



Hierarchy of Preferred Solid Waste Management Methods (Inverted triangle)

- Impacts of Organized Collection
- Cost of Solid Waste Services: (A 31-household City survey revealed the average Bloomington household pays \$21.33/month for trash and recycling; not including yard waste.) Rates vary considerably from household to household and from city to city. Conclusion is that the average rate paid in an organized collection system would be similar to existing average rates; some residents would pay more and some would pay less.

Busse commented Maplewood's rates went down after organized collection but their monthly rate is still \$4.00 higher than what Bloomington residents pay.

Winstead said it's going to cost that much to get the job done.

Staff stated residents will likely pay Bloomington's average per month for organized collection.

- Recycling Rates: It's Hennepin County's data. Tonnage of recyclables collected annually based on hauler reporting.
- Recycling Rates-Bloomington (Graph): Bloomington is on the high end of the per capita recycling rate scale compared to other cities. Last year, a typical home in Bloomington recycled 700 pounds of materials.

Oleson commented lifestyle plays a role in how much people recycle so it's hard to get accurate data.

Carlson inquired if Bloomington would have access to other cities' organized collection bid data.

Keel replied yes.

- Recycling Rates – Open Systems
- Recycling Rates – Hybrid Systems
- Recycling Rates – Fully organized systems (trash and recyclables)

Mark Bernhardson, City Manager said a better measure is the total tonnage (total amount of recycling and waste as a percentage of recycling) to see which city is doing the best job of recycling. He said reduce and reuse are the most effective ways to reduce recycling and that the Council can't really count on an increase in Bloomington's recycling.

Keel said the mere fact of organizing collection will not necessarily produce a change in recycling.

- Environmental Impacts of Organized Collection: Local regulations can be imposed in both open and organized systems. Organized collection can reduce the number of trucks in a neighborhood. However, the result is that a reduction in potential emissions is very small. It was concluded that organized collection will have very little impact on environmental issues.
- Neighborhood Impacts: Environmental factors are proportionately larger on low volume streets.

Oleson said his street handles the weight of the garbage and recycling trucks just fine but lesser quality streets might not.

Winstead commented a representative of one of the larger haulers told him they eat up the cul-de-sacs.

It was concluded there could be an 80% reduction in truck volumes with organized collection.

- Approach #1: Educate, Enable and Enforce (Hire outside help to ramp up the communication and education.)
- Approach #2: Scalable – organize recycling first. (It would be an easy approval process to go to organized recycling.) Then, undertake a full organized system with implementation in January 2016. (This approach is similar to Bloomington Master Recycler/Composter Group recommendation.) Scalable recycling would result in a small to medium potential impact to society. A scalable full organized approach would result in a small to large potential impact on society.
- Approach #3: Full Organized Collection – Implementation in January 2016. Again, small to large potential impact to society.
- Timeline for Approaches #1, #2 and #3:  
 #1: Begin new initiatives 1<sup>st</sup> quarter of 2015  
 #2: Begin full organized collection mid-1<sup>st</sup> quarter of 2016  
 #3: Begin full organized collection in 1<sup>st</sup> quarter of 2016
- Staff Recommendation: Start Approach #1 immediately for all three Land Use categories. Or, if a more organized collection is desired, start Approach #2 mid 1<sup>st</sup> quarter of 2016.

Council comments/inquiries:

Busse inquired as to whom the City would hire with Approach #1.

Keel replied there's a question as to whether this person would be housed in Public Works or in Environmental Health this initial round. This person will work with the City's Communication staff; especially regarding coordination.

Baloga commented Maplewood's bills were cut in half when they went to organized collection. He doesn't believe Maplewood was paying what the staff indicated. He said the sampling size was too small so the data was not accurate. He believes staff is doing a disservice to the Council because costs were not included. He said common sense says there is wear and tear on the roads, which has an impact on the asphalt. He commented according to the citizen survey results the City received, residents are becoming less satisfied with the condition of Bloomington roads. He believes removing trucks from the roadway would improve citizens' perception and he expects education would be included in all three approaches; especially in Approach #2 and #3. He said incentivized recycling hasn't been addressed yet. He said the City needs to look at an approach that will help improve recycling in Bloomington, as Hennepin County listed Bloomington in the lower third of all Hennepin County cities per household or per person prior to 2012. He believes there is more improvement that can be gained in reducing trash, improving compostables, and increasing the amount of recycling that what's been indicated in this process to date. It's how the program is designed. He said incentives should be developed like the City did with the tiered water rates.

