

REGULAR MEETING – OCTOBER 9, 2012

The regular meeting of the Common Council of the City of Marshall was held on October 9, 2012 in the Professional Room at the Marshall Middle School, 401 South Saratoga Street. The meeting was called to order at 5:30 P.M. by President Pro-Tem Boedigheimer. In addition to Boedigheimer the following members were present: Charlie Sanow, Dan Ritter, Jennie Hulsizer, John DeCramer, and Larry Doom. Absent: Robert Byrnes. Staff present included: Ben Martig, City Administrator; Dennis Simpson, City Attorney; Glenn Olson, Director of Public Works/City Engineer; Thomas M. Meulebroeck, Finance Director/City Clerk; and Jane DeVries, Deputy City Clerk. Others in attendance included: Cal Brink, CEO Marshall Area Chamber of Commerce.

The Pledge of Allegiance was recited at this time.

APPROVAL OF AGENDA:

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

CONSIDER APPROVAL OF THE MINUTES OF THE SPECIAL MEETING HELD ON SEPTEMBER 18, 2012, THE MINUTES OF THE WORK SESSION HELD ON SEPTEMBER 18, 2012, AND THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 25, 2012:

Member (**Larry Doom**) moved, Member (**Jennie Hulsizer**) seconded to approve the ORIGINAL motion 'that the minutes of the special meeting held on September 18, 2012, the minutes of the work session held on September 18, 2012 and the minutes of the regular meeting held on September 25, 2012 be approved as filed with each member and that the reading of the same be waived'. Upon a roll call vote being taken, the vote was: Aye: 6 Nay: 0. The motion Carried 6 - 0

AWARD OF BIDS - PROJECT Z05: TIGER PARK STORMWATER DETENTION POND PROJECT – CONSIDER RESOLUTION DECLARING OFFICIAL INTENT REGARDING THE REIMBURSEMENT OF EXPENDITURES WITH THE PROCEEDS OF TAX-EXEMPT BONDS:

Glenn Olson, Director of Public Works/City Engineer, indicated that this project includes the expansion of the existing Marshall High School storm water pond, the construction of two new storm water ponds in the northeast and northwest portions of the intersection of East College Drive (TH 19) and TH 23, and related storm sewer work. The proposed work will provide storm water storage and storm water treatment required for the continued development of Tiger Park prior to the outfall to Branch 10 of the Lyon County Ditch System.

Member (**John DeCramer**) moved, Member (**Dan Ritter**) seconded to approve the ORIGINAL motion 'that the Council adopt RESOLUTION NUMBER 3816, SECOND SERIES, which provides for Declaring Official Intent Regarding the Reimbursement of Expenditures with the Proceeds of Tax-Exempt Bonds'. Upon a roll call vote being taken, the vote was: Aye: 6 Nay: 0. The motion Carried 6 - 0

**PROJECT Z05: TIGER PARK STORMWATER DETENTION POND PROJECT –
CONSIDER RESOLUTION ACCEPTING BID (AWARD CONTRACT):**

Bids were received, opened and read on October 4, 2012 for Tiger Park Stormwater Detention Pond Project Z05. The bids received, opened and read were from:

Central Specialties Inc
Alexandria, Minnesota
\$1,304,726.05

Duininck Inc
Prinsburg, Minnesota
\$1,159,384.40

Frattalone Companies
St. Paul, Minnesota
\$1,265,278.68

Kuechle Underground Inc.
Kimball, Minnesota
\$1,347,437.06

Midwest Contracting, LLC
Marshall, Minnesota
\$1,162,606.30

Minnerath Construction, Inc.
Cold Spring, Minnesota
\$1,409,588.01

R & G Construction Co.
Marshall, Minnesota
\$1,053,871.31

R & R Excavating, Inc.
Hutchinson, Minnesota
\$1,183,946.23

Member (**Larry Doom**) moved, Member (**Charlie Sanow**) seconded to approve the **ORIGINAL** motion 'that the Council adopt RESOLUTION NUMBER 3817, SECOND SERIES, which provides for the Resolution Accepting Bid (Awarding Contract) authorizing entering into an agreement with R&G Construction Co. of Marshall, Minnesota, in the amount of \$1,053,871.31'. Upon a roll call vote being taken, the vote was: Aye: **6** Nay: **0**. The motion **Carried 6 - 0**

CONSIDER APPROVAL OF CONSENT AGENDA:

Member (**Dan Ritter**) moved, Member (**Charlie Sanow**) seconded to approve the **ORIGINAL** motion 'that the council approve all consent agenda items as presented'. Upon a roll call vote being taken, the vote was: Aye: **6** Nay: **0**. The motion **Carried 6 - 0**

That the proper city personnel be authorized to enter into a Professional and Technical Services Contract with the State of Minnesota Department of Public Safety to continue the funding for the operation of the Chemical Assessment Team (C.A.T.) for the period of October 1, 2012 through September 30, 2014.

