



*"An enlightened citizenry is indispensable for the proper functioning of a republic."*  
Thomas Jefferson

## **Position Paper # 2**

### **The Referendum Vote Was Never A Mandate for A Community Center**

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## **Disunity Over the Community Center**

We have a problem related to disunity among the citizens of Fairmont. This disunity is not universal. It appears to be related to one specific issue — the community center. Why does this disunity exist on this topic? People have disagreed on other issues facing Fairmont. But, this issue appears to have driven a much deeper division between the citizens. What is the source of this disunity?

The disunity exists because of the manner in which this issue has been presented to the people, and how it has been pursued by past City Councils. There are also other reasons why people oppose the construction of the proposed CC. They include, but are not necessarily limited to the items listed below:

- The referendum language was vague and misleading;
- It will compete against the privately owned fitness centers already operating in town;
- It was not the will of the people to have all of the money from the 0.5% sales tax be dedicated to the construction of the CC;
- It will not accomplish its original purpose, which included providing a place to hold regional sporting events, and where large social events could be held;
- It will not bring new businesses to town;
- There are too many unanswered questions related to ownership and the future cost of operating and maintaining the facility;
- It will not incentivize people to move to Fairmont if they don't have a job in town;
- It will compete with the existing charitable and private organizations providing similar services;

These are just a few of the reasons why people are opposed to the CC proposed by the Fairmont Area Community Center Foundation (FACCF) and the Community Center Advisory Board (CCAB). I discuss several of these key reasons below. I will follow up with additional information about the other reasons at a later date.

## **Vague Referendum Language**

One component that exacerbated this problem was the referendum language. The language combined all three items (trails, recreational amenities and/or community center) together under one vote. These are not the same or even similar items. For example, trails and recreational amenities are existing amenities in Fairmont. However, a CC, as it has been proposed, would require the construction of an entirely new physical man-made facility. Making improvements to the trails and other recreational amenities such as the lakes and parks is NOT the same as constructing from the ground up a new large physical building.

Furthermore, “recreational amenities” is vague at best. What does that term include — lakes, parks, band shells, boat ramps, swimming beaches, waste baskets, charcoal grills, channel repairs, playground equipment, etc.? Combining these items (trails, recreational amenities, community center) together under one vote only served to confuse the voter and deny the voter their right to freely express their preference concerning each item (e.g. trails, recreational amenities and/or a community center).



### *Department of Revenue Guidelines Were Not Followed*

The language of the referendum certainly did not follow the guidelines published by the Minnesota Department of Revenue (MDR). Several years ago MDR revised its guidelines concerning the application for a local option sales tax. The reason why the MDR revised its guidelines is precisely because of what happened in Fairmont and other communities in prior elections where there were referendums on the ballot for a sales tax. In the following discussion there are two key points that are critical to conducting a fair referendum that would ensure an accurate representation of the will of the people, and that the MDR sought to address and correct with revisions to its guidelines.

When we review the changes that the MDR made to its guidelines it becomes clear that the referendum that the citizens voted on in 2016 was, at best ill-conceived. It was certainly poorly written, as evidenced by all of the confusion and strong disagreement that has ensued since the vote.

The MDR guidelines are shown below. These guidelines appear under the section titled, “General Guidelines and Steps.”<sup>1</sup> In order for a municipality to impose a local option sales and use tax upon the citizens, it must receive authorization through the Minnesota Legislature. That was done by the City Council of Fairmont for the 2016 referendum.

However, the changes issued by the MDR to their guidelines following the 2016 referendum illustrate the problems that many communities, including Fairmont, encountered when their citizens voted about a local option sales tax. This is where we can see that there was a problem with the entire 2016 referendum.<sup>2</sup>

Below is a list of the guidelines prepared by the MDR with the two key items highlighted in red print:

1. Pass a resolution that includes:
  - A. Proposed tax rate.
  - B. Detailed description of up to five capital projects to be funded with the tax. A capital project includes:
    - i. A single building or structure, including associated infrastructure needed to safely access or use the building or structure. (e.g. community center)
    - ii. Improvements within a single park or named recreation area. (e.g. lakes)
    - iii. A contiguous trail.
  - C. Documentation of how each project will provide an economic benefit to residents, businesses, and visitors from outside the jurisdiction. **NOTE: There were three (3)**

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<sup>1</sup> Minnesota Department of Revenue. (<https://www.revenue.state.mn.us/starting-local-sales-tax>).

