

ADVISORY PARK BOARD AGENDA

May 18, 2015
5:30 P.M.

Meeting Rooms H
City-County Government Center

160 South Macy Street
Fond du Lac, Wisconsin

I. CALL TO ORDER

- A. Roll Call
- B. Declaration a Quorum is Present

II. ELECTION OF OFFICERS

- A. Chairperson
- B. Vice-Chairperson

III. CONSENT AGENDA

- A. April 27, 2015 Minutes

IV. INPUT (No action required)

- A. Lakeside Park Wellhouse & Bathroom Discussion
Initiator: John Redmond, Parks Superintendent
- B. McDermott Park Lease to Winnebago Lutheran Academy
Initiator: Jordan Skiff, Director of Public Works
- C. Public Comments

V. ADJOURN

ADVISORY PARK BOARD MINUTES

April 27, 2015

5:30 P.M.

Meeting Rooms D&E
City-County Government Center

160 South Macy Street
Fond du Lac, Wisconsin

CALL TO ORDER

ROLL CALL: Present: - Chad Behling
Ted Eischeid
Daniel Feyen
Shawn McCrary
John Piper
Renee Wagner

Absent: - Catherine Block
Sandra Krueger

Administrative Staff: - John Redmond, Park Superintendent
Jordan Skiff, Dir of Public Works

Chairperson Piper declared a quorum present.

CONSENT AGENDA

February 23, 2015 Minutes

Motion made by McCrary to approve the minutes of the February 23, 2015 Advisory Park Board meeting as presented.

Seconded by Feyen.

ROLL CALL VOTE: Aye - Behling, Eischeid, Feyen,
McCrary, Piper, Wagner

Nay - None

INPUT

Lakeside Park Exploratory Committee

Subject: An update on the Lakeside Park Exploratory Committee

Initiator: Jordan Skiff, Director of Public Works

General discussion on the above topic ensued.
No formal action was taken at this meeting.

Lakeside Park Concession Agreement

Subject: An update on the Lakeside Park Concession Agreement

Initiator: Jordan Skiff, Director of Public Works

General discussion on the above topic ensued.
No formal action was taken at this meeting.

Lakeside Park Harbor Master Contract

Subject: An update on the Lakeside Park Harbor Master Contract

Initiator: Jordan Skiff, Director of Public Works

General discussion on the above topic ensued.
No formal action was taken at this meeting.

General Update on Park Activities

Subject: An update on Park Activities

Initiator: John Redmond, Park Superintendent

General discussion on the above topic ensued.
No formal action was taken at this meeting.

ADJOURN

Motion made by Feyen to adjourn.

Seconded by McCrary.

ROLL CALL VOTE: Aye - Behling, Eischeid, Feyen,
McCrary, Piper, Wagner

Nay - None

Carried.

Meeting adjourned at 6:10 p.m.

MARGARET HEFTER
CITY CLERK

**LEASE AGREEMENT BETWEEN
THE CITY OF FOND DU LAC
AND
WINNEBAGO LUTHERAN ACADEMY**

This Lease Agreement (“Agreement”) is made by and between the City of Fond du Lac, a Wisconsin municipal corporation, (“City”) and the Winnebago Lutheran Academy Association, a Wisconsin non-stock corporation, (“WLA”).

WHEREAS, the City owns property known as McDermott Park, which includes the property shown in Attachment A to this Agreement (“the site”); and

WHEREAS, WLA has expressed interest in leasing a portion of the site for the construction and use of athletic fields, the south parking lot and associated improvements at the site, as shown in Attachment B to this Agreement (“the leased premises”); and

WHEREAS, the City, due to budget constraints, would not be able to make these improvements without the help of WLA. These improvements will benefit both City residents and WLA; and

WHEREAS, WLA, through its Board of Directors, has approved the construction of athletic fields, the south parking lot and associated improvements on the leased premises.

NOW, THEREFORE, BE IT RESOLVED, that the City and WLA mutually agree on the following terms and conditions for construction and use of the site.

1. Premises & Construction. In consideration of the covenants contained herein and other valuable consideration, the City hereby leases to WLA and WLA hereby leases from the City the premises now located or to be constructed on the leased premises. Furthermore, WLA agrees to construct athletic fields, the south parking lot and associated improvements on the leased premises in conformance with all City Building requirements (together “Improvements”). In the context of this Agreement, construction is limited to the creation of 3 athletic fields, the ancillary features of athletic fields normally associated with the sports for which they are created and one parking lot (normally associated means dugouts, fences, bleachers, lights, etc.).

