1. **Call to Order**

   Mayor Brad Wiersum called the meeting to order at 6:30 p.m.

2. **Pledge of Allegiance**

   All joined in the Pledge of Allegiance.

3. **Roll Call**

   Councilmembers Patty Acomb, Mike Happe, Deb Calvert, Tim Bergstedt, Tony Wagner, Bob Ellingson, and Mayor Wiersum were present.

4. **Approval of Agenda**

   Acomb moved, Wagner seconded a motion to accept the agenda with addenda to items 14A and 14B. All voted “yes.” Motion carried.

5. **Approval of Minutes: May 14, June 4 and June 18, 2018 regular council meetings**

   Bergstedt moved, Wagner seconded a motion to approve the minutes of the May 14, 2018 regular council meeting, as presented. All voted “yes.” Motion carried.

   Bergstedt moved, Wagner seconded a motion to approve the minutes of the June 4, 2018 regular council meeting, as presented. Acomb, Calvert, Bergstedt, Wagner, Ellingson, and Wiersum voted “yes.” Happe abstained. Motion carried.

   Bergstedt moved, Wagner seconded a motion to approve the minutes of the June 18, 2018 regular council meeting, as presented. All voted “yes.” Motion carried.

6. **Special Matters:**

   A. **Recognition of City Councilmember Tony Wagner**

      Wiersum read the recognition.

      Wagner thanked the current and past councilmembers he served with. He also thanked staff, residents, and the voters who elected him.

      Acomb thanked Wagner for making her a better councilmember and for his service.

      Ellingson said he and Wagner started on the council at the same time. He said Wagner had a big impact on the city.
Calvert said there was not a more gracious person than Wagner. She said it was inspirational to watch the way Wagner’s mind thought.

Bergstedt said the city of Minnetonka was known for its high level of governance. Wagner elevated the quality of governance and was the rare person who could look at things from a short term as well as a long term vision.

Happe said his first exposure to the council was through Wagner through their work on the EDAC. He said he learned a lot from Wagner.

City Manager Geralyn Barone thanked Wagner for his years of service. She said his commitment to residents to get to good solutions was impressive.

Wiersum presented Wagner with a plaque. He said Wagner was an outstanding councilmember and had been a great advocate for his ward but always kept the broader perspective for what was good for the entire city in mind.

7. Reports from City Manager & Council Members

Barone reported on upcoming city events and council meetings.

Wiersum noted he recently attended the League of Minnesota Cities annual conference.

8. Citizens Wishing to Discuss Matters not on the Agenda

9. Bids and Purchases: None

10. Consent Agenda – Items Requiring a Majority Vote:

   A. Twelve month extension of the OAKHAVEN ACRES 2nd ADDITION preliminary plat at 13929 Spring Lake Road

       Ellingson moved, Happe seconded a motion to approve the twelve-month time extension. All voted “yes.” Motion carried.

   B. Resolution approving a conditional use permit for an educational institution at 18707 Old Excelsior Blvd.

       Ellingson moved, Happe seconded a motion to adopt resolution 2018-072 approving a conditional use permit for an educational institution at 18707 Old Excelsior Blvd. All voted “yes.” Motion carried.

   C. Ordinance and resolution approving the Master Development Plan amendment and Site and Building Plan Review with drive aisle and stall length variances for a proposed parking ramp addition at 12700 Whitewater Drive
Ellingson moved, Happe seconded a motion to adopt ordinance 2018-08 and Res. 2018-073 approving the Master Development Plan amendment and Site and Building Plan Review with drive aisle and stall length variances. All voted “yes.” Motion carried.

D. Order for tobacco license violation at Freedom Valu Center #57, 17516 State Hwy 7

Ellingson moved, Happe seconded a motion to approve issuing the Findings of Fact, Conclusion, and Order for the Freedom Valu Center #57, 17516 Hwy 7. All voted “yes.” Motion carried.

E. Resolution providing for the issuance and sale of $10,000,000 General Obligation Utility Revenue Bonds, Series 2018A

Ellingson moved, Happe seconded a motion to adopt resolution 2018-074 providing for the issuance and sale of approximately $10 million General Obligation Utility Revenue Bonds, Series 2018A. All voted “yes.” Motion carried.

11. Consent Agenda – Items requiring Five Votes:

A. Resolution approving a conditional use permit, with a parking variance, to expand an existing medical clinic at 10653 Wayzata Blvd.

Ellingson moved, Happe seconded a motion to adopt resolution 2018-075 approving a conditional use permit for a medical clinic, with parking variance, at 10653 Wayzata Blvd. All voted “yes.” Motion carried.

