

REGULAR MEETING – JANUARY 27, 2009

The regular meeting of the Common Council of the City of Marshall was held on January 27, 2009 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 Byrnes. In addition to Byrnes the following members were present: Hulsizer, Doom, Sanow, Reynolds, Boedigheimer and Ritter. Absent: none. Staff present included: Ben Martig, City Administrator; Dennis Simpson, City Attorney; Shane Waterman, Assistant City Engineer; Rob Yant, Director of Public Safety; Eric Klenken, Police Officer; Harry Weilage, Director of Community Services; Gregg Swanson, Engineering Technician; Sheila Dubs, Assistant City Administrator; Thomas M. Meulebroeck, Finance Director/City Clerk; and Jane DeVries, Deputy City Clerk.

The Pledge of Allegiance was recited at this time.

APPROVAL OF THE AGENDA:

It was the general consensus of the council that the agenda be approved as presented.

APPROVAL OF MINUTES:

Ritter moved, Reynolds seconded, that the minutes of the regular meeting held on January 13, 2009 and that the minutes of the special council / joint hospital meeting held on January 14, 2009 be approved as presented and that the reading of the same be waived. All voted in favor of the motion.

PUBLIC HEARING ON CONSIDERATION OF SALE OF HOSPITAL TO AVERA A. CONSIDERATION OF RESOLUTION TO CONSENT THE ASSET TRANSFER AGREEMENT AND MEMBERSHIP TRANSFER AGREEMENT; B. CONSIDERATION OF INTRODUCTION OF ORDINANCE TO APPROVE THE SALE OF REAL PROPERTY AND TO SET A REVIEW AND CONSIDERATION OF ADOPTION OF ORDINANCE ON FEBRUARY 10, 2009:

This was the date and time set for a public hearing for Consideration of Sale of Hospital to Avera. Dan McNerney, Attorney with Leonard, Street and Deinard for Avera Marshall and Mary Maertens, CEO of Avera Marshall were in attendance at the meeting to review the proposed sale of Weiner Memorial Medical Center (WMMC) to Avera Health (Avera). Mary reviewed the Rationale for Privatization which included: the Mission, Vision, the Vision in the 1940's, the Vision for Health in 2009 and Beyond; the System Benefits; Changing Health Care Landscape and Solidifying the Future. Mr. McNerney reviewed the Transaction Details, which included Financial Details of the Avera Offer, Summary of Use of Proceeds, and WMMC Foundation to be Restructured; Use of Sales Proceeds; Key Post-Closing Promises; Employment and Nonpension Employee Benefit Issues; and PERA Compensatory Retirement Supplement. This sale results in a \$38.5 million cash payment to the City which will be used as follows:

1. The City will use this to pay off approximately \$18.695 million in bond debt.
2. Approximately \$2.815 million to pay bond defeasance costs (any unused portion of this cost estimate will be returned to Avera Marshall).
3. Fund compensatory retirement benefit (intended to approximate PERA benefit when combined with Avera retirement plans (based on actuarial analysis, \$5 million). Any unused portion of this amount to be returned to the City of Marshall.

The proceeds of the sale remaining after these payments is estimated to be approximately \$12 million. Of this \$12 million, \$2 million would be used by the City for public purposes and the balance would be made available to Avera Marshall through a restricted City gift to the WMMC Foundation as follows:

1. Surgery Remodeling Project Capital - \$1.5 million.
2. Oncology Program Development and Capital - \$7 million.

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3. Health and Health Promotion needs of the Community (Avera Marshall eligible to receive; other qualifying organizations to be eligible as well) \$1.5 million.

Comments from the Council and others in attendance included:

Council Member Sanow asked how the \$7 million would be used and what would happen if oncology is not pursued. Mary Maertens indicated that Avera Marshall completed a business plan in 2005 for an oncology unit. Mr. McInerney indicated that if oncology is not pursued the local trust committee could decide to use the \$7 million for other health care needs.

Michael Rich, Chairperson for the Hospital Board, indicated that a sub committee was set up to work on the sale and the board is satisfied with the results.

Roger Madison, a board member and a member of the negotiating team, briefly reviewed who the stake holders were and the part that they played in the negotiating. The stake holders were: the citizens of Marshall and the surrounding area, employees of the hospital, the City Council, the Hospital Board Members and Avera Health of Sioux Falls.

Cliff Carmody addressed as to why RFP's were not received. RFP's were received when Weiner Memorial Medical Center partnered with Avera Health.

Dr. Meister stated that the relationship with Avera has been very good and the Hospital Board and the City of Marshall are making the best decision.

Mary Maertens indicated that she has received positive feedback from the staff. She read several letters of support from the staff.

Jean Reed, employee and member of the negotiating team, read a letter from Mr. John Porter, President and CEO of Avera Health.

