

ADVISORY PARK BOARD AGENDA

July 27, 2015
5:30 P.M.

Legislative Chambers
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. CONSENT AGENDA

- A. June 22, 2015 Minutes

III. UPDATE (No Action Required)

- A. Update and Review Proposed Lease agreement to Winnebago Lutheran Academy
Initiator: Jordan Skiff, Director of Public Works

IV. PUBLIC COMMENTS

V. INPUT (No Action Required)

- A. Parks Superintendent General Update
Initiator: John Redmond, Parks Superintendent

VI. ADJOURN

ADVISORY PARK BOARD MINUTES

June 22, 2015
5:30 P.M.

Meeting Rooms F & G
City-County Government Center

160 South Macy Street
Fond du Lac, Wisconsin

CALL TO ORDER

Roll Call: Present: - Catherine Block
Jane Dennis
Ted Eischeid
John Kiefer
Shawn McCrary
John Piper
Renee Wagner

Administrative Staff: - Joe Moore, City Manager
John Redmond, Park Superintendent
Jordan Skiff, Dir of Public Works

Chairperson Piper declared a quorum is present.

CONSENT AGENDA

May 18, 2015 Minutes

Motion made by Block to approve the minutes of the May 18, 2015 Advisory Park Board meeting as presented.

Seconded by McCrary.

ROLL CALL VOTE: Aye - Block, Dennis, Eischeid, Kiefer,
McCrary, Piper, Wagner

Nay - None

Carried.

ACTION

McDermott Park Lease to Winnebago Lutheran Academy

Initiator: Jordan Skiff, Director of Public Works

Appeared And Spoke In Support:

Dan Leeds, 155 Cottage Ave., Fond du Lac, WI

Appeared And Spoke In Opposition:

Diana Beck, N7141 Leonard Dr., Fond du Lac, WI
Nancy Sondergard, 395 Ledgeview Ave., Fond du Lac, WI
Barb Bossenbroek, 396 Ledgeview Ave., Fond du Lac, WI
Rick Moulton, 240 Cottage Ave., Fond du Lac, WI
Art Godleski, 16 Bryn Mawr Cir., Fond du Lac, WI
Mary Ann Johnson, 472 East Merrill Ave., Fond du Lac, WI
Shirley Clements, 101 Cottage Ave., Fond du Lac, WI
Janelle Anderson, 136 E. Merrill Ave., Fond du Lac, WI
Barb Neitman, 426 E. Merrill Ave., Fond du Lac, WI
David Stetter, Conservation Chair, Fond du Lac County
Audubon, W9392 State Rd. 23, Rosendale, WI
Patrick Mullen, 285 Linden St., Fond du Lac, WI
Leslie Benson, 57 Elm Tree Ln., Fond du Lac, WI
Mary Hayes, 285 Linden St., Fond du Lac, WI
Kathy Walz, 618 E. Merrill Ave., Fond du Lac, WI
Keith Searl, 424 Maple Ave., Fond du Lac, WI

Appeared In Opposition And Did Not Speak:

Mary Hayes, 285 Linden St., Fond du Lac, WI
Laura DeGolier, 289 14th St., Fond du Lac, WI

Motion made by Block to postpone lease agreement
between Winnebago Lutheran Academy and the City of
Fond du Lac.

Seconded by McCrary.

ROLL CALL VOTE: Aye - Block, Dennis, Eischeid, Kiefer,
McCrary, Piper, Wagner

Nay - None

Carried.

INPUT

Discussion on Bowstring Bridge in Lakeside Park

Initiator: Jordan Skiff, Director of Public Works

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

Discussion On Proposed Food Truck Ordinance

Initiator: Jordan Skiff, Director of Public Works

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

Parks Superintendent General Update

Initiator: John Redmond, Parks Superintendent

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

ADJOURN

Motion made by McCrary to adjourn.

Seconded by Block.

ROLL CALL VOTE: Aye - Block, Dennis, Eischeid, Kiefer,
McCrary, Piper, Wagner

Nay - None

Carried.

Meeting adjourned at 7:33 p.m.

MARGARET HEFTER
CTIY CLERK

CITY OF FOND DU LAC - Memorandum

Department of Public Works

Date: July 24, 2015

To: Advisory Park Board Members

From: Jordan Skiff, Director of Public Works 

Re: Significant Changes in McDermott Park Situation

As you know, next Monday's Advisory Park Board meeting was intended to focus almost entirely on a proposed lease with Winnebago Lutheran Academy (WLA) to use a portion of McDermott Park for ball fields and a parking lot. Two major discoveries have been made since your last meeting that will alter this conversation significantly, and I wanted to summarize those issues for you in advance of the meeting. **Since these changes render obsolete the lease and concept plan that have been prepared, you will not be asked to take action at Monday's meeting.** WLA will be meeting to decide how to proceed, if at all, based on this information.

