spray booth has not been approved or installed. He presented a photo of the parking lot showing one junk vehicle and then some outside storage next to the dumpster and the spray booth.

Mr. Cahill stated as to recent changes, they have removed all junk vehicles and all outside storage, and are no longer parking on the street. One of their conditions was to get a spray booth for the location. They bought a frame for the spray booth, did get an electrical permit for the future use of the spray booth, but are currently spraying vehicles inside the auto body shop. He presented a photo where obviously they are doing work. Another photo showed a vehicle inside the spray booth frame. He just found out today they are using the spray booth and are spraying vehicles inside the building. The Fire Chief has not been aware of this until recently when he talked to him. As to overall violations they are using the spray booth without permits or approval of the Building Official and the Fire Marshall.

Mr. Cahill stated staff recommends the City Council revoke the auto body repair license for the Auto Body Shop, LLC. Staff has prepared a resolution to revoke which is on pages 84 and 85 but the business does not have a current license with the City. Therefore, the business is already operating without a current license.

Michael Morris, Auto Body Shop, LLC, stated as far as the car in the paint booth, that car was not sprayed at that body shop. They only prime vehicles there right now. He was not aware they did not have a license. He has a license hanging in the shop for repair of vehicles.

Councilmember Bolkcom asked from what year.

Mr. Morris replied, it is for this year. He did not know his license was expired.

Mayor Lund stated but he was notified of that.

Mr. Morris replied no he was not.

Mayor Lund stated it sounded like in the presentation he was notified, and he has not had a license since he moved in there.

Mr. Morris replied he has.

Mayor Lund stated he used the license from across the way and across the street?

Mr. Morris replied, no.

Attorney Karlovich stated there has been some type of confusion with City staff about a license that had an improper date.

Mayor Lund asked, there was an improper date on it. He asked who made the error here.

Cassandra Wolfgram, Assistant City Attorney, stated as to Mr. Morris' property, he actually moved locations and so there was a replacement license issued to him for the new location. The license period was supposed to be January 2, 2019, through April 30, 2019. When the license was issued, it says the license goes through April 30, 2020. So, there is confusion as to whether his license was ending in 2019 or 2020.

Mayor Lund stated he does not know why there is a dispute. Staff made a mistake and put the wrong date on the license.

Attorney Wolfgram, replied, the issue is the license that was issued to Mr. Morris does say April 30, 2020.

Councilmember Bolkcom stated so why would you not think you had an operating license. She asked that the photos be brought back up. She asked Mr. Morris, if they were not doing any painting.

Mr. Morris replied, no, that is no painting. It is just primer.

Councilmember Bolkcom stated is primer paint?

Mr. Morris replied, no, they are just priming the vehicle to get ready to have it painted. Primer is part of the finish, but it is not the actual paint. You can prime a vehicle just about anywhere.

Mr. Cahill stated maybe the Fire Marshall could come up and explain it a little more.

Fire Chief Spencer replied, the answer is he does not have a good answer. What they are getting hung up on, which is kind of confusing, is that paint and clear coat are a flammable finish. He does not have the answers about whether primer is.

Councilmember Bolkcom stated so they do not really know if what Mr. Morris is doing is in violation.

Fire Chief Spencer replied he would have to get more information on the primer itself.

Mayor Lund asked Mr. Cahill if those are the photos he took today. He asked whether it was just a primer or a finish coat

Mr. Cahill stated that is why he informed the Fire Chief of his findings and was going to investigate it further.

Mr. Morris replied, there are no finish coats in there.

Mr. Cahill stated it is lack of understanding on his end.

Councilmember Bolkcom asked Mr. Morris, so he primed it, then what was the next plan for the vehicle?

Mr. Morris replied, send it out for paint.

Councilmember Bolkcom said he just does priming.

Mr. Morris replied they cannot paint it there right now.

Councilmember Eggert stated to Mr. Morris, he is an auto body shop and he is repairing fenders, that sort of thing, and then just priming it and sending out possibly to his neighbor to paint it.

Mr. Morris replied, yes, because their booth is not operational yet. They have it done but for the ventilation. He has dealt with the City before, he had a shop across the street, and everything passed. He knows what to do to operate the shop. It is just not done yet. They are almost ready to be in Code with the City.

Councilmember Eggert asked Mr. Morris how long he has been in this space.

Mr. Morris replied, they started to move in December. They still have to do the walls. They are working on the ventilation. The contractors will be there Wednesday to finish the fire suppression system in the booth along with the electrical wiring so that is just about ready to go.

Councilmember Eggert stated so at this time they still need information on priming, as to whether they require some additional fire suppression to deal with that.

Mr. Morris replied they have fire extinguishers.

Councilmember Eggert asked but does priming a vehicle require a paint booth.

Fire Chief Spencer stated the question would be whether primer is a flammable finish. He will do some investigation on that and touch base with Mr. Morris.

Councilmember Bolkcom stated all other primers are flammable. It seems odd.

Fire Chief Spencer stated it is just when you are spraying it, it is in an aerosol state. Things of that nature and it is much easier to ignite.

Mr. Morris replied, if they go to the Maaco across the street, they do not prime their cars in their booth.

Councilmember Bolkcom stated Mr. Morris has a business, he thought he had a license, and it was an error. He really still needs to get a license which is something Mr. Morris can do tomorrow.

Mr. Morris replied, yes.

Mayor Lund asked how long ago did the error become known?

Mr. Cahill replied, today.

Councilmember Bolkcom stated so Mr. Morris needs a license. He bought a frame. She is just worried this is one of those businesses where he suddenly starts using the spray booth because it is there and they want to try it out and they do not have all the things in place. It sounds like Mr. Morris has had a business and he understands he is not going to use the spray booth.

Mr. Morris replied, he has had a business in Fridley since 2005.

Councilmember Bolkcom stated Mr. Morris is not going to use the spray booth until it has been approved. He is going to get an exhaust system, and he is going to get a new license.

Mr. Morris replied, exactly. He has taken care of a lot of those other problems. The junk vehicles. Sometimes a person will bring a vehicle in or have it towed to your shop. Because it is a body shop they will have it towed there and drop it off for an estimate, but it is totaled. So, it sits there until the tow company comes to get it or the customer decides what they are going to do with it. He can send them letters and tell them to come and get their car, but that is not too often. Usually the insurance company will come and take care of it right away and tell someone to tow it away.