12. Introduction of Ordinances: None

13. Public Hearings: None

14. Other Business:

A. Conditional use permit for a religious institution at 2333 and 2339 Hopkins Crossroad and 11170 Mill Run

City Planner Loren Gordon gave the staff report.

Wagner asked if the road were to be perfectly reconstructed, what the width of the lanes would be. City Engineer Will Manchester said if the road were to be reconstructed, the county would do an extensive study. A common width of lanes per state aid standards would be 11 feet. He said the county would look to add a trail and a sidewalk to each side as well as widening the shoulder on the west. Wagner asked what the likelihood the road could be widened in the next four to five years where the guard rails were located. Manchester said it was a very expensive widening because it would require retaining walls. This was usually done as part of a reconstruction given the costs.
Happe asked if the current plan was for the trail to be built in 2023. Manchester confirmed that was correct.

Wagner asked if the grading plan had changed from what the council had previously seen. Gordon said that was mostly true. Berming had been previously discussed. It was decided during the neighborhood meetings that trying to berm might lead to unintended consequences. Wagner said it appeared that in the grading plan there was a contour where the parking lot would be. The fence would be 10 feet high. He asked what the impact of headlights would be during the wintertime. Gordon noted the parking lot was four to five feet lower than the property line. The fence would block the headlights but the question was if the light would shine over the top of the fence. Wagner asked staff to come up with some conditions for approval to address this issue.

Wiersum said he was sensitive to the headlight issue as well but thought there was a difference between having headlights shine directly into people’s windows as opposed to having the light being refracted. The intensity was dramatically different.

Wagner said the parking was being based on the assembly standard seating with 99 seats. If that increased there was a trigger for the council to look at the conditional use permit again. He asked staff’s opinion on maximum capacity. He said the applicant’s document inferred the maximum would be 125 for a large gathering. Gordon said when the parking study was done, staff wanted to look at existing conditions as well as the proposed parking. Conditions were looked at for a typical week day as well as Saturdays. The study indicated parking would be adequate during these times. Wagner said there would be special events with 250-300 people attending. He said he would like to hear comments on how parking would work for those events.

Rabbi Mordechai Grossbaum said there had been a lot of discussion about traffic and landscaping. He said Ackerberg agreed it would provide additional parking. This would suffice for the larger events. He said he had committed over and over to working with the city on the landscaping.

David Abrams, 11501 Fetterly Road W, asked what the nature of the contractual commitment was for things like landscaping and water management. What was the process should the city find the verbal commitments were not being met? He said the plantings shown in the pictures would take a number of years to provide adequate screening. He asked what the plan was for replacing the plantings should they die. He grew up in a home where headlights came directly into his bedroom. He said it was utterly important that the lighting provide the proper security. He asked how bright the security lights would be. He said the city already had experience at the other three synagogues in the city for understanding what parking was needed during the high holidays.

Aaron Parker, the project architect, said if there was a violation of the storm water management, the property owner would be penalized. He said he was working closely with a civil engineer to ensure there would not be a problem with
the storm water management. The existing situation would be improved. He said there would be adequate security lighting that would be well back from the property line. He was as concerned as others about the security. He said headlights should not be an issue given the slope and the fencing. A fast growing very dense cedar would be used for the landscaping.

Jo Soo, 2391 Vernon Circle, asked the council to require an eight foot tall fence. The fence would provide better noise mitigation. He also asked that the council require a 50 foot green space that would act as a buffer to the properties to the east. He said the neighbors still have an issue with the size and mass of the building that was too close to the neighboring homes.

Candace Velasquez, 11512 Fetterly Road, said the safety issues caused by the proposal were very disturbing. She said the school parking lot and bus stop at Fetterly Road and Hopkins Crossroads was precarious. Her children do not use it because it was too dangerous. She was very concerned with the dedicated left turn lane at the expense of the homes in the area that lose a dedicated right hand turn lane. She said the Mill Run and Overlook neighborhoods were very small neighborhoods. The Fetterly neighborhood was much larger and had a lot of inbound and outbound traffic. She asked the council to reject the proposal.

Vladimir Greengauz, 15200 Willowood Drive, said he tried to imagine a situation where something big was moving into his neighborhood. The first question he would have was if the proposal was legal. This proposal was legal. He might then take the attitude he wouldn’t like the proposal no matter what, no matter how many changes were made. Everyone wants something nice facing their front yard. Something would definitely be built on the property whether or not the council approved Chabad. He said the congregation was part of the community. He asked that when the council made its decision it did not think only about the upset neighbors but also the people looking for a place to pray.

