

REGULAR MEETING – SEPTEMBER 9, 2015

The regular meeting of the Common Council of the City of Marshall was held September 9, 2015 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 in attendance: David Sturrock, John DeCramer, Glenn Bayerkohler, Larry Doom and Craig Schafer. Absent: Ellayne Conyers. Staff present included: Ben Martig, City Administrator; Dennis Simpson, City Attorney; Glenn Olson, Public Works Director/City Engineer; Ilya Gutman, Building Official; Jane DeVries, Deputy City Clerk and Thomas M. Meulebroeck, Finance Director/City Clerk.

The Pledge of Allegiance was recited at this time.

APPROVAL OF AGENDA:

Member (**Craig Schafer**) moved, Member (**John DeCramer**) seconded to approve the **ORIGINAL** motion 'that the agenda be approved with the removal of consideration for approval of furniture for the MERIT Center'. Upon a roll call vote being taken, the vote was: Aye: 6 Nay: 0. The motion **Carried 6 – 0**

CONSIDER APPROVAL OF THE MINUTES OF THE WORK SESSION HELD ON AUGUST 18, 2015 AND THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 25, 2015:

Member (**Larry Doom**) moved, Member (**Craig Schafer**) seconded to approve the **ORIGINAL** motion 'that the minutes of the work session held on August 18, 2015 and the minutes of the regular meeting held on August 25, 2015 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**

PUBLIC HEARING CONSIDER REVISIONS TO CHAPTER 86, SEC. 86-97 R-1 ONE FAMILY DISTRICT, SEC. 86-98 ONE TO FOUR-FAMILY DISTRICT, SEC. 86-101 R-5 MANUFACTURED HOME PARK DISTRICT, SEC. 86-162 YARD MODIFICATIONS, AND SEC 86-163 ACCESSORY BUILDINGS – 1. PUBLIC HEARING; 2. ADOPTION OF ORDINANCE:

This was the date and time set for a public hearing to consider revisions to Chapter 86, Sec. 86-97 R-1 One Family District, Sec. 86-98 One to Four-Family District, Sec. 86-101 R-5 Manufactured Home Park District, Sec. 86-162 Yard Modifications, and Sec 86-163 Accessory Buildings. Glenn Olson, Director of Public Works/City Engineer, indicated that the new Minnesota State Building Code was adopted earlier in 2015. The City Zoning Ordinance has a few provisions that have been based on numbers corresponding to the Building Code and now those numbers have been changed. Therefore, it is reasonable to update the Zoning Ordinance to reflect the Building Code changes. The Building Code previously exempted storage buildings under 120 SF and fences less than 6 feet tall from the building permit requirements; these numbers were revised to 200 SF and 7 feet respectively in the new Code. Therefore, staff proposes to adjust corresponding numbers in the Zoning Ordinance and change the references to the square footage of accessory buildings from 120 SF to 200 SF as they appear in the Section 86-163 Accessory Buildings in the Zoning Ordinance and modify permitted fence height from 6 feet to 7 feet in Section 86-162 Yard Modifications. If a building permit is not required, reduced requirements for accessory buildings and fences will make Zoning enforcement more

