

**CITY OF MARSHALL  
CITY COUNCIL MEETING  
M I N U T E S  
Tuesday, October 27, 2020**

The regular meeting of the Common Council of the City of Marshall was held October 27, 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 (6:26 PM), Glenn Bayerkohler, 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; Karla Drown, Finance Director; Jim Marshall, Director of Public Safety; Dave Parsons, City Assessor; Sheila Dubs, Human Resource Manager; Laura Wing, Payroll/ Benefit Specialist; Jasmine DeSmet, Training Facility Coordinator 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 approval of the minutes of the work session and regular meeting held on October 13, 2020.**

Motion made by Councilmember DeCramer, Seconded by Councilmember Labat, that the minutes of the work session and regular meeting held on October 13, 2020 be approved as filed with each member and that the reading of the same be waived. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Bayerkohler, Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski. The motion **Carried. 6-0**

**Vacation of Utility Easement in Carr Subdivision I, Block One, Lots 9-10 (Vierstraete) – 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.

All utility companies were contacted to ensure no utilities are currently within the proposed vacation area. All respondents indicated no facilities present. Property owner to reimburse the City for all costs associated with the vacation.

Director of Public Works/ City Engineer Jason Anderson provided the background information on the agenda item.

Dustin Verstriate, 1204 Cheryl Ave stated that he wished to continue his landscaping and irrigation work into the new lot as well as expanding future building plans. Director Anderson commented that utility services lines should be checked for before any future work is done.

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

Motion made by Councilmember Schafer, Seconded by Councilmember DeCramer that the Council adopt Resolution Number 4757, Second Series, which is the Resolution Granting Petition to Vacate Utility Easement. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Bayerkohler, Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski. The motion **Carried. 6-0**

**Consider Approval of the Consent Agenda.**

Agenda items number 4, 5,6 and 9 were removed from the consent agenda for further discussion.

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

Approval for a Request of Prairie Home Hospice & Community Care for the Light Up the Night Parade on Friday, November 27,2020.

Approval of the Farm Lease between Paul Wambeke, Tenant, and the City of Marshall as Landlord.

Approval of an Engagement Letter with Vanlwaarden Associates for an actuarial valuation for post-employment benefits

Approval of On-Sale Intoxicating Liquor License and a Sunday On-Sale Intoxicating Liquor License for BDH2 – Marshall, LLC (Bird Dog Equity Partners, LLC).

Approval of the bills/project payments

**Request for Map Amendment (rezone) by Vesta LLC, at 512 Continental Street.**

This is a request by Vesta, LLC, Marshall, MN to rezone 512 Continental Street from A Agricultural District to R-1 One Family Resident District. This lot is adjacent to residential area and will be used for a single-family house. Rezoning procedures are described in Section 86-30 Amendments

At the October 14, 2020, Planning Commission meeting, a public hearing was held, and a motion was made by Lee, second by Carstens to recommend approval to City Council to rezone the property as recommended by staff. All voted in favor.

Mayor Byrnes has requested the item be removed from the consent agenda to allow him to abstain from the vote.

Motion made by Councilmember DeCramer, Seconded by Councilmember Schafer that the Council introduce an ordinance to rezone property at 512 Continental Street from A Agricultural District to R-1 One Family Resident District. Voting Yea: Councilmember Schafer, Councilmember Bayerkohler, Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski. Voting Abstaining: Mayor Byrnes. The motion **Passed. 5-0-1**

**MERIT Center Road Course-Phase 2 – Consider Change Order No. 9 (Final) and Acknowledgement of Final Pay Request No. 12.**

Councilmember Lozinski requested the item be removed from the consent agenda to discuss the change order as a result of a quantity error from the project's engineer.

The items on the Change Order No. 9 (Final Reconciling Change Order) for the above project are the result of final measurements and changes in item quantities during construction for a contract increase in the amount of \$64,345.91. All work has been completed in accordance with the specifications.

The project is funded entirely by \$3.1 million in State grant funds. Change Order No. 9 (Final) results in a contract increase in the amount of \$64,345.91 and a total contract amount of \$2,872,036.12. The original contract amount was \$2,712,530.50.

The change order and final payment in the amount of \$12,663.92, including release of retainage, will be funded from the MERIT Center Driving Track-Phase 2 Fund (493-42600-55130 MERIT Center-Operations-Improvements).