BE IT RESOLVED, that the proper City personnel be authorized to advise the State of Minnesota Charitable Gambling Control Board that they have approved a LG220 Application for Exempt Permit for Southwest Minnesota State University for a raffle to be held at 1501 State Street, Marshall, Minnesota on February 1, 2013, and that the 30 day waiting period be waived.

BE IT RESOLVED, that the proper City personnel be authorized to advise the State of Minnesota Charitable Gambling Control Board that they have approved a LG220 Application for

REGULAR MEETING – OCTOBER 9, 2012

Exempt Permit for Southwest Minnesota State University for a raffle to be held at 1501 State Street, Marshall, Minnesota on April 26, 2013, and that the 30 day waiting period be waived. Acknowledgement of an Appraisal Engagement Agreement between the City of Marshall and Brovold and Company. Trevor Brovold has been retained by the City to provide appraisal of fair market value of the Bud Rose Flower Shop and residential property.

The proper City personnel be authorized to enter into the Laredo Agreement at the 0-250 minute plan level with the Lyon County Recorder. This agreement will provide for electronic access to documents recorded back to 1986.

That the City Council meetings for 2013 be held on the second and fourth Tuesday of the month with the exception of the second meeting in January being held on Tuesday, January 15, 2013 and the seconded meeting in December being held on Tuesday, December 17, 2013 at the Marshall Middle School Professional Development Room 401 South Saratoga Street at 5:30 p.m.

That the following bills and project payments be authorized for payment: ACCOUNTS PAYABLE, Voucher no. 81207 through 81388.

CONSIDER THE REQUEST BY DOUG AND SANDRA MOSCH TO REZONE PROPERTY AT 906 EAST SOUTHVIEW DRIVE FROM B-4 (SHOPPING CENTER BUSINESS DISTRICT) TO B-3 (GENERAL BUSINESS DISTRICT):

Glenn Olson, Director of Public Works/City Engineer reviewed the request from Doug and Sandra Mosch to rezone their property at 906 East Southview Drive from B-4 (Shopping Center Business District) to B-3 (General Business District). They want to build a self storage warehouse in that area. However, self storage warehouses are not listed as a permitted use in a B-4 district but are listed as a conditional use permit in a B-3 district. Part of the Mosch's property is already zoned B-3. These two parcels in question are sandwiched between B-4 and B-3 districts and therefore may belong to either of those districts.

Member (Larry Doom) moved, Member (John DeCramer) seconded to approve the ORIGINAL motion 'that the Council adopt ORDINANCE NUMBER 662, SECOND SERIES to rezone 906 East Southview Drive from B-4 (Shopping Center Business District) to B-3 (General Business District)'. This property is owned by Doug and Sandra Mosch. Upon a roll call vote being taken, the vote was: Aye: 6 Nay: 0. The motion Carried 6 - 0

CONSIDER THE REQUEST, SUBMITTED IN CONJUNCTION WITH THE REZONING REQUEST FOR THIS AREA, BY DOUG AND SANDRA MOSCH FOR A CONDITIONAL USE PERMIT IN A B-3 DISTRICT TO BUILD A SELF STORAGE WAREHOUSE AT 906 E. SOUTHVIEW DRIVE:

Member (Larry Doom) moved, Member (Dan Ritter) seconded to approve the ORIGINAL motion 'that the Council approve the request for Conditional Use Permit for a Self Storage Warehouse in a B-3 General Business District with the following conditions: 1) Access is provided from East Southview Drive. 2) All driveways, approaches, any other non-landscaped areas are paved. 3) Power line posts are protected. 4) At least 20% of the exposed ground shall be landscaped with live vegetation and at least 8 trees total shall be planted along Southview Drive and Highway 23'. This conditional use permit is for the property located at 906 East

Southview Drive and is owned by Doug and Sandra Mosch. Upon a roll call vote being taken, the vote was: Aye: 6 Nay: 0. The motion **Carried 6 - 0**

