

**Regular Meeting**  
**Monday, January 26, 2015**  
**Bloomington Civic Plaza**  
**1800 West Old Shakopee Road**  
**Bloomington, Minnesota 55431-3027**

- 1      **CALL TO ORDER- 7 PM**      Mayor Winstead called the meeting to order at 7:00 p.m.
- Present:      Councilmembers C. Abrams, J. Baloga, T. Busse, A. Carlson, D. Lowman, and J. Oleson.
- Staff:      Interim City Manager Larry Lee.
- 2      **INTRODUCTORY**
- 2.1      **FLAG PRESENTATION**      Mayor Winstead led the audience in the pledge of allegiance to the flag.
- 2.2      **Human Rights Commission 2014 Annual Report / 2015 Work Plan**
- Requested Action: Accept the 2014 Human Rights Commission (HRC) Annual Report and approve their 2015 Work Plan.
- HRC Chairperson Dennis Kane presented the 2014 Annual Report and 2015 Work Plan. He announced the 2015 Work Plan includes another naturalization ceremony at Civic Plaza.
- Busse asked the HRC to look at ways to engage the Black Lives Matter group to open up some dialogue to move that situation in a forward direction.
- Kane said the HRC would be happy to look into that and he would discuss it with Human Services Manager Lorinda Pearson.
- Oleson echoed Busse's comments and asked the commission to give thought to understanding cross cultures at a person to person level and offered to be involved.
- Motion was made by Abrams, seconded by Oleson, and all voting aye, to accept the HRC 2014 Annual Report and approve the HRC 2015 Work Plan as presented.
- 3      **CONSENT BUSINESS**
- 3.1      **MN Dept. of Public Safety Budget Adjustment**
- Requested Action: Approve a Minnesota Department of Public Safety budget adjustment in the amount of \$41,804.00 for a grant that will be in effect from January 1 – December 31, 2015.
- Motion was made by Abrams, seconded by Baloga, and all voting aye, to approve the budget adjustment as described above.

- 3.2 Support of ROW Acquisition Agreement 2016-201 Normandale Blvd Project Adopt Resolution**
- Requested Action: Adopt a resolution approving the Right-of-Way (ROW) acquisition agreement for the Normandale Boulevard (CSAH 34) Reconstruction Project (City Project 2016-201).
- Motion was made by Abrams, seconded by Baloga, and all voting aye, to adopt a resolution approving the agreement as described above.  
(R-2015-5)
- 3.3 2015-2016 City-Wide Curbside Clean-up Collection Program-Award Contract**
- Requested Action: Award a two-year contract to Republic Services for the 2015-2016 Citywide Curbside Clean-up Collection Program for the collection and disposal of trash, brush, scrap metal, and appliances in the amount of \$1,818,885.50 plus any applicable State of Minnesota and Hennepin County taxes on trash collection and disposal.
- Motion was made by Abrams, seconded by Baloga, and all voting aye, to award a two-year contract to Republic Services for the 2015-2016 Citywide Curbside Clean-up Collection Program.
- 3.4 3 Freightliner Fire Engines - Approve Purchase**
- Requested Action: Approve the purchase of three Freightliner engines from Rosenbauer Minnesota, LLC under HGAC Contract #FS12-13 in the amount of \$1,073,292.
- Motion was made by Abrams, seconded by Baloga, and all voting aye, to approve the purchase of three Freightliner fire engines.
- 3.5 Replacement Police Vehicles - Approve Purchase**
- Requested Action: Approve the purchase of nine 2015 Ford Interceptors from Nelson Auto Center under State of Minnesota Contract #83065 for a total of \$251,472.55.
- Motion was made by Abrams, seconded by Baloga, and all voting aye, to approve the replacement of Police Department vehicles.
- 3.6 Two Tandem Truck and Bodies - Approve Purchase**
- Requested Action: Approve the purchase of two 2016 Volvo VHD64F200 cab/chassis units from GATR Truck Center of Sauk Rapids, MN under State of Minnesota Contract #77949 in the amount of \$175,516.92 plus Minnesota State Vehicle Sales Tax (6.5%) in the amount of \$11,408.60 and the purchase of two Henderson 1596-TA Elliptical Bodies from Aspen Equipment Company under State of Minnesota Contract #80236 in the amount of \$235,065.00.
- Motion was made by Abrams, seconded by Baloga, and all voting aye, to approve the purchase of two tandem trucks and bodies as described above.
- 3.7 Public Health Grants - Approve Acceptance**
- Requested Action: Accept the Public Health Grants and approve the budget adjustments as described in the agenda item.
- This item was held by Lowman who encouraged the City to continue submitting grant requests to the Minnesota State Department of Health to keep the public health programs going in Bloomington.
- Motion was made by Lowman, seconded by Abrams, and all voting aye, to accept the public health grants and approve the budget adjustments as described in the agenda item.

- 3.8 AFSCME Parks Maintenance Labor Agreement Ratify 2015-2017** Requested Action: Ratify three-year labor agreement 2015-2017 with AFSCME Local 2828 Park Maintenance.
- Motion was made by Abrams, seconded by Baloga, and all voting aye, to ratify the 3-year labor agreement (2015-2017) with AFSCME Local 2828 for the Park Maintenance employees as presented in the agenda materials.
- 3.9 AFSCME Technical Labor Agreement - Ratify 2015-2017** Requested Action: Ratify three-year labor agreement for 2015-2017 with AFSCME Local 2828 Technical Unit.
- Motion was made by Abrams, seconded by Baloga, and all voting aye, to ratify the 3-year labor agreement (2015-2017) with AFSCME Local 2828 for the Building and Inspection, Environmental Health, Planning, Assessing, Animal Control, Fire Prevention and Housing and Redevelopment Authority Divisions as presented in the agenda materials.
- 3.10 Metropolitan Council (2011-702 South Loop ROW) Approve Settlement Agreements** Requested Action: Staff recommends approval of the settlement agreements with Metropolitan Council for Project 2011-702 South Loop ROW.
- Motion was made by Abrams, seconded by Baloga, and all voting aye, to approve the settlement agreements with Met Council for the South Loop ROW Project 2011-702.
- 3.11 New Oakland Ave. Street Light Accept Utility Easements** Requested Action: Accept the utility easements for the new street light on Oakland Avenue.
- Motion was made by Abrams, seconded by Baloga, and all voting aye, to accept the utility easements for a new street light on Oakland Avenue.
- 3.12 Travel Expenses City Council-Approve** Requested Action: Approve the estimated out-of-state travel expenses for Council members Tim Busse, Andrew Carlson and Jon Oleson as listed in the agenda item.
- Motion was made by Abrams, seconded by Baloga, and all voting aye, to approve the estimated out-of-state travel expenses for Busse, Carlson and Oleson.
- 3.13 Meeting Minutes City Council-Approval** Requested Action: Approve the City Council meeting minutes for the following 2014 meetings: June 23 (study), July 7 (study), July 21 (study), September 8 (regular), and September 22 (regular).
- Motion was made by Abrams, seconded by Baloga, and all voting aye, to approve the minutes, as presented, for the City Council meetings as listed above.
- 3.14 Building Automation System for Bloomington Ice Garden - Approve Purchase** Requested Action: Award contract to Northern Air Corporation - NAC in the amount of \$217,640.00 plus a \$21,764.00 contingency to install a new central Building Automation System for the Bloomington Ice Garden.
- Motion was made by Abrams, seconded by Baloga, and all voting aye, to award a contract to Northern Air Corporation – NAC, as described above, for a new building automation system for the Bloomington Ice Garden.

**4 PUBLIC COMMENT PERIOD**

Mayor Winstead opened the Public Comment Period for anyone wishing to address the Council on any matter not on tonight's agenda.

Speaker #1: Alex Stanford, Congressman Paulsen's Office  
He brought a brief message on behalf of Congressman Paulsen. He described the services Paulsen's office provides, which includes helping people connect with the appropriate party when they have issues with any federal agency. He encouraged the public to contact Congressman Paulsen at [Paulsen@house.gov](mailto:Paulsen@house.gov).

