

REGULAR MEETING – OCTOBER 11, 2016

The regular meeting of the Common Council of the City of Marshall was held on October 11, 2016 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: Larry Doom, Glenn Bayerkohler, John DeCramer and David Sturrock. Absent: Schafer and Conyers. Staff present included: Nick Johnson, City Administrator; Dennis Simpson, City Attorney; Glenn Olson, Director of Public Works/City Engineer; Karla Drown, Finance Director; Rob Yant, Director of Public Safety; Scott VanDerMillen, Community Services Director; Marc Klaith, Fire Chief; Ilya Gutman, Plan Examiner; Preston Stensrud, Parks Superintendent; and Jane DeVries, City Clerk. Others in attendance were Darin Rahm, CVB Director.

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 REGULAR MEETING HELD ON SEPTEMBER 27, 2016:

Member (Larry Doom) moved, Member (John DeCramer) seconded to approve the ORIGINAL motion 'the minutes of the regular meeting held on September 27, 2016 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: 5 Nay: 0. The motion Carried 5 - 0

REZONE 811 NORTH BRUCE STREET AND 813 NORTH BRUCE STREET FROM R-4 HIGHER DENSITY – MULTI FAMILY RESIDENCE DISTRICT TO AN I-1 LIMITED INDUSTRIAL DISTRICT – 1. PUBLIC HEARING; 2. ADOPTION OF ORDINANCE:

This was the date and time set for a public hearing on the rezoning of 811 North Bruce Street and 813 North Bruce Street. Glenn Olson, Director of Public Works/City Engineer, indicated that Great Plains Natural Gas Company conducts local business from the location at the edge of town at 811 N. Bruce Street. There is an office building and a contractor's shop building there. The owner wants to take down a part of the shop (a building built in 1971) and build an addition for storage. The land Great Plains owns is currently zoned R-4 Higher Density Multiple Family Residence District. It was rezoned from an A-Agricultural District in 2006 in conjunction with Conditional Use Permit for a business office that was built there at that time. The contractor's shop was there prior to rezoning and was left intact making it a non-conforming use which allows continuation of the previous activity but not any extension. Rezoning seems to be the best way of achieving Ordinance compliance and allowing construction to proceed. I-1 Limited Industrial District allows both contractor's shops and offices. The area North of Kossuth Avenue where the City shops are located is already zoned I-1 Limited Industrial District making it somewhat consistent even though I-1 zoning will not be contiguous rezoned. Additionally, these two parcels are already zoned differently from surrounding area. To make it consistent, the City is proposing to similarly rezone adjacent parcel 813 North Bruce Street (27-626-012-0) owned by Northern Natural Gas Company. All properties within 350 feet of the area proposed to be rezoned have been notified of the proposed zoning change. This Ordinance was introduced at the September 27, 2016, City Council meeting.

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Members of the public asked what the new building would be used for and if the construction or the zoning change would affect neighboring residential property. Mr. Olson indicated the new building would be used for storage of materials like valves and piping. The construction would stay within existing setbacks and surrounding properties would stay residential.

Member (**John DeCramer**) moved, Member (**Larry Doom**) seconded to approve the **ORIGINAL** motion 'that the Council close the Public Hearing to rezone 811 North Bruce Street and 813 North Bruce Street from R-4 Higher Density – Multi Family Residence District to an I-1 Limited Industrial District'. Upon a roll call vote being taken, the vote was: Aye: **5** Nay: **0**. The motion **Carried 5 - 0**

Member (**Larry Doom**) moved, Member (**David Sturrock**) seconded to approve the **NEW** motion 'that the Council adopt ORDINANCE NUMBER 714 SECOND SERIES, which is an ordinance Amending Chapter 86. This ordinance provides for 811 North Bruce Street and 813 North Bruce Street be rezoned from R-4 Higher Density – Multi Family Residence District to an I-1 Limited Industrial District'. Upon a roll call vote being taken, the vote was: Aye: **5** Nay: **0**. The motion **Carried 5 - 0**

KNIEFF ADDITION - 1. PUBLIC HEARING ON PRELIMINARY PLAT AND APPROVAL OF PRELIMINARY PLAT; 2. CONSIDER RESOLUTION APPROVING FINAL PLAT:

This was the date and time set for a public hearing on the preliminary plat for Knieff Addition. Glenn Olson, Director of Public Works/City Engineer indicated that a portion of the property had been previously platted. Mr. Knieff is in the process of acquiring an additional piece of adjacent property in an unplatted area, requiring a subdivision of property. The new subdivision will include Lot 3 and Lot 4, Block Three of Wilke-Miller-Buesing Second Addition, as well as a triangular piece of unplatted property immediately adjacent to and south of those lots. Copies of the proposed subdivision have been sent to the local utility companies for their review and comments. Per the City Assessor, the real estate taxes payable in 2016 have been paid for all parcels.

