October 6, 2023

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City of Fairmont
Mayor Lee Baarts and City Council
100 Downtown Plaza
Fairmont, MN 56031

TO: Mayor Lee Baarts and Members of the City Council,

On Wednesday, September 27 the following comments appeared in an online post (see attachments) on Councilor Maynard's FaceBook page,

> "I sat there for two hours listening to my intelligence being insulted, my integrity being questioned, and <u>inaccurate statements being made one after the other in a way designed to inflame, not inform</u>."

His post is in response to Citizens 4 A Strong Fairmont's presentation at the Opera House on the evening of September 26, 2023 about issues related to the construction, maintenance, operation and ownership of the community center. Below is our response to Councilor Maynard's post.

We presented our perspective on factual information about the history of this project. The only time we ever made mention of Councilor Maynard's name was to commend him for his challenge to the citizens to present solutions and alternatives to the proposed community center, "What would you do differently?"

As we have stated publicly in previous letters and presentations, we think his question was justified and demonstrated the correct approach to this issue — bring solutions, not complaints — We agree. Citizens 4 A Strong Fairmont made no statements with an intent or design to impugn Councilor Maynard's intelligence or integrity. Nor was it designed to inflame.

It is this last statement by Councilor Maynard that we find most disturbing. His claim that we designed the presentation to inflame is simply false. We find his statement to be disappointing and petty. Our desire was to inform people by presenting factual information that has not been readily available to the public.

Operating Obligation of the FACC

Councilor Maynard then went on to further accuse us of deliberately making false and inaccurate statements. He complained that one of the most inaccurate statements we made was that the Fairmont Area Community Center Foundation (hereinafter "FACC") is only obligated to operate the facility for 7 to 9 years. We stand by that claim.

On June 12, 2023, at the request of the FACC, the City Council voted to adopt Resolution 2023-21 titled "Resolution Giving Preliminary Approval to the Proposed Financing Structure of the Community Center". The Resolution adopted the Taft Law Memorandum dated May 3, 2023,, as the proposed financing structure for the community center. That Memorandum is now commonly referred to as the "Memorandum of Intent" (the "MOI").

Section 5 of the MOI (shown below) clearly states that FACC Holding (the FACC's Holding Company) "would be obligated to maintain the building as a community center for the life of the Bonds and any amount of time required by the NMTC structure". The NMTC has a compliance period of 7 years during which it requires the

> 5. After construction, FACC Holding would be responsible for the maintenance and operation of the community center, and would be obligated to maintain it as a community center for so long as the Bonds are outstanding, and any additional amount of time required by the NMTC structure. It is contemplated that FACC Holding would sublease the community center to the YMCA to operate.

project to be operated as it was presented to the U.S. Department of the Treasury. The NMTC 7 year compliance period would run simultaneously with the life of the bond. As we will discuss below, the bond, or bonds, can only be expected to run 7 to 9 years.

To date, the City has not issued a memorandum that specifies the terms of how the FACC must operate the facility as a YMCA community center. We would expect to see conditions laid out by the City to the FACC in return for such a significant donation of sales tax revenue. The City Council has only stated, up to this point, that it intends to turn over the $12.67 million in revenue from the sales tax shown in Exhibit A of the MOI, and referred to as the "Remaining City Contribution" to the FACC. No requirements related to the terms of maintenance, and duration of operation as a YMCA / Community Center have been provided to the public other than Section 5.

If any other documents and terms have been agreed to in writing between the FACC, FACC Holding, and the City, we respectfully request the City to provide that information for our review.

Length or Term of the Sales Tax

Councilor Maynard further stated that the "25 year" reference in the 2016 Referendum authorizes a bond lifespan that can extend 19 more years. Councilor Maynard is mistaken about the language of the sales tax referendum and the 2016-16 Ordinance. Both documents clearly state that the sales tax was for $15M **or** 25-years, whichever comes first.[1]

By the end of 2023 the City will have collected the local option sales tax for 6 years.[2] The average rate of collection per year has been approximately $825,000.[3] At this rate of collection, the $15M will be collected within the next 7-9 years.