Lori Fritz, 11111 Mill Run, noted she had emailed a court case to all the councilmembers that involved a CUP in Bloomington. The city denied the CUP citing safety concerns and the Minnesota Supreme Court upheld the denial. She said if the council denied this proposal due to safety concerns, the next proposal would also be denied for the same reason. The concerns had nothing to do with this being a religious organization. She said the new striping design would make her right turn less safe because it was taking away the area she uses to speed up to merge into traffic. As a public entity the city had the obligation to design and maintains roads that do not pose a reasonably foreseeable risk.

Susan Wiens, 2346 Vernon Circle, said she recognized that the staff recommendation was for approval of the project. She also recognized the council were elected by residents to use their own judgment to make an independent determination on the proposal. She said there was factual basis to deny the CUP. The city zoning was enacted to promote public health and safety and general welfare. The CUP gave even more specific requirements for approval. The neighboring houses were dwarfed by the proposal and the land use was not compatible. The structure was jammed into a small space. Congestion was not
limited to County Road 73. The neighbors were thankful for the city and the county attempting to address the issues, but what was before the council was not the solution. She said the CUP required that the proposed use did not have an undue, adverse impact on the public health, safety and welfare. The location of the curb cut had not been changed even though there had been many discussions about moving it more toward Hillside. The re-striping did not help the access and sightline issues. The drivers exiting Chabad by taking a left hand turn, would have to cross two lanes of traffic instead of one. The problem had not been solved by the re-striping. The county’s spacing guidelines were not met. There was a known risk that was being created by the additional use of the site. The county commented on the re-striping plan by indicating its preference for relocating the access point further north because of safety concerns. She said if there was an agreement of offsite parking the agreement should be in writing and should ensure the arrangement continued into the future. The ordinance required the council to consider what the design capacity was. The design capacity was not 99 people.

Amy Weiss, 2308 Nottingham Court, said her children use the bus stop. Eliminating the right turn lane would make it even more difficult for the children to safely get on the bus. Making the right turn required the driver to do so slowly because the width of the road was narrow. Doing this with cars driving 40 mile per hour behind you was an accident waiting to happen.

Michael Leirdahl, 2390 Vernon Circle, said his house was directly adjacent to the project property’s parking lot. The 10 foot high fence was needed to address the lighting, the noise and the visual coming from the property. The six foot tall arborvitae would not grow the first two years. After that there would be roughly eight inches of growth a year. It would take 10 years for the arborvitae to provide the same amount of privacy for his property as a 10 foot fence. Because there was not a light plan, the height of the lights was not known. He said he felt disrespected by some of Grossbaum’s comments and those comments made him concern about what type of neighbor Chabad would be.

Marvin Liszt, the attorney for Chabad, 9701 Oak Ridge Trail, said change was difficult and could be disconcerting. Human nature was to like things the way they are. That’s not what always happens. Land use changes occur in both urban and suburban environments. The city’s ordinances allow religious institutions and other institutions in R1 neighborhoods. He said all the comments he heard from the neighbors could be made for any proposal for an institution going into an R1 neighborhood where the facility was larger than the surrounding homes, was visible by the surrounding homes, and may create more traffic than a single family or two single family homes. The staff report indicated there were 21 other religious facilities in the city in R1 zones. Every one of those were larger than the homes around them but they still coexisted well with the surrounding environment. He said the traffic studies indicated the additional traffic from this proposal was negligible. He noted the staff report indicated the proposal met the CUP standards. Three experts, SRF, city engineering staff, and county engineering staff had looked at the project in terms of safety. All three didn’t find a safety issue with the use and the re-striping project. He said in the Supreme
Court case involving the CUP in Bloomington, there were competing expert traffic engineering reports and there was a 26 percent increase in traffic as a result of the proposed use. He noted the resolution before the council contained a provision that would allow the council to consider revisiting the CUP if there were any changes from what was approved and issues arose. He supported this language. He said there was no legal basis to deny the CUP.

Amy Taswell, 11120 Mill Run, said the staff report for the April planning commission meeting contained the word “safety” one time. The staff report indicated there was not a safety issue but it did not address specific concerns. There was nothing about the increased turning traffic on County Road 73, pedestrian traffic, bicycle traffic, parking or congestion. The re-striping would not address the safety issue. She said the staff report was heavily reliant on the traffic study and the traffic study was heavily reliant on information provided by the applicant. If the information provided by the applicant was wrong or incomplete, there was a safety issue.