Floodway: In light of the flooding concerns that have been brought up by residents when considering WLA's planned athletic fields, City staff took a fresh look at McDermott Park from that perspective. This revealed that much of the western third of McDermott Park is in a floodway. A floodway is defined as "those portions of the floodplain adjoining [a] channel required to carry the regional flood discharge." Basically, during a regional flood, water might *move* through this area (instead of just *sitting* in the flood fringe, the other component of the floodplain). City ordinance and State and Federal floodway laws do not allow development in a floodway that "will obstruct flow or increase regional flood heights 0.01 foot or more, based on the officially adopted FIRM [Flood Insurance Rate Map] or other adopted map." For WLA to demonstrate that these two conditions can be met would be time-consuming and costly.

It is likely that the lease and concept plan, in their present form, would not be feasible or cost effective, and that WLA will be forced to look at other options.

2005 Lease: Since the previous Park Board meeting, WLA proposed a new parking lot location which would by virtue of that new location fall under a lease from 2005 that runs through 2036. The first of the major components of the lease is that the City may use WLA land for infrastructure needed to construct a surface water blending plant in McDermott Park. After the lease was signed, the City Council voted to pursue a different approach to address long-term water supply needs, so the City did not build the plant in the park. Under the lease, WLA was allowed to use a 60' wide strip of land on the

east side of the park to expand their baseball field and to possibly construct a parking lot. The newly proposed parking lot location would be in this area.

Please feel free to contact me at 920-322-3472 to discuss this issue further.

LEASE

THIS LEASE AGREEMENT, by and between the **CITY OF FOND DU LAC** (the "City"), a political subdivision and municipal corporation in the State of Wisconsin, and **WINNEBAGO LUTHERAN ACADEMY ASSOCIATION** (the "Academy"), a not-for-profit corporation, provides as follows:

WITNESSETH:

WHEREAS, The City is renovating its system of waterworks to include blending of well water with surface water; and

WHEREAS, As part of that renovation it is necessary and desirable for the City to secure rights to transport water over, through and under property owned by the Academy and located on the North end of it's property at 475 E. Merrill Avenue in the City; and

WHEREAS, The Academy is willing to provide an easement to the City over, through and under such property for that purpose, in return for a lease of a portion of land in McDermott Park that lies immediately to the West of the Academy property; and

WHEREAS, This arrangement would promote the general health, welfare and safety of the City and its residents; and

WHEREAS, The City and the Academy wish to set forth their understandings, obligations and duties with respect to this matter;

NOW THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Academy hereby represent, warrant, covenant, and agree as follows:

1. Ground Lease. Subject to the terms and conditions hereof, the City hereby leases to the Academy, and the Academy hereby leases from the City, the property described in Exhibit "A" hereto (the "Property").

2. Permitted Uses. The Property may be used by the Academy only for the following purposes (collectively, "Permitted Uses"):

- a) The construction, acquisition, improvement, operation, maintenance, and use of a parking lot to be used in connection with the Academy's normal and routine functions and to occupy a footprint approved by the Director of the City Department of Public Works.
- b) The construction, acquisition, improvement, operation, maintenance, and use of a baseball fence to occupy a footprint approved by the Director of the City Department of Public Works (such parking lot and baseball fence are collectively referred to as the "Improvements");
- c) Such other uses as are related and subordinate to those set forth above; and

- d) Such temporary uses as are approved by the Director of the City Department of Public Works; and
- e) Such non-temporary uses as are approved by the City Council.

3. **Permitted Users.** The Property and the Improvements may be used only by the Academy, and its designees and invitees, and such other users as may be approved from time to time by the City (collectively "Permitted Users"). This use is not exclusive as applied to the City and its invitees, who shall have the continuing right to use unimproved portions of the Property for park or other City purposes.

4. **The Improvements.** The Improvements shall be constructed by or at the direction of the Academy, and nothing in this agreement modifies or relieves the Academy or its agents from complying with all laws relating thereto. In addition, all plans for the Improvements shall be submitted to the Director of Public Works of the City for review and approval prior to construction.

5. **Ownership of the Improvements and Property.** The Improvements and all and any part thereof are and at all times shall remain the property of and under the ownership of the Academy. The City remains owner of the Property, subject to this agreement.

6. **Permitted Signage.** No signage shall be allowed on or at the Improvements or the Property unless approved by the Director of the City Department of Public Works.

7. Rent. Good and sufficient consideration exists for this agreement, and there is no rent.

8. Operation and Maintenance. The Academy shall at its expense at all times maintain and operate the Improvements and Property in good repair and operating order, for Permitted Uses. Without limiting the generality of the foregoing, the Improvements and Property shall be maintained at least at the level of similar facilities similarly used.

