

City Council Minutes
December 16, 2024

The Fergus Falls City Council held a regular meeting on December 16, 2024, at 5:30 pm in the City Council Chambers. Pastor Dale Hexum gave the invocation, and the Pledge of Allegiance was recited. Mayor Schierer called the meeting to order at 5:32 pm and the following council members were in attendance: Kremeier, Mortenson, Rachels, Hicks, Fish, Kvamme and Rufer. Job was absent.

Open Forum

Laurie Mullen thanked staff for their efforts with the Over the River festival.

Approval of Agenda

The Transportation Alternatives contract was removed from the agenda as the agreement entered last year will not expire until December of 2028. Mortenson asked to remove the lobbyist contract from the consent agenda. Hicks asked about the placement of the developer's TIF request. A motion and second were made by Fish and Rufer to approve tonight's agenda as amended and the motion carried.

Fire Fighters Badge Ceremony

Castrenze Fricano, Ben Molstre, Tony Bernal and Noah Gutz were sworn in as Fergus Falls Fire Department members.

Public Hearing for Unmanned Aerial Vehicles

Police Lieutenant Andrew Miller showed the council the drone the department acquired as a tool to find missing people or in accident reconstruction. The department will notify the public via social media when they are using the drone. The public hearing opened at 5:48 pm. Mike Streeter asked for the definition of invasion of privacy and asked what the protocol is if the department finds evidence of another crime while using the drone. Miller said it is not their intent to invade privacy and if they do come across evidence of another crime, they must first obtain a search warrant. Mark Leighton congratulated the department on their purchase. Hicks commented on past experiences with reporting drone usage. The hearing closed at 5:52 pm. Hicks offered **Resolution #228-2024** adopting the Unmanned Aerial Vehicle Policy, which was seconded by Kremeier and was adopted.

Housing Tax Abatement at 213 Two Rivers Road

Josh and Ashlie Duenow applied for a property tax abatement earlier this year, but their home valuation was higher than the program limits. Now that construction is nearly complete and costs are lower than anticipated, the valuation fits within the program parameters. The public hearing opened at 5:58 pm and was closed after no one appeared. Rufer offered **Resolution #229-2024** approving a property tax rebate for 213 Two Rivers Road, which was seconded by Kvamme and was adopted.

Snow Removal Contract

Fish offered **Resolution #230-2024** approving the sidewalk snow removal contract with Atlas Outdoor Services, which was seconded by Rachels and was adopted.

Retirement of Penny Davis

Fish offered **Resolution #231-2024** acknowledging the retirement and 34 years of service from Penny Davis, which was seconded by Rufer and was adopted.

Riverfront Splash Pad Award

Kent Exner presented the American Public Works Association, MN Chapter Project of the Year Award to the riverfront splash pad project.

Consent Agenda

The following items were approved under **Resolution #232-2024** by Rufer: Motion approving the minutes from the December 2, 2024, City Council meeting and the December 11, 2024, Committee of the Whole meeting. Motion approving the following licenses: Excavator Earl Strande Excavating; Sign Hanger Indigo Signworks; Tobacco Cenex/Zip Trip, Lakes Area Grow Co/JRE Consult; Mechanical Metropolitan Mechanical Contractors; Wine with Strong Beer Authorization Abroad Companies LLC (dba Hotdish); Hemp-Derived THC Sugar High Cannabis Consulting & Dispensary; Metal Recycling Lakes Iron & Metal. **Resolution #233-2024** accepting a \$1,000 donation to the Police Department and approving the corresponding budget adjustment. **Resolution #234-2024** approving a one-year lease management agreement with Pebble Lake Golf Club Inc. **Resolution #235-2024** authorizing staff to submit the Local Road Improvement Program Grant Agreement in the amount of \$790,000 for the Fir/Friberg roundabout project. **Resolution #236-2024** accepting the project plans and specification for PI 8231 & 7224, the Scenic Drive infrastructure projects and authorizing the advertising of bids. **Resolution #237-2024** approving the purchase of a 2025 Freightliner gravel/plow/sander truck from Bert's Truck Equipment, declaring Unit 213 as surplus equipment and authorizing the advertisement of bids. **Resolution #238-2024** authorizing entering a contract for 800 MHz radios for the Police Department. The resolution was seconded by Kvamme and was adopted.

