

AGENDA
REGULAR MEETING DES MOINES CITY COUNCIL
February 9, 2006 - 7:30 p.m.

CALL TO ORDER - Mayor Sheckler

PLEDGE OF ALLEGIANCE

ROLL CALL

CORRESPONDENCE

COMMENTS FROM THE PUBLIC: At this time you are invited to comment on items that you wish to bring to Council's attention. Please sign in prior to the meeting and limit your comments to three minutes or less.

BOARD & COMMITTEE REPORTS

PRESIDING OFFICER'S REPORT

COUNCILMEMBER COMMENTS

ADMINISTRATION REPORTS

Highline School District Bonds, Matt Pina

CONSENT CALENDAR*

1. Motion is to approve the regular minutes of December 8, 22 and 29, 2005, and January 12, 2006.
2. Findings: Vouchers audited and certified by the auditing officer as required by RCW 42.24.080, and those expense reimbursement claims certified as required by RCW 42.24.090, have been recorded on a listing which has been made available to the City Council.

Motion: As of this date the Des Moines City Council, by unanimous vote, does approve for payment those vouchers and payroll transfers included in the above list and further described as follows:

Claim checks #102698 through #102906 & electronic fund transfers in the total amount of \$687,481.60
Payroll fund transfers in the total amount of \$355,684.99

3. Motion is to approve an agreement to provide commercial real estate brokerage services in the Marina with JHS Properties, Inc. with commissions paid to JHS Properties not to exceed \$30,000 without further Council action and authorize the City Manager to sign the agreement substantially in the form as submitted.
4. Motion is to approve an additional expenditure of \$600 for the payment of registration and travel expenses for Councilmember White's attendance at the National League of Cities Conference in Washington, DC, March 11-15, 2006.
5. Motion is to confirm Mayor Sheckler's appointments of Nadine Byers, Michael Adams and Ann Berney and re-appointments of Debbie Hickman and Florence McMullin to 2 year terms on the Human Services Advisory Board; appointment of Simon Yang to a 3 year term on the Library Board; second term re-appointments of Natalie Wilcox McCann, Rena Humburger and Kaylene Moon to the Sr. Services Advisory Committee, and appointment of Robert Polwarth to an unexpired 4 year term on the Planning Agency. All terms to be effective January 1, 2006.
6. Motion is to adopt the extension to the Classic Yacht's Lease to extend the lease for another five years, commencing January 1, 2006, under the same terms, with the exception of the minor

modification involving the slip exchange and authorize the City Manager to sign the Lease substantially in the form as submitted.

7. Motion is to approve the Standard Consultant Agreement with Universal Field Services, Inc., for right-of-way acquisition for Phase I of the 16th Avenue South Improvement Project between S 260th & S 272nd Streets, in the amount of \$71,391, plus a 10% contingency and to authorize the City Manager to sign the agreement substantially in the form as submitted.

8. Motion is to approve the contract to allocate 2006 Community Development Block Grant funds in the amount of \$28,573 to Des Moines Senior Services Support and authorize the City Manager to sign the contract substantially in the form as submitted.

9. Motion is to authorize advancing the City Manager's salary to Step D of range M39 of the City of Moines Pay Plan, effective January 1, 2006.

*NOTE: Items on the Consent Calendar are either
routine or have been previously discussed.
Any item may be removed by a Councilmember.

CONTINUED PUBLIC HEARING

Shoreline Master Program Update

SUMMARY: The Purpose of this item is to continue a public hearing on the update to the Des Moines Shoreline Master Program. The area affected by this update is all land extending landward from the shoreline for 200' in all directions as measured from the ordinary high water mark and all associated floodplains and wetlands.

Staff Presentation: Development Services Manager

OLD BUSINESS

1. Draft Ordinance No. 05-216 2004/2005 Comprehensive Plan Amendments - 1st Reading

SUMMARY: The purpose of this item is to continue review of the 2004/2005 Comprehensive Plan amendments.

Staff Presentation: Consultant

NEW BUSINESS

1. Police Sub-Station, Redondo Square

SUMMARY: This item will allow for Council discussing the request of the Police Dept. and Joshua Green entering into a partnership and lease agreement for office space in the Redondo Square Shopping Center to establish a Police Department Sub-Station.

Staff Presentation: Chief of Police

2. Interlocal Agreement between the City of Normandy Park for Senior Services for 2006.

SUMMARY: The purpose of this item is to seek Council approval to enter into an Interlocal Agreement between the City and the City of Normandy Park, whereby in fiscal year 2006, Normandy Park will contract for Senior Services from Des Moines.

Staff Presentation: Parks and Recreation Director

NEXT MEETING DATE - Regular Meeting February 23, 2006

ADJOURNMENT

MM

Exec session
2/9/06
7:04 pm

"portentful litigation"

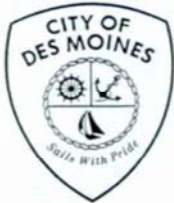
Tony Puzoski
Rosa Baker
June Mawson

Mayor Bob Sheehan
Dave Kaplan
Ed Pina
Scott Thompson
(Gorman Scott)

Dan Sherman arrived 7:10 pm

adjourned
7:24 pm
no action

Frank C. Mawson
City Attorney



COMMENTS FROM THE PUBLIC - 3 Minutes or Less

Sign Up Sheet for 2/9/06

PLEASE PRINT

[illegible]

First given October 20, 2005; Today is February 9, 2006.

(my apologies for reading)

The following is the Testimony in favor of a Redondo Square Sub Station for Des Moines City Police made by:

Jim Heath.

I live at the Bayshore Condominiums located at:
28120 Redondo Beach Dr. S. #212
Des Moines WA 98198

To the new council persons; welcome.

Thank you honorable Mayor and councilpersons for allowing the opportunity to share my opinion about the installation of a Police sub-station at Redondo Square. It is clear to me that a sub-station at the top of the hill will help increase the police presence at Redondo Beach.