9. Insurance. The Academy shall at all times maintain insurance on the Improvements and Property of a nature and in amounts and covering such risks as is customary for similar facilities having similar Permitted Uses. Such insurance shall also name the City as an additional insured or otherwise cover the City, as its interest may appear. Without limiting the generality of the foregoing, the Academy shall maintain liability insurance on the Improvements and Property in the aggregate amount of not less than \$1,000,000, with at least \$1,000,000 coverage for each occurrence. The Academy shall also maintain workers compensation insurance in accordance with Wisconsin requirements of law. The Academy shall also maintain property insurance, covering such perils as wind, fire and other losses, in an amount not less than \$1,000,000. The Academy shall also maintain builder's risk insurance in amounts that are customary for similar projects. Such policies may not contain deductibles. All policies shall be presented to the City and shall be in amounts, and from insurance companies, and in form and substance satisfactory to the Director of the City Department of Public Works.

10. **Permits.** The Academy shall obtain and keep in existence at its expense all necessary permits, licenses and other approvals for the operation and maintenance of the Improvements and the Property for Permitted Uses.

11. **Payment of any Charges.** The Academy shall promptly pay any and all taxes, charges, assessments or other fees and or expenses, whether from a public or private party or concern, and will not permit any of the same to become a lien or encumbrance on any part of the Improvements or Property.

12. **City Under No Obligation.** The City is not obligated to pay for or perform or cause to be performed any of the Academy's obligations hereunder. Those obligations are the sole responsibility of the Academy, and the Academy agrees that the City shall have no expense or liability from or as a result of the construction, maintenance, operation or use of the Improvements or Property. Notwithstanding the foregoing, should the City incur any expense or have any liability, the Academy shall immediately reimburse such amount to the City, it being agreed that the Academy has the absolute obligation to indemnify and hold the City harmless from all expense and liability, whether incurred in tort, or contract or otherwise, relating to or arising out of the Improvements or Property, or the operation, maintenance, construction or use thereof.

13. **Term.** The term of this agreement is from June 1, 2005, to and including June 1, 2036, unless sooner terminated as provided herein, or extended by the parties (the "Term"). This agreement may be terminated by the City on 90-days' written notice to the Academy if the Academy is in default under this agreement and has been notified in writing by the City of such default and

such default has not cured within 30 days or such longer period as is agreed to by the City.

14. Return of Property after Term. Upon completion of the Term, the Academy shall turn the Property over to the City in a dust-free and erosion-free condition, free of all structures, materials and debris, and also free of any encumbrances or liens of any nature, except for any of the foregoing that are acceptable to the Director of the City Department of Public Works, all in a condition satisfactory to the City.

15. City Approval. All references herein to city officials or city bodies are to the designated official or body of the City of Fond du Lac, Wisconsin. If approval is required or permitted from the City without further designation, such approval means approval from the City Council.

16. Non-Assignable. The interest of the Academy hereunder or to the Improvements or Property or any portion thereof is not assignable, not transferable, may not be mortgaged or a security interest therein granted, or in any other way encumbered, alienated, or transferred, without the express prior consent of the City.

17. Binding on Successors and Assigns. This agreement is binding on the parties hereto, and on their successors and assigns.

IN WITNESS WHEREOF the parties hereto have caused this agreement to be executed.

CITY OF FOND DU LAC

BY: Wayne F. Rollin
Wayne F. Rollin,
Acting City Manager

ATTEST: Sue Strands
Sue Strands,
Deputy City Clerk

WINNEBAGO LUTHERAN ACADEMY ASSOCIATION

BY: Pastor Joseph G. Casper President
Walter J. [Signature] Secretary
Contractor

This instrument drafted by:

James A. Flader
City Attorney

EXHIBIT "A"

DESCRIPTION

A parcel of land being a part of lots 11 and 12 of Merrill Avenue Addition to the City of Fond du Lac, and also a part of unplatted lands located in part of the N.W. $\frac{1}{4}$ of the S.E. $\frac{1}{4}$ of Section 11, T15N. - R17E., in the City of Fond du Lac, Fond du Lac County, Wisconsin and is more particularly described as follows;

Commencing at the S.W. Corner of Lands described in Volume 358 on Page 250 of Deeds as recorded in the Fond du Lac County Register of Deeds Office and the Point of Beginning for this description: thence Westerly 60.00 feet on the Westerly extension of the South Line of said lands recorded in Volume 358: thence Southerly 633.96 feet, more or less to a point on the North Line of said Lot 12, said point being 10 feet East of the Northwest corner of said Lot 12: thence Southerly 120 feet along a line 10 feet Easterly of and parallel to the West Line of said Lot 12 to the North Line of Merrill Avenue: thence Easterly 60 feet along the North line of Merrill Avenue: thence Northerly 120 feet along a line 20 feet Easterly of and parallel to the West Line of said Lot 11 to the North line of said Lot 11; thence Northerly 633.96 feet, more or less along the West Line of Winnebago Lutheran Academy Lands (as recorded in Volume 952 of Records on Page 637 in the Fond du Lac Register of Deeds Office) to the Point of Beginning containing 1.039 acres (45,237.6 S.F.) of land more or less.