

**CITY OF MARSHALL  
CITY COUNCIL MEETING  
M I N U T E S  
Tuesday, January 26, 2021**

The regular meeting of the Common Council of the City of Marshall was held January 26, 2020, at the Minnesota Emergency Response and Industrial Training (MERIT) Center, 1001 West Erie Road. The meeting was called to order at 5:30 P.M. by Mayor Robert Byrnes. In addition to Byrnes the following members were in attendance: Craig Schafer, Steve Meister, Don Edblom, John DeCramer, Russ Labat and James Lozinski. Absent: None. Staff present included: Sharon Hanson, City Administrator; Dennis Simpson, City Attorney; Jason Anderson, Director of Public Works/ City Engineer; Annette Storm, Director of Administrative Services; Director; Sheila Dubs, Human Resource Manager and Kyle Box, City Clerk.

The Pledge of Allegiance was recited at this time.

There was a consensus to operate under the current agenda.

**Consider Nominations and Appointment for City Council President Pro Tempore.**

Motion made by Councilmember Schafer, Seconded by Councilmember Meister.

Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember Edblom, Councilmember Labat, Councilmember Lozinski. Voting Abstaining: Councilmember DeCramer. The motion **Passed. 6-0-1**

**Consider approval of the minutes of the regular meeting held on January 12, 2021.**

Motion made by Councilmember Lozinski, Seconded by Councilmember Meister that the minutes of the regular meeting held on January 12, 2021 be approved as filed with each member and that the reading of the same be waived. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember Edblom, Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski. The motion **Carried. 7-0**

**Consider Approval of the Consent Agenda.**

Motion made by Councilmember Schafer, Seconded by Councilmember DeCramer to approve the consent agenda. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember Edblom, Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski. The motion **Carried. 7-0**

Approval of an Engagement Letter for Audit Services for 2020 Financial Statements.

Approval of Resolution Number 21-009 Authorizing Submission of the 2021 Pay Equity Implementation Report.

Approval of the Wastewater Treatment Facilities Improvement Project – Consider Payment of Invoice 0262852 to Bolton & Menk, Inc.

Approval for the Request for Proposals South 4<sup>th</sup> Street/Country Club Intersection Study.

Approval for the renewal of American Engineering, Inc. Testing Professional Services Agreement.

Approval for the renewal of Unlicensed Maintenance Electrician Inspection Agreement.

Approval for Project Z51-2021: Bituminous Overlay Project – Consider Authorization to Advertise for Bids.

Approval of the bills/project payments.

### **NEW BUSINESS**

Consider City Council Nominations to the Charter Commission.

Council Members have been tasked to nominate a resident of their Ward to the Charter Commission. Nominations will be submitted by staff to the District Court Judge for appointment to the City's Charter Commission. Mayor Byrnes provided the following nominations to the Charter Commission submitted by Council Members.

Mike Fox, Marc Klaith, Mark Mather, Larry Magrath, Amanda Schroeder

Motion made by Councilmember Meister, Seconded by Councilmember Labat to approve the nominations presented by Council. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember Edblom, Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski. The motion **Caried. 7-0**

### **Consider the request of Monte Buntjer for a Variance Adjustment Permit at 516A Main Street East.**

The owner desires to use a shipping container as a permanent storage next to his building at the address listed above. The Ordinance prohibits using shipping containers as accessory buildings (Sec. 86-163 (10)) or permanent storages (Sec. 86-248 (f)).

To grant a variance, City Ordinance and State Statutes require the presence of practical difficulties. The term "practical difficulties," as used in connection with granting a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance, the plight of the landowner is due to circumstances unique (usually something related to physical characteristics of the property not allowing to comply with the Ordinance) to the property not created by the landowner, and the variance, if granted, will not alter the essential character of the locality. The State Statutes essentially forbid granting variances if those conditions are not met. The Findings of Fact, based on the League of Minnesota Cities template, is attached to this memo, and explains each item listed above in detail.

Shipping containers do not meet building codes and do not fit into typical city environment, which may lead to reduction in surrounding properties' values. Based on the above information, staff does not believe that there are any practical difficulties in this case and therefore recommends that the variance be denied. It is the opinion of City Staff that allowing this variance will set a precedent for the entire city.