Councilmember Bolkcom stated it seems they have some things in place, and they could continue this public hearing until he gets these other things in place. Does two weeks seem reasonable?

Mr. Morris replied, yes. It is better than taking away his license, that he does not have.

Councilmember Bolkcom asked if that seemed a reasonable recourse here?

Mr. Morris replied, yes.

Councilmember Bolkcom stated in the meantime they can find out if primer is considered flammable and he should cease and desist doing that and he can get that answer tomorrow.

Mayor Lund stated Mr. Morris posed another issue that has no resolution. He gets customers unbeknownst to him, who drop a vehicle hoping for an estimate, and it could be days before it was moved. If that occurs can Mr. Morris keep those vehicles in his indoor limited stall space?

Mr. Morris replied, yes, he does. He referred to the first picture with the parking. They try not to keep any vehicles outside.

Councilmember Bolkcom stated do not say “try.”

Mr. Morris replied, they do, yes. They try and schedule them in.

Mayor Lund stated they just want to know staff comes back and says, the issue still prevails because the problem or excuse is people bring the cars in, he does not approve of them bringing them in. They just do because they got in an accident and are told take it to their body shop. They get an estimate that it is totaled, he has to wait for the insurance company to come pick it up.

Mr. Morris replied, usually that happens pretty fast.

Councilmember Bolkcom asked whether there is a way to do some signage?

Mayor Lund stated a sign that says “Towed Vehicles Do Not Park Here.”

Mr. Morris replied, they do not have that problem.

Councilmember Bolkcom asked said part of the problem is they have the wide-open area and it is not fenced.

Mr. Morris replied they have plenty of parking.

Councilmember Bolkcom stated all three of these businesses are going to be on a short leash.

Mr. Morris replied, he thinks she is right.

Mayor Lund stated he just wants resolution. It has been festering for years. This is not the first time it has been in front of them. A lot of it has to do with the manager or owner and making sure he is being a watchdog over the tenants, and they are not violating the City Codes.

Councilmember Bolkcom asked Mr. Morris to look at the Findings of Fact on pages 85 and 86. The plan would be that he complies with all of those and that he gets his license. As of September 9, the City staff would come back with a report related to those Findings of Fact.

Mr. Morris replied by September 9?

Councilmember Eggert asked if he could not get his spray booth done by then.

Mr. Morris replied, no, he would need a little more time than that.

Councilmember Bolkcom said how about they give him the same amount of time as the other two tenants.

Mr. Morris replied, that would be great. He asked about the other finding?

Mr. Cahill replied he has taken care of most of the issues.

Councilmember Bolkcom stated they want to put him on notice that things still apply to his license once he gets it.

Mr. Wysopal stated he wanted to make clear again that should Mr. Morris come into the City to get the license and it is provided, that does not resolve any of these other issues.

MOTION by Councilmember Bolkcom to continue the Public Hearing to Consider Revocation of the Auto Body Repair License for Auto Body Shop, located at 13 – 77th Avenue N.E., with the Findings of Fact found on pages 85 and 86 and the condition the business owner applies for a business license within two days, to October 28, 2019. Seconded by Councilmember Barnette.

Councilmember Bolkcom also asked Mr. Morris to work with the Fire Chief as to the primer and what is allowed.

UPON A VOICE VOTE, ALL VOTING AYE, MAYOR LUND DECLARED THE MOTION CARRIED UNANIMOUSLY AND THE PUBLIC HEARING WAS CONTINUED AT 9:31 P.M.

4. Approve Perpetual Storm Water Drainage and Access Agreement and a Storm Water Maintenance Agreement for the Fridley Station Village Development Project with Sherman Associates (Ward 3).

Mayor Lund asked whether the Perpetual Storm Water Drainage and Access Agreement and Maintenance Agreement the City provides is standard, and they have used it without any issues.

Mr. Hickok replied that is correct.

Mayor Lund asked if whoever reviewed this had any issues with the changes that Sherman Associates have suggested.

Mr. Hickok replied they used standard language and it makes it very consistent and provides an opportunity for them to all know, when they go out onto a site, what the conditions are. Custom conditions make it difficult for different sites. They would prefer not to deviate.

Mayor Lund stated with that in mind, he thought this was a bit of wordsmithing, whether it is an obstacle or obstruction or encroachment. Then he has some issues with page 18. In addition, it

says “pursuant to Storm Water Maintenance Agreement of even date herewith between the City of Fridley and Owner.” He asked what an even date is.

Attorney Karlovich replied, that means it is recorded on the same date. What happened is their standard format for this easement agreement says that they kind of have the right to go over any of the lots where the buildings are and then the maintenance agreement says there is a set of plans showing where the storm water ponds are. The attorney was trying to mesh the two agreements together to try and define the rights the City had, and the developer was not going out, at least in his opinion, to have a surveyor tell you here are the metes and bounds description around the storm water pond. They are trying to, with the different agreements with the changes to it, not just make it a blanket easement over the whole property. The only issues he had from a legal standpoint were kind of the open-ended indemnification of the City of them. That cannot happen. That has to be capped at the City’s tort liability limits.

Mayor Lund stated that is only one of the things he had issue with. One of the other items was it said the City could only do inspections by the City staff without 24-hours’ previous notice unless it is feasible in case of emergency and then less notice. He asked who is determining whether it is an emergency case. He said he did not like the fact they changed the language from 10 to 30 days and/or they could have up to 90 days to correct any deficiency if they cannot reasonably be corrected in 30 days. That seems like a lot longer than the City’s 10 days to go up to 100 days and then if they wait until the 100th day and they say, well, they did not do it within 100 days and it is now necessary for the City to step forward; and you are only going to reimburse the City for reasonable third-party expenses. So, if the City Public Works goes in and does the repairs, the City is a second party and, therefore, they are not going to reimburse the City of Fridley and its taxpayers who just spent money through the Public Works to fix a repair they should have done in 10 days rather than in 90 days. Then they go on to say, plus administrative overhead of not more than 5 percent. What is the City’s typical administrative expense? With Code Enforcement issues it is 25 percent. Does that seem reasonable?