Winstead commented the number of trucks is an environmental issue as well as an aesthetic issue. He said there wasn't as much of a competitive environment when the City of Maplewood went through this. He noted Bloomington has been competitive so its rates have been down. He also heard the savings would be great when this was implemented.

Bernhardson said there are going to be some people who will see a significant reduction in rates. He said the measurable thing people will see in going to organized trash and recycling is a reduction in the number of trucks on the street on collection day. With regard to incentivizing, he stated the City was mandated to go to a water incentive rate but he doesn't believe it has made a difference. With regard to zero waste, he said to the extent that people consider conversion of trash to energy as a recycling method, the City can mandate in all three Approaches that all trash goes to the Hennepin County's Energy Resource Center to be converted into energy. However, it is anticipated there will be a cost to do so, which will be revealed in the bidding process. He said traditionally the landfills have been cheaper but staff believes it's better to do the scalable option.

Winstead said he wants to see a collection system that requires organics. The City needs to make sure it's available and part of the system. He's looking to be aggressive. The details will be in how it's being done, how it's going to be available to all haulers, what kinds of requirements, customer satisfaction elements, etc. He wants to see the City get there but it's about how it gets done, how are the haulers treated, the services that will be provided and how does the City assure that, how it's costed, how the transition goes, etc..

Bernhardson explained staff is recommending organics be an optional service to start off with recycling. He told the Council to decide if it wants to include organics in Approach #2 because it will likely add \$3 to \$5 to the customer's monthly bill.

Abrams suggested collecting organics and recycling every week and trash every other week to create the incentive of more recycling. She said that would change the math on the percentage of truck traffic that would be taken off the street. She said it was her understanding that this discussion was going to be about the whole Solid Waste Management Plan vs. this one segment. She commented the food establishments in her area only recycle cardboard and cooking oil so wanted to know when the commercial piece would be added. She said there is a lot of interest in doing so and some things that shouldn't are still going to the landfill.

Winstead commented residential and commercial are two different animals.

Bernhardson said if organics is not included, trash and recycling could be collected every two weeks. He said the commercial end of the world is very diverse. Staff believes residential is where the City will get the biggest bang for its buck.

Keel said the consultant was not aware of any community that has organized multi-family or commercial recycling.

Winstead said if there is an assigned coordinator, one trip to a strip center to help educate them in recycling would produce results. Then an incentive could be added.

Oleson believes the education piece is critical. He said there was a reference to the League of Minnesota Cities (LMC) reports whereby they're talking with the haulers. He thinks the haulers will benefit by saving money if they're not driving as many miles; as there will be less wear and tear on their trucks and tires plus less hours for their employees. He said an option should include talking to the haulers to discuss the City's vision and goals. He said if the City ends up contracting with the haulers for once a month; they should cut the City a break. He said the haulers could help the City figure out how to do the billing on different pick up options. He said the language in State statutes encourages cities talk with the haulers early on in the process. He commented although the number of surveys relating to garbage costs was small, it resulted in a diverse range of what residents are paying. He said there are a host of ways this can be a win, win for the City,

the residents, and the haulers while bringing down costs. He believes the same result could be achieved within the commercial areas. He suggested the City bring in the commercial industry to talk with staff and that the Mall of America be included. He thought perhaps the Bloomington Chamber could assist staff in the coordination of such a meeting.

Bernhardson explained talking to the haulers is a statutory requirement.

Keel explained with the basic steps outlined in State statute, once a city declares its intent to organize and determines the format, it's required to negotiate with the existing haulers for 60 days minimum. This gives the haulers time to put together a proposal, working jointly as a consortium, to keep the business they currently have for trash. After that, the City will be required to form a citizens committee to help staff develop the scope of services that will be involved in an eventual Request for Proposals (RFP) that will go out for organized collection. That is when all of the details will be sorted out.

Oleson said a properly structured conversation results in asking the haulers if they will save money if they drive less miles. His recollection was that the discussion with the haulers didn't have to wait until there is a proposal. He believes it would better to meet with the haulers first to brainstorm their ideas and options.

Keel said Oleson is suggesting the City utilize the expertise of the hauler community to help develop a better proposal, which the City will do.

Bernhardson said staff wants to know if the Council wants to take on the recycling right away. He said when required, the City will give the haulers notice so they can come in and talk with staff to answer the question, "Is there a way that you can organize yourself as existing haulers" and present that to the City. They will be given the City's objectives to include in their proposals.

Oleson said the City thinks the haulers wouldn't be interested in doing something.

Keel commented the hauling community hasn't been a willing partner in organizing efforts, but rather have spent their energy in opposing organizing efforts.

Winstead said the statutes and history are such that the haulers will be engaged but historically they haven't wanted to do anything but oppose it straight away. He said it's very tough to get more than one hauler in a room together. They don't like to get together and talk about this subject matter.