Motion made by Councilmember Schafer, Seconded by Councilmember DeCramer that Council approve Change Order No. 9 (Final) with R&G Construction Co. of Marshall, Minnesota, resulting in a contract increase in the amount of \$64,345.91 and acknowledgement of Final Pay Request (No. 12) in the amount of \$12,663.92 for the above-referenced project. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember DeCramer, Councilmember Lozinski. Voting Nay: Councilmember Bayerkohler, Councilmember Labat. The motion **Passed. 4-2**

**Project Z50-2020: Bituminous Chip Sealing on Various City Streets - Consider Change Order No. 1 (Final) and Acknowledgement of Final Pay Request (No. 2).**

The items on the Change Order No. 1 (Final Reconciling Change Order) for the above-referenced project are the result of final measurements and changes in item quantities during construction. Project quantity increases are largely the result of receiving good bid prices and adding the following segments to the project: South 4th Street between Elaine Avenue and MN 23 and Country Club Drive from County Road 7 to a point roughly 1,700 ft. east. All work has been completed in accordance with the specifications.

Change Order No. 1 (Final) results in a contract increase in the amount of \$20,174.90 and a total contract amount of \$136,521.95. The original contract amount was \$116,347.05.

\$154,300 was included in the 2020 budget or funded as follows:

- \$140,000 Street Department 2020 budget for bituminous chip sealing on various city streets and will be funded under Account #101-60211-2227 (General Fund, Street Department-Other Repairs & Maintenance)
- \$14,300 Red Baron Arena & Expo parking lot

Motion made by Councilmember Lozinski, Seconded by Councilmember Schafer that Council approve Change Order No. 1 (Final) with Pearson Bros., Inc. of Hanover, Minnesota, resulting in a contract increase in the amount of \$20,174.90 and acknowledgement of Final Pay Request (No. 2) in the amount of \$18,338.63 for the above-referenced project. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Bayerkohler,

Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski. The motion **Carried. 6-0**

**Approve Subordination Agreement Regarding Property At 223 North Hill Street (Lot Nine (9) Block Two (2) Schultz Addition to The City of Marshall) Subordinating A Small Cities Development's Program Loan/Grant in Favor of First Mortgage Lien to The Wanda State Bank.**

Councilmember Bayerkohler requested the item be removed for further discussion on the subordination agreement.

Chancey Frances Devos is the owner of property located at 223 North Hill Street in Marshall. Property is currently subject to a First Mortgage lien dated October 30, 2018 granted to the Wanda State Bank. Homeowner has recently obtained a \$24,000.00/Grant from the City of Marshall for residential building rehabilitation pursuant to the Small Cities' Development Rehabilitation Program. The loan is in the amount of \$24,000.00 pursuant to an agreement dated December 9, 2019, recorded June 30, 2020 in the office of the Lyon County Recorder. The Small Cities Development Grant Program is a second lien against the property.

Property owner seeks to refinance the first mortgage and obtain additional funds for additional rehabilitation of the property. Pursuant to the refinancing, The Wanda State Bank will satisfy its first mortgage, but is asking that the City subordinate its lien so that the new loan to Wanda State Bank will be a first mortgage lien and the City of Marshall Small City Development mortgage will continue to be a second mortgage lien against the property.

Staff is recommending that City Council approve a subordination agreement as requested. Marshall EDA met on Wednesday, October 21- and recommended that City Council approve the subordination request.

The request for subordination is not timely, but it still appears to be appropriate to recommend loan subordination as requested by the property owner and by loan officer from the Wanda State Bank. City Staff will work with the property owner and loan officer to obtain all of the appropriate and required documentation.

Motion made by Councilmember Schafer, Seconded by Councilmember Lozinski that the City Council approve the loan subordination request from property owner Chancey Frances DeVos. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Bayerkohler, Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski. The motioned **Carried. 6-0**

**Request for a Variance Adjustment Permit by Charles R Aufenthie at 1000 Country Club Drive**

The owner desires to build a detached garage next to his house with its front wall located about 20 feet in front of the house front wall. However, the Ordinance prohibits any accessory structures being built closer to the street than the house, except gazebos on larger lots. This provision's goal, in staff's opinion, is to provide uniformity and avoid often unsightly accessory buildings, which may be storage sheds with cheap finishes, being the focus of a property, which may reduce surrounding properties' values.

