

City Council Minutes
June 5, 2023

The Fergus Falls City Council held a regular meeting on June 5, 2023 at 5:30 pm in the City Council Chambers. Pastor Eric Uggerud 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: Rachels, Fish, Job, Kvamme, Rufer, Kremeier, and Thompson. Hicks was absent.

Approval of Agenda

A motion and second were made by Rachels and Thompson to approve tonight's agenda with the removal of the conditional use permit from the consent agenda and moving the retirement recognition to the first item of business.

Retirement of Jim Neigel

Fish offered **Resolution #105-2023** acknowledging the retirement and 36 years of service from Jim Neigel, which was seconded by Kvamme and was adopted.

City Project 5960 Final Cost Hearing

Tonight, is the final cost hearing for City Project 5960 Summit Avenue: Broadway to Oak; Linden Street: Broadway to Oak; Laurel Street: First Ave to Broadway. Individual assessment notices were mailed to affected property owners and no written objections have been received since the preliminary cost hearing. The project will address the reconstruction of the sanitary sewer, water main, storm sewer, sewer and water services and bituminous streets. The total estimated project cost is \$2,072,357.90 of which \$318,000 will be specially assessed at \$82.97 per lineal foot. The special assessments will be payable over 15 years at a 5.25% interest rate. The city will finance the special assessments and the city's share of the street projects with a PIR 429 bond. The special assessments will be due annually and the proceeds will pay for the bonds. The city will likely add another street reconstruction project into the bond to save financing costs. The city will be paying cash from the sanitary sewer, water and storm water enterprise funds for CP 5960. The final cost hearing was opened at 5:41 pm. As no one appeared, the hearing was closed. Thompson offered **Resolution #106-2023** adopting the final cost assessment for City Project 5960 contingent upon awarding the construction contract, which was seconded by Kremeier and was adopted.

City Project 5960 Award Bid

Kremeier offered **Resolution #107-2023** awarding the construction services contract to Joe Riley Construction in the amount of \$1,657,886.32, which was seconded by Fish and was adopted.

Public Art Contracts for Phase II Downtown Riverfront Project

The city secured a \$100,000 grant from the National Endowment for the Arts for public art in Phase II of the downtown riverfront project. The Dell Trust provided an additional \$100,000 for public art. The Public Arts Commission released a call for artists to submit proposals and recommend the work of both local artists Carl and Jeff Zachmann be incorporated into the project. One piece will be placed at the new park entrance off Court Street and the other in the upper plaza. The pieces will feature regional significant kinetic work and the artists will each be provided with \$20,000 for the upfront cost of the materials and the remainder of the contract (up to \$75,000 each) will be paid upon completion. Unused funds will be set aside for other public art as determined by the Public Arts Commission. Fish offered **Resolution #108-2023** approving the agreements with Jeffrey Zachmann and Carl Zachmann

for public art to be included in Phase II of the downtown riverfront improvements, which was seconded by Thompson and was adopted.

Consent Agenda

The following items were approved under **Resolution #109-2023** by Rufer: Motion approving the minutes from the May 15, 2023 City Council meeting and the May 31, 2023 Committee of the Whole meeting. Motion approving the following licenses: Excavator Diversified Foundations, LLC, Outdoor Renovations Landscaping & Nursery; Fireworks Display SummerFest on June 10, 2023 at the RTC grounds; Fireworks Sales Walmart/TNT Fireworks, Otter Tail Plaza/TNT Fireworks; Food Truck Permit Jonny's, Cooler Treats, This Little Piggy Catering, JoCo's Food Truck; Minnesota Lawful Gambling Permit to the Elizabeth Lions Club for BINGO at the West Otter Tail County Fair July 19-22. **Resolution #110-2023** amending the city's open forum policy. **Resolution #111-2023** accepting the State of Minnesota Airport Maintenance Operations Grant for state fiscal years 2024 and 2025. **Resolution #112-2023** accepting a vacation petition on Oak Street and setting the public hearing date for July 3, 2023, at 5:30 pm in the City Council Chambers. **Resolution #113-2023** initiating PI 5364, the 2023 mill and overlay improvement project and ordering the project plans and specifications. **Resolution #114-2023** initiating PI 5365, the 2023 seal coat improvement project and ordering the project plans and specifications. **Resolution #115-2023** authorizing an agreement for the transfer of entitlement funds between the City of Fergus Falls and the Red Wing Regional Airport. **Resolution #116-2023** renewing the Otter Tail County Fire Department's Joint Cooperative Agreement for the use of emergency operations personnel and equipment. **Resolution #117-2023** accepting the 2022 city audit. The resolution was seconded by Fish and was adopted.