A master site plan shall be submitted to the City for approval prior to commencing any site work. The City’s approval shall not be unreasonably withheld, delayed, or conditioned. Construction of the Improvements may occur in phases. However, prior to beginning any phase WLA must show to the reasonable satisfaction of the City’s Parks Superintendent that sufficient resources are available to complete the contemplated phase. WLA agrees to complete construction of any phase of its work within 12 months of commencement. WLA will work to minimize disruptions and communicate in advance with the Recreation Department. It is anticipated that the 2016 season will be completely disrupted. Title to the Improvements shall be held by the City.

At the time of the execution of this Agreement WLA reasonably believes that there will be sufficient space for the contemplated Improvements. However, if WLA subsequently determines,

in its sole discretion, that there is insufficient space for the contemplated Improvements, then WLA may either or both (a) request that the City consider expanding the boundaries of the leased premises, to which request the City will give good faith consideration, or (b) rescind this Agreement.

WLA reserves the right to modify the Improvements in the future, subject to the City's approval, which shall not be unreasonably withheld, delayed, or conditioned, provided that the modifications to the Improvements align with the intent of this Agreement, which is to provide outdoor sports fields for high school athletic programs and public access, as described herein, to those fields.

2. First Use and Occupancy Rights. In exchange for constructing the Improvements, the City grants WLA first occupancy and use rights to the constructed athletic fields from September through May of each year. Except as provided, below, the City retains first occupancy and use rights from June through August of each year. The City and WLA acknowledge the need for WLA to access the athletic fields in portions of both June and August to correspond with either WLA's school calendar or WIAA events. The City agrees that WLA's first occupancy and use rights shall be adjusted to correspond with either WLA's school calendar or WIAA events; provided, however, that the City retains first occupancy and use rights in August for the softball fields. Accordingly, WLA will schedule its use of the athletic fields during August to avoid conflict with the Recreation Department schedule. Both the City and WLA also acknowledge the potential need for WLA to access the athletic fields in June. When such a need arises, WLA must promptly advise the Recreation Department no later than March 1 of that year. The first occupancy and use rights as described shall exist through the year 2065 and shall, thereafter, automatically renew on an annual basis unless either party gives a written 90 day notice of intent to renegotiate the terms of this Agreement. This Agreement does not extend first occupancy and use rights to the south parking lot, which will be available to the general public on a first come, first served basis for the duration of this Agreement.

3. Public Use.

- 3.1 The City and WLA further agree that when the leased premises are not being used by the WLA, they shall be available for public use. The City retains the authority to set park hours and reserve the fields outside of the times the fields are reserved for WLA use. The design of the athletic fields shall meet the then current applicable WIAA athletic requirements.
- 3.2 WLA agrees to prepare and install signs notifying the public that the leased premises are open to the public, subject to WLA's priority use during the school athletic season (WIAA rules).
- 3.3 No later than March 1 of each year the Recreation Department and WLA will jointly review the athletic field schedule endeavoring to maximize athletic field utilization and to minimize scheduling conflicts, with special emphasis on the June and August schedules. Solutions to unanticipated schedule changes, such as cancellations due to weather, will be determined mutually, but in deference to whichever party holds first occupancy and use rights at that time. The City acknowledges that WLA may not know its

athletic fields schedule by March 1 of each year. WLA shall cooperate with the Recreation Department in the coordination of unforeseen needs of the athletic fields in June and August.

- 3.4 WLA shall not exclude the general public from the athletic fields, except as required for practices and games.
- 3.5 Concession facilities, if any, shall be open to the general public.
- 3.6 The south parking lot will be open for public use on a first come, first served basis. However, public access to the south parking lot shall not affect the calculation of WLA's compliance with applicable parking space requirements. Overnight parking will be prohibited in the south parking lot.

4. Maintenance.

- 4.1 Fields. The City will be responsible, at its cost, for mowing all the grass on the leased premises. The remaining upkeep and maintenance of the Improvements shall be the responsibility of the WLA, at its cost. The Parks Superintendent will review WLA's upkeep and maintenance and if it is acceptable, approve same. The approval shall not be unreasonably withheld, delayed, or conditioned. WLA shall not be responsible for preparing the athletic fields for public use.
- 4.2 Parking Lots. WLA shall maintain the proposed south parking lot, including snow removal, repairs, reconstruction and lighting. The City shall maintain the existing north parking lot at the site, including snow removal, repairs, reconstruction and lighting.
- 4.3 Lighting. The City shall continue to maintain and operate existing park lighting, including the north parking lot and tennis courts. WLA shall install and operate lighting for the south parking lot. Should WLA choose to provide lights for the new fields, the City will not utilize those lights without making usage and payment arrangements.
- 4.4 General. WLA agrees to reimburse the City for any electrical service and/or garbage removal, relating to the leased premises.