My home at Redondo Beach includes a wonderful view in the midst of some really nice people who care about their surroundings. It would be nice to feel totally comfortable having my grandchildren and my year old great grand son visit me here.

University District and Wallingford in Seattle were the locations my previous home for 35 years. While in the University District I did not have a garage and my garage in Wallingford did not even have a door on it and, frequently, my vehicle was parked on the street. In that time my car was not vandalized.

About two months after I bought a new car it was broken into in the parking lot of my residence at beautiful Redondo Beach.

Several incidents of car prowling and car theft have occurred in our parking lot.

We need more police presence.

Our storage area has been broken into several times.

We need more police presence.

My expectation is that criminal activity will escalate.

A short time ago a woman, who lives just south of us had a home intruder rape her.

We need more police presence.

We have done several things to improve our security but:

We need more police presence.

A couple of Thursdays ago I tried to attend this council meeting. An accident on I-5 backed up traffic on Pac-highway and 16th Ave S. I gave up trying. What if the police officer I might need down on Redondo Beach was not available because of a traffic snafu?

We need more police presence near Redondo Beach.

In the early morning hours of October 15 this year there was a shooting in the Redondo Square parking lot.

A few years ago, an officer lost his life to violence within a few blocks of Redondo Square.

Recently forty plus arrests for prostitution were made on Pac Highway all within a mile of Redondo Square in one night.

It is my understanding that the Joshua Green Foundation has offered free facilities for the Redondo Square Sub station; they have even offered to equip the space and allow the City of Des Moines to pay for the improvements over a five year period with no interest charged. I understand this payment amounts to about \$1100.00 per month. CHEAP

I wish to request each of you persons who have the awesome responsibility of representing the rest of us to gather all your courage and foresight and vote to install the police sub station at Redondo Square.

We need more police presence.

Please give us a police sub station at Redondo Square.

Thank You for the time.

Jim Heath
28120 Redondo Beach Dr. S. #212
Our fair city, 98198

206.484.6518
jheath@w-link.net

Angie

Highline Public Schools Capital Facilities Improvement Bond Fact Sheet

Election Day
March 14

Amount: \$148,000,000

① ②

• Replace Aging Schools—\$124,200,000

- Shorewood Elementary School.
- Midway Elementary School.
- Parkside Elementary School.
- Marvista Elementary School.
- McMicken Heights Elementary School (with matching and reimbursement funds).

④

• Camp Waskowitz—\$3,300,000

- Rehabilitate dining hall (in compliance with historic preservation guidelines).
- New kitchen.
- New water tower to replace leaking, wooden tower.

③

• Security and Safety for Secondary Schools—\$2,000,000

- Camera surveillance systems.
- Security fencing.
- Additional security lighting.

②

• Technology—\$9,000,000

- Upgrade e-mail and Internet access for better communication and instruction.
- Upgrade desktop computer equipment, printers, and copiers.
- Upgrade telephone systems and install classroom phones at nine older schools.
- Instructional technology training and support at new and existing buildings.
- Student data system, allowing parents to track student progress online.

⑤

• Capital Improvement / Emergency Fund—\$9,500,000

- Roofing repairs at Chinook, Evergreen, Cascade, Hilltop, Sylvester, Tyee, Highline, and Pacific.
- Facility modifications to support program needs.
- Roofing at ancillary sites.
- Unanticipated facility emergencies and capital improvements.

Why a Bond Now?

- Highline still has many buildings in need of replacement and repair.
- Expensive repairs drain dollars from the classroom.
- Students need access to today's technology.
- Improved student safety and security.
- Improved communication with parents.

What is the cost to taxpayers?

Current tax rate (bond only)	\$1.73
Projected tax rate 2007–2010	\$1.83
Projected tax rate 2011–2013	\$1.74
Projected tax rate 2014–2026	\$1.75

← current
Based on
current
value of
home

If the bond passes, the estimated tax rate would increase 10 cents per \$1,000 in assessed valuation for four years to pay off the short-term technology investment. The increase amounts to \$30 per year for a home valued at \$300,000.

VOTE YES MARCH 14

Here are SIX reasons to vote YES on the
Highline Public Schools Capital Bond



1. Build five new schools

These aging schools need to be replaced:

Shorewood, Midway, Marvista, Parkside, and McMicken Heights.

2. Preserve Camp Waskowitz for future generations.

This historic treasure desperately needs repair.



3. Improve safety and security at secondary schools.

Surveillance cameras, exterior lighting, and
fencing to limit access to campus will keep our students safer.

4. Give our students access to technology.

Highline lags dangerously behind in educating our children
to use technology critical to tomorrow's jobs. We must
upgrade hardware and improve Internet access.



5. Every school in the district will benefit.

Besides the safety and technology upgrades, many
schools will get new roofs and other urgent repairs.

6. It only costs you 10 cents for four years!

Your taxes will go up by just one thin dime per \$1000 in
home value. That's only \$30 a year for the average home!
In 2011, taxes will drop within a cent of the current rate.

To learn how you can support this important measure, contact:
Highline Citizens for Schools 206-243-9944 www.supporthighlineschools.com