Busse said he believes there will be a cost savings and the streets will be less beat up with organized collection. He's heard from most people that they want a reduction in the number of trucks in their neighborhood. He supports Option #2. He said Bloomington has been a leader for years and with this ordinance, it could be a leader in this process. He asked what the new hire will work on. He said if the City wants to increase the recycling, it has to increase enforcement. The City needs to take steps beyond what it's doing now. He likes the approach of jumping into Approach #1 immediately, getting Approach #2 going as soon as possible, and working towards Approach #3.

Bernhardson explained the City would hire a coordinator for the City's overall contact to handle the education, recycling contract and monitoring, etc. They would coordinate people to handle those tasks while working on the contracts, ordinances, and the enforcement issue.

Winstead said it's education and enforcement. It has to be easy for people to recycle. He said there are 25,000 homes and their behaviors are the same. There are 7,000-8,000 businesses in Bloomington and their behaviors are much different.

Keel commented the coordinator would work closely with Hennepin County and the Minnesota Pollution Control Agency (MPCA).

Carlson said he likes the scalable approach and asked about the strategy behind starting with the recycling. He said two of the existing haulers can process recycling while the other haulers would have to contract for that. He asked if the City is putting itself in a situation whereby the haulers might choose not to bid or is this a big enough piece of the pie whereby there is too much at stake where they would not consider bidding on the recycling piece as a separate piece.

Keel said only two of the larger companies offer the process of recycling. He said it wouldn't exclude those smaller haulers from bidding, but they would have to have a sub-contract with one of those two larger companies. Council will have to decide if it makes sense to have one contract for the entire city or should the city be split into smaller areas to allow the smaller companies to compete.

Carlson cautioned use of the scalable approach and said if there any risks in the bid process, the City needs to be thoughtful in its decision-making process.

Bernhardson said he doesn't believe some hauler wouldn't bid.

Moore said there is some competition out there. She said some cities have in their contracts that if the hauler produces a certain amount of a certain quantity of recyclables, the cities might offer some cost sharing.

Gates said there's bound to be competition in Bloomington for recycling.

Moore said when you're negotiating a contract, who is collecting the money and doing the billing is a bonus to a company. She said the City could get the price down by offering that capability.

Baloga said there are some pluses with the scalable approach, especially with the timing. He said if the City has the opportunity to make a more drastic change in the process so it's collecting recyclables every week and trash every other week, the second the scalable approach becomes an impediment to doing something later on. It's the difference and timing between Approach #2 and #3. People are concerned about what is on the horizon. He believes it would be better to get it out and get it going. He said Option #2 is maintaining the status quo for the very first part of it while Option #3 changes a lot of things. He asked staff how they see all of the kinds of thoughts and change in process being executed under the scalable approach.

Keel said the City would have to anticipate the range of options in the first contract.

Baloga said the trick is when the compostables should be added.

Keel said in the first recycling contract, the City would need to give some thought to what the entire range of things might be and suggested ways to do that. He said the City's ability to change the service should be built into the contract to whatever the City needs are at the beginning of the trash hauling contract. He said compostables should be offered as an optional service as part of the initial recycling contract but be open again in anticipation that it could become mandated.

Winstead said he thinks the compostables will end up in the trash anyway.

Abrams said regarding the differences in the execution of Approach #2 vs. #3 or jumping into Approach #2 with the intent to fulfill Approach #3, her concern is that the City will get going on the recycling part and perhaps implement the billing of recycling via the water bill, thereby reducing residents' bills, and then the City looks to implement the full trash collection and the residents' bills change again.

Bernhardson said there is nothing that precludes the recycling contractor from handling the billing process himself.

Abrams said conceptually it's either a methodical two-year process with all of the progress at the end or a little bit of progress at the beginning and more to come.

Lowman said he'd like to see some more additional information on the commercial. He said the City should be a leader on this. He'd like to see organics be included from the beginning. He said he would like to see more of an environmental impact toward those goals.

Bernhardson said one can't expect that by going to an organized collection system at this time. He said going to an organized collection itself won't make a substantial change absent the organics and more organics recycling. He said the Council should say it's making a change in the system because it's the right thing to do; it reduces the number of trucks, improves neighborhood livability, provides the City an opportunity to get into organics, and may have a marginal impact on cost. He said the Council can mandate organics for a little higher cost. He said the Council can mandate that all of the trash go to the burner for commercial, multi-family residential, and single-family residential for a cost.

Keel said there doesn't have to be organized collection in order to mandate composting. The City could require all of the haulers do it.

