



May 18, 2012

Mr. Hyder Aziz, Director of the Al Farooq Community Center
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Bloomington, MN 55420

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Subject: Al Farooq Youth and Family Center (AFYFC)

Dear Neighbors:

The change in property ownership in the property now belonging to AFYFC has over the past year has given rise to concerns by various parties over changes in the use of that property. as well as adjacent City properties.

American Legal Framework

Fundamental to the United States' legal system (as well as those of many countries) is the concept of ownership of property, including real estate, and the protection of those ownership rights within the context of laws relating to its use.

Whether owned by a private individual, nonprofit or religious group, a commercial enterprise or public body, entrance onto or use of real property by others is solely at the invitation of the owner (lessee or agent) and it remains within the owner's sole discretion to invite or exclude others from the use of his or her property. In fact, even with respect to real property that is owned by a public body, the public's right to use and access that property can be restricted so as to protect and promote the primary purpose for which the property is owned and operated.

Among those limitations commonly imposed on the use of public property are the following:

- Parks – Hours and conduct
- Revenue facilities such as sporting and arts venues – Payment of admission

- Facilities used for maintenance and public safety such as fire stations – Restricted access – for the security of the facility, protection of the public and efficiency of the governmental operation
- Security facilities – Generally off limits – again except for very limited public areas.
- Schools – Due to concerns for student safety, these have become considerably more restricted over the years to general public access.

As noted, use of publicly owned property is restricted by the laws and regulations applicable to the type of property, the jurisdiction in which it is located and other rules protecting the public health, safety and welfare. Though not frequently exercised, members of the public can be individually trespassed from publicly owned property for various violations of the rules governing the use of the property, criminal activity, or to protect the public from a general or specific threat.

Private property owners have the legal authority to exclude others for any reason they choose. Where limited public use of private property is allowed by agreement, or public easement, the public's use of that property is restricted to the rights set forth in the agreement or easement.

Ownership Change

Since Bloomington's inception, first as a township in 1858, the property now owned by AFYFC has been primarily owned by private entities, first as a farm, then a developer who deeded it over to the City of Bloomington in 1953, who in turn deeded it to the Bloomington School District that built an elementary school on it. The Bloomington School District chose to sell the property to the Lutheran High School Association in 1990 when the School District determined they no longer wanted to continue ownership and used the funds obtained in the sale for its K-12 educational purposes. As a private entity, the Lutheran High Association (subsequently Concordia) chose to operate it as a school and for a while rented a portion of it to the Maranatha Community Church for their worship and related usage during times that did not interfere with their use for a school. This usage for educational and / or religious purposes was common for other former and even present Bloomington Schools including but not limited to:

- Former:
 - River Ridge Elementary/Trinity School and church rental
 - Nine Mile School/Church of God
 - Cedar Crest Elementary/Cedar Valley Church and School
 - Brookside Elementary/Bloomington Covenant Church
 - Penn Junior/NW Health Sciences
 - Creekside Elementary/City of Bloomington Community Center
- Present:
 - Oak Grove/Church rental

(Additionally Bloomington Lincoln was sold for a private commercial usage.)

Lutheran/Concordia subsequently has sold it to the Dar Al Farooq organization, which closed on the property on August 23, 2011, and uses it for purposes that are in many ways similar to the way Lutheran HS used it.

The manner in which the property was used in the past and the extent to which the public had access to that property in the past does not entitle the public to continued access to the property. The property's owner, current or subsequent, has the ability to limit public access and use in the future, including the full exclusion of the public absent public contractual rights or easements. In a similar manner, the prior manner or scope of usage of the private property does not limit the owner's ability to change that usage provided it remains within the laws and ordinances that govern that property.

