

REGULAR MEETING – NOVEMBER 1, 2016

The regular meeting of the Common Council of the City of Marshall was held on November 1, 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: Craig Schafer, Larry Doom, Glenn Bayerkohler, John DeCramer, David Sturrock and Ellayne Conyers. Absent: none. Staff present included: Nick Johnson, City Administrator; Dennis Simpson, City Attorney; Glenn Olson, Director of Public Works/City Engineer; Karla Drown, Finance Director; Scott VanDerMillen, Director of Community Services; Ilya Gutman, Plan Examiner, Barb Lipinski, Adult Community Center Coordinator and Jane DeVries, City Clerk.

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 with the deletion of item number 15, which is to consider the sponsorship agreement between the City of Marshall and Reinhart Food Service, LLC, regarding the Red Baron™ Arena & Expo.

ICE AND SNOW REMOVAL AND WEED ELIMINATION FROM PRIVATE PROPERTY IN THE CITY OF MARSHALL; 1. PUBLIC HEARING ON ASSESSMENT; 2. CONSIDER RESOLUTION ADOPTING ASSESSMENT:

This was the date and time set for a public hearing on the ice and snow removal and for weed elimination from private property. Dennis Simpson, City Attorney, indicated that the City shall conduct public hearing to consider approving of special assessments to be levied against City property to allow for collection of costs incurred by the City to remove ice and snow and to mow lawns-eliminate weeds on private property. City Attorney recommends adoption of the special assessment after closing the public hearing. 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. 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 be held before those amounts can be assessed. The City Council has previously passed a resolution declaring the costs to be assessed as required by Minnesota Statute §429.061 and further that a second resolution has been passed calling for a public hearing regarding those costs to be assessed. Notice of public hearing has been sent to property owners and has been published in the Marshall Independent as required by Statute.

There were no concerns or comments at the public hearing.

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Member (**Craig Schafer**) moved, Member (**John DeCramer**) seconded to approve the **ORIGINAL** motion 'that the Council close the public hearing on assessments for ice and snow removal and for weed elimination from private property in the City of Marshall'. Upon a roll call vote being taken, the vote was: Aye: 7 Nay: 0. The motion **Carried 7 - 0**

Member (**Larry Doom**) moved, Member (**Craig Schafer**) seconded to approve the **NEW** motion 'that the Council adopt RESOLUTION NUMBER 4319, SECOND SERIES, which is the "Resolution Adopting Assessment" for ice and snow removal and for weed elimination from private property in the City of Marshall'. Upon a roll call vote being taken, the vote was: Aye: 7 Nay: 0. The motion **Carried 7 - 0**

APPROVAL OF CONSENT AGENDA:

Member (**Craig Schafer**) moved, Member (**John DeCramer**) 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: 7 Nay: 0. The motion **Carried 7 - 0**

Authorization be granted to the Department of Public Safety to dispose of three (3) vehicles considered as surplus. These vehicles will be auctioned on-line at the state site or will be taken to Alter Metal Recycling for disposal.

The adoption of RESOLUTION NUMBER 4320, SECOND SERIES, which is a resolution Declaring Costs to be Assessed for Removal of a Diseased Tree on Private Property and Ordering Preparation of Proposed Assessments.

The adoption of RESOLUTION NUMBER 4321, SECOND SERIES, which is a resolution Calling for a Public Hearing regarding Costs to be Assessed for Removal of a Diseased Tree on Private Property and Ordering Preparation of Proposed Assessments.

That the following bills and project payments be authorized for payment, Accounts Payable, Voucher No. 100430 through 101079.

REQUEST FOR APPROVAL OF SPIRIT OF THE COMMUNITY SCULPTURE (SOTC) AGREEMENT WITH ARTIST RANDY WALKER:

Scott VanDerMillen, Community Services Director, indicated that Randy Walker was selected by the Spirit of Sculpture Committee in June 2016 to provide the ARTWORK to be located in the Avera Plaza at the Red Baron™ Arena & Expo. During the transition of directors at MCS, Artist Walker presented a few questions regarding the foundation structure to be funded by the City in an amount not to exceed \$25,000 (paragraph 2.1, page 4). First, the City will provide footings, foundation, and other expenses, landscaping, electrical or drainage, up to an amount of \$25,000. The expenditure by the City will be directed by the Artist so that the facility can receive the best quality product for the investment. Secondly, the City and Artist will work together to receive the best value for the foundation, etc. whether that is hired by the City or if it is simply under the direction of the Artist. Finally, the warranty period was reduced from the original seven years to the now indicated three years. The market standard is one-year based on similar projects. Artist Walker and the City negotiated and agreed to the reduced warranty period.