Mr. Hickok, replied, no that is not.

Mayor Lund stated there are so many things he does not like about this that he had to pull it.

Attorney Karlovich stated the other thing he had a big problem with is the term, “City Parties” on the bottom of the access agreement. The City never really wants to indemnify our agents and contractors. They have their own insurance and then if they are indemnifying our contractors there is going to be a fight between the league of Minnesota Cities and their insurance company as to which insurance company has to pay first. The indemnification is a real problem. Any time you give a document to legal counsel or anyone they are going to mark it up. That is what they do to try and get more towards their side.

Mayor Lund stated they should deny it and say they have to go by the City’s standard agreement they have used for many years.

Attorney Karlovich stated on the plat there is no dedicated drainage and utility easements where the storm water ponds are going to be. They have not done a survey or he has not seen a sketch

as to where the ponds are. If they do not like this agreement format, then go hire a surveyor to say this is exactly where your easement rights are; and they have different formats for that in which you would not have to try and mark up these agreements. However, the developer has kind of taken the cheap way out of not paying for the survey.

Councilmember Bolkcom stated, he is getting what he wants. She had some of the very same concerns and the other concern is on No. 4 also, reasonable inspection by the City staff but not less than 24 hours. There has to be sometimes where they would want to do something before 24 hours.

Mayor Lund stated that would be probably in cases of an emergency.

Councilmember Bolkcom stated, they do not know it is an emergency until they inspect them. What she is hearing them say is they will not even provide access for the City unless they deem it an emergency, and who defines it as an emergency, and what if they do not do it, then what happens?

Mayor Lund stated he does not know if there is any benefit as to what they had in there and so he wanted to hear that from staff. He has heard it is problematic.

Attorney Karlovich stated in a perfect world your drainage and utility easements are dedicated by the plat and then there is a road next to it so City staff can drive right onto the plat-dedicated drainage and utility easements and you have all the rights you need.

Mayor Lund stated there has to be a sense of reasonableness. They have a storm water pond, and then they have to provide the actual space dedicated they can get onto it. Do not park in our parking lot to do an inspection. You better be within this 10-foot wide width to inspect our property.

Councilmember Bolkcom stated and make sure you do not do it without giving notice.

Mr. Wysopal asked Mr. Hickok if this was something where they can take the comments from the Council meeting tonight and go back to the developer to see about getting those things changed and bring it back in two weeks?

Mr. Hickok replied, they could do that. If that is what Council would like staff to do. The preference would be to not customize the language too much. Frankly, as the City Attorney has said, if it was drawn on the survey showing a dedicated area and a legal description for the pond area and you have to get to it, that is one thing and they could make the agreement refer to that. However, to do this makes it a very difficult situation because, frankly, how they come at this in this particular case, the pond is going to be in the southwest corner and there is not the convenience of a road right next door to it. They are going to come in at the point where they need to get to it which makes the most sense. If there is an issue where there is maybe a facility plugged or something like that, and you need to get in to protect further damage, you are going to want to go in, not wait to do that, and you are probably going to take the best route in based on where water and drainage is and where conditions allow you to do it.

Councilmember Eggert stated obviously he has been on the other side of these things, too. He appreciates these older documents. Sherman is working with a lot of cities and has probably reacted to some of the things that have happened. His question is, what specifically for storm water drainage are they talking about here? Is this a pond? Is this pipe network? Is this water flowing through the property to someplace else? Is it strictly retainage? What are they talking about?

Mr. Hickok replied, he is going to try to answer, but Mr. Kosluchar is probably is the best one to answer this. In this particular situation, there is a storm pond that exists right now in the northeast corner of the site. The storm pond condition and the development condition are such that the pond is going to move to the southwest corner of the site. As Councilmember Eggert mentioned, the pipes and the kind of network that would be necessary to move water then to that southwest corner of the site, would be related to that storm water management system. It is quite elaborate. Basically, you are pitching parking, and everything else in accordance with everything you need to do in order to get it to drain properly to that southwest corner.

Councilmember Eggert asked if it was strictly on private property.

Mr. Hickok replied, it is strictly on private property.

Councilmember Eggert said he thought it made a difference. He visited a resident the other day where Xcel replaced a transformer and they drove the truck right through her yard and tore it up. As a resident, he would be pretty anxious about when Xcel is going to finish it. They are talking about a private storm water system for that property. If there was damage to it, it would then cause damage to the surrounding area.

Mr. Hickok replied, yes, and that is the City's concern.

Mayor Lund stated there may be some elements in here where maybe they say this makes good sense and they should change the City's easement. He is not really willing to make a number of changes just to satisfy Sherman Associates. He is more interested if they brought forward something that makes good sense. There is nothing wrong with the City from time-to-time reviewing its documentation. However, as he read this it offended him quite frankly. He did not know if they were dealing with any trust here at all. You cannot take away anyone's right-of-way. He does not think anyone from Sherman Associates is going to go running out there at 2:00 a.m. when they have a six-inch storm deluge that happens in less than two hours and the catch basins which are overflowing. The City has to get done what needs to be done. If there is a rut put in their property or damage to one of their shrubs, he would think that reasonableness should prevail. He is okay with staff looking it over and he will do it again, too. He would say absolutely no to this.

Mr. Wysopal replied, if that is the desire of Council, he asked they make a motion to direct staff to take those things into consideration, return it to the developer, and bring it back as soon as they can with a proposal.

James Kosluchar, Public Works Director, stated he would offer that if Sherman rethinks this and accepts the City's standard easement, it would not need to come back to the Council so they may want to consider that in the motion as well.

Mayor Lund stated they could just deny it and Sherman might likely accept it. He is okay with giving them an opportunity

Councilmember Bolkcom stated when she was reading it she had all kinds of concerns. She said she realized they have worked in a lot of other cities, but why would they want to deviate so far from their normal standard agreement.

Councilmember Eggert stated even their own City Attorney has commented on how things could be put together. Obviously, Sherman Associates is trying to nail things down, and they have probably taken an extreme position.