Speaker #2: Sally Ness, 8127 Oakland Avenue South  
She made the following comments regarding the Al Farooq Youth & Family Center (AFYFC) at 8201 Park Avenue South:

- Don't sign the Joint Use Agreement (JUA) until the uses at AFYFC are compliant.
- AFYFC fills its and the Smith Park parking lots every Friday.
- Asked the City to address the overuse of the AFYFC building.
- Compared the AFYFC Bloomington site to a property in St. Anthony.
- Asked why the Amended and Restated Site Development Agreement for AFYFC is not listed on the City's AFYFC FAQ page.
- Read some of the conditions from the Conditional Use Permit (CUP) AFYFC was granted in May 2011, which she said states City parks are closed during the night.
- Don't sign JUA that allows Smith Park to be open during the night.
- Reported AFYFC clearly has more than 300 users when they fill up the Smith Park parking lot during the middle of the night.
- AFYFC doesn't have enough classrooms to handle the 600+ users.
- AFYFC was not designated for a university.
- Don't sign the JUA due to the current overuse of the building.

Winstead asked staff to follow up on some of the comments made by Ness.

Speaker #3: Vi Rozek, 8214 Park Avenue South

She made the following comments regarding AFYFC at 8201 Park Avenue:

- Agreements signed by the Mayor, the Council and AFYFC.
- City amended the Site Use Agreement in September 2011, which was signed by the City Attorney, City Manager, and AFYFC Director.
- Two agreements were signed; the JUA and one for parking.
- Questioned why AFYFC Director Hyder Aziz was allowed to sign forms if he didn't have the legal authority to make certain representations per a staff comment at the July 2012 meeting.
- AFYFC should have to strictly conform to the CUP they were issued and read the conditions associated with it.
- Why is AFYFC allowed to have over 300 users constantly and serve as a university on the weekends? Why are they allowed to have so many large events on the weekends?
- Did AFYFC apply to the City for a university to be located at 8201 Park?
- Why does the City allow Smith Park to be used past 10 pm?
- Requested the Council ask more questions before it agrees to a new JUA.
- Giving AFYFC carte blanche to do whatever they want is an abuse to the City, Smith Park, and their neighborhood.

5 LICENSING DIVISION:  
PUBLIC HEARINGS

6 DEVELOPMENT  
BUSINESS: PUBLIC  
HEARINGS

6.1 Jennifer Development  
Company, Inc.; 10701  
Hampshire Ave.

Requested Action: A draft Public Improvements Agreement for the sidewalk and trail along Hampshire Avenue South and West Old Shakopee Road, as requested by the City Council at its January 5, 2015 meeting, is being reviewed by City staff and the applicant but is not complete. Staff has also prepared cost estimates for the sidewalks and has additional information on the condition of the sidewalks (a rating of 2 out of 100 along Old Shakopee Road). Staff will present the additional information and seek Council direction. Depending on direction, the item will likely need to be continued to the February 2, 2015 meeting to allow additional time for staff and the applicant to review the draft agreement.

Planner Mike Centinario and City Engineer Shelly Pederson made the joint presentation highlighting the following information:

- Applicant is appealing Condition of Approval #9 relating to the need to reconstruct a 10-foot bituminous sidewalk along West Old Shakopee Road and a 6-foot concrete sidewalk within the sidewalk/bikeway easement on Hampshire Avenue, as approved by the City Engineer.
- Council-recommended agreement that the Applicant be assessed for the costs to reconstruct those improvements when either an adjacent property is required to do a similar project or a City project occurs.
- Photo of concrete 5-foot sidewalk along Hampshire Avenue, which staff agreed could wait until work is done on an adjoining property.
- Asphalt trail facing east along West Old Shakopee Road (WOSR) has a Pavement Condition Index (PCI) rating of 2 and should be replaced sooner rather than later.
- PCI of the trail to the east and west of this section along WOSR is 40.
- Cost Estimates: Hampshire sidewalk (\$55,000), West Old Shakopee Road (WOSR) Trail (\$99,000).
- Construction costs for the trail would be less expensive if the owner did it while the project construction is occurring on site but it could be assessed also.
- Estimated cost for the asphalt trail facing east on West Old Shakopee Road could be lowered to \$66,000 if the City worked with Hennepin County to move the trail and widen it towards the street, thus decreasing the retaining wall costs by approximately \$30,000.
- Asphalt trail -- corner of WOSR & Hampshire is in bad shape.
- Recommendation: Continue with reconstruction of the Hampshire Avenue sidewalk per the agreement discussed at the last meeting and request the reconstruction of WOSR trail either be done with the development project or have Council direct staff to reconstruct it in 2015 and assess the cost back to the property owner, which could be done by a Petition of Waiver at the February 2 Council meeting.

Winstead asked if staff had discussed this with the Applicant and Pederson replied they had not.

Abrams asked about the difference in the PCI ratings of the two outside sections of the trail along WOSR compared to the section in between that has a PCI of 2. Pederson stated this trail was constructed by Hennepin County a long time ago but didn't know why the section in the middle was so bad. She was unsure as to the soil conditions when it was constructed.

Baloga questioned the sidewalk policies of the City and Hennepin County. He thought the street had been reconstructed and wondered why the trail wasn't updated then. Pederson explained the County's sidewalk policy is more robust and contains some cost sharing. They wait to do trail projects when there are adjacent street projects; none of which are planned on these streets. She will check on why the trail wasn't updated then.

Carlson agreed with staff's recommendation to have this work done at this time as part of this project or to have it done in 2015 and assess it back to the property owner. He desired the trail not be moved closer to the roadway so the boulevard could be preserved. Pederson explained the trail would not be moved over, it's just the additional width would be added to the street side of the trail. The City would preserve the rest of the green space.

Busse asked if any development to the east or the west was contemplating any work in the future or will this section continue to deteriorate for the foreseeable future. Centinario said staff is not aware of any redevelopment projects to the east or the west nor is it aware of any project that would trigger that significant redevelopment provision in the City Code.

Baloga inquired as to the width of the green space between the existing trail and the roadway. Pederson said it varies anywhere from 15-25 feet. As it gets closer to the intersection on the westerly end, it drops down to 10 feet. She said there is a sidewalk easement there.

Baloga also asked about the green space along Normandale Boulevard for another project and Pederson replied that will be between 6-10 feet. He said staff's recommendation of moving into the green space for the additional sidewalk width makes a lot of sense. He asked about the condition of the trail beyond the adjoining parcels on either side. Pederson replied it is generally between 40-55 along that stretch.

Winstead said the photos are very telling of the condition.

Speaker #1: Michael Mergens, Attorney Representing the Applicant  
He said when they were here two weeks ago the estimated cost to install the sidewalks was \$50,000 and now between the two it's \$150,000. He believes there is something more going on with the trail section along WOSR and that the actual cost will be higher yet. He thought they had a good solution two weeks ago. He said this developer is taking a chance on redeveloping a functionally obsolescent building in hopes of bringing in some tenants. He said the tenant base doesn't justify spending \$50,000 let alone \$150,000. He said the project will not move forward if they have to replace a section of sidewalk that has doubled in cost from what they anticipated. He said the sidewalks will stay in the shape they are today until the City or the County adopts a project to replace them. He said there are questions regarding benefit to the property and how much of that cost can be assessed. He indicated a desire to talk with staff. He said they haven't seen any draft agreement from the City. He asked for direction from the City Council and a week to figure it out. He said if it involves the property owner replacing a sidewalk at a cost of \$100,000, this process won't go forward.

Winstead suggested this item be continued. He said the Hampshire Avenue sidewalk could remain as is until neighboring properties to make some improvements. The section along WOSR, however, is bad. He indicated he wouldn't support this unless there were provisions or conditions to have that sidewalk repaired, included in the project or initiated as a City project and then assessed. He suggested keeping the retaining walls to a minimum to keep costs down but make it functional.

Motion was made by Abrams, seconded by Oleson, to continue this item to the February 2, 2015, Council meeting to allow for further discussion by both sides. Council would like to see this included in the project or the City could initiate a project and assess it to the property owner. No vote was taken at this time.

Carlson asked how long the applicant would have to pay for the assessment. Pederson replied it would be for 10 years at 5% interest. She clarified the cost for the trail along WOSR would be approximately \$66,000 without retaining walls.

Lee explained the developer might choose to do the sidewalk themselves because constructing it along with their other project might be cheaper than having the City contract for the sidewalk and assess it.

Mayor called for a vote on the motion to continue this to the February 2, 2015, Regular Council meeting. It passed 7-0.

**Closed Public  
Comment Period**

The Mayor asked if anyone else wanted to address the Council or the Public Comment Period would be closed. No one came forward to speak so it was closed.

