

**CITY OF MARSHALL
CITY COUNCIL MEETING
M I N U T E S
Tuesday, August 24, 2021**

The regular meeting of the Common Council of the City of Marshall was held August 24, 2021, 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: Craig Schafer, Steve Meister, John DeCramer, Russ Labat and James Lozinski. Absent: Don Edblom. Staff present included: Sharon Hanson, City Administrator; Matt Gross, City Attorney; Jason Anderson, Director of Public Works/ City Engineer; Annette Storm, Director of Administrative Services; Jim Marshall; Director of Public Safety; Lauren Deutz, Economic Development Director; Preston Stensrud, Park Maintenance Superintendent; Jessie Dehn, Assistant City Engineer and Kyle Box, City Clerk.

The Pledge of Allegiance was recited at this time.

There was a general consensus to operate under the current agenda.

Consider approval of the minutes of two work sessions held on August 3, August 10 and the regular meeting held on August 10, 2021.

Motion made by Councilmember Lozinski, Seconded by Councilmember Labat That the minutes of the two work sessions held on August 3, August 10 and the regular meeting held on July 10, 2021, be approved as filed with each member and that the reading of the same be waived. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski. The motion **Carried. 6-0**

2025 MnDOT College Drive Improvement Project (SP 4204-40) – 1) Public Hearing; 2) Resolution for Municipal Consent and Layout Approval

MnDOT is proceeding with plans to complete State Project 4204-40, the reconstruction of MN 19/College Drive from South 4th Street to Bruce Street within our city limits. The project is a comprehensive reconstruction project that includes new pavement, sidewalk, and city utilities. Some notable changes include the addition of a roundabout, the removal of a traffic signal, the addition of RRFB pedestrian crossings, optimized road widths, access review, and strategically placed center medians. In accordance with State Statutes, MnDOT is required to receive the City's approval of the proposed layout by Resolution of the City Council.

MnDOT has made significant efforts to engage with the public, key stakeholders, and the City Council leading up to this request to help achieve project support and obtain "municipal consent". City Engineering staff has met numerous times with the MnDOT team to review and comment throughout the process.

Included with this memorandum is a "Municipal Consent Packet" as provided by Jesse Vlaminck, MnDOT Project Manager. The packet includes a memorandum, applicable State Statutes, project schedule, project cost estimate, and resolutions for the city to utilize for offering municipal consent. Also included with MnDOT's submittal is the final layout to be used for the project. The final layout provides the basis for the project as it highlights the general concept for the project by identifying all key features and access points for the highway.

State Statutes required the following:

- City to schedule a public hearing within 15 days of receiving the final layout (by 7/28/21) and the public hearing was scheduled at the 07/13/2021 City Council meeting to be held 08/24/2021
- Conduct a public hearing within 60 days of receiving the final layout (by 9/11/21) and the public hearing is being held at this 08/24/2021 City Council meeting State

Statutes will require the following:

- Approve or disapprove the layout by resolution within 90 days of the public hearing (by 12/10/21).

MnDOT Project Manager, Jesse Vlaminck is present at this meeting to help present this topic and answer City Council questions. Jesse will help explain the municipal consent process and guide Council expectations moving forward.

There is no fiscal impact at this time. A future estimated total city cost of \$3,895,661 at time of College Drive reconstruction project. All improvements may 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.

Leroy Affolter, 302 Jean Ave., commented on the Whitney and High St intersections and asked for no additional traffic being brought down those roads and safe intersections for pedestrians. Mr. Affolter asked how the snow would be removed from the pedestrian walkways located in the median safe zones. Mr. Affolter also commented on the increased speed at the corner between N. 3rd St. and Park Ave. Mr. Affolter commented that he wants common sense to rule throughout the project.

MnDOT Project Manager, Jesse Vlaminck addressed questions raised by Mr. Affolter and commented that any major changes made to the project will need to come back the Council and minor changes can likely be handled by MnDOT.

