



City of Fergus Falls Committee of the Whole Agenda

June 28, 2023

7:00 am

City Council Chambers

A. Call to Order

B. Roll Call

C. Discussion Items

1. City Project 5959 Parking Recommendations

Brian Yavarow

Requested Action: Recommendation to the council to restrict parking on the north side of Stanton Avenue from Vine Street to Union and designating diagonal parking on the south side of Stanton Avenue from Vine Street to Union Avenue

2. Aquatics Center Project Presentation

Brian Yavarow

Requested Action: Recommendation to the council to accept plans and specification and authorize the advertising of bids for PI 9504, the aquatics center project

3. Flour Mill LLC TIF Development Agreement and Purchase Agreement

Klara Beck

Requested Action: Recommendation to the council to approve a development agreement and purchase agreement related to the redevelopment of the mill building

4. Sound System Rental Fee

Len Taylor

Requested Action: Recommendation to the council to amend the 2023 fee schedule to include a rental fee for the use of the city's sound system

5. Refuse Truck Purchase

Len Taylor

Requested Action: Recommendation to the council to approve a refuse truck purchase

6. Chicken Permit Amendment

Len Taylor

Requested Action: Recommendation to the council directing the City Attorney to amend City Code 91.52 to include quail to the fowl allowed with the proper permit

7. City Code 154.038 Amendments
Klara Beck

Requested Action: Recommendation to the council review the Conditional Use Permit requirements for manufacturing THC products in a B-3 zone

D. Additional Agenda Items

E. Announcements

July 3 5:30 pm City Council Meeting

July 4 Most city offices closed for observance of Independence Day

Garbage & recycling normally collected on Tuesday will be Wed July 5

July 12 7:00 am Committee of the Whole Meeting

Adjourn



Council Action Recommendation

Page 1 of 1

Meeting Date:

June 28, 2023 – Committee of the Whole
July 3, 2023 – City Council

Subject:

City Project CP No. 5959 – 2023 Street and Utility Improvement Project No. 2
Stanton Avenue Reconstruction Improvement Project

Recommendation:

- Resolution restricting parking on north side of Staton Avenue from Vine Street to Union Avenue
- Resolution designating diagonal parking on south side of Staton Avenue from Vine Street to Union Avenue

Background/Key Points:

Diagonal parking may be established by the local road authority if the State Aid designated street width and traffic volumes meet standards in State Aid Rules 8820.9961 and the legal speed limit is 30 mph or less. This provision must be established by cooperative agreement between the City and the State for the State to allow funding.

Diagonal parking is proposed on the south side of Stanton from Vine Street to Union Avenue. To meet State Aid rules, parallel parking will subsequently have to be removed on the north side of Staton within this same block. Please refer to the attached exhibit for the proposed parking stall layout.

Although restricting parking in the downtown area is a concern, passing both of these resolutions per State Aid requirements will net four (4) additional stalls along this block contingent on the final location of the entrance to the Flour Mill redevelopment. I recommend the Council approve the requested action.

Budgetary Impact:

General staff time.

Originating Department:

Engineering Department

Respectfully Submitted:

Brian Yavarow, P.E. - City Engineer

Attachments:

Exhibit – Proposed Parking Layout

SOUTH VINE STREET

BLOCK 22

10

10

11

12

5

Restricted
Parking
Area

Union Ave.

Stanton

RES. 70

RES. 73

RES. 72

RES. 71

ORIGINAL TOWNSITE

1



Council Action Recommendation

Page 1 of 1

Meeting Date:

June 28, 2023 – Committee of the Whole
July 3, 2023 – City Council

Subject:

PI 9504 – Aquatic Center Improvement Project

Recommendation:

- Resolution accepting the project plans and specifications.
- Resolution authorizing advertisement for bids

Background/Key Points:

For the past few months multiple City staff members and community volunteers have worked with JLG Architects and their subconsultants during the Aquatic Center final design phase. JLG has substantially completed the project plans and specifications and are ready to start the advertisement for bids. Representatives from JLG will be in attendance to present the project and answer any questions.

The Estimated Probable Construction Cost for the base bid work items is \$8,278,000. The bid alternates are estimated at an additional \$830,000 for a total combined construction contract estimate at \$9,108,000. City must publicly advertise for bids pursuant to the “Competitive Bidding Requirements” monetary thresholds for a minimum 21-day publication. The bid opening date is not determined yet however, it will begin soon if acceptable to this Council.

If favorable bid prices are received, the total estimated project budget will be updated along with a recommendation to award and be presented to this Council.

Budgetary Impact:

The local option sales tax to publicly finance the project bonds is the current funding mechanism. Presently, the City has the legislative authority for a \$10.8 million dollar Aquatic Center improvement.

Originating Department:

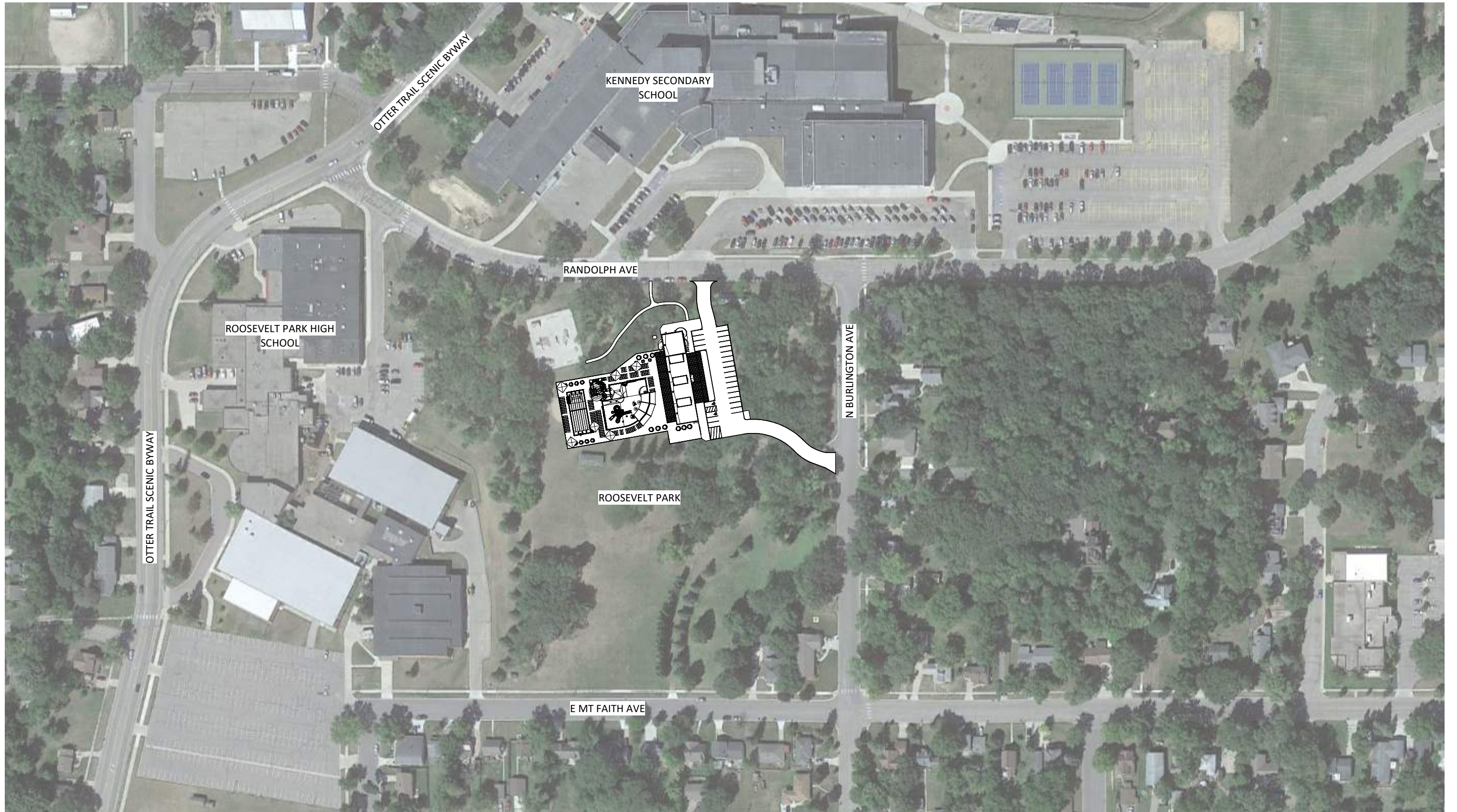
Engineering Department

Respectfully Submitted:

Brian Yavarow, P.E. – City Engineer

Attachments:

Exhibits – JLG Architects

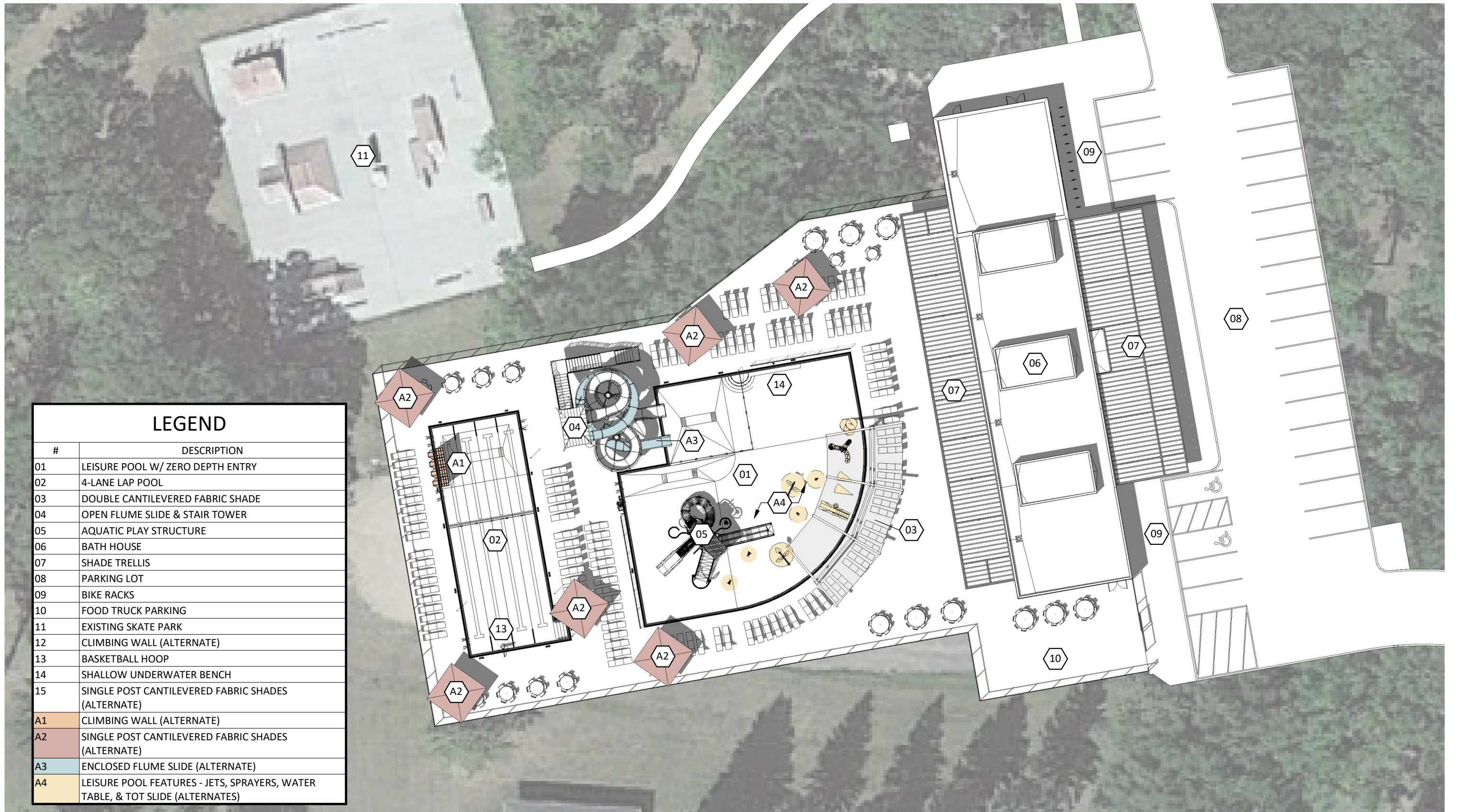


ROOSEVELT PARK COMMUNITY POOL

SITE CONTEXT PLAN

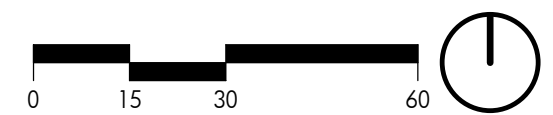
6/20/2023 | JLG 22315 | © 2023 JLG ARCHITECTS