Highline Public Schools Capital Facilities Improvement Bond

Frequently Asked Questions

1. *What is the Capital Facilities Improvement Bond?*
Our students need schools that are safe and are equipped with technology that supports today's learning needs. This bond measure will ensure that every Highline school has adequate computer and Internet access for student learning, that our secondary schools are safer and more secure, that five aging schools are replaced with safe and healthy facilities, and that facilities at historic Camp Waskowitz are rehabilitated.
2. *When is the election?*
The election date is March 14, 2006. Polls are open 7:00 a.m. to 8:00 p.m.
3. *What margin is needed for passage?*
A 60% yes vote is needed to pass the bond.
4. *What would the bond pay for?*
 - Replacement of outdated and aging elementary schools
 - Midway Elementary
 - Shorewood Elementary
 - Parkside Elementary
 - Marvista Elementary
 - Replacement of McMicken Heights Elementary will be financed with state matching funds.
 - Installation of security lighting, surveillance cameras, and fencing at all secondary schools to improve student safety and protect school property.
 - Historically appropriate rehabilitation of the Camp Waskowitz dining hall and kitchen; and replacement of the leaking water tower.
 - Improving computer and Internet access at schools that are not wired for today's technology. This will increase student access to technology and will allow for better email communication between teachers and parents.
 - Development of a secure student database that allows parents to track student grades and attendance records.
 - An emergency fund to pay for unanticipated facility repairs and urgent capital needs, such as roofing.
5. *Why does the district need to replace schools?*
Many of Highline's schools were built in the 1950's or before using inexpensive materials with an anticipated lifespan of about 20 years. These facilities are now over 50 years old and are far overdue for replacement. As these facilities age, repairs become increasingly

expensive. More importantly, these buildings are not up to current fire safety and building codes.

6. What type of health and safety problems would this bond address?

- Outdated fire alarms.
- Leaking roofs.
- Asbestos and hazardous building materials that were in standard use when existing buildings were constructed.
- Inefficient heating systems.
- Deteriorating sewer lines.
- Deteriorating water pipes.
- Earthquake safety standards.

7. Which schools will see improvements if the bond passes?

All schools in the district will benefit in one way or another:

- All secondary schools will get security improvements (surveillance cameras, and improved exterior lighting.) Fencing will be installed as necessary to limit access to school grounds.
- All schools will have improved Internet and email access.
- All parents will have access to the new student tracking system.
- New roofing will be installed at several schools.
- Five aging elementary schools will be replaced.

8. Which schools would be replaced?

- Midway Elementary (to open in September 2008)
- Shorewood Elementary (to open in September 2008)
- Marvista Elementary (to open in September 2009)
- Parkside Elementary (to open in September 2009)
- McMicken Heights Elementary (to be built with state matching funds as soon as funds are released by the state.)

9. How were these five schools chosen?

They are next on the priority list developed by a citizens' committee prior to passage of the 2002 bond. The committee used findings developed by a team of engineers and architects to assess which schools had the most urgent need for replacement.

10. Will airport noise be addressed at any of these schools?

Yes. Funding from the Port of Seattle, the Federal Aviation Administration, and the state will pay for noise mitigation treatments at Midway and Parkside because they are among the 15 schools impacted by noise from SeaTac airport.

11. What is the difference between a school bond and a school levy?

Levies are for learning; bonds are for building.

Bonds are typically used for capital facilities needs. Voters approve a measure allowing the school district to borrow money for facilities improvements. The district issues bonds to raise the money up front. Similar to a home mortgage, the district repays the money (plus interest) in installments over time. Bond dollars can *only* be used for capital improvements.

Levies are used to raise funds for school district operations, such as teachers salaries and support services. When voters approve a levy, they are agreeing to pay taxes to fund these services. Levy dollars *cannot* be used for capital improvements.

12. If the bond passes, can the school district use the money for **any** capital improvements?

No. State law mandates that the proceeds of a bond can only be used for the capital improvements approved by the voters of the community.

13. How much money would this bond raise?

\$148 million.

14. How will this bond affect my property tax rate?

Your tax rate would not increase, except in a four-year period during which taxes would increase an estimated ten cents per \$1000 in assessed valuation. (For a home valued at \$300,000, the increase would be \$30 per year.) After four years, the rate would drop back to approximately what it is today.

15. Why would the tax rate bump up by 10 cents for four years?

The four-year increase would pay for the technology improvements, since they are a shorter-term investment. Payments for long-term investments, such as new schools, will be spread over a 20 year period.

16. If property values increase, will my taxes increase?

No. The school district is *not* allowed to collect more than the \$148 million approved by voters. **If property values increase, the tax rate will decrease, so the dollar amount each homeowner pays stays constant.**

17. How does Highline's tax rate compare with other south King County school districts?

Highline's tax rate falls close to the middle.

18. How will bond passage impact senior citizens?

Homeowners over age 61 with an annual income under \$35,000 qualify for an exemption from the tax. People with disabilities may also qualify for an exemption. To apply for this exemption, call the King County Tax Exemptions Office at 206-296-3920 or go to

19. Can I vote by mail?

Yes. If you are not an absentee voter and you would like to vote by mail in this election, please call the King County Records and Elections Office at 206-296-8683 to request a mail ballot or fill out the request form at

[http://www.kingcounty.gov/elections/absentee/](#). To allow time for mailing, please make your request by March 1.

20. How can I support the bond campaign?

Contact Highline Citizens for Schools at 206-243-9944 or

[http://www.hcschools.org/](#)

INFORMATIONAL AGENDA ITEM

SUBJECT: – Update on 16th Ave South Improvement Project – S. 260th to S. 272nd

ATTACHMENT:

None

AGENDA OF: February 9, 2006
DEPT. OF ORIGIN: Planning, Building & Public Works

DATE SUBMITTED: February 6, 2009

CLEARANCES:

[X] PB&PW 

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation:

The purpose of this item is to provide the City Council with an update on the status of the project and report on a public information meeting held January 31, 2006.

Motions - None necessary

Background:

On October 13, 2005, the City Council approved a second supplemental design contract to advance this project into final design. The improvements will include curbs, gutters, sidewalks, bicycle lanes, left turn lanes, underground storm drainage, and landscaping. Most utilities in the corridor will be relocated.

A utility coordination committee has been formed and is meeting regularly with the City to advance the design of these improvements and utility relocations. The project has undergone environmental review and a SEPA determination is pending. Proposals for Right of Way services have been solicited and a recommended contract is pending City Council approval.