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: **5** Nay: **0**. The motion **Carried 5 - 0**

DeCramer moved, Doom seconded, the approval of the Preliminary Plat of Knieff Addition. All voted in favor of the motion.

Member (**John DeCramer**) moved, Member (**David Sturrock**) seconded to approve the **NEW** motion 'that the Council adopt RESOLUTION NUMBER 4313, SECOND SERIES, which is the Resolution Approving the Final Plat of Knieff Addition'. Upon a roll call vote being taken, the vote was: Aye: **5** Nay: **0**. The motion **Carried 5 - 0**

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AWARD OF BIDS FOR A 4-WHEEL DRIVE ARTICULATING WHEEL LOADER FOR THE STREET DEPARTMENT:

Bids were received, opened and read on October 10, 2016 for a new 2016 or Current Model 4-Wheel Drive Articulating Wheel Loader for the Street Department. The bids received, opened and read were from:

Schuneman Equipment Co., Marshall, Minnesota

John Deer 324K \$88,382.00

Heavy duty snow pusher 8'x28" with carbon steel edges – 2016-2017 Notch 8' pusher \$2,070.00

1.3 yd general purpose bucket with a bolt on cutting edge – 2016-2017 JD 1.4 yd \$2,618.00

102" snow bucket with bolt on cutting edge – 2016-2017 MDS 102" bucket \$2,150.00

Total bid \$95,220.00

Titan Machinery, Marshall, Minnesota

Case 321F \$76,000.00

Heavy duty snow pusher 8'x28" with carbon steel edges – 2016-2017 Erskine 96" pusher \$2,295.00

1.3 yd general purpose bucket with a bolt on cutting edge – 2016-2017 Case 1.70 yd GP w/BOE included in bid

102" snow bucket with bolt on cutting edge – 2016-2017 WF SB102 \$1,450.00

Total bid \$79,745.00

Ziegler Inc., Marshall, Minnesota

Caterpillar 908M Compact Wheel Loader \$90,230.00

Heavy duty snow pusher 8'x28" with carbon steel edges – 2016 Snow Wolf USP96 \$2,741.00

1.3 yd general purpose bucket with a bolt on cutting edge – 2016 Caterpillar general purpose 1.4 yd. w/BOCE \$2,770.00

102" snow bucket with a bolt on cutting edge – 2016 Virnig MSHV101 \$1,766.00

Total bid \$97,507.00

Member **(Larry Doom)** moved, Member **(David Sturrock)** seconded to approve the **ORIGINAL** motion 'that the Council award the bid for the Compact 4 Wheel Drive Articulating Wheel Loader for the Street Department to Titan Machinery of Marshall, Minnesota in the amount of \$79,745.00, including all attachments'. Upon a roll call vote being taken, the vote was: Aye: **5** Nay: **0**. The motion **Carried 5 - 0**

AUTHORIZE PURCHASE OF SCOREBOARDS FOR THE AMATEUR SPORTS CENTER BALL FIELDS:

Preston Stensrud, Parks Superintendent, indicated the purchase of these scoreboards was included in the 2016 bonding bill. In accordance with the Minnesota Service Cooperative Contract #AEPa IFB #012-H and the Southwest/West Central Service Cooperative, athletic scoreboards have been included in a competitive bidding process and are available for cities to utilize. Installation of these new scoreboards will also require the purchase of I-beams and hiring a contractor to install the I-beams in concrete. The estimated cost for the (8) I-beams is

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\$3,400.00 total. The estimated cost for the installation of the I-beams in concrete is \$4,500.00. Daktronics has provided an estimate of \$27,000 to do complete installation. Preston is comfortable with installation of the scoreboards utilizing local contractors and City staff to mount the boards on the I-beams leading to significant cost savings for the City. The total estimated costs for purchasing and installing the scoreboards is \$45,997.00. The Parks Department will drive to Brookings when the scoreboards are ready to be picked up due to the close proximity of Daktronics. Daktronics had proposed a \$685 delivery fee. City staff would also like to have arches installed on top of all four scoreboards after the installation process is complete. The estimated cost of these arches is \$18,200.00 and would continue to tie together other landmarks within the City of Marshall. This will be brought forward at another Council meeting in the future.