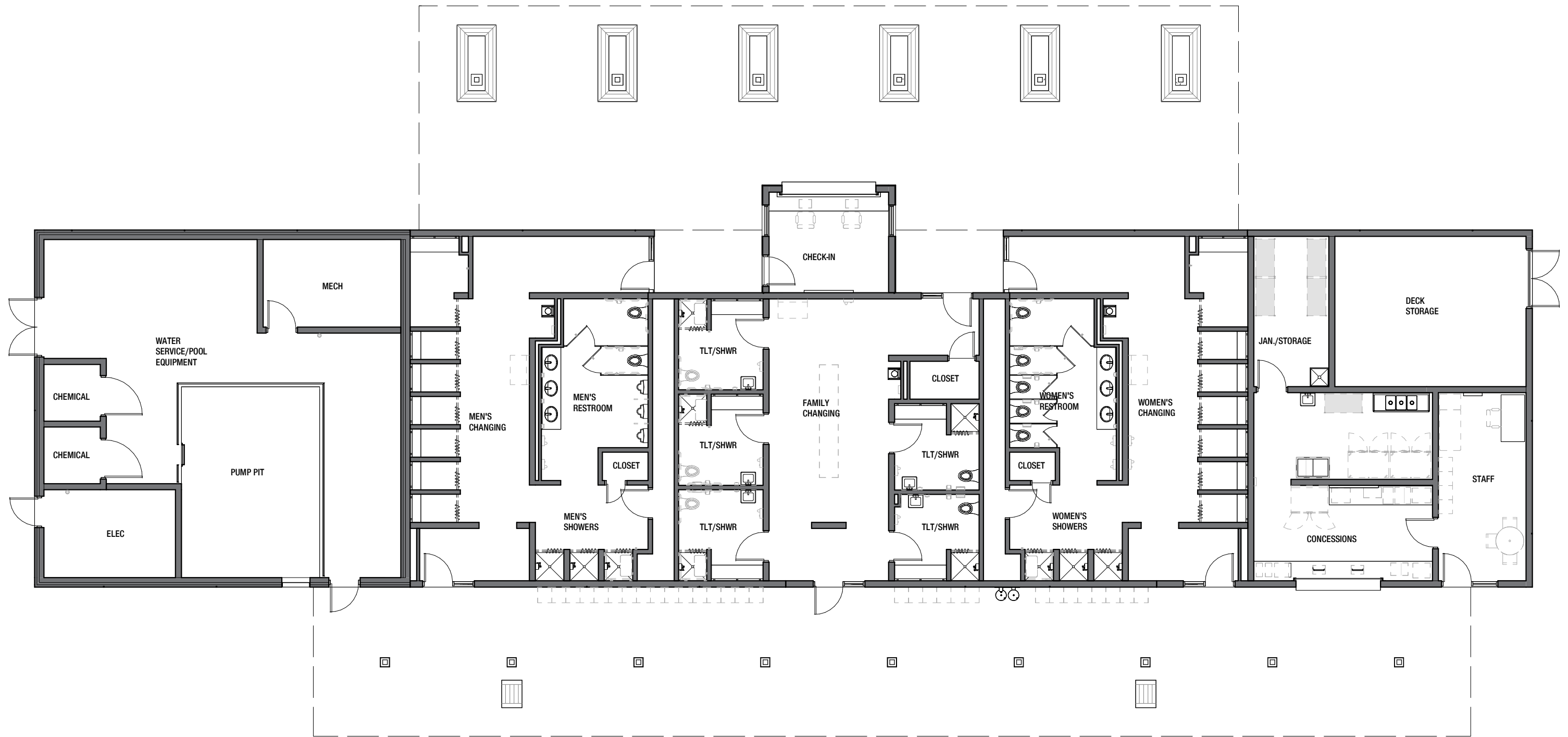




ROOSEVELT PARK COMMUNITY POOL

FEATURES PLAN



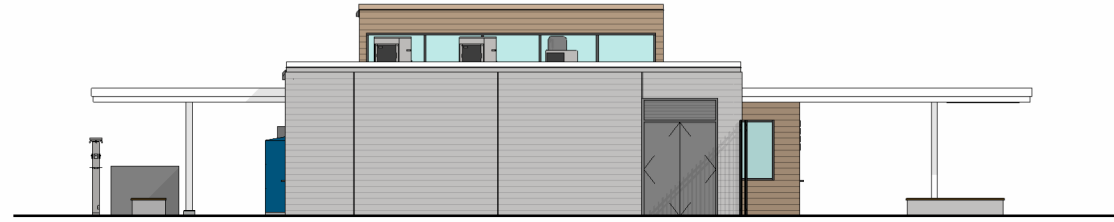


ROOSEVELT PARK COMMUNITY POOL

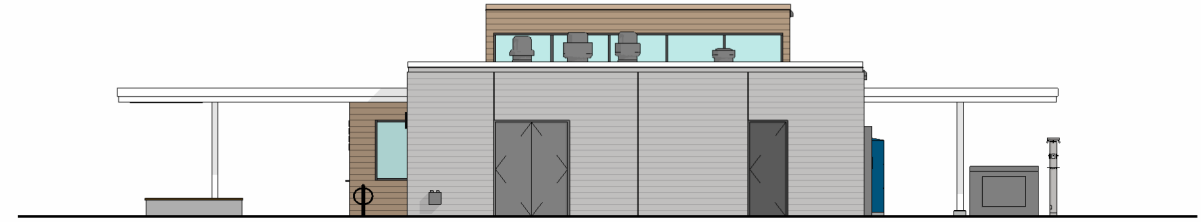
FLOOR PLAN

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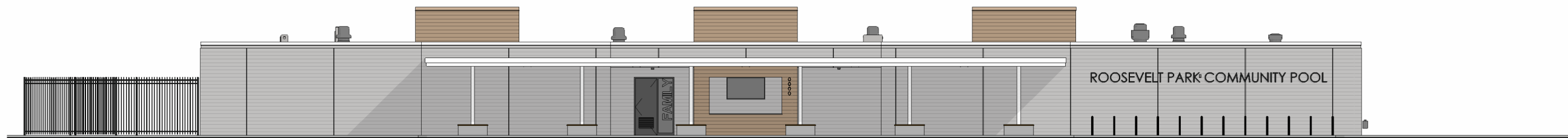
SOUTH ELEVATION



NORTH ELEVATION



WEST ELEVATION



EAST ELEVATION

ROOSEVELT PARK COMMUNITY POOL

EXTERIOR ELEVATIONS

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City Council Action Recommendation

Page 1 of 1

Meeting Date:

June 28, 2023- COW

Subject:

Flour Mill LLC TIF development agreement & purchase agreement for parking lot (as part of gap financing package)

Recommendation:

Approve a development agreement & purchase agreement related to the redevelopment of the mill building for action at an upcoming council meeting.