Since the City began collecting the sales tax in November of 2017, it has collected approximately $5.734M. This means that the City will have collected over $6M (the current projection is $6,163,481) by the end of this year. Thus the remaining amount of revenue which can be collected from the sales tax is captured in the following formula:

$15,000,000 - $6,163,481 = $8,836,519.

In other words, at the end of 2023 all that will be left to collect is $8.84M. At the current rate of receipt, $1,137,420 - average for the past 3 years), the City of Fairmont will collect the remaining balance within the next 7 to 8 years. This assumes $8,836,519 / $1,137,420 = 7.769 years. If receipts follow the anticipated trend, the monthly receipts will be approximately $94,785.

At the end of that 7 - 8 year period no more money can be collected for the construction of the community center with the following exception: Funds can be collected to pay for certain fees related to engineering and archival services, bond loan debt servicing,

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1 I refer you to Ordinance 2017-16. The General Election ballot makes a similar statement, "…for 25-years or until $15,000,000 in revenues have been collected…"

2 We began collecting sales tax receipts sometime November-December of 2017.

3 If we drop 2017 from the calculation (receipts were only for 1 month) then the average rate jumps to $966,714 per year.

etc.[4] In the following formula we add an estimated amount for those fees to the balance of the sales tax revenue still to be collected. This could take the life of the bonds out to a maximum 9 years. Thus, 7 to 9 years is the limit.

$8,836,519 (outstanding sales tax revenue) + $500,000 (fees) = $9,336,519.

$9,336,519 / $1,137,420 (average annual sales tax revenue) = 8 years, 3 months.

After the City has collected the entire $15,000,000 plus these extra fees the local option sales tax will expire and the City will be required to stop collecting funds under its authorization. Therefore, the term of the bond cannot exceed the period of 7 - 9 years, and certainly not the 19-years (25 - 6 = 19) as Councilor Maynard indicated.

BOND

A bond for $9,336,519 over 8 years at 6% interest rate would equal a payment of $122,695 per month for a total payment of $11,778,740 over the 8 year term of the loan. The total interest paid on this loan would equal $2,442,221. The table shown below illustrates the problem with this scenario.

Year	Revenue Receipts	Loan Payment	Balance
2024	$94,285	$122,695	-$28,410
2025	$94,285	$122,695	-$56,820
2026	$94,285	$122,695	-$85,230
2027	$94,285	$122,695	-$113,640
2028	$94,285	$122,695	-$142,050
2029	$94,285	$122,695	-$170,460
2030	$94,285	$122,695	-$198,870
2031	$94,285	$122,695	-$227,280
Balance to be paid at the end of 8 years			**-$227,280**

[4] The exception is for fees related to the design and financial analysis of constructing a community center. These would include fees for Architect / Engineering studies and design work, legal counsel, financial analysis, funding for any City issued bond, etc. The amount of these fees are currently between $250,000 and $500,000. The information that is readily available to the public is sparse, therefore this is an estimate.

The City would need to make a balloon payment of $227,280 to payoff the remaining balance on the bond loan. How the City would do this would have to be determined. The total additional funds to be paid using sales tax revenue would include the interest + the balloon payment. This would be equal to: $2,442,221 + $227,280 = **$2,669,501.**

Funding Requirements

While Citizens 4 A Strong Fairmont believes that gifting the public taxpayer funds to the FACC is an inappropriate use of funds, we are presenting you with the following funding requirements which should be put in place. If the FACC wants this funding they should be contractually obligated to operate the facility as a YMCA / Community Center for no less than 19 years and preferably 30 years. Even at 19 years, the taxpayers' $12.5M to $14.0M investment amortizes at $658K to $737K per year.

There is another requirement that the City should put in place. If it becomes financially unsustainable for the FACC or its Holding Co. to operate the facility as a YMCA / Community Center for the specified period of time, then the building and land should be deeded over to the City free and clear with no trailing obligations. The donors are giving funds to a Community Center and the taxpayers are the largest donor to the project.