Winstead said he'd like to see the City go with Approach #3 with organics and in half the amount of time.

Bernhardson said organics can't be accomplished in half the time. He said going with Approach #2 is being upfront with people to let them know changes are coming in steps.

Winstead said he wants to get to Approach #3.

Bernhardson said both schedules can be compressed to some degree. With Approach #2, if the trash hauling gets pushed out, at least the recycling has started.

Abrams suggested getting the coordinator hired in terms of Approach #1 but supports Approach #3, as the City is in it for the long haul.

Baloga said he supports #3 with organics in half the time.

Winstead supported #3 and making organics part of the ultimate proposal.

Bernhardson again said it would be better to do a phased approach, as it will result in the same end at the same time. He said yard waste would be coupled with recycling and organics, which might involve two haulers.

Carlson said he supports Approach #2 and said a lot can be said for building momentum to an approach. He said reducing the number of trucks on the street right away is a win. He said this is a linier process that affects every citizen in Bloomington. He said let the process play out. Set up the new recycling manager for success. He said build on the successes that are built into Approach #2. He said something could go wrong with a hurried approach. He said Approach #2 is a mindful approach coupled with Approach #1.

Keel said the process has been contentious in the other communities that have gone through this. He said Approach #3 could end up being continued or stalling.

Baloga sees Approaches #2 and #3 as having the same amount of risk. He said people always want to be heard but Approach #2 doesn't include any public hearing to solicit feedback from the public. He believes this will only breed the same recycling results. He said the City needs to educate people on recycling. The only difference between Approach #2 and #3 is 45 days. He sees better public input with Approach #3.

Bernhardson said a public hearing can be held on the front end before starting the recycling in Approach #2 and the number of trucks in the neighborhood can be reduced. He said the Council could start organizing the trash collection once the recycling contract is signed.

Abrams read the goals listed in the March 2014 Draft Plan, which she said are needed in a plan. With regard to how those goals became morphed into the City's Strategic Plan and trying to fulfill the sustainability objectives of that plan, she said it feels as though the Council is now honing in that the only significant value of this particular action, which she feels the organization of collection is one tactic in a larger plan. If the Council can make the thoughtful action on this one tactic as a component of a larger plan that Council has not formally accepted, it still holds to bear that reducing the number of trucks on the road as soon as possible is a very specific goal that the Council is pursuing. She fears they will come at the expense of the larger recycling and more thoughtful goals.

Bernhardson said staff has not dismissed the goals of that plan. Staff was asked to provide options to move forward from that plan, develop measurable goals, and tell the Council what potential impacts each of those approaches will have. Here is the potential to implement the program once Council gives staff the direction. He said the Council is doing this because this is the strategic direction of this community that has been adopted.

Winstead concurred with Bernhardson's conclusion. He's not convinced the costs will go down or that recycling will greatly increase. He said the costs will probably go down for a lot people and go up for a few. He said recycling will pick up once the public gets educated. He said everyone knows where he wants to be but he's not going to get hung up on either Approach #2 or #3 but is adding on the organics.

Motion was made by Carlson, seconded by Busse, to direct staff to proceed with Approach #1 and #2 simultaneously. No vote was taken at this time.

Busse said it's optimistic to think organized collection will start by January 1, 2016.

Baloga said he can't support the motion because it doesn't think it will happen by January 1, 2015, and it won't eliminate 50% of the truck traffic in six months time. He said it will add significant burdens to the overall process and delay the implementation of the entire plan much further than the proposed calendar shows. It adds too many additional complexities that won't be addressed in the front end. He said this might be an early win but at the loss of too many additional items.

Lowman supported Approach #3 and dialing it back if necessary, which Bernhardson said cannot be done. It would be hard to go back and put it in a step by step process.

The Mayor called for a vote on the motion. It failed 2-5 with (Oleson, Baloga, Abrams, Lowman and Winstead opposing.)

Motion was made by Baloga, seconded by Abrams, to direct staff to immediately proceed with Approach #1 and #3 incorporating organics.

Motion passed 5-2 (Busse and Carlson opposing).

Baloga offered his services as a Council representative when a citizens' committee is formed.

The City Manager requested Council continue to provide staff with their revisions on the plan for solid waste handling in the city.

## 6.2 Smith Park/8201 Park Avenue South Joint Usage Agreement

Bernhardson introduced this item by stating there has been significant discussion regarding 8201 Park Avenue over the last three years. The City had several agreements in place with the previous owner regarding Smith Park. He said staff would like to know if the Council wants to stay with the existing agreements or go forward with the proposed agreement. If there are certain issues within the proposed agreement, staff can go back to the owners of 8201 to see if they are willing to accept the changes. He said there are really only two choices. If Council chooses to stay with the existing agreements, the conditions are addressed through no action on the part of the City. He said the Council received substantial background materials on this but said there was one mistake in the materials relating to the October traffic study. The study was not conducted during Ramadan but rather during the second feast of Eid.