Background/Key Points:

Mr. Kevin Bartram, owner of the former Red River Milling Company building, received council approval for Tax Increment Financing (TIF) for the former mill property on November 1, 2021. Following TIF approval, Mr. Bartram continued to develop his project plans for a boutique hotel and seek project financing.

In the winter of 2023, Mr. Bartram approached the city with a \$300,000 financing gap based on updated bids for the project. On February 21, 2023, the council adopted resolution #37-2023 approving a business assistance loan in the amount of \$200,000 to the Flour Mill LLC to close part of the \$300,000 gap. Loan terms include 1% interest for 20 years, a 1.5% origination fee on the loan, personal and corporate guarantees, and maintenance of a life insurance policy. Interest savings over the life of the loan are calculated to be approximately \$140,000 at 1%. The interest savings constitute part of the city's contribution toward gap closure.

With Council direction, the city also began discussion with Mr. Bartram to purchase the unimproved parking lot adjacent to the mill building for \$160,000. The lot would be retained by the city for public parking in the downtown area. Discussions have led to a final footprint of approximately 20,200 square feet of unimproved parking lot. The purchase amount of \$160,000, combined with interest savings of approximately \$140,000 over the life of Mr. Bartram's loan, is expected to fill the \$300,000 financing gap.

With abatement work started on site, Council is asked to approve a development agreement for inclusion with TIF documentation. Council is also asked, as a separate action, to approve a \$160,000 purchase of approximately 20,200 square feet of unimproved parking lot adjacent to the mill to fill Mr. Bartram's final financing gap.

Originating Department:

Community Development

Respectfully Submitted:

Klara Beck

Attachments:

TIF 4-15 Development Agreement
Mill parking lot purchase agreement

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT ("Agreement") is entered into as of the Effective Date by and between Flour Mill LLC, a North Dakota limited liability company ("Seller") and the City of Fergus Falls, a Minnesota municipal corporation ("Buyer"). The "Effective Date" shall mean the last date of execution of the Agreement by Seller or Buyer.

1. PURCHASE AND SALE

(a) **Agreement of Purchase and Sale of Property.** Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, certain real property located in the City of Fergus Falls, Otter Tail County, Minnesota and legally described in the attached Exhibit A (the "Property") together with all improvements and fixtures located thereon plus any interests, rights, and title of Seller in and to all adjacent streets, rights-of-way, access rights, easements, hereditaments, and tenements benefiting the Property.

(b) **Purchase Price.** The purchase price for the Property shall be One Hundred and Sixty Thousand and No/100 Dollars (\$160,000.00) USD (the "Purchase Price").

2. DUE DILIGENCE

(a) **Due Diligence Documents.** Within 15 business days after the Effective Date, Seller shall deliver to Buyer accurate, complete, and legible copies of the following documents (the "Due Diligence Documents") to the extent they are in Seller's possession or are reasonably obtainable by Seller: (i) an updated abstract and any existing title insurance policy for the Property; (ii) any existing survey of the Property; (iii) any soil tests, environmental reports, and engineering inspection reports for the Property; and (iv) any other information on the Property reasonably requested by Buyer.

(b) **Physical Inspection of Property.** Buyer and its agents shall have the right at any time and from time to time to enter upon the Property to inspect its condition and to conduct such examinations, studies, surveys, and tests (including Phase I and Phase II environmental assessments and tests) deemed necessary by Buyer, all at Buyer's sole cost and expense. Buyer shall give Seller reasonable advance verbal notice of such entry and examinations, studies, surveys, or tests and shall conduct the same during normal business hours to the extent practicable. Buyer shall conduct all examinations, studies, surveys, and tests in a manner that will not harm or damage the Property or cause any adverse claim against Seller or the Property. Buyer shall indemnify and hold Seller harmless from and against claims from any person or entity conducting such examinations, studies, surveys, or tests and from any claims for injury or death to persons, damage to property or other liability relating to any entry upon the Property on behalf of Buyer. Notwithstanding the foregoing, Buyer shall have no liability for any pre-existing condition of the Property that may be discovered during such examinations, studies, surveys, and tests.

(c) **Buyer's Due Diligence Period.** Buyer shall have 30 days after receiving the last of the Due Diligence Documents (the "Due Diligence Period") in which to inspect the Due Diligence Documents and the Property and conduct any examinations, studies, surveys, and tests deemed necessary by Buyer. Except for the specific representations in paragraph 4 below, Buyer is relying solely upon its inspections and due diligence in purchasing the Property. If Buyer determines on or before the end of the Due Diligence Period not to proceed with the purchase of the Property, Buyer shall deliver to Seller a written notice of termination of this Agreement ("Notice of Termination") to notify Seller of Buyer's intention not to proceed with the purchase of the Property. Such notice shall be provided to Seller in accordance with the notice provisions contained in Section 7 hereof. If Buyer fails to timely deliver to Seller the Notice of Termination, such failure shall be deemed to be Buyer's decision not to terminate this Agreement and proceed to Closing.

3. TITLE

(a) **Title Inspection.** Within 15 (fifteen) days after the Effective Date, Seller shall deliver the following "Title Documents":

- i. All title insurance commitments and policy's insuring the marketability of the Property or any portion thereof that is in Seller's possession, or
- ii. Deliver to Buyer an updated abstract certified as to required searches as set forth in Minnesota Title Standard No. 82; or
- iii. An Owner's Policy and Commitment for Title Insurance covering the marketability of the Property naming the Buyer as the Insured.

(b) **Survey.** Buyer has surveyed the Property (the "Survey"), showing all Property corners and other matters identified. The Survey is acceptable and satisfactory to Buyer and to Seller. Buyer and Seller agree to split the costs of the Survey.