Joint Use Agreement

City of Bloomington Contractual Rights on the AFYFC Property

When the property went from the school district's ownership to the private ownership of Lutheran HS, the City of Bloomington, in exchange for certain considerations, obtained a limited scope of contractual rights for the use by the City. It is important to note that the City's rights do not automatically flow to any member of the public. The extent of public access to the property is defined by the contractual rights provided to the City. For public health, welfare and safety reasons or operational concerns, City policies may further restrict public access. The agreements with the property owner and the City for use, which are depicted in the enclosed map, include:

- Use for parking of a portion of the Lutheran HS parking area;
- Use for parking of the parking area on what was Xcel property that was previously leased to Lutheran HS (and subsequently sold to Dar Al Farooq by Xcel Energy).
- Use of a pedestrian way on the north side of the site providing access from 82nd Street to Smith Park – in exchange for the access across and use of the Lutheran HS lots granted to the City, Lutheran HS was granted use of Smith Park for their use;
- The City of Bloomington was granted scheduled usage of the Lutheran HS owned sports fields on the basis that it did not interfere with Lutheran HS usage. On an annual basis, this is worked out operationally. This contractual right is not a broader right of the public to use as they choose. The fence was constructed to help limit the usage to that provided for in the contract, in a manner not dissimilar to playing fields owned by the City or school district that are fenced and limited to specific scheduled uses.;
- The public, through the rights provided to the City of Bloomington, can use the tennis courts and basketball court on AFYFC property with access from Smith Park;
- Use of the walking path that parallels Park Avenue south from Smith Park which is located on an easement on that portion of the property sold by Xcel to Dar Al Farooq (the City's rights remain unchanged by the change in ownership).

The contractual usage rights previously granted to the City do not include any additional rights of access to the public other than the areas listed above. For example, there is no agreement for public access to other parking areas on the property or to sidewalks abutting the building.

Former Lutheran HS / AFYFC's Rights to City Property

As part of the agreements noted above, Lutheran High was granted certain rights to the use of City property:

- The parking lot in the SE corner between the sports fields and Chicago Avenue north of 83rd Street, which is owned by the City. Under the agreement, Lutheran HS had specific rights to parking on that lot. Those rights carried forward to AFYFC upon the sale of the property.
- Smith Park Parking lot – In like manner they have contractual rights to use this parking lot as well.

Additionally, persons coming to Lutheran HS and now AFYFC activities, being members of the public, have the same rights as any member of the public to park on any of the City owned lots and as members of the public to use the parks and other public spaces to the same extent granted any other member of the public. They also may park on the street to the same extent as any other member of the public, whether or not the AFYFC's parking lots are full.

The contractual usage by the City of Bloomington on Lutheran HS property was transferred as part of the sale to Dar Al Farooq, and remains in force pending any mutually agreed on amendment of the two parties.

Joint Use Agreement Amendment

The City and Dar Al Farooq are in the process of negotiating a revised use Agreement that will consolidate the current use agreements related to the AFYFC and Smith Park properties. Pending the conclusion of that negotiation, the two parties will meet to discuss the scheduling for the coming seasons. (Enclosed please find a copy of the current agreement originally negotiated with Lutheran High School in 1990). The CUP requirements did include a condition that the current use agreements be updated by September of 2011, and to date that has not occurred. The conclusion of this process was first delayed due to unforeseen delays in closing on the purchase of the property, followed by delays as City staff worked to draft a consolidated agreement for the negotiations noted above. The fact that the deadline set forth in the CUP condition was not met does not constitute a violation of the conditions that would meet the legal standard for revocation of the CUP.

Respect for Property Ownership

In the United States, it is a social norm for people to respect the property rights of the owner and only proceed onto the property of another when invited by the owner (lessee or agent.) Most property owners or lessees, though perhaps tolerant of an occasional person coming on to their property, do not generally find it acceptable for persons they have not invited onto their property to peek in their windows or have pets conduct their bodily functions on their property – especially when animal defecation is not cleaned up (which itself is a violation of City code and not allowed on either publicly or privately owned property).

Persons who choose to violate property rights of another by proceeding uninvited onto their property are at risk of being trespassed and can cause the property owner to enforce their property rights by excluding all members of the public not specifically invited. The City ordinance regarding trespass can be found in Section 12.09 to 12.11.

Neighborhood Disagreements

Events, distrust and or animosity can occur between persons in a neighborhood. The City on occasion finds itself caught in the middle of such disputes by neighbors who for whatever reason are not able to maintain a "neighborly relation."

These types of disputes can often result in escalating patterns of retaliatory actions. Many of these actions are often found to be unpleasant and unwelcome but fall short of constituting a violation of law. The City has no legal authority to intervene in private conduct falling short of a law violation. In such cases, it is often best for the parties to voluntarily agree to mediation to see if they can mutually resolve their private dispute. This is voluntary on the part of each party and the desire of one not to participate in dispute resolution does not give the other party any legal or morally superior position to assert that they should be able to override the other party's property rights.