Member (**John DeCramer**) moved, Member (**Larry Doom**) seconded to approve the **ORIGINAL** motion 'that the Council authorizes the purchase of the scoreboards for Amateur Sports Center Ball Fields from Daktronics of Brookings, SD in the amount of \$38,097.00'. Upon a roll call vote being taken, the vote was: Aye: 4 Nay: 1. The motion **Passed 4 – 1** with Bayerkohler voting no.

AWARD BIDS FOR EQUIPMENT FOR THE AMATEUR SPORTS BALLFIELDS:

Bids were received, opened, and read for a new 2016 or 2017 Compact 4-Wheel Drive Articulating Wheel Loader for the Amateur Sports Ballfields from:

Schuneman Equipment Co., Marshall, Minnesota

2016/2017 John Deer 324K \$88,382.00

1.3 cubic yard bucket with bolt on cutting edge - 2016/2017 John Deere 1.4 cubic yard \$2,618.00

96" Sectional snow pusher - Steel 2016/2017 Notch 8' pusher \$2,070.00

Snow blower 7'x36" with hydraulic chute and deflector - 2016/2017 John Deere SB843 \$10,800.00

One (1) set 48" pallet forks heavy duty rail style - 2016/2017 MDS 48" \$1,185.00

Total base bid \$105,055.00 less trade in \$27,500.00

Total bid \$77,555.00

Titan Machinery, Marshall, Minnesota

2016 Case 321FHS \$76,000.00

1.3 cubic yard bucket with bolt on cutting edge - 2016 Case 1.7 yard/734624 included with base bid

96" Sectional snow pusher - 2016 Case LD-8-C \$5,007.00

Snow blower 7'x36" with hydraulic chute and deflector - 2016 Erskine 2014X \$5,096.00

One (1) set 48" pallet forks heavy duty rail style - 2016 Case 734642 included with base bid

Total base bid \$86,103.00 less trade in \$20,250.00

Total bid \$65,853.00

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Ziegler Inc., Marshall, Minnesota

2016 Caterpillar 908M Compact Wheel Loader \$90,230.00

1.3 cubic yard bucket with bolt on cutting edge - 2016 Caterpillar general purpose 1.4 yd.
w/BOCE \$2,770.00

96" Sectional snow pusher - 2016 Snow Wolf USP96 \$2,741.00

Snow blower 7'x36" with hydraulic chute and deflector - 2016 Caterpillar SR321 high
flow \$7,920.00

One (1) set 48" pallet forks heavy duty rail style - 2016 Caterpillar pallet fork, 48 \$1,460.00

Total base bid \$105,121.00 less trade in \$15,000.00

Total bid \$90,121.00

Member (**John DeCramer**) moved, Member (**Larry Doom**) seconded to approve the **ORIGINAL** motion 'that the Council award the bid for a New Compact 4-Wheel Drive Articulating Wheel Loader for the Amateur Sports Ballfields to Titan Machinery of Marshall, Minnesota in the amount of \$65,853.00, including all attachments and trade in'. Upon a roll call vote being taken, the vote was: Aye: 4 Nay: 1. The motion **Passed 4 – 1** with Bayerkohler voting no.

Bids were received, opened and read for a new 2016 or 2017 One-Ton 4-Wheel Drive Truck Chassis for the Amateur Sports Ballfields from:

Lockwood Motors

Marshall, Minnesota

2017 Chevy, 3500 Regular Cab Chassis

Base bid \$39,960.00

Sales tax \$2,597.40

Total bid \$42,557.40

Kruse Buick-GMC, Inc.

Marshall, Minnesota

2017 GMC, Serra 3500 HD

Base bid \$40,721.71

Sales tax \$2,646.91

Total bid \$43,368.62

Midway Ford (state bid)

Roseville, Minnesota

2017 F350 4X4 Regular Cab – 60: CA DRW XL F3H

Base bid \$37,964.00

Sales tax \$2,467.66

License and fee \$114.75

Total bid \$40,546.41

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Bids were received, opened and read for a Dump Box and Snowplow for the One-Ton 4-Wheel Drive Truck Chassis for the Amateur Sports Ballfields from:

Bend Rite Custom Fabrication, Inc. Marshall, Minnesota Crysteel 9' stainless-tipper Dump box \$11,942.00 (installed) Plow with Smart Hitch \$6,518.00 (installed) Total bid \$18,460.00 Deduct \$200.00 for steel mold board	Crysteel Truck Equipment Lake Crystal, Minnesota 9' SS Tipper, LB500DA Hoist Dump box \$11,015.00 Plow with Smart Hitch \$6,565.00 (installed) Total bid \$17,580.00
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Preston Stensrud, Parks Superintendent, indicated that these bids were received on Monday and that an additional State Bid was received on Tuesday for a One-Ton 4-Wheel Drive Truck Chassis and One (1) Dump Box and Plow from:

Nelson Auto Center
Fergus Falls, Minnesota
\$56,559.45

Dennis Simpson, City Attorney, indicated that the City of Marshall can utilize the State Cooperative Purchasing Contracts. Staff indicated that if the bids were rejected local vendors could be provided an opportunity to match the State bid that was received from Nelson Auto Center.