(c) **Objections to Title Documents.** Buyer shall have 30 days following the receipt of the Title Documents in which to notify Seller of any objections to title as disclosed in the Title Documents, the Abstract, or the Title Commitments. Seller shall then have 15 days after receiving such title objections from Buyer in which to eliminate or cure such title objections. If Seller is not willing or able to eliminate or cure such title objections within such period, Buyer shall have the option to (i) terminate this Agreement by providing a Notice of Termination to Seller, (ii) accept such title as Seller is willing or able to deliver, or (iii) reduce the Purchase Price by an amount mutually determined by Seller and Buyer to be the approximate cost to eliminate or cure such title objections. If Buyer elects (ii) or (iii) hereinabove, the parties shall execute an appropriate amendment to this Agreement. If Buyer elects (i) hereinabove, this Agreement shall become null and void and the Earnest Money shall be promptly refunded to Buyer with interest and neither Seller nor Buyer shall have any further liability hereunder.

4. **SELLER'S REPRESENTATIONS AND WARRANTIES.** Seller hereby represents and warrants to Buyer as follows, which representations and warranties shall survive the Closing for a period of two years:

(a) **Compliance with Law.** To the best of Seller's knowledge, the Property is and on the Closing Date shall be in full compliance with all applicable federal, state, and local laws and regulations.

(b) **Authority.** Seller has full authority and right to execute, deliver, and carry out this Agreement and all other documents to be executed and delivered by Seller in connection herewith. The execution and delivery of this Agreement, the consummation of the transactions herein contemplated, and compliance herewith shall not conflict with or result in a breach of any contract or agreement to which Seller is a party or of any judgment, order, or decree of any court having jurisdiction over Seller or the Property.

(c) **Good Title.** Seller has good and marketable title to the Property, free and clear of any and all liens and encumbrances, except for any encumbrances accepted by Buyer pursuant to Section 3 hereof.

(d) **No Adverse Actions.** Seller has no knowledge of any action or proceeding pending against Seller or the Property that, if determined adversely as to Seller or the Property, would have a material adverse effect on title or the use, enjoyment or value of the Property, or that could interfere with the consummation of the transactions contemplated by this Agreement, including eminent domain proceedings.

(e) **No Hazardous Substances.** No toxic or hazardous substances or wastes, pollutants or contaminants (including, without limitation, asbestos, urea formaldehyde, the group of organic compounds known as polychlorinated biphenyls, petroleum products including gasoline, fuel oil, crude oil and various constituents and such products, and any hazardous substance as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”), have been generated, treated, stored, released or disposed of, or otherwise placed, deposited in or located on the Property, nor has any activity been undertaken on the Property that would cause or contribute to (i) the Property to become a treatment, storage or disposal facility within the meaning of, or otherwise bring the Property within the ambit of, the Resource Conservation and Recovery Act of 1976 (“RCRA”), or any similar state law or local ordinance, (ii) a release or threatened release of toxic or hazardous wastes or substances, pollutants or contaminants, from the Property within the ambit of, CERCLA, or any similar state law or local ordinance, or (iii) the discharge of pollutants or effluents into any water source or system, the dredging or filling of any waters or the discharge into the air of any emissions, that would require a permit under the federal or state law or local ordinance. No substances or conditions exist in or on the Property that may support a claim or cause of action under RCRA, CERCLA or any other federal, state or local environmental statutes, regulations, ordinances or other environmental regulatory requirements, including without limitation, the Minnesota Environmental Response and Liability Act, Minn. Stat. Section 115B.

(f) **No Unrecorded Documents.** As of the Closing Date there shall be no unrecorded contracts, easements, management contracts, service contracts or other agreements or claims of any third party affecting the title, use, development or occupancy of the Property; and no entity or person shall have as of the Closing Date any right of first refusal, option or other right to acquire all or any part of the Property.

(g) **Statutory Representations.** To the extent required by Minnesota law, Seller represents and warrants that there are no wells, septic systems or storage tanks of any kind located on the Property, and the Property has not been used to manufacture methamphetamine.

5. CONDITIONS PRECEDENT TO CLOSING. Buyer's performance under this Agreement shall be contingent upon the following occurrences:

(a) **Affirmation of Seller’s Representations and Warranties.** All of Seller's representations, warranties, and obligations under this Agreement shall be reaffirmed as of the Closing Date.

(b) **Failure of Conditions.** If any condition precedent set forth in this Section 5 has not been fully performed or satisfied by the date specified therein, Buyer may elect to terminate this Agreement by giving a Notice of Termination to Seller. In the event of such termination, this Agreement shall thereupon become null and void.

6. CLOSING

(a) **Closing Date.** The closing of the purchase and sale of the Property (the “Closing”) shall take place at _____ or other location as agreed upon by Seller and Buyer.

(b) **Seller’s Closing Deliveries.** At Closing, Seller shall execute and deliver to Title Company in escrow on behalf of Buyer the following documents or other items:

- (i) A Warranty Deed (the "Deed"), conveying good and marketable fee simple title to the Property, subject only to exceptions permitted by Buyer.
- (ii) Any other items or documents affecting the conveyance and sale of the Property that may be reasonably requested by Buyer or the Title Company.

(c) **Buyer's Closing Deliveries.** At Closing, Buyer shall deliver to the title and closing company in escrow on behalf of Seller the following documents or other items:

- (i) The Purchase Price.
- (ii) a Certificate of Real Estate Value completed in accordance with Buyer's instructions to be filed with the County Assessor's Office; and
- (iii) Any other items or documents affecting the conveyance and sale of the Property that may be reasonably requested by Seller or the Title Company.

(d) **Closing Adjustments and Prorations.** Real estate taxes due and payable with respect to the Property in the years prior to the calendar year of Closing shall be paid by Seller. Real estate taxes due and payable with respect to the Property during the calendar year of the Closing shall be prorated between Seller and Buyer as of the Closing Date, based upon the latest available tax information. Real Estate taxes due and payable in the years after the calendar year of Closing shall be paid by Buyer. All pending and levied special assessments at the Closing Date shall be paid by Seller at or prior to the Closing Date.