Conditional Use Permit for Sugar High

On May 22, the Planning Commission considered a Conditional Use Permit (CUP) from Emily McCune representing Sugar High LLC to allow hemp processing or manufacturing in a B-3 General Business District at 116 S Union Avenue. They held a public hearing with no one appearing in opposition. The Planning Commission unanimously recommended the council approve the CUP without conditions. Rufer offered a **resolution** approving the Conditional Use Permit for hemp processing or manufacturing in a B-3 General Business District at 116 S Union Avenue without conditions, which was seconded by Fish. Thompson felt the issue needs more discussion. After clarifying the correct verbiage in Robert's Rules of Order, a motion and second were made by Rachels and Thompson to table this item until another date as they would like additional discussion on the request. City Attorney Rolf Nycklemoe explained the city has by law, 60 days to approve or deny a written land use application. This application was received on April 25, 2023 and the 60 day expiration date is June 24. The city does have the ability to extend the time period for an additional 60 days if the motion to table the discussion is adopted and he recommended the council direct staff to provide written notice of the council's intent to extend the deadline and the reasons for the extension request. If the council does not extend the deadline and fails to act within 60 days, the application is approved as submitted.

Rufer did not feel there was a need to delay the decision as the business owner followed the city's process and was concerned this would set a precedence that businesses follow local laws and still be denied a CUP. He encouraged the council to not pick and choose what and what types of business they would allow and asked if the same concerns would be had if a brewery or distillery applied for a permit. Mayor Schierer agreed and said the city has adopted an ordinance allowing THC product sales and the state has approved the legalization of marijuana. By denying the CUP, the council would

adversely affect businesses operating within the community. Klara Beck clarified the Conditional Use Permit satisfies the city's requirements and the city has no legal basis for a denial. Fish asked if the original resolution is still active and asked to call for the vote to approve the Planning Commission's recommendation to approve the CUP. Nycklemoe recommended the council act on the motion to postpone the discussion first and if the motion is denied, then the council move to the original resolution of approving the CUP. Kremeier spoke about his conversation with the Public Health Department, his concerns for the health of young children and felt the public has the right to know if THC products are manufactured in a kitchen they are consuming from. He was opposed to the idea of a shared kitchen and felt these products should be manufactured in their own kitchen. Rufer disagreed and said there are sanitizing procedures in place for shared space. The council can impose conditions such as signage identifying THC edible products are manufactured on the premises. The motion to postpone the discussion to a later date was called and it carried. Voting in favor were Rachels, Job, Kvamme, Kremeier and Thompson. Voting in opposition were Fish and Rufer. A motion and second were made by Rufer and Rachels to extend the 60-day period for this Conditional Use Permit from Sugar High to allow hemp processing or manufacturing in a B-3 General Business District at 116 S Union Avenue and the motion carried. Staff will place this item on the June 14 Committee of the Whole meeting for continued discussion.

Ordinance 38, Eighth Series

Fish introduced Ordinance 38, Eighth Series, Amending Chapter 36.01, Local Lodging Tax, and it was declared to have its first reading.

PI 9504, Aquatics Center Professional Services Proposal

In November of 2022 local voters approved a ballot question to implement a local option sales tax for \$10.8 million to fund an aquatics center in Roosevelt Park. At that time the city had legislative authority for a \$7.8 million project with a request ready for the 2023 legislative session for an additional \$3 million to fully fund the project through a sales tax. Upon successful passage of the ballot question the city accepted a professional services proposal for PI 9504, the Aquatics Center improvement project from JLG Architects in the amount of \$681,200 or 8.7% of the total estimated project cost of \$7.8 million. The legislative request for an additional \$3 million was approved last week requiring the contract with JLG be adjusted to 8.7% of the \$10.8 million project or \$939,600. Kvamme offered [Resolution #118-2023](#) accepting JLG Architect's professional services proposal for design development, final design, and construction administration in the amount of \$939,600, which was seconded by Rachels. Kremeier felt the petition to change the location of the aquatics center be considered and he asked for projection of annual costs before the city spends nearly \$1 million on this contract. Finance Director Bill Sonmor said Bolton & Menk was retained to update the US Aquatics study and projections. They anticipate annual expenses of \$278,000 and \$150,000 in revenue. The city is planning for the projected annual operational shortfall of \$128,000 into the 2025 budget. The City of Fergus Falls is not unique in expecting aquatic centers will require they are subsidized within the city budget. He stated this information was widely disbursed to the public prior to the November 2022 General Election and 60% of the voters still choose to vote in favor of the city constructing the aquatics center. Rachels agreed this information was readily available prior to the election and still is accessible on the city's website. Rufer felt the issue had been settled. Voters were aware of the city's intentions to construct the aquatics center in Roosevelt Park. He has heard for years that young families want amenities such as a water park in Fergus Falls rather than driving to neighboring communities to use a public swimming pool. The location was determined after an exhaustive process including public input and studies spanning several years. The City Attorney agreed the public agreed

to construct the park in this location and any petition to change the location would need to be reviewed by the city's bond counsel. The City Council cannot ignore a ballot question that specifically provided the project's location.