Member (**David Sturrock**) moved, Member (**John DeCramer**) seconded to approve the **NEW** motion 'that the Council reject all bids as submitted for a New One-Ton 4-Wheel Drive Truck Chassis for the Amateur Sports Ballfields and work with local vendors to match the State bid received from Nelson Auto Center, Fergus Falls, Minnesota which includes the Chassis, Dump Box and Snowplow'. Upon a roll call vote being taken, the vote was: Aye: **4** Nay: **1**. The motion **Passed 4 – 1** with Doom voting no.

Member (**Glenn Bayerkohler**) moved, Member (**John DeCramer**) seconded to approve the **NEW** motion 'that the Council reject all bids as submitted for a Dump Box and Snowplow (for New One-Ton 4-Wheel Drive Truck Chassis) for the Amateur Sports Ballfields and work with local vendors to match the State bid received from Nelson Auto Center, Fergus Falls, Minnesota which includes the Chassis, Dump Box and Snowplow'. Upon a roll call vote being taken, the vote was: Aye: **5** Nay: **0**. The motion **Carried 5 - 0**

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Bids were received, opened and read for a new 2016 or 2017 Track Skid Loader for the Southwest Minnesota Regional Amateur Sports Center. Attachments included are 72” heavy duty low profile bucket with bolt on cutting edge and a 102” snow bucket with bolt on cutting edge.

Preston Stensrud, indicated that upon review of the warranty’s Swede’s Service Center provided a 1-year warranty and Titan Machinery provided a 3-year warranty.

Schuneman Equipment Company	Swede’s Service Center
Marshall, Minnesota	Minneota, Minnesota
2016-2017 John Deer 323E	2017 (if built in later November) Bobcat T630
Base bid \$52,790.00	Base bid \$47,192.19
72” bucket \$1,231.00	72” bucket \$957.60
102” snow bucket \$2,150.00	102” snow bucket \$1,527.50
Total bid \$56,171.00	Total bid \$49,677.29

Titan Machinery	Ziegler, Inc.
Marshall, Minnesota	Marshall, Minnesota
2017 Case TR310	2016 Caterpillar 259D
Base bid \$49,550.00	Base bid \$54,170.00
72” bucket included with base bid	72” bucket \$1,590.00
102” snow bucket \$1,450.00	102” snow bucket \$1,766.00
Total bid \$51,000.00	Total bid \$57,526.00

Preston Stensrud, Parks Superintendent indicated that he contacted Swede’s Service Center and they were willing to match the three year warranty. Council Member Doom indicated that changes to the bids should not be allowed, especially if they add value.

Member **(Larry Doom)** moved, Member **(John DeCramer)** seconded to approve the **NEW** motion 'that the Council award the bid for a New Track Skid loader for the Amateur Sports Ballfields to Titan in the amount of \$51,000, including all attachments and a three year warranty'. Upon a roll call vote being taken, the vote was: Aye: **4** Nay: **1**. The motion **Passed 4 - 1** with Bayerkohler voting no.

Bids were received, opened and read for a new 2016 or 2017 4-Wheel Drive 72” Commercial Mower with Cab, 60” Articulating Broom, and 48” Snow Blower for the Southwest Minnesota Regional Amateur Sports Center from:

Kesteloot Enterprises, Inc.	MTI Distributing, Inc.
Marshall, Minnesota	Brooklyn Center, Minnesota
Kubota F3990	Toro Grounds Master 3280, 30345 4 WD
Mower and cab \$32,423.00	Mower and cab \$28,763.92

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48" snow blower included
60" articulating broom included
Total bid \$32,423.00

50" snow blower \$5,481.00
60" articulating broom \$5,540.40
Total bid \$39,785.32

Schuneman Equipment Co.
Marshall, Minnesota
John Deere 1580
Mower and cab \$30,200.00
48" snow blower \$4,100.00
60" articulating broom \$3,800.00
Total bid \$38,100.00