The variance regulations and procedures are found in Section 86-29.

At the Planning Commission meeting on January 20, 2021, a public hearing was held, and a motion was made by Knieff, second by Lee to recommend approval to the City Council of the request by Monte Buntjer for a Variance Adjustment Permit for a shipping pod as permanent storage at 516A East Main Street. All voted in favor of the motion.

Motion made by Councilmember DeCramer, Seconded by Councilmember Schafer to table until the February 9 council meeting. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember Edblom, Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski. The motion **Carried. 7-0**

### **Consider the adoption of an Ordinance amending Chapter 2, Article 6, Division 6; Human Rights Commission.**

Beginning this fall, staff, council members and community members have been regularly meeting to begin work on establishing a City commission to address diversity, equity, and inclusion within the city of Marshall.

The Diversity, Equity, and Inclusion (DEI) Commission, although in its infancy, has established its vision and mission statements, guiding principles and has begun working on its first set of actions steps as well as proposed this amendment to the city code to official become a City Commission.

The groundwork for the DEI commission is key and crucial. The Commission is dedicated to learning, creating innovative ideas, and adapting to the ever-changing environment. The DEI Commission is taking purposeful action to advance this commitment through the guiding principles of equity, inclusion, collaboration, and transparency.

At the January 12, 2021 regular meeting the City Council Introduced the Ordinance. The DEI group continues to meet establishing its framework to ensure a solid foundation.

Motion made by Councilmember DeCramer, Seconded by Councilmember Meister to adopt Ordinance Number 21-001. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember Edblom, Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski. The motion **Carried. 7-0**

Motion made by Councilmember DeCramer, Seconded by Councilmember Meister to appoint the following members to the DEI Commission; Beth Wilms, Esther Oluborode, Jefferson Lee IV, Michele Sterner, Sara Runchey, See Moua-Leske. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember Edblom, Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski. The motion **Carried. 7-0**

### **Establishment of Comprehensive Plan Proposal Review Committee.**

The City is currently advertising a request for proposals (RFP) for an update to the City Comprehensive Plan. The “Comp Plan” is a planning guide that the City primarily uses to provide a consistent set of goals and policies that guide decisions regarding land use. The Comp Plan update process will be very public, and the City and its selected consultant will plan to do a lot of outreach and we will plan to solicit a lot of input.

Before we get to that step, the City will need to receive proposals and select our desired consultant. To do this, we are planning to establish a Proposal Review Committee that will meet a few times to grade, interview, and select the consultant.

We are proposing a committee consisting of:

2-City Council members: Don Edblom (liason to the Planning Commission) and Dr. Meister or John DeCramer (liasons to the EDA)

1-Planning Commission member: Amanda Schroeder

1-EDA Board member: Dan Herrmann

2-City Staff (likely Ilya Gutman and Lauren Deutz)

1-Chamber member

Proposals are due by Wednesday, February 3, 2021. Staff would expect that the Proposal Review Committee would meet a few times in February and early March to rate proposals and select a number of consultants to interview. Following the interview and final grading, the committee would select their preferred consultant for recommendation to the City Council.

No fiscal impact at this time. Cost estimate for our Comprehensive Plan update was presented as \$50,000-\$60,000 at the November 24, 2020 Council meeting. Current belief is that the update may cost \$60,000-\$80,000, depending on level of consultant involvement in the public participation portion of the plan

Motion made by Councilmember Schafer, Seconded by Councilmember Lozinski that the Council authorize the establishment of the Comprehensive Plan Proposal Review Committee for the purpose of completing a thorough review of Comprehensive Plan RFP’s and seeking consensus on the preferred consultant to be recommended to the City Council. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember Edblom, Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski. The motion **Carried. 7-0**

### **Project Z83: James Avenue/Camden Drive Reconstruction Project - Consider Resolution Approving Plans and Specifications and Ordering Advertisement for Bids.**

This project consists of the following: reconstruction and utility replacement on James Avenue between Camden Drive and South 4th Street and Camden Drive between James Avenue and South 4th Street. All utilities will be replaced, including watermain, sanitary sewer, and storm sewer on James Avenue and Camden Drive. Other items of work included in this project are pavement removal, aggregate base, bituminous surfacing, sidewalks, curb and gutter and other minor work.