Skylar Silberman, 11123 Mill Run, said she was 18 years old and had been driving for a little over a year. She is Jewish and in high school was the regional leader of the Minnesota Chapter of the B’nai Brith Youth Organization. She asked the council to reject the proposal because of the safety concerns. She waited to get her driver’s license because she was terrified of driving. She still dreads making the left hand turn from Mill Run onto Hopkins Crossroad. Her younger sister who just began driving would also be affected. Silberman said her sister often walks to Ridgedale with her friends. Change should always be for the better and not make things less safe for her sister, herself and other residents. One accident that took a life would be on the hands of the people who approved the project.

Susan Flint, 2390 Vernon Circle, said the traffic expert the neighbors hired indicated there were safety issues. Similar to the Supreme Court case, there were conflicting expert opinions. She said the language in the resolution that Liszt cited allowed the council to review the CUP if there were changes, however it wasn’t mandatory that the council do so. She requested that be changed. She noted that the last time the council reviewed this proposal, Wiersum asked the city attorney how much latitude the council had in making a decision. The city attorney indicated that whatever decision was made there was a requirement to support the decision with findings. There were some objectives standards not subject to debate, but there were also some subjective standards that allow some exercise of discretion. Flint said all the information from the community had been reasonable, founded in fact, and credible. There were at least 16 discretionary standards that were identified that should lead the council to deny the application. The council was fully in its purview to deny the application.

James Bechthold, 11320 Fetterly Road, said the hill coming up Fetterly Road should be three lanes, not two. When somebody parks on the hill there was only room for one car to get up to the stop sign. Eliminating the right turn lane would stop traffic. He said the right turn lane on the east side of County Road 73 should be extended as far down as possible and the entrance to Chabad should be as
far north as possible. He was concerned about the safety on County Road 73 whether this proposal was approved or not. He suggested Chabad pay for the right turn lane.

Parker said the request for the fence on the east side was related to security, sound, and visibility. He said the type of fence being discussed would provide no noise mitigation. The height of the fence had to do with the fence being able to withstand strong winds.

Kristin Soo, 2391 Vernon Circle, said she hoped the city would ask Chabad to put in a fence that would provide noise mitigation.

David Carlson, 11171 Mill Run, said the project would negatively impact the neighborhood. If it wasn’t going to adversely impact the neighborhood there would be no need to have a schematic showing the re-striping. If three single family homes were built, there would be no discussion about re-striping the road. He questioned why taxpayer money was being used for the re-striping.

Gordon said he and Manchester reviewed the issue related to headlights. Based on the slope, headlights would shine below halfway up on the fence. There would not be direct headlights on to the properties to the east but there might be some glare. In terms of safety, staff looked at the issue from a volume standpoint. As far as the access currently there were two driveways and the proposal was to consolidate them into one. He said if something were not built as approved, the correction would be handled administratively. If the issue wasn’t discovered until after construction was complete, the CUP could come back to the council. Wischnack said every project came with financial security to ensure things were done as approved. Gordon said the costs of the re-striping would be shared by the city, county, and applicant.

Wagner said the re-striping was a $20,000 project. He asked what the additional benefit was to having a right turn lane. Manchester said staff looked at the intersections to see what would fit in and the impact to the shoulder of the road. The road could be widened to accommodate a right turn lane. The volume of traffic during peak hours was looked at. In this case there were around 20 cars in a peak hour that would take the turn. Typically what triggers a turn lane was 100 cars in a peak hour. Wagner said this was the location of the bus stop, which gave him pause. There was not a perfect solution. This was the way the county was designing roads. He said driving down Minnetonka Road, he had to wait for drivers turning right into the Marsh. He agreed with the traffic study’s conclusion that this proposal would not generate a lot of traffic. What he didn’t necessarily agree with was that the turns would not have an impact.

Wiersum said that was what he had been grappling with. Was County Road 73 unsafe? The neighbors indicated it was. The lane width after the re-striping would meet the current way roads were being done. The center turn lane was the wave of the future if not the wave of the present. This was done on many roads in the area. The question he had was if there were characteristics of certain
intersections in this neighborhood that made some of the intersections inherently
less safe.

Calvert asked for clarification of the location of the access out of Chabad on to
Hopkins Crossroad. Gordon pointed to the access point on the plans drawn up
by Chabad. He said when the county was asked to review the driveway permit,
they may decide to request it be moved north. Staff and SRF do not believe there
would be sight or visibility issues if the access was as shown.

