

CITY OF ONALASKA MEETING NOTICE

COMMITTEE/BOARD: Special Parks & Recreation Board

DATE OF MEETING: June 11th, 2018 (Monday)

PLACE OF MEETING: City Hall – 415 Main Street (Room 112)

TIME OF MEETING: 5:15 P.M.

PURPOSE OF MEETING

1. Call to Order and roll call.
2. Approval of minutes from the previous meeting.
3. Public Input (Limited to 3 minutes/individual)

Consideration and possible action on the following items:

4. Development Agreement for Dash-Park
5. Adjournment

PLEASE TAKE FURTHER NOTICE that members of the Common Council of the City of Onalaska who do not serve on the Board may attend this meeting to gather information about a subject over which they have decision making responsibility.

Therefore, further notice is hereby given that the above meeting may constitute a meeting of the Common Council and is hereby noticed as such, even though it is not contemplated that the Common Council will take any formal action at this meeting.

NOTICES MAILED TO:

Mayor Joe Chilsen

*Ald. Jim Binash

Ald. Jim Olson

Ald. Jerry Every

Ald. Ron Gjertsen

Ald. Kim Smith

Ald. Diane Wulf

City Attorney Dept Heads
La Crosse Tribune City Administrator

Coulee Courier

WKTY WLXR WKBT

WXOW WLAX FOX

*Committee Members

*Dan Stevens

*Andrea Benco

*Brian Udermann

*Dennis Aspenson – Vice Chair

*Steven Nott – Chair

*Obhe Johnson

Onalaska Omni Center

Onalaska Public Library

Notices Posted and Mailed: 6/7/18

In compliance with the Americans with Disabilities Act of 1990, the City of Onalaska will provide reasonable accommodations to qualified individuals with a disability to ensure equal access to public meetings provided notification is given to the City Clerk within seventy-two (72) hours prior to the public meeting and that the requested accommodation does not create an undue hardship for the City.

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "*Agreement*") is made and entered into effective as of this ____ day of _____, 2018 (the "*Effective Date*"), by and between SkogenHeim, LLC, a Wisconsin limited liability company (hereinafter "*Owner*"), and the City of Onalaska, a Wisconsin municipal corporation (hereinafter "*City*").

RECITALS:

A. Owner owns certain real property located at the southeast corner of the intersection of Main Street and Second Avenue in the City of Onalaska, Wisconsin, as more particularly described on Exhibit A attached hereto, on which Developer has developed and constructed a public park facility known as Dash-Park (hereinafter, the "*Park*");

B. Owner desires to dedicate the Park to the City to be maintained by the City for the use and enjoyment by the general public, and City intends to own, manage and maintain the Park following dedication of the Park to the City; and

C. The parties desire to enter into this Agreement to set forth the terms and conditions of their agreement.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Dedication of Park to City.** Owner hereby dedicates the Park to the City to be maintained as a public park for the use and enjoyment of the general public, conditioned upon City's acceptance of the following terms, conditions and restrictions:

a. Name; Signage. The Park shall at all times be named and described as "Dash-Park." The existing "Dash-Park" monument sign located at the southeast corner of the intersection of Main Street and Second Avenue (the "*Sign*") shall be maintained in its existing location to acknowledge and promote the name of the Park, and any signage, references, advertising or promotional materials made by the City in connection with the Park shall make reference to the Park being called "Dash-Park."

b. Use; Programming. The Park shall be maintained as a public park for the use and enjoyment by the general public, with emphasis on providing a community gathering place and natural open space for use and enjoyment by the citizens and visitors of the City. City shall make reasonable efforts to coordinate and maintain events and programming in the Park for the enjoyment and entertainment of the general public, including, but not limited to, musical or other entertainment performances, art fairs or exhibits, and other community events, to encourage the use and enjoyment of the Park by the general public. City may use funds from the Maintenance Fund (as defined herein) to offset any extraordinary costs incurred by the City to coordinate and maintain any events

or programming at the Park as required herein. City shall not allow the Park to be used other than as provided in this Agreement.