Randy Quale, Parks & Recreation Manager made the following presentation:

- Existing Agreements
- Aerial of Property
- Revisions to the Proposed Joint Use Agreement (JUA):
  - City use of 8201 owner parking spaces
  - 8201 owner use of City parking spaces
  - Public use of 8201 owner sidewalks to access City and 8201 owner facilities.
  - Nighttime use limits on City parking spaces: (Parks & Recreation to issue after-hours use permits (up to all night whenever the 8201 facility is in use).
  - Access easement over 8201 owner property to City parking lot.
  - Agreement termination provisions: (Existing Agreement terminates in 2024.)
  - Limitations on 8201 owner use of field
  - Initial term of agreement(s)
  - City control of irrigation levels; football field lighting shutoff requirement
  - City indemnification.
  - Each revision was described in more detail.

In the details Quale provided regarding the revisions to the Agreement, he reported there are 190 uses that occur after 10 pm at both the Valleyview Playfields and at Dred Scott. Per the City's policy, the lights on the fields go out at 11 pm while the parking lot lights stay on another 30 minutes to allow the users to exit the parking lot.

Winstead commented both the Valleyview and Dred Scott fields are used after 10 pm for softball.

Abrams asked if the 190 uses are split between Valleyview and Dred Scott.

Quale reported there were 100 uses at Valleyview and 90 uses at Dred Scott.

Busse questioned what this means in the original agreement, which is silent on the hours or use.

Quale said the Park would remain closed at 10 pm unless an athletic event is taking place. He added the after-hours parking permit would not allow them use of the Park.

Baloga asked if the Agreement means the 8201 owners can use the fields and when it's their use, they can collect the revenue. However, when the City is using it, the City splits it with the 8201 owners.

Quale replied the 8201 owners can't rent out the field but there are some events they charge a fee to recover costs. He said when the City rents out its field, the revenue would be split.

- Options for Council consideration:
  1. Allow the current Agreement to lapse on May 17, 2024.
  2. Approve a New Joint Use Agreement

Council comments/inquiries:

Winstead stated the business points of the Agreement remain about the same. He asked if there was anything in the Agreement requiring the 8201 owners to adequately water the athletic field.

Abrams inquired who's responsible for watering the field. She asked if the owners of 8201 don't request an after-hours permit three business days in advance, what's the City's recourse.

Bernhardson said the lights won't be turned on and it would be a violation of the Agreement.

Quale said this is a Joint Use Agreement so if the City found the 8201 Park owners to be in violation, it would be a breach of the contract.

Winstead questioned what enforcement action would result from a breach in the contract. Would it result in a termination of the contract, a fine, or would Chief's Towing be called in to tow cars?

Bernhardson said if there are issues the Council wants addressed, staff can talk to the 8201 owners.

Winstead questioned why the City would want a permit.

Quale said if the 8201 owners are using Smith Park, the City wants to make sure they are using their building at the same time. Staff wants to know when they are using the parking lot.

Oleson stated the elements of the Agreement need to be enforced; especially for the larger events. He said there needs to be some teeth in the Agreement to deal with the violations that might occur at 8201 Park. He said Council has been given an option of staying with the current Agreement, but that is not acceptable. As this Agreement runs with the property, he said it would be helpful to have more openness regarding how the facility is being used, as there is no practical leverage for the City to exert. He said the City might be creating a situation it can't live with down the road.

Bernhardson explained there is more control with the proposed Agreement than with the current one. He asked Council what it wanted to see with regard to enforceability adding the City can see if the 8201 owners would be agreeable to that. He said that would get the Council to where it wants to be.

Oleson said it's how the Agreement is administered. He questioned why the communication that was sent to Hyder Aziz at 8201 Park didn't happen long ago.

Bernhardson said there is no Joint Use Agreement in place; only the existing Agreement. He said the Aziz letter addressed the Fire Code issue so the City could gain some control. He said there is a current Agreement, a proposed Joint Use Agreement, and a Conditional Use Permit (CUP). He said there are Code violations which are separate from the CUP. Those violations are enforced on an individual basis. Then there are violations that occur on or around the property but don't constitute a legal issue for AFYFC (Al Farooq Youth & Family Center). He asked Council what things they would you like to see for teeth in the Joint Use Agreement. He said there could be a 60-day termination.

