

**CITY OF MARSHALL  
CITY COUNCIL MEETING  
M I N U T E S  
Tuesday, March 14, 2023**

The regular meeting of the Common Council of the City of Marshall was held March 14, 2023, at City Hall, 344 West Main Street. 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: Amanda Schroeder, Craig Schafer, Steve Meister, John Alcorn, See Moua-Leske and James Lozinski. Absent: None. Staff present included: Sharon Hanson, City Administrator; Pamela Whitmore, City Attorney; Jason Anderson, Director of Public Works/City Engineer; E.J. Moberg, Director of Administrative Services; Jim Marshall, Director of Public Safety; Ryan Hoffman, Police Captain; Quentin Brunsvold, Fire Chief; Preston Stensrud, Park & Rec Superintendent; Ilya Gutman, Plans Examiner, and Steven Anderson, City Clerk.

The Pledge of Allegiance was recited at this time.

**Consider Approval of the Minutes from the Regular and Special Meeting Held on February 28, 2023**

No changes were requested.

Motion made by Councilmember Lozinski, Seconded by Councilmember Alcorn to approve the regular and special meeting minutes from February 28, 2023. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember Schroeder, Councilmember Alcorn, Councilmember Moua-Leske, Councilmember Lozinski. The motion **Carried. 7-0.**

**Project ST-002-2023: Bituminous Overlay on Various City Streets – Consider Resolution Accepting Bid (Awarding Contract)**

Jason Anderson stated this project is an annual street mill and overlay project that also includes ADA improvements at sidewalk ramp crossings. The two bid amounts: Duinick, Inc. \$887,990.20 and Central Specialties, Inc. \$912,720.98 came in over the engineer's estimate of \$859,247.00. To remain under budget Floyd Wild Dr. and Canoga Park Dr. were removed from the proposed street list. With the removal of the two streets the project is estimated to be \$793,285.10 and staff recommended that Duinick, Inc. be awarded the bid in the amount of \$793,285.10.

Motion made by Councilmember Schafer, Seconded by Councilmember Lozinski to approve Resolution 23-016 awarding Project ST-002-2023 to Duinick, Inc. of Prinsburg, MN in the amount of \$793,285.10. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Schroeder, Councilmember Alcorn, Councilmember Moua-Leske, Councilmember Lozinski. Voting Nay: Councilmember Meister. The motion **Carried. 6-1.**

**Project ST-008 / SAP No. 139-121-004: Channel Parkway Pavement Replacement Project - 1) Consider Resolution Accepting Bid (Awarding Contract); 2) Consider Resolution Authorizing Execution of MnDOT Grant Agreement No. 1051694**

The project consists of 3" mill of existing bituminous pavement and replacement with 3" new bituminous pavement, spot replacement of curb and gutter, and ADA pedestrian ramps along Channel Parkway in Marshall, MN. Previously on 02/23/2021, the City Council adopted a "Resolution of Support for Channel Parkway LRIP Application, authorizing City staff to submit an LRIP grant application for the concrete resurfacing of Channel Parkway." On 09/07/2022, the city received authorization from MnDOT to advance the status of this project, with the project LRIP funding capped at \$1,250,000. The LRIP project funding requires the execution of a MnDOT grant agreement before the LRIP funds can be authorized.

On October 20, 2022, bids were received for replacement of the existing bituminous pavement with concrete pavement. Four bids were received with the apparent low bid in the amount of \$3,790,693.55. The engineer's estimate was approximately \$3,123,900. At the November 7, 2022, meeting, the City Council rejected all bids received and authorized City staff to proceed with redesigning the project to a bituminous mill and overlay project to be bid in 2023.

At the January 24, 2023, meeting, the City Council authorized advertisement for bids for the bituminous mill and overlay project. Two bids were received on March 7, 2023. One from Duininck, Inc. for \$1,374,151.96 and one from Central Specialties, Inc. for \$1,722,527.94. The engineer's estimate for the project was \$1,554,082.90.

Motion made by Councilmember Schafer, Seconded by Councilmember Meister to approve Resolution 23-017 awarding Project ST-008 to Duininck, Inc. of Prinsburg, MN in the amount of \$1,374,151.96. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember Schroeder, Councilmember Alcorn, Councilmember Moua-Leske, Councilmember Lozinski. The motion **Carried. 7-0.**

Motion made by Councilmember Lozinski, Seconded by Councilmember Schafer to approve Resolution 23-018 authorizing execution of Local Road Improvement Program grant agreement 1051694. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember Schroeder, Councilmember Alcorn, Councilmember Moua-Leske, Councilmember Lozinski. The motion **Carried. 7-0.**