Mark Leighton, no address provided, alleged the city was not transparent about the location of the aquatics park. He believed Roosevelt was chosen at the last minute and voters were unaware what project they were voting for. Mayor Schierer took exception to Mr. Leighton's comments that the city has been anything but transparent and said comments contrary to this are misleading to the public. He felt the information was clearly stated within the ballot question last November and 60% of the community voted in favor of the project. Leighton asked the city for specific information on the project costs, bond issuance and sales tax issues. He heard the public pool in Wahpeton is considering closing as the operational costs are too high and felt it was important the voters should have been aware of the operating costs prior to the election. Sonmor explained the aquatics center is a \$10.8 million project and the improvements at DeLagoon are \$5.2 million or approximately \$16 million total. Including the cost of the bond issuance, brings the project estimate to \$16.2 million. At 3.5% interest, this leads to approximately \$21.9 million of sales tax collected over the life of the bond. The bonds will be paid by the local option sales tax. Sonmor is planning for the sales tax collection to begin in October of 2023 and expects it will conclude on December 31, 2037. Leighton claimed the city did not gather enough in their last sales tax collection. Sonmor disagreed stating the city only collected sales tax for the library project through the third quarter of 2022 because the sales tax ended on September 30, 2022. He noted the sales tax collections came in 7-10% higher than the collections in 2021.

City Administrator Andrew Bremseth read the ballot question language from the November 2022 General Election. "Shall the City of Fergus Falls impose a sales and use tax of one-half of one percent (0.50%) until December 31, 2037, or until \$10,800,000, plus an amount equal to interest and the costs of issuance of any bonds, is collected to finance an aquatics center in Roosevelt Park? The total sales and use tax approved by voters at this election to finance this project and any other project will not exceed one-half of one percent (0.50%)." He said the City Council hired a Communications Manager prior to the election and this information was widely dispersed prior to the election. He felt the community knew what they were voting for, and the confusion came from Mr. Leighton continuing to represent himself as a representative of the city and spreading misinformation. He said he was looking forward to working with the council in building a good project that 60% of the voters of the city voted in favor of. Kvamme said the amount of the project does not matter as the project will be paid by the sales tax, not property taxes. He expressed his frustration that Mr. Leighton's use of "big numbers" was being used to sound scary and this tactic is not helpful. The \$150,000 annual impact to operate a community asset such as a public aquatics center was a small portion of the city's overall budget. The resolution accepting the professional services proposal for PI 9504 was called to a vote and was adopted with Rachels, Fish, Job, Kvamme, Rufer, Thompson and Rachels voting in favor and Kremeier voting in opposition.

Local Option Sales Tax for DeLagoon and Aquatics

The Minnesota State Legislature originally authorized the city to seek voter approval of a local option sales tax to fund an aquatics center for \$7,800,000 and improvements to DeLagoon Park for \$5,200,000. The estimated cost of the aquatics center increased to \$10,800,000 and the voters approved a \$10.8 million aquatics center and the \$5.2 million DeLagoon project in November of 2022. During the 2023 legislative session, the state approved the city's request of a \$3,000,000 increase to

the aquatic center. The city was authorized to collect a 0.50% local option sales tax through December of 2037 to provide the funding for both projects. The City Council must approve the Minnesota Session Law and submit a resolution and Certificate of Approval to the Secretary of State's office. The city must implement the local option sales tax by ordinance to begin collecting the tax on October 1, 2023. The state requires a 90-day period prior to the sales tax collection beginning. Rufer offered **Resolution #119-2023** approving Minnesota Session Laws 2023 Regular Session, Chapter 64, Article 10, Sections 18 & 19, which was seconded by Thompson and was adopted.

Ordinance 39, Eighth Series

Fish introduced Ordinance 39, Eighth Series, An ordinance of the City of Fergus Falls imposing a local sales and use tax and it was declared to have its first reading.

Resolution of Accounts

Fish offered a resolution authorizing the payments and claims in the amount of \$1,330,669.09, which was seconded by Rufer and was adopted.

Legislative Recap

2023 was a productive legislative session for Fergus Falls. The city received \$4 million in the bonding bill (cash) for dairy property. \$1.2 million will be used for acquisition costs to transfer the property from the Port Authority to the city for the 11.68-acre river buffer parcel. \$1.6 million will be used for two rail crossings at Broadway and St Andrews Street. \$700,000 will be used for the river buffer trail and \$500,000 will be used for public amenities/public parking area on the river buffer trail. The city also received the additional \$3 million request for the aquatics center project, \$75,000 for the 3D water quality project on Lake Alice, an increase of \$576,845 in LGA funding (15.03%) and one-time public safety aid of \$614,465. The city will monitor the impacts and implications of the passage of paid family and medical leave bills and legalization of marijuana. The city is seeking clarification if they qualify for aid under the electric generation transition aid from the closure of Hoot Lake Power Plant. The historic tax credit was extended for an additional 8 years which is beneficial to the mill project. Bremseth credited the Investment Committee, lobbyist Joel Carlson and local legislators Backer and Rasmussen for their work in the session.

The meeting adjourned at 6:32 pm

Lynne Olson