

**CITY OF MARSHALL
CITY COUNCIL MEETING
M I N U T E S
Tuesday, July 23, 2019**

The regular meeting of the Common Council of the City of Marshall was held July 23, 2019 in the Professional Development Room at the Marshall Middle School, 401 South Saratoga 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: Craig Schafer, Steven Meister, Glenn Bayerkohler, John DeCramer, Russ Labat and James Lozinski. Absent: None. Staff present included: Sharon Hanson, City Administrator; Dennis Simpson, City Attorney; Glenn Olson, Director of Public Works/ City Engineer; Annette Storm, Director of Administrative Services; Dave Parsons City Assessor and Kyle Box, City Clerk.

The Pledge of Allegiance was recited at this time.

With the consensus of the Council, Mayor Byrnes asked for agenda item, Acceptance of donation from CarterStrong Foundation and naming of basketball court at Independence Park to be moved ahead of agenda item, Presentation of Marshall Aquatic Center Study from 292 Design Group.

Consider approval of the minutes of the work session and regular meeting held on July 9, 2019.

Motion made by Councilmember Schafer, Seconded by Councilmember Lozinski that the minutes of the work session and regular meeting held on July 9, 2019 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 Bayerkohler, Councilmember Decramer, Councilmember Labat, Councilmember Lozinski. The motion **Carried. 7-0**

Vacation of Utility Easement in Westwood Acres Plat 1 – 1) Public Hearing on Resolution Granting Petition to Vacate Utility Easement, 2) Consider Resolution Granting Petition to Vacate Utility Easement.

A signed petition for vacation of a utility easement has been received from the owners of all the real property that includes the proposed area for utility easement. The purpose of the vacation is to construct a detached garage on the property, including a portion of the area to be vacated.

Prior to the public hearing and adoption of the resolution granting a petition for vacation, all utility companies were contacted for notification of the vacation and receipt of requirements they may have. Comments were received from multiple utilities. Marshall Municipal Utilities has procured a new easement on the property to accommodate all existing utilities.

Motion made by Councilmember Schafer, Seconded by Councilmember Decramer to close the public hearing. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember Bayerkohler, Councilmember Decramer, Councilmember Labat, Councilmember Lozinski. The motion **Carried. 7-0**

Motion made by Councilmember Labat, Seconded by Councilmember Lozinski that the Council adopt RESOLUTION NUMBER 4631, Second Series which is the Resolution Granting Petition to Vacate Utility Easement. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember Bayerkohler, Councilmember Decramer, Councilmember Labat, Councilmember Lozinski. The motion **Carried. 7-0**

Project Z70: South High Street/South Whitney Street (100 & 200 Block) Alley Improvement Project – 1)
Public Hearing on Improvement and Consider Resolution Ordering Improvement and Preparations of Plans.

Property owners affected by the above-referenced project have been notified, according to law, that a hearing would be held on July 23, 2019. A public presentation will be made followed by any discussion. The project consists of the reconstruction of the alley lying between the west side of South Whitney Street and the east side of South High Street, between the north line of East Marshall Street and the south line of East College Drive and installing storm sewer and/or concrete surfacing of the alley.

The engineer's estimate for the construction portion of the project is \$83,850. The total estimated project cost, including 10% allowance for contingencies and 16% for engineering and administrative costs is \$106,993. All improvements will be assessed according to the current Special Assessment Policy.

Costs for the alley improvements and storm sewer drainage improvements will be mostly by special assessments in the amount of \$75,065 with City participation in the alley grading and shaping in the amount of \$31,928.

Director of Public Works/ City Engineer Glenn Olson introduced the item and provided the background information on the project. Director Olson also discussed the current special assessment policy.

Kevin Veldhuisen, 103 High St. South asked about the project process and commented that access to the alley is limited to only a few property owners in the project area. Mr. Veldhuisen also commented that he was against the project containing concrete.

Councilmember Bayerkohler discussed the Council and Committee's discussion on special assessments.

Dan Ritter, 109 High St. S., commented in favor of the project and asked if the storm sewer would be paid out of the wastewater management fund

Director Olson discussed that the initial cost of the project would be assessed to the homeowners within in the project area but 100% of the maintenance and repair would come out of that fund.

Adam Rigge, 101 High St. S., discussed the drainage issues in the neighborhood and the current special assessment policy. Mr. Rigge was concerned with being assessed at a higher rate based on frontage and receiving the least amount of benefit.

Andy Dallmann, 200 Whitney St. S., commented in favor of the project. Mr. Dallmann discussed the main reason for asking for concrete of the petition is for water control in the alley.

Lee Ann Buysse, 202 Whitney St. S., commented in favor of the project. Mr. Buysse mentioned that her property is the lowest point in the project area.

Rich Dorman, 204 Whitney St. S., Mr. Dorman commented on the history of the drainage and alley condition issues in the neighborhood. Mr. Dorman commented in favor of the project.