Attorney Karlovich stated if they look at the first page it says they are getting an easement over Lot 2, Lot 2A, Lot 4, Lot 4A and Block 1. If they look at those, they are just big blocks where the buildings are going. The attorney is looking at an easement where the City is going to get the rights to go where the building is. He is trying to tie it together with the maintenance agreement and say it is kind of only where the plan shows where the pond is. If they wanted to use a different form, then come up with the legal description of where the pond is and come with an access drive through the parking lot. They can use a different form easement agreement if they give the City that legal.

Councilmember Eggert stated that is another solution. He has a hard time with an easement over the whole property just for the storm water.

Councilmember Bolkcom stated to her it would be simpler to just deny the agreement.

Attorney Karlovich suggested they can work with Sherman Associates to try and reign in these changes or tell them they need to spend some money on a survey with different legal descriptions.

Councilmember Bolkcom asked can they do that by denying this and asking City staff to work with it. She asked if it would offend them.

Mr. Hickok stated he is not sure it would offend them. They can see the standard language in the City's agreement which is in black and white without the blue additions. By saying, no, to the blue at this point, they can take the black and white language there and say, that is the standard. They can either accept it or they do have options to provide a legal description of the pond area, provide an access route to and from. They wanted to simplify the process by not having those legal descriptions while at the same time making the agreement very specific and it is either our agreement or they come back with something they can attach and say, here is where the City will travel.

Councilmember Bolkcom asked if it was okay to deny it.

Mr. Hickok replied, it is okay. .

MOTION by Councilmember Bolkcom to deny the Perpetual Storm Water Drainage and Access Agreement and a Storm Water Maintenance Agreement for the Fridley Station Village Development Project with Sherman Associates and ask staff to work with Sherman Associates to come back with either a standard agreement or a modification of the agreement they presented tonight.

Mr. Wysopal replied, he is concerned that sometimes they take an action without knowing all the other parts of the development agreement and he is thinking of language that might say something like they will not reasonably deny without providing findings.

Mr. Hickok replied, they have to the best of the City's abilities, compared this to the development agreement language and worked to make sure it does not conflict or get the City into any other sort of issues. It really could stand how the Council decides to run with it.

Mayor Lund stated he was okay with whether they deny it and say in the motion, let the staff work with them.

MOTION by Councilmember Bolkcom to deny the modified Perpetual Storm Water Drainage and Access Agreement and a Storm Water Maintenance Agreement for the Fridley Station Village Development Project with Sherman Associates and ask City staff to work with Sherman Associates on going back to the City's normal perpetual storm water drainage and access easement or a modification of that easement. Seconded by Councilmember Eggert.

Attorney Karlovich stated it sounds great to him. If they come up with different legals, they can drop them into agreements that opposing counsel will not need to change.

UPON A VOICE VOTE, ALL VOTING AYE, MAYOR LUND DECLARED THE MOTION CARRIED UNANIMOUSLY.

Councilmember Eggert stated there is no easement agreement like this over the Target property. It can be done as the City Attorney has said.

5. Approve Retaining Wall Easement and Encroachment Agreement between the City of Fridley and Townhomes at Locke Park Homeowners Association (Ward 1).

Councilmember Eggert stated this retaining easement and encroachment agreement basically the HOA is encroaching on the City tract with a retaining wall, and one issue he has was they are relying on the HOA to maintain this retaining wall which is fine. However, he understands the recourse for if they do not maintain it for budget, deferred maintenance, whatever, the City's recourse is basically is bringing them to court. Found on number 8. The City should have the recourse to go in, repair it and bill them.

Mr. Kosluchar stated the last line of paragraph 7 covers that.

MOTION by Councilmember Tillberry to approve the Retaining Wall Easement and Encroachment Agreement between the City of Fridley and Townhomes at Locke Park Homeowners Association. Seconded by Councilmember Bolkcom.

UPON A VOICE VOTE, ALL VOTING AYE, MAYOR LUND DECLARED THE MOTION CARRIED UNANIMOUSLY.

NEW BUSINESS:

11. First Reading of an Ordinance Amending Chapter 125 of the Fridley City Code Related to Massage Therapy Businesses and Massage Therapist.

Deb Skogen, City Clerk, stated on March 25, 2019, the City Council adopted Ordinance No. 1367 which is an interim ordinance prohibiting acceptance or consideration of zoning applications relating to massage therapy businesses to allow further study.

Ms. Skogen stated the Planning Commission has studied the zoning requirements and are recommending the amendments to the Fridley Zoning Code. Staff met with other cities and the City Attorney to address concerns raised from the February hearing for denial of a massage therapy license.

Ms. Skogen stated amendments to the licensing and regulations of massage therapy businesses and massage therapist have been drafted to incorporate some of the recommendations to make this chapter more defensible in the future.

Ms. Skogen stated Section 1 amends Section 125.05(1)(A)(9), the license application, by requiring the applicant to disclose license revocation, suspension or denial in any other licensing entities for the previous five years.

Ms. Skogen stated 2 amends Section 125.06(3) which is the term and renewal of the license. It now requires if a limited liability company changes or transfers ownership or interest, they must submit a new application within 30 days. Section 12.506(4) repeals language in this section that pertains to revocation and denial and is put elsewhere in the ordinance.

Ms. Skogen stated Section 3 amends Section 125.08 which is the license application investigation and verification by defining the process to follow if suspending, revoking or denying the license.

Ms. Skogen stated Section 4 amends Section 125.10 by redefining the process of grounds for denial, suspension or revocation by requiring a licensed premise to be in an approved zoning district unless the business is a legally established non-conforming use which is shown in section (H); provides for clarifying language regarding delinquencies for utilities, taxes, fines or other penalties in subsection (I); requiring compliance with the state, building, and fire code in section (K); requiring a separate distinct front facing entrance if located within a building with multiple offices, suites, or stores with a new section (L); and allowing for denial, suspension or revocation

if an applicant has had a massage business or therapist license revoked or denied by any other licensing authority within the past five years which would be Section (M). It ends by clarifying language to help define a process the City can use if a license is suspended, revoked or denied.

Ms. Skogen stated Section 5 amends Section 125.11 by amending and adding the following additional license restrictions:

6. Provides for additional language defining dress requirements. It requires that therapists be fully clothed with non-transparent clothing when performing massage therapy services.
11. That only licensed massage therapy businesses and licensed massage therapists may perform massage therapy within the City.
12. That the business must post the rates for all Massage Services in a prominent place in the entrance or lobby of the business;
13. That food preparation shall be limited to employees' breaks occurring during regularly scheduled shifts; and
14. That the premises shall not contain sleeping quarters or living spaces of any kind for habitation.