The plans and specifications have been prepared by City staff for the above-referenced project. If the City Council decides to proceed with this project, a resolution has been prepared approving the plans and specifications and ordering advertisement for bids.

The engineer's estimate for the construction portion of the project is \$952,200. The total estimated project cost, including 10% allowance for contingencies and 16% for engineering and administrative costs is \$1,214,700. All improvements will be assessed according to the current Special Assessment Policy, including but not limited to participation from Marshall Municipal Utilities, Wastewater Department, Surface Water Management Utility Fund and Ad Valorem. Final approval of the project must include determination of funding sources.

Motion made by Councilmember DeCramer, Seconded by Councilmember Lozinski that the Council adopt Resolution Number 21-010 the "Resolution Approving Plans and Specifications and Ordering Advertisement for Bids" for Project Z83: James Avenue/Camden Drive Reconstruction Project. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember Edblom, Councilmember DeCramer, Councilmember Lozinski. Voting Nay: Councilmember Labat. The motion **Passed. 6-1**

### **Lyon Street Lane Reconfiguration (TH 23 to Adobe Road).**

In 2022, the City will be completing an enhanced pedestrian crossing on Lyon Street adjacent to Adobe Road to provide a safer pedestrian crossing between Independence Park and Parkside Elementary School. The project will incorporate the use of new school zone signed, radar speed zone signage, a rectangular rapid flashing beacon (RRFB), and a pedestrian refuge island. See attached drawings.

To accommodate the pedestrian refuge island and better accommodate area travel patterns, City engineering staff would like to propose a Two Way Left Turn Lane (TWLTL) striping configuration on Lyon Street from Adobe Road to TH 23. The TWLTL fits well in this area and the existing road width can accommodate this striping pattern and the on-street bike lanes if parking is removed from both sides of Lyon Street through this area. Most land uses adjacent to Lyon Street through this area do not currently utilize on-street parking. There are two residential homes west of Adobe Road that would lose parking directly in front of their homes as a result of the restriping.

City staff would propose to complete this restriping in 2021.

At the Public Improvement/Transportation Committee meeting on January 8, 2021, LABAT MADE A MOTION to recommend approval to the City Council of the Lyon Street Lane Reconfiguration (TH 23 to Adobe Road) as presented, SECONDED BY LOZINSKI. ALL VOTED IN FAVOR. MOTION PASSED 3:0.

Motion made by Councilmember Meister, Seconded by Councilmember Lozinski to table the agenda item until the February 9 council meeting. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember Edblom, Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski. The motion **Carried. 7-0**

### **US Army Corps of Engineers Betterments Project Update.**

In spring-summer 2019, City staff brought forward six different locations where some level of slope failure was occurring along our US Army Corps of Engineers (USACE) flood control project. High water events in summer 2018 and spring 2019 resulted in some areas of significant damage to our flood control project. After reviewing the locations with USACE St.

Paul District staff, it was determined that four of the six locations may be eligible for federal assistance in rehabilitation under Public Law 84-99 (PL 84-99).

At the September 24, 2019 meeting, the City Council entered into an agreement with the USACE for city participation in “betterments” associated with the flood control project repairs. At the time, city staff was informed that the federal government would pay for costs associated with repairing the flood control project to its pre-existing/pre-flood damage condition, and the city would be responsible for all costs associated with improving the project to make the system more resistant to similar damage in the future. In the agreement, the City’s estimated cost participation for these “betterments” is \$148,311.

Recently, USACE staff completed project plans and are nearly ready to prepare the project for bid with a 2021 construction schedule. Along with completed plans, the USACE sent over an updated cost proposal. The updated cost proposal reflected a city cost participation of \$440,919, which was significantly greater than the \$148,311 cost participation that the City Council had previously agreed to. City staff initiated conversation with USACE staff and held multiple meetings to discuss the discrepancy and the lack of communication to get to this point.