**Project ST-009: W Lyon St. / N 3rd St. Reconstruction Project – 1) Consider Resolution Declaring the Official Intent of the City of Marshall, Minnesota to Reimburse Certain Expenditures from the Proceeds of Tax-Exempt Bonds or Other Obligations to be Issued by the City; 2) Consider Resolution Accepting Bid (Award Contract)**

The project consists of reconstruction and utility replacement on West Lyon Street from East College Drive to North 5th Street and North 3rd Street from West Main Street to West Redwood Street. All utilities will be replaced, including watermain, sanitary sewer, and storm sewer on West Lyon and North 3rd Streets. Other items of work included in this project are pavement removal, aggregate base, concrete surfacing, sidewalks, curb, gutter, streetscaping, and other minor work. Also included with this project will include reconstruction of the Addison Parking Lot adjacent to West Lyon Street and East College Drive. Reconstruction of the parking lot will include pavement removal, grading, aggregate base, and concrete surfacing.

Three bids were received on March 9, 2023. The apparent low bid was received from R&G Construction Co. of Marshall, Minnesota, in the amount of \$3,845,497.31. The engineer's estimate for this project was \$3,598,863.46. Council discussed removing portions of the project such as landscaping to lower the cost of the project. Discussion then moved to assessments and that removing elements and adding back later would not qualify for assessment to the property owners. The city would be splitting the assessment 80% paid by the city and 20% paid by the property owner. Attorney Whitmore cautioned council that changing the specifications of this project could open the city to be challenged for violating competitive bid rules. This project differs from street projects as street projects are bidding on a per unit quantity and statute allows some adjustments based on unit price. Questions arose regarding change orders, and it was clarified that change orders are allowable but not significant changes to the project. Councilmembers exchanged dialog about possibly cutting future projects or reductions in other areas.

Motion made by Councilmember Schafer, Seconded by Councilmember Schroeder to approve Resolution 23-019 declaring intent of the city to reimburse certain expenditures. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember Schroeder, Councilmember Alcorn, Councilmember Moua-Leske. Voting Nay: Councilmember Lozinski. The motion **Carried. 6-1.**

Motion made by Councilmember Schafer, Seconded by Councilmember Alcorn to approve Resolution 23-020 awarding Project ST-009 to R&G Construction of Marshall, MN in the amount of \$3,845,497.31. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember Schroeder, Councilmember Alcorn, Councilmember Moua-Leske. Voting Nay: Councilmember Lozinski. The motion **Carried. 6-1.**

**Project SWM-002: Legion Field Stormwater Improvements Project-Phase II – 1) Consider Resolution Declaring the Official Intent of the City of Marshall, Minnesota to Reimburse Certain Expenditures from the Proceeds of TaxExempt Bonds or Other Obligations to be Issued by the City; 2) Consider Resolution Accepting Bid (Award Contract)**

The proposed Phase II improvements include a new pipe crossing of the railroad tracks and a ponding improvement north of the tracks and south of the Parkway Addition to manage the stormwater runoff from the developed land south of the BNSF railroad tracks. The developed industrial area south of the railroad tracks has been nearly completely covered by impervious surfacing for many years, and the development pre-dated current requirements for on-site stormwater management. This resulted in development that sheds stormwater quickly without managing the volume of stormwater runoff that is generated.

Five bids were received on March 8, 2023. The apparent low bid was received from Towne & Country Excavating LLC of Garvin, Minnesota in the amount of \$703,749.60. The engineer's estimate for this project was \$861,419.50.

Motion made by Councilmember Moua-Leske, Seconded by Councilmember Schroeder to approve Resolution 23-021 declaring intent of the city to reimburse certain expenditures. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember Schroeder, Councilmember Alcorn, Councilmember Moua-Leske, Councilmember Lozinski. The motion **Carried. 7-0.**

Motion made by Councilmember Schafer, Seconded by Councilmember Schroeder to approve Resolution 23-022 to award Project SWM-002 to Towne & Country Excavating LLC of Garvin, MN in the amount of \$703,749.60. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember Schroeder, Councilmember Alcorn, Councilmember Moua-Leske, Councilmember Lozinski. The motion **Carried. 7-0.**

**Approval of the Consent Agenda**

No items were requested to be removed for further discussion.