**6.2 Hennepin County  
Residential Treatment  
Facility 8941 Portland  
Ave.; CUP**

Requested Action: Adopt a resolution approving a Conditional Use Permit for a Residential Treatment Facility located at 8941 Portland Avenue South and adopt a resolution approving a variance to allow use of an existing detached structure for trash collection and storage located at the same address for Hennepin County, subject to the conditions listed in the staff report.

Planner Dennis Fields provided the staff report. He explained this property started in 1962 as an apartment building with a detached parking structure. The property is owned by the State but has been vacant since 2005. Hennepin County is requesting a Conditional Use Permit to operate an Intensive Residential Treatment Services (IRTS) Program and a variance to allow one stall of an existing detached garage structure to be used for trash collection and storage. No significant exterior changes are planned except to add a 6-foot privacy fence on the north side of the building. He said the Landscape Plan meets City Code. The application was recommended for approval by the Planning Commission (PC) with an additional condition that the applicant implement an outreach program with the neighbors. Legal staff, however, said that condition would be in conflict with State statute and that unless the applicant is willing to add that condition on its own, it needed to be removed. Staff's recommendation is to approve the Conditional Use Permit and the variance without the PC's proposed condition. He reported the applicant has held some neighborhood meetings.

Carlson said it bothers him there was no mention of a school located across the street from this site and thought there should be a greater separation between the school and this intended use. He questioned the spacing regulations in this zoning district and asked if this is located on the Safe Routes to School path.

Fields explained the Code does not have any distance requirement for this type of use. The City's Zoning Code allows this as a conditional use as long as it's a State program. He didn't know if it was located on a Safe Routes to School path.

Speaker #1: Michael Noonan, Hennepin County Real Estate  
He said staff's presentation thoroughly described their application and the proposed uses. With respect to the outreach program, he said the County is prepared to sponsor a program for the immediate neighborhood and said they agree to putting in the voluntary condition suggested by the Planning Commission. He reported they've sponsored three meetings with the neighborhood and have been working with City staff and the community on this application for a year. He stated this is different from the State facility that was run out of this location ten years ago. He said this will be a facility for intense treatment. He stated concerns have been expressed about the amount of free time the residents will have. He explained the days of these residents are very structured. Staff works to transition the patients from a facility to living on their own. He said Touchstone Mental Health is a well-run facility with a track record, as they have eight Intensive Residential Treatment Centers (IRTC). The residents are properly managed. He said representatives from Hennepin County Human Services and Touchstone were available for Council questions.

Baloga questioned what renovations will be undertaken prior to occupancy. Noonan stated the exterior of the facility will not be renovated except for the establishment of a fenced-in healing garden, which will provide a private space for the residents.

Winstead said he recalled residents going out to the sidewalk to smoke in the former facility and asked about Touchstone's rules adding the City has different tobacco ordinances in place now. Noonan replied residents can smoke in the healing garden. He then went on to explain the second renovation will be to accommodate the trash on site. In addition, they've done \$600,000 in renovations to the interior to adapt the space to meet the needs of the residents.

Baloga asked if there will be an alarm system on the doors in case someone tries to leave the building. Noonan said there will not be an alarm system but the residents will be monitored by staff 24 hours/day, 7 days/week. Three staff will be present during the evening hours.

Carlson again questioned the location for this type of facility near a school. Noonan said the site was chosen because it housed a similar use in the past. It's convenient and it was accepted by the community some time ago. He said there were no issues with the neighboring residents or the school in the past; just about some loitering on the sidewalk. He said this site was made available to them by the State, which has an interest in locating these patients/residents in various locations. Carlson requested someone from Human Services speak to this location. Noonan said serious mental illness is problematic for the patients but they're not a threat.

Speaker #2: Louella Kaufer, Program Services for Hennepin County  
This is a treatment facility for people with serious mental health illness. These individuals are not Level 3 sex offenders. They typically come in and receive intense treatment for 90 days and then return to the community. She said they do not pose a danger to the community.

Carlson asked how these residents could be considered Low Risk when they are considered to have a serious mental health issues. Kaufer explained risk refers to the fact that these people have received treatment in a hospital but are not quite ready to go home. She said they're considered low risk because they will receive supervised treatment 24/7 and they're deemed not to be at risk for injuring themselves or others. She said if such indications were to appear, they would be transported back to the hospital. She said they have the appropriate staffing levels for these types of patients.

Abrams asked if a patient needs to be re-hospitalized, can the staff refer them to the hospital or could the neighbors make that request. Kaufer deferred that question to the Touchstone representatives.

Lowman inquired as to the differences between the residents that were previously housed there compared to who will be housed there now. Kaufer explained some mental illnesses are similar but the services offered to treat them are different. She said these patients will be similar to those housed in this location in 1977 and they'll be coming from neighboring hospitals.

Lowman asked how staff is trained how to handle different circumstances that occur in these types of facilities with two entrances at the staffing level proposed. Hoffer referred this question to the Touchstone representatives.

Busse commented on the other locations for these facilities but said none of them are located across the street from an elementary school and asked if that presents any red flags. Kaufer said there are other facilities located near schools and parks. She said the County trusts this particular provider to provide the necessary outreach programs with the neighborhood.

Speaker #3: Dedi Van Syke, Touchstone Treatment Director (Minneapolis) and Dr. Kutol, Touchstone Senior Director of Clinical Operations

Dr. Kutol said their current facility in Minneapolis is located 1½ blocks from a charter school. Kids walk in front of that facility daily to get to bus stops at both ends of the block. He said there have been no complaints or concerns from anyone in that neighborhood. They held an open house at their Minneapolis site in the Seward neighborhood and again, those neighbors had no issues. They want to be good neighbors to the neighborhood.

Carlson asked if the proposed staffing levels are required by the State or are Touchstone's own standards. Van Syke replied the State requires less staffing so what is being proposed by Touchstone are their own standards.

Abrams inquired as to the protocol across the mental health system when it's been determined a resident needs more treatment and/or hospitalization. Van Syke said a nurse at the facility, along with the treatment director, would determine if a patient needs to return to the hospital or can be treated in the community by their psychiatrist. Abrams inquired further about protocols in place by Touchstone to handle intake and discharge services. Van Syke said the Department of Human Services determines which type of treatment various groups of people will receive as determined by the State.

Lowman inquired as to the process used to train the staff and asked for details regarding the overnight staffing. Van Syke said the staff receives 40 hours of training and there is continued training throughout the year. The staff is well trained by a master's degree level staff which is different from other treatment facilities in the Twin Cities. She further described exactly which staff is there during the daytime and evening hours.

Speaker #4: Karen Nordstrom, 8123 Forest Hills Circle  
She has a family member who has experienced IRTC and said she attended two of the three meetings that were held. She said many of neighbors who attended the meetings were concerned with a school located across the street. She worked at an Anoka Treatment Center as a young nurse and said the Twin Cities needs more of these IRTCs. She's had experience with this issue for 20 years. This is a necessary facility for Bloomington, as it will keep the residents under control and keeps them off the street. She said these treatment facilities are a good thing.

Speaker #5: Brad Kessler, Resident and Parent  
He has a 7<sup>th</sup> grader at Valley View Middle School (VVMS) and another one coming up. He attended the meetings and said this wasn't broadcast to the extent it should have been. He said the notification area is only 500 feet so they weren't notified. He said the school has worked hard to restore its image but fears it will decline again with this facility in the neighborhood. He said someone reported drug use and fights have occurred in the parking lot of this building. He said the VVMS principal said these conditions are unpredictable and asked Van Syke what they expect could happen and how it will be handled. He said 3 staff for 16 residents isn't a lot so wanted to know how quickly staff could respond if there was an issue. He was concerned with security issues within the neighborhood.

There were no more Council questions.

Motion was made by Abrams, seconded by Lowman, and all voting aye, to close the public hearing.

Oleson said he lives within eight blocks of this facility and was contacted by the principal of (VVMS) regarding this facility. He spoke to a PSA group, which included a lot of Hispanic people. He said the community needs to participate in the healing process and mentioned a social worker who attended the meeting who was experienced in working with people with mental illness. He commented no one from the school is here to speak on this but reported the principal sent out notices to the parents through their children. He said there is only one neighbor here. He said according to the statistics, one out of every three people has some mental illness issues that require some level of care. He said he will support this and given the track record of Touchstone, he'd be willing to meet with the school as needed the first year.