Jim Smalley, 113 High St. S., commented in favor of the project and mentioned the condition of the alley. Mr. Smalley also asked for the council to review potential changes to the assessment policy.

Councilmember Jim Lozinski provided commented from a resident within the project area. Kristin Malin, 107 High St. S., emailed Councilmember Lozinski opposing the project because of the concrete.

Councilmember Lozinski discussed potential benefit for all property owners within the project area.

Councilmember DeCramer commented that the petition asked for concrete.

Motion made by Councilmember Meister, Seconded by Councilmember Schafer that the Council close the public hearing on improvement for Project Z70: South High Street/South Whitney Street (100 & 200 Block) Alley Improvement Project. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember Bayerkohler, Councilmember Decramer, Councilmember Labat, Councilmember Lozinski. The motion **Carried. 7-0**

Motion made by Councilmember Schafer, Seconded by Councilmember Labat that the Council adopt RESOLUTION NUMBER 4632, SECOND SERIES, which is the Resolution Ordering Improvement and Preparation of Plans" for Project Z70: South High Street/South Whitney Street (100 & 200 Block) Alley Improvement Project. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember Bayerkohler, Councilmember Decramer, Councilmember Labat, Councilmember Lozinski. The motion **Carried. 7-0**

Red Baron Arena & Expo Parking Lot Project - Consider Resolution Awarding Contract.

Bids were received on July 17, 2019 for the above-referenced project. Two bids were received. D & G Excavating, Inc., Marshall, Minnesota, was the lowest responsible bidder. The contract includes construction of curb and gutter, aggregate base, bituminous pavement surfacing, storm sewer and miscellaneous work to construct a parking lot on the south side of the Red Baron Arena & Expo. The "Resolution Accepting Bid" awarding the contract to D & G Excavating, Inc., Marshall, Minnesota, in the amount of \$423,380.30.

The estimated total project cost including 5% allowance for contingencies is \$444,549.32 funded from Account #456-70579-5530. The engineer's estimate for the construction portion of the project was approximately \$379,000.00.

Director of Public Works/ City Engineer Glenn Olson provided the background material on the agenda item.

Councilmember Labat stated that he is not opposed to the parking lot addition but opposed to the parking lot design and will be voting no.

There was further discussion by on the design of the parking lot.

Motion made by Councilmember Schafer, Seconded by Councilmember Lozinski that the Council adopt RESOLUTION NUMBER 4633, which is the "Resolution Accepting Bid (Award Contract)" for the Red Baron Arena & Expo Parking Lot Project to D & G Excavating, Inc., Marshall, Minnesota, in the amount of \$423,380.30. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Decramer, Councilmember Lozinski. Voting Nay: Councilmember Meister, Councilmember Bayerkohler, Councilmember Labat. The motion **Passed. 4-3**

Approval of Consent Agenda

Motion made by Councilmember Decramer, Seconded by Councilmember Meister that the following consent agenda items be approved as presented. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember Bayerkohler, Councilmember Decramer, Councilmember Lozinski
Voting Nay: Councilmember Labat. The motion **Carried. 6-1.**

Approval of Amendments to the Fund Balance Policy.

Approval for a contract for National Night Out Event.

Approval of Resolution Number 4634, Second Series and Resolution Number 4635, Second Series, Calling Public Hearing on the Adoption of a Five-Year Capital Improvement Plan & Issuance of General Obligation Capital Bonds Thereunder.

Approval of an Off-Sale 3.2 Percent Malt Liquor and Tobacco Licenses for Ag Plus Cooperative, 401 Country Club Drive, Marshall, MN.

Approval of the bills/project payments.

Acceptance of donation from CarterStrong Foundation and naming of basketball court at Independence Park.

On May 31st Marshall was selected as one of four sites for the program by the Minnesota Timberwolves. Work has begun on the new court to be installed and unveiled to the public August 15th.

The family of Carter Boerboom would like to present the City of Marshall Parks Department with a donation from the CarterStrong Foundation in the amount of \$10,000.00 for improvements and amenities to be purchased and installed around the new court in memory of Carter.

Along with the donation, Carter's family would like to ask the City to consider naming the court "Carter's Court" to honor Carter's love for the game of basketball. A sign would be made and placed near the court as part of the donation to the project.

Wade Boerboom and Preston Stensrud will be in attendance to provide any additional info and answer any questions pertaining to the donation.

Motion made by Councilmember Meister, Seconded by Councilmember Schafer to approve Resolution Number 4636, Second Series, a resolution accepting a donation and naming the basketball court at Independence Park – "Carter's Court", Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember Bayerkohler, Councilmember Decramer, Councilmember Labat, Councilmember Lozinski. The motion **Carried. 7-0**

Presentation of Marshall Aquatic Center Study from 292 Design Group.

The City has requested professional assistance in evaluating the existing outdoor aquatic center and studying the possible replacement. On January 8, 2019, Council approved a Professional Services Proposal from 292 Design Group for Programming, Schematic Design and Project Budget Development for the Marshall Aquatic Center. 292 Design Group will present its findings to the Council via PowerPoint.

The City of Marshall and 292 Design Group agreed upon contract is for \$21,300.00 Expenditures will be reflective in the 2019 budget out of 101-70176-3311.

Presentation of the Marshall-Lyon County Library Annual Report

Michele Leininger, Marshall Lyon County Library Director will be present to review the annual report with the Council. This is an informational presentation via PowerPoint.

Request for Variance Adjustment Permit for Brian and Kim Swalboski at 702 East Southview Drive

This is a request by Brian and Kim Swalboski of Marshall for a Variance Adjustment Permit to provide 11 parking spaces for the daycare facility in lieu of required 15 spaces.

The owners are building an addition to their existing daycare facility, which will require full compliance with parking regulations of the Zoning Ordinance since the addition is larger than 50% of the existing building. Parking requirements for daycare facilities are based on the number of employees and kids (1 per employee and 1 per 10 kids). Based on the numbers provided by the owner, 15 off street parking spaces are required. It appears that 11 parking spaces may be accommodated in front of the building with some minor adjustments (no parking may be located within 10 feet of the front property line). Even when the State requirements for outside playground area are taken into consideration, it seems that it would be possible to fit the remaining four spaces in the back yard, accessible from Southview Court.

The Zoning Ordinance, consistent with the State Statutes, states that a variance applicant "shall prove that the literal enforcement of the provisions of this chapter would cause practical difficulties because of circumstances unique to the individual property under consideration and the granting of the variances will be in keeping with the spirit and intent of this chapter." It explains that the "term "practical difficulties," as used in connection with the granting of 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 to the property not created by the landowner, and the variance, if granted, will not alter the essential character of the locality." It further clarifies that "Economic considerations alone shall not constitute practical difficulties if reasonable use for the property exists under the terms of this chapter." Considering that the site can accommodate all required parking spaces, staff concluded that there are no practical difficulties in this case.

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

At the Planning Commission meeting on July 10, 2019, a motion was made by Fox, second by Knieff to recommend approval to the City Council of the request by Brian and Kim Swalboski for reduction of the parking from required 15 spaces to 11 spaces. All voted in favor of the motion.

Motion made by Councilmember Schafer, Seconded by Councilmember Labat that the Council approve the request by Brian and Kim Swalboski for a Variance Adjustment Permit for reduction of the parking from required 15 spaces to 11 spaces. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember Decramer, Councilmember Labat. Voting Nay: Councilmember Bayerkohler. Voting Abstaining: Councilmember Lozinski. The motion **Passed. 5-1-1**

Introduction of Project and Project Management of MNDOT East College Drive Project

MN Department of Transportation (MNDOT) is planning a reconstruct of East College Drive in 2025 with some of the work possibly starting in 2024. MNDOT will conduct public meetings regarding the project in the future. MNDOT has contracted with the engineering firm SEH to conduct the engineering and scoping for the project. SEH representatives will be present at the meeting to present information on the project.

Resolution in Support of Chloride Reduction in Water Discharged to the Redwood River

The City of Marshall and Marshall Municipal Utilities have been working cooperatively in an attempt and effort to meet the National Pollutant Discharge Elimination System (NPDES) permit as issued by the Minnesota Pollution Control Agency (MPCA). The City's NPDES contains a chloride (salt) limitation which must be achieved by 2024. To achieve that limit, significant changes or upgrades need to be made to City of Marshall Wastewater Treatment Facility. Both MMU and City have retained competent consultants that have recommended and designed changes to the water utility system and to the Wastewater Treatment Facility.

The City has previously passed City Council resolution No. 4430 which supports the goals of Sodium Reduction as recommended by consultants.

MMU has applied for and has been successful in obtaining Minnesota Public Authority Point Source Implementation Grant (PSIG) in the amount of \$7M.

City Council and MMU will proportionately share all costs of the sodium reduction project in excess of the \$7M PSIG grant. City of Marshall will pay 55.74% of costs in excess of PSIG grant. MMU will pay 44.26% of the additional costs.

On April 9, 2019, City passed Resolution No. 4608 which committed the City to pay as its share of the estimated costs in an amount not to exceed \$2,211,000. Bids for the project were let on July 9, 2019 and two bids were received. The low responsible bid exceeded the engineer's cost estimate and it is now necessary to discuss additional finances as required from the City of Marshall as City costs will exceed the amount as authorized by Council Resolution No. 4608.

A resolution which would obligate the City to pay, as its share of costs for the project, the amount of \$2,555,953. The resolution does explain and sets forth costs for the City, for MMU, all in excess of the \$7M PSIG grant. Marshall Municipal Utilities Commission has accepted the bid and has authorized award of the contract, subject to the City Council approval of its share of costs in the amount of \$2,555.953.

Staff recommends approval of the resolution. MMU Water Superintendent Jeff Larson and MMU General Manager Brad Roos will be present at the July 23 Council meeting to discuss the project and it's financing.

Motion made by Councilmember Decramer, Seconded by Councilmember Labat to approve Resolution Number 4637, Second Series, in Support of Chloride Reduction in Water Discharged to the Redwood River Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember Bayerkohler, Councilmember Decramer, Councilmember Labat, Councilmember Lozinski. The motion **Carried. 7-0**

Project Z70: West Marshall Street/West Redwood Street Alley Improvement Project - Consider Resolution Declaring Adequacy of Petition and Ordering Preparation of Report.

Per Minn. Stat. 429.031, subd. 1(f), if the council chooses to proceed with an improvement based on a petition, said petition must have the signatures of the owners of at least 35 percent in frontage of the property bordering the proposed improvements.

City staff has determined that the signatures on the petition are of at least 35 percent of the property owners. The City Clerk has endorsed the petition indicating the petition has been examined, checked, and found the petition to be in proper form and signed by the owners of at least the required 35 percent of frontage.

All improvements will be assessed according to the current Special Assessment Policy, potentially including but not limited to Marshall Municipal Utilities, Wastewater Department, Surface Water Management Utility Fund and Ad Valorem participation. Final approval of these projects must include determination of funding sources.

Motion made by Councilmember Lozinski, Seconded by Councilmember Labat that the Council adopt RESOLUTION NUMBER 4638, SECOND SERIES, which is the "Resolution Declaring Adequacy of Petition and Ordering Preparation of Report" for Project Z70: West Marshall Street/West Redwood Street Alley Improvement Project. Voting Yea: Mayor Byrnes, Councilmember Meister, Councilmember Bayerkohler, Councilmember Decramer, Councilmember Labat, Councilmember Lozinski. Voting Abstaining: Councilmember Schafer. The motion **Passed. 6-0-1**

Approve Resolution No. 4639, Second Series regarding accepting low quotation and authorizing James Lozinski Construction Inc. to proceed with installation of steel to a roof located on a facility in Justice Park.

Parks Department has requested quotations for labor related to the installation of a steel roof on a facility in Justice Park. James Lozinski Construction Inc. submitted a labor quotation for said job in the amount of \$2,700. That quotation was the lowest solicited quotation.

Minnesota Statutes indicate that City officials cannot bid on City contracts, subject to various exceptions. Minnesota Statutes §471.88 subd. 5 indicates that City officials can provide quotes for City projects if formal bidding is not required. If City official submits the low quotation, the contract can be awarded to a City official upon filing of an affidavit from the City official acknowledging the conflict of interest with a statement indicating that the quoted bid is as low or lower than other quoted prices. In addition, City Council must then approve the quotation by unanimous vote approving the resolution.

The affidavit from Council Member James Lozinski acknowledging the conflict of interest. Additionally, a proposed resolution accepting the low quotation and authorizing that James Lozinski Construction Inc. to proceed with the installation of the project as quoted. Staff recommends approval of the resolution.

Motion made by Councilmember Decramer, Seconded by Councilmember Meister to approve Resolution Number 4639, Second Series regarding accepting low quotation and authorizing James Lozinski Construction Inc. to proceed with installation of steel to a roof located on a facility in Justice Park. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember Bayerkohler, Councilmember Decramer, Councilmember Labat. Voting Abstaining: Councilmember Lozinski. The motion **Passed. 6-0-1**

Commission/Board Liaison Reports

Byrnes No Report

Schafer No Report
Meister No Report
Bayerkohler No Report

DeCramer Economic Development Authority met and discussed the Strategic Plan and Budget as well as continued business incentives.

Marshall Municipal Utilities Commission met and discussed the Resolution in Support of Chloride Reduction in Water Discharged to the Redwood River, the installation of Verizon's 5G towers, and auto meter readings.

Labat No Report
Lozinski No Report

Councilmember Individual Items

City Administrator

City Administrator, Sharon Hanson discussed a school traffic study being conducted by the school district.

Director of Public Works

Director of Public Works/ City Engineer Glenn Olson discussed Frost Boils throughout the City.

City Attorney

No Report

Information Only

There were no questions on the information items.

Upcoming Meetings

There were no questions on the upcoming meetings

Adjourn Meeting

At 8:08 P.M., Motion made by Councilmember Schafer, Seconded by Councilmember Meister.

Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember Bayerkohler, Councilmember Decramer, Councilmember Labat, Councilmember Lozinski. The motion **Carried. 7-0**

Mayor

Attest:

City Clerk