(e) **Third Party Fees and Expenses.** Except as otherwise provided herein, all Closing costs, including the Closing fee charged by the title and closing company, shall be paid so that one-half of such Closing costs are paid by Seller and one-half of such Closing costs shall be paid by Buyer. Notwithstanding the foregoing, however, Buyer shall pay any recording fees in connection with the recording of the Deed, and Seller shall pay the deed tax payable with respect to the conveyance of the Property and any processing or recording fees payable to satisfy any prior encumbrances necessary to deliver title to the Property as required by this Agreement. Buyer shall pay the premium for any owner's title insurance policy if requested. Except as otherwise provided in this Agreement, each party shall pay for its own accounting, consulting, engineering, legal and other similar expenses incurred in connection with the transactions contemplated by this Agreement, whether or not such transactions are consummated.

7. NOTICES. All communications permitted or required under this Agreement shall be in writing and shall be deemed to have been duly given or served if delivered, in person or deposited in the United States mail, postage prepaid, for mailing by certified mail, return receipt requested, or by nationally recognized overnight courier, and addressed to a party to this Agreement as follows:

If to Seller: Flour Mill LLC
 505 Broadway N Ste 201
 Fargo, ND 58102

If to Buyer: Fergus Falls City Administrator
 Fergus Falls City Hall
 112 W Washington Ave
 Fergus Falls, MN 56537

Any party may change its address by giving notice in writing, stating its new address to any other party as provided in the foregoing manner.

8. DEFAULT / REMEDIES.

(a) **Seller Default.** If Seller defaults in the performance of this Agreement, Buyer sole and exclusive

remedy shall be to cancel this Agreement by delivering written notice of such default to Buyer and this Agreement shall be deemed canceled without further action between parties

(b) **Buyer Default.** If Buyer defaults in the performance of this Agreement, Seller’s sole and exclusive remedy shall be to cancel this Agreement by delivering written notice of such default to Buyer and this Agreement shall be deemed canceled without further action between parties.

9. GENERAL PROVISIONS

(a) **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Minnesota.

(b) **Entire Agreement; Amendments.** This Agreement contains the entire understanding of the parties and supersedes all prior agreements and understandings. Neither party has relied upon any oral or written statements not set forth in this Agreement. No amendment, modification or waiver of any provision of this Agreement shall be valid unless made in writing, signed by the party or parties to be bound, and stating the extent and nature of such amendment, modification or waiver.

(c) **Successors and Assigns.** This Agreement shall bind and inure to the benefit of the parties and their successors and assigns. Neither party shall assign any right or obligation hereunder in whole or in part without the prior written consent of the other party hereto and any attempt to do so shall be null and void (except that Buyer may at any time prior to Closing assign its rights and obligations hereunder to one of its affiliates upon written notice to but without the consent of Seller).

(d) **Number of Days.** In computing the number of days for the purposes of this Agreement, all days shall be counted, including Saturdays, Sundays and national legal holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or national legal holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or national legal holiday.

(e) **No Third Party Beneficiaries.** Nothing in this Agreement, expressed or implied, is intended to confer upon any person, other than the parties hereto and their successors or assigns any rights or remedies under or by reason of this Agreement.

(f) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be considered one and the same Agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party. A PDF or facsimile of this executed Agreement shall be effective in the same manner as an original.

IN WITNESS WHEREOF, this Purchase Agreement has been executed as of the Effective Date of this Agreement.

SELLER:

FLOUR MILL LLC

Kevin J Bartram

By: ID wxotMczY17Tse3BR6mbDtck1 _____

Its: Owner _____

BUYER:

CITY OF FERGUS FALLS

Ben Schierer, Mayor

Andrew Bremseth, City Administrator



Council Action Recommendation

Page 1 of 1

Meeting Date: 6/28/23

Subject:

Addition to the 2023 Fee schedule

Recommendation:

Implement a fee for rental/use of the sound system.

Background/Key Points:

Along with the purchase of the mobile stage 2 years ago, the City also purchased a full professional quality sound system complete with sound board, speakers, subs, microphones, mic stands, and stage lights. These items have been stored in the Pavilion storeroom and users of the Pavilion have inquired about using the system. Without having this fee in place we didn't have the ability to allow its use. A local person knowledgeable in such matters was consulted and he (Michael Burgraff) indicated that \$300/event for the system would be a reasonable rate.

The city, not wanting to allow anyone unqualified operate the system, has a list of approved qualified operators that will be allowed to operate for an event and the payment for this service will be between the event organizers and the individual from our list of qualified operators.

Budgetary Impact:

Proceeds from rentals of the system will go into a fund that will be used when repairs become necessary.

Originating Department: Public Works

Respectfully Submitted: Len Taylor

Attachments:



Council Action Recommendation

Page 1 of 1

Meeting Date: 6/28/23

Subject: Refuse truck purchase

Recommendation:

Purchase a 2024 Freightliner M2 106 dual steer truck that is equipped with a Neway 24 yd ASL body (packer body and lift arm).

Background/Key Points:

According to the replacement schedule for refuse equipment, unit 226 is scheduled to be replaced.

Budgetary Impact:

The purchase will be made through the "Sourcewell" purchasing group, with funds coming from the 2024 budget of the Equipment Enterprise Fund.

Retail price of Truck and packer body:	\$342,112.80
Trade in:	<u>-\$55,000.00</u>
Purchase price:	\$287,112.80

Originating Department: Public Works-Fleet Div.

Respectfully Submitted: Len Taylor

Attachments: Truck quote



Council Action Recommendation

Page 1 of 1

Meeting Date:

6/28/23

Subject:

Amend City Ordinance 91.52 "Chickens"

Recommendation:

Amend the ordinance to include "quail" as an allowable variety of fowl allowed to be kept in city limits, with the appropriate permit.

Background/Key Points:

The request to have quail has come to the city. Research shows that quail can be reared in an urban setting just as chickens are. The allowance for quail would be the same process as it is with chickens. The ordinance requires that the resident requesting the permit receives all abutting neighbor's consent in writing (or proof that there has been an attempt to obtain it) and periodic inspections by the Animal Control Officer to ensure that setbacks for coop's and run's and adequate and not excessive size for coop's are complied with.

Budgetary Impact:

Cost of publication

Originating Department: Public Works

Respectfully Submitted: Len Taylor

Attachments: Red lined ordinance

§ 91.52 CHICKENS/QUAIL.

(A) *Chickens and quail permitted.* It is unlawful for any person to own, control, keep, maintain or harbor chickens **or quail** on any premises within the city unless issued a permit to do so as provided in this section. No permit shall be issued for the keeping or harboring of more than four female chickens/quail or hens on any premises. The keeping or harboring of male chickens or roosters is prohibited. Violations of this section are misdemeanors.