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Member (**John DeCramer**) moved, Member (**Ellayne Conyers**) seconded to approve the **ORIGINAL** motion 'that the proper personnel be authorized to enter into an agreement for the Spirit of the Community Sculpture Agreement with Randy Walker'. Upon a roll call vote being taken, the vote was: Aye: 6 Nay: 1. The motion **Passed 6 - 1** with Bayerkohler voting no.

APPROVAL OF SENIOR CITIZEN'S COMMISSION YEARLY CONTRACT WITH BOTH MASC, INC. (MARSHALL AREA SENIOR CITIZENS, INC.) AND LSS (LUTHERAN SOCIAL SERVICES - SENIOR DINING):

Barb Lipinski, Adult Community Center Coordinator, reviewed the agreements with Lutheran Social Services as they provide meals for the Adult Community Center and the Marshall Area Senior Citizen's Commission for their operation for the facility.

Member (**Larry Doom**) moved, Member (**John DeCramer**) seconded to approve the **ORIGINAL** motion 'Approval of the agreement with Marshall Area Senior Citizens, Inc., for the Adult Community Center Rental from January 1, 2017 through December 31, 2017 at a rate of \$550.00 per month; and the approval of the agreement with Lutheran Social Services for the Senior Nutrition Program from January 1, 2017 through December 31, 2017 at the rate of 18 cents per meal'. Upon a roll call vote being taken, the vote was: Aye: 7 Nay: 0. The motion **Carried 7 - 0**

REQUEST FOR APPROVAL OF ADULT EDUCATION CENTER (AKA ABE) LEASE AGREEMENT WITH LYON COUNTY:

Scott VanDerMillen, Community Services Director, reviewed the Adult Education Center (aka ABE) Lease with Lyon County. Lyon County has proposed a one year lease (July 1, 2016 – June 30, 2017) for the current space at the courthouse. Lyon County is willing to commit only to a one-year lease, with a 4-year renewal. The renewal lease rate has not yet been discussed. The Adult Basic Education program has been successfully located in the courthouse for a number of years. ABE is funded with both State and local funding and Marshall ISD #413 is the fiscal host. The ABE program is structured through the Community Services Department of the City. With the construction/remodeling project going on at the courthouse, a one-year lease works well for both parties. While that project does not impact the ABE space, it is taking up a lot of the time for Lyon County staff and as such, Lyon County is willing to grant a one-year lease. The original lease proposal was at a rate of \$16.25 per square foot. The ultimate rental rate was negotiated by Bruce Lamprecht of the school district and it was agreed upon that the reasonable rent would be \$14.50 per square foot for the one-year lease.

Member (**John DeCramer**) moved, Member (**Ellayne Conyers**) seconded to approve the **ORIGINAL** motion 'Approval of the Adult Education Center (ABE) Lease Agreement with Lyon County for July 1, 2016 through June 30, 2017 at an annual rate of \$25,415.50'. Upon a roll call vote being taken, the vote was: Aye: 7 Nay: 0. The motion **Carried 7 - 0**

THIS IS A REQUEST BY SCHWAN'S SHARED SERVICES, LLC TO REZONE PROPERTY FROM R-4 HIGHER DENSITY MULTIPLE FAMILY RESIDENCE DISTRICT TO B-2 CENTRAL BUSINESS DISTRICT AT 114 SOUTH 5TH STREET:

Glenn Olson, Director of Public Works/City Engineer, reviewed the request from Schwan's Shared Services, LLC to rezone property from R-4 Higher Density Multiple Family Residence District to B-2 Central Business District at 114 South 5th Street. Currently, the lot contains no buildings and about half of it is paved and another quarter is graveled. There used to be two houses there which have been recently taken down. The owner intends to expand the gravel parking lot to allow for additional parking for beverage plant staff which is located on adjacent lot. The Beverage Plant has currently enough parking but the corner parking lot used by its employees may be leased to Lyon County and/or Turkey Valley. The lot is currently zoned R-4 Higher Density Multiple Family Residence District which does not allow automobile parking as a permitted use. Considering that there are no buildings on the lot and it is adjacent to a B 2 Central Business District, it is reasonable to rezone this property to B-2 Central Business District which does allow automobile parking as a permitted use because parking is short in general in that area.

