

City Council Meeting
November 7, 2022

The Fergus Falls City Council held a regular meeting on Monday November 7, 2022 at 5:30 pm in the City Council Chambers. Pastor Tim Molter 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: Fish, Hagberg, Kvamme, Rufer, Thompson, Arneson, Gustafson and Hicks.

Approval of Agenda

A motion and second were made by Hagberg and Fish to approve tonight's agenda with the removal of the Welcome House Conditional Use Permit from the consent agenda and the motion carried.

Donation for Downtown Riverfront Project

The Veden Trust has pledged \$1 million for the downtown riverfront project. The first payment was received and the next two are expected over the next two years. Thompson offered **Resolution #205-2022** accepting a \$333,333.33 donation from the Frank W. Veden Charitable Trust for deposit to the Capital Improvements Operations Fund for the Downtown Riverfront Phase 2 project and authorizing the acceptance of future fundraising donations for the project, which was seconded by Gustafson and was adopted.

Consent Agenda

The following items were approved under **Resolution #206-2022** by Rufer: Motion approving the open and closed minutes from the October 17, 2022 City Council meeting, the November 2, 2022 Committee of the Whole meeting and work session. Motion approving the following licenses: Mechanical License – 2022 Fergus Home & Hardware, McDowall Company, Metropolitan Mechanical Contractor; Demo Hauler/Building Waste – 2022 Ben Wolden Landscaping; Full On Sale Liquor – 2023 Fiesta Brava, Gunpowder; Sign Hanger Newman Signs – 2023; 3.2% Malt Liquor and Wine (Strong Beer Authorization) – 2023 The Fabled Farmer; Demo Hauler/Building Waste – 2023 Big Red Boxes; Minnesota Lawful Gambling Premises Permit Fergus Falls Hockey Association for lawful gambling at Gunpowder, 220 W Lincoln Ave. Motion directing the City Attorney to draft an amendment to Chapter 154 of the City Code regarding definitions and zoning allowing the sale and manufacturing of THC. **Resolution #207-2022** accepting Minnesota State Grant Agreement No. 1050807 for PI 9350, the Airport Weather Observation System Relocation and Replacement Improvement Project. **Resolution #208-2022** authorizing the execution of a utility easement with Otter Tail Power Company. **Resolution #209-2022** gifting various artwork from the Regional Treatment Center to the Otter Tail County Historical Society. **Resolution #210-2022** decertifying Tax Increment District 4-9. The resolution was seconded by Hagberg and was adopted.

Conditional Use Permit, 314 W Cavour Ave

The Welcome House purchased a house in 2021 to “create a path to recovery for women through supportive transitional housing” at 314 W Cavour Avenue. This sober house is set up for family use or congregate living. City Code defines family in the zoning code as an individual or two or more persons related by blood or marriage, or a group of not more than five persons who need not be related by blood or marriage living in a dwelling unit. The request to house up to 10 unrelated individuals conflicts with the city's definition of family and requires a conditional use permit (CUP) to operate outside the city's zoning regulations. The Planning Commission has reviewed the application and

recommends approval of a Conditional Use Permit for up to 10 people to live at 314 W Cavour with the following conditions:

1. Signage cannot exceed two square feet. The sign can be placed in the front, but not side yard and it can be illuminated.
2. Pending an appeals process, Welcome House will work with the Fergus Falls Fire Department to put in place a plan to sprinkle the building prior to occupancy by more than 5 people.
3. Welcome House must comply with all state and local laws and regulations.

Tammy Anderson, representing the Welcome House talked about the mission of the sober house, their congregate living philosophy and said they need to house more than more than 5 and up to 10 women to create a positive cash flow. If more than 5 residents are in the structure, the building and fire codes require the space have a fire suppression system. The estimated cost to install the sprinkling system is \$50,000, which is a financial challenge for the organization. Anderson asked why this is the only sober home in the state requiring a fire suppression system. Community Development Director Klara Beck explained if the CUP is granted, there is nothing to prevent the sober house opening with 5 residents. The sprinkler system would be necessary when they get over 5 residents. Fire Chief Ryan Muchow explained the work the Fire Inspector and Building Inspector have been working in conjunction with the State Fire Marshall and Department of Labor and Industry and all entities agree this structure has been classified as an R-3 occupancy unit based on the plans the designer submitted. This classification drives the need for a fire suppression system under both fire and building codes. He was unsure why this would be the only sober home needing this system as Anderson had earlier stated and suggested other houses were approved under the current code language at the time they opened. There were questions about the appeals process and City Attorney Rolf Nycklemoe explained he sent an appeals application to the Welcome House board after the Building Official's opinion was stated. The Welcome House wants to appeal, they must do so with the Department of Labor and Industry.