Turf Works
Egan, Minnesota
Jacobsen Turf Cat 069180-4212
Mower and cab \$26,402.50
48" snow blower \$8,716.25
60" articulating broom \$5,937.50
Hose kit for broom/blower \$356.25
Total bid \$41,412.50

Member (**John DeCramer**) moved, Member (**Larry Doom**) seconded to approve the **NEW** motion 'that the Council award the bid for the a new 4-Wheel Drive 72" Commercial Mower with Cab, 60" Articulating Broom and 48" Snow Blower for the Amateur Sports Ballfields to Kesteloot Enterprises, Inc. of Marshall, Minnesota in the amount of \$32,423.00, including all attachments'. Upon a roll call vote being taken, the vote was: Aye: 4 Nay: 1. The motion **Passed**. 4 - 1 with Bayerkohler voting no.

Bids were received, opened and read for a new 2016 or 2017 Utility Vehicle for the Amateur Sports Ballfields from:

Action Sports
Marshall, Minnesota
Polaris Ranger XP 900 EPS
\$13,338.00

Action Sports
Marshall, Minnesota
Polaris Diesel HST
\$14,260.00

Kesteloot Enterprises, Inc.
Marshall, Minnesota
Kubota RTVX900WL-H
\$12,700.00

Schuneman Equipment Company
Marshall, Minnesota
John Deere HPX Diesel
\$10,800.00

Swede's Service Center
Minneota, Minnesota
Bobcat 3400
\$14,200.00

Turf Works
Egan, Minnesota
Jacobsen Truckster HX
\$13,402.00

Member (**Larry Doom**) moved, Member (**John DeCramer**) seconded to approve the **NEW** motion 'that the Council award the bid for the a new Utility Vehicle for the Amateur Sports Ballfields to Schuneman Equipment Co. of Marshall, Minnesota in the amount of \$10,800.00,

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of \$10,800.00, including all attachments'. Upon a roll call vote being taken, the vote was: Aye: 4 Nay: 1. The motion **Passed 4 – 1** with Bayerkohler voting no.

Bids were received, opened and read for a new 2016 or 2017 Ball Diamond Dragging Machine for the Amateur Sports Ballfields from:

MTI Distributing Inc. Brooklyn Center, Minnesota Toro Sand Pro 3040, Model 08703 \$17,047.60 (does not meet specs)	Turf Works Egan, Minnesota Smithco Sand-Star II (45-002) \$17,511.00 (does not include Municipal Discount)
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Turf Works
Egan, Minnesota
Smithco Sand Star II
\$16,029.20 (with Municipal Discount)

Member (**Larry Doom**) moved, Member (**John DeCramer**) seconded to approve the **NEW** motion 'that the Council award the bid for the a New Ball Diamond Dragging Machine for the Amateur Sports Ballfields to Turfwerk's of Eagan, Minnesota in the amount of \$16,029.20'. Upon a roll call vote being taken, the vote was: Aye: 4 Nay: 1. The motion **Passed 4 - 1** with Bayerkohler voting no.

APPROVAL OF CONSENT AGENDA:

Member (**Larry Doom**) moved, Member (**Glenn Bayerkohler**) seconded to approve the **ORIGINAL** motion 'the following consent agenda items be approved as presented'. Upon a roll call vote being taken, the vote was: Aye: 5 Nay: 0. The motion **Carried 5 - 0**

The approval of the License Agreement at a one-time fee of \$2,500 which includes training and set up and approval of the Service Contract at an annual fee of \$962.50 once the website goes live for public viewing with Vanguard Appraisals, Inc.

The approval of a Temporary On-Sale Liquor License for Avera Marshall to use at 300 South Bruce Street, Marshall, Minnesota on January 21, 2017.

The approval of a Temporary On-Sale Liquor License for the Lyon County Historical Society to use at 301 West Lyon Street, Marshall, Minnesota on October 20, 2016.

That a bullet proof vest be declared surplus property by the City of Marshall and agree that it could be sold to Todd Ellis for \$50.00.

That the following bills and project payments be authorized for payment, ACCOUNTS PAYABLE, Voucher No. 100430 through 100792.

CONSIDER AUTHORIZATION TO DECLARE VEHICLES AS SURPLUS PROPERTY FOR THE POLICE DEPARTMENT:

Council Member Sturrock requested that this item be removed from the consent agenda. He questioned how often the squad cars are retired. Rob Yant, Director of Public Safety, indicated that they usually replace 2 squad cars per year.