Oleson asked what happens when conditions aren't followed; what is the end result. He said AFYFC is located in his district and he's met with members of the immediate community. He said the City has to be able to respond to the needs of this community. He said there is no guarantee the JUA will be followed.

Bernhardson replied there are conditions in the proposed JUA. He said separate from that there is a Conditional Use Permit for which most of those conditions have been satisfied.

Oleson asked what happens when a condition isn't being followed. He said that generalization needs to be out there.

Winstead said the City can't tie the CUP into this proposed Joint Use Agreement. He said there should be discussion regarding how the JUA gets utilized. He asked if that would lead to an over-intensification or a heavy duty use of the site. He said there might be a reason the Council wouldn't want to go forward with the JUA but then the current Agreement stays in place. He said the two are definitely separate but asked if the JUA facilitates some of the CUP requirements that are being abused.

Bernhardson restated for the most part, the CUP conditions have been satisfied.

Oleson said most of the CUP conditions have been satisfied but questioned what happens when the rest aren't.

Amy Schmidt, Assistant City Attorney explained the CUP conditions are separate from the JUA. She said the only requirement of the CUP is that the existing Agreements be updated. She said the proposed JUA theoretically touches some of the CUP conditions as they relate to parking, the use of the different parts of the building at the same time. That is not part of what the proposed JUA does. She said the existing Agreement and the proposed Agreement are intended to address just the shared facilities for the athletic uses of the City and the owner of 8201 and the parking. She said the proposed JUA does not address parking, as there is a standalone parking agreement that has been incorporated into the updated Agreement that is far clearer as to what parking can be used and when. She said the existing parking Agreement doesn't address future usage but addresses construction and who pays for what and how it terminates. She said the draft JUA provides far more clarity for the City regarding who can use what and when for parking as it does for the user. She said the approval for the CUP carries forward a condition that was included with the approvals for Lutheran High School that said if Lutheran High School builds the extra parking lot, it will count those parking spaces towards the parking requirements under the Code. She said that ability carried forward to the current owner of 8201 Park. In order for 8201 Park to remain Code compliant, they need the City parking spaces in their calculation. That's the only way the current Agreement touches on parking. It doesn't get to the operational characteristics of the building.

Oleson questioned how the original CUP happen.

Schmidt said the agreements predate the existing CUP so the agreements that exist currently didn't contemplate the current owner. They were negotiated with the previous owner. Because those agreements are on record with Hennepin County, they carry forward to the current user.

Winstead said the current CUP did take into consideration the existing parking Agreement and as well as the multi-use field.

Oleson inquired as to the conditions under which they can be modified.

Bernhardson said the owners of 8201 Park made an application for a CUP. He said the 500 seating capacity on the bleachers in the gymnasium was used just to determine the parking need for 8201 Park when it was Lutheran High School. He said when Dar Al Farooq (DAF) submitted an application for a CUP, the City was concerned their parking need would be greater than it was for Lutheran High School. A couple of conditions were inserted; the simultaneous use of two assembly areas but either one can be used for an assembly area. He said the assembly area can be anything including worship or prayer, etc. DAF can only use one or the other area for that purpose and that tied into the trigger for their Proof of Parking. Based on the number of parking spots Lutheran High School had, DAF was asked to add another 50 parking spaces, which resulted in a 50% increase of parking on their site. He said the Proof of Parking then increased their parking another 50%. The City gauged the parking for Lutheran High School on a 500-person capacity but since then it has increased 50% plus the Proof of Parking that increases it to double what Lutheran High School had. The City did take into account the potential for greater parking on that site. He explained the way the CUP is written, if DAF exceeds the 500-person capacity on a routine basis and ends up parking in the street and/or there is ongoing simultaneous use in the building, it would trigger their Proof of Parking.

Schmidt said Hyder Aziz has verbally consented with the terms of the proposed JUA. She asked the Council if they wanted any terms added to the Agreement to address enforceability, which is separate from anything related to the CUP.

Bernhardson said the three approaches would be: A breach of contract, insert a unilateral termination clause of some period of time that says if AFYFC isn't in compliance, the City can serve them a notice with so many days to cure the default, or some financial penalty could be imposed.

Oleson referenced the Table on Impacts of Cancellation or Lapse of Smith Park/8201 Avenue South Joint Use Agreement Table on Impacts and inquired if all of those issues listed have been dealt with in the proposed Agreement.

Quale said within the Agreement, Exhibit D covers the disposition of all of the improvements based on location. He said all of the items on the list are addressed within the Agreement.

Bernhardson said the fourth column indicates the disposition of those items if the Agreements were to lapse in 2024.