Anderson felt reasonable accommodations should be made to request the release of fire suppression requirements. Rufer agreed this is a worthwhile project and acknowledged the city's power is limited as the city cannot supersede state building codes. Nycklemoe said the city has made an interpretation of the building classification and the state is the only entity that can change the interpretation. He again reviewed the appeals process the Welcome House needs to follow at the state level and said the city does not have the authority to grant a variance from the state building and fire codes. Bud Nornes spoke as a Welcome House board member and suggested council members provide their support of the project on record in the appeals process. A motion and second were made by Fish and Kvamme showing the council's support of the Welcome House sober home project and the motion carried. Nycklemoe suggested the council consider granting the conditional use permit with the condition to comply with all state and local laws and regulations. The Welcome House can operate with 5 people living there with the passage of the CUP, but if they expand to ten people they must comply with the fire suppression requirements. Hicks offered **Resolution #211-2022** approving a Conditional Use Permit to the Welcome House to house over five and up to ten people in a home zoned R-4 located at 314 W Cavour Avenue, which was seconded by Hagberg and was adopted.

Ordinance 31

Ordinance 31, Eighth Series, Stormwater Management was introduced by Hicks and was declared to have its first reading.

Ordinance 32

Ordinance 32, Eighth Series, Amending Chapter 154 for THC was introduced by Gustafson and was declared to have its first reading. A motion and second were made by Kvamme and Arneson directing staff to develop a licensing process for THC edibles like the city's alcohol and tobacco licensing process and the motion carried. Bremseth said when the city first brought the THC issue to the council there was not an appetite for the city to develop a license process, but to focus on the allowed zoning. Since that time the county proposed a moratorium on THC sales and the city would have the ability to opt out of the moratorium if an ordinance is already in place to gain local control. He suggested the motion be amended to direct staff to address issues from the moratorium to allow existing businesses to sell THC products including background and compliance checks, permitting, and controlling sale to minors. The amendment to the motion was approved and carried.

Ordinance 33

Ordinance 33, Eighth Series, Downtown Riverfront Phase II Bonds was introduced by Hicks and was declared to have its first reading.

Memorandum of Understanding with the MPCA

The MPCA is seeking a Memorandum of Understanding with the city to voluntarily become a partner in an MPCA initiative to determine the presence of Per-and Polyfluoroalkyl chemicals (PFAS) at the Waste Water Treatment Plant. Hicks felt it was better to comply than fight the agency and acknowledged they will pay for half of the testing, while the city would be responsible for the cost of the second test, estimated at \$1,600-\$2,000 annually. Kvamme understands this is not a big financial contribution to the city but felt the MPCA should cover all costs if they are going to mandate the program. Hicks offered **Resolution #212-2022** authorizing staff to enter into a Memorandum of Understanding between the Wastewater Treatment Plant of the City of Fergus Falls and the MPCA as a part of the statewide monitoring plan for per-and polyfluoroalkyl substances (PFAS), which was seconded by Arneson and was adopted with Kvamme and Thompson voting in opposition.

Purchase Agreement with Otter Tail Power

Otter Tail Power requested a 0.03-acre tract of land to install a permanent electrical substation facility for their new express feeder project. There would be a permanent ingress/egress easement to construct new facilities prior to decommissioning existing facilities. This tract of land lies above the old Waste Water Treatment Plant structures that need to be removed prior to the construction of the substation. In 2019, the council initiated the demolition of the structures, but the project was put on hold due to other funding priorities. The Purchase Agreement requests a clean site. City Engineer Brian Yavarow recommended the city demolish the entire structure rather than only the portion of land needed for the new substation. The city needs to obtain an Environmental Site Assessment Phase One per a letter of intent. Staff is requesting authorization to negotiate a Purchase Agreement with Otter Tail Power for this land. Kvamme suggested staff prepare a response as to why the city would proceed with this demolition instead of spending money on road improvements. Yavarow explained the demolition project would be funded by Sewer Enterprise Funds, which cannot be used for street projects. Hicks asked if the demolition is needed for the entire plant and staff explained it is and would be more cost effective and less interruptive to complete all demolition at one time rather than in phases. Fish offered **Resolution #213-2022** authorizing city staff and the City Attorney to negotiate a Purchase Agreement with Otter Tail Power Company for the purchase of real property Northwest of Pisgah Dam, which was seconded by Rufer and was adopted.

Resolution of Accounts

Fish offered a resolution authorizing the payments and claims in the amount of \$3,785,570.84, which was seconded by Hagberg and was adopted.

The meeting adjourned at 6:24 pm

Lynne Olson