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efficient. Additionally a few more changes are made to Section 86-97 One Family District to align it with recently revised Accessory Building section. The staff is also proposing to revise Ordinance provisions for residential pools. Currently the way the Ordinance is written, any accessory pool in the residential district will need a fence around that. It seems reasonable to exclude some smaller pools, such as inflatable kiddie pools, from these requirements. The Building Code excluded above ground pools with the capacity less than 5,000 gallons and the depth less than 2 feet from the permitting requirements. However, a 5,000 gallon pool with a depth of 2 feet will be about 20 feet in diameter; 4 foot depth pool with 5,000 gallon capacity will have 15 foot diameter and 10 foot diameter pool with this capacity will have a depth of 8.5 feet; all those pools seem to be of significant size and may present danger to kids as an attractive nuisance. Therefore, the staff recommendation was to exclude pools with the diameter less than 10 feet and the depth less than 2 feet from the fencing requirements. With the exception of smaller pools from the enclosure requirements, the staff suggests making existing fences requirement stricter by adding provisions for self-closing and self-locking doors and requiring fence to be non-climbable i.e. prohibiting horizontal rails. The pool regulations have been researched and ordinances of other cities have been analyzed. Requirements appear to vary greatly from very strict and applicable to any pool. During a Planning Commission meeting on August 12, 2015, a recommendation was made to change the Ordinance pool requirements to match the State Building Code and exclude all above ground pools with the capacity less than 5,000 gallons and the depth less than 2 feet from the fencing requirements. Except for this change, the Planning Commission recommended approval of all revisions suggested by staff. During a Legislative & Ordinance Committee meeting on August 19, 2015, a recommendation was made similar to the Planning Commission recommendation to change the Ordinance pool requirements to match the State Building Code and exclude all pools excluded from the permitting requirements by referencing the State Building Code instead of using specific numbers. Except for this change, the L&O Committee recommended approval of all revisions suggested by staff.

Comments from the Council Members included:

Bayerkohler was concerned with the location of self-locking latches on self-closing doors. Ilya, Gutman, Building Official, indicated they are usually located on the top of the door.

Bayerkohler was also concerned with the river adjacent to property, would the owners of the property have to install a fence. Mr. Olson indicated that normally rivers are not part of the homeowners property.

Schafer stated that the City can be more restrictive than the State, but not less restrictive. DeCramer asked about covers for hot tubs.

Member **(Larry Doom)** moved, Member **(John DeCramer)** seconded to approve the **ORIGINAL** motion 'that the Council close the public hearing'. Upon a roll call vote being taken, the vote was: Aye: 6 Nay: 0. The motion **Carried 6 - 0**

Member **(Larry Doom)** moved, Member **(John DeCramer)** seconded to approve the **NEW** motion 'that the Council adopt ORDINANCE NUMBER 699, SECOND SERIES which provides the amendment of Chapter 86, Sections 86-97 R-1 One Family District, 86-98 One to Four Family District, 86-101 R-5 Manufactured Home Park District, 86-162 Yard modifications

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and 86-163 Accessory buildings as follows: Secs. 86-162 Yard modifications and Secs. 86-163 Accessory buildings by revising fence height and accessory building area to correspond to the new Building Code. Secs. 86-97 R-1 One Family District, 86-98 R 2 One to Four Family District, and R-5 Manufactured Home Park District by revising swimming pool provisions in (c) Permitted accessory uses and the adoption of the Summary Ordinance for Publication'. Upon a roll call vote being taken, the vote was: Aye: 6 Nay: 0. The motion **Carried 6 - 0**

CONSIDER APPROVAL OF CONSENT AGENDA:

Council Member Bayerkohler requested that the following items be removed from the consent agenda:

- Proposal for Intrusion and Security System for Tall Grass Liquor Store
- Proposal for Fire Monitoring for Tall Grass Liquor Store
- Proposal for Camera Security System for Tall Grass Liquor Store

Member (**Larry Doom**) moved, Member (**David Sturrock**) seconded to approve the **ORIGINAL** motion 'that the following consent agenda items be approved as presented'. Upon a roll call vote being taken, the vote was: Aye: 6 Nay: 0. The motion **Carried 6 - 0**

The adoption of RESOLUTION NUMBER 4192, SECOND SERIES Authorizing Transfer and Closure of Capital Project Fund 411 to Debt Service Fund 321. The cash balance of \$31,477.21 is to be transferred to Debt Service Fund 321.

The adoption of RESOLUTION NUMBER 4193, SECOND SERIES Closing Wastewater Debt Service Fund 611 to Wastewater Debt Service Fund 614. The cash balance of \$16,795.07 is to be transferred to Wastewater Debt Service Fund 614.