Member (**Larry Doom**) moved, Member (**Craig Schafer**) seconded to approve the **ORIGINAL** motion 'the adoption of ORDINANCE NUMBER 715, SECOND SERIES, which is an ordinance rezoning 114 South 5th Street from R-4 Higher Density Multiple Family Residence District to B-2 Central Business District'. Upon a roll call vote being taken, the vote was: Aye: 7 Nay: 0. The motion **Carried. 7 - 0**

THIS IS A REQUEST BY SCHWAN'S SHARED SERVICES, LLC FOR A VARIANCE ADJUSTMENT PERMIT TO REDUCE THE LANDSCAPING REQUIREMENTS FOR PROPERTY AT 114 SOUTH 5TH STREET:

Glenn Olson, Director of Public Works/City Engineer, reviewed the request from Schwan's Shared Services, LLC for a Variance Adjustment Permit to reduce the landscaping requirements for property at 114 South 5th Street. Currently, the lot contains no buildings and about half of it is paved. There used to be two houses there which have been recently taken down. The owner intends to expand the parking lot to allow for additional parking for Beverage Plant staff which is located on adjacent lot. The Beverage Plant currently has enough parking but the corner parking lot used by its employees may be leased to the County and/or Turkey Valley Plant. The previous request was for rezoning of this lot to B-2 Central Business District which permits automobile parking lots. Section 86-247 Landscaping requires that 30% of the properties located in business districts is landscaped with half of the landscaped area being grass. Additionally, the Ordinance requires planting 8 trees based on the lot area. Considering shortage of parking in this area, it makes sense to reduce the landscaping requirements.

Member (**Craig Schafer**) moved, Member (**David Sturrock**) seconded to approve the **ORIGINAL** motion 'that the Council approve a Variance Adjustment Permit for 114 South 5th Street to reduce landscaping requirements with the following conditions: 1) That the regulations, standards and requirements as set forth in the City Code and as pertains to the class of district in which such premises are located shall be conformed with. 2) That the City reserves the right to revoke the Variance Adjustment Permit in the event that any person has breached the conditions contained in this permit provided first, that the City serve the person with written notice

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specifying items of any default, and allow the applicant a reasonable time in which to cure any such default. 3) That the conditions contained in this permit shall be binding upon the successors and assigns of the applicant. 4) Provide a 10 foot wide green area along South 5th Street. 5) Provide a 10 foot wide green area and plant a buffer planting screen along the northeast property line. 6) All additional parking shall be hard surfaced'. Upon a roll call vote being taken, the vote was: Aye: 7 Nay: 0. The motion **Carried 7 - 0**

CONSIDER AUTHORIZATION FOR RENTAL AGREEMENT BETWEEN THE CITY OF MOORHEAD AND THE CITY OF MARSHALL FOR THE HAZMAT TRAINING TRAILER:

This is the fourth or fifth year that the CAT (Chemical Assessment Team) has rented the state team's training trailer. The trailer has training props specific to the team's response but would be too expensive for each of the teams to buy. So the trailer is shared among the 11 CAT teams and provides equipment to help enhance the hands on training needed for the team to retain its proficiency. The contract covers the assumption of liability for the trailer while in the City of Marshall's possession and the cost for transporting the trailer to and from Marshall.

Member (**Larry Doom**) moved, Member (**John DeCramer**) seconded to approve the **ORIGINAL** motion 'that the proper City personnel be authorized to enter into a rental agreement with the City of Moorhead for the Southwest Minnesota Chemical Assessment Team (SWMN CAT) to use their training trailer for team training'. Upon a roll call vote being taken, the vote was: Aye: 7 Nay: 0. The motion **Carried 7 - 0**

CONSIDER PROFESSIONAL SERVICES AGREEMENT FOR COMMERCE PARK STORMWATER STUDY AND MICHIGAN ROAD STREET AND UTILITY DESIGN.