Lowman understood the concerns of this facility being located near a school and said the City has a long history of recognizing people with disabilities. He said VVMS is a great school but he strongly supports this. He believes the City needs to support this center, as it's a place for people to get the help they need to get back into the community.

Motion was made by Lowman, seconded by Oleson, to adopt a resolution approving a Conditional Use Permit for a residential treatment facility at 8941 Portland Avenue South for Hennepin County and adopt another resolution approving a variance to allow use of a detached structure for trash collection and storage subject to the conditions in the staff report including a voluntary condition by the applicant to implement an outreach program with the neighbors. No vote was taken at this time.

Winstead said the outreach condition is very important and concurred with Oleson that it should occur during the first year. It needs to be acted on immediately.

Carlson asked about the length of the contract. Interim City Manager Lee explained the property owner is accepting the CUP but the condition will apply for any other operator that works for Hennepin County. Carlson said he was impressed by Touchstone. He said let's be thoughtful in the location because not all mental health providers are equal but the conditions help. He said it's a convenient location for the County.

Mayor called for a vote on the motion. It passed 7-0.  
R-2015-6 (CUP) and R-2015-7 (Variance)

Noonan said they anticipate opening in late June or early July.

**6.3 Luther Company 8860 & 8870 Wentworth Ave; Interim Use Permit**

Requested Action: Approve an Interim Use Permit expiring on May 19, 2018, for the open storage of motor vehicles at 8860 and 8870 Wentworth Ave. South for Luther Company, subject to the conditions in the staff report.

Planner Michael Centinario presented the staff report. He said Luther Co. is requesting an Interim Use Permit for the open storage of motor vehicles. He showed several slides including the location of the vacant site, the 6-foot fence wooden fence that will remain, and the access gates that will be replaced. He said one improvement to be made is a gate to access the ingress and egress of the two sites, which will reduce the truck traffic along Wentworth Avenue. It's recommended for approval by staff and the Planning Commission. The expiration date of this permit will coincide with the expiration date of the permit on the adjacent property, which is May 14, 2018.

Speaker #1: Steve Sabraski, Professional Services, Representing Applicant They will repair the fence and upgrade the security. He said the access will help to alleviate some of the traffic on Wentworth. He said some fueling will be accepted onsite.

Motion was made by Oleson, seconded by Lowman, and all voting aye, to Approve an Interim Use Permit expiring on May 19, 2018, for the open storage of motor vehicles at 8860 and 8870 Wentworth Avenue South for the Luther Company, subject to the conditions listed in the staff report.

**6.4 Master Sign Plan Application for MOA Phase IC**

Requested Action: Approve the Master Sign Plan for the Mall of America at 8100 24<sup>th</sup> Avenue subject to the conditions and Code requirements listed in the staff report.

Planner Jason Schmidt presented the staff report. He showed a slide presentation and said the amendments approved by Council last fall are included in this Master Sign Plan. He explained the Mall of America (MOA) is only seeking flexibility for MOA Phase 1-C. He said the Master Sign Plan is recommended for approval by staff and the Planning Commission.

Council had no questions.

No public testimony was received.

Motion was made by Busse, seconded by Oleson, and all voting aye, to approve the Master Sign Plan for proposed signage on Mall of America Phase 1C for MOAC Mall Holdings, LLC at 8100 24<sup>th</sup> Avenue, subject to the conditions listed in the agenda item.

**7 TRANSPORTATION & UTILITY IMPROVEMENTS: PUBLIC HEARINGS**

None.

**8 ORDINANCES: PUBLIC HEARINGS**

**8.1 Mixed Use Districts and Nonconformity Standards City Code Amendments**

Requested Action: Adopt an ordinance to amend Chapters 19 and 21 of the City Code – Mixed Use Districts and Nonconformity Standards:

- 1) To modify use, development, and design standards in mixed use districts;
- 2) Modify motor vehicle sales standards; and
- 3) Modify nonconformity definitions.

Planning Manager Glen Markegard provided this staff report and said there will be five brief presentations in one. His presentation covered the following slides:

- Timeline: (2) Items – Memorandum of Understanding (MOU) with Kraus-Anderson (K-A) and the Auto Dealer Amendments.
- Auto Dealer Amendments: Minimize negative impacts on existing businesses. The proposed changes do that. Makes existing auto dealerships conforming uses. Requires 0.6 minimum Floor Area Ratio (FAR). Potential for further FAR flexibility.
- Minimum FAR: All other uses in the district are 1.0 and existing auto dealerships are 0.6 FAR.
- Rezoning Recommended By District Plan: Continue with the area outlined in red (K-A, Wedding Day Jewelers and Jiffy Lube) and move forward with the remaining shaded areas tonight.
- K-A MOU Proposed Terms: Continue indefinitely but no later than August 3, 2015. Various parties will continue to meet. The MOU could be terminated with 90 days notice by either party. Met Transit requires zoning be in place by the third quarter of 2015 to assist in receiving Federal transportation funding.
- Desired Outcomes
- Recommendation: PC recommends denial but staff is recommending a much more permissive approach.
- Recommended Motions: (6) separate motions.

Winstead said Council will approve the amendments, adopt them for the parcels, and continue the rezoning of the Southtown parcel for up to 7 months to allow the discussions to continue.

Council had no questions of staff.

Winstead said the public hearing is still open on this item and asked the audience if staff has worked through everything.

Speaker #1: Eric Galantz, Representing Lupient Chevrolet  
Thanked the Council for the very serious consideration of their issues. While 0.6 FAR is still a high bar, they're grateful for that and the exceptions.

Speaker #2: Peter Beck, Representing The Luther Companies  
Thanked the Council, the Planning Commission, and staff for working through the concerns. He said they would have preferred to stay zoned C-1 but the C-4 and C-5 zoning, along with the text amendments, allows them to come forward with a proposal if and when they're ready to do so and they appreciate the opportunity to do that.

Oleson commented this is the way the process needs to happen. There was a lot of concern and anguish out of the gate but now there appears to be some level of compromise that will work for the City, the district concept, and the practical needs of the various businesses within the community. He thanked them for their efforts in this process.

Motion was made by Abrams, seconded by Baloga, and all voting aye, to adopt an ordinance modifying Development Standards in the LX Lindau Mixed Use, B-4 Neighborhood Commercial Center, and C-5 Freeway Mixed Use Zoning Districts; Standards regarding Motor Vehicle Sales, General Definitions, Landscaping Standards, Exterior Materials Standards, Use Tables, Development Intensity Standards, Structure Placement Standards and Definitions regarding nonconformities thereby amending Chapters 19 and 21 of the City Code. (O-2015-3)

**8.1.1 Resolution Directing Summary Publication - Mixed Use and Nonconformity**

Requested Action: Adopt a resolution authorizing summary publication of Ordinance O-2015-3.

Motion was made by Baloga, seconded by Abrams, and all voting aye, to adopt a resolution directing summary publication of Ordinance O-2015-3. (R-2015-8)

**8.2 City Initiated (PENN AMERICAN) Rezone Multiple Parcels**

Requested Action: Approve the rezoning of 14 properties and continue the public hearing on the rezoning of five properties (Jiffy Lube, Wedding Day, Southtown, Lucky’s and Mitsubishi) as follows:

The Planning Commission recommends denial of all nine rezonings based on concerns about new zoning district requirements being too prescriptive.

The Housing and Redevelopment Authority recommends proceeding with the rezonings as recommended in the adopted District Plan.

Rezone these parcels:

- A) In Case 10940A-14, move to approve rezoning the primary district from CO-1 (Commercial Office) to C-4 (Freeway Office) for 1600 and 1700 West 82<sup>nd</sup> Street and 8101 Knox Avenue South [*Southpoint Office Center*];
- B) In Case 10940B-14, move to approve rezoning the primary district from R-1 (Single-Family Residential) to RM-50 (Multiple-Family Residential) for 8100 Knox Avenue South [*Knox Landings*];
- C) In Case 10940C-14, move to approve rezoning the primary district from CO-0.5 (Commercial Office) to C-4 (Freeway Office) and B-1 (Neighborhood Office) for 8100 Penn Avenue South [*Southtown Office Park*];
- D) In Case 10940D-14, move to approve rezoning the primary district from B-3 (General Business) to C-5 (Freeway Mixed Use) for 8000 and 8040 Penn Avenue South [*Bloomington Chrysler Jeep*];
- G) In Case 10940G-14, move to approve rezoning the primary district from CR-1 (Regional Commercial) to C-4 (Freeway Office) for only 1700 American Boulevard West and 1601 Southtown Drive [*Lupient Chevrolet*];
- H) In Case 10940H-14, move to approve rezoning the primary district from C-1 (Freeway Office and Service) to C-5 (Freeway Mixed Use) for 1601 and 1701 American Boulevard West, 1600 West 81<sup>st</sup> Street and 8033 Knox Avenue South [*Luther Kia and Luther Fiat*]; and
- I) In Case 10940I-14, move to approve rezoning the primary district from C-1 (Freeway Office and Service) to C-4 (Freeway Office) for 8030 Humboldt Avenue South [*Luther Infiniti of Bloomington*].