Motion made by Councilmember Lozinski, Seconded by Councilmember Labat to close the public hearing. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski. The motion **Carried. 6-0**

Motion made by Councilmember Schafer, Seconded by Councilmember Lozinski that the Council adopt RESOLUTION NUMBER 21-059, which provides for approval of the presented MnDOT layout. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski. The motion **Carried. 6-0**

308 Athens Ave.– 1) Public Hearing regarding a home property tax abatement request 2) Consideration of a resolution approving home property tax abatement.

On August 10, 2021, a public hearing was called for and to be held on August 24, 2021, regarding a home property tax abatement request. Per M.S 469.1813 sub 5 The governing body of the political subdivision may approve an abatement under sections 469.1812 to 469.1815 only after holding a public hearing on the abatement. The property is located at 308 Athens Ave. with an estimated market value of \$213,600.00 and with the difference of improvement being \$201,800.00.

Motion made by Councilmember Schafer, Seconded by Councilmember DeCramer to close the public hearing Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember DeCramer, Councilmember Labat. Voting Abstaining: Councilmember Lozinski. The motion **Passed. 5-0-1**

Motion made by Councilmember Labat, Seconded by Councilmember DeCramer to approve Resolution Number 21-061, a resolution approving home property tax abatement. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember DeCramer, Councilmember Labat. Voting Abstaining: Councilmember Lozinski. The motion **Passed. 5-0-1**

310 Athens Ave.– 1) Public Hearing regarding a home property tax abatement request 2) Consideration of a resolution approving home property tax abatement.

On August 10, 2021, a public hearing was called for and to be held on August 24, 2021, regarding a home property tax abatement request. Per M.S 469.1813 sub 5 The governing body of the political subdivision may approve an abatement under sections 469.1812 to 469.1815 only after holding a public hearing on the abatement. The property is located at 310 Athens Ave. with an estimated market value of \$212,100.00 and with the difference of improvement being \$199,100.00.

Motion made by Councilmember Meister, Seconded by Councilmember DeCramer to close the public hearing. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember DeCramer, Councilmember Labat. Voting Abstaining: Councilmember Lozinski. The motion **Passed. 5-0-1**

Motion made by Councilmember Schafer, Seconded by Councilmember Meister to approve Resolution Number 21-062, a resolution approving home property tax abatement. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember DeCramer, Councilmember Labat. Voting Abstaining: Councilmember Lozinski. The motion **Passed. 5-0-1**

505 Darlene Dr.– 1) Public Hearing regarding a home property tax abatement request 2) Consideration of a resolution approving home property tax abatement.

On August 10, 2021, a public hearing was called for and to be held on August 24, 2021, regarding a home property tax abatement request. Per M.S 469.1813 sub 5 The governing body of the political subdivision may approve an abatement under sections 469.1812 to 469.1815 only after holding a public hearing on the abatement. The property is located at 505 Darlene Dr. with an estimated market value of \$230,300.00 and with the difference of improvement being \$206,100.00.

Motion made by Councilmember Schafer, Seconded by Councilmember Labat to close the public hearing. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember DeCramer, Councilmember Labat. Voting Abstaining: Councilmember Lozinski. The motion **Passed. 5-0-1**

Motion made by Councilmember Schafer, Seconded by Councilmember DeCramer Meister to approve Resolution Number 21-063, a resolution approving home property tax abatement. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember DeCramer, Councilmember Labat Voting Abstaining: Councilmember Lozinski. The motion **Passed. 5-0-1**

Project PK-001: Independence Park Trail Replacement Project – Consider Award of Bids.

The multi-use trail within Independence Park is a bituminous-surfaced trail that is approximately 10-FT wide that travels throughout the entire park. The trail pavement is in poor condition and several areas do not meet ADA requirements. There are numerous locations where surface defects make the trail difficult to traverse, and numerous other locations where trail cross slopes are severe, resulting in hazardous conditions.

At the August 10, 2021, meeting, City Council authorized staff to advertise for bids. On August 24, 2021, bids were received for the above-referenced project. Five bids were received as shown on the attached resolution awarding contract.

The apparent low bidder is A&C Excavating, LLC of Marshall, MN with a total bid amount, including Alternates 1 & 2 of \$410,358.60. A&C Excavating, LLC is the low bidder for all award options that may be considered. Based on the advantageous pricing received, city staff recommends to award both project alternates.