A public meeting (open house) was held at the Woodmont Elementary School on January 31, 2006 to more fully inform the community and solicit public comments on the final design. A newspaper article was published in the January 25 edition of the "Des Moines News", and invitations were sent to approximately 300 property owners in the corridor as well as posted at the school and other public places. Approximately 40 people attended the open house and nearly 22 questionnaires were completed by property owners in the area.

Discussion:

The open house was an informal meeting allowing interested citizens to learn about the project and/or understand impacts on individual property owners. A number of useful comments were noted on the plans which will be considered in the final design.

The majority of the comments received were positive although most participants felt that the project will be disruptive during construction, but worth it in the long run because of improved drainage and public safety.

Several people were concerned about simultaneous impacts of Pacific Highway South Construction by Kent and WSDOT. The City of Kent staff advises that the paving of their project, which is high impact, should be completed by May, 2006. Utilities will be relocated during this timeframe; however, there should not be conflicts with major construction activities.

Alternatives:

N/A

Financial Impact:

No changes to scope or budget noted at this time

For further information, please contact Len Madsen (870-6523) or Grant Fredricks (870-6568).

CITY OF DES MOINES
Voucher Certification Approval
09-Feb-06

Auditing Officer Certification

Vouchers and Payroll transfers audited and certified by the auditing officer as required by RCW 42.24.080, and those expense reimbursement claims certified as required by RCW 42.24.090, have been recorded on a listing, which has been made available to the City Council.

As of February 9, 2006, the Des Moines City Council, by unanimous vote, does approve for payment those vouchers and payroll transfers included in the attached list and further described as follows:

The vouchers below have been reviewed and certified by individual departments and the City of Des Moines Auditing Officer.

Claims Vouchers:	Numbers					Amounts
Total A/P Checks/Vouchers	102698 - 102906 = 209					661,381.91
Electronic Wire Transfers	1	DEPT OF REVENUE & KEY BANK VISA				26,277.07
Subtotal for this Council Packet						687,658.98
Voided Claim Checks this check run:						0 0.00
Voided Claim Checks from previous check runs	102520, 102871 2					(177.35)
Total Claims/Wire Transfers/Voids	211					687,481.63

Payroll Vouchers:	DISBURSED 02/03/06					Amounts
Payroll Checks	13178	-	13212	=	35	29,311.70
Payroll Taxes						45,155.79
Direct Deposit	50001	-	50126	=	126	205,627.84
Wage/Garnishments						1,578.33
Electronic Wire Transfers						74,011.33
ICMA 401 Forfeitures						0.00
Total Claims/Wire Transfers	161					355,684.99

Total certified Wire Transfers, Voids, A/P & Payroll vouchers for February 9, 2006

1,043,166.62

PRELIMINARY
DES MOINES CITY COUNCIL MINUTES

MINUTES

December 8, 2005

The regular meeting of the Des Moines City Council was called to order at 6:38 p.m. by Mayor Sheckler in the City Council Chambers, 21630 11th Avenue South.

PLEDGE OF ALLEGIANCE to the Flag was led by Councilmember Steenrod.

ROLL CALL - Present: Mayor Bob Sheckler, Mayor Pro Tem Scott Thomasson, Councilmembers Richard Benjamin (arrived at 9:59 p.m.), Gary Petersen, Dan Sherman, Maggie Steenrod and Susan White. Also in attendance were City Manager Tony Piasecki, City Attorney Linda Marousek, Finance Director Paula Henderson, Planning, Building and Public Works Director Grant Fredericks, Assistant City Engineer Loren Reinhold, Parks and Recreation Director Patrice Thorell, Police Commander John O'Leary, and City Clerk Denis Staab.

BOARD & COMMITTEE REPORTS

Tacoma Chamber of Commerce Meeting

Councilmember White reported attending a meeting last week, along with representatives from the cities of Tacoma, Gig Harbor and Des Moines Harbormaster Joe Dusenbury, regarding the passenger ferry service idea to the City of Des Moines. She advised that she is applying for a feasibility study to explore the idea with a Transportation Mobility Grant. She noted the next meeting will be January 9, 2006, and all are invited to attend.

Senior Services Advisory Committee

Councilmember White read an announcement that the Senior Services Social Worker, Julia Baker, will be setting up 30 minute appointments for one Tuesday a month for folks to call and make an appointment to meet with her privately to discuss needs in the care giving area.

PRESIDING OFFICER'S REPORT

Commemorating Outgoing Councilmembers

Mayor Sheckler presented outgoing Councilmembers Benjamin, Petersen and Steenrod with plaques recognizing their past four years service as Des Moines City Councilmembers.

COUNCILMEMBER COMMENTS

Festive Seasonal Lighting

Councilmember White acknowledged and thanked Redondo resident Gene Achziger for his hard work in displaying festive seasonal lighting in the Redondo area of the City.

Areas of Concern

Councilmember White noted that she is disturbed that this late in the year, Council has not passed the Comprehensive Plan after numerous meetings. She felt this sets the City up to be vulnerable to people who could petition the Growth Management Hearings Board for failure to act, which could be costly to the City. She further noted that this also prevents the City from

obtaining any funding for Public Works Trust Fund loans. She also expressed displeasure that the 2006 Budget has not been finalized. She felt that Council is not doing their job.

Leadership Summit

Mayor Sheckler announced that last Saturday was the second meeting of the Leadership Summit. He advised that it was an exciting event and some great ideas came forward out of the meeting. He stated Council will be receiving a summary of the items that the public identified as issues that the City and Council should be looking at.

ADMINISTRATION REPORTS

New Format

City Manager Piasecki advised that he is trying out a new format for getting information to Councilmembers. He noted there are two items in Council's packet entitled "Informational Items", one having to do with WSDOT's project on Highway 99 and how it will effect the intersection at 279th, 16th and Pacific Highway. The second item concerns the Association of Washington Cities L&I Retro Group, that the City belongs to. He advised that Council can expect more of these types of informational items and he requested Council feed-back on whether this is helpful, or there are other types of format that would be preferred.