Motion made by Councilmember Meister, Seconded by Councilmember Schafer to approve the consent agenda as presented. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember Schroeder, Councilmember Alcorn, Councilmember Moua-Leske, Councilmember Lozinski. The motion **Carried. 7-0.**

- Consider Approval to Allow Alcoholic Beverages at City-Owned Facilities and Parks
- Consider Approval for a Temporary On-Sale Liquor License for the Lyon County Ag-Society
- Consider Approval for a New Tobacco License for DG Retail, LLC
- Frontline Warning Systems (Outdoor Warning Sirens) Contract with the City of Marshall
- Consider Approval of Amendments to the Personnel Policies
- Consider Resolution and Authorization for Submission of MN/DNR Outdoor Recreation Grant
- Consider Approval for Out of State Travel Request
- Consider Approval of the Bills/Project Payments

**Request for Conditional Use Permit at 522 Jaguar Court**

Attorney Whitmore informed council of the legal basis of a conditional use permit (CUP). A CUP is related to land use and thus is subject to the 60 day rule. January 29<sup>th</sup> was the original submission date so a decision would need to be made before the end of March or an extension of an additional 60 days must be granted. For a CUP the granting must be done on a reasonable basis/finding and cannot be denied because of arbitrary or capricious reasons. Courts have given parameters to base permission and denial such as what the comprehensive plan of the city states and ordinance restrictions (Ord. 86-II-2 sec. 49). The Supreme Court has stated that neighborhood input and opposition can be taken into consideration but that neighborhood input cannot be the only factor for denial.

Ilya Gutman presented the CUP for a single ownership duplex in a R-1 One Family Residence District. Ordinance 86-49 outlines the standards that must be looked at when approving a CUP.

- Whether the proposed use is compatible with the existing neighborhood environment and use.
- The adequacy of the access to roads and rights-of-way.
- The additional traffic generated by facility.
- The landscaping, fencing and/or screening provisions.
- The outside storage provisions.
- The accessory buildings provisions.
- The facility size.
- The area of site.
- The off-street parking facilities.
- The density of the population and structures.
- The duration of proposed interim use.
- The natural features of the area.
- The availability of existing utility and public service facility.
- The future maintenance provisions.
- Whether the proposed use will be injurious to the property or improvements in the area adjacent to such proposed use and the community as a whole, including planned development.

Based on the criteria of the ordinance staff recommended to the Planning Commission that the CUP be approved. The Planning Commission based on the public hearing that was conducted recommended to deny the CUP due to the proposed structure not being compatible with the existing neighborhood environment and use. At the public hearing the plans and building information were not yet available. The site plan that was included in the council packet does not meet ordinance requirements for rear yard numbers because of placement. The placement location can be adjusted to meet ordinance requirements. Councilmember Lozinski brought up the option of splitting the lot and creating twin homes to meet requirements. Gutman clarified that twin homes would not meet the side yard requirements and would need a variance permit. Councilmember Schroeder talked about the public hearing and that a majority of the concerns were from neighbors that built their homes with the intent the area would remain single-family homes. Schroeder mentioned that the plans were not available and no one knew what the building would look like. The Planning Commission without the right information available didn't know if the building was suitable for the area and thus recommended rejecting the CUP based on compatibility.

Councilmember Meister asked for clarification from Attorney Whitmore that based on the information presented as long as there was a modification to the site plan all of the criteria would be met and the only reason for denial is neighborhood disagreement. Whitmore confirmed that the sole reason for denial cannot be neighborhood opposition. Meister brought up the possibility to bring the CUP back to the Planning Commission now that all information is available and have Attorney Whitmore attend for questions/clarifications. Council discussed this site being R-1 in the compressive plan and neighborhood opposition as two reasons for possible denial. Whitmore pointed out that under Ordinance 86-97 for a R-1 district this type of structure was authorized as a permitted use under a CUP. Courts have found that if it is allowable in ordinance the district type isn't a factor and will instead look at other factors such as setbacks or traffic issues.

Motion made by Councilmember Lozinski, Seconded by Councilmember Schafer to approve the CUP based on the following: standards set forth under Ordinance 86-49; that the outside appearance is uniform and masks evidence of two dwellings in the building by having units face different streets; having a two-car garage for each unit; having finishes compatible to single-family houses in the neighborhood; and that a new site plan be submitted and followed that conforms with city ordinance . Voting Yea: Councilmember Schafer, Councilmember Meister, Councilmember Moua-Leske, Councilmember Lozinski. Voting Nay: Mayor Byrnes, Councilmember Schroeder, Councilmember Alcorn. The motion **Carried. 4-3.**

### **Body Worn Camera & Squad Car Cameras**

In October of 2019, the City of Marshall implemented the Body-Worn Camera Program for the Marshall Police Department. Many aspects of a BWC program were discussed at that time which included the costs involved, software, data storage costs, release of data and future expenses. The recommendation at that time was to proceed with the proposal from the Watchguard company to supply all the required equipment.

In October of 2022, the Motorola Company informed Marshall PD they had purchased the Watchguard Company and would be transitioning all current Watchguard users into Motorola equipment or their leasing program. Marshall PD was informed that current warranty work for our Watchguard cameras would be honored but that our cameras would be discontinued, and service would not be provided for equipment outside of warranty coverage. Nearly all our current equipment will be off warranty by the summer of 2023.