That the TASER International contract be approved for the purchase of five (5) X-2 Taser's, holsters and additional cartridges in the amount of \$7,907.31. This is to be paid from account no. 101-50151-2245.

That the following bills and project payments be authorized for payment: ACCOUNTS PAYABLE, Voucher No. 95133 through 95318.

APPROVAL OF ITEMS PULLED FROM CONSENT

Council Member Bayerkohler asked City Administrator Martig to review the following Monitoring Systems for Tall Grass Liquor.

CONSIDER PROPOSAL FOR INTRUSION & SECURITY SYSTEM FOR TALL GRASS LIQUOR STORE:

Ben Martig, City Administrator, reviewed the proposal from Living Connected L&A Systems, LLC as it relates to an Intrusion & Security System for the Tall Grass Liquor store. The system will include door sensors for the front door, employee entrance, dock doors and roof door. This will also include glass break vibration sensors.

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Member (**Craig Schafer**) moved, Member (**Larry Doom**) seconded to approve the **ORIGINAL** motion 'That the proposal for Intrusion & Security System for Tall Grass Liquor Store be approved'. The cost for this system is \$5,780.00 and will be paid from account number 409-90991-5540. Upon a roll call vote being taken, the vote was: Aye: 5 Nay: 1. The motion **Passed 5 - 1** with Bayerkohler voting no.

CONSIDER PROPOSAL FOR A FIRE MONITORING FOR THE TALL GRASS LIQUOR STORE:

Ben Martig, City Administrator, reviewed the proposal from Living Connected L&A Systems LLC as it relates to Fire Monitoring for the Tall Grass Liquor Store. The proposal will furnish materials and labor that will monitor the fire system in the building.

Member (**Larry Doom**) moved, Member (**John DeCramer**) seconded to approve the **ORIGINAL** motion 'that the Proposal for Fire Monitoring for the Tall Grass Liquor Store be approved'. The cost for this system is \$24.95 per month or \$299.40 for a year. This will be paid from account number 609-90991-3323. Upon a roll call vote being taken, the vote was: Aye: 5 Nay: 1. The motion **Passed 5 – 1** with Bayerkohler voting no.

CONSIDER PROPOSAL FOR A CAMERA SECURITY SYSTEM FOR THE TALL GRASS LIQUOR STORE:

Ben Martig, City Administrator, reviewed the proposal from Living Connected L&A Systems LLC for a new security system monitoring.

Member (**John DeCramer**) moved, Member (**Larry Doom**) seconded to approve the **ORIGINAL** motion 'that the Proposal for a Camera Security System for the Tall Grass Liquor Store be approved'. The cost for this system is \$38,538.00 and will be paid from account number 409-90991-5540. Upon a roll call vote being taken, the vote was: Aye: 5 Nay: 1. The motion **Passed 5 – 1** with Bayerkohler voting no.

CONSIDER THE REQUEST FOR MAP AMENDMENT TO REZONE 901 EAST SOUTHVIEW DRIVE FROM I-1 TO B-3:

Glenn Olson, Director of Public Works/City Engineer, reviewed the request for a map amendment to rezone 901 East Southview Drive from I-1 to B-3. The owner intends to revise the use of the property from storage to beauty shop in one building and contractor shop in another building. Both uses are permitted in a B-3 (General Business District) while a beauty shop is not in an I-1 (Limited Industrial District). Additionally, B-3 (General Business District) is more consistent with the surrounding area. Requirements for B-3 District can be found in Section 86-106. Rezoning procedures are described in Section 86-30 Amendments. The Planning Commission approved this request at their August 12, 2015 meeting. Additionally, after the Planning Commission meeting, it was noticed that a portion of the area zoned I-1 (Limited Industrial District) belongs to the school district. After consulting with Bruce Lamprecht, staff recommends rezoning that portion to R-1 (One Family Residence District) to match the rest of the school property.

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Member (**Craig Schafer**) moved, Member (**Larry Doom**) seconded to approve the **ORIGINAL** motion 'that the Council adopt ORDINANCE NUMBER 700, SECOND SERIES to rezone the property located at 901 East Southview Drive from I-1 (Limited Industrial District) to B-3 (General Business District) and R-1 (One Family Residence District)'. Upon a roll call vote being taken, the vote was: Aye: 6 Nay: 0. The motion **Carried 6 - 0**

CONSIDER RESOLUTION AUTHORIZING EXECUTION OF GRANT AGREEMENT NO. 1001485 / S.P. A4201-97 WITH MN/DOT-AERONAUTICS FOR MASTER PLAN/AIRPORT LAYOUT PLAN (ALP) UPDATE:

Glenn Olson, Director of Public Works/City Engineer, reviewed Mn/DOT Grant Agreement, No. 1001485 / S.P. A4201-97 and the Agreement for Airport Improvement Excluding Land Acquisition from Mn/DOT Office of Aeronautics for the Master Plan/Airport Layout Plan (ALP) Update. This Agreement will remain in effect until December 31, 2018. This agreement is the companion agreement to the FAA Grant Number 3-27-0056-014-2015 received in the amount of \$322,200. At the June 23, 2015 meeting, the City Council authorized entering into a Professional Services Agreement with Toltz, King, Duvall, Anderson and Associates, Incorporated (TKDA) of St. Paul, Minnesota for the Airport Master Plan Update Project (Master Plan Update and Business Plan) for a total project cost not-to-exceed \$404,000.00, contingent upon receipt of federal and State grant funding for the Master Plan Update and State grant funding for the Business Plan. The agreement with TKDA contained two signatures on the agreement, one for the Master Plan Update and one for the Business Plan. The Master Plan is fully federally eligible for funding. TKDA sought State funding for the Business Plan since it had been determined to be federally ineligible by the local FAA office. Both sections of the agreement were contingent on the receipt of the corresponding federal and State grants (federal and State funding for the Master Plan and State funding for the Business Plan). Staff has received notification from Mn/DOT-Aeronautics that State funding is not available for the Business Plan. Therefore, TKDA will not proceed with the Business Plan portion of the project unless directed by the City.

Member (**David Sturrock**) moved, Member (**John DeCramer**) seconded to approve the **ORIGINAL** motion 'that the Council adopt RESOLUTION NUMBER 4194, SECOND SERIES, which is the Resolution Authorizing the Executing of Mn/DOT Grant Agreement No. 1001485 / S.P. A4201-97 for the Master Plan/Airport Layout Plan (ALP) Update'. The agreement provides for project costs not to exceed \$358,000.00. Funding participation of 90% federal (\$322,200.00), 5% State (\$17,900.00) and 5% local (\$17,900.00). The 2015 Airport budget includes \$100,000.00 for this project funded under Account #101 60364-3311 (General Fund-Airport-General Professional Services). Upon a roll call vote being taken, the vote was: Aye: 6 Nay: 0. The motion **Carried 6 - 0**

PROJECT Z28: NORTH 5TH STREET / PLEASANT AVENUE RECONSTRUCTION PROJECT -- 1. CONSIDER CHANGE ORDER NO. 1 (FINAL); 2. ACKNOWLEDGEMENT OF FINAL PAY REQUEST NO. 6.

Glenn Olson, Director of Public Works/City Engineer, reviewed North 5th Street / Pleasant Avenue Reconstruction Project Z28. This project consisted of the reconstruction of streets and utilities on North 5th Street from West Marshall Street to Pleasant Avenue and Pleasant Avenue from North 5th Street to North 6th Street. Items included in the project were sanitary sewer, watermain and storm sewer replacement, curb and gutter, sidewalk reconstruction, bituminous

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surfacing, aggregate base, grading and other minor work. The items on the Change Order No. 1 (Final Reconciling Change Order) for this project are the result of final measurements and changes in item quantities during construction. Each individual line item is shown on the spreadsheet attached to the change order. All work has been completed in accordance with the specifications.

Per a memo from Dennis Simpson, City Attorney, the City of Marshall has been made aware that there are two sub-subcontractors on this project that have provided labor and material but have not been paid. Apparently a subcontractor of Kuechle Underground, hired Tolk Gravel of Minnesota to provide fill on the project. Tolk provided the fill, subcontractor Finish Grade received payment from contractor Kuechle Underground, but Finish Grade did not pay Tolk in full. Tolk is owed \$30,507.82. D&G Excavating of Marshall also provided labor for Finish Grade as well. D&G has an outstanding balance due of \$23,190.22.

Mr. Simpson is advising that a portion of the 5% retainage of the contract would be attributable to the unpaid claims due to D&G Excavating and Tolk Gravel. The City of Marshall has advised the unpaid sub-subcontractors to file a claim against the payment bond. The City of Marshall, however, is not a party to the payment bond claim and does not have a contractual relationship with either of the sub-subcontractors. Mr. Simpson is recommending that a portion of the 5% of retainage be paid to each of the sub-subcontractors. Specifically, City Attorney is recommending that the retainage payments be made as follows:

\$1,159.51 to D&G Excavating (5% of their outstanding bill)

\$1,525.39 to Tolk Gravel (5% of their outstanding bill)

\$31,556.85 to Kuechle Underground (remainder of the 5% retainage)

Member (**Craig Schafer**) moved, Member (**Larry Doom**) seconded to approve the **ORIGINAL** motion 'that Council approve Change Order No. 1 (Final) with Kuechle Underground, Inc. of Kimball, Minnesota, resulting in a contract increase in the amount of \$31,721.21'. Upon a roll call vote being taken, the vote was: Aye: 6 Nay: 0. The motion **Carried 6 - 0**

Member (**Glenn Bayerkohler**) moved, Member (**John DeCramer**) seconded to approve the **NEW** motion that the Council approves the payment of the Final Pay Request (no. 6) in the amount of \$34,241.75 per the City Attorney recommendation that a portion of the remaining payment be paid to each of the sub-subcontractors. Payments to sub-subcontractors would be as follows: \$1,159.51 to D&G Excavating (5% of their outstanding bill); \$1,525.39 to Tolk Gravel (5% of their outstanding bill). The remaining balance of \$31,556.85 would be paid to Kuechle Underground (contractor). These payments are contingent upon the contractor, Kuechle Underground, agreeing to sign a claims release form which indicates that contractor agrees to this payment plan and which acknowledges that contractor has received payment in full. Upon a roll call vote being taken, the vote was: Aye: 6 Nay: 0. The motion **Carried 6 - 0**

SMASC PROJECT – CONSIDER CHANGE ORDER NO. 3 (0990.003) FOR CONTRACT #0990 PAINTINGS/COATINGS WITH STEINBRECHER PAINTING, INC:

Glenn Olson, Director of Public Works/City Engineer, reviewed Change Order No. 3 (0990.003) for Contract #0990 Paintings/Coatings with Steinbrecher Painting, Inc., for a contract increase in the amount of \$2,630.00. The contract increase relates to additional paint striping required. This

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increase will be encumbered to account number 456-70579-5520 (Amateur Sports Center Fund – Buildings and Structures).

Member (**Craig Schafer**) moved, Member (**John DeCramer**) seconded to approve the **ORIGINAL** motion 'that Council approve Change Order No. 3 (0990.003) for Contract #0990 Paintings/Coatings with Steinbrecher Painting, Inc., for a contract increase in the amount of \$2,630.00'. Upon a roll call vote being taken, the vote was: Aye: 5 Nay: 1. The motion **Passed 5 – 1** with Bayerkohler voting no.

MERIT CENTER ADDITION - CONSIDER CHANGE ORDER NO. 3 WITH MOHS CONTRACTING, INC:

Ben Martig, City Administrator, reviewed Change Order No. 3 with Mohs Contracting, Inc. of Owatonna, MN resulting in a contract increase of \$26,830.69 and a revised contract amount of \$1,591,047.30. The change order is to provide four added concrete pads on the MERIT site. This increase will be funded from account number 455-50551-5520 (MERIT Center Operations Buildings & Structures).

Member (**John DeCramer**) moved, Member (**Craig Schafer**) seconded to approve the **ORIGINAL** motion 'that the Council approve the attached Change Order No. 3 with Mohs Contracting, Inc. of Owatonna, MN resulting in a contract increase of \$26,830.69'. Upon a roll call vote being taken, the vote was: Aye: 5 Nay: 1. The motion **Passed 5 – 1** with Bayerkohler voting no.

APPROVAL OF APPOINTMENTS TO THE PUBLIC HOUSING COMMISSION AND THE AIRPORT COMMISSION:

Per the recommendation of Mayor Byrnes Member (**John DeCramer**) moved, Member (**David Sturrock**) seconded to approve the **ORIGINAL** motion 'approval of appointments to the Public Housing Commission and the Airport Commission'. Upon a roll call vote being taken, the vote was: Aye: 6 Nay: 0. The motion **Carried 6 - 0**

Public Housing Commission – Jana Reilly be appointed to a vacant term to expire on May 31, 2017

Airport Commission – Michael Rich be appointed to a vacant term to expire on May 31, 2018

COMMISSION/BOARD LIAISON REPORTS:

Byrnes No report.

Schafer Library Board the dedication for the Children's Wing at the Library was held on September 2, 2015.

Doom No report.

Bayerkohler No report.

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DeCramer Ways and Means reviewed the Financial Analysis report for the Finance/Clerk Department.

Sturrock Airport Commission met, but Sturrock was not able to attend; Police Advisory Board will meet on September 14, 2015.

COUNCILMEMBER INDIVIDUAL ITEMS:

The Grand Opening of the Children's Wing of the Library was held on September 2, 2015; staff held a conference call on litigation with MPCA; Building Official Illya Gutman is working on an ordinance violation in regard to junk – this will be going to the Attorney's office. The unveiling of MARSH, Marshall Amateur Regional Sports Hub, took place on September 9th. This is a partnership of the City of Marshall, Marshall Public School, SMSU and CVB. The naming of the Sports Facility will take place on September 14th.

CITY ADMINISTRATOR:

Ben Martig, City Administrator, provided updates on the following:

Works continues on the new liquor store. Meetings are held every other week.

The MERIT Center is close to completion

Staff on the first floor of City Hall will be moving offices

There will be a 9-11 Remembrance at Memorial Park on Friday 9/11/15 at noon.

Ben and Rob Yant, Police Chief, will be attending a Drug Task Force meeting on Thursday on 9/10/15

Ben provided a video on the overpass intersection on Saratoga Street and Hwy 23 by-pass

DIRECTOR OF PUBLIC WORKS:

Glenn Olson, Director of Public Works/City Engineer, provided updates on the following:

He briefly reviewed the video presented on the overpass intersection and how to use this intersection.

Margaret Street and Windstar Street project is progressing.

Work is continuing on the track at the MERIT Center.

There was a Corps inspection of the dike system today.

The new Assistant City Engineer will start on September 24th.

CITY ATTORNEY:

The sale of the Ralco property was finalized. They will continue to rent part of the facility for September.

PENDING ITEMS:

There were no questions on the pending items.

INFORMATION ONLY:

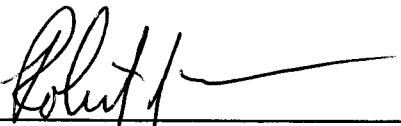
There were no questions on the information items.

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UPCOMING MEETINGS:


There were no questions on the upcoming meeting list.

Member (**Larry Doom**) moved, Member (**Craig Schafer**) seconded to approve the **ORIGINAL** motion 'Adjourn Meeting'. Upon a roll call vote being taken, the vote was: Aye: **6** Nay: **0**. The motion **Carried 6 - 0**



Mayor

ATTEST:



Finance Director/City Clerk