King County City Manager's Meeting

City Manager Piasecki reported attending the meeting yesterday. He noted a lot of time was spent discussing "Stream Line Sales Tax" and a bill that is being prepared, and most likely will be introduced in the Legislature in January. He noted that the upcoming Legislative session will be only 60 days long and next year is an election year. He advised while the bill does not change sales tax, it changes the way sales taxes are collected and potentially will allow sales tax to be assessed and collected on internet and catalog sales. It was suggested that all cities get with their legislative delegations and stress the importance of this to the cities and that it is more of a fairness type issue than it is a tax issue. It is important to the businesses in our communities that are competing on an uneven playing field. He requested permission to send an e-mail to Des Moines' contingent letting them know that this is an important issue for us and that the City would like their support. Council concurred that the City Manager should do this.

CONSENT CALENDAR was read by City Clerk Staab.

1. Motion is to approve the regular minutes of November 3, 10 and 17, 2005.
2. Findings: Vouchers audited and certified by the auditing officer as required by RCW 42.24.080, and those expense reimbursement claims certified as required by RCW 42.24.090, have been recorded on a listing which has been made available to the City Council.

Motion: As of this date the Des Moines City Council, by unanimous vote, does approve for payment those vouchers and payroll transfers included in the above list and further described as follows:

Claim checks #101739 through #102106 & electronic fund transfers in the total amount of \$1,049,294.60

Payroll fund transfers in the total amount of \$731,353.10

3. Motion is to approve the Emergency Management Consultant Agreement between the City of Des Moines and Montgomery and Associates and authorize the City Manager to sign the agreement substantially in the form as submitted.
4. Motion is to confirm the City Manager's re-appointment of the firm of Driscoll & Hunter as the land use Hearings Examiners, and the appointment of Driscoll & Hunters as the Hearings

Examiners for all other administrative code compliance hearings, for a one-year term beginning January 1, 2006, which will be re-negotiable within one year at the request of either party and, following the end of the one-year term, the contract shall automatically renew on a year-to-year basis unless re-negotiated; ~~to ratify and confirm any acts consistent with the authority granted by this appointment which occurred prior to the date of this confirmation;~~ and to authorize the City Manager to sign the Hearings Examiner Agreement, substantially in the form as submitted. [ED NOTE: Strike out removed by Council consensus, with concurrence by City Attorney Marousek that the language does not pertain in the new contract.]

5. Draft Resolution No. 05-245 ~~[ASSIGNED RESOLUTION NO. 1003]~~ - Title: A resolution of the City of Des Moines, Washington, adopting a Retiree Health Savings Plan for employees covered under the collective bargaining agreement between the City of Des Moines and the Public, Professional & Office-Clerical Employees and Drivers Local Union No. 763 (Teamsters).

MOTION is to approve Draft Resolution No. 05-245 and to authorize the City Manager to execute such documents as necessary to implement the Plan.

6. ~~Motion is to enter into the Interlocal Agreement for Regional Planning of the Central Puget Sound Area and authorize the City Manager to sign the Interlocal Agreement substantially in the form as submitted.~~ [ED NOTE: Removed by Mayor Pro Tem Thomasson.]

7. Motion is to authorize the City Manager to sign the continued enrollment authorization to continue participation in the Association of Washington Cities Workers' Compensation Group Retro Program.

8. Motion is to confirm the City Manager's reappointment of Colleen Hartl to the position of Municipal Court Judge for a four-year term beginning January 1, 2006, and expiring December 31, 2009.

9. Motion is to approve the Interlocal Agreement for the provision of tourism and marketing services with the City of Tukwila, and authorize the City Manager to sign the agreement, substantially in the form as submitted.

Mayor Pro Tem Thomasson requested that item #6 be removed from the Consent Calendar. Councilmember Sherman concurred.

Upon questioning, City Attorney Marousek advised that the language contained in item #4 which states "~~to ratify and confirm any acts consistent with the authority granted by this appointment which occurred prior to the date of this confirmation;~~" is old language from a previous contract and should be stricken.

MOTION was made by Mayor Pro Tem Thomasson, seconded by Mayor Sheckler and passed unanimously, to approve the consent calendar as read, with Item #6 removed and language as noted in item #4 stricken.

REMOVED CONSENT ITEM

Interlocal Agreement for Regional Planning of the Central Puget Sound Area

Mayor Pro Tem Thomasson noted that when this was discussed at a previous meeting he was against it and still is.

MOTION was made by Councilmember White, seconded by Councilmember Steenrod, to enter into the Interlocal Agreement for Regional Planning of the Central Puget Sound Area and authorize the City Manager to sign the Interlocal Agreement substantially in the form as

submitted. Motion passed 4 to 2 with Councilmember Sherman and Mayor Pro Tem Thomasson opposed.

AGENDA REVISION

Mayor Sheckler announced that he is going to change the Agenda and take New Business Item #1 first, then the following items: Capital Improvement Plan, Mitchell Rezone, 2006 Budget.

NEW BUSINESS

Police Dept. Agreements: Puget Sound Law Enforcement Information Exchange (LInX) and Regional Automated Information Network (RAIN)

Police Commander O'Leary advised Council that the agreements work together and play an important role in information gathering for the Police Department. He noted that LInX will integrate relevant federal, state, county and local records of participating parties, effectively providing each agency with a single source for regional law enforcement information and also provide analytical capabilities and link analysis. He advised there are currently 47 parties participating, and noted Des Moines has been invited to participate in this powerful investigative tool at no cost to connect.

In regards to the RAIN agreement Commander O'Leary noted that the network will connect automated records management systems to protect the public by assisting law enforcement in solving and preventing crimes and acts of terrorism; protects officers by giving them information important to their safety while out on our streets and highways; connects to other parts of the Criminal Justice System for increase effectiveness and efficiency; and connects to other regional, state and national information systems. He noted there are currently 25 other police departments participating. He concluded by noting there is no cost to join. Only nominal fee to tie into the system and providing for in-house training.