c. Maintenance Standards. City shall use its reasonable efforts to maintain the Park in a first-class condition, consistent with similar marquee public parks in the City and the greater La Crosse, Wisconsin-metropolitan area. If certain elements of the Park require additional or extraordinary maintenance by City, City may use funds from the Maintenance Fund to perform such maintenance and upkeep.

d. Display of Holiday Exhibit. Owner's dedication of the Park to the City shall include all of Owner's right, title and interest in and to a certain holiday display Owner had custom-built for the Park; consisting of an artificial, decorated holiday tree, being approximately 40-feet in height, together with any ornaments, replacement parts, stand, or other equipment related thereto (collectively, the "*Holiday Exhibit*"). City shall erect and display the Holiday Exhibit in the Park (at the location identified on the attached Exhibit B), beginning no later than December 1st each year, and continuing until not earlier than December 31st each year during the useful life of the Holiday Exhibit. City shall not be required to replace or conduct extraordinary repairs on the Holiday Exhibit; *provided, however*, that City (i) may, in City's discretion, use funds from the Maintenance Fund to offset any extraordinary costs incurred by the City in connection with the repair or replacement of the Holiday Exhibit; and (ii) shall, in the event the Holiday Exhibit is damaged or destroyed by an act which is covered under any insurance policy(s) maintained by City, use those insurance proceeds actually received by the City in connection with any such damage or destruction of the Holiday Exhibit to make necessary repairs or replacement to the Holiday Exhibit (*provided, however*, that the costs of such repair or replacement does not exceed the amount of any such insurance proceeds). During those times when the Holiday Exhibit is not on display, City shall make reasonable efforts to store the Holiday Exhibit out of the elements to extend its useful life.

e. Security. City shall use reasonable efforts to keep and maintain the Park as a safe and secure environment for the general public, and shall take those measures reasonably necessary to secure and protect the Park from vandalism, theft or damage.

f. Encumbrances. Except as provided herein, the Park shall not be conveyed, assigned or encumbered by any liens or indebtedness, whether voluntary or involuntary.

g. Failure to Comply. If for any reason City, at any time, fails to comply with the restrictions, terms or conditions provided herein, any interested party may bring the issue to the City Parks ~~Commission~~ Board which will determine the severity of any issue, how to remedy any issue and if the City Parks ~~Commission~~ Board finds that the City cannot properly maintain the Park, the City will turn ownership of the Park over to a not-for-profit entity whose primary purpose is to protect and preserve open space and, in this instance, provide for the continued use of the Park in the manner and subject to the restrictions contained herein. Such not-for-profit entity shall be such an entity as selected

by the Onalaska Community Development ~~Association~~ Authority.

2. **Contribution of Park Maintenance Fund.** Upon City's written acceptance of the dedication of the Park, Owner has agreed to make a contribution of no less than Twenty-Five Thousand Dollars (\$25,000) to City's Special Projects Fund for the restricted purpose of funding the maintenance, repair and programming at the Park, as provided herein, during the City's ownership of the Park (the "*Maintenance Fund*"). City agrees that the Maintenance Fund shall be (i) held in an interest-bearing investment account, segregated from City's general funds; and (ii) used exclusively for the long-term maintenance, repair and programming of the Park (including the Holiday Exhibit), consistent with the standards provided in Section 1 above. If at any time the Park is transferred by the City to a non-for-profit entity as contemplated in Section 1(g) above, City shall also transfer to such entity any portion of the Maintenance Fund still held by City at the time of such transfer.

3. **Assignment of Warranties; Lien Waivers.** Upon dedication of the Park to the City, Owner shall transfer or assign to the City all warranties for workmanship and materials related to the Park such that any issues that arise at the Park due to original construction or material defects will be covered by Owner's contractor or subcontractor for a period ending no earlier than May 31, 2019. Owner shall have received lien waivers from all contractors and subcontractors for the construction of the Park.