The project estimate was \$591,875.79 (Base Bid + Alternate 1 + Alternate 2), including contingency (10%) and engineering (16%) costs for this project. Based on the bid results, the estimated total project cost, including 5% allowance for contingencies and 16% for engineering and administrative costs, is \$499,816.77.

Motion made by Councilmember Meister, Seconded by Councilmember Lozinski table the agenda item until the August 25, 2021, Work Session. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski. The motion **Carried. 6-0**

Project Z87 - Diversion Channel Slope Repair and Sheet Piling Removal Project – Consider Award of Bid.

The Redwood River Diversion Channel begins west of the Lyon County Public Works property at the diversion structure east of County Road 7. Over the last several years, the channel bank has eroded significantly in several locations upstream of the drop structure north of Madrid Street. There are several locations where sheet piling used for outfall installation was left in place. This sheet piling, along with numerous recent high-water events, has contributed to the erosion of the diversion channel banks. The drainage ditches adjacent to the diversion channel spill into the channel via flume channels. These flume channels have also exhibited erosion and need repair.

City Engineering staff has identified a project to repair the severely eroded channel bank locations, remove sheet piling, and repair flume channels and storm water pipe outfalls. Staff originally budgeted \$155,000 in the 2021 Capital Budget to perform repairs in the diversion channel.

At the July 27, 2021, meeting, City Council authorized staff to advertise for bids.

On August 18, 2021, bids were received for the above-referenced project. At the bid opening, it was noted that our electronic bidding system indicated that three bids were completed, and those three bids were read aloud. It was noted that R & G Construction of Marshall was the apparent low bidder with a bid of \$98,950.44.

Following the bid opening, city staff identified that a fourth bid was submitted on time, but the bidder had not acknowledged the third and last project addendum that was issued. Because the final addendum was not acknowledged, our electronic bidding program identified the bid as being incomplete. Upon investigation, staff realized that Towne & Country Excavating's proposal was completed and submitted on Friday, August 13th. The third addendum was issued on Monday, August 16th. The electronic bidding program sends an e-mail notification that an addendum is issued, but Towne & Country did not check e-mail or otherwise failed to acknowledge the most recent addendum. Therefore, the program turned Towne & Country's "completed" submittal into an "incomplete" submittal. Towne & Country's proposal was for \$85,094.00 and the contractor has notified staff that Addendum No. 3 does not impact their submittal.

The purpose of Addendum No. 3 was to notify all bidders of an alternative method of completing a portion of the contract work. Staff determined the need to issue Addendum No. 3 because staff had authorized one contractor that they may utilize an alternative method to complete work and it was important to issue notification of the alternative method to all plan holders to help ensure that contractors are aware of all construction methods available to them to give the City of Marshall the best possible price.

City staff has conferred with City legal staff regarding this situation. As is common in municipal bid advertisements, the City's advertisements contain the language that the city reserves the right to reject all bids or waive informalities or irregularities. There are several court rulings that have established that a bidder who has deviated from the specifications may still be awarded a contract if the deviation was a nonmaterial deviation. A general rule is that a deviation is material if it gives a bidder a substantial advantage or benefit over other bidders. Conversely, non-material deviations are those that are technical irregularities that do not injure other bidders.

Reviewing Addendum No. 3, it is not requiring any additional information from bidders, it is not changing the scope of work that is required to be completed, it is not changing project quantities, it does not contain a new proposal sheet, it

does not change the nature of work to be completed, and by city staff's determination, it is largely non-material in nature because it is a question and answer type of project addendum.

To make an award recommendation in this instance, the City Council will need to make the determination of whether the failed acknowledgement of Addendum No. 3 constitutes a material deviation.

Staff budgeted \$155,000 in the CIP for this project. The project will be funded by the Surface Water Management Utility. If awarded to Towne & Country Excavating, the project will cost \$103,644.49, including 5% contingency and 16% engineering fees. If awarded to R&G Construction, the project will cost \$120,521.64, including 5% contingency and 16% engineering fees.