5. Advertising. WLA shall be permitted to honor sponsors and donors with permanent signs on the leased premises, similar to the plaques that the City has approved for donated benches in the parks. All signage and banners whether permanent or temporary must be approved by the Parks Superintendent prior to placement at the site. Any advertising must comply with City ordinances.

6. Insurance. WLA will provide proof of insurance with general liability coverage of \$1,000,000 per occurrence, \$2,000,000 general aggregate; umbrella liability of \$2,000,000 per occurrence and aggregate. A certificate evidencing the City as an additional named insured, shall be provided to the City annually. WLA agrees to indemnify and hold harmless the City

from liability or losses caused by the fault or negligence of WLA and its employees or agents. The City shall provide fire and extended coverage insurance regarding any buildings on the property. WLA shall procure and have in effect at all times pertinent Workmen's Compensation Insurance coverage relative to their employees, if any.

To the extent authorized by law, the City agrees to indemnify and hold harmless WLA from liability or losses caused by the fault or negligence of the City and its employees or agents.

7. No Assignment. Except as provided below, the rights provided to WLA under this Agreement shall not be assigned, transferred, subleased, hypothecated or otherwise disposed of, nor shall the control of the premises or any interest therein, or any part thereof, be granted by the WLA to any other person or entity without the consent of the City Manager, which consent shall not be unreasonably withheld, delayed, or conditioned. The parties stipulate that the City Manager may consider the following criteria: (a) the financial responsibility of the proposed assignee, (b) the entity or business character of the proposed assignee, (c) the legality of the proposed use, and (d) the specific nature of the occupancy. The preceding prohibition against assignment does not apply to the merger, consolidation or reorganization of WLA with another non-stock corporation.

8. Revocation of Agreement.

8.1 This Agreement shall be revocable if WLA neglects or fails to perform or observe any of the covenants of this Agreement, and WLA shall fail to remedy the same within sixty (60) days after the City has given to WLA written notice specifying such neglect or failure or within such period, if any, as may be reasonably required to cure such default, if it is of such nature that it cannot be cured within said sixty (60) day period, provided that WLA shall have commenced the cure and proceeds with due diligence to complete the cure. After 2065, this Agreement shall also be revocable at any time by the City Manager upon 90 day written notice given to the WLA. After any revocation, the City shall have the right to re-enter and take possession of the premises forthwith. Neither the City of Fond du Lac nor its agents or employees, shall be liable for any damages because of such revocation.

8.2 After any revocation, WLA shall immediately quit and surrender possession of the premises. If revoked for cause, WLA shall either restore the site to its original condition if a commenced Improvement is not completed prior to revocation, or complete the commenced Improvement.

9. Limitation of Municipal Liability. Nothing contained within this Agreement is intended to be a waiver or estoppel of the City or its insurer to rely upon the limitations, defenses and immunities contained within Wisconsin Statutes sections 345.05, 893.80, and 895.52. To the extent that indemnification is available and enforceable, the City or its insurer shall not be liable in indemnity, contribution or otherwise for an amount greater than the limits of liability of municipal claims established under Wisconsin law.

10. Miscellaneous.

- 10.1 WLA agrees to conduct all practices, games and school activities on the leased premises in a safe and considerate manner.
- 10.2 WLA acknowledges that the City reserves the right to use the balance of McDermott Park located outside the leased premises, including, without limitation, the north parking lot, the picnic pavilion, the storage/warming building adjacent to the picnic pavilion, and the open area that has been utilized as a skating rink.
- 10.3 WLA shall adhere to all ordinances, resolutions, rules and regulations as established by the City and shall assist and cooperate with park personnel in the care and maintenance of its occupied premises. The described premises shall be maintained in a neat, clean and attractive condition at all times.
- 10.4 The City acknowledges that WLA will be required to perform excavation and related earth work in order to improve the leased premises pursuant to the provisions of the master site plan. However, this work shall not materially increase the discharge of storm water from the leased premises. To the extent that local, state or federal regulatory approvals are required before WLA is allowed to improve the leased premises, WLA expressly reserves the right to terminate this Agreement if the approvals materially increase WLA's project costs or materially alter WLA's contemplated use.
- 10.5 WLA shall comply with the Code of Ordinances of the City of Fond du Lac, Wisconsin. However, WLA's compliance with the Code of Ordinances is subject to WLA's rights and privileges conferred by the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc-2000cc-5, and other applicable laws protecting religious entities.

Dated this _____ day of _____, 2015.

CITY OF FOND DU LAC

WINNEBAGO LUTHERAN
ACADEMY ASSOCIATION

By: _____
Joseph Moore, City Manager

By: _____
Board President

Attest:

Attest:

Maggie Hefter, City Clerk

Board Clerk



No Change

WLA Athletic Fields
(New)

Tennis Courts
(No Change)

Parking Lot
(New)