Ms. Skogen stated Section 6 amends Section 125.12 which are the restrictions regarding sanitation, health, and safety. It adds additional language defining the type of equipment that may be used for massage therapy services and adds additional language defining and prohibited massage therapy services.

Ms. Skogen stated Section 7 amends Section 125.13 which are the penalties requiring each separate violation of this section shall constitute a separate offense.

Ms. Skogen stated Sections 8 and 9 amend Section 125.14 which is the effective date of the ordinance. It repeals the current effective date of the ordinance and provides the new effective date of the ordinance which would be 14 days after publication after the second reading of the new ordinance.

Ms. Skogen stated if the ordinance is adopted a policy will be prepared defining the process used should a license be suspended, revoked, or denied along with sample letters and notices to be used for reference. Prior to this report being completed tonight, the City did receive a letter from one of its licensees. She also provided a response today to them. She tried to answer all of the questions the licensee had.

MOTION by Mayor Lund to receive the letter dated August 23, 2019, from Attorney Patrick Farley relative to this proposed ordinance and his questions. Seconded by Councilmember Bolcom.

UPON A VOICE VOTE, ALL VOTING AYE, MAYOR LUND DECLARED THE MOTION CARRIED UNANIMOUSLY.

Mayor Lund asked Ms. Skogen to give a verbal response to the items contained in Attorney Farley's letter.

Ms. Skogen replied she received attorney Farley's letter today. She reminded them there was a moratorium and that staff did take his client's concerns and comments into consideration when putting the ordinance amendments together. As to their first question, the attorney states, you stated there was no standard of training resources or qualification. This amendment does not change any of the requirements that were adopted in 2018. Staff would refer to Section 125.02 defining which are the definitions, Section 125.05(2)(J) which is the massage therapist license application and in the original ordinance they do talk about accredited institutions and accredited programs. In the later section, under Massage Therapist License, the applicant has to provide proof they have met the following requirements: that they are affiliated or employed by a massage therapy business, they have to provide proof they have met academic requirements by providing a certified copy of transcripts from an accredited program or accredited institution which are defined in Section .02. They have to provide a copy of a diploma or certificate of graduation from accredited program or institution approved by the City. An accredited program institution must confirm that the applicant has successfully completed 600 hours of education as a certified therapeutic massage trainee, and they have to provide current insurance coverage. In addition to that, in lieu of the academic requirement listed, the applicant can provide proof of passage of the National Certification Exam offered by the National Certification Board for Therapeutic Massage and Bodywork with a minimum of seven years of full-time work experience as a massage therapist. They do feel that issue has been addressed in the ordinance.

Ms. Skogen stated as to the legalities listed as being prohibited, namely Shiatsu, they are looking at the ordinance and what they added which is on page 5 of the ordinance, Section Six, Prohibited Massage Services. Prohibited Massage Services involving services provided to customers located on the floor or requiring a massage therapist to stand on a massage therapy table, including but not limited to Shiatsu, are strictly prohibited unless the Massage Therapist remains completely clothed and the massage therapist is certified in Shiatsu or other similar techniques. They are not prohibiting the type of massage, they are prohibiting that it only be done on the appropriate equipment. They are trying to remove the use of a futon which has been a problem in the past to go with the typical yoga mat where they are stretching and things like that are involved.

Ms. Skogen stated as to No. 3, why does the City allow for skirts to be worn? The original language staff proposed prior to going to the City Attorney did provide some language about a skirt or shorts being at least three inches above the knee. After sending it to the City Attorney, it was redrafted so that is no longer in the language and then the new language added that they be fully clothed to prohibit non-transparent clothing. Staff understands there is professional dress that massage therapists use; however, they did put the clarifying language in based on the past experience here in the City. That is shown in Section Five of the ordinance.

Ms. Skogen stated the last question was about why the client was not consulted during the drafting process. Ms. Sloper is well-respected and has provided a lot of guidance and information to Ms. Skogen which she has provided to other people. They have tried to listen to concerns and comments and tried to incorporate them into the ordinance. She provided Ms. Sloper the draft she provided and sent to the City Attorney prior to the final draft. These questions are a result of that. Hopefully the changes are acceptable. Earlier today she did receive another e-mail with additional questions they will provide tonight.

Ms. Skogen stated if Council feels the ordinance is okay, staff recommends Council make a motion to waive the reading and order the adoption of the first reading of the ordinance.

Councilmember Bolkcom asked how she defined fully-clothed.

Ms. Skogen replied, that it be non-transparent. They did not want to define that they had to wear slacks or shorts or skirts. They just wanted that they were fully-clothed. There have been instances in the past involving businesses where they have not been dressed professionally or appropriately. She is under the assumption that massage therapy businesses that are legitimate businesses know what appropriate and professional dress is.

Councilmember Bolkcom asked the City Attorney, what does fully-clothed and no see-through clothes mean. She could wear a t-shirt you could see through.

Attorney Karlovich replied, he has expressed before his frustration with the State not regulating this and they do not have a model ordinance from the League of Minnesota Cities. He has the cities of Blaine and Plymouth here and each city keeps on trying to define and enunciate a reputable massage business do not do illegal activity. It just started going on and on. Originally in there was what City staff came up with. There would have been more time for interface between City staff and some of the public but he apologized, he thought the Assistant City Attorney was handling this and she thought he was, and the time had gone by and they were a little bit behind. In the City of Blaine they do have a provision saying they must be dressed professionally, including short sleeve shirts, skirts that are not shorter than three inches above the knee, no cleavage showing, nails trimmed and neat, hair pulled back, and closed-toe shoes. To what extent do you just keep going with these ordinances and definitions. They have done them for Inver Grove Heights, Forest Lake, Mahtomedi, and Cottage Grove.

Councilmember Bolkcom asked if they used the term, fully-clothed, in the ordinances of the other cities.