<sup>2</sup> It is true that the changes made by the MDR to its guidelines occurred after the 2016 referendum vote. Nevertheless, the City Council should have been made aware of those changes, and recognized the problems, outlined in this paper, that the vague language of the referendum created. They should have stopped the project and taken appropriate actions, to resolve those problems, before proceeding any further with the disbursement of the revenue from the sales tax.



separate projects included in the referendum language: Trails, Recreational Amenities and/or Community Center.

**D. Amount of revenue to be raised for each project and the estimated time needed to raise funds.**

- E. Total amount of revenue to be raised for all projects.
- F. Estimated length of time the tax will be in effect if all proposed projects are approved.
- 2. Submit the approved resolution and supporting documents to the senate and house tax committee chairs by January 31.
- 3. Once legislative approval is given, revise and reaffirm your resolution. The resolution must be passed at least 90 days before a general election.
- 4. Pass a referendum to impose the tax:
  - A. Hold a vote at a general election within two years of legislative approval.
    - i. **Each project must have a separate question for approval.** NOTE: The referendum language did NOT include separate questions for each project.
    - ii. Voters must approve by a majority vote. If a project is not approved, the revenue and expiration date must be adjusted.
  - B. You cannot spend money to advertise or promote the proposed tax, but you may publicize information included in the resolution.
- 5. If approved, create and pass an ordinance imposing the tax.
- 6. File a certificate of approval and a copy of the ordinance with the Minnesota Secretary of State.
- 7. After you file with the Minnesota Secretary of State, you must notify us in writing to start a new local tax.

I bring to your attention Items 1D and 4Ai. These two particular items highlight the problem that existed with the language in our 2016 referendum. The referendum language included three categories of capital projects: trails, recreational amenities, and/or a community center as one item. The voters were never given the opportunity to vote on each separate project. Nor, was there any \$\$\$ amount provided for each project in the original language.

On the basis of the above revisions to the guidelines the entire referendum vote should be tossed out — invalidated, and a new referendum put in place that upholds the voter's constitutional protections concerning taxation without representation. And, that gives the voters a clear prior understanding of the amount of money that would be put toward each amenity, and that would have give them the opportunity to vote their personal preferences for each individual project.

It must be emphasized that what happened in 2016 was likely done out of ignorance, and to some degree a measure of bias. It involved a failure to recognize the citizens' constitutional right to vote for those items on an individual basis. Failure on the part of the current city council to take into account these revisions, and what the MDR is attempting to address in regard to a voter referendum for a local option



sales tax is a significant contributing factor to the disunity that continues to exist in Fairmont about the proposed community center.

The fact that this is the root-cause of the disunity among the citizens of Fairmont should be clear from the response of the citizenry to the resolution passed by the city council to allocate \$14 million of the \$15 million of revenue from the local option sales tax to the community center. The citizens were understandably upset and angry with that decision. Why? Because it was NEVER the will of the people to have the vast majority of that money directed toward a community center, and leave almost nothing for the other amenities included in that referendum.

### **Survey Questions and Language**

The disunity that resulted from this referendum has only increased because of the repeated refusal by the City Council, the FACCF and the CCAB to conduct any type of survey to assess whether the people specifically do or do not want to construct the proposed CC, and how much of the sales tax revenue are they are willing to put toward each project. The survey conducted by the CCAB in 2022 only included questions about what type of amenities people would like to see included in a community center.