Police department staff began exploring options and seeking proposals from Motorola and the other leading body camera company AXON. Several meeting with the Lyon County Sheriff's Office (Watchguard customer) and County IT staff occurred to see what would serve our current and future needs. County IT staff believe that the transition to a cloud-based system is the desired way to store and share data. AXON and Motorola submitted proposals that would replace all our current body cameras (22) and squad car cameras (8). The Equipment Review Committee reviewed the submitted proposals and voted to move forward with the proposal from AXON. AXON's proposal was the lowest proposal, and it meets the needs of the Marshall Police Department. AXON is currently estimated to have 70% of the body camera market for police departments in the United States. In 2022, the State of Minnesota entered into an agreement with AXON to provide camera equipment for all state law enforcement agencies.

Councilmember Schafer confirmed that the Equipment Review Committee voted in favor of AXON and bringing the proposal to city council. Schafer also mentioned his son who is serving in a police department in Texas their PD is going through a similar situation with Motorola and is opting to go with AXON for their new cameras.

Motion made by Councilmember Lozinski, Seconded by Councilmember Schafer to approve the proposal submitted by AXON to purchase body-worn and squad car camera equipment with cloud-based storage. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember Schroeder, Councilmember Alcorn, Councilmember Moua-Leske, Councilmember Lozinski. The motion **Carried. 7-0.**

### **Consider Appointments to Various Boards, Commission, Bureaus, and Authorities**

Mayor Byrnes recommended to appoint the following:

Bryce Gorder to the Convention & Visitors Bureau with a term expiring 12/31/25.

Andrew Kindschi to the Police Advisory Board with a term expiring 5/31/26.

Tanisha Juarez to the Public Housing Commission with a term expiring 5/31/26.

Motion made by Councilmember Schroeder, Seconded by Councilmember Meister to appoint and affirm the recommendations to various boards, commissions, bureaus and authorities. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember Schroeder, Councilmember Alcorn, Councilmember Moua-Leske. Voting Abstaining: Councilmember Lozinski. The motion **Carried. 6-0-1.**

**Commission/Board Liaison Reports**

Brynes	No report.
Schafer	<u>Airport Commission</u> : Will be meeting on March 16.
Meister	<u>EDA</u> : Will be meeting March 15.
Schroeder	<u>Planning Commission</u> : Mostly talked about the CUP that was just discussed. <u>Public Housing</u> : Improvements to Parkview such as replacing sliding doors and a housing assessment was conducted by HUD with a couple items that were found to be deficient and will be corrected.
Alcorn	No report.
Moua-Leske	<u>Diversity, Equity, and Inclusion Commission</u> : Reviewed and discussed World Café results and have formed a subcommittee to figure out a way to best distribute the information. <u>Library Board</u> : Talked about the outreach program and strategic plan. <u>Convention &amp; Visitors Bureau</u> : Met in The Upper Room and got to see the new venue.
Lozinski	No report.

**Councilmember Individual Items**

Councilmember Schafer wanted to remind citizens to clear out around fire hydrants and to clear intakes if you know where they are located.

Councilmember Meister urged citizens to continue to keep sidewalks clear, it's been a tough winter.

Councilmember Moua-Leske had a concern brought forward about the possible noise from the aquatic center project violating the cities noise ordinance.

Mayor Brynes brought up a proposal to form a Rental Code Ordinance Committee to gather input from renters and landowners. Two council members, advocates from United Community Action and SMSU, Fire Chief, Director of Public Safety, a city building official and city attorney would be members of the committee.

**City Administrator**

Related to the rental ordinance the city attorney is looking at an alternative enforcement policy rather than using the court system. The library director will be coming back with new numbers in the near future to possibly fund the daycare program. The mayor and administrator testified at the Senate Tax Committee as part of the process to get the aquatic center project moving. Stockwell Engineers are gearing up to move into next phases for the aquatic center and gather additional public input.

**Director of Public Works/City Engineer**

Make sure sump pumps are discharging outside of the home. A permit is required to discharge inside during the winter months. The Wastewater plant is continuing to get chloride numbers down and will be campaigning to encourage residents to use the rebate program.

**City Attorney**

A draft base ordinance has already been created for the rental code committee and rental ordinances are very common in the state.

**Administrative Brief**

There were no questions on the Administrative Brief.

**Information Only**

There were no questions on the Information Only items.

**Upcoming Meetings**

There were no questions on the Upcoming Meetings.

**Adjournment**

At 6: 38 PM Motion made by Councilmember Schafer, Seconded by Councilmember Meister to adjourn the meeting.  
Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember Schroeder,  
Councilmember Alcorn, Councilmember Moua-Leske, Councilmember Lozinski. The motion **Carried. 7-0.**

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Mayor

Attest:

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City Clerk