Motion was made by Baloga, seconded by Abrams, and all voting aye, to adopt an ordinance to rezone multiple parcels in the Penn American District as recommended by the Penn American District Plan. (O-2015-4)

Requested Action: Continue action on the following parcels to August 3, 2015:

- A) In Case 10940E-14, move to continue the public hearing to August 3, 2015 for 7901 and 7999 Penn Avenue South [*Wedding Day Jewelers and Jiffy Lube*];
- B) In Case 10940F-14, move to continue the public hearing to August 3, 2015 for 7803 Penn Avenue South [*Southtown Shopping Center*]; and
- C) In Case 10940G-14, for only 1750 and 1800 American Boulevard West [*Mitsubishi, and Lucky's*], move to continue the public hearing to August 3, 2015.

Motion was made by Oleson, seconded by Baloga, and all voting aye, to continue the rezoning of the parcels listed above to August 3, 2015.

**8.2.1 Resolution Directing Summary Publication Penn American District**

Requested Action: Authorize summary publication of Ordinance No. O-2015- 4.

Motion was made by Baloga, seconded by Abrams, and all voting aye, to adopt a resolution authorizing summary publication of Ordinance No. O-2015-4. (R-2015-9)

**8.2.2 Memorandum of Understanding with Kraus-Anderson Inc.**

Requested Action: In Case 05722A-15, approve the Memorandum of Understanding with Kraus-Anderson.

Motion was made by Baloga, seconded by Lowman, and all voting aye, to approve the Memorandum of Understanding with Kraus-Anderson.

**8.3 City Code Amendments - Residential Districts**

Requested Action: Adopt an ordinance amending Chapters 10, 14, 19, 21 and 22 of the City Code addressing residential districts and standards.

Planning Manager Glen Markegard and Planner Jason Schmidt presented the staff report. They presented slides that highlighted the following: Residential Code amendments, additional amendment since the Planning Commission (PC) meeting, Residential Code amendments overview. He said both staff and the Planning Commission (PC) recommend adoption of the ordinance.

Oleson asked how “crash pads” used by airline personnel fits in with these standards. Markegard said before staff knew about crash pads, they discussed AirBNB at a Council study meeting. He said Bloomington drew the line at 30 days. Stays for less than 30 days in duration are not allowed today or going forward. He said the crash pad is very similar to the AirBNB involving stays of 1-3 days. He said staff’s preliminary thought is that crash pads would fall under transient lodging. Oleson talked about a pilot who remodeled some buildings near the Airport and rented out rooms to 2-3 airline personnel at a time. While they’re return date to MSP might be unknown, each has their own bed. He said this fills a need for people in the community and encouraged staff to discuss this option at a study meeting.

Lee stated that would change the zoning in residential districts, as it involves density of occupancy. He said these zones prohibit transient lodging but it’s something Council could readdress in the future.

Carlson requested more detail on prevailing setbacks.

Schmidt provided the following information on the existing prevailing setback vs. the proposed prevailing setback. He said any variances that would be needed would go before the PC and the City Council.

Winstead said this defines prevailing but an odd circumstance could throw a house into nonconformance or needing a variance.

Carlson desired more discretion be given to the PC so they didn't need to come to the Council, which could provide an expedited approval process.

Lee asked if the Planning staff would be willing to bring back at a later time, a provision to delegate minor variances to the Planning Commission.

Markegard replied State law provides for administrative variance approval but those are still required to go to the City Council for approval. He said the prevailing setbacks in east Bloomington used to be 35 feet in the front and 20 feet on the side but it was changed in 1974 to 30 feet on the side and front abutting a street. He said the study meeting discussion was how sacrosanct should that line be. Traditionally, variance requests for small additions have been approved. The thought process was this could be an excellent way to get more reinvestment in home renovations in east Bloomington.

Lee said porches and covered entryways add to the aesthetics of a neighborhood.

Carlson said he's worried about the ones that come in with a less desired addition. He said everyone on 4<sup>th</sup> Avenue could come in with a 30-foot setback for an addition without needing to get a variance and everyone who has come through and requested a variance has been approved. He said others who don't want to apply for the variance just don't do the project.

Winstead said the variances have been for a porch or a kitchen bump out; not for anything undesirable. He said 5 feet is not discernable to the neighborhood.

Motion was made by Baloga, seconded by Lowman, to adopt an ordinance amending Chapters 10, 14, 19, 21 and 22 of the City Code. No vote was taken at this time.

Winstead questioned the rationale for setting the dwelling height at 40 feet from the front elevation and 45 feet from a rear elevation and asked why not just consider the front elevation and make it 45 feet.

Markegard replied staff saw a lot of variances for height and that looking at the front elevation; they met the Code standard of 40 feet to the peak of the roof. In looking at it from the rear, there is usually a walkout basement so the height is measured from the lowest grade. In the example shown, he said the back height is measured from the ground to the peak, which is 44 feet. Staff wanted to match the Code to what was being approved. He said the idea of applying a different standard to the rear not facing the street should work in all scenarios according to the Gonyea developer. He said a recent proposal would be just a little above that which could create another potential variance request. He said another alternative way to address this situation would be to have the standard apply only on facades that face a public street, which would be a 40-foot height limit with no standard for the rear facing facades. He said with that alternative, walkouts should work in just about every situation except for a front facing walkout, which is very rare.

Winstead said why not make it 45 feet from the front.

Markegard said the policy question is should there even be a standard on the rear elevation or should it just apply on facades that face a public street.

Carlson said he still had questions regarding setbacks and heights.

Winstead wanted to work through the issues expressed by Council. He didn't think it was necessary to look at both the front and the rear elevations. He said this is old Code that needs to be applied to newer style homes. He said with a 45-foot front elevation, two-story homes wouldn't be an issue.

Baloga didn't recall any variances for the front of the house because there have been criteria for all sides of the house. He agreed with the Mayor in allowing 40 feet from the front. He said making it higher could lead to the McMansion issue.

Markegard said staff would recommend 40 feet on a façade facing a public street rather than getting into the front, side and rear facing facades.

Lee said on a corner lot it would apply to the front and the side facing the street.

Markegard said it would still present a problem with through lots.

Oleson said a 40-foot tall home in some areas wouldn't stick out but it would be considered a McMansion in his neighborhood. He said a variance requires a survey of the neighbors, which gives them an opportunity to weigh in on what their neighborhood should look like. He also mentioned the shadowing Code.

Markegard said the shadowing requirement doesn't apply to single-family residential. He said there was a standard that came out in 2005 regarding McMansions but this provision comes into play more often in east Bloomington where there are some larger lots.

Winstead said he likes 40 feet from any front facing a street.

Lee said the problem occurs in east Bloomington where people want to add on a story. He said if this is acceptable on an R-1 lot in west Bloomington, why isn't it acceptable to those in east Bloomington.

Oleson restated the problem is with McMansions and how they affect people's views.

Lee explained there is not the opportunity to weigh in if the application meets the City Code.

Winstead asked the Council if they were comfortable with 40 feet from a façade facing a street for height.

Lee said this could be continued to the next meeting but Markegard said there are four parties anxious to get this decision.

Oleson asked if the amendments permit small homes.

Markegard said the current Code doesn't permit tiny homes. It requires homes be 1,040 square feet. He said it could be looked at in the future but it's not in this particular amendment.

Motion was made by Winstead, seconded by Lowman, to amend the motion on the table to make the prevailing height 40 feet from any façade facing a public street in Sec. 21.301.10(b)(1)(B)(iv) to take care of the ripple effects. The amendment was agreeable to Baloga.