One must wonder why the City Council, the CCAB and the FACCF are unwilling to ask the question about the citizen's position regarding whether to build or not build the proposed CC. The CCAB and the FACCF both claim it is not necessary because a majority of the people voted in favor of having a community center.<sup>3</sup> This is simply incorrect. The people voted in favor of a 0.5% local option sales tax that would be used for trails, recreational amenities and/or a community center. An analysis of the vote results (see below) examines this claim by the FACCF and the CCAB. I believe you will agree this analysis demonstrates that their claim is at best incorrect, at worst it is a deliberate attempt to deceive the electorate.

Members of the Community Center group have publicly stated that their reasons for not wanting to put such a question into their surveys was because they didn't want a repeat of what occurred at the Opera House in December 2018 when dozens of citizens showed up to protest the use of the majority of the local option sales tax dollars primarily for a community center. Members of the community center group were not expecting, nor were they prepared for the negative response of the majority of the people who attended that meeting.

The members of the community center group continue to confidently assert that the people are overwhelmingly in favor of building the proposed community center. If the FACCF and the CCAB are so confident that the majority of people in Fairmont want to see the CC built, then what do they fear by the addition of including such a question on a future election ballot? Lets examine the vote results to see whether their confidence is justified and their claims that an overwhelming majority of voters are in favor of the community center is valid.

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<sup>3</sup> The FACCF and the CCAB also point to the claim that a community center was the #1 idea by voters in the ideas survey. However, this too is an erroneous claim. I addressed this particular issue in my earlier letter to each of you. It was titled, *"It Was Never the #1 Idea."*



## Referendum Vote — Was It A Mandate?

There were a total of 6,295 registered voters in Fairmont for the 2016 general election. Yet, only 5,069 votes were cast in Fairmont for the 2016 general election. This means that a total of 1,226 voters (19.5%) chose not to cast a vote in the general election. National polling analysts have studied voting habits and have learned that a certain percentage of non-votes during an election are “protest” votes. These are done in an effort to demonstrate dissatisfaction and /or political alienation. It is a statement for “NONE of the above.” According to several studies, roughly between 38% and 41% (39.5% average) of the registered voters who do not cast a vote, do so because they do not like the candidates and /or issue(s), or felt that their vote would not make a difference.<sup>4</sup> This means that at least 484 of the non-votes in the 2016 general election in Fairmont were protest votes.

Also, of the 5,069 votes cast in the general election only 4,955 votes were cast about the referendum. This is a difference of 114 votes. This means that 47 of those registered voters (39.5%) who did not answer the referendum question were also “protest” votes. If you add the 484 and 47 together that equals a total of 531 protest votes against the sales tax referendum. Also, 1,923 votes were cast against the referendum. You can add to these votes against the other 531 protest votes, which brings the total votes against the sales tax to 2,454 (48.4%). There were 3,032 votes cast in favor of the 0.5% sales tax referendum. It would need to be determined how many voted in favor of the referendum because they wanted a portion of the tax revenue to go to their personal preference for:

- Trails
- Recreational Amenities (e.g. lakes and parks, etc.)
- Community Center

Remember that the revisions to the guidelines published by the MDR recognize that referendum language for a local option sales tax should have included separate questions for each of the above projects. This is something that was not done. Since, no one can see into the mind of the voters when they cast their votes we have to assume that those votes should be divided equitably among the three choices.

We would also have to consider those voters who voted “Yes” because they had no particular preference. They simply wanted the money to go to all of the above items. Therefore, the 3,032 votes would need to be divided by 4 to arrive at an equitable number of 758 votes for each of the above, which includes the added category for “all of the above”.

This means that votes cast in specific preference for the community center, even including the “all of the above” category only equalled 1,516. Compare that number to the 2,454 votes against the sales tax and the protest votes and it is clear that there never was a mandate for a CC. In fact, it was the opposite. Just comparing these two vote totals indicates that only 30% (1,516/5,069) of the voters were in favor of the

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<sup>4</sup> Thomson-Deveaux, Amelia; Jasmine Mithani and Laura Bronner. *Why Many Americans Don't Vote*. FiveThirtyFive, 2008. Also see, Williams, Anthony (Project Director). *The 100 Million Project - The Untold Story of American Non-Voters*. The Knight Foundation, 2020.



community center and 48% (2,454/5069) were against the sales tax referendum and the community center. Those numbers indicate a mandate AGAINST building a CC. However, this gets even worse for those claiming a mandate for building a community center.