Mike Dulas, Chairman of the Marshall Area Chamber of Commerce Board of Directors, read a resolution of support from the Marshall Area Chamber of Commerce.

Pat Leary, a lawyer from Marshall, indicated that he is in favor of the sale but does not like the terms. He indicated that the city isn't getting enough money for the sale. He indicated that the \$10 million should not be put in a trust, but that the city should receive this and allow the public to determine future needs. He also indicated that the PERA Trust of \$5 million is not needed.

Don Louwagie, a member of WMMC Foundation indicated that he is in favor of the sale to Avera.

Steve Strautz, former board member and Marshall Businessmen, indicated that since the revenue from the hospital is generated from patients it makes sense to put the money into health care.

Donna Hartfiel, OB/GYN, indicated that it is very important for Avera to not only recruit physicians but also to retain them.

Rick Jueneman, Anesthesiologist, indicated that he and other long-term employees with PERA appreciated the consideration and he could almost guarantee all of those employees will finish their careers with Avera Marshall.

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John Glasgow, former board member, indicated his support for the sale.

Dan McInerney indicated that they did receive a promise from Avera that the hospital would not be relocated outside the City of Marshall, unless permitted by law.

Council Member Sanow was concerned whether or not anyone else was interested in purchasing the hospital. It was the hospitals decision to stay with Avera.

There was a brief discussion on the \$2 million needed to pay bond defeasance costs and Mr. McInerney indicated that any unused portion of this would be returned to Avera Marshall.

Sharon Williams, Finance Director for Avera Marshall, provided a review of the Balance Sheet.

Council Member Reynolds indicated that this is a privatization agreement and not a sale. The health services are paid for by the users.

Doom moved, Ritter seconded, that the public hearing be closed. All voted in favor of the motion.

Boedigheimer moved, Sanow seconded, to deny the Resolution Approving the Transfer of Assets to WMMC for Membership Interest in WMMC, and Transfer of Membership Interest to Avera Health because of the wording. All voted in favor of the motion, except Doom and Byrnes.

Dennis Simpson provided a revised resolution and indicated that the following section was deleted from the last paragraph: to make and approve such non-substantive changes and clarifications to the form of Asset Transfer Agreement and Membership Transfer Agreement attached hereto as they deem necessary and appropriate, and authorized.

Boedigheimer moved, Sanow seconded, the adoption of RESOLUTION NUMBER 3192, SECOND SERIES and that the reading of the same be waived. Resolution Number 3192, Second Series is a Resolution Approving the Transfer of Assets to WMMC for Membership Interest in WMMC, and Transfer of Membership Interest to Avera Health. This is the revised resolution as reviewed by Mr. Simpson. All voted in favor of the motion.

Boedigheimer moved, Ritter seconded, the introduction of an Ordinance Approving the Sale of City Owned Real Property as Required by Marshall City Charter Section 12.05. Dan McInerney indicated that there are two changes to be made to the Membership Transfer Agreement and this agreement would be brought to the February 10th meeting. All voted in favor of the motion.

Mayor Byrnes called for a 5-minute recess at 7:40 P.M.

PUBLIC HEARING FOR A NEW ON-SALE LIQUOR LICENSE FOR LYON STREET GRILL AND BAR:

This was the date and time set for a public hearing on a new On-Sale Liquor License for Lyon Street Grill and Bar. Thomas M. Meulebroeck, Finance Director/City Clerk, reviewed the application and indicated that they meet the requirements for an On-Sale Intoxicating Liquor License at a pro-rated fee of \$2,450. Steve Klinkhammer, applicant, introduced himself and

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indicated that even though the license is effective June 1, 2009 they probably would not be ready to open until the fall of 2009. Rob Yant, Director of Public Safety, indicated that the Department of Public Safety did not have any concerns. Council Member Sanow asked Mr. Klinkhammer if he was aware of the new ordinance regulating underage persons in establishments providing alcoholic beverages. Steve indicated that he was aware of this change. Reynolds moved, Ritter seconded, that the public hearing be closed. All voted in favor of the motion.

Ritter moved, Sanow seconded, the approval of an On-Sale Intoxicating Liquor License for Lyon Street Grill and Bar which will be located on Lot 1, Block 1, O.K. First Addition effective June 1, 2009 at a pro-rated fee of \$2,450. All voted in favor of the motion.