Joel Carlson Lobbyist Contract

Mortenson asked how Joel Carlson was chosen as the city's lobbyist and how his fee is determined. Carlson has advocated for Fergus Falls at the state legislature since 2002 and his services and relationships have helped the city get funding on multiple projects. He consented to a one-year contract as there will be limited requests anticipated for the upcoming legislative session. Fish offered **Resolution #239-2024** approving the 2025 lobbying services agreement with Joel Carlson, which was seconded by Mortenson and was adopted.

Land Sale 702 S Tower Road

On December 2 a land sale was introduced for 702 S Tower Road from Dave and Tracy Chaput. The City Charter requires a land sale to be introduced at one meeting and the final sale taking place at a subsequent meeting. A second letter of intent was submitted by Key Property Investments (Andrew Yaggie) with a proposal to purchase the land to build a new home. His offer was for \$19,500 with the assumption there are no additional fees, costs or assessments levied or pending. The buyer and seller would split the cost of closing, and the seller paying the state deed tax, warranty deed, transfer documents, and recording fees to provide clear title. They also requesting the property receive the city and county property tax abatement credit. Hicks offered **Resolution #240-2024** finalizing the land sale of 702 S Tower Road to Dave and Tracy Chaput, which was seconded by Rachels, and the resolution was adopted with Rufer abstaining.

2025 Budget and Levy

Bill Sonmor reviewed the changes in the budget since it was presented on December 2. Worker's compensation premiums decreased 37% resulting in a savings of \$213,846. Property and liability insurance premiums will also decrease \$28,561. The Tax Levy Committee recommended reducing the 2025 property tax levy by an additional \$70,000, increasing the fire truck capital by \$100,000 and

eliminating a \$12,770 training grant. \$50,000 for Greater Fergus Falls will stay in the budget along with \$20,000 in economic development services. \$15,000 to market the Bigwood Event Center is included with additional discussions to come before the council in 2025. The refuse fund changes will be included and effective January 1, 2025.

Sonmor shared the preliminary budget, and the proposed budgets on December 2 and December 16.

	<u>Sept 16, 2024</u>	<u>Dec 2, 2024</u>	<u>Dec 16, 2024</u>
Proposed Revenues	\$55,264,191	\$56,235,651	\$56,151,331
Proposed Expenditures	\$53,623,237	\$54,091,320	\$53,936,049
Proposed Tax Levy	\$8,941,000	\$8,620,000	\$8,550,000
Change from 2024	\$794,000	\$473,000	\$403,000
Increase %	9.75%	5.81%	4.95%

The public hearing was continued. Mark Leighton asked what happens if the final budget is not approved or if an error is found after it is certified. State statute requires the final property tax levy be certified to Otter Tail County by December 30. Once it is certified, it cannot change, but budget adjustments can be made. Rachels offered **Resolution #241-2024** adopting the 2025 levy in the amount of \$8,550,000, which was seconded by Rufer and was adopted. Hicks offered **Resolution #242-2024** adopting the 2025 budget in the amount of \$53,936,049, which was seconded by Fish and was adopted.

TIF District 4-10

Sam Jelleberg addressed the council with a developer's request for assignment and assumption of rights and obligation agreements for TIF District 4-10 to Sunset Investments LLC. On December 2, the council voted in opposition to an assignment and assumption of rights and obligations agreement for the Sunset Ridge Investments LLC. After the denial of the TIF assignment, there was a reconfiguration of the LLC as the acquisition is not economically feasible without the transfer. This was not the creation of a new TIF or obligation on behalf of the city, but a transfer of the payment and affordable housing obligations from one owner to the next. The original TIF agreement with Sunset Ridge Apartments was approved in 2014 to construct a 105-unit apartment building and contained a transfer clause. They were surprised and concerned the city's denial of the assignment not only deviates from common practice but sets a precedence that signals the city is inflexible or unpredictable. The remaining payments on the TIF note total \$550,000 and the value of the remaining TIF note payments are approximately \$350,000. Through the proposed transfer and sale, the developer would forgo \$550,000 in cash flow over the next 6 years for a lump sum payment, creating zero economic profit. Jelleberg asked the council to consider the transfer of the Sunset Ridge Apartments TIF Note to Sunset Investments LLC.