MOTION was made by Councilmember White, seconded by Councilmember Sherman to approve the Puget Sound Law Enforcement Information Exchange (LInX) Memorandum of Understanding and authorize the Des Moines Police Department to join LInX as a participating local agency by filling in the appropriate information and signing Appendix A to the MOU in substantially the form as presented. Motion passed unanimously.

MOTION was made by Councilmember Sherman, seconded by Councilmember Petersen, to approve the Regional Automated Information Network (RAIN) Memorandum of Understanding and authorize the Des Moines Police Department to join RAIN as a participating local agency and authorize the Chief of Police sign the MOU in substantially the form as presented.

Mayor Pro Tem Thomasson stated that Council has authorized numerous agreements for the Police Department in the past few months. He requested that annually, or semi-annually, the Council should be given an update on how these tools, associations and agreements are working.

City Manager Piasecki advised that he will ask the Police Chief, at least on a quarterly basis, to add this to his monthly report to him, or he noted he can do an Informational Agenda item once a quarter to provide updated information to Council.

VOTE ON MOTION: Motion passed unanimously.

OLD BUSINESS

Draft Resolution No. 05-240 Adopting 2006-2011 Capital Improvement Plan

City Manager Piasecki noted there are some policy questions that need to be discussed, in particular do we use Councilmanic Bonds to make all the projects work and are these types of projects the priorities that Council wants or are there other things Council wants to do with the funding we do have directly available. He suggested Council hold off on the policy questions until staff has reviewed the projects currently listed. After that staff will prepare a summary page and then Council can determine exactly which projects it wants to do, rather than making a decision on each one individually.

Councilmember Sherman noted that he prefers handling each project as it is described.

Mayor Pro Tem Thomasson expressed agreement with Councilmember Sherman and at least identify which policy issues apply. At the end of the presentation Council needs to discuss borrowing money against future Real Estate Excise Taxes and whether that is wise or not.

Mayor Sheckler advised that he has no problem dealing with each project individually unless Council tends to get bogged down. If things move along smoothly fine, if not he will look for a new way to get this done.

Parks and Recreation Director Thorell began review with the following items, and Council comments as noted.

Park & Playground Repair and Replacement

- 2006 \$ 91,120, REET: Field House Park
- 2007 \$ 82,880, REET: Wooten Park
- 2009 \$116,190, Bond Proceeds: Wooten Park
- 2010 \$221,168, Bond Proceeds: Parkside Park
- 2011 \$ 73,540, Bond Proceeds: Cecil Powell Park

MOTION was made by Councilmember Sherman, seconded by Councilmember White, to accept this item as presented.

Mayor Pro Tem Thomasson stated he cannot support the motion because of funding with borrowed money. He also noted that he would prefer that each of the projects stand on their own and that is how he would like to see them in the future CIP. He noted under this particular item many of the projects are listed as "repairs" and he does not feel these should be capital projects, but dealt with through ongoing operations and maintenance. He noted that he cannot support parking at Wooten Park as we are still having parking conversations in the larger neighborhood, therefore he questioned whether we would be building parking for commercial use, as people are suppose to be able to walk to neighborhood parks.

Councilmember Sherman expressed agreement with Mayor Pro Tem Thomasson about not bonding against REET.

MOTION TO AMEND the main motion was made by Mayor Pro Tem Thomasson, seconded by Councilmember Sherman, to delete all projects and funding for the years 2009, 2010 and

2001. Motion FAILED by a 3 to 3 vote with Councilmembers Petersen and Sherman and Mayor Pro Tem Thomasson voting yes.

Councilmember Steenrod suggested leaving as is with a foot note to discuss funding sources a year or two before they are estimated to occur.

Mayor Pro Tem Thomasson suggested that some of the future projects should actually be listed as "unfunded".

VOTE ON MOTION: Motion passed 4 to 2 with Councilmember Steenrod and Mayor Pro Tem Thomasson opposed.

Steven J. Underwood Memorial Park

MOTION was made by Councilmember White, seconded by Mayor Sheckler, to accept this item.

Mayor Pro Tem Thomasson advised that he cannot support the use of Bond Proceeds in the amount of \$112,060 for a Parking lot and would need to see a clear site plan for future development. He also noted he is against the soccer fields as he would rather see the one at Zenith Park fixed.

Councilmember Sherman advised that he shares the same concerns and he cannot support the projects with the City's current budget concerns.

Councilmember White remarked that there is a great need for soccer fields and they will help bring people into the City. Councilmember Steenrod added that these fields can be revenue producing.

VOTE ON MOTION: Motion FAILED 4 to 2 with Councilmembers Steenrod and White voting yes.

Zenith Park Acquisition

Parks and Recreation Director Thorell noted the Park is approximately 17 acres. She noted a grant was awarded from King County Conservation Futures in the amount of \$450,000. She further advised that the site has not been surveyed or appraised, so the price of \$906,000 is based on like properties in the area. She noted it may be possible to buy it from the Highline School District over time such as 10 or 20 years, but with grants the City would need to buy the property outright. She felt to buy the property the City would need to use Councilmanic bonds, or REET money.

MOTION was made by Councilmember White, seconded by Mayor Sheckler, to include the Park acquisition as presented.

Mayor Pro Tem Thomasson stated that he is in favor of the acquisition and feels that if the City does not purchase the property and the School District surpluses it, it will most likely be developed as residential housing. He advised however, that he is not in favor of using bond proceeds, but prefers reaching an agreement with the District in order to keep the grants that have already been awarded.

City Manager Piasecki advised that he is not sure whether the City can acquire the deed fee simple, and then have the District act as a bank, but we can see if this is possible or not.

Mayor Sheckler expressed agreement with Mayor Pro Tem Thomasson and stated he would like to pursue an agreement with the District.

Finance Director Henderson confirmed that even if an agreement can be worked out with the District, the debt would be counted against the City's debt ceiling.