Markegard suggested it say, “beyond the 20-foot side setback line, building must not exceed 40 feet on facades facing a street” and remove the next sentence regarding 45 feet on facades not abutting a public street. He said there may be some ripple effects from this. If it’s a side or rear property line, then the setback is 30 feet in most zoning districts. He said the 20 feet only applies to side lot lines.

Carlson desired more time to think about it but Council had no other questions.

Winstead called for a vote on the amended motion. It passed 6-1 (Carlson opposing). (O-2015-5)

No public testimony was received.

**8.3.1 Resolution Directing Summary Publication City Code Amendments Residential Districts**

Requested Action: Adopt a resolution directing summary publication.

Motion was made by Baloga, seconded by Lowman, to adopt a resolution directing summary publication of Ordinance No. O-2015-5. Motion passed 6-1 (Carlson opposing). (R-2015-10)

**8.4 Medical Marijuana Moratorium Ordinance**

Requested Action: Adopt an ordinance imposing a 12-month moratorium on medical cannabis/marijuana manufacturing and distribution facilities in Bloomington to allow staff time to prepare a study to assess the need for amending the City’s official controls for these facilities.

City Attorney Sandra Johnson presented the staff report explaining in the last legislative session, the Legislature authorized the use of medical marijuana but said the distribution model is very unique. Federal law has yet to distinguish medical marijuana. She said it’s a cash industry; the medicine is expensive and is not currently covered by health insurance. As a result, the stolen product is sold on the black market, which causes security concerns for staff. The distribution facilities operate like clinics. Pharmacists determine the type of medication and the dosage. She said it’s a use that doesn’t clearly fall into any recognized zoning category of City Code so staff desires to study this further. She said staff doesn’t intend to, by the proposed moratorium, prohibit or unduly restrict medical marijuana in the city of Bloomington, as it addresses a recognized medical need as found by the Legislature. The City does, however, want to codify some of the amendments including the very good security provisions that are currently in the existing Minnesota Rules and State law. If they were to become more lax, the City Council could weigh in on those changes in security. Staff wants to know if a standalone building is more secure for the patients, the product, and the facility itself than a location in a strip mall. They want to study the cash handling that needs to be addressed. She said dispensaries do not seem to have likelihood for increasing the availability of marijuana to the general population. She said it would be cheaper to get marijuana for personal use on the street. If someone is found to be in possession illegally of medical marijuana in the form of a pill, oil or liquid, they face felony charges. She said the Legislature will be watching the need for medical marijuana but it’s likely the number of dispensaries will increase in future legislative sessions. She said Bloomington is a site that is being considered.

Johnson said only one dispensary can be located within each congressional district. She added the Minnesota Association of City Attorneys will be taking up this issue at their annual conference in February. It is anticipated staff could bring back an ordinance to Council in less than a year.

Speaker #1: Patrick McLellan, Bloomington Resident

He has a rare form of adult onset muscular dystrophy and lobbied the Legislature and the Governor to get this going. He reported there are approximately 5,000 patients under the current bill. He commented on a presentation the University of Minnesota did on medical cannabis last summer. He believes there will be a massive extension of the program in 2016-2017. He asked the Council to expedite this as soon as possible, as it will be easier to work out the problems with a 5,000 user base compared to expanded programs later on. He asked the Council to remove obstacles for people who are terminally ill. He said the intent of this law is to make it easy and safe for people who need medical cannabis to have access to it. He said the predictions are there will be 35,000 patients in 2016-17. He said the Minnesota Department of Health (MDH) will impose conditions but the Legislature has the ability to stop it.

Speaker #2: Bernie Hess, Food & Commercial Workers Union.

They've been organizing with groups in eight states and asked the Council to be thoughtful in its moratorium process. Bring in industry people to talk about control and security. They always think of patients, a secure source, safety and the job application. He said for every 10 patients, there is one job. He said Minnesota has a good medical community and they will build this industry. He asked the Council to think about this before instituting the moratorium. He believes veterans will need medical marijuana for Post Dramatic Stress Disorder and said the Food & Commercial Workers Union could be used as a resource.

Winstead said this is about the possibility of placing a medical marijuana dispensary within our community. The moratorium would give staff and the Council a little more time to think about it. He said upon conclusion of the moratorium, staff and the Council will be prepared to act upon an application to locate a dispensary in Bloomington, should one be submitted, and the conditions and the criteria will be laid out.

Busse commented this isn't a prohibition on medical marijuana in Bloomington but a moratorium to understand the issue, which makes sense. He said Council can then have a discussion to determine how aggressive the Council wants Bloomington to be a player in this arena.

Oleson asked if this could be expedited and requested the City Attorney report back to Council on what it would take to expedite this and a timeframe. He'd like to know what the other attorneys Johnson will see at the February conference have to say on this subject. He said it would be helpful if all of the city attorneys could work together on this, as the State wants the dispensaries up and running by July 1.

Baloga commented this is not an unusual type of moratorium. When the City has land uses that don't fit into its current ordinances, Council has utilized a moratorium process and this is no different. He said the Council needs to be concerned about what the normal process will be.

Motion was made by Baloga, seconded by Oleson, to adopt an interim ordinance imposing a one-year moratorium on medical cannabis or marijuana manufacturing and distribution facilities pending completion of a Planning Study assessing the need for an amendment to the City's official controls. No vote was taken.

Abrams asked whose jurisdiction the process to expand the number of dispensaries will go through.

Johnson replied it would have to be an amendment to the State rules that have been adopted by the MDH. She doesn't foresee an expansion occurring before 2016 and doesn't think the expansion would need to go before the Legislature.

Abrams said the ordinance doesn't indicate what form of marijuana is being referenced and offered an amendment under (1) Findings and Purpose to read as follows: "The City Council finds that it is necessary to temporarily preserve the status quo regarding the City's regulation of land uses through its official controls following the passage of 2014 Minnesota Session Laws, Chapter 311, §§ 1-22, the Medical Cannabis Therapeutic Research Act of 2014 (the "Act"), Minnesota's first law authorizing and regulating the use, manufacturing and distribution of medical marijuana, 'in its pill, oil and liquid form' pending completion of a planning study to determine the need for additions or amendments to the City's zoning controls." Baloga and Oleson concurred with the amendment.

Winstead summarized there is a motion and an amendment before the Council. He said Council will go back and review the Planning staff's work plan to prioritize the researching of this issue. He said a shortening of the timeline might be possible.

Mayor Winstead called for a vote on the amended motion to adopt an ordinance. It passed 7-0. (O-2015-6)

**Council Recess**

The Council took a short recess.

**8.4.1 Resolution Directing Summary Publication - Medical Marijuana Moratorium**

Motion was made by Baloga, seconded by Abrams, and all voting aye, to direct summary publication of an ordinance adopting a medical marijuana moratorium Ordinance No. O-2015-6. (R-2015-11)

**8.5 Cable Television Franchise Renewal**

Requested Action: Approve the proposed cable television ordinance and franchise agreement.

Cable Administrator Janine Hill and outside counsel Brian Grogan presented the staff report. Grogan said he was last before the Council 16 years ago regarding cable and this time it's to renew a cable franchise agreement and approve a transfer of the cable franchise. Their slide presentation included slides on the Existing Franchise, Needs Assessment, Negotiation Process and Franchise Renewal (10-year term, 5% franchise fee). Included in the slides was a recommendation to charge \$1.40 for the PEG (Public Education/Government) channels with an option for Council to increase it up to \$1.60. He said adoption of this franchise renewal and the transfer package allows this process to move forward.

Abrams asked if the City will need to purchase new equipment to support the HD channel opportunity.

Hill replied the City currently has a proposal for the next year for HD equipment around the building and staff is shooting in HD to prepare for that transition.

Grogan continued with the next portion of the presentation regarding the Comcast/Midwest Cable Transfer. He talked about the Comcast/Time Warner Cable merger explaining as a result of the Comcast merger, Comcast has to divest itself from 4 million of its subscribers; Bloomington being one of them. He proceeded to provide the following slides: Comcast/Time Warner Cable (TWC) 34 million subscribers map, Comcast/Charter, Midwest Cable. This franchise agreement also requires federal approval by the FCC. The City will act on this before the FCC because it must act on the transfer within 120 days of its presentation to the Council. The FCC decision is expected in late March or early April. It was stated Midwest Cable will be known as "GreatLand Connections." GreatLand is financing \$8 billion of it. Charter Communications shareholders will own 33% and Comcast shareholders 67%. It will have a separate board of directors. There is no real historic experience available on GreatLand. Proposed Charter + Midwest Cable (called SpinCo), Charter Services to Midwest, Impact on Services, Financial Review, Timeline for Local Action, Resolution.