Motion made by Councilmember Labat, Seconded by Councilmember Schafer that the Council declare the failed acknowledgement of Addendum No. 3 to be material in nature, reject the non-conforming apparent low bid and authorize award of the project to the second low bid received from R&G Construction Co. of Marshall, MN in the amount of \$98,950.44. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Labat. Voting Nay: Councilmember Meister, Councilmember DeCramer, Councilmember Lozinski. The motion **Failed. 3-3**

Motion made by Councilmember Lozinski, Seconded by Councilmember DeCramer that the Council declare the failed acknowledgement of Addendum No. 3 to be nonmaterial in nature and authorize award of the project to Towne & Country Excavating, LLC of Garvin, MN in the amount of \$85,094.00. Voting Yea: Councilmember DeCramer, Councilmember Lozinski. Voting Nay: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember Labat. The motion **Failed. 2-4**

Motion made by Councilmember Lozinski, Seconded by Councilmember Meister to table until the September 14, 2021, regular Council Meeting. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski. The motion **Carried. 6-0**

Consider Approval of the Consent Agenda

Motion made by Councilmember Meister, Seconded by Councilmember DeCramer to approve the consent agenda. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski. The motion **Carried. 6-0**

Approval of an annual agreements for renewal with Lutheran Social Services & Marshall Area Senior Citizens for 2022.

Approval for a LG220 Application for Exempt Permit for the Buffalo Ridge Gobblers NWTF.

Approval to Call for a Public Hearing Regarding Proposed Property Tax Abatement at 306 Athens Ave.

Approval of a temporary On-Sale Intoxicating Liquor License for the Marshall Area Chamber of Commerce.

Approval of a temporary On-Sale Intoxicating Liquor License for the Marshall Area YMCA.

Approval of a temporary extension of alcohol license area for Brau Brothers Brewing Company, 1010 East Southview Drive for Hop Fest on September 10-11, 2021.

Approval of the bills/project payments.

Consider approval of a Tax Increment Financing Resolution for Suite Liv'n.

Gabe Olson, owner of L2C LLC (Suite Liv'n) has applied for Tax Increment Financing to develop two, 24-unit workforce apartment buildings located at 406 Village Drive and 501 Village Drive.

L2C LLC is co-owned by Olson and his business partner, Jeff Huston who also co-own Suite Liv'n, the property management company that is responsible for managing the apartments. L2C LLC purchased its first property in Marshall in 2018 and now owns approximately 350 units within the city.

Estimated project costs for the development both units are \$6.2 million with construction anticipated to begin in Spring of 2022. The proposed project would include 32 one-bedroom units and 16 two-bedroom units. The proposed development would include 40% of dwelling units affordable to household earning 60% or less of the area median income.

The development would also help meet the goals of the City of Marshall's new Housing Study which is nearing completion. The study draft indicates a need for 124 new market rate rental housing units, 75 shallow-subsidy units and 128 deep-subsidy units through 2030. Proposed rental rates for the project range from \$700 - \$900. (Housing Study Draft Executive Study included in packet).

Olson originally requested 25 years of TIF for the project but following review from Baker Tilley, staff is requesting a 12-year, Pay-Go TIF Plan which would equate to \$460,000 in payments.

Staff has submitted a Development Agreement to the HRA for approval.

Motion made by Councilmember Schafer, Seconded by Councilmember DeCramer to remove the item from the table. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski. The motion **Carried. 6-0**

Motion made by Councilmember DeCramer, Seconded by Councilmember Schafer approve resolution approving establishment of Project Area No. 6 and a Project Plan therefor, approving establishment of Tax Increment Financing (Housing) District No. 6.1 and a Tax Increment Financing Plan, therefore. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember DeCramer, Councilmember Lozinski. Voting Nay: Councilmember Labat. The motion **Passed. 5-1**

2022 Marshall Area Fine Arts Council (MAFAC) Community Contribution Request.

The Marshall Area Fine Arts Council provided an update of events over the last year and their 2022 requested contribution.

Coalition of Greater Minnesota Cities Update

Marty Seifert, Senior Lobbyist with Flaherty & Hood provided a legislative update to the City Council. The update was focused to Coalition of Greater Minnesota Cities issues.

Enterprise Fleet Management 1) Review proposal 2) Consider approval of a fleet management program with Enterprise Fleet Management.

