



CITY OF BAYPORT

294 NORTH 3RD STREET
BAYPORT, MN 55003

NOTICE OF CITY COUNCIL AND PLANNING COMMISSION JOINT WORKSHOP

***** Please note: There will be no public comment taken at the workshop. *****

NOTICE IS HEREBY GIVEN that the City Council and Planning Commission will hold a joint workshop at Bayport City Hall on Monday, November 13, 2023, at 4:00 p.m. The purpose of the workshop is to discuss a draft Memorandum of Understanding with the Stillwater Area Public School District which outlines the terms of shared use for Barker's Alps Park and parking lot if Andersen Elementary is relocated to the adjacent People's Congregational Church Park parcel.

Matt Kline, City Administrator



CITY OF BAYPORT
294 NORTH THIRD STREET
BAYPORT, MINNESOTA 55003
PHONE 651-275-4404 FAX 651-275-4411

Date: November 7, 2023

To: Mayor and City Council

From: Matt Kline, City Administrator

Re: Discuss a draft Memorandum of Understanding with the Stillwater Area Public School District which outlines the terms of shared use for Barker's Alps Park and parking lot

BACKGROUND

The Stillwater Area School District has reached an agreement with the People's Congregational Church to purchase 10 acres adjacent to Barker's Alps Park. Initially, the school district approached the city about the potential of purchasing or using a portion of Barker's Alps for relocation of Andersen Elementary. However, the option to purchase the church property became a possibility within the past few months, which provides a primary location for school facilities, with only a portion of shared use at the park.

The city has worked with school district over the past few weeks to draft a Memorandum of Understanding (MOU) outlining the terms of the shared use, which will be presented to the City Council and Planning Commission for consideration at a joint workshop on November 13. Facilities proposed for shared use include the existing and potential for an expanded parking lot, as well as the ball fields, open space, and picnic shelter by students and faculty. In the draft MOU, the city is proposing the following shared use terms/restrictions:

- Design and size of existing/expanded parking lot shall be a collaborate effort by city and school district
- Construction and maintenance of existing/expanded parking lot shall be assumed by school district
- Parking stalls shall be specifically designated for public use during school hours
- Use of the park facilities for school purposes shall be coordinated with the city
- Trail system shall remain open to the public during park hours

It is important to note that the MOU is only in draft form. Based on discussion and direction at the November 13 workshop, the city will coordinate with the school district to incorporate the necessary language for both parties to feel comfortable with the document.

RECOMMENDATION

Staff recommends the City Council and Planning Commission provide direction on the proposed terms of the draft MOU.

Attachment: Memo of Understanding, Concept plan

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is entered into this _____ day of _____ of 2023 between the City of Bayport, a municipal corporation, (the “City”) and Independent School District No. 834, Stillwater Area Public Schools, (the “District”). The City and the District are collectively known as “the Parties.”

WHEREAS, the City owns and operates a public park known as Barker’s Alps Park, 901 5th Ave N., Bayport, MN 55003. Specifically, this Memorandum of Understanding applies to the north, lower portion of the park known as PID No. 1002920120002, (the “Park”).

WHEREAS, the Park contains wooded hiking trails, baseball fields, and other recreational facilities.

WHEREAS, the Park has a public parking lot located on the northwestern portion of the Park parcel (the “Parking Lot”).

WHEREAS, the District intends to purchase the property adjacent and to the west of the Park and construct a new school facility, located at 1003 5th Ave. N., Bayport, MN 55003, PID No. 1002920210005 (“District Property”).

WHEREAS, the Parties desire to enter into this Memorandum of Understanding to formalize their agreement with respect to the shared use of the Park and Parking Lot.

WHEREAS, pursuant to Chapter 424 – S.F. No. 650, Laws of Minnesota for 1973, the Park may only be used for recreational or cultural purposes and the District’s intended use is for educationally-related recreational or cultural purposes.

NOW, THEREFORE, in consideration of the foregoing premises, the recitals which are incorporated herein, and the mutual promises and agreements contained herein, the Parties agree as follows:

1. **Construction of Expanded Parking Lot.** The District’s current intent is to expand the Parking Lot ___ feet in size. The District shall collaborate with the City to determine the size necessary to meet its needs and to meet construction specifications. The District shall be solely responsible for the cost of construction and maintaining the Parking Lot, including all costs for snow removal, surface maintenance, and reconstruction. If the District must relocate the pavilion, paved trail, electrical transformer, drinking fountain, display sign, or trees currently located near the Parking Lot, it shall be responsible for all costs in doing so. If either the City, the District, or another governmental entity determines that lighting for the Parking Lot is necessary for safety and/or security reasons, the District shall be responsible for all lighting installation, maintenance, and replacement costs. To the extent necessary, the City will grant the District access to the Park in order to meet its construction and maintenance requirements under this Memorandum of Understanding. For avoidance of doubt, District shall, at its sole expense, keep any the Parking Lot free from snow, ice, rubbish, and other obstructions. In the event that the District fails to do or perform any act that District is required to do or perform under this Memorandum of Understanding, then the City may, but shall not be required to, do or perform such act.