Glenn Olson, Director of Public Works/City Engineer, indicated that the City is in the process of developing a portion of the Commerce Industrial Park (formerly known as the DeRuyck site). The current industrial site has been substantially developed and does not have significant developed areas to allow major industrial users to construct new facilities. The EDA is in the process of developing a grant request for the partial development of the Commerce Industrial Park, including utility infrastructure (watermain, sanitary sewer main, and storm sewer system), roadway development, and site grading to allow a portion of the Commerce Industrial Park to be "shovel ready". The timing on the next round of DEED grants has indicated that preliminary plans should be available as soon as possible as the funding is based upon money availability within the State program. The State has indicated the funds are available on a first-come, first-serve basis but must include complete plans and specifications prior to consideration. In order to develop complete plans and specifications in the least amount of time and address the complex surface water issues at the site, City staff is not available to complete the project plans in a timeline necessary for spring 2017 construction. Another consideration for hiring a consultant is there is a significant question as to whether the site is capable of developing a storm water system using gravity only or whether or not a pump station will be necessary. The consultant-designed plans will include an evaluation of both alternatives to define the most cost-effective method. Bollig Engineering from Willmar, Minnesota, was also given the opportunity to provide a proposal but because of the timeline, they were not able to submit a proposal for this project. Upon review of the Bolton & Menk proposal it was found to be extremely cost-effective as this firm has been intimately involved with many of the City's stormwater design issues. The

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proposed agreement from Bolton & Menk has been forwarded to the City Attorney for his review.

Member (**Craig Schafer**) moved, Member (**Larry Doom**) seconded to approve the **ORIGINAL** motion 'that the proper City personnel be authorized to enter into a Professional Services Agreement for Commerce Park Stormwater Study and Michigan Road Street And Utility Design with Bolton & Menk, Inc. of North Mankato, Minnesota in the amount not to exceed \$50,000.00'. Upon a roll call vote being taken, the vote was: Aye: 7 Nay: 0. The motion **Carried 7 - 0**

APPROVAL OF APPOINTMENTS TO VARIOUS BOARDS AND COMMISSIONS:

Per the recommendation of Mayor Byrnes, Member (**Larry Doom**) moved, Member (**Craig Schafer**) seconded to approve the **ORIGINAL** motion 'approval of appointments to the various Boards and Commissions'. Upon a roll call vote being taken, the vote was: Aye: 7 Nay: 0. The motion **Carried 7 - 0**

Library Board – Bill Cole be reappointed to a 3-year term to expire on December 31, 2019

Convention & Visitors Board – Kelly Loft be appointed to a 3-year term to expire on December 31, 2019

Community Services Advisory Board – Renee Suby be appointed to a 3-year term to expire on February 28, 2020

COMMISSION/BOARD LIAISON REPORTS:

Byrnes No report.

Schafer No report.

Doom No report.

Bayerkohler No report.

DeCramer No report.

Sturrock Airport Commission met on October 31st; Police Advisory Board will meet on November 2nd.

Conyers No report.

COUNCILMEMBER INDIVIDUAL ITEMS:

Council member DeCramer provided an update on the grant that was awarded for five homes in Marshall from the Minnesota Housing Finance Agency.

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CITY ADMINISTRATOR:

Nick Johnson, City Administrator, reminded the council of work sessions that will be held on November 15th and November 22nd. He also indicated that the Legislative and Ordinance Committee met to review part-time employees being allowed to serve on boards and commissions.

DIRECTOR OF PUBLIC WORKS:

Glenn Olson, Director of Public Works/City Engineer, indicated that the Airport Commission discussed the number of flights, type of aircraft that use the airport and the availability of the airport for other type of uses.

CITY ATTORNEY:

Dennis Simpson, City Attorney, met with Mary Maertens, CEO of Marshall Avera to review the MOU to fund an additional police officer. He is also working on sponsorship agreements; complaints on how residents maintain their property; the sale of lots in Parkway Addition. Staff will be meeting on Monday to review policies and procedures for the Arena.

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 (**Larry Doom**) moved, Member (**David Sturrock**) seconded to approve the **ORIGINAL** motion 'adjourn meeting'. Upon a roll call vote being taken, the vote was: Aye: 7
Nay: 0. The motion **Carried 7 - 0**



Mayor

ATTEST:



City Clerk