CONSIDER THE REQUEST BY FLINT HILL RESOURCES TO REZONE FROM A-AGRICULTURAL AND I-1 LIMITED INDUSTRIAL DISTRICT TO I-2 GENERAL INDUSTRIAL DISTRICT:

Glenn Olson, Director of Public Works/City Engineer, indicated that in 2007, Flint Hill Resources Pine Bend, LLC purchased two lots along the rail road right of way. At the same time that land and another adjacent lot located along the Diversion Channel were platted. Preliminary plat check list required that the properties would be rezoned appropriately when the final plat is approved which has recently happened. As a result, the Flint Hill Resources has submitted an application to rezone two lots between their current facility and Diversion Channel from A to I-2. The third lot will remain zoned A- Agricultural since Flint Hill Resources is planning to transfer its ownership to the City of Marshall to become part of the Diversion Channel. During the City review of this rezoning application, the City Staff noticed that there are two isolated parcels in the vicinity of this area that are zoned I-1 while the rest of the blocks are zoned I-2. Both of these parcels contain warehouses which are allowed in both I-1 and I-2. After careful consideration, the City Staff recommends that these lots would be also rezoned to I-2 along with two requested lots.

Member (**Larry Doom**) moved, Member (**Charlie Sanow**) seconded to approve the **ORIGINAL** motion 'that the Council adopt ORDINANCE NUMBER 663, SECOND SERIES to rezone the properties as described above from A (Agricultural District) and I-1 (Limited Industrial District) to I-2 (General Industrial District)'. This property is located at 901 North 7th Street, 703 North 7th Street and 702 North highway 59. Upon a roll call vote being taken, the vote was: Aye: 6 Nay: 0. The motion **Carried 6 - 0**

GENERATOR EMISSION COMPLIANCE AT THE MARSHALL WASTEWATER TREATMENT FACILITY:

Glenn Olson, Director of Public Works/City Engineer, indicated that the Wastewater Treatment Facility (WWTF) has four standby generators that are used for load controlling power during peak demands for MMU. The WWTF receive an interruptible rate on their power from MMU for being part of this program. Because of a new EPA emission regulation, the WWTF needs to update the exhaust emissions on two of these generators due to their size and age. MMU is offering a grant to existing customers in the interruptible rate class to help offset the cost of the new regulations and keeping users in this class. The new regulations take effect May 3, 2013. It is better to do the upgrades in the fall with the cooler temperatures to prevent interference with MMU's interruptible scheduling. This usually occurs on hot days or cold days.

The cost of the emission upgrades to the two generators would be:

Ziegler, Inc.	\$54,890
Bisbee Plumbing & Heating	10,486
Meier Electric	1,000
MMU Grant	(21,738)
Total City Cost	\$44,638

REGULAR MEETING – OCTOBER 9, 2012

The annual power savings for the two generators would equal \$110,000 by staying in the interruptible class. The payback on this project is less than six months.

Mike Boedigheimer asked if this needs to be bid. Mr. Olson indicated that these specific generators need to be done by the generator manufacturer.

Member (**John DeCramer**) moved, Member (**Charlie Sanow**) seconded to approve the **ORIGINAL** motion 'that the Council approve updating the two standby generators at the Wastewater Treatment Facility to meet new Environmental Protection Agency (EPA) Emission Standards at a cost of \$44,638.00'. Upon a roll call vote being taken, the vote was: Aye: **6** Nay: **0**. The motion **Carried 6 - 0**

BRAU BROTHERS SANITARY SEWER MAIN PROJECT:

Ben Martig, City Administrator, indicated that significant work has been done to attract Brau Brothers to Marshall. The proposed redevelopment site is the former Running's site, adjacent to a small strip mall and south of Perkins. During the discussion, the location and condition of both the sanitary sewer services serving the small strip mall and the former Running's site, as well as the condition of the water service line serving both properties was questioned. The Wastewater Department televised the existing sanitary sewer service and found that the Running's service runs under the small strip mall and is not able to be televised because of offsets and significant problems with the condition of the service line. As the former Running's property is intended to be sold to Brau Brothers, they should have an individual sanitary sewer service; and because of the poor condition of the sanitary sewer service line and the high volume of wastewater discharge and the wastewater quality, it is strongly recommended that the sanitary sewer service line be relocated. Staff recommends the installation of a new sanitary sewer main from the existing main located at the southeast corner of Southview Court northeastward along T.H. 23 to the southeast corner of the former Running's site. The owner will be responsible for redirection of the sanitary sewer service within the building, extending the service outside the building, installation of a sanitary sewer sampling structure outside the building, and connection to the new sanitary sewer main. This is of immediate concern as the Brau Brothers facility is intending to be operational just after January 1, 2013, necessitating the construction of the sanitary sewer main yet this fall.