Of the 3,032 votes in favor of the referendum, the remaining 1,516 votes were cast in preference for trails and recreational amenities. If you add the 1,516 in preference for trails and recreational amenities to the 2,454 against the referendum then the total number of votes not in preference for a community center equalled 3,970 (78%) — Thus, only 22% of those who voted in that general election expressly voted in favor of a community center — This is not a mandate for the construction of a CC by any stretch of the imagination.

The results of the vote clearly indicated a “negative” bias against the community center. Thus, the results of the 2016 referendum vote was NEVER a mandate for the CC.<sup>5</sup> If the FACCF wants to claim otherwise then they need to provide documented proof, which they cannot do, unless a new vote is taken about the question whether to build the proposed \$24.3 million YMCA Gym & Swim. They will never agree to that recommendation because they know that they will lose.

In conclusion, given all of the 150 plus organizations, including the 23 churches that exist in Fairmont, which provide numerous services, amenities and activities for our youth, young adults, married couples and seniors there simply is no need to bring a YMCA-based CC into Fairmont.

However, building a general-purpose activities-based community center at a cost that is more in line with what Fairmont can afford, similar in concept to the \$1.9 million proposal presented by Citizens 4 A Strong Fairmont (C4ASF) in the summer of 2022 could prove a very useful addition to our community.<sup>6</sup> The C4ASF proposal also demonstrated the viability to remodel an existing structure into a functional and very useful recreation center in Fairmont, which would provide a sustainable income for the on-going operation and maintenance of that facility, for less than 1/8 of the amount of the \$15 million in revenue from the local option sales tax.

### **Resolution Passed By City Council Was Unjustified**

The vague language and vote results for the referendum clearly show that the resolution passed by the city council in 2019 to distribute 93% (\$14 million divided by \$15 million) of the revenue for the construction of a community center was never justified.<sup>7</sup> There is nothing anywhere in the referendum language or the vote results that implied such an action should have been taken by the city council. It is

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<sup>5</sup> These results are more in line with past efforts to get a community center for Fairmont. Various comments by different individuals have stated that prior attempts failed by margins anywhere from 65% - 80+% of the people against building a community center.

<sup>6</sup> Citizens 4 A Strong Fairmont presented an alternate plan for a community center to the City Council of Fairmont on July 11, 2022. *Repurpose and Reimagine: A Community Center for All*, June 6, 2022. See also: Sentinel. “Council Hears SMEC Proposal”, Sentinel, Fairmont, MN July 12, 2022.

<sup>7</sup> Sentinel, “City Commits To Community Center”, Fairmont Sentinel, Fairmont, MN December 10, 2019.





important to remember during that time the city council was under the control of a majority of council members in favor of building the CC.<sup>8</sup>

Their actions were partisan, and not in keeping with the will of the majority of the people of Fairmont. I want to emphasize that the referendum vote for the 0.5% sales tax to raise \$15 million was for **“trails, recreational amenities (e.g. lakes and parks), and/or a community center”** - three separate projects — NOT just one project (e.g. the community center) as some like to claim. Any reasonable person would have expected the \$15 million to be distributed equitably in a 1/3 - 1/3 - 1/3 split for trails, recreational amenities and/or a community center.

### *Language Vs Intent*

The Project 1590 group has claimed that they went around town and knocked on all the doors of the residents in Fairmont. We were told that they did this to inform the people that if they vote for the sales tax referendum it was actually a vote for the CC.<sup>9</sup> They further claimed that everyone who voted knew this to be the case. Even if that was correct they cannot legitimately make the claim for a mandate for the community center. Their claim is without merit.

When asked to provide a list of the names and/or addresses of the people whom they spoke to in Fairmont they were unable to do so because they did not keep any records.<sup>10</sup> Their claim is also irrelevant and without any merit for another reason. What actually matters is the legal language of the referendum and what it states. The Project 1590 group was advocating that people view the wording to mean something entirely different than the legal wording of the referendum language. Even if it were true that all of the people had been contacted and informed by the Project 1590 group how to interpret the language, it does not follow that the people voted according to that line of thinking.

Citizens 4 A Strong Fairmont investigated to determine whether the claim made by certain members of the Project 1590 group about telling all of the citizens that a vote for the sales tax was a vote for a CC. We randomly interviewed between 350 and 400 citizens.<sup>11</sup> Not one of those citizens we interviewed backed up the claim that someone from the Project 1590 group visited their home and informed them that if they voted for the sales tax they were voting for the CC.

Many of those people that we interviewed stated, had they known that their vote was actually solely for the community center, and not for all three items, they would have voted against the sales tax. We asked

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<sup>8</sup> That majority included Randy Lubenow, Ruth Cyphers, and Tom Hawkins — See Sentinel (Dec. 10, 2019).

<sup>9</sup> Bill Cieslenski, Bob Seidel and Richard Bradley met with Amy Long, John Kasper, Randy Lubenow, Steve Hawkins and Britney Kawecky to discuss Mr. Bradley’s understanding of the history behind the development of the community center. This meeting was requested by Britney Kawecky and Amy Long. It was their belief that Mr. Bradley was being misled about the “facts” surrounding the referendum vote and the costs of the community center. The meeting took place on March 4th, 2022.

<sup>10</sup> This question was specifically asked of Amy Long, John Kasper, Randy Lubenow and Steve Hawkins at that March 4th meeting. They immediately responded that their door-to-door interviews were informal and that they did not keep any records of the individual homes that they visited.

<sup>11</sup> Members of Citizens 4 A Strong Fairmont randomly interviewed people at HyVee, Fareway, the fitness clubs, downtown on the street and in several restaurants, the service stations, and even in the parks.



them why? These people said that they wanted the money to be put toward their particular preference, with the understanding that the money would be used for all of the projects — and not just a community center. It was a reasonable assumption on the part of the voters that the monies would have been somewhat equitably distributed amongst the various options.

Finally, and this we find distasteful. Whenever anyone has questioned the construction of the proposed community center, certain members of Project 1590 and the FACCF have been quick to accuse those individuals of being against Fairmont. Nothing could be further from the truth. There are legitimate economic and social reasons why people are opposed to building the proposed community center. Those reasons have appeared in print on numerous occasions.<sup>12</sup> There is much more to say on this issue and additional information may be forthcoming in the near future.

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<sup>12</sup> See for example: Mike Garry, *"Matter of Independence"*, Fairmont Sentinel, Oct. 30, 2018; Hank Roehler, *"No To Community Center"*, Ibid., Nov. 2, 2018; Verlus Burkhart, *"Where Are Our Priorities?"*, Ibid., Dec. 10, 2018; Hugh Fraser, *"Questions Abound"*, Ibid., Dec. 22, 2018; Linda Meschke, *"Time For Referendum"*, Ibid., Dec. 12, 2019; Don and Harriet Richards, *"Is There Public Support for Proposed Community Center?"*, Ibid., Feb. 15, 2022; Eugene Koch, *"Community Center Input — Don't Build It"*, Ibid., Feb. 16, 2022; Richard Bradley, *"Seek Feedback on Community Center"*, Feb. 24, 2022; Marvel Snyder, *"Take A New Pole On Community Center"*, Ibid., Mar. 12, 2022; Lawrence Vogel, *"Remember the Abandoned Pool?"*, Ibid., Mar. 17, 2022; Ann Osborn, *"Strong Community Center Concept Presented"*, Ibid., Jul. 27, 2022; Kent Barker, *"Most Bang For The Buck"*, Ibid., Nov. 11, 2022; Darlene Lutz, *"This Is All Common Sense"*, Ibid., Nov. 26, 2022; Ann Osborn, *"Close-mindedness Creates Division"*, Ibid., Nov. 29, 2022; Jan Fickbohn, *"Let Taxpayers Vote For This"*, Ibid., Dec. 17, 2022.