Attorney Karlovich replied, yes, they have been avoiding the, why 3 inches above the knee and why not 2 inches above. Can you really tell someone you can never show any cleavage? The people in the audience today have suggestions and they can try and work them in. What is the perfect massage therapy ordinance? The purpose of this was to kind of close the loophole Fridley had for any type of enforcement of the ordinance. He does not know what the perfect language is.

Councilmember Bolkcom asked regarding posting of rates, she is thinking of a beauty salon could also have a massage license, correct? Do you normally see all the different massages with costs in the front? It says here it must be posted at a prominent entrance or lobby of a business.

Ms. Skogen replied for the stylist she uses, no she does not but she has her nails done and there is a list of prices. That did come out of either the Plymouth or the Blaine ordinance. There was one establishment that basically had pictures on how the individual would dress, etc. Things like that they are trying to avoid. If you go on the website of somebody who is doing massage, you can find the price. She has not done massage therapy so she cannot speak to what those businesses are doing. She attended the city clerks annual conference in March and there was a two-session on massage therapy. The cities of Blaine and Plymouth actually provided the information, and there were probably about 150 people in attendance. It is an up and coming issue. As Attorney Karlovich said, if this was legislated at a State level and they had to have State licenses, they would not be dealing with that.

MOTION by Councilmember Bolkcom receiving into record the letter dated August 26, 2019, from Deb Skogen in response to Attorney Farley's letter. Seconded by Councilmember Eggert.

UPON A VOICE VOTE, ALL VOTING AYE, MAYOR LUND DECLARED THE MOTION CARRIED UNANIMOUSLY.

Sharon Sloper, Collective Harmony Massage and Healing Arts, said she is the owner of Collective Harmony Massage and Healing Arts and is a massage therapist of 30 plus years, has been with the AMTA since 1991, and nationally certified since 1993. She said since 1992, they have been working to get State licensing and what hangs them up every time is language. It is everybody having their agenda and now it is getting to the point of being ridiculous. It is burdening the cities and municipalities. She and Attorney Farley have gone through the ordinances for Columbia Heights, Circle Pines, Lexington, Minneapolis, New Brighton, Brooklyn Park, Spring Lake Park. They have really combed through what is everybody doing so that they can help Fridley really come up with some language in the ordinance because she personally has seen some crazy stuff going on in this ordinance and it has to stop.

Ms. Sloper stated today they would like to help the City really with this ordinance. She is looking at this because she has seen a lot in the 30 plus years in the business. They are on a tight timeframe, but if they can do some things tonight to at least really close up some of this language, it would help. That is why she brought Attorney Farley. She said she has shared some of her experiences and perspectives with him just being in the industry and what they have at the national certification board since its inception and how the changes that have gone on and the AMTA and other credentially organizations have gone through to help stop the issue that is going on.

Ms. Sloper stated they are here tonight to help the City with the ordinance. Right now, it looks like the State will not license a massage therapist, but it will register one.

Attorney Patrick Farley, Counsel 4 Veritas Law, LLC, stated the statutes and codes are very painful and ugly to go through. The one thing he noticed on the education and the sections

regarding it, with regards to the individual therapy it says that it is from a nationally-accredited board or education or fulfillment determined by the City. That leaves a question of what schools would be allowed. In Minneapolis alone they have the Center for Massage Therapy which is one of the oldest massage therapy schools in the country, and they are accredited by a bunch of national boards. As a City, according to the statute, it would have the ability to determine they are not qualified. That is kind of concerning because then it is not guaranteed that his client would have that therapist be able to do massages.

Attorney Farley stated it comes up right now because with regards to the prohibited massage services, he believed it would be Section 6, on page 7. Massage services involving services provided to customers located on the floor or requiring a massage therapist to stand on a massage therapy table including but not limited to Shiatsu are strictly prohibited unless the massage therapist remains complete clothed and is certified in Shiatsu or other similar techniques by an approved institution or program. He appreciated the question, what does fully-clothed mean but more important the question is, why Shiatsu? Shiatsu is a type of deep muscle tissue massage that is designed to use your thumbs to dig into your muscles to release the facial tensions. It has nothing to do with the tables. It can be done using bare feet. There are multiple components to it.

Attorney Farley stated he believes they want to get rid of mattresses, futons, and couches and things do not belong in a professional massage therapy program. Shiatsu has been around for over 3,000 years. It is a very common and regular method of treatment for various types of ailments.

Councilmember Bolkcom stated if they crossed out “including but not limited to Shiatsu,” would that work?

Attorney Farley stated if the goal is to get rid of the equipment or to limit the equipment, you have passage 5 which states no beds, mattresses, similar types of equipment shall be allowed in areas where massage services are provided except for a mat similar to those used in yoga. That seems to him is efficient for what the City is trying to accomplish.

Councilmember Tillberry asked if they could have staff work with these individuals and bring it back. He has been in front of the licensing board at the Capitol and this is becoming as painful.

Mayor Lund asked how much time they had on the six-month moratorium.

Attorney Karlovich replied, they have to keep marching along.

Ms. Skogen stated they have until October 1.

Attorney Karlovich replied for the next reading they could and give them a redline version of what they would have.

Councilmember Bolkcom asked if Ms. Skogen could work with the individuals here and they could table this for further discussion with them. Looking at some of the other two ordinances they recommended elsewhere, come back for the first meeting in September as the first reading, and the second reading end of September. Would that work?

Ms. Skogen replied, the moratorium was adopted on March 25. The second meeting in September is the 23rd, and then they have to publish it after that. That is an additional 14 days. After publication, there is usually an extra week.

Attorney Karlovich stated the biggest thing they want to do is have provisions in there about suspension and revocation and those processes. There is nothing saying they cannot amend this ordinance again.

Councilmember Bolkcom asked if they could approve the first reading tonight with the understanding Ms. Skogen works with them for the second reading?

Attorney Karlovich replied, yes, they have done that before. The verbiage regarding Shiatsu is the exact same as Blaine and Plymouth have.

Councilmember Bolkcom asked if it would work to have Ms. Skogen work with Ms. Sloper and her attorney and bring it back after for the second reading?

Ms. Skogen replied, yes, that would be acceptable. She thinks they can work through some of the concerns and at least notify Council on at least a Friday report what progress they have made and but have it available September 9 for the second reading with the changes in it.

Attorney Karlovich stated they can approve this tonight and then additional changes made after.

Ms. Skogen stated, yes, they have done that in the past.

MOTION by Councilmember Tillberry to waive the reading and adopt the ordinance on first reading work and with staff for further additions or changes for second reading. Seconded by Councilmember Bolkcom.

UPON A VOICE VOTE, ALL VOTING AYE, MAYOR LUND DECLARED THE MOTION CARRIED UNANIMOUSLY.

12. First Reading of an Ordinance Amending Chapter 205, Defining Massage Therapy, Prohibiting a Massage Therapy Business in Residential Districts and Permitting a Massage Therapy Business in Certain Commercial Zoning Districts (Text Amendment Request, TA #19-05).

MOTION by Councilmember Bolkcom to waive the reading of the ordinance and adopt the ordinance on first reading. Seconded by Councilmember Tillberry.

UPON A VOICE VOTE, ALL VOTING AYE, MAYOR LUND DECLARED THE MOTION CARRIED UNANIMOUSLY.

- 13. First Reading of an Ordinance Amending Chapters 6 and 128 of the Fridley City Code, and Section 205.05 of the Fridley Zoning Code Pertaining to the Dissolution of the Appeals Commission and Transfer of Responsibilities to the Planning Commission (Text Amendment, TA #19-04).**

Mr. Hickok stated this is to modify Chapters 6, 128 and 205 to dissolve the Appeals Commission and transfer all those responsibilities to the Planning Commission. This also establishes the Planning Commission as the Board of Adjustment and Appeals as defined under Minnesota State Statute.

Mr. Hickok stated the City receives very few variances in part because of a good ordinance and also changing times and the statutory changes in how and why a variance can be granted. That made it difficult to maintain interest for members of the Commission. There were very few meetings. Fridley is one of the few cities in the area that has a separate board of adjustment outside of the Planning Commission. To meet the timeline on Code Enforcement appeals, it is also necessary to have a quorum and this helps the City meet the 60 days' Action law.

Mr. Hickok stated this text amendment does change Chapter 6, Commissions; it changes Chapter 128.05.2, Procedures for Removal of Exterior Public Nuisances, Hearing; it changes 205.05.6, relative to Variances; and it changes 205.05.7, as it relates to Appeals.

MOTION by Councilmember Barnette to waive the reading of the ordinance and adopt the ordinance on first reading. Seconded by Councilmember Bolkom.

UPON A VOICE VOTE, ALL VOTING AYE, MAYOR LUND DECLARED THE MOTION CARRIED UNANIMOUSLY.

- 14. Resolution Receiving a Petition and Ordering Preparation of a Preliminary Report for Street Improvements on Monroe Street between 67th and Rice Creek Terrace N.E. (Ward 1).**

Jim Kosluchar, Public Works Director, said this is a resolution receiving and referring a petition for Monroe Street improvements. They had a resident concerned with the conditions of the roadway between 67th Avenue and Rice Creek Terrace. The resident was advised the segment was not identified in the ten-year plan which is not unusual. Some of these street segments are sometimes outside of the zone, and the City will add them in.

Mr. Kosluchar stated a resident requested recourse to move the pavement repair ahead at a nearer term, and staff provided a petition form. The resident became the circulator of the petition and gathered signatures from property owners. The City received the petition on August 15. They reviewed the signatures, and 83 percent of the affected property owners signed the petition. Those would be the persons affected by the special assessment essentially.

Mr. Kosluchar stated the petition identified a resurfacing improvement of Monroe Street and, since the petition references Minn. Stat. Ch. 429 and was signed by over 35 percent of the affected property owners, the resolution that is also attached refers the petition to staff and instructs them to prepare a feasibility report for the requested improvement. The report will review conditions and options for repair of the street. The report will conclude whether the requested improvement is cost-effective, necessary, and feasible.

Mr. Kosluchar presented a photo of the roadway and the condition. There is some surface distress that is obvious. There is a very flat crown so water tends to sit there and gets affected by freeze thaw events which they had a lot of this spring. There is utility patching in the roadway. In a parallel track, staff had observed conditions in a group of early 1990's street pavements of which this is one and staff is working on a party where Carl Lind, the intern, was working on gathering data on that. Mr. Kosluchar presented a map showing areas with a lot of pavement distress from over the last couple of years, and nearly all of them are early 1990's street pavements. They think there is some kind of connection to follow up on there, and staff will be providing a report.

Councilmember Barnette stated it says, where the City of Fridley funds these rehab projects to its street reserve fund, and later it goes on and talks about possible assessments. He asked whether these people would be assessed?

Mr. Kosluchar replied, he would presume so. They talked about it and the petition cites that it is a Chapter 429 eligible project.

Councilmember Bolkcom stated there are always still funds that are used out of the City funds so it is a combination of the two.

Councilmember Barnette stated that was the question asked of him, is will I be assessed if I lived on that street.

Councilmember Eggert asked if the petitioners knew they would be assessed.

Mr. Kosluchar replied, he does not know. They advised the requestor that would be the case. Whether he relayed that he does not know. It would still go through the City's hearing process, etc. They would be notified prior to an authorization of any kind of project.

Attorney Karlovich stated it is kind of customary if you get a live petition to do at least the feasibility study but you do not have to as city engineer.

MOTION by Councilmember Tillberry to adopt Resolution No. 2019-40. Seconded by Councilmember Eggert.

UPON A VOICE VOTE, ALL VOTING AYE, MAYOR LUND DECLARED THE MOTION CARRIED UNANIMOUSLY.

15. Resolution Calling for a Hearing on Improvements for the 2018 Street Rehabilitation Project No. 2018-01.

Jim Kosluchar, Public Works Director, stated this is for 69th, east of Central Avenue and Anoka Street. On March 26, 2018, the City Council approved a resolution receiving a feasibility report calling for a hearing on the improvement. On May 29, 2018, that hearing was held; and a resolution was passed ordering final plans, specifications, and calling for bids.

Mr. Kosluchar stated the project scope has had no change since that public hearing; however, they have had some difficulties getting approvals. The work elements include a road diet; shared multi-use trail; removal of pavement, reclaim, or milling; and reducing the roadway with some storm water treatment; swale and drainage work; spot curb replacement and realigning the curb; and then restoration.