Kraus-Andersen Contract

Councilor Maynard's online post also claimed that Citizens 4 A Strong Fairmont stated that the City has spent money to get out of its contract with Kraus-Anderson. Nothing could be further from the truth. We have not made that statement and will not make it unless it becomes true.

What we did state is that the FACC has **requested** the City to terminate its contract with Kraus-Anderson to serve as Construction Manager for the Phase 1 YMCA community center building project.

We also stated that if the City decides to pursue that course of action there is a likelihood that the City will have to reimburse Kraus-Anderson for some portion of the time and money which they have spent on the project.

These are standard contractual obligations which are triggered in the event that a contract is signed and one party subsequently backs out of that contract, whether in whole, or in part. There are always terms for reimbursement for canceling, and/or changing the terms of a signed contract.

For an example, refer to the contract that the City approved with Kraus-Anderson at the June 27, 2022 City Council meeting, [Article 13 – Termination or Suspension in AIA Document A133-2019, *Standard Form of Agreement Between Owner and Construction Manager as Constructor*.]

Ice Arena

Councilor Maynard also stated, "The fact of the matter is that the City is still under contract with K-A [Kraus-Anderson] to build the ice arena phase of the community center, and is not contemplating changing that in any way."

According to the MOI the "ice arena phase" of the proposed community center or Phase 2, is predicated on two funding sources being approved. 1) A $10M grant from the State of Minnesota's bonding bill; and 2) the citizens voting for a second sales tax in the amount of $20M in the next election.

The $10M bond from the State was discussed in depth at a hearing with members of the Senate Capital Investment Committee in their Bonding Tour stop in Fairmont on October 5th. The Bonding Tour members indicated that $10M is a "heavy lift".

Since the voters have not yet approved the $20M in additional sales tax and the $10M bond from the State has not been landed, the Ice Arena or Phase 2 contract is no easy cure for the issue of canceling the Kraus-Andersen contract for Phase 1 of the project.

Community Center Ownership

Finally, Council Maynard makes the comment that Citizens 4 A Strong Fairmont made much about the issue of ownership. That comment is surprising. The issue of ownership is very important when the taxpayers are funding a major public works project to build a structure that could become either a significant long-term asset to the City or a short-term operated facility that is privately owned.

The use of the New Market Tax Credit (NMTC) as a means for obtaining enough funds to cover the cost of building the YMCA / Community Center creates an ownership issue. As stated in the MOI, the wrinkle is that the City is not eligible to apply for NMTC money. The NMTC program is administered by the U.S. Department of the Treasury for the express purpose of encouraging private sector investment in low income areas.

Thus, in order to tap into NMTC funds, the City can't own the project. It is our position that the City can't wholesale gift away public sales tax funds to a private project.

When this project was originally proposed to the Citizens of Fairmont it was presented as a City owned and operated facility. There was no mention in any resolution or ordinance leading up to the 2016 referendum that the City would turn over taxpayers' funds to a private foundation, or a foundation's holding company, to build and own the facility. Neither was there any mention that the City would bring in an outside entity (e.g. YMCA) to operate it.

All of these were significant changes to the initial proposal. They were also important disclosures that should have been presented to the public for its agreement. The local option sales tax revenue is public money.

Public Funds

Councilor Maynard assumes the City is justified in giving away public tax dollars to a private entity (e.g. the FACC) without the approval of the voters and without an RFP. This is clearly contrary to the role of civil government. The City cannot give large handouts, and clearly $12.67M is a large handout, to private, not-for-profit entities in the community.

Councilor Maynard also ignores the fact that the citizens never voted to give almost all (99%) of the revenue from the sales tax dollars for the construction of the community center.