MOTION was made by Mayor Pro Tem Thomasson, seconded by Councilmember White, to amend the main motion to leave the project in, continue with the King County conservation Futures and REET money, show the rest of the funding as "to be determined" and direct staff to start negotiations with the School District and to talk to Highline College to see if they would like to participate in the purchase.

Councilmember Sherman expressed concern due to the cost that is being shown in the 2006 CIP with too many indefinites.

VOTE ON AMENDMENT: Motion passed 5 to 1 with Councilmember Sherman in opposition.

VOTE ON MAIN MOTION: Motion passed 5 to 1 with Councilmember Sherman opposed.

8:08 p.m. Mayor Sheckler declared a 10 minute break.

Zenith Park Soccer/Football Field Rehab - \$287,160 in 2009

MOTION was made by Mayor Pro Tem Thomasson, seconded by Councilmember Sherman, to delete this item. Motion passed 4 to 2 with Councilmember Steenrod and Mayor Sheckler opposed.

Des Moines Memorial Park Renovation - \$33,640 in 2006

MOTION was made by Councilmember White, seconded by Councilmember Sherman and passed unanimously, to leave this item as presented.

Waterfront District Entryway Signage - \$47,520 in 2006

Upon comments by Councilmember Sherman that this item appears to be geared toward the Marina and there it should be paid with Marina funds, City Manager Piasecki stated the concept is for 'Welcome to Des Moines' type entry-way signage therefore while the Marina may provide a little bit of funding, it is not just for the Marina but all of downtown.

Councilmember Steenrod felt this is an important tool for economic development.

MOTION was made by councilmember Steenrod, seconded by Councilmember White, to keep this item as presented.

City Manager Piasecki noted this is more of a placeholder until more plans are developed. He advised that the whole plan would come to Council for approval prior to being undertaken.

Mayor Pro Tem Thomasson stated that this seems rather a high price for some directional or informational signage. He advised he would like to see further study and details before he can support this project.

Mayor Sheckler advised that he can support the motion as long as it is understood it will come back to Council for final approval.

VOTE ON MOTION: Motion passed 5 to 1 with Mayor Pro Tem Thomasson opposed.

City Hall Remodel - \$200,000 in 2006

Planning, Building and Public Works Director Fredricks informed Council the idea is to find the best way to organize space at City Hall, how to best serve the customers at Community Development and create a one-stop service center.

Councilmember Sherman advised it was his understanding most of the funds were to fix things, such as the carpeting, which is a trip hazard.

Planning, Building and Public Works Director Fredricks noted that the project for new carpeting was put on hold while it was studied more comprehensively to see if we will move staff around. He advised it may be determined to just do the carpeting and paint the north wing, or it may be determined it would be more efficient to use the service center at 24th and 223rd to create a one-stop service area.

Mayor Pro Tem Thomasson voiced support for modernizing the North Wing of City Hall. However, the City has been downsizing and at this point he is not interested in moving Public Works and Planning staff to another building and will not authorize extra money to do that. Whereas replacing the worn carpet is a need, everything beyond that is a want that we cannot afford right now.

Mayor Sheckler stated he supports what ever is necessary to get the old building at least into a reasonable working environment, which at this time it is not. He questioned what beyond that is staff talking about.

Planning, Building and Public Works Director Fredricks responded that he is talking about a study to evaluate the way in which the City delivers over the counter services to the public.

City Manager Piasecki added that as an example; moving all permitting staff of planning and public works, into one space in the south wing; the City Attorney area would need to be converted to allow the Public Works Engineering people space; moving the City Attorney's office to the north wing lobby area. He stated that the lobby area at this time is wasted space. He noted that the Park and Recreation Administrative staff could then be located in the building where Engineering staff is now. He felt it does not make sense to put down new carpeting and painting because we may decide to do a remodel.

Councilmember White stated that if we can improve efficiency to help the public and developers, then it makes sense to combine departments.

MOTION was made by Councilmember Sherman, seconded by Councilmember White, to keep this item as presented.

Councilmember Steenrod stated she thinks we should do a workflow analysis or process analysis, to determine what improvements need to be made before we start moving people around. So there should be some funding for a study and then in a later year, funds for actually making the changes.

Mayor Sheckler announced that he will reclude himself from further discussion and voting on this item to avoid any potential conflicts of interest, and asked Mayor Pro Tem Thomasson to take over the gavel.

Mayor Pro Tem Thomasson noted that the City is still paying on the debt incurred in building the South Wing therefore he cannot see moving walls, and it is his understanding that the court and legal system is functioning quite well. Therefore, he can't see disrupting that to try to make public works and planning better. In regards to the space in the North Wing he would like to see a plan before making any changes.

VOTE ON MOTION: Motion passed 4 to 1 with Councilmember Thomasson opposed. (Mayor Sheckler recused.)

City Hall Parking Lot - \$35,500 in 2006

MOTION was made by Councilmember Sherman, seconded by Councilmember White and passed unanimously, to retain this item as listed.

Vehicle Wash and Decant Station

Planning, Building and Public Works Director Fredricks noted this project is required by the Department of Ecology.

MOTION was made by Councilmember Sherman, seconded by Councilmember White, to keep the project as presented.

Mayor Pro Tem Thomasson felt that in terms of a City vehicle car wash he is not convinced it is needed. He pointed out that there are several car washes located in the City. He felt that the decanting station is needed. He asked for the actual costs of the two elements of this project. Planning, Building and Public Works Director Fredricks noted that he does not have a break down of the two items. Mayor Pro Tem Thomasson felt that the decant facility should be improved.

VOTE ON MOTION: Motion FAILED 3 to 3 with Councilmembers Petersen and Steenrod and Mayor Pro Tem Thomasson opposed.

City Manager Piasecki advised that the City must build the decant station and requested that the project be left as is with an understanding that an analysis of the vehicle wash will be brought back to Council before staff begins design. Also if staff feels the vehicle wash is necessary we will bring that back to Council to compare with contracting out vehicle washing.