CONSENT AGENDA – A. CONSIDERATION OF APPROVAL ON TEMPORARY ON-SALE LIQUOR LICENSE FOR CATHOLIC DAUGHTERS OF AMERICA FOR APRIL 25, 2009; B. CONSIDERATION OF APPROVAL FOR SUNDAY LIQUOR LICENSE FOR THE WOODEN NICKEL; C. CONSIDERATION OF RESOLUTION ACCEPTING THE DONATION OF PERSONAL PROPERTY; D. CONSIDERATION OF AUTHORIZATION TO DECLARE VEHICLES AS SURPLUS PROPERTY; E. ESTABLISH THE EDA AS THE DEVELOPER/MARKETER FOR CITY OWNED/PRIVATELY OWNED COMMERCIAL PROPERTY FOR THE CITY OF MARSHALL; F. CONSIDERATION OF APPROVAL BILLS/PROJECT PAYMENTS:

Per the request of Council Member Boedigheimer item c, which is the consideration of a Resolution Accepting the Donation of Personal Property.

Sanow moved, Reynolds seconded, that the following consent agenda items be approved:

The approval of a Temporary On-Sale Liquor License for the Catholic Daughters of American to be used at Southwest Minnesota State University, 1501 State Street on April 25, 2009. The fee for this license is \$30.00.

The approval of a Sunday Liquor License for the Wooden Nickel, 448 West Main Street, effective January 28, 2009. The fee for this license is \$200.00.

Authorization be granted to the Department of Public Safety to dispose of surplus City property – eight (8) vehicles. These vehicles will be auctioned using the State's On-Line auction process. Those vehicles that don't receive the minimum bid will be taken to Becker Iron & Metal for disposal.

The approval to establish the EDA as the Developer/Marketer for City owned/private owned commercial property for the City of Marshall.

The following bills and project payments be authorized for payment: ACCOUNTS PAYABLE, Voucher No. 63783 through 63961.

All voted in favor of the motion.

Boedigheimer moved, Doom seconded, the adoption of RESOLUTION NUMBER 3193, SECOND SERIES and that the reading of the same be waived. Resolution Number 3193, Second Series is a resolution Accepting the Donation of Personal Property from Dale R. and Deborah L. Bisbee by the City of Marshall, Minnesota. This resolution accepts a cash donation in the amount of \$1,000 by Dale R. and Deborah L. Bisbee in memory of Lyall and Theola

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Bisbee to be used for the Marshall Volunteer Fire Department's Turn Out Gear. All voted in favor of the motion.

Council Member Boedigheimer requested a letter be sent to the Bisbee's expressing the City's appreciation for their support.

PRESENTATION OF SAFE AND SOBER AWARD:

Brad Kollmann, a Law Enforcement Liaison for the Minnesota Department of Public Safety, Office of Traffic Safety, was in attendance at the meeting to present the 2008 1st Place Safe and Sober Award to Rob Yant, Director of Public Safety and Eric Klenken, Police Officer, in the amount of \$4,000. This award was for the work done by the Department of Public Safety during 2008 with traffic safety education, outreach and enforcement efforts.

CONSIDERATION OF APPROVAL OF AWAIR PROGRAM (GREGG SWANSON):

Gregg Swanson, Chairperson of the City of Marshall Safety Committee, and Sheila Dubs, Assistant to the City Administrator, briefly reviewed A Workplace Accident and Injury Reduction (AWAIR) Program for the City of Marshall. Under the Minnesota Occupational Safety and Health (OSHA) the City of Marshall is required to develop and adopt a written, comprehensive workplace safety and health program. Ritter moved, Reynolds seconded, the adoption of RESOLUTION NUMBER 3194, SECOND SERIES and that the reading of the same be waived. Resolution Number 3194, Second Series is a resolution Approving the City of Marshall – A Workplace Accident and Injury Reduction (AWAIR) Program. All voted in favor of the motion.

CONSIDERATION OF WESTERN COMMUNITY ACTION MEMORANDUM OF UNDERSTANDING, WESTERN COMMUNITY ACTION TRANSIT BUILDING AGREEMENT AND ARCHITECTURAL AGREEMENT WITH TSP, INC:

Jeanette Porter, Transit Director for Western Community Action, was in attendance at the meeting to review the Memorandum of Understanding, Transit Building Agreement and Architect's Agreement with TSP for a six (6) stall cold storage facility. Western Community Action is requesting City approval to build a six stall cold storage facility across from the existing transit facility. The proposed site is recommended due to the poor soil conditions at the other locations that would substantially drive up development costs. The proposed site does have expansion capabilities. The major impact to the city is that it does dedicate land for transit at no cost. Staff has discussed internally and there is not planned use for the property. Additionally, the site is restricted for future development as there are substantial utilities in and around the property. There was a concern about drainage but Shane Waterman, Assistant City Engineer, indicated that it has been reviewed by the Engineer Department and they are recommending approval of this location.

Ritter moved, Sanow seconded, the approval of the Memorandum of Understanding, Transit Building Agreement and Architect's Agreement with TSP for a six (6) stall cold storage facility contingent upon review by the City Attorney. All voted in favor of the motion, except Boedigheimer who voted no.