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 Findings of Fact based on the League of Minnesota Cities template and explains each item listed above in details.

The existing lot is large, like all adjacent lots, and the garage can be shifted back 20 feet to meet the Ordinance requirements. No other house in the area has a detached garage or other accessory building located in front of the house, so the area's character will be altered by the garage construction. 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.

The variance regulations and procedures are found in Section 86-29. At the Planning Commission meeting on October 14, 2020, a public hearing was held and a motion was made by Fox, second by Knieff to recommend approval to the City Council of the request by Charles R Aufenthie for a Variance Adjustment Permit for building a detached garage next to his house with its front wall located about 20 feet in front of the house front wall. All voted in favor of the motion.

During Planning Commission discussion, members brought up existence of a deep front yard, absence of a negative effect on the neighbors, and their desire to let people control their properties without city's interference to increase property values as justification for approval.

Motion made by Councilmember Lozinski, Seconded by Councilmember Schafer The Planning Commission recommends that the Council approve the request by Charles R Aufenthie for a Variance Adjustment Permit for building a detached garage next to his house with its front wall located about 20 feet in front of the house front wall.

Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski. Voting Nay: Councilmember Bayerkohler. The motion **Passed. 5-1**

**Project Z83: James Avenue/Camden Drive Reconstruction Project - Consider Resolution Receiving Feasibility Report and Calling Hearing on Improvement.**

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.

This Feasibility Report as authorized by the City Council covers the proposed improvements including scope, background/existing conditions, proposed improvements, probable costs, proposed assessments, feasibility and proposed project schedule.

The proposed improvements as described in the report are necessary, cost-effective, and feasible from an engineering standpoint.

The engineer's estimate for the construction portion of the project is \$920,000.00. The total estimated project cost, including 10% allowance for contingencies and 16% for engineering and administrative costs is \$1,174,000.00. 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 Schafer, Seconded by Councilmember Lozinski that the Council adopt Resolution Number 4758, Second Series, which is the Resolution Receiving Feasibility Report and Calling Hearing on Improvement for the above-referenced project and setting the public hearing on improvement date for November 10, 2020. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Bayerkohler, Councilmember DeCramer, Councilmember Lozinski. Voting Nay: Councilmember Labat. The motion **Passed.**  
**5-1**

**Transportation Alternatives Grant Letter of Intent.**

MnDOT District 8 is currently soliciting for 2025 Transportation Alternatives (TA) grant applications. The TA grant is an 80-20 grant to match program that provides funds for ped and bike facilities, historic preservation, Safe Routes to School, and more. The last project that the City had funded through this program was the RRFB school crossings project which is scheduled for construction in 2022.

For several years there has been discussion about providing a direct trail link between trail at the intersection of C Street and Progress Drive down to Southview Drive. Included in the Council packet is a preliminary route and cost estimate to complete this work. With the new elementary school being constructed, now seems like a good time to investigate this option.

City Engineering and Community Services Department staff have met with Marshall Public Schools staff to begin preliminary discussions about this project. At this point in time, City staff would propose a partnership that generally splits grant match costs with Marshall Public Schools, with the City providing engineering services. Preliminary cost estimates show a \$43,000 City cost participation and \$29,000 school district cost participation.

There is no project commitment at this stage in the grant process. If the City submits a letter of intent, we are not bound to complete the application process. This is simply a preliminary step in the MnDOT Area Transportation Partnership (ATP) grant process to gauge preliminary interest and help assess projects for grant eligibility. Staff will need to come back to the City Council at a later date to request a resolution of support for submittal in the final grant application. Staff would propose to revisit with City Council once the grant application is generally completed but not yet submitted.

There is no fiscal impact today. City staff will return for a resolution of support at a later meeting. If we are awarded a grant, we will be notified in Spring 2021. In today's dollars, our cost estimate for City participation is \$43,000 in cash with the City also providing the services for grant application, project design, project permitting, and construction administration.

At 6:26 PM, Councilmember Meister Joined the meeting.