Mortenson asked if the city has the right to terminate TIF with a new buyer and what changed to bring this request back. It was clarified the transfer does not cancel the TIF agreement and tonight's action is consenting to the assignment to the new LLC entity. He asked if anyone on the council or staff advised him to change the legal entity. Staff received the request and consulted the bond counsel who affirmed a new entity can pose a new request. Mortenson asked if any of the criteria within the business subsidy agreement were met with this proposal. Mayor Schierer reminded him of the difference between TIF and the business subsidy plan and the city does not have a TIF policy. Schierer said the council's decision not to consent to the assignment of an existing TIF district has shocked businesses and developers with an anti-business sentiment and he is worried this decision could detract

future projects in Fergus Falls. In 2030 the city will receive \$90,000 in taxes that would not have been there 10 years ago. Mortenson said he would support TIF for housing if a building is constructed downtown with housing above retail space. Rufer felt it was ridiculous the city isn't supporting this transfer and the risk of losing future development opportunities. Kremeier said he is not opposed to using TIF for business industry but was opposed to profiting from TIF. Fish offered a motion calling the question. Rufer offered **Resolution #243-2024** approving the assignment and assumption of rights and obligations agreements for TIF District 4-10 to Sunset Investments LLC, which was seconded by Kvamme and was defeated when the resolution failed to get 5 affirmative votes. Voting in favor were Rachels, Fish, Kvamme and Rufer. Voting in opposition were Kremeier, Mortenson, and Hicks.

Westridge Mall Purchase Agreement

On October 21 the city entered into a purchase agreement for the Westridge Mall which expires on December 31, 2024. The agreement was entered into to save existing businesses, address a blight and provide local control over a significant property in the community. The mall's owner has not been paying his bills and if the water and electricity are turned off, the four businesses connected to the mall (Dunhams, Westridge Theater, Harbor Freight and Dollar Tree) would be without a fire suppression system that could force them to close their business. There is a temporary solution to prevent the utilities being shut off and the seller has provided written consent to the purchase agreement. The city and county jointly applied for a DEED Energy Transition grant in the amount of \$1 million. \$650,000 of state grant funds have been secured for the project. Otter Tail County is willing to invest in this project if the city invites the county's Community Development Agency (CDA) to partner with the project. Fergus Falls is the only city within Otter Tail County, not part of the CDA. Assigning the purchase agreement to Otter Tail County makes them responsible for continued due diligence, the \$350,000 funding gap and the negotiation of assignment and assumption agreements with all creditors. If the deal falls apart, it is likely the creditors will not collect their past due balances. The council was presented with four options to consider tonight:

1. Cancel the purchase agreement based on contingencies not met
 - a. The deal would be off, and negotiations would have to start over if there was future interest
2. Extend the agreement to continue due diligence items
 - a. This would require the consent of the seller
3. Assign the agreement to Otter Tail County as contemplated within the agreement
 - a. This would require passing a resolution authorizing the county's CDA to operate in Fergus Falls and an assignment and novation agreement
4. Close on the property
 - a. The city would be on the hook for all costs, with no county partnership. The DEED funds would be in question

Rufer offered **Resolution #244-2024** approving the assignment and novation agreement with Otter Tail County (assigning purchase agreement to Otter Tail County), which was seconded by Rachels.

Mayor Schierer encouraged the council to help save businesses, the years of effort to get local control over this property, the benefits of working with the county's CDA and the opportunity to use state funds. He read a message from the movie theater owner Tony Tillemans stating if there is not a change in mall ownership, there is an economic reality they would likely close the theater. Rachels shared his support for the assignment to the county and the possibility for the entities owed money by the mall's owner to collect if this agreement goes forward. Rufer agreed the most business-friendly action the city could show is saving these businesses. Hicks felt it is irresponsible to commit to the project without a plan for redevelopment that includes the separation of fire suppression systems, and he was

not in favor of bailing out poor business management. He wanted assurance from the county board that they agree to these terms. He referenced a letter from a resident concerned with the use of taxpayer funds for this project and proposed an extension to conduct more due diligence and learn about the CDA's plans if they were allowed to operate within the city.