2. **Access and Use Easement.** Subject to approval by the City Council and prepared by the school district, the Parties intend to execute and record an easement conveying to the District the necessary property interests in the Park parcel so that the District may access and maintain all portions of the Parking Lot located on the Park parcel. Said easement will be prepared and signed by the Parties once the final location of the Parking Lot is determined. The District may not use the Park to construct its new school or related facilities, but may use the expanded Parking Lot for construction access and use subject to reasonable restrictions imposed by the City. The terms and conditions of the easement shall be substantially the same as this Memorandum of Understanding.

3. **Use of Parking Lot by Members of the Public.** The City shall designate ____ parking stalls, and the District shall provide signage to designate such stalls, to be available for the public using the Park during school hours. All parking stalls shall be available for public use during non-school hours.
4. **Use of the Park by the District.** The District's staff and students shall be allowed to use the Park during school hours for recreational and cultural purposes. The District shall coordinate with the City to reserve specific locations within the Park for exclusive use, such as the pavilion, fields, or open play areas when the District is undertaking recreational and/or cultural activities for its staff or students during Park hours. It is assumed by the District and the City that unless specific portions of the Park are reserved for exclusive use by the District, these facilities are open and accessible to the public during Park hours.
5. **Term.** Subject to section 8 (Contingency) below, this Memorandum of Understanding shall remain in effect while the District owns and operates a public education facility adjacent to the Park, and shall automatically terminate either when the easement identified above is recorded or when the District no longer owns and operates a public education facility adjacent to the Park, whichever is earlier.
6. **Indemnification.** Each party shall protect, hold harmless, defend and indemnify the other party for claims, actions, and expenses (including, without limitation, reasonable attorney fees and expenses) imposed on or incurred by or asserted against the other party for: (i) any negligence or tortuous act on the part of the indemnifying party or any of its agents, contractors, sub-lessees, licensees, or invitees including those arising from any accidents or injury to or death of persons or loss of or damage to property, occurring on, about, or in any part of the Parking Lot, or (ii) failure on the part of the indemnifying party to perform or comply with any of the terms of this Memorandum of Understanding. In case any action, suit, or proceeding is brought against any of such indemnified parties by reason of any such occurrence, the other party (indemnifying party) shall defend the action, suit, or proceeding with counsel designated by the indemnified party. The foregoing indemnification shall not apply to loss, injury, death, or damage arising by reason of the gross negligence or intentional misconduct of any of such indemnified parties, and except as may otherwise be expressly provided in this Memorandum of Understanding.
7. **Insurance.** Each party shall, at its own expense, maintain and keep in force general liability insurance covering use of the District Property and Park. The insurance policy shall have limits for bodily injury and property damage of not less than \$1,500,000 for each occurrence or the tort cap liability limits in effect under Minnesota Statute Chapter 466, as amended, whichever is greater. Proof and verification of this insurance coverage shall be made available to the Parties upon request. The District's insurance shall name the City as an additional insured.
8. **Contingency.** This Memorandum of Understanding is contingent upon the District purchasing the District Property. This Memorandum of Understanding shall have no effect unless and until the District completes the purchase of the District Property.
9. **Ownership.** The City is and shall continue to be the sole and exclusive owner of the Park. The District shall be the sole and exclusive owner of the District Property. This Memorandum of Understanding does not transfer any ownership interests in either parcel to the Parties, but rather documents the Parties shared use of certain facilities located on the two properties. The District may not be assigned or sublease this Memorandum of Understanding or the Parking Lot in whole or in part and may not encumber the Parking Lot.
10. **Governing Law.** This Memorandum of Understanding shall be deemed to have been made and accepted in Washington County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of the Memorandum of Understanding without regard to its choice of law or conflict of laws principles.
11. **Entire Agreement.** The Parties expressly understand and agree that the terms of this Memorandum of Understanding are contractual and, as set forth herein, constitute the entire agreement of the Parties. Except as

stated in this Memorandum of Understanding, neither party has relied on any statement, promise, inducement, or representation of the other. This Memorandum of Understanding supersedes any and all other statements and agreements between the Parties relating to the subject matter contained herein.

By signing below, each party specifically acknowledges that it has reviewed this Memorandum of Understanding, that it fully understands and agrees to all the terms set forth in this Memorandum of Understanding, and that it is authorized to enter into this Memorandum of Understanding.

CITY OF BAYPORT

By: _____
Its

By: _____
Its

INDEPENDENT SCHOOL DISTRICT NO. 834, STILLWATER AREA PUBLIC SCHOOLS

By: _____
Its Board Chair

By: _____
Its Board Clerk



SITE DIAGRAM

FOR ILLUSTRATIVE PURPOSES ONLY/ PROOF OF CONCEPT