Acomb said traffic on the road already was an issue. She agreed the impact of
the proposal would be negligible although it certainly would not make things
better. She asked if there had ever been a project involving a road of this grade
that was denied because of the impacts of traffic. Gordon said normally an
engineered solution is agreed upon that accommodates a project through an
improvement of some type. He cited the Fingerhut development on Baker Road
as an example. Acomb asked if Baker Road was graded as a “D” like County
Road 73. Gordon said it probably doesn’t have quite the same volume. Wagner
said Syngenta was another example.

Wagner said at the May meeting there were concerns about the locations of the
Mikveh and playground. He asked if anything had changed. Parker said the
entrance to the Mikveh was moved from the east side to the south side. It had
not been determined if there would be a playground.

Wagner said if the council approved the proposal, he had identified some things
that should be considered so that expectations were aligned. He was not
comfortable with the lack of specificity in the CUP for a site this small in an R1
neighborhood. It was a permitted use and the center would be fabulous addition
to the city. The proposal met the objective criteria. As far as the subjective
criteria, he thought there were some challenges associated with the fears of the
neighborhood. The council was entrusted with making sure the issues could be
effectively managed. He didn’t want staff to be in the position of being a mediator
to an issue every month. He suggested codifying some language related to event
or large gathering management plans. During his time on the council he had only
received one call about Adath and it was because Adath had such a
management plan in place. The council policy was in order to get no parking on a
street, the city had to receive a petition. He didn’t think this was the right policy
for Mill Run. One thing that gave him pause was dragging staff into ongoing
deliberations. He said he was extremely involved with the Syngenta landscaping.
What worked out well was there was an active neighborhood with similar
concerns so a landscaping plan was developed. Expectations were
communicated about the ongoing maintenance. He didn’t want staff to get in the
middle of ongoing management of the plan. He said another fear of the
neighborhood was what would happen if there was a great deal of increased
usage. Determining upfront how to mitigate this should it occur, was something
that also should be discussed. He had great concern about the proposal related
to the footprint and the intensity of the usage of the site tied to the pinch points
on Hopkins Crossroad and that a trail would not exist for another five years. This
would have some adverse effects on the safety in the area.
Acomb said as she thought about this project she thought back to other projects that had similar neighborhood engagement. One such project was the Highland Bank building that had a great deal of pushback from the neighbors. The biggest concerns were around traffic. That situation was totally different because the city had control over the road. Because the city was a responsive government the decision was made to redo the road at a major expense. This project involved a county road. She noted the trail was not scheduled for another five years and asked if the trail plan had been looked at to move it up on the list. Barone said there was a list of trails in the CIP that were prioritized based on predetermined criteria. There were other projects ahead of this trail. She said the council could reprioritize projects in order to move this trail up on the list.

Calvert said at the last council meeting she had brought up the idea of making a right turn only out of the parking lot. This was absent a request for a median. If there was a way to encourage people only to turn right, many of the concerns would be addressed. She said she belonged to a congregation that had a flexible space. She appreciated Wagner’s comments about an event or large gathering management plan. She didn’t think this issue was insurmountable. Parking at Ackerman would accommodate a number of people.

Happe said religious institutions were generally pretty good neighbors. This location from a redevelopment standpoint was attractive to do something different. He continued to have grave concerns about traffic, pedestrian, and bicycle safety. This was an area that already had issues. Because of the safety concerns, he was not in a position to support the proposal.

Bergstedt said the zoning allowed religious institutions. The county approved an access on to County Road 73. He still had concerns about the mass of the development on a very small piece of property. This had led to elaborate landscaping plans to protect the neighbors. If Chabad was willing to work with the neighbors on the landscaping, proper buffering was possible. He said he was really struggling with the public safety issue. This was a very dangerous road especially for people walking and biking. The pinch points were a serious matter. A lot of his concerns would somewhat be alleviated if the trail was going in at the same time as this proposal. He was concerned about eliminating the right turn lane on to Fetterly Road because this would add to the danger. There were benefits to the re-striping but as he looked at the re-striping plan he saw as many negatives as positives.

Calvert said this was prime real estate in the city and everyone agreed Chabad would make good neighbors. The county proposed an initial solution to some of the roadway intensity issues. She worried what could end up on the property if this was not approved. If it were three single family homes, the driveway access would be an issue. She said this project met the objective standards. She thought it was a very intense use of the property. The original traffic study showed there would be a .7 percent added traffic. The property would not remain empty forever and whatever ended up going there would also add complexity.
Heine said the ordinance contains purpose and intent sections that do not create independent standards. The burden was on the applicant to show he met the conditions for this use set forth in the ordinance. There were both objective and subjective standards. The applicant had to meet all the standards. When it came to the subjective standards the council had to consider all of the evidence in the record and needed to make a determination and judgement on whether the subjective standards had been met. If the council found that all the standards had been met, it couldn’t go back to the purpose and intent sections and say that something did not meet the intent. The intent and purpose sections were meant to guide and inform the council in determining what the actual set standards were. She said all the testimony on the traffic related to the standard of public health, safety and welfare. The testimony related to the site plan and landscaping related to the standard of protection of adjacent and neighboring properties. Both of these standards were subjective standards.

Ellingson said he agreed with the other councilmembers who felt this was a good project and Chabad would be a good neighbor. He also shared the concerns about public safety and traffic. It was a difficult decision because this was a good project. He was apprehensive about accidents that might happen.

Acomb agreed Chabad would be a good neighbor and good member of the community. She appreciated the efforts made to the landscaping design. Her concern was about the safety of the road. She worried about the location of the bus stop and kids having to cross multiple lanes to the other side.

Calvert said one of the things she thought about was that most of the activities of the center would occur during nonpeak traffic times. This lessened some of her concerns.

Wiersum said when the proposal was first before the council the issues were with the landscaping and not knowing if the county would agree the access could be off Hopkins Crossroad. The county agreed to that access. He said he heard many comments that the council had not even discussed safety issues. There was no need to get into the safety issue if the county had denied the access on to Hopkins Crossroad. Now the safety issues needed to be discussed. If Hopkins Crossroad was striped the way other roads in the city were being striped, it wouldn’t be inherently unsafe. At the same time he wasn’t willing to say it was a safe road for pedestrians. One of the things he was pushing for as the mayor was greater attention to pedestrian safety. He wanted people to be able to walk safely in the city. He wanted people to stop at yellow lights and not accelerate through the intersection. He wanted people to be able to step into a crosswalk and not worry about getting run over. The geometry of County Road 73 was not kind to pedestrians even if the lanes of traffic were conforming and the way of the future. He said the proposal technically met the CUP standards. Religious institutions were allowed in R1 zoning. He said this was a poor location for this facility. It was an intense use on the smallest religious institution property in the city. Most religions want to grow. If this facility was a success that meets its mission the intensity of use would get greater. The added traffic was not so great it would dramatically change the safety of County Road 73. He said this use was
exceedingly intensive. He said Chabad satisfied him with the proposed landscaping. He would love if they found a larger property in the city. He didn’t know if his concern about the intensity was a valid reason to deny the CUP. Pedestrian safety and the general safety associated with this location was a valid reason for denial.

Heine said the question if this was an appropriate site was a valid consideration for the council if it determined the intensity of use on this particular parcel was not appropriate for the neighborhood and did not meet the CUP.

Wiersum said if the proposal were to be approved there needed to be a special event management plan if there were 125 people or more as Wagner suggested. The management plan would need to include things like temporary no parking signs in the neighborhood, a specific offsite parking plan, and a specific traffic management plan.

Gordon said an approval resolution was included in council packet. The council could add whatever conditions it deemed necessary. If the council was of the mind to deny the proposal then it needed to state findings of fact. Heine provided language to include in the resolution about the event management plan.

Bergstedt said given the size of the parcel, the proposal was way too intense. His biggest concern was not to come up with an event management plan, it was the public safety concerns. He wasn’t concerned about number of cars exiting Chabad during the day, but he was concerned about the re-striping plan, loss of the turn lane and having a middle turn lane. The additional turning movements would affect the traffic all day long. There were existing safety issues.

Acomb said public safety was her biggest concern and she leaned toward denial.

Wagner said it was important to keep in mind that rarely has the council wrestled with something like this. There was a 7-0 vote for approval of the Highland Bank. Here, the council was split. The council doesn’t always strive for 7-0 votes but many of them end up that way because through the process the proposal gets better. He said this proposal never went through a concept review plan and many of the comments made at this meeting would have been made at a concept plan review. This would not be a bad site for this proposal if the site was bigger. It was not a bad site if some of the improvements could be done. He suggested coming up with findings of fact to deny the request. He said the council found the drivers for denial being tied to the intensity of use and turning movements that it generated negatively impact the public safety on the county road. Also, there were multiple driveways within a short distance with limited shoulder widths.

Heine said those comments along with Bergstedt’s comments about the turning movements and the lack of a right turn lane for Fetterly Road would be used for findings of fact. She said several councilmembers made comments about pinch points in terms of the narrowed shoulders. Comments were also made about the development adding additional traffic onto a roadway that the council already considered unsafe. Wagner said he disagreed with that suggested finding. He
thought the concerns were with the turns that would be generated not the amount of traffic coming from the development. Wiersum agreed. Heine said all those findings would support a determination that the applicant had not met the burden of demonstrating that the use would not have undue adverse on public health and safety.