In 2018/2019 staff began to research a fleet management option for the City's fleet vehicles. Staff partnered with Enterprise Fleet Management to present information and next steps on the program. The program was ultimately halted due to timing.

At the August 2, 2021, budget work session, it was requested by Councilmember Lozinski and Councilmember Labat and with a consensus from the remaining members in attendance to revisit the fleet management program and bring update information and a proposal back to the City Council before the end of August 2021.

Staff began to work with Enterprise Fleet Management with our current fleet vehicles, current and future equipment budgets and have compiled the information for review. The City's fleet currently consists of 50+ vehicles that will be considered for the fleet management program.

Senior Account Executive, Wong Nystrom will be in attendance to provide detailed information on Enterprise Fleet Management's program. Staff remain in support of this program.

It was requested by the Council that the Equipment Review Committee and Ways and Means Committee review the proposal and bring back their recommendations to the full council.

Consider Amendment to Purchasing Ordinance.

Staff are recommending this change to the purchasing ordinance to ensure compliance with the newly approved purchasing policy. By having the ordinance reference the council approved policy, future changes to the policy would not conflict with the ordinance. This would allow a more efficient process and simplify procedures in the future.

Motion made by Councilmember DeCramer, Seconded by Councilmember Lozinski to approve the amendments to the Purchasing Ordinance. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember DeCramer, Councilmember Lozinski. Voting Nay: Councilmember Labat The motion **Passed. 5-1**

Consider approval of the purchase agreement for 800 N. Hwy. 59 property.

On July 13th, 2021, City Council gave staff the direction to proceed with discussion and negotiations with the seller of the property located at 800 N. Hwy. 59. City staff viewed the property and negotiated with the seller. City staff has worked with the City Attorney's Office to draft a detailed purchase agreement. The purchase agreement outlines the property to be purchased and contingencies made in order for the purchase agreement to be fully executed. Please see the attached purchase agreement.

Motion made by Councilmember Schafer, Seconded by Councilmember Lozinski to approve the purchase agreement for 800 N. Hwy 59. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski. The motion **Carried. 6-0**

Commission/Board Liaison Reports

Byrnes No Report

Schafer Airport Commission met and elected officers and discussed the future development of a new fueling system at the airport.

Meister No Report

DeCramer Diversity, Equity, and Inclusion Commission is continuing to plan Welcome Week with events being held on September 18.

Labat Adult Community Center met and approved the contract with Lutheran Social Services.

Marshall Convention and Visitors Bureau is continuing to move their offices to the Red Baron Arena. The CVB is working on a program to offer bus tours of Marshall for SMSU students

Marshall Area Transit Committee is installing graphics on bus shelters and is discussion a dedicated bus services during the Marshall 150th.

Lozinski City Hall Committee met and asked the general contractor to complete the unfinished work by September 30, 2021.

Councilmember Individual Items

Council member Labat thank City staff for their work during the Sounds of Summer event.

City Administrator

No Report

Director of Public Works

Director of Public Works/ City Engineer commented that the mill will be in town to complete mill and overlay state aid routes.

City Attorney

No Report

Information Only

There were no questions on the information items.

City Parking Lot Development

Recently city staff have been discussing interest in purchasing all or parts of the attached parking lots from Ralco, following their soon to be acquisition of the property. City staff is looking for direction on the merits of city interest and if the city should continue to pursue discussions. The purchase by Ralco of the property is not contingent upon the city's interest and possible purchase. So, the discussion will focus on public purpose.

The City Council will adjourn into closed session pursuant to minn. stat. § 13d.05; 13d.05, subd. 3 c.

At 7:56 P.M., Motion made by Councilmember Schafer, Seconded by Councilmember Lozinski pursuant to minn. stat. § 13d.05; 13d.05, subd. 3 c. to adjourn to closed session to discuss a possible land purchase. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski. The motion **Carried. 6-0**

At 8:37 the Council came back into the regular meeting.

Upcoming Meetings

There were no questions on the upcoming meetings.

Adjourn

At 8:37 PM., Motion made by Councilmember Schafer, Seconded by Councilmember Lozinski to adjourn. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski. The motion **Carried. 6-0**

Attest:

City Clerk