Andrew Bremseth said the goal of this purchase is to get local control of this property and save businesses. This property has gone to two public auctions in the past 18 months, but negotiations have failed with the current owner. City Attorney Rolf Nycklemoe said the assignment and novation were drafted to ensure neither the city nor its citizens are at risk. The county would take the assignment and risk. If the county were to not consent to the assignment, the agreement would be null and void. Bremseth suggested if the county does not accept the assignment, city staff can cancel the RFP, and he reminded the council that an extension must be agreed upon by the seller by the closing date of December 31. Mortenson and Kremer agreed a 120-day extension would provide an opportunity for further due diligence. Kvamme said voting in favor of this decision is the only responsible thing to do tonight and read an email from Lonnie Ballweg encouraging support of this initiative and the opportunity to leverage outside funds for local solutions.

Steve Schoeneck, representing Otter Tail Power acknowledged this is not a perfect scenario, but it does get the property under local control, it opens opportunities for future development and could be facilitated with state funds. The existing businesses have stepped up to pay the local utilities on a temporary basis; however, the future of the movie theater is on the fence and not supporting the purchase agreement could tip them to leaving. There is no Plan B, and he stressed the importance of removing the current mall owner to move forward. Jeff Ackerson representing Vector Windows agreed this is not an easy decision but if the city wants to encourage economic development, they need to start by keeping existing businesses. The four affected businesses have not done anything wrong; they acted in good faith and assumed their landlord would pay his bills. He asked the council to consider the economic impact of multiple businesses leaving the community, to not impede future redevelopment or jeopardize state grant funding. Mark Leighton felt the city is using the four businesses as trojan horses and disagreed with the city's decision to purchase the mall as the creditors will write off the uncollectible debt. He agreed to an extension was the best action to take.

Rufer felt this is an opportunity to change the narrative that Fergus Falls is a dying town by voting to save businesses. Chamber of Commerce President Lisa Workman encouraged the council to support businesses, the possible ripple effect and the economic development challenges for the community if they don't move forward. Charlie Smith asked the council to explore options other than relying on the mall owner to supply fire suppression for the businesses. He suggested the property could be purchased for a better price once it goes into foreclosure and regardless of who is making the purchase, it is still taxpayer dollars being used which needs to be considered over a business owner who has done a disservice to the community for many years. Mike Streeter asked where the \$350,000 shortfall is coming from and about council conflicts of interest. Bremseth said it is the county's decision how to fill the funding gap and conflicts of interest are determined by financial gain which is not the case. Rufer clarified his father retired from his position at the Pemberton Law and the firm being a creditor of the mall owner has no impact on this matter.

Schoeneck was asked how much electricity costs for the common area per month. At its peak it is approximately \$4,000 per month and the ancillary businesses have agreed to pay the utilities on a short-term basis. Otter Tail Power understands the outstanding debt is likely a write-off but with the

state grant, they could retain the rights to collect. Mortenson suggested the city cover the electrical fee and help the businesses cordon off the fire suppression system. He asked Rufer and Rachels to reconsider their resolution and instead seek a 120-day extension so more due diligence can be conducted. Rufer said he would not reconsider his motion as it is his intent to save these businesses, and that solution is on the table. County Commissioner Lee Rogness spoke of the efforts over the past 20 years to get local control over the mall. The state funding provides the necessary push to solve a long-term, multi-faceted problem in the community including the separation of fire suppression systems, parking lots, lighting and title issues and the county's willingness to help in this process. Mark Leighton addressed Rogness directly asking him if it is such a good deal to buy a \$419,000 property, then why doesn't he (personally) buy it. The resolution was called to a vote, and it failed 4-3. Voting in favor were Rachels, Fish, Kvamme and Rufer. Voting in opposition were Kremeier, Mortenson and Hicks. The resolution failed as it did not receive 5 affirmative votes.

Hicks offered **Resolution #245-2024** to extend the purchase agreement for an additional 120-days with the consent of the mall owner, which was seconded by Mortenson and was adopted by a 5-2 vote. Voting in favor were Kremeier, Mortenson, Rachels, Hicks, and Kvamme. Fish and Rufer voted in opposition. Rufer expressed his disappointment in the council not acting when there is an available solution and encouraged the public to contact the council members voting in opposition to the purchase agreement if the businesses leave.

Resolution of Accounts

Rufer offered a resolution authorizing the payments and claims in the amount of \$1,971,281.48, which was seconded by Fish. The resolution was adopted with Fish voting in opposition.

The meeting adjourned at 7:53 pm

Lynne Olson