Motion made by Councilmember Schafer, Seconded by Councilmember DeCramer that the Council authorize staff to submit the grant letter of intent and continue work on the full grant application for this project. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Bayerkohler, Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski. Voting Abstaining: Councilmember Meister. The motion

**Carried. 6-0-1**

**S.P. 4210-49RW Project - MN 68 Temporary Easements and Land Acquisition – Parcel 238B.**

MnDOT is proposing a 2022 MN 68 highway surfacing project between Minneota and Marshall that includes shoulder widening and ditch slope grading. To ensure adequate space for construction of their proposed improvements, the DOT is requesting temporary construction easements and fee acquisition of City owned property. - MnDOT Parcel 238B, Diversion Channel Parcel #12A: MnDOT is proposing to pay the City \$9,200. This amount includes \$5,438 for 25'x150' of permanent property acquisition and \$3,762 for damages of loss of value to the property related to construction operations on or adjacent to these parcels. This parcel is owned by the City of Marshall. The proposed temporary construction easement areas were reviewed by City Engineering and Assessing Department staff. City staff does not foresee any concerns with granting MnDOT their requested easements. The City of Marshall will receive \$9,200.00 in total.

Motion made by Councilmember Meister, Seconded by Councilmember DeCramer that the City Council authorize execution of the Warranty Deed for Parcel 238B, which also includes the Temporary Easement. Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember Bayerkohler, Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski. The motion **Carried. 7-0**

**Approve Resolution No. 4759, Second Series regarding accepting low quotation and authorizing James Lozinski Construction Inc. to proceed with residing a shed and installing a door on a storage building at Liberty Park.**

Parks Department has requested quotations for labor related to the installation of a door and residing a shed on a facility in Liberty Park. James Lozinski Construction Inc. submitted a labor quotation for said job in the amount of \$2,885.00. 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.

Council Member James Lozinski acknowledged 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 is before the council for consideration. Staff recommends approval of the resolution.

Motion made by Councilmember Schafer, Seconded by Councilmember DeCramer Approve Resolution Number 4759, 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 Liberty 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**

**Acknowledgement of a Closed Meeting for Labor Negotiations Strategy.**

13D.03 CLOSED MEETINGS FOR LABOR NEGOTIATIONS STRATEGY. At 4:00 P.M., a closed meeting was held at the Minnesota Emergency Response and Training (MERIT) Center.

**Commission/Board Liaison Reports**

Byrnes No Report

Schafer No Report

Meister No Report

Bayerkohler Planning Commission met and discussed council items 3 and 13.

DeCramer Marshall Municipal Utilities met and completed their 2021 budget. This is the final year of the conversion of LED streetlights.

Economic Development Authority did move forward with ending the contract with the Chamber of Commerce.

Labat Convention and Visitor Bureau met and hired a new finance coordinator and is currently planning a haunted tower event. Hotel and Restaurant business is steady and increasing.

Lozinski City Hall Committee met to discuss the progress of the Main Stay Café wall. The general contractor of the city hall project recommended to the committee to use a fiber cement panel in place of the proposed efis to help reduce the over all cost of the project. The materials are similar in cost, but the heating application is significantly less with the fiber cement panel.

**Councilmember Individual Items**

Councilmember Meister discussed a 'Wear your mask' campaign that Avera is heading up.

Mayor Byrnes requested that Public Works Director/ City Engineer provide an update on the U.S. Army Corps. of Engineer levy improvement project. Mayor Byrnes also discussed the renewal of the cities annual liquor licenses.

**City Administrator**

City Administrator Sharon Hanson provided an updated on the 2020 elections in Lyon County.

**Director of Public Works**

Director of Public Works/ City Engineer Jason Anderson provided an update on the US Army Corps. of Engineer project. Director Anderson commented that the project is expected to take place in 2021. Director Anderson also discussed that staff are continuing to review the special assessment policy before presented to the Ways and Means Committee. Anderson commented that MnDOT will provide a project update on the College Drive project.

Director Anderson also discussed ditch assessments presented to the City from Lyon County.



**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**

6:57 P.M., Motion made by Councilmember DeCramer, Seconded by Councilmember Lozinski to adjourn.  
Voting Yea: Mayor Byrnes, Councilmember Schafer, Councilmember Meister, Councilmember Bayerkohler,  
Councilmember DeCramer, Councilmember Labat, Councilmember Lozinski. The motion **Carried. 7-0**

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Mayor

Attest:

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City Clerk