Baloga asked why the 10-year agreement when it will involve a transfer to an entity the City knows nothing about. Why not a shorter period?

Grogan replied short and long-term agreements were considered. The operator wants the shortest length of time due to the amount of competition and federal changes to the law. City staff thought Bloomington would be in a better situation to try and lock into the terms of the agreement. He said staff would prefer to have a 10-year contract in case any legislative changes were to occur or the industry was to change quite a bit.

Baloga commented the revenue stream is protected but he's not comfortable with the contract length. He said he can't put his faith in the new provider. He believes they will significantly raise rates for their customers based on the amount of debt they will be taking on. He can't support the transfer due to the audit report provided to Council.

Grogan explained they included all of the worst case scenarios in their financial report. He said the question was asked if the Council was inclined to deny this transfer, what would be the City's ultimate objective -- to force Comcast to bring in a different potential company or to try and force Comcast to continue providing service to Bloomington. He explained why tying these two items together is important to the City. He said they could impose some reasonable conditions to try and obtain something in value.

Baloga said he worries about the customer service issue with regard to Charter because he's had had significant issues with Comcast.

Grogan explained the same employees will be retained. He said Charter doesn't outsource any of its customer service overseas. He said realistically there will be some growing pains with this transfer.

Oleson commented there are a lot of things in the agreement the City can control such as right-of-way and there are a lot of controls in how the City can make complaints and get them addressed. He asked if the 10-year term protects the City given the competition.

Grogan said there is competition so if this company fails to perform, there is an aggressive enforcement procedure to hold their feet to the fire.

Oleson asked if there were loop holes for the City to get out of the contract during the 10 years.

Grogan explained if the City went with a 5-year contract, it would have to start the negotiation process all over again in 2 years, as it has to start 3 years before the contract expiration date. He said 10 years makes the most sense.

Winstead asked if this franchise would be the same if there was no transfer.

Grogan replied the two created a package.

Carlson said it appears Minneapolis just settled on a 6-year deal. He said Bloomington would be locked in with this company for 10 years even if competition ramped up and asked if the City risks leaving something on the table if this is approved tonight.

Grogan said Minneapolis made the best deal for them.

Winstead said this franchise agreement is non-exclusive meaning there is nothing to preclude the City from allowing CenturyLink into the community.

Grogan explained by statute, the City can't restrict cable television to one franchise. He said Bloomington is in the mix regarding terms and length of contract when compared to other similar cities.

Busse said he shares Baloga's concerns regarding the business standpoint and asked what recourse the City has if this doesn't work out.

Grogan replied if Midwest fails to provide what they promised, the expectation is that Charter will be looking to acquire the balance of Midwest. He said if Midwest struggles, Charter could come in and gain the company.

Winstead said the television franchise renewal is straight forward. It's where Bloomington wants it to be. With regard to the transfer of the company, legitimate issues and concerns have been raised. He asked what impact the Council's inability to approve the transfer would have on the process. Grogan said Bloomington's individual voice probably wouldn't be heard.

Abrams said there is GreatLand and Century Link is getting ready to provide service also so recognizing all of the risks, she made the following motion:

Motion was made by Abrams, seconded by Oleson, and all voting aye, to adopt an ordinance amending Chapter 20, Article II of the City Code relating to the Cable Television Franchise, renewing the granting of a franchise to Comcast of Arkansas/Florida/Louisiana/Minnesota/Mississippi/Tennessee, Inc., to operate and maintain a cable system in the city of Bloomington, Minnesota; setting forth conditions accompanying the granting of a franchise; and providing for City regulation and administration of the cable system. (O-2015-7)

No public testimony was received.

**8.5.1 Resolution Directing Summary Publication Cable Television Franchise Renewal**

Requested Action: Adopt a resolution directing summary publication of Ordinance No. O-2015-7.

Motion was made by Abrams, seconded by Oleson, and all voting aye, to adopt a resolution directing staff to publish a summary of Ordinance No. O-2015-7 that includes City Code amendments to Chapter 20 of the City Code in the official newspaper rather than the multi-page ordinance itself. (R-2015-12)

**9 OTHER: PUBLIC HEARINGS**

**9.1 Transfer of the Cable Television Franchise**

Requested Action: Approve the cable system transfer from Comcast to Midwest Cable/GreatLand Connections.

Motion was made by Carlson, seconded by Abrams, to adopt a resolution approving the transfer of the cable franchise and changing of control of the grantee from Comcast to Midwest Cable. Motion passed 6-1 (Baloga opposing). (R-2015-13)

**10 ORGANIZATIONAL BUSINESS**

**10.1 City Council Policy & Issue Update**

Interim City Manager Lee stated the Council has worked through a lot of issues in January and said February will also be busy. He said it's been a pleasure serving as Interim City Manager.

Abrams expressed her appreciation for Lee's work as Interim City Manager.

Lowman requested information other communities have used to rehabilitate their housing stock, as it's needed in east and central Bloomington. He requested Council be given a report to help Bloomington jump start the rehabilitation of its housing stock. He's very interested in this issue and wants to make sure the Council stays on track with it.

Lee explained the Housing & Redevelopment Authority (HRA) runs the City's loan programs. He said staff is looking at an interesting program in the northern suburbs. One option at budget time will be to earmark some Strategic Priorities money for more housing loans and programs of this type. He said an ordinance adopted tonight will encourage some homeowners to make updates.

Winstead requested staff provide the Council with the tools it currently has available and report on what is in play right now. He said that list could include some historic information on when and where there were past City programs in certain neighborhoods and the results they produced.

**10.2 Organized Collection**

Requested Action: Discuss the approval of Option 1 to accept the hauler proposal as submitted on January 20, 2015, or proceed directly to Option 4.

Public Works Director Karl Keel presented the staff report on Organized Collection. He said it's a follow up to the study session. He reported staff has received another proposal from the haulers group. Council will need to decide if the haulers' proposal is acceptable or if staff should continue to negotiate or move to another process. He presented the following slides:

- Initial Activity: Process started on October 13, 2014
- City Priorities for Organized Collection
- Organized Collection Process (chart)
- Hauler Negotiations: All (7) haulers have been active in the process and it's been a productive one.

- Price: Largest barrier to an agreement. City provided some comparison data for the haulers. It included a resident survey of 275 Bloomington households. Review of organized collection prices in other Metro cities.
- Comparison Data – Adjustments: Data was adjusted to try and get an apples to apples comparison. The comparison numbers are approximations. It's not a perfect apples to apples comparison. Staff believes the difference is a matter of cents and not dollars. Staff and the consultant are confident the adjustments are fair and provide a fair assessment of the other cities.
- Hauler's January 20<sup>th</sup> Proposal: Provided prices for both 5 and 7-year contracts. Includes an up-front \$17.50 per cart exchange fee. Option for citywide organics recycling would be a \$2.00 increase per household. Trash prices in the 7-year contract equal the average of the Negotiated Cities contracts. The recycling prices are above the average of the Negotiated Cities (\$4.96 vs. \$3.67).
- Graph: Bloomington's Current Open Hauling Rates from Resident Invoice Survey. Shows a big difference in the low price some Bloomington residents are paying compared to the high price others are paying.
- Possible Next Steps: Accept the January 20<sup>th</sup> hauler proposal, continue negotiations, form an Organized Collection Options Committee (OCOC) made up of two Council members and two staff to expedite the process, or form an OCOC but allow additional negotiations with the haulers, or terminate the pursuit of organized collection.

Keel said the haulers would like to make a presentation.

Winstead said this is the time for the Council to take in information and agreed it will be constructive to hear from the haulers.