Council Member Ritter asked why this would not be special assessed. Martig responded that it was not proposed to be specially assessed as the pro forma of the overall project suggests added assessment payments are not feasible and therefore would be an added incentive provided to the developer. Council Member Sanow was concerned that the City was setting a precedent. Cal Brink, CEO Marshall Area Chamber of Commerce, indicated that the additional cost for the sewer line could hurt Brau Brothers ability to get private funding for the move. Adequate sewer capacity was also a major reason why the Brau Brothers were interested in moving to Marshall. Martig indicated that the City has offered varied incentives for other companies in the past for industrial and manufacturing related business and on a case by case basis. Martig explained as an illustration that the full CRIF Loan funds allowed were not used in this project and neither was Tax Increment Financing or Tax Abatement which are tools to fund public infrastructure related improvements and other eligible project expenses.

REGULAR MEETING – OCTOBER 9, 2012

Member (**Larry Doom**) moved, Member (**Jennie Hulsizer**) seconded to approve the **ORIGINAL** motion 'that the Council approve proceeding with project plans and development of a sanitary sewer main serving the proposed Brau Brothers (former Running's site)'. Upon a roll call vote being taken, the vote was: Aye: 4 Nay: 2. The motion **Carried 4 – 2**, with Charlie Sanow and Dan Ritter voting no.

5-YEAR CAPITAL IMPROVEMENT PROGRAM (CIP) FOR THE AIRPORT:

Glenn Olson, Director of Public Works/City Engineer, reviewed the proposed 5-Year Capital Improvement Program (2014-2018) submission to Mn/DOT Aeronautics. At their meeting on October 2, 2012, the Airport Commission unanimously recommended approval of the 5-year CIP. In the 5-Year CIP, the first two years of the CIP are intended to be fairly accurate for commitment for local funding. The items three or more years out are intended to be planning proposals to provide information to Mn/DOT-Aeronautics and the FAA as to what the local community needs may be.

Mike Boedigheimer, President Pro-Tem, indicated that MN/DOT requires all airports to submit a 5-Year Capital Improvement Program and that the City of Marshall changes their requests every year.

Member (**John DeCramer**) moved, Member (**Larry Doom**) seconded to approve the **ORIGINAL** motion 'that the Council approves the submission of the 5-Year Capital Improvement Program (CIP) to Mn/DOT-Aeronautics as recommended by the Marshall Airport Commission'. Upon a roll call vote being taken, the vote was: Aye: 6 Nay: 0. The motion **Carried 6 - 0**

APPROVAL OF ADMINISTRATIVE CODE SMOKING POLICY:

Ben Martig, City Administrator, indicated that the City Personnel Policy currently states the following related to tobacco use: 8.12 TOBACCO-FREE WORKPLACE; All City buildings and vehicles, in their entirety, shall be designated as tobacco-free, meaning that no person will smoke tobacco or other substances or use smokeless tobacco while in a City facility or vehicle. Smoking of any kind, including pipes, cigars, cigarettes, and the use of chewing tobacco is prohibited for employees while on duty. Employees 18 and over are allowed to smoke only during their breaks and lunch, and only in areas designated for that purpose. Administration is suggesting to implement a policy to designate smoking areas since there are none currently identified. All other areas would be prohibited. As a separate action staff is drafting an amendment to the personnel policy that would prohibit smoking during any paid time, including breaks.

Council Member Sanow was concerned with smoking areas being close to the entrances of the buildings. Mr. Martig indicated that each department will be reviewed. Mr. Martig also indicated that the Council needs to be specific about where the designated smoking area should be.

Member (**Dan Ritter**) moved, Member (**Charlie Sanow**) seconded to approve the **NEW** motion 'approve the Administrative Code Policy Number: Chapter 1-Section 1, 1.100 "GUIDELINES FOR DESIGNATED EMPLOYEE SMOKING AREAS" with the designated area being a minimum of 50 feet from the entrance of a main entrance of a building and city hall be 50 feet

from the rear entrance as no smoking'. Upon a roll call vote being taken, the vote was: Aye: 5
Nay: 1. The motion **Carried 5 – 1**, with Jennie Hulsizer voting no.