(B) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AT LARGE. A chicken/**quail** out of its ~~chicken~~ run, off the premises or not under the custody and control of the owner.

CHICKEN. A female chicken or hen.

QUAIL. A small, short-tailed Old World game bird resembling a small partridge, typically having brown camouflaged plumage or a small or medium-sized New World game bird.

CHICKEN COOP. A structure for housing chickens/**quail** made of wood or other similar materials that provides shelter from the elements.

CHICKEN RUN. An enclosed outside yard for keeping chickens/**quail**.

PERSON. The resident, property owner, custodian or keeper or of any chicken **or quail**.

PREMISES. Any platted lot or group of contiguous lots, parcels or tracts of land and is located within the city.

(C) *Permit.*

(1) No person shall maintain a ~~chicken~~ coop and/or ~~chicken~~ run unless granted a permit by the Animal Control Officer. The Animal Control Officer is authorized to issue a maximum of 20 permits annually for the keeping of chickens/**quail**. The permit shall be subject to all the terms and conditions of this subchapter and any additional conditions deemed necessary by the Animal Control Officer to protect the public health, safety and welfare. The necessary permit application shall be obtained from the City Administrator's office. Included with the completed application must be a scaled diagram that indicates the location of any ~~chicken~~ coop and/or ~~chicken~~ run, and the approximate size and distance from adjoining structures and property lines, the number and species of chickens/**quail** to be maintained at the premises and a statement that the applicant/permittee will, at all times, keep the chickens/**quail** in accordance with this section and all the conditions prescribed by the Animal Control Officer, or modification thereof, and failure to obey the conditions will constitute a violation of the provisions of this subchapter and grounds for cancellation of the permit. The applicant shall include written consents/approval of the keeping of chickens/**quail** on his, her or their premises from all abutting property owners, or shall provide proof of the certified mailing of a

notice, and copies of the notice(s) to all abutting property owner(s) which advises the abutting property owner(s) the applicant is applying for a permit from the city for the keeping of chickens/quail on his, her or their premises, the abutting property owner may object to the applicants permit application, any objection must be received by the Animal Control Officer within ten days of the mailing date of the notice, and failure to provide written objections to the Animal Control Officer within ten days of the mailing of the notice will authorize the Animal Control Officer to issue a permit for the keeping of chickens/quail to the applicant at his, her or their premises.

(2) Upon receipt of a permit application, the Animal Control Officer shall determine if the application is complete and contains the required consents/approvals and/or proof of the certified mailing of the required notices. If the application is complete and includes written consents/approval from all abutting property owners, the Animal Control Officer shall issue a permit for the keeping of chickens/quail to the applicant. If the application is complete and includes proof of mailing certified notices to abutting property owner(s) as required by this section, the Animal Control Officer shall issue a permit to the applicant ten days after receipt of the completed application, unless the Animal Control Officer receives a written objection from an abutting property owner objecting to the applicant's application for the keeping of chickens/quail, in which case no permit shall be issued. No permit shall be issued for an incomplete application or for the keeping of chickens/quail on any rental premises.

(3) A permit for the keeping of chickens/quail may be revoked or suspended by the Animal Control Officer for any violation of this section following written notice. The applicant/permittee may appeal the revocation or suspension of their permit by requesting in writing a hearing before the City Council within seven days of the notice of revocation or suspension. The request for hearing must be either postmarked or received in the City Administrator's office within seven days of the date of the notice. The City Council shall hold a hearing on the applicant/permittee's request for hearing within 30 days of the request for hearing.

(4) An annual fee will be set by resolution.

(D) *Confinement.* Every person who owns, controls, keeps, maintains or harbors chickens/quail must keep them confined at all times in a ~~chicken~~ coop and ~~chicken~~ run and may not allow the chickens/quail to run at large. Any ~~chicken~~ coop and ~~chicken~~ run shall be at least 25 feet from any residential structure or any other structures on any adjacent premises.

(E) ~~Chicken~~ **C**oops and chicken runs.

(1) All ~~chicken~~ coops and ~~chicken~~ runs must be located within the rear yard subject to a 20-foot setback from any adjacent premises and be at least 25 feet from any residential structure or dwelling or any other structures or dwellings on any adjacent premises. All ~~chicken~~ coops must be a minimum of four square feet per chicken/quail in size, must not exceed ten square feet per chicken/quail in size and must not exceed six feet in total height. Attached fenced-in ~~chicken~~ runs must not exceed 20 square feet per chicken/quail and fencing must not exceed six feet in total height. ~~Chicken~~ **R**uns may be enclosed with wood and/or woven wire materials and may

allow chickens/quail contact with the ground. Chicken/quail feed must be kept in metal predator-proof containers. Chicken manure may be placed in yard compost piles.

(2) ~~Chicken~~ Coops must either be:

(a) Elevated with a clear open space of at least 24 inches between the ground surface and framing/floor of the coop; or

(b) The coop floor, foundation and footings must be constructed using rodent-resistant construction;

(3) ~~Chicken~~ Coops are not allowed to be located in any part of a home and/or garage;

(4) Chickens/quail must be secured in a ~~chicken~~ coop from sunset to sunrise each day.

(F) *Conditions and inspections.* No person who owns, controls, keeps, maintains or harbors chickens/quail shall permit the premises, whether the chickens/quail are kept to be or remain in an unhealthy, unsanitary or noxious condition or to permit the premises to be in such condition that noxious odors are carried to adjacent public or private property. Any ~~chicken~~ coop or ~~chicken~~ run authorized by permit under this section may be inspected at any reasonable time by the Animal Control Officer, law enforcement officer or other agent of the city. A person who has been issued a permit shall submit it for examination upon demand by the Animal Control Officer, law enforcement officer or other agent of the city. Slaughter and breeding of chickens/quail on any premises within the city is prohibited.

(G) *Private restrictions and covenants on property.* Notwithstanding the issuance of a permit by the city, private restrictions and/or covenants on the use of property shall remain enforceable and take precedence over a permit. Private restrictions include, but are not limited to, deed restrictions, condominium master deed restrictions, neighborhood association by-laws, covenant declarations and deed restrictions. A permit issued to a person whose premises are subject to private restrictions and/or covenants that prohibit the keeping of chickens/quail is void. The interpretation and enforcement of the private restriction is the sole responsibility of the private parties involved.