Speaker #1: Jim Wollschlager, Chief Operating Officer for Randy's Representing the licensed haulers in Bloomington

Before he made his presentation on Organized Collection – Hauler's Viewpoint, he stated this has been a tough process. They're moving off prices that were relative to their business model. There are a lot of costs that go into their business. They were involved in working this through the Legislature. They were assured by the legislative group that the purpose of this was to meet the cities' goals for roadway wear and tear and safety, etc. and that the haulers would stay whole. He reported there are three negotiated cities that take care of the billing. He said the haulers had hoped the service they provide is just as important to the cities as is the price. He added today's trucks are much more expensive. His presentation followed:

- Negotiated Agreements: The low bids that come in from the Request for Proposals (RFPs) cannot stand on their own as viable businesses in this industry.
- Negotiating in Good Faith: Haulers group reduced trash rates significantly to meet the rates in other Negotiated Cities.
- The Results: (Hauler Proposal): We're down to the recycling number. They didn't offer townhomes but said they could opt in. He talked about the amount of glass the recyclers will take from the haulers, which is far less than what they are collecting on a daily basis. That results in a stockpiling of glass in their yards. There is no market for paper right now.
- Residential Recycling
- Dramatic Changes in the Industry

- Month End Commodity Prices Per Ton: There aren't margins built in for the recycling indexes. 4 out of 5 of the major recycling indexes are down and are trending down.
- Month End Commodity
- Commodity Price & Change (January 2014 – January 2015)

Wollschlager said this is small town business at its best. He's been with Randy's for 20 years and reported they've never missed a collection day due to weather, etc.

Winstead said this information is enlightening.

Oleson said he hears from people during National Night Out they call other companies to get a better rate once a year.

Wollschlager said no matter how hard the haulers try, someone is paying less than someone else. He said trash is a fixed cost where recycling isn't.

Oleson asked about the fluctuating prices between the haulers.

Wollschlager said there is a cost for picking up trash but the route times need to be built into the recycling pick up. It's the cost of turning recycled goods into new products vs. buying virgin products.

Lowman asked how representative is the chart to what is happening in Bloomington.

Wollschlager replied the chart numbers are low. He said 10% of Bloomington customers pay in arrears. He said the 275 resident surveys didn't indicate if any of them were in arrears with their hauler.

Lowman asked about the \$2 for organics.

Wollschlager said organics is expensive to offer as a single service. He said everyone is required to recycle in Minnesota. The Blue Bag Organics program is offered by Randy's in every city. They've been offering the blue bags for four years. He said the \$2 organics rate is based on every customer taking organics.

Regarding the recycling of organics, Winstead said everyone has to pay the \$2.00, whether they recycle organics or not, but if too many customers use the service, the price goes up, which he's uncomfortable with. He said he's uncomfortable with the pricing that's been offered by the haulers. He's also uncomfortable with the number of contract years. He said the haulers are hedging their pricing with what they're putting forth for recycling. He wants staff to work with them to get a price but have a mechanism for the haulers to come in and talk about the rates to demonstrate that maybe their rate needs to move depending on what's happening with the commodities. Depending on what's going on with the recycling market, the prices could be negotiated up or down depending on what's happening. He said when fuel costs were high, the haulers put on an extra charge, which he accepted, but the prices haven't gone down even though fuel prices have dropped. He wants a rock bottom price from the haulers but said the City should allow the haulers the opportunity to renegotiate some items with the City when the commodities change. He said he didn't know what the issue of non-payment meant to the haulers. The City is working on that with the Legislature. He said he doesn't want to shut off any potential negotiations with the haulers but thinks it's time to set up the OCOC. He said the City could look at it again taking into consideration taking over the billing process.

Winstead said if the rates needed to change, the haulers would have to come in and make a good case for it. He said setting up the OCOC could lead us to becoming a competitive city or better negotiations with the haulers.

Oleson questioned the process for forming the OCOC.

Winstead said the Council has expressed wanting to keep this moving so at the next Council meeting, the Council will need to figure out who is going to sit on that committee. In the meantime, he said the haulers might come in with a satisfactory proposal. He said from the very beginning, he wanted all of the haulers to participate but be more in line with what other cities are paying. He said the ideal outcome would be if every hauler could maintain their market share with a competitive price that everyone could live with.

Motion was made by Baloga, seconded by Oleson, to form an Organized Collections Options Committee while continuing negotiations with the haulers. He said if the price doesn't improve, the City will be forced into a position of putting out an RFP. No vote was taken at this time.

Abrams questioned why the price of organics would go up if more people participated in the Blue Bag program.

Wollschlager said if 100 people sign up for organics, the hauler will spend \$4,900 in sending bags out to all customers for their organics to be set at the curb. He said once the hauler gets to 25% of its customers recycling organics, the \$2 that was set aside for organics collection is used up. In addition, there are costs to administer the program. He said if the organics program continues to grow, there is a mechanism in place for the haulers to come back and request the \$2 fee be increased.

Lee said another option open for Council is to not include organics in the initial contract; add it later on.

Winstead said the Council previously indicated they wanted the organics. He said organics is now where recyclables were many years ago. He wants to see a high percentage of people recycling organics.

Abrams said she understands the purpose of the OCOC but encouraged staff to continue working on the negotiations, as it's a tremendous learning opportunity for all. She said the Council has learned what good things can come from dialogue with another industry to the benefit of everyone. She encouraged the haulers and the City to continue working on the negotiations because the OCOC step puts this into 2016 timeframe if all of the criteria needs to be met.

Lowman commented Europe was way ahead of the U.S. with regard to organics when he lived there. He wants to see organics included as part of the agreement. He encouraged everyone to keep this moving and to continue working to reduce the amount of trash collected in this city. "Let's try to preserve choices as much as possible in this process and do it in the spirit of working with the industry to try and preserve the current market share of Bloomington's haulers keeping in mind price is an important issue for many residents." He supports the motion.

Oleson said he likes the direction this is going. He expected there would be inefficiencies but is hopeful the process will continue to improve.

Mayor Winstead called for a vote on the motion to form the OCOC while keeping the negotiation process going. It passed 7-0.

Lee said Keel has prepared a draft resolution for approval if the Council is ready to name the members who will serve on the OCOC tonight.

Winstead said he'd prefer to talk to Council members about serving on the OCOC and suggested it be continued to the meeting on February 2, 2015, at which time Council will act upon the resolution.

**10.3 I-494 Corridor Commission Appointment**

Requested Action: Appoint a Council member to fill the unexpired term of Councilmember Oleson on the I-494 Corridor Commission scheduled to expire on December 31, 2015.

Baloga agreed to take over for Oleson.

Motion was made by Abrams, seconded by Busse, and all voting aye, to appoint Councilmember Baloga to serve on the I-494 Corridor Commission for a term expiring December 31, 2015.

**10.4 Advisory Board of Health**

Requested Action: Appoint two providers and two consumers to the Advisory Board of Health to two-year terms expiring on December 31, 2016.

Mayor Winstead indicated 1 provider and 3 consumers are needed.

Motion was made by Abrams, seconded by Busse, and all voting aye, to appoint Joshua Korthouse, Joe Lawless and Sharon Mills to the three consumer positions expiring December 31, 2016, and appoint Jahana Berry to the provider position expiring December 31, 2016, on the Advisory Board of Health.

It was noted because Lawless is scheduled to be interviewed for a position on the Human Rights Commission next Saturday, staff will contact him to see if he would be willing to serve on two commissions should he get appointed to the HRC following the interview process.

**10.5 Parks, Art, and Recreation Commission Appointments**

Requested Action: Appoint two adults to serve on the Parks, Arts & Recreation (PARC) Commission, expiring December 31, 2017.

Council members were directed to vote for two people each:

Lowman: (Doble & Tellers)  
 Oleson: (Rickert & Tellers)  
 Carlson: (Rickert & Tellers)  
 Baloga: (Rickert & Tellers)  
 Abrams: (Rickert & Tellers)  
 Busse: (Doble & Tellers)  
 Winstead: (Doble & Rickert)

Motion was made by Baloga, seconded by Lowman, and all voting aye, to appoint Dave Rickert and Susan Tellers to three-year terms on the PARC.

Because Tellers is also a candidate for the HRA, staff was directed to contact her to see if she would be willing to serve on two commissions at the same time if she were appointed to the HRA following the interview process.

**10.6 Housing And  
Redevelopment  
Authority  
Appointments**

Requested Action: Nominate an additional candidate to be interviewed on January 31, 2015, for an open position on the Housing and Redevelopment Authority (HRA).

Motion was made by Oleson, seconded by Lowman, and all voting aye, to add Steve Furlong's name to the list of nominees to be interviewed for the open position on the Housing and Redevelopment Authority. Staff to contact Furlong to schedule an interview time on Saturday, January 31, 2015, along with the other HRA candidates.

**11 ADJOURN**

Mayor Winstead adjourned the meeting at 12:47 a.m.

Barbara Clawson  
*Council Secretary*