(Oleson distributed a list of the issues that were presented at the April 21, 2014, Study meeting.)

Oleson asked for an explanation of what "Park Avenue sidewalk on the 8201 owner property is allowed" means.

Quale said the proposed Agreement covers all of those things.

Bernhardson said the right-hand column addresses what would happen if the proposed Joint Use Agreement were to be cancelled or allowed to lapse on May 17, 2014.

Busse asked if AFYFC's request to host events at 8201 Park past 10 pm is going to be granted. He asked for the definition of what "unreasonable" means in conjunction with their request for after-hours permits. How many days would be considered unreasonable?

Quale replied the request would automatically be approved if DAR was in compliance with all of the aspects of the Agreement.

Schmidt said it's not quantifiable term.

Bernhardson said 8201 can have their parking lights on all night if they want when they're in use. He said the question is for those times when they overflow their parking lot and ask permission to use the City's parking lot and have it lighted – if the City turns them down and they were overflowing their parking lot, and there was language that barred them from being there, they would then park in the street legally where it's dark.

Busse said at one point, the City talked about restricting the on-street parking in this area.

Bernhardson said that discussion didn't garner much interest at that point. He said the City can't be specific to the point whereby it impairs their religion. He said staff could go back and negotiate. The City could say it's not going to allow AFYFC to use the City's lot at all at night. They could either accept that as part of the new JUA or they can stay with the current Agreement which is unclear about that.

Busse questioned why there can't be parking restrictions on the street. He asked for some assurance that DAF will apply for the permit

Schmidt said the difficulty is there is an entire body of law that applies to religious users. If the City were to cap a number of days per year that their parking would be limited, the City's liability, if it was going to cap the number of days, is much greater than if the City simply has this cooperative effort to control the after- hours of parking in the City lot. However, enforcement is an issue.

Busse said it would be difficult but it's an opportunity to get Aziz to the table.

Schmidt stated it's the strong advice of the City Attorney's office that there is no cap. She said AFYFC needs City parking after hours for 30 days a year. Beyond that, it could be 10 more days throughout the rest of the year. She said the Parks & Recreation Manager can say no to more permits and can suggest to AFYFC that the JUA might need to be revisited.

Winstead said the vast majority of what is being proposed is if the current Agreement stays in place. However, this is an improvement on the current Agreement.

Baloga said he believes there are a lot of underlying questions on the CUP. He said he cannot deal with the proposed Agreement and the CUP as mutually exclusive items. He said the Council needs some analysis and education on what the terms of the CUP are, what are the City's rights and obligations under it, what DAF's rights and obligation are, and what remedies there are for failing to achieve those on either parties' part. He said until he has that analysis, he will not be comfortable in moving forward with the JUA. He said the questions regarding the CUP is overwhelming what is before the Council today. He said there has to be a level of understanding and acceptance so the JUA can be addressed as a singular item. He wants an educational process discussing the duties and responsibilities of each party. He said with that understanding, Council can focus on the JUA.

Winstead said Council hasn't had that specific discussion.

Bernhardson said the memo in the packet addresses all of those questions.

Winstead said there have been enough concerns and issues raised that Council wants more of an explanation.

Bernhardson reported 8201 has complied with most of the CUP conditions except for those that could trigger the Proof of Parking. He said staff will break down the CUP for Council.

Winstead said the Council needs an explanation and a legal opinion on the line items in the CUP.

Baloga said Legal has already expressed an opinion on this. He requested someone with fresh eyes should do that analysis for the Council.

Winstead said the Legal Department should explain the CUP. If Council still isn't satisfied, it could consider going outside.

Baloga said this has been an item on the CUP that has been unfulfilled for three years. He said that means Council will have to overwhelm the Legal Division. He said staff could unburden them by taking this outside.

Bernhardson said this has been strung out because there are neighbors that don't want the AFYFC in their neighborhood and staff has answered their questions over and over again.

Winstead agreed this is tardy but said it has nothing to do with the Legal Department being overwhelmed. He said this is a JUA. He said he wanted to know to what degree does the City use DAF's parking, for what kind of events, and how often.

Quale said the actual use of the parking lot is minimal and is more of an issue of convenience for the users. He said it's better to say everyone can use the parking jointly so that issue doesn't have to be addressed. He said in pure numbers, DAF gets a greater benefit. He said occasionally, Smith Park users park in the 8201 parking lot because the City lot is full. He added all of the parking adjacent to the community garden is controlled by 8201.

Winstead asked how much City use is on the basketball and tennis courts.

Quale replied it's a public use.

Winstead asked about the large multi-use field.

Quale said there is some City use but not as much as the City would like to see. He also said the lack of water on the field might have driven some teams away.

Winstead said the Park use for the City and parking is limited to the tennis courts and the area near the basketball hoops. With regard to Smith Park and the City's parking lot, Winstead asked how many times has it gone to capacity.

Quale replied it probably overflows approximately ten times per year.

Winstead said it's been requested that some time be spent with Council on the CUP. With regard to the JUA, he said Council has concerns with the intensity, frequency of use, and the time of use of these parking lots by DAF. He said the 8201 owner would probably not agree to a lesser use of the joint facilities.

Abrams said the Council is being asked to give consideration to putting some teeth in the enforcement process. She said that is an area that still needs to be discussed and asked what exists in comparable agreements within the City or with other organizations. She said some language regarding termination needs to be discussed. She said the City should hold with the current Agreement until some of these issues get worked out. She encouraged everyone to read the minutes from the past Planning and City Council meetings on this subject. She said she watched the video of the

2011 meetings was helpful. She said a lot can be learned by watching past meetings.

Winstead said highlights of the questions or representations that were made during those meetings should be discussed by Council to determine how it works within the context of the issuance of the CUP and ultimately to performance, etc.

Schmidt cautioned the Council regarding examining the representations that were made at those meetings, as the law is very clear that the representations made by an applicant at the time of application are essentially irrelevant once the CUP is approved and of record. She said to give context and a historical perspective is valid to a certain degree. She said the Council would have to be very careful in how examining the record of the granting of the CUP is characterized, as it could be viewed as bringing the CUP back for reconsideration.

Bernhardson said the question is how is this center treated in what they do in line with all other places of assembly in the City. He talked about Christ the King Lutheran Church. He said back in the 60s and 70s, the traffic was overflowing from his church. He said Cedar Valley is not in a dissimilar situation today. He said there is an issue of late-night assembly at DAF which is unique to Islam on continuous nights. He said he looked at an aerial of St. Bonaventure and saw cars parked in undesignated parking spots throughout the entire parking lot and there was no enforcement. He mentioned he checked on Dred Scott and said parking issues are not unusual in this community. He said the Council needs to look at the impacts to streets in a neighborhood in a greater context than just focusing on what's happened at 8201 Park Avenue.

Winstead suggested deferring this type of conversation to the study meeting. He asked if there was a comfort level by the Council to vote on this JUA. He believes this is at least an improvement over the current Agreement.

Oleson said he met with seven members of the neighborhood. They know the standards he has as a member of the Council. He said he met with them, received 40 e-mails, had conversations with them, and then met with Mr. Aziz. He said all of the parties look at this situation from their own perspective. He has done some of his own watching on an occasional basis. He said the words used at the Public Comment Period were "constant traffic" and the "speed" of traffic. He believes the Council can get to a point whereby this becomes a Joint Use Agreement. He said it would be good if the City and AFYFC can work towards the kind of arrangement that makes everyone reasonably happy. He said there needs to be a spirit of give and take.

Winstead said he's comfortable with the proposed JUA and could move it unless there are others that would prefer to wait.

Lowman said the Council should be timely in getting informed and not delay this for the neighborhood. He asked if the Council were to adopt this Agreement, could it be redone at some later point in time.

Bernhardson said once it's done, and the Council approves it, it can't be changed unless the other party agrees to it.

Lowman requested staff to define the word "occasional."

Bernhardson said Mr. Aziz is willing to talk about dates and that putting in a cap would not be enforceable.

Quale said the word, "occasional" is not a word in the JUA.

Baloga said it's probably more beneficial to the 8201 owners than the City in terms of use. He said he didn't see the benefit to Three Rivers Park District listed in the Agreement.

Bernhardson said prior agreements have been more beneficial to the other party than the City in the past so this Agreement is to see if the City can improve it. He said the City can try and get a more evenly balanced agreement but isn't sure the City could be more use out of what is currently there. He said if the other party is not agreeable to the City's proposal, the existing agreements that are even less beneficial to the City stay in place.

Baloga added he'd like to see the "unreasonable" language regarding the issuance of after-hours permits considered in a different context because it puts the burden on the City to prove it's not being unreasonable in its actions.

Winstead requested staff schedule a study session to revisit these items and another meeting to review the CUP.

Bernhardson said he will look at the schedule but these meetings will probably not occur until September. He said staff will send the Council a link to the Planning Commission and City Council meeting webcasts.

**6.2.1 CONFIDENTIAL—  
ATTORNEY-CLIENT  
PRIVILEGED Memo**

No discussion.

**7 ADJOURN**

Adjourned at 9:46 p.m.

Barbara Clawson  
*Council Secretary*