(H) *Refusal to grant or renew permit.* The Animal Control Officer may refuse to grant or renew a permit to keep or maintain chickens/quail for failure to comply with the provisions of this section, submitting an inaccurate or incomplete application, if the conditions of the permit are not met, if a nuisance condition is created, or if the public health and safety would be unreasonably endangered by the granting or renewing of the permit.

(I) *Removal of ~~chicken~~ coop and ~~chicken~~ run.* Any ~~chicken~~ coop or ~~chicken~~ run constructed or maintained on any premises shall be immediately removed from the premises after the expiration of the permit or shall be removed within 30 days upon ceasing to use the ~~chicken~~ coop and/or ~~chicken~~ run for the keeping of chickens/quail.

(J) *Residential Agricultural District.* This section does not apply to premises located in a Residential-Agricultural District, as that area is defined in this code of ordinances.

(K) *Prohibited.* The keeping of chickens/**quail**, male or female, is prohibited in R-3, R-4 and R-5 Multiple-Family and Multiple-Residence Districts and all Business and Industrial Districts (B-1 through B-6 and I-1 through I-3), as those areas are defined in this code of ordinances.

(Ord. 22, Eighth Series, effective 2-27-2022)



City Council Action Recommendation

Page 1 of 1

Meeting Date:

June 28, 2023- COW

Subject:

Zoning of THC Edibles, beverages, and manufacturing

Background/Key Points:

Effective August 1, 2022, Session Law Chapter 98, Article 13 amended Minn. Stat. § 151.72 to allow for the sale of certain edibles and beverages infused with tetrahydrocannabinol (THC), the cannabis ingredient extracted from hemp. Municipalities across the state responded in various ways to the legislation. Otter Tail County responded by enacting a moratorium on the sale and manufacturing of THC edibles and beverages but allowed municipalities in the county to opt out of the moratorium should an ordinance and regulations regarding sales and manufacturing be adopted by the municipality. Council in Fergus Falls therefore requested that Planning Commission update city zoning code to account for the legislative change and authored Ordinance 35, Eighth Series, THC Product Sales (adopted Jan 3, 2023). These regulations in place, Fergus Falls then opted out of the countywide moratorium.

It is specifically the zoning of THC edibles and beverages that Council has requested to review today. In the fall of 2022, Planning Commission suggested the following changes to City Code Chapter 154, Planning and Zoning:

- Define Hemp-derived Tetrahydrocannabinol (THC) edibles and beverages, hemp processing/ manufacturing, and hemp/ industrial hemp
- Restrict the sale of THC edibles & beverages to B-3, B-5, and B-6 zones
 - Amend § 154.038 B-3, GENERAL BUSINESS DISTRICT, Section (B) Permitted uses to include “Retail establishments selling THC edibles & beverages.”
- Allow for manufacturing of THC edibles & beverage products in zone I-2 (and by extension I-3).
- Amend § 154.041 I-1, PLANNED INDUSTRIAL DISTRICT, Section (B) Permitted uses to include “Hemp Processing or manufacturing.”
- Permit “Hemp Processing or manufacturing” by CUP in I-1, B-3, B-5 AND B-6

Planning Commission discussions on the zoning of THC edibles began at their July 25, 2022 meeting and continued through their October meeting. Minutes of those meetings are available here: www.ci.fergus-falls.mn.us/home/showdocument?id=4257&t=638132770608721496.

Planning Commission’s suggested zoning amendments were adopted by the Council on November 22, 2022.

Respectfully Submitted:

Klara Beck
Community Development Manager

ORDINANCE NO. 32, EIGHTH SERIES

**AN ORDINANCE OF THE CITY OF FERGUS
FALLS, MINNESOTA, AMENDING CHAPTER
154.002 DEFINITIONS, CHAPTER 154.038 B-3,
GENERAL BUSINESS DISTRICT AND CHAPTER
154.041, I-1, PLANNED INDUSTRIAL DISTRICT OF
THE CITY CODE.**

THE CITY OF FERGUS FALLS DOES ORDAIN:

Section 1. City Code Chapter 154.002, Definitions, Hemp-Derived Tetrahydrocannabinol (THC) Edibles and Beverages, is hereby added to read as follows:

HEMP-DERIVED TETRAHYDROCANNABINOL (THC) EDIBLES AND BEVERAGES. Any product that is intended to be eaten or consumed as a beverage by humans and contains THC in combination with food ingredients.

Section 2. City Code Chapter 154.002, Definitions, Hemp Processing or Manufacturing, is hereby added to read as follows:

HEMP PROCESSING OR MANUFACTURING. "Processing" means rendering by refinement hemp plants or hemp plant parts from their natural or original state after harvest. Processing includes but is not limited to decortication, devitalization, chopping, crushing, extraction, combining cannabinoid(s) with food ingredients, and packaging. Processing does not include typical farm operations such as sorting, grading, baling, and harvesting.

Section 3. City Code Chapter 154.002, Definitions, Hemp or Industrial Hemp, is hereby added to read as follows:

HEMP OR INDUSTRIAL HEMP. "Industrial hemp" means the plant *Cannabis sativa L.* and any part of the plant, whether growing or not, including the plant's seeds, and all the plant's derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis. Industrial hemp is not marijuana as defined in Minnesota Statutes section 152.01, subdivision 9.

Section 4. City Code Chapter 154.038 B-3, General Business District, (B), is amended by adding the following permitted use:

(76) Retail establishments selling THC edibles and beverages

Section 5. City Code Chapter 154.038 B-3, General Business District, (C), is amended by adding the following use by conditional use permit:

(7) Hemp processing or manufacturing.

Section 6. City Code Chapter 154.041 I-1, Planned Industrial District, (B), is amended by adding the following permitted use:

(21) Hemp processing or manufacturing;

(22) Uses permitted or conditionally permitted in the B-3 zone, unless regulated differently elsewhere in this chapter.

Section 7. Effective date. The effective date of this ordinance shall be the 11th day of November, 2022.

THIS ORDINANCE was introduced on the 7th day of November, 2022, and adopted by the City Council of the City of Fergus Falls, Minnesota, on the 21st day of November, 2022, by the following vote:

AYES: Hagberg, Kvamme, Arneson, Thompson, Gustafson, Hicks, Fish
NAYS: None
ABSENT: Rufer

ATTEST:

APPROVED:

Andrew Bremseth
City Administrator

Ben Schierer
Mayor

Published in the Fergus Falls Daily Journal on November 26, 2022