Wagner asked if it would be helpful to include in a motion that the council agreed it was a conditionally permitted use because this was a site specific issue not a use specific issue. Heine said it was undisputed that the use was conditionally permitted in this district provided they met all the objective and subjective standards. The council was finding that due to the traffic safety and intensity of use on a small site that the application did not meet the standards.

Wagner moved, Bergstedt seconded a motion to deny a conditional use permit for a religious institution at 2333 and 2339 Hopkins Crossroad and 11170 Mill Run based on the stated findings. Acomb, Happe, Bergstedt, Wagner, Ellingson and Wiersum voted “yes.” Calvert voted “no.” Motion carried.

Wiersum called a recess at 10:26 p.m. He called the meeting back to order at 10:37 p.m.

B. Items concerning Ridgedale Executive Apartments located at 12501 Ridgedale Drive:

1) Rezoning from Planned I-394 District (PID) to Planned Unit Development (PUD);
2) Master development plan;
3) Final site and building plan.

Gordon gave the staff report.

Wagner said he disagreed with some of the planning commission and staff dialogue. There was discussion there was a fixation with the building and not about the site. He when he was talking about mass it was about how much mass the site had that was buildable and not the slopes. When the existing building was approved the council had approved a dual use site. The city had encumbered itself with a relatively new, highly valued building while also wanting residential on the site. Staff and the developer seemed to take the council’s comments that the mass and intensity of the site did not include the office building. He said for him, it did. Wischnack said the council had talked about footprint so that was part of the planning commission discussion. Gordon said the staff and planning commission talked about the functionality of the site with the office building. He said some of the planning commissioners were not concerned with the intensity of the site and would have supported a five or six story building.

Wiersum said the scale of the new building was quite a bit smaller. The concerns about the mass and scale of the building had largely dissipated. He agreed with staff that having an office building that wasn't visible from the primary road was a problem. Given the office building was there he asked what changes could be
made to make a building of approximately the size of the proposed development acceptable to staff. What fixes could be made or was the site simply doomed? Gordon said the planning commission asked a similar question and his response was he wasn’t exactly sure what could be done. An acceptable arrangement of the buildings had not been proposed yet. It was likely the new building could be oriented in a way to create more visibility to the office building. This would require the apartment building to change its footprint and configuration on the site. It may require more property in order to do so. The same thing could probably be accomplished by reducing the size of the building. Wiersum said the only thing small about the proposal was the site. Gordon said staff did not think having residential and an office building on the site was inappropriate.

Tammera Diehm from Winthrop & Weinstine spoke on behalf of the applicant. She said when looking back at the history of the project it was important to look back to the concept plan review that occurred in November 2017 and not just the changes made between May 2018 and June 2018. The applicant had made several changes after receiving feedback from the neighbors, the planning commission, staff and the council. The focus of the applicant in regards to the mass and footprint was in response to concerns about the size of the building. The applicant worked hard with his architect and engineers to reduce the size of the building to address the neighbors’ concerns. She said during the 10 months the applicant spent a lot of time looking at different site layouts and options. There were several challenges to the site. One of the major changes from the May proposal to the June proposal was the removal of the pool and some of the amenities. This was done for a couple of reasons and not without heartache. She said the change was in response to staff concerns about the overall parking. Staff had encouraged the applicant to reduce the amount of parking while at the same time making sure the parking that was offered was logical for the office user. Originally the proposal was for a six story, 75 foot tall building. The current proposal was for a four story, 50 foot tall building. The number of units was reduced from 111 to 78. The gross square footage of the building was reduced from 253,404 to 174,000. The number of parking stalls was reduced from 250 to 178. She said the issue about a building behind a building had been a site condition for over 20 years. A number of the office building tenants were destination tenants. In many ways the orientation of the office building was to the natural area behind it. The applicant was a longtime resident who wanted to revitalize the property.

Wagner said the site plan showed changes to some of the parking. Comments had been made indicating some of the parking in the building would also service the office building. This was not documented anywhere. Concerns had been raised at the planning commission about having adequate parking for the office building. Diehm said the original plan to designate parking for the office building in the underground space was something the applicant was happy to do. In conversations with staff, it was suggested staff preferred designated parking that was more logical. That was why more stalls were added between the buildings. The applicant remained supportive of having parking stalls for the office building in the underground parking. Wagner said 50 spots were required for the office building and the plan showed 35. If the council approved the development he
thought it was important to document the parking requirements to make sure the site had functionality. Diehm said the applicant not oppose a condition related to parking and also would not oppose a condition that the site would not be available for future subdivision.