DISCUSSION OF D&G AWARD OF BID FOR TREE RELOCATION:

Glenn Olson, Director of Public Works/City Engineer, indicated that the City Council approved the following motion on a 5-0 vote on September 25, 2012 related to tree removals for the corps of engineer dike project. Motion for award of bid to "Rogge Excavating, Inc. of Ghent Minnesota, in the amount of \$39,875.00 for the clearing and grubbing and for the relocation of trees to D&G Excavating, Inc. of Marshall, Minnesota, in the amount of \$51,250.00." There was an alternative option presented to Council to award the entire bid to D&G. D&G Excavation has submitted a letter through Attorney Kappenman related to the issues of the bid and award. Mr. Olson indicated that the bid specification included the ability of the city to award various sections of the bids to different contractors. D&G has verbally indicated intent to withdraw their bid, after the bid has been awarded. The withdrawal of a proposal or bid after award is unusual. The recent case of a bid being pulled after award relates to the wastewater farm lease which the City is currently litigating against the owner. Similar penalties are being pursued including financial damages and an "irresponsible bidder" designation for more than 12 months. Staff has not received a written withdrawal of bid from D&G as of October 5, 2012. Therefore, we were not intending on bringing any follow up action to the City Council. However, Councilmember Ritter requested this be added to the agenda.

Chris Gruhot, D & G Excavating, was in attendance at the meeting and indicated that they did not realize they could pick and choose which part of the project they could bid on. Ms. Gruhot indicated that they submitted a complete bid and all of the set up costs were included in the first items on the bid. She also indicated that they are not interested in working with Rogge Excavating. Ms. Gruhot indicated that by splitting this project there could be disputes regarding which contractor caused ruts or other damage to the dike during the project and could lead to a dispute over who would be responsible for repairing the dike and neighboring properties affected by this project. Ms. Gruhot was also concerned with the City of Marshall determining D & G an "irresponsible bidder" for an extended period of time and penalized for withdrawing its bid.

Dennis Simpson, City Attorney, indicated that the bid could not be undone or withdrawn after it has been awarded. The City of Marshall could reconsider the issue and get new proposals for tree relocation, but that would slow down the project and the project needs to be completed before the ground freezes.

Council Member Ritter indicated that the project should have been started earlier.

Cal Brink, CEO Marshall Area Chamber of Commerce, stated that D & G have performed many projects for the City. This is not their first time bidding for the city.

Member (**Charlie Sanow**) moved, Member (**John DeCramer**) seconded to approve the **NEW** motion 'rescind contract with D & G and proceed with getting proposals for the relocation of trees and there be no penalties on D & G '. Upon a roll call vote being taken, the vote was: Aye: 6
Nay: 0. The motion **Carried 6 - 0**

REGULAR MEETING – OCTOBER 9, 2012

COUNCILMEMBER COMMISSION/BOARD LIAISON REPORTS:

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

Hulsizer Library Board upcoming events include the spelling bee and they discussed the issue with the Plum Creek Board in regard to policies. Jennie also indicated that the Library Board meets on the first Monday of the month.

Doom Community Services Advisory Board met last week.

Sanow No report.

DeCramer No report.

Boedigheimer Airport Commission items acted on earlier in the meeting.

Ritter No report.

COUNCILMEMBER INDIVIDUAL ITEMS:

Council Member Sanow requested that City staff check on the progress of the home located at 305 South Bruce Street.

STAFF REPORTS

Ben Martig, City Administrator, indicated that the City received notice that they did not get the Block 11 Redevelopment Grant and there will be a Council work session on October 16th.

Glenn Olson, Director of Public Works/City Engineer; and Dennis Simpson, City Attorney, did not have a report.


REVIEW OF PENDING ITEMS:

There were no questions on the pending agenda items.

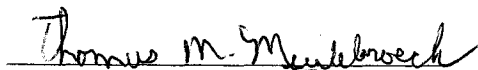
INFORMATION ONLY:

There were no questions on the information items.

Member (**Charlie Sanow**) moved, Member (**John DeCramer**) seconded to approve the **ORIGINAL** motion 'that the meeting be adjourned'. Upon a roll call vote being taken, the vote was: Aye: **6** Nay: **0**. The motion **Carried 6 - 0**


President Pro-Tem

ATTEST:


Finance Director/City Clerk