The citizens voted for the sales tax dollars to be spent on trails, recreational amenities and/or a community center. Furthermore, a careful analysis of the voting results, based on the language of the referendum, clearly shows that only a minority voted solely for a community center.[5]

In addition, at the time of the vote there was no anticipation that the City would endorse the construction of a community center that would contain elements directly in competition with the private sector. In 2019 a letter was submitted to the City by seventy-nine business owners objecting to the construction of any type of community center that would have elements competing with the private sector.[6]

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[5] Please refer to the Citizens 4 A Strong Fairmont Position Paper, "*The Vote Was Never A Mandate*". You can download a copy at www.c4asf.com.

[6] Fairmont City Council Meeting, December 10, 2018. Elroy "Ernie" Nuss of 1800 S. Prairie Avenue addressed the Council and presented a letter signed by 79 business owners in the City of Fairmont who opposed the proposed Community Center and the competition with existing businesses in the City of Fairmont. This letter was sent to the attention of Deb Foster — Mayor, Mike Humpal — Fairmont City Administrator, Fairmont City Council and the Community Building Committee.

Additional Taxes

Councilor Maynard repeatedly stated on numerous occasions, both publicly and on social media platforms, prior to his election that he has always been against any community center, if it will require raising taxes. He is now in favor of significant tax increases.

First, he is promoting a second local option sales tax that he intends to directly benefit the FACC and its Holding Company. The first sales tax of $15M has not finished its course and he is heavily advocating to layer a second $20M sales tax on top of it for an aggregate of $35M in tax burden to the citizens.

Secondly, he fails to recognize the stark reality that if the City decides to gives away 94% - 99% of the revenue from the current local option sales tax it will have set up a de facto situation where taxes will need to be increased in order to fund any repairs and/or improvements to our trails, lakes, parks, etc. Why? Because, all of the revenue from the sales tax is being spent on a single item, which was not the language of the sales tax referendum, nor the intent of the people.

Forward Actions

It would be prudent on the part of the City to add a referendum to the 2024 General Election ballot asking the citizens whether they do, or do not want to invest the $12.67M remaining of the $15M local option sales tax toward the construction of the proposed community center before any further action is taken by the City Council to award funds to the FACC or its Holding Company.

Thank you.

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ATTACHMENTS

EXHIBIT A

POST BY JAY MAYNARD

Jay Maynard, Fairmont City Council · **Follow**

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I went to Citizens 4 a Strong Fairmont's presentation at the Opera House last night. I sat there for two hours listening to my intelligence being insulted, my integrity being questioned, and inaccurate statements being made one after the other in a way designed to inflame, not inform.

The two most inaccurate statements - ones they hammered over and over - were that the Foundation would only be obligated to operate the facility for 7 to 9 years, and that the city has spent money to get out of its contract with Kraus-Anderson. The Foundation will be obligated to operate the facility for the life of the local option sales tax bonds - but that life is not 7 to 9 years, but the remainder of the 25 years authorized by the sales tax referendum, which will be until 2042 (I believe). That's 19 years, not 9. The bonds won't get paid off any faster than that.

The second inaccurate statement was that the city is getting out of its contract with K-A. The fact of the matter is that the city is still under contract with K-A to build the ice arena phase of the community center, and is not contemplating changing that in any way. Since the Foundation is a separate entity, all of the existing contracts would need to be transferred to them anyway; the Foundation is choosing not to transfer the construction manager contract with K-A to themselves for the YMCA portion. This does not incur any costs to the city.

Much was made of the fact that the Foundation would own the building, not the city. There are two reasons for this. First, that structure is necessary to get the $5 million of New Market Tax Credit money; the city cannot own the building for that money to be available. (And Ossenfort included that money in his contention that the facility would be funded by $25 million in tax dollars, a number he came up with by adding together every tax deduction anyone can claim. He ignores the fact that that federal money will go somewhere else if we don't ask for or get it; it won't be returned to the taxpayers.) The second reason is that if the city doesn't own it, the city is not liable for costs to operate or maintain it - a point C4aSF ignores.

EXHIBIT B (Attached)

MEMORANDUM — Fairmont Community Center (Phase I) — Business Deal.
Prepared by TAFT — Dated: May 3, 2023 (Mary Ippel and Dan Burns)