Calvert asked if there was adequate space along the drive for emergency vehicles. Gordon said the city’s ladder truck could not be driven completely around the building. There were two spots the truck could access the building. One was along Ridgedale Drive. The other was along the west side. The building would need to be equipped with sprinklers and it was not uncommon to not have full access to a building. Diehm said the applicant hired a traffic consultant who found no concerns with the access.

Wagner said looking back at the comments on the site, everyone had stated high density residential was appropriate. He didn’t disagree with staff comments that the site wasn’t as harmonious as the council was used to. Rarely was there two different uses on a site that was already built. Yet the city sought a future change to the site. The high density was appropriate because it scaled down to the residential neighborhood. He said the design was not perfect but he wasn’t sure he would say that in order to develop the site, the office building needed to be torn down. The neighbors probably preferred that nothing be done on the site but also were concerned with what could be done with the site. He shared the concerns. He said he did not have an aversion to allowing a building behind the building because a previous council had approved it. It was almost wasteful to say in order to get a high density development, the office building had to come down. If that were to happen something more would be proposed and the neighborhood likely would not support that. He said some of the changes were good changes. It was not insignificant that the development would generate almost $400,000 in park dedication fees. This would help move the city toward the goal of getting a $4 million park in the Ridgedale area.

Happe agreed with Wagner’s comments. He said the area was one the council wanted to redevelop and the facility looked great. The city wanted to have this type housing. He agreed the development wasn’t perfect but he thought the project should be approved.

Acomb agreed the council wanted high density residential surrounding Ridgedale and also agreed the applicant made some concessions to the original building that reduced the massing. When the Highland Bank proposal was before the council, it was the first residential building at Ridgedale and the council discussed the importance that the proposal would set a precedence for the area. It was a successful development. Subsequently, other developments had come forward so the interest was there. She didn’t think the proposed site design worked well. There were alternatives that would be better. The two buildings do not relate and the circulation on the site was an issue. She didn’t want to settle for something that wasn’t quite right.

Bergstedt said in looking at the different iterations over time he kept thinking progress not perfection. Progress had been made to address concerns. If there
was nothing on the site, the council would not think about sticking an office building behind an apartment building. But that decision had already been made. It was a very viable office building, not a high volume retail facility. The situation was far from ideal but it was functional and could work.

Calvert said she originally saw this project when she was on the planning commission. Everyone’s initial reaction was to the mass and the height. She said the applicant did a wonderful job addressing those concerns. One of the responsibilities of the council and the planning commission was to make sure the plans were done right. Minus the ability to acquire the site to the east, and given the existing office building, this was a very difficult site to develop. She said the council had the responsibility to approve plans that meet the city’s requirements and this proposal did not. She worried about setting a precedent. If approved, she wanted the record to show this was a unique situation. She thought the building was beautiful but thought there could be changes made to improve what the office building was facing. She agreed the office building currently was a destination office building but that could change in the future.

Ellingson said he agreed with Bergstedt’s comments.

Wiersum said Minnetonka was an interesting city and one of the things the city had that most neighboring cities did not were lots behind lots in residential neighborhoods. He wasn’t a big fan of lots behind lots. He thought the proposed building had improved dramatically in terms of mass and scale. He noted the neighbors were not opposing the proposal which was significant because they had been virulently opposed to some of the earlier versions. The question he had was, if not this, then what? One option would be to tear down the office building. This would be a significant expense that the developer would own. Anything proposed going forward would have to cover that cost. Chances are the building would have to be larger to make the numbers work. To reduce the footprint of the building, it could be made taller. He didn’t think this would be a good solution. The city was not going to get a perfect solution.

Wagner moved, Happe seconded a motion to adopt resolution 2018-077 and Ord. 2018-09 approving the following associated with the properties at 12501 Ridgedale Drive: 1) rezoning from Planned I-394 District (PID) to Planned Unit Development (PUD); master development plan; and final site and building plan. Additional language would be included detailing shared parking and prohibiting the site from being subdivided. Happe, Bergstedt, Wagner, Ellingson and Wiersum voted “yes.” Acomb and Calvert voted “no.” Motion carried.

15. Appointments and Reappointments: None

16. Adjournment

Bergstedt moved, Wagner seconded a motion to adjourn the meeting at 11:33 p.m. All voted “yes.” Motion carried.
Respectfully submitted,

David E. Maeda
City Clerk