CONSIDERATION OF APPROVAL OF EMPLOYEE SERVICE AWARDS PROGRAM:

Ben Martig, City Administrator, reviewed the request for an increase in the gift values of the Service Award Program effective January 1, 2009. The Service Awards Program serves to recognize and award the service of employees at milestones in their careers through a uniform and consistent recognition program. The service recognition award acknowledges the length of

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service, in five year increments, beginning with the 5th year of service for each employee. City Staff is recommending an increase to the gift values for this program effective January 1, 2009. Under this recommendation, employees recognized for their service at the January 16, 2009 awards program would be eligible for the increased gift values. The recommendation is to increase the values to \$10 per year of service, which has been approved by the Personnel Committee. Doom moved, Reynolds seconded, to approve an increase in the gift values of the Service Award Program to \$10 per year of service effective January 1, 2009. All voted in favor of the motion.

CONSIDERATION TO ESTABLISH A FREEZE ON THE WAGE SCHEDULE STEP INCREASES:

Ben Martig, City Administrator, indicated that staff continues to monitor the potential reductions in local government aid. He indicated that there will be an unallotment of local government in 2009 as well as a reduction in certified local government aid in 2010. In order to prepare financially for these reductions, the city has implemented a number of cost control measures. In addition to these items, Mr. Martig is recommending to implement a step increase freeze for city employees effective February 1, 2009. There are approximately twenty six of the ninety full time employees affected by this freeze and the city would save approximately \$42,000. Boedigheimer moved, Doom seconded, to implement a step increase freeze for city employees effective February 1, 2009. All voted in favor of the motion.

COUNCIL MEMBER COMMISSION / BOARD LIAISON REPORTS:

Reports by the Mayor and Council Members of the various Boards and Commissions were presented at this time:

- Byrnes No report.
- Hulsizer Library Board has reviewed the plans for the proposed new library with TSP and they have implemented a wage and step increase freeze for 2009.
- Doom Marshall Community Services Advisory Board met but Doom was unable to attend. He indicated that they did discuss the proposed new park and the bike trail.
- Sanow No report.
- Reynolds Utilities Commission met last week and had a presentation from Bremer on their investments for the past year.
- Boedigheimer Airport Commission discussed a report provided by Glenn Olson on air service; Lyon County Enterprise Development met tonight; Ways and Means Committee and the Legislative and Ordinance Committee met last week.
- Ritter No report.

STAFF REPORTS:

Ben Martig, City Administrator, indicated that there would be a meeting on Tuesday, February 3, 2009 to start on the 2009 Work Plan; the budget books will be printed and distributed soon; work is being done to add public notices, meeting dates and packet information to the Web Portal site; and the City of Marshall Chamber Membership is run through EDA and the City's membership is a non-voting member.

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COUNCILMEMBER INDIVIDUAL ITEMS:

Other items brought forth by the Mayor and Council Members included: thanking the Marshall Volunteer Fire Department for helping to move the Lyon County Museum; Ben's evaluation is being compiled and each council member will be receiving a report next week; there was a Transportation Committee meeting in Granite Falls last Wednesday to discuss Highway 23; and the City of Montevideo along with the 5 surrounding counties are working to establish a Veteran's Home and would like a letter of support from the City of Marshall.

REVIEW OF PENDING AGENDA ITEMS:

There were no questions on the pending agenda items.

CONSIDER APPOINTMENTS TO BOARDS AND COMMISSIONS:

Per the recommendation of Mayor Byrnes, Doom moved, Reynolds seconded, and was unanimously approved that the following appointments be made to the various boards and commissions:

Planning Commission – Chris Shover for a term to expire on May 31, 2009

Planning Commission – Jim Lozinski for a term to expire on May 31, 2010

BUILDING PERMITS – INFORMATION ONLY:

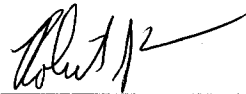
The following building permits previously approved by the Building Official were confirmed:

Applicant	Location Address	Description of Work	Valuation
1. Cornerstone of Willmar, Inc.	1420 East College Drive	Interior Remodeling / Space 704	\$250,300
2. Avera Marshall Regional Medical Center	1104 East College Drive	Remodel Office	\$2,000

INFORMATION ONLY:

Other items for information only included: Certificate of Deposit; Workman's Compensation Claims Report; Economic Development Authority Minutes; Marshall Area Transit Minutes; and Public Housing Commission Minutes.

Upon motion by Reynolds, seconded by Doom, the meeting was adjourned at 8:45 P.M. All voted in favor of the motion.



Mayor of the City of Marshall

ATTEST:


Financial Director/City Clerk