MOTION was made by Mayor Pro Tem Thomasson, seconded by Councilmember Steenrod, to include a storm water decant facility in the Surface Water Management Fund.

Mayor Pro Tem Thomasson noted that staff can still do a business case for a vehicle car wash and bring it back to Council, and if Council wishes the CIP can be amended to include it.

VOTE ON MOTION: Motion passed unanimously.

Finance Director Henderson displayed the Municipal Capital Improvement Fund (Attachment A) showing previous changes for the years 2006 to 2011. She advised that this will be revised again based on the decisions Council made tonight.

Councilmember White spoke in opposition to any delays in the Beach Park facilities as it would not be in the City's best economic interests. She also felt there are some possibilities for some public/private partnerships. She advised she is not opposed to some Councilmanic bonds that she feels could be very useful.

Mayor Pro Tem Thomasson advised that he has a real issue in the fact that the City is not making ends meet and the police are underfunded, and the budget strategy seems to be to get "the credit cards out" and go on a buying spree. He does not feel the City should be run that way as this is no time for the City to go into debt, other than the Zenith Park acquisition. He also felt the Activity Center funding should be put back in with "voter approved special issue". He also pointed out that these type of projects should not happen when transportation projects need more funding.

MOTION was made by Councilmember Sherman, seconded by Mayor Sheckler, to accept Attachment A as amended by Council. Motion passed 5 to 1 with Mayor Pro Tem Thomasson opposed.

9:21 p.m. Mayor Sheckler called for a 10 minute break.

Draft Ordinance No. 05-217 Mitchell/Chamlain Rezone - 1st Reading

Consultant Judith Kilgore informed Council that the draft ordinance, findings of fact and conditions of approval relating to the Mitchell/Chamlain rezone have been prepared in response to Council motions on November 17, 2005. The Council has also directed staff to include the associated Comprehensive Plan land use map revisions relating to this project in the 2004/2005 Comprehensive Plan amendments.

City Manager Piasecki noted that the City's Code requires the Council to consider all Comp Plan amendments together in order to study and ascertain impacts.

City Attorney Marousek advised that the Comp Plan amendment should be done at this time, so the applicant does not have to wait for the massive Comprehensive Plan amendments that are still pending.

City Manager Piasecki advised that staff has not prepared the Comp Plan Ordinance at this time. He noted that the proposed rezone ordinance can be adopted with it being conditioned on being effective once the comp plan amendment is adopted. He advised that he will have that draft ordinance ready for the meeting of December 22nd.

Mayor Pro Tem Thomasson felt that procedurally, if this comp plan amendment will be adopted separately from the other comp plan amendments, he felt it would be best to adopt the rezone

ordinance and the comp plan ordinance at the same time. He would prefer to consider both on the 22nd. In regards to Section 1 of the draft ordinance, he stated that there are some aspects of this rezone that are contract in nature, he is uncomfortable with the new map being adopted as it does not reflect those contract conditions.

Consultant Kilgore advised that historically once we do a rezone, we change the zoning map and then readopt it. She noted that she is trying to create an easily understood legislative record for the future so that 50 years from now someone won't say "how did this get rezoned to this", as there will be a clear record.

Councilmember Steenrod felt this process has dragged on long enough and the applicant needs to move forward. She stated she does not share Mayor Pro Tem Thomasson's concerns.

MOTION was made by Councilmember Steenrod, seconded by Councilmember White to pass the draft ordinance to a 2nd reading on December 22, 2005. Motion passed unanimously.

CONTINUED PUBLIC HEARING

Draft Ordinance No. 05-226- Adoption 2006 Budget - 1st Reading

Mayor Sheckler introduced the item noting it is continued from the November 17, and December 5, 2005, Council meetings.

PUBLIC COMMENT

Bob Pond, 23116 30th Avenue South

Mr. Pond raised the following issues:

- Mt. Rainier should be self supporting
- Motel/Hotel Tax of 1% is not enough due to the enormous impact they have on police services in the community
- Against the Rental "Crime Free Program" as a tax on the poor as owners pass the tax onto the renters

Mayor Sheckler questioned whether there were any further speakers three times. There was no response and declared the public hearing closed. The item will be placed on the December 22, 2005, agenda.

9:59 p.m. Councilmember Benjamin arrived.

OLD BUSINESS

Continued Discussion - Draft Resolution No. 05-240 Adopting 2006-2011 Capital Improvement Plan

Council continued discussion from earlier in the meeting by addressing Surface Water Management Capital Fund.

Marine View Drive Bridge - \$2,342,082 for 2006

MOTION was made by Mayor Pro Tem Thomasson, seconded by Councilmember Sherman and passed unanimously, to accept as presented.

Des Moines Creek Basin Projects - \$463,500 for 2006, \$413,500 for 2007

Assistant City Engineer Reinhold noted there are several issues that have increased costs, such as higher bids than expected and encountering arsenic.

City Manager Piasecki informed Council that the City is currently negotiating an amendment to the Interlocal that will determine how the costs overruns will be handled.

Mayor Pro Tem Thomasson expressed concern that if the City shows it funded, when we go to negotiate and try to argue against paying any more money than we originally agreed, we are setting ourselves up to be expected to fund it. He felt maybe we should not fund a dime more and go into negotiations and say we don't have any more to pay, which is what he would prefer. Having the money there shows we are expecting to, and willing to, fund it.

Upon questioning, Assistant City Engineer Reinhold noted that all projects listed on page 62, have been pushed out a year because of this item and the shotcrete for the Marine View Drive Bridge. Therefore if some of this funding is removed other projects could be done sooner.

MOTION was made by Mayor Pro Tem Thomasson, seconded by Councilmember Sherman and passed unanimously, to change the project to show only the committed \$50,000 and that the King Conservation District revenues be reapportioned to a project to be determined.

Marine View Drive Bridge - Shotