

Study Meeting
Monday, October 21, 2014
Bloomington Civic Plaza
1800 West Old Shakopee Road
Bloomington, Minnesota 55431-3027

1 Call to Order - 6:00 PM

Mayor Winstead called the study meeting to order at 6:00 p.m.

Present: Councilmembers C. Abrams, J. Baloga, T. Busse, A. Carlson, D. Lowman and J. Oleson.

Before consideration of any of the study items, Mayor Winstead discussed the hiring process for a new city manager, which involves a consultant hired by the City to assist in the process. He talked about having a subcommittee of Council members who will conduct the first round of interviews from a pared down list of candidates to the interviews Council will conduct of the finalists. He talked about the process to gain input from community stakeholders on this important decision. He also said there will be an opportunity for senior staff to interview the finalists as well.

Council members inquired if they would have the ability to review and add to the questions that will be posed to the candidates. One member inquired if possible changes to the Charter Commission regarding communication between the Council, the city manager, and City staff was going to be a subject of discussion during the interviews with the candidates.

Winstead stated any discussion relating to changes in the City's Charter is a separate matter and would need to start at a higher level due to Bloomington's Manager/Council form of government. He said it would not be a subject of discussion with the candidates.

Human Resources Manager Kay McAloney stated Council could have an opportunity to review the questions before the interviews start and they could suggest additional questions they'd like to see included. Possible interview dates of December 1st and 2nd were discussed. She talked about how the Council's interview of the candidate finalists would occur and suggested a meet and greet could be held for the stakeholders and Council members to meet the finalists. She stated she would get clarification from Legal regarding whether Council's interview of the finalists and the discussion regarding compensation would be occurring in an open or closed meeting. She stated a third date might be needed for this process so December 6th was suggested.

One Council member inquired if the City should begin a Request for Proposals process to hire a consultant who could advise the Council in developing performance measures to be used in evaluating the new city manager's performance when that time comes.

City Attorney Sandra Johnson explained the interview questions are considered private until they're asked of the candidates. She will check on whether the Council meeting to interview the finalists, make the selection, and discuss the compensation package needs to be done in an open meeting or if it could be held during a closed session.

- 2 **INTRODUCTORY** None.
- 3 **CONSENT BUSINESS** None.
- 4 **PUBLIC COMMENT PERIOD** None.
- 5 **HEARINGS/PUBLIC INPUT** None.
- 6 **ORGANIZATIONAL BUSINESS**

6.1 **2015 Preliminary Property Tax Levy and General Fund Budget**

Requested Action: Receive a presentation on the 2015 and Conceptual 2016 Special Revenue Funds, Internal Service Funds, and Enterprise Funds.

Budget Manager Cindy Rollins made the presentation on the budgets listed above.

Council questioned how the Self-Insurance budget differs from the League of Minnesota Cities Insurance Trust (LMCIT). Rollins explained the Self-Insurance budget includes the LMCIT insurance costs. She also said the City budgets for large deductibles. Another question asked by Council was whether the City has a reinsurance policy in Worker's Comp and what those limits are. Staff said that information will be provided to the Council.

With regard to the Enterprise Funds, Council asked about the private hiring of police officers to perform traffic duty on a contractual overtime basis. Staff explained only police officers are allowed to direct traffic at the Mall of America on Saturdays per state statute.

Council mentioned an increase in the Motor Vehicle budget and Rollins replied staffing will be increased in 2015 to better assist customers in a more timely fashion.

Rollins reported a 4% rate increase is proposed for Storm Water in 2015.

Regarding the Ice Garden budget, Rollins explained it will receive \$800,000 in Strategic Priorities money in 2015 to repay Golf operations for the transfers it previously made to help fund major capital projects at the Ice Garden.

One member stated the transfer of \$800,000 to Golf is outside of a Council strategic driven priority and disagreed with spending Strategic Priorities money in this manner.

Regarding Special Revenue Funds, a Council member questioned whether the revenue the City receives from its cable contract is safe. Staff replied if the City doesn't come to an agreement with Comcast, a formal process will be implemented. It was reported the City is close to an agreement with Comcast so the existing fees will stay in place.

These (18) budgets will be presented for action at the November 3 meeting.

No action required.

6.2 Annual Bonding Process Overview

Requested Action: Receive a presentation on the formalities behind Municipal Bonding in anticipation of the General Obligation (GO) Permanent Improvement Revolving (PIR) Refunding Bonds 2014, Series 48 sale set for November 17.

Chief Financial Officer Lori Economy-Scholler and Senior Vice President of Springsted, Inc. Terri Heaton jointly presented this item of which Council requested a copy. Some highlights from their presentation include:

- Financing Methods & Techniques: New Mall of America ramp will be constructed without issuance of any debt.
- City of Bloomington Net Debt Limit: 3% of the City's Market Value.
- Financing Timetable: Takes approximately 13 weeks to issue debt.
- Financial Sustainability: City's three AAA ratings.
- Key Bond Rating Factors: Majority of Bloomington's debt is paid off in 10 years or less.

Council inquired about a 30-day reverse referendum. Heaton explained 30 days following the public hearing on a street reconstruction or the Capital Improvement bonds, if more than 5% of the total number of voters in the last General Election sign a petition, they could require there be a referendum for a particular project.

Another inquiry was made regarding when the City's purchases its own debt and how it falls into all of this. Economy-Scholler replied the City was advised to buy the Radisson Blu parking ramp bonds when they were issued, as it was a short 5-year term.

No action required.

6.3 Hyland Greens Options

Requested Action: Discuss options presented for Hyland Greens Golf Course and provide direction to staff on which alternative(s) should be explored further.

Community Services Director Diann Kirby presented this item regarding options for the Hyland Greens Golf Course. She prefaced the presentation by stating several factors including unfavorable weather, an economic downturn and a changing golf industry has led to a decline in business at Hyland Golf and Learning Center resulting in an ongoing operating loss. She proceeded to make the following presentation: State of Golf, Rounds Played YTD % Change, Hyland Greens History (launched operations in 1964, was sold to the City in 1974, 18-hole course converted to 9 holes in 2011, expanded practice range in 2012, and launched foot golf in 2014), Hyland Operating Revenues vs. Operating Expenditures (Dwan has helped sustain expenditures), Dwan Operating Revenues vs. Operating Expenditures (doing well), Combined Budget for Both Courses (will receive \$800,000 transfer from the Ice Garden), City of Bloomington Vision, Parks and Recreation Goals, and 5 Options for Hyland's Future (continue as City-operated golf course, convert to park land, sell for development, manage privately, partnership on a year-round golf facility).

Kirby introduced Doug Tenpas, Minnesota Golf Academy (MGA) who presented a plan they had approached the City with back in March without having any understanding of the finances involving Hyland Greens. He suggested Minnesota Golf Academy could partner with the City to create a facility at Hyland that everyone could be proud of. He proceeded to make the following presentation:

- MN Golf Academy: (Only facility of its kind in the country)
- MN Golf Academy video
- Bloomington/MGA Partnership
- MN Golf Academy Vision: (Create a year-round facility)
- Stakeholders
- Residents
- MGA: (Manage and operate year-round golf center at Hyland.)
- Site Layout
- Inside View: (50,000 square feet)
- View from the South
- Indoor Practice Center
- Proposed Partnership: (Manage Hyland beginning in 2015 with the new facility opening in fall 2015. City-owned course and building. Council would approve any changes and rates. They would assume all liabilities for the golf course and pay the City a minimum of \$70,000 annually plus 4% of the revenues. Requested City issue \$5.5 million in tax abatement bonds, which MGA would pay for. The 5.5 million includes the building plus \$750,000 of infrastructure and improvements on the golf course the City will own. MGA would set aside a year's payment in reserve (\$350,000) and repay the bonds. They would eliminate the liability and pay the City a management fee to keep the golf course public.)

Council had inquiries regarding the length of the bonds, how viable is a 9-hole golf course over a long period of time, viability of long-term expandability should golf become popular again, and the amount of investment by MGA.

Tenpas explained the bonds would be for 20 years and the Council would have the major decision-making ability. He said there are too many 18-hole golf courses around and a 9-hole facility would serve beginning and senior golfers who only want to play 9 holes. He said the traffic that would be generated by the other activities at Hyland would help drive the rounds of golf played there. He believes Hyland is the right size for this facility. Their plan is to keep the indoor facility full. He said he would hope the facility could be expanded should the demand for golfing 18 holes increase. With regard to having skin in the game, he said MGA's investment is the reserve and the fact they'll be making all of the improvements.

Winstead commented this would be a tax abatement bond. The building would be taxable for a 20-year term. He said there needs to be a balance between golfers and events that could preclude Bloomington golfers from using it.

Busse commented Option 5 is the most palatable and said the City has nothing to lose by exploring the idea. He said more details will be needed for the City to fully examine the risk and the possibilities.

Tenpas said they've been working with City staff for eight months providing detail. Bernhardson confirmed it's beyond the "back of the napkin" consideration but staff didn't want to spend lots of time on this if the Council wasn't interested.

Baloga said more justice needs to be given to the other options, as the financial implications of all the options weren't presented. He said the City could sell the property for \$10 million. He asked if any consideration was given to peeling off the portion of land where the building would go. He said he visited MGA and it is an impressive facility.

Tenpas replied Hyland is a public facility primarily used by the City.

Winstead commented more information needs to be provided on the other options but said he sees using it as a park as a negative given what Three Rivers Park District provides.

Abrams said if this is going to be pursued for further study, staff should dig deeper to determine the demographics of the current users at Hyland and Dwan including the numbers of foot golfers for 2014. She said the foot golfers are upsetting the culture at Hyland and requested staff get a clear snapshot of what happened in 2014. She said she called to golf on a Saturday but Hyland was booked until Tuesday.

Carlson said he's a believer in public/private partnerships and supports further exploration of this proposal but would like the risks mitigated. He said the City would like to see MGA be successful, as it would fill a unique niche within the community.

Tenpas restated Hyland is a perfect location for a year round indoor/outdoor golf center. He said Dwan has 18 holes but no practice course. He commented they're open to various funding options. They'd like to start directing traffic over to Hyland and hope to market it for next year.

Winstead said Option 5 definitely needs further exploration. He wants the Performa tied into the City's obligation and requested it be analyzed. He'd like to see this endeavor be successful for both MGA and the City.

(There was Council consensus to explore this proposal further.)

Short Recess

Council took a short recess.

6.4 Smith Park/8201 Park Avenue South - Background Information

Requested Action: Receive background information for discussion and provide direction to staff regarding future Council consideration of a Revised Joint Use Agreement (JUA) with the Dar Al Farooq Youth & Family Center at 8201 Park Avenue South.

Bernhardson said Council's direction to staff at the July 28th study meeting was to go back and review the numerous land use allegations that have been made against the users of 8201 Park Avenue. He reported staff spent time chasing down several allegations but the ones that constituted a violation were not land use or Conditional Use Permit (CUP) violations. He explained staff tries to work with the offending party first but said what is happening at 8201 Park Avenue is happening at many places of assembly located in residential zones. He said the Council has been briefed on the constitutional issues and said the City Attorney and the Planning Manager will present.

Planning Manager Glen Markegard began by presenting the following slides:

Background Information, Aerial and History Timeline, Aerial of Boundaries of Xcel Property, City of Bloomington Property, and Dar Al Farooq (DAF) Property, and an Aerial of the Joint Use Facilities (athletic field, tennis courts, basketball court and the other areas the City has access to and the areas DAF has access to).

City Attorney Sandra Johnson made the following presentation on the Legal Constraints on the Regulation of Religious Land Uses. She presented the following slides:

RLUIPA Trigger – Religious Land Use, Equal Terms – No Discrimination, Discriminatory Intent, Avoid the Appearance of Discrimination, Equal “Terms” Violations, “Substantial Burden” Violations, Religious Exercise (courts have decided traffic and intensity are not compelling governmental interests, Substantial Burden, Substantial Burden – Hours of Operation (there is no curfew in Bloomington), Substantial Burden – Noise Violations (people and car noises are not listed nuisances unless there is a violation of the decibel standards), Substantial Burden – Food Service (a free will offering is allowed but can’t have a menu and charge prices), Substantial Burden – Peak Periods (The Conditional Use Permit (CUP) is all the City has to get DAF to do more parking but staff needs to engage the director), Substantial Burden - Occupancy Limits (only limited by Fire Code. If they go beyond those limits, staff will need to start a dialogue.), Substantial Burden – Delayed Processing, Over-Use (settlements could cost \$3.7 million as in other cases), Other Legal Issues (City can enforce parking lot lighting. People can’t be in Smith Park after hours.), Nighttime Parking – Smith Park (after hours use of the Park is prohibited. Individuals are violated.), Parking Lot Lighting, Park Usage, Representations of Applicant, Impact of RLUIPA Lawsuits, Other Implications, Conclusion (staff met with lawyers from the League of Minnesota Cities and there is no legal basis to place the CUP for this property on a future Council agenda for revocation, sanctions, or even tightening up. Trash and lighting are enforceable actions on the site.), Community Meeting (Department of Justice will provide mediation services if the violations are really egregious. It is inappropriate for the City to serve as mediators.)

Council said occupancy limits with regard to religious uses are set by Fire Code only but asked if the City could work to improve the nighttime parking situation through regulation. Johnson explained occupancy cannot be limited for a religious land use unless there is a health, life, safety hazard. She said the City can’t restrict nighttime use of a religious facility but it could try and address the nighttime parking through negotiation of the JUA. She said DAF’s CUP can’t be revoked if enforcement actions aren’t rectified, but fines could be imposed.

Council asked at what point the City would be considered as harassing DAF with its issues concerning the parking lot, trash, lighting, etc. Johnson said it would be a problem if the City was singling them out and not treating them the same as other churches in the city.

Bernhardson said if the City doesn’t go after other churches with similar complaints, the City could be in trouble. He said the City has video and audio of the same people coming to the podium to complain about DAF, which puts the City in a bad position.

When asked how frequently the City has to enforce the Fire Code across Bloomington, Johnson said the Bennigan’s St. Patrick’s Day party was the last time. She couldn’t recall proactive enforcement of Fire Code violations unless it was a special event, which resulted in a visit from the City’s Fire Marshal. She’s never heard of a Fire Marshal counting people as they entered a religious place of assembly.

Community Development Director Larry Lee explained Bloomington’s occupancy limits are determined by how a space is being used. A single room could have a different occupancy limit.

Council asked if anything had changed with the neighbors not wanting to talk to DAF, as was the case a couple of years ago. Johnson stated the City has a contract with The Conflict Resolution Center but with a religious land use, she said the religious organization should volunteer to initiate such an effort. She said the neighborhood could ask the City to request DAF voluntarily meet with them and a facilitator would be paid for by the City. Bernhardson added it would be problematic for the City if it looked like it was imposing its will on DAF. He said the neighborhood would have to be broadly represented and the meeting must take place in good faith.

Council asked what the City would do differently next time and Johnson said the Legal Department would be more involved on the front end of any land use application. The City would engage more with the applicant to try and plan better for the future. She restated occupancy limits can't be imposed on religious land uses, but it can include triggers for construction of additional parking. She said the City can negotiate terms with the property owner that would be mutually agreeable to both parties. She again stated traffic, parking, intensity of use, are not compelling government interests.

Bernhardson said the CUP is as good as the City can get a trigger for parking. He said the City will continue enforcement as long as there are valid violations to investigate. He said staff brought this to Council to determine if it wants to: Stay with the existing shared use agreements, bring forth a revised JUA that consolidates, clarifies, and improves it from the City's perspective, or make changes to the revised Agreement to see if 8201 will accept them. If it's not acceptable to DAF, Council falls back to Option #2 or #1. He said the CUP condition of having a new JUA in place by a certain date is moot.

Markegard continued the presentation with the following slides:

Comparison of 8201 Park Avenue with Other Bloomington Places of Assembly, Parcel Size, Building Size, Floor Area Ratio, Parking Ratio – Gym (bleacher capacity is 0.53 spaces per occupant), Access, Parking Restrictions (none adjacent to 8201 Park), CUP Conditions of Approval, Aerial with Parking Numbers, Parking, DAF Friday Assembly – Parking Counts (Proof of Parking threshold is 267 vehicles parked regularly and per data collected on Fridays, the parking has never exceeded 267 vehicles), Parking Conclusions (a No Parking Zone could be added on Park Avenue if Council is concerned with parking on the street).

Council questioned the dates of the data collected and suggested the continued growth of DAF and the permanence of the facility should have warranted more current information.

Markegard presented more slides:

Occupancy (Fire Code limit for occupancy in Assembly room is 300, the Fire Code limit for occupancy in the Gymnasium is 1900, and full capacity on the bleachers is 500, which is what the CUP was tied to. The trigger is the Proof of Parking by overflow parking conditions.)

Bernhardson stated the “compelling governmental interest” test relates to the interior of the building but DAF can use any facility within the structure to worship. He said the City can't regulate why they're assembling.

Markegard continued with the following slides:

Issues related to the City Code, Parking Lot Lighting (there have been lighting violations followed by compliance), Food Safety, Noise, Field Use (Revised JUA states no rent can be collected and any event would have to comply with City usage requirements for parks. If the City collects any rent through its normal procedures, it would be shared with DAF.) A commercial park would require another CUP, which is not in place.

Markegard presented the issues relating to the JUA:

Shared Parking, Issues Enforced Against Individuals (speeding, parking violations, being in Smith Park after hours), Traffic (within range of typical Bloomington streets), Hours of Operation, Classes, and Next Steps (Is Council ready to schedule consideration of the JUA?)

Council comments/inquiries:

Oleson said as representative of the represents living near 8201 Park, he met with the neighbors on two occasions; several months ago and more recently. He said he also met with Hyder Aziz, Director of Dar Al Farooq and others at the Center in March. He said no other issue has frustrated him like this one and it's been going on for three years. There's been lots of education on this and background provided on RLUIPA. He reported he drove on Park Avenue six times during Ramadan and on more than twenty Fridays. He believes this has risen to the point whereby the City should meet with the proper authorities at 8201 Park because the number of users at DAF is considerably more than what they were three years ago when the agreement was made with them. He said the CUP can be changed as long as both parties agree to it. He believes it would be wise for Council to delay action on the JUA to early 2015 so the appropriate authority to execute the agreement on behalf of DAF can be determined. He would like to see two or three Council members participate in a discussion between the City and DAF. He believes education and open dialogue would result in an agreement that moves forward in a positive way and helps reduce the discriminatory attitudes by anybody. He believes it will produce an outcome that will influence the interactions between people of different cultures in a good direction.

Winstead said many people have expressed frustration with DAF; its structure and its management. He said there are events listed on the Internet that have not been reported by Hyder Aziz such as a restaurant with a menu and dollar amounts. He said no one has stepped up to take responsibility for trying to operate a restaurant at DAF. Two neighbors continually bring issues to Council relating to traffic and parking at this site without showing bias to the religion. Their issues have focused on the intensity of the use and late night use.

Oleson suggested both parties get together and describe what they'd like to see happen at DAF. The City could provide its goals for DAF and how it will respond to the use of a facility that is protected by law. Put everything on the table and indicate to DAF the City will be guided by parameters within the law. He believes this will be a learning experience for both DAF and the City.

Winstead said the three options as outlined pertain to the JUA and they won't have any meaning to start to address the issues raised by individuals regarding the activities at 8201 Park Avenue.

Lowman said he grew up in this district and he's seen the evolution of Smith Park. He's unsure about what outcome could be reached regarding the CUP. He said the neighbors aren't happy with what's going on at DAF but there is a risk to the City in how it responds to those claims and allegations. He said the Council can't discount what the neighbors are saying and suggested perhaps staff should look at restricting parking on Park Avenue 24 hours/7 days a week. He believes the City should only enforce what it can so as not to put the City at risk for a lawsuit.

Bernhardson said the City has offered to pay for mediation between the neighbors and DAF but any mediation that were to take place between the City and DAF would smack of discrimination, as the City hasn't done that with anyone else. He said the "No Parking" could be revisited again as could the traffic counts. He said the JUA could be put on hold with the understanding that the condition of having a JUA in place is moot.

Winstead said what Oleson is proposing with the City and DAF talking over coffee to see if changes should be made in their operations could be construed as the City putting pressure on DAF.

Carlson commented the revised JUA is a common sense, standalone document that is long overdue. He encouraged the City to negotiate with DAF in good faith to move it forward.

Oleson thanked the Legal Department for working to enlighten the Council on this subject. He requested a couple of days to consider Options 1, 2 or 3.

Bernhardson said staff will provide this presentation to the Council electronically.

Abrams said with regard to contracted mediation services, she would support offering those services without the City's intrusion or participation but as a way to create accountability for the neighbors and DAF. She said what little enforcement authority the City has with this property relates to parking, garbage, etc. to ensure that as a piece of land and as a building, 8201 Park Avenue is not violating public safety and hazards that are being enforced in other locations.

Winstead concurred and said let that process go forward, as it might alleviate some concerns for both parties. He said his concerns were addressed in the JUA, as it clarifies all of the agreements. He stated the revised JUA clarifies the benefits of the Agreement to the City and it allows for a joint parking agreement.

Bernhardson said staff will recirculate the revised JUA for feedback and will inquire if Hyder Aziz is DAF's legal authority to sign the document. He said staff will provide Council with the July 28th study materials and a review of the proposed changes. He said a time for formal consideration of the JUA will be discussed at the next study meeting.

Lowman again asked the Council if anyone was interested in restricting the parking.

Winstead said there was discussion regarding restricting parking at one time but the neighbors had no interest in doing that.

Bernhardson suggested the Council deal with the JUA and said staff will make mediation available to the parties involved. He said parking restrictions could be an outgrowth of the mediation discussion.

Winstead stated staff will reach out to the neighborhood and DAF regarding the City's offer to provide mediation services if the parties are interested.

No action required.

6.5 2015 Draft Council Meeting Calendar

Requested Action: Review the draft 2015 Council meeting calendar.

The City Manager requested Council inform him of any concerns they might have with the draft calendar, as it will be on the November 3 agenda for approval.

No action required.

7 ADJOURN

Mayor Winstead adjourned the study meeting at 11:23 p.m.

Barbara Clawson
Council Secretary