4. **Acceptance of Terms; Conveyance of Park.** The parties acknowledge and agree that the execution of this Agreement by both Owner and the City shall evidence (i) City's acceptance of the dedication provided herein, (ii) City's agreement to be bound by the terms, conditions and restrictions contained herein, and (iii) Owner's agreement to convey the Park to the City. Within thirty (30) days following the execution of this Agreement, Owner shall (i) convey the Park to City by quit claim deed and any other instrument(s) deemed reasonably necessary by City, and (ii) contribute the Maintenance Fund to City.

5. **Future Contributions and Dedications.** City acknowledges and agrees that Owner may desire to make future contributions or dedications of equipment or other physical improvements to enhance the Park. City agrees to reasonably accommodate such contributions or dedications so long as any equipment or improvements offered by Owner does not, in City's reasonable discretion, cause (i) a safety hazard to the general public; and (ii) the City to incur any extraordinary costs for the maintenance, upkeep, repair or replacement of such equipment or improvements.

6. **Binding Terms; Covenants Running with Land.** All the terms, conditions, restrictions and covenants herein contained or implied by law are covenants running with the Park in perpetuity and shall be binding upon, attach to, inure to the benefit of and be enforceable by City and Owner and their respective successors and assigns, and any other beneficiaries identified herein.

7. **Authority.** Each of the parties represents and warrants that it has the full capacity, right, power and authority to execute, deliver and perform this Agreement, and all required actions, consents and approvals therefor have been duly taken and obtained.

8. **Recording of Agreement.** Either party may record this Development Agreement or a Memorandum of this Agreement with the Register of Deeds for La Crosse County, Wisconsin. Upon request of either party, the other party shall execute and deliver to the requesting party any such Memorandum or any other document in connection with such recording.

9. **Governing Law.** The laws of the State of Wisconsin shall govern this Agreement.

10. **Severability.** If any provision of this Agreement is determined by a court of law to be invalid or unenforceable, the court may modify that provision to be within the limits of enforceability or validity, if feasible; however, if the offending provision cannot be so modified, it may be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

11. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which will be considered one and the same agreement and will become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have entered into this Development Agreement as of the Effective Date.

CITY:

City of Onalaska,
a Wisconsin municipal corporation

Joe Chilsen, Mayor

Cari Burmaster, Clerk

ACKNOWLEDGEMENT

STATE OF WISCONSIN)
)ss.
COUNTY OF LA CROSSE)

Personally came before me on the ____ day of _____, 2018, the above-named Joe Chilsen and Cari Burmaster, being the Mayor and Clerk, respectively, of the City of Onalaska, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

_____, Notary Public
State of Wisconsin

My commission expires: _____

OWNER:

SkogenHeim, LLC,
a Wisconsin limited liability company

David Skogen, Member

Barbara Skogen, Member

ACKNOWLEDGEMENT

STATE OF WISCONSIN)
)ss.
COUNTY OF LA CROSSE)

Personally came before me on the ____ day of _____, 2018, the above-named David Skogen and Barbara Skogen, Members of SkogenHeim, LLC, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

_____, Notary Public
State of Wisconsin

My commission expires: _____

This document was drafted by:

Dustin F. Von Ruden
Weld Riley, S.C.
3624 Oakwood Hills Parkway
Eau Claire, Wisconsin 54701

EXHIBIT A

LEGAL DESCRIPTION OF PARK

Legal Description:

Lots 1 and 3 of La Crosse County Certified Survey Map, recorded on April 24, 2017, as Document No. 1692276, in Volume 17 of Certified Survey Maps, on Pages 46-46A, being part of the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 8, Township 16 North, Range 7 West, City of Onalaska, La Crosse County, Wisconsin.

AND

The East 30 feet of Lots 9 and 10 in Block 14 of the Original Plat of the Village (now City) of Onalaska, La Crosse County, Wisconsin.

Tax Parcel ID No.:

18-96-1

18-98-1

18-100-0

EXHIBIT B

MAP DEPICTING LOCATION OF HOLIDAY EXHIBIT

[See attached.]

[Exhibit B]