Member (**David Sturrock**) moved, Member (**John DeCramer**) seconded to approve the **ORIGINAL** motion 'that the 2013 Chevy Impala Vehicle No. 1304 and the 2013 Chevy Impala Vehicle No. 1305 be declared as surplus property by the City of Marshall'. Upon a roll call vote being taken, the vote was: Aye: **5** Nay: **0**. The motion **Carried 5 - 0**

CITY ATTORNEY RECOMMENDS RESCINDING RESOLUTION NO. 4310, SECOND SERIES, REGARDING ADOPTING AN ASSESSMENT FOR THE REMOVAL OF HAZARDOUS BUILDING; AND APPROVING RESOLUTION ADOPTING ASSESSMENT FOR REMOVAL OF HAZARDOUS BUILDING, BUT WITH INTEREST ACCRUING ON UNPAID PRINCIPAL AT A RATE OF 8% PER ANNUM:

Dennis Simpson, City Attorney, indicated that the City of Marshall entered into a consent agreement with property owner Paul Drown regarding the removal of a hazardous building owned by Mr. Drown located at 104 S. 10th Street. The agreement indicated that the City would pay for the hazardous building removal in an amount not to exceed \$5,000. The consent agreement was silent to interest rate to be charged but did indicate that the amount to be assessed, if not paid in full, would be paid over a period of time not to exceed 5 years. The agreement further indicated that the amount would be assessed pursuant to Minnesota Statutes Chapter 463, hazardous building statute. City Council, on September 27, 2016, did approve Resolution No. 4310, Second Series, authorizing the assessment against the property in the principal amount of \$4,152. This resolution indicated that interest would accrue against unpaid principal at a rate of 3.31% per annum. Council Member Bayerkohler asked that the City Attorney review the statute regarding the interest rate to be accrued against the unpaid principal. Dennis indicated that he reviewed Minnesota Statutes §463.151 regarding the assessment process for collection of expenses incurred for the demolition of hazardous building and concurs with Council Member Bayerkohler's assessment that interest on assessments pursuant to Chapter 463 accrue interest at the statutory rate of 8% per annum. Assessments pursuant to the hazardous building Chapter 463 gives the City the authority to set the length of assessment (not to exceed 5 years) but does not give the City the discretion to establish the interest rate to accrue against unpaid principal. Therefore, it is the City Attorney's recommendation that Resolution No. 4310, Second Series needs to be rescinded and a subsequent resolution must be approved authorizing interest on unpaid principal at a rate of 8% per annum as required by Minnesota Statutes §463.151.

Member (**Glenn Bayerkohler**) moved, Member (**Larry Doom**) seconded to approve the **SUBSTITUTE** motion 'that Resolution Number 4310, Second Series, Adopting the Assessment for Removal of Hazardous Building be rescinded'. Upon a roll call vote being taken, the vote was: Aye: **5** Nay: **0**. The motion **Carried 5 - 0**

Member (**Larry Doom**) moved, Member (**David Sturrock**) seconded to approve the **SUBSTITUTE** motion 'the adoption of RESOLUTION NUMBER 4314, SECOND SERIES,

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Adopting an Assessment for the Removal of Hazardous Building located at 104 South 10th Street with interest accruing on unpaid principal at a rate of 8% per annum for a period of 5 years'. Upon a roll call vote being taken, the vote was: Aye: 5 Nay: 0. The motion **Carried 5 - 0**

CITY ATTORNEY RECOMMENDS THAT CITY COUNCIL RESOLUTION NO. 4311, SECOND SERIES, AS ADOPTED ON SEPTEMBER 27, 2016 BE RESCINDED, AND THE CITY COUNCIL SUBSEQUENTLY ADOPT RESOLUTION DECLARING COSTS TO BE ASSESSED FOR ICE AND SNOW REMOVAL AND FOR WEED ELIMINATION AND ALSO ADOPTION OF A RESOLUTION FOR HEARING ON PROPOSED ASSESSMENT BE ADOPTED:

Dennis Simpson, City Attorney, indicated that at the City Council meeting on Tuesday, September 27, 2016, a resolution was adopted by City Council declaring costs to be assessed by the City for ice and snow removal on private property and also for grass and weed mowing on private properties. At that meeting, Council Member Bayerkohler raised an issue as to whether or not the City has the authority to levy special assessments without full compliance of the special assessment process as outlined in Minnesota Statutes Chapter 429. Council has asked that the City Attorney review statutes and legal precedence regarding this matter. Mr. Simpson has completed that review and is providing the following information. Minnesota Statutes Chapter 429.101 does set forth the various types of City charges that can be assessed against property taxes pursuant to the special assessment process. Minnesota Statutes §429.101 subd. 1(1) indicates that snow, ice, or rubbish removal from sidewalks may be assessed against property owners. §429.101 subd. 1(2) indicates that “weed elimination from streets or private property” may be assessed against property owners. The procedure by which those types of costs incurred by the City may be assessed against private property owners is outlined in Minnesota Statute §429.061 and procedures further outlined in a Minnesota Court of Appeals decision Sykes v. Rochester City Council Court of Appeals case A13-2421. Dennis had previously reviewed that case with City Engineer Glenn Olson, but had failed to discuss that case with City Clerk Jane DeVries and Finance Director Karla Drown. City Clerk DeVries and Finance Director Drown had followed the procedure previously used by the City of Marshall regarding assessment of City costs for snow and ice removal and weed elimination as previously completed. However, the Sykes decision does require full compliance with §429.061, when levying those costs as assessments against private property. §429.061 does require a public hearing to be held before those amounts can be assessed. Therefore, it is the City Attorney’s recommendation that Resolution No. 4311, Second Series as previously passed by City Council be rescinded. Subsequently, the City Council does need to pass a resolution declaring the costs to be assessed as required by Minnesota Statute §429.061 and further that a second resolution be passed calling for a public hearing regarding those costs to be assessed

Member (**David Sturrock**) moved, Member (**Larry Doom**) seconded to approve the **ORIGINAL** motion 'that Resolution No. 4311, Second Series, as adopted on September 27, 2016 be rescinded'. Upon a roll call vote being taken, the vote was: Aye: 5 Nay: 0. The motion **Carried 5 - 0**

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Member (**Larry Doom**) moved, Member (**John DeCramer**) seconded to approve the **NEW** motion 'the adoption of RESOLUTION NUMBER 4315, SECOND SERIES, which is a resolution Declaring Costs to be Assessed for Ice and Snow Removal and for Weed Elimination'. Upon a roll call vote being taken, the vote was: Aye: **5** Nay: **0**. The motion **Carried 5 - 0**

Member (**Larry Doom**) moved, Member (**John DeCramer**) seconded to approve the **NEW** motion 'the adoption of RESOLUTION NUMBER 4316, SECOND SERIES, which is a resolution Calling for A Public Hearing on the Proposed Assessment for Ice and Snow Removal and for Weed Elimination'. The public hearing will be held on November 1, 2016. Upon a roll call vote being taken, the vote was: Aye: **5** Nay: **0**. The motion **Carried 5 - 0**

CONSIDER RESOLUTION APPROVING THE FINAL PLAT OF COMMERCE INDUSTRIAL PARK:

The preliminary plat of Marshall Commerce Park was approved by City Council on November 22, 2011. Thereafter development of that preliminary plat stalled and the surrounding area did develop. It appears that now is the present time to continue with the platting and subsequent development of Marshall Commerce Park. On July 12, 2016, the extension of the effective time period for the preliminary plat was extended and the Marshall City Council did approve the final plat of the property now called Commerce Industrial Park. Approval on July 12, 2016 was valid for a 90 day period of time, or upon completion of all contingencies and approvals. Subsequent review by City Attorney and the Order of Annexation from the State of Minnesota have been completed. In addition, the City did approve by ordinance, the renaming of the street from 240th Avenue to Pacific Avenue. All contingencies have now been completed. The Lyon County Recorder is recommending that a final resolution once again be obtained authorizing the approval of the final plat which would be valid for 90 days from the date of execution. Therefore, resolution of the final plat has been prepared and is recommended that subsequent plat be approved and filed.

Member (**Larry Doom**) moved, Member (**John DeCramer**) seconded to approve the **ORIGINAL** motion 'the adoption of RESOLUTION NUMBER 4317, SECOND SERIES, which is a resolution Approving the Final Plat of Commerce Industrial Park'. Upon a roll call vote being taken, the vote was: Aye: **5** Nay: **0**. The motion **Carried 5 - 0**

REQUEST TO USE PUBLIC IMPROVEMENT FUNDS FOR NEW SIDEWALK THROUGH FREEDOM PARK:

Preston, Stensrud, Parks Superintendent, indicated that Freedom Park does not have any sidewalks/bike trails to assist users in navigating through the Park. Staff has discussed this for the last couple of years since the addition of the new playground equipment at Freedom Park. Karla Drown, Finance Director, has suggested to use Public Improvement Funds for this project. City staff will install the sidewalk through the park with the entire project being completed this fall 2016 or early next spring 2017. The total estimated cost to install sidewalk through Freedom Park is \$10,080.00. The Parks Superintendent has worked with Buffalo Ridge Concrete on this project and Buffalo Ridge Concrete has agreed to give a donation of \$28/cubic yard of concrete. This donation brings this part of the project to a new estimated cost of \$7,200.00. Installation of this new sidewalk would also allow disabled individuals access to the restrooms and shelter