Mr. Kosluchar stated the final details were delayed to obtain the necessary approvals and mainly due to design complexity because the City has a Railroad right-of-way easement which they have obtained; and the fate of the 69th Avenue and Central Avenue signal. They had to go through iteration with County to determine whether the signal is warranted and what they are going to do in the future with that before they decided how to modify the signal. It was worthwhile but it did take a while.

Mr. Kosluchar stated they had coordination on approval with four other government entities that were involved which were Mounds View, New Brighton, Ramsey County, and Anoka County. The provisions in Minnesota Statute Chapter 429 require the contract be let within one year of the date the project was ordered which would have been May 29, 2019, unless otherwise specified by resolution.

Mr. Kosluchar stated the City Attorney has confirmed they must restart the 429 process including holding a new public hearing. He presented a revised schedule. They will hopefully be able to bid the project this fall and get some decent bid pricing.

MOTION by Councilmember Eggert Adopting Resolution No. 2019-41. Seconded by Councilmember Barnette.

UPON A VOICE VOTE, ALL VOTING AYE, MAYOR LUND DECLARED THE MOTION CARRIED UNANIMOUSLY.

16. Resolution Ordering Preparation of Preliminary Report, Plans, and Specifications for University Avenue Service Road Traffic Changes Project.

Jim Kosluchar, Public Works Director, stated this allows staff to officially begin work on a preliminary design analysis to determine whether the project is feasible. A series of community meetings with MnDOT personnel, City staff, and Fridley residents happened this spring the during the Highway 47/65 corridor study. There were recommendations to improve safety and image. MnDOT and City staff coordinated recommendations. The existing chain link fence from Trunk Highway 47 was defined as an image problem. They would like consider alternative

buffers where MnDOT would allow those. So MnDOT and City staff have established where the fencing will be replaced and other places where alternative buffers could be established which might include landscaping, berming, and swales.

Mr. Kosluchar presented a map and stated these three areas have been identified where fencing could be removed and replaced with alternative buffers. This would be West University Service Drive between Mercury Drive and Star Lane, West Service Road between Rice Creek Terrace and 67th Avenue, and on the East Service Road between 66th and 67th Avenue.

Mr. Kosluchar stated staff had the first of three neighborhood meetings on August 13 with the last of those projects on the east side between 66th and 67th. There was not a strong opposition to the project based on the comments and feedback received. There was actually some support for it and some questions? There are two neighborhood meetings planned for September for property owners adjacent to and within the other two areas affected by the proposed project.

Mr. Kosluchar stated a feasibility report would be to address concepts, closure impacts, funding, MnDOT fence project and, finally, the alternative bumpers. The reason they are thinking about a traffic change in these areas is on the east side would be a foreclosure. On the west side it would be a one-way adjustment and moving of curb. They basically need the room in order to provide these alternative bumpers. A fence does not take up much of a footprint. They need to replace it with something having a wider footprint.

Mr. Kosluchar stated if approved tonight they would schedule the second and third meetings on September 10 and 11. They would also complete a feasibility report for the Council after those two meetings and advise what is feasible from a construction standpoint and the project could go to construction as soon as 2020.

Councilmember Bolkcom asked whether they have to do the meetings on the 10th and the 11th. She has a conflict with the 10th. She has a board meeting. She asked if they could be switched.

Mr. Kosluchar replied, they can work with the City Manager to find a good date.

MOTION by Councilmember Tillberry to adopt Resolution No. 2019-42. Seconded by Councilmember Bolkcom.

UPON A VOICE VOTE, ALL VOTING AYE, MAYOR LUND DECLARED THE MOTION CARRIED UNANIMOUSLY.

- 17. Approve the Fridley Station Village Development Contract between the City of Fridley and Fridley Market Apartments I, LLC, and Fridley Senior Apartments I, LLC (Ward 3).**

Scott Hickok, Community Development Director, stated this is again standard contract language. They saw this recently with the Pulte Development and again with the Lennar Development. It is specific to the project and they know it has one market rate, one senior building, one mixed income building, common outdoor amenities, and some private amenities.

Councilmember Bolkcom asked regarding paragraph 10 on page 143, because right now there are going to be two buildings completed, it talks about asphalt and the effective date. Would that final one not be put down if that third building is delayed or would they go ahead?

Mr. Hickok stated there may be some added language and even a smaller specific development agreement relative to that building at that time. They are anticipating that building will be built and there will be no huge delay in between. If necessary, they can adjust some language.

Councilmember Bolkcom asked so the whole idea behind this agreement is if there are any significant changes, it would come back to Council.

Mr. Hickok replied, correct.

Councilmember Eggert asked regarding letters of credit, does the City have a requirement for a certain level of bank that is acceptable for a letter of credit to the City? He has seen some letters of credit from some pretty small banks that do not have the assets to cover it.

Mr. Hickok replied, no, they have not scrutinized that.

Daniel Tienter, Director of Finance/City Treasurer, stated at this point, no, the City does not have any standards that relate to letters of credit. If the Council would so direct, staff could certainly evaluate if a certain type or level or size of bank that would be sufficient for a letter of credit requirements. Additionally, with the letters of credit there can be challenges when a bank is located out of state. The Council has mentioned in certain situations, especially during the greater recession, there were actually occasions where municipalities had to place their staff on airplanes and fly them down to the bank and present a letter of credit a person to draw on it.

Councilmember Eggert asked Mr. Tienter to please look into it.

MOTION by Councilmember Bolkcom to approve the Fridley Station Village Development Contract between the City of Fridley and Fridley Market Apartments I, LLC, and Fridley Senior Apartments I, LLC. Seconded by Councilmember Tillberry.

UPON A VOICE VOTE, ALL VOTING AYE, MAYOR LUND DECLARED THE MOTION CARRIED UNANIMOUSLY.

18. Informal Status Reports

There were no informal status reports.

ADJOURN:

MOTION by Councilmember Barnette, seconded by Councilmember Eggert, to adjourn.

UPON A VOICE VOTE, ALL VOTING AYE, MAYOR LUND DECLARED THE MOTION CARRIED UNANIMOUSLY AND THE MEETING ADJOURNED AT 11:01 P.M.

Respectfully submitted by,

Denise M. Johnson
Recording Secretary

Scott J. Lund
Mayor