In reviewing the cost estimate city staff learned that the USACE was proposing to cover the costs of site #2 in its entirety, with the city covering the costs of all other project sites (Sites #1, #3, and #6) in their entirety. The thought process from the USACE was that the failure at site #2 was directly compromising the flood protection project and the other three sites were not immediately hazardous to the integrity of the flood control project. City staff disagreed with this proposal and presented our argument to the USACE staff. City staff shared some historical aerial imagery as well as some local river and project knowledge and following further discussion, USACE staff have now proposed to cover all project costs for Sites #1 and #2, with the city being entirely responsible for Sites #3 and #6.

The cost estimates for Sites #3 and #6 are \$82,342.63 and \$128,323.55, respectively. Staff is proposing to the USACE to seek bids with Sites #1 and #2 as the base bid, and Sites #3 and #6 being listed as add-alternates. This will allow the City the flexibility to determine if we’d like to participate in the project by completing the work at Sites #3 and #6 after we review the costs from the low bidder.

If the City does not view the costs as favorable, we may choose to not cost participate and not complete work at Sites #3 and #6. By choosing this route, the City will very likely need to expend funds at these two locations in the future to protect and manage the flood control project. These locations will very likely be continually flagged on our inspection reports which will require the City to utilize our funds to maintain the project. The benefit of waiting is that there may be another high-water event that clearly causes significant damage to the project and these sites may be eligible for federal cost participation at that time.

If the costs for completing the work at Sites #3 and #6 are favorable, the City may choose to have these alternate sites awarded and included with the project. By doing so, the City will be required to pay for all costs associated with the “betterments” at these two locations. The improvements will become part of the flood control project, and future damage repairs may be eligible for federal cost participation.

The City has already prepaid \$148,311 from the Surface Water Management Utility to cover our original estimated portion of project costs. No further payment is required at this time. If the City elects to complete work at Sites #3 and #6 and costs are greater than \$148,311, the City will be expected to contribute more funds. If the City elects to not participate in a project at Sites #3 and #6, the City will be reimbursed our \$148,311. The City is only required to pay for actual costs associated with Sites #3 and #6 if we elect to complete work at these locations.

Motion made by Councilmember DeCramer, Seconded by Councilmember Lozinski that the Council authorize City staff to advise USACE officials to bid Sites #3 and #6 as alternates for City consideration upon receipt and tabulation of bids. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember Edblom, Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski. The motion **Carried. 7-0**

## **Consider Approval to Request Proposals for Marshall Aquatic Center Design, Architecture, Engineering Services.**

The Marshall Aquatic Center has served the residents of Marshall and surrounding communities for more than 50 years—a long time for a community recreation facility. The current facility is showing its age and has numerous deficiencies in code compliance, operations, customer experience and maintenance costs.

The existing Marshall Aquatic Center includes three (3) vessels: a diving pool with 1-meter and 3-meter diving boards, a lap/ general use pool with a waterslide, and a wading pool. It also includes a bathhouse and concessions building. The original facility was constructed in 1960's.

For many years, the City has been studying and reviewing next steps with the 50-year old Aquatics Center. A study was completed in 2019 that provided recommendations on next steps (see attached Study).

In order to move the project to a decision stage staff is recommending we hire a firm to bring us from the conceptual stage to bidding documents in order to bring to the public for their consent.

Motion made by Councilmember Meister, Seconded by Councilmember Lozinski to approve Request for Proposal Process. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember Edblom, Councilmember DeCramer, Councilmember Lozinski. Voting Nay: Councilmember Labat. The motion **Passed**.

**6-1**

### **Commission/Board Liaison Reports**

Byrnes            No Report

Schafer         No Report

Meister         No Report

Edblom         No Report

DeCramer

Labat

Lozinski

### **Councilmember Individual Items**

#### **City Administrator**

#### **Director of Public Works**

#### **City Attorney**

#### **Information Only**

There were no questions on the information items.

#### **Upcoming Meetings**

There were no questions on the upcoming meetings.

**Adjourn**

At 7:15 P.M., Motion made by Councilmember DeCramer, Seconded by Councilmember Schafer to adjourn.  
Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember Edblom,  
Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski. The motion **Carried. 7-0**

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Mayor

Attest:

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City Clerk