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house - something not currently offered. At the same time as this installation through the Park, City Staff recommends also making connections to the existing sidewalk along South 4th Street as well as the existing sidewalk along 2nd Street. These costs would be funded through the Sidewalk Replacement program for a total estimated cost of \$5,488.00. Buffalo Ridge Concrete will again participate in a donation of \$28/cubic yard of concrete for a new estimated cost of \$3,920.00. Preston Stensrud, Parks Superintendent, would like to thank Buffalo Ridge Concrete for their donation to this project.

Member (**Larry Doom**) moved, Member (**David Sturrock**) seconded to approve the **ORIGINAL** motion 'the approval to install new sidewalks at Freedom Park in the amount of \$7,200.00 and to include connections to existing sidewalks in the neighborhood in the amount of \$3,920.00'. Buffalo Ridge Concrete has agreed to give a donation of \$28/cubic yard of concrete. Upon a roll call vote being taken, the vote was: Aye: **5** Nay: **0**. The motion **Carried 5 - 0**

CONSIDER LG220 APPLICATION FOR EXEMPT PERMIT FOR SOUTHWEST MINNESOTA STATE UNIVERSITY FOUNDATION FOR NOVEMBER 30, 2016:

Member (**John DeCramer**) moved, Member (**Larry Doom**) seconded to approve the **ORIGINAL** motion 'BE IT RESOLVED, that the City Council hereby (1) grants local unit of government approval to Southwest Minnesota State University Foundation, to hold a raffle on November 30, 2016, at SMSU, 1501 State Street, Marshall, Minnesota, (2) acknowledges the receipt of LG220 Application of Exempt Permit, (3) waives the 30-day waiting period, and (4) authorizes and directs the appropriate city personnel to complete and sign the LG220 Application for Exempt Permit on behalf of the City of Marshall'. Upon a roll call vote being taken, the vote was: Aye: **4** Nay: **0** Abstain: **1**. The motion **Passed 4 – 0 – 1** with Bayerkohler abstaining.

COMMISSION/BOARD LIAISON REPORTS:

Byrnes Regional Development Commission will meet on October 13th.

Doom Southwest Minnesota Amateur Sports Center – working on the website for scheduling; the first Girls Varsity Hockey Game is scheduled for November 18th; the concession equipment has arrived and the concession stand will be named the "Hangar".

Bayerkohler Planning Commission will meet on October 12; Public Housing Commission met on October 10th.

DeCramer Utilities Commission held a strategic meeting last week. They discussed the excess of backwash of salt from water softeners.

Sturrock Airport Commission will meet on October 31st. Police Advisory Board will meet in early December.

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COUNCILMEMBER INDIVIDUAL ITEMS:

Council Member Sturrock attended an event on Tuesday, October 4th at the Merit Center at which time MN/West was awarded a grant from AT&T to fund a Safety Training Program. DeCramer asked about the process for refunding shelter permit fees. Mayor Byrnes indicated that he along with Craig Schafer will be out of town starting on Friday.

CITY ADMINISTRATOR:

Nick Johnson, City Administrator, indicated that the budget schedule has been updated; LEL Arbitration will be held on October 12th; Open House at the Fire House will be on October 13th; and there will be a candidate forum at SMSU on October 13th.

DIRECTOR OF PUBLIC WORKS:

Glenn Olson, Director of Public Works/City Engineer, provided updates on the parking lot and sidewalks at the Red BaronTM Arena and Expo. Staff continues to work on the bike bath project; bids for Brau Brothers Area Storm Sewer Project Z54 will be received on October 18th and work continues at Independence Park to remove the sediment from the pond.

CITY ATTORNEY:

Dennis Simpson, City Attorney, continues to work on contracts for the City.

PENDING ITEMS:

There were no questions on the pending items.


INFORMATION:

There were no questions on the information items.

UPCOMING MEETINGS


There were no questions on the upcoming meeting list.

Member (**David Sturrock**) moved, Member (**John DeCramer**) seconded to approve the **ORIGINAL** motion 'adjourn meeting'. Upon a roll call vote being taken, the vote was: Aye: 5 Nay: 0. The motion **Carried 5 - 0**



Mayor

ATTEST:



City Clerk