Other items brought to the City's attention recently include:

- Land Use Limitation:
 - While the FAQ's have previously noted the CUP limitation of the gym's use when the other designated assembly areas are in use to control the impact of parking spilling into the neighborhood, there is nothing that precludes the gym being used for assemblies provided the Conditional Use Permit limit of 500 gym occupants is observed. The gym occupancy limit applied to both Lutheran HS and AFYFC. The property may be used for a number of customarily incidental uses to serve AFYFC members including such things as health care and food service, incidental uses that are provided by many schools and religious facilities in the community. Presently the staff is working with AFYFC related to their food service equipment installation in the same way the City does with any other membership facility in the community.
- Trucks at night:
 - While it has been indicated to Council members that there has been at least one occasion that there were trucks on the AFYFC site in the middle of the night. To the extent that this did occur at the community center is not in and of itself illegal unless there was a verified noise code violation.
 - Police dispatch received no calls reporting such activity at the time it occurred and patrol officers in the area did not observe any such activity. (Persons who observe such activity that they believe may be illegal should immediately contact police dispatch at 911 or if they do not desire to call 911 can also call 952-563-4900 which is the administrative number for the Police Department. During normal business hours, that number is answered by a switchboard operator who can respond to routine questions or concerns. During non-business hours that phone is answered by police dispatchers. When appropriate, police officers will respond and investigate.)

- **Parking and Traffic:**
 - As previously noted in the FAQ's and other correspondence to the neighborhood on these matters, the appropriate City departments are monitoring the issues of parking in the neighborhood, as well as the speed and volume as part of the study that this fall will correspond with the neighborhood on any recommendations that evolve from that study on limitations regarding on-street parking in the neighborhood.

- **City of Bloomington Neighborhood Gardens:**
 - Apparently there may be individuals at AFYFC who believe the garden is part of the AFYFC property and therefore they have told neighbors that it belonged to AFYFC and that they would need to leave.

 - That is not the case, which as noted in the attached graphic, is on property that Xcel owns the property that is leased to the City of Bloomington. In a phone conversation with Mr. Aziz of AFYFC on May 14th, he indicated he clearly knows that it is not part of their property and is informing AFYFC members and employees.

While the City will continue to investigate concerns of the various parties – repeated accusations that are found to have little if any basis will result in limiting that responsiveness to only public safety items. In addition, the City Code provides that if a complainant repeatedly calls police on matters not constituting a law violation, after being told that the conduct complained of does not amount to a violation of law, that person may be fined \$250 for each such future call to police.

Neighbor Assistance

The City is willing to host a neighborhood event if agreeable to Al Farooq and if so – open to those in the neighborhood who desire to build mutual understand among those in the neighborhood.

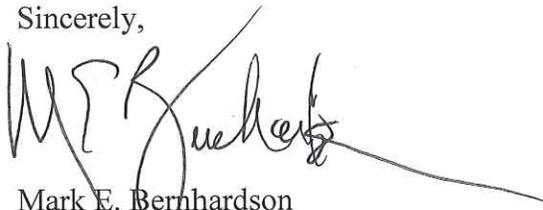
Conclusion

We invite you to continue to explore ways that you can at a minimum learn to respect the rights of others to the enjoyment of their property, just as you would like them to respect your property. If you are able to find ways to move beyond that to build mutual trust and respect with your fellow neighbors – it will provide a better result for the neighborhood, as distrust in a neighborhood ultimately benefits no one.

The United States, which has been the land of opportunity for people from across the world over the past nearly 400 years – and has been the longest operating democratic republic in the world for the past almost 240 years – has done so as succeeding generations of newcomers to this country have been able, despite differing backgrounds, to live peaceably with other newcomers and their descendants from other parts of the world in a neighborly manner that we each like to pride ourselves on, so that each is able to enjoy the fruits of living in this wonderful country.

We invite you to help be part of the solution to the benefit of all in your neighborhood.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark E. Bernhardson', written over a large, stylized 'M' and 'B'.

Mark E. Bernhardson
City Manager

cc: Mayor and City Council
City Attorney
Community Development Director
Community Services Director
Chief of Police
8201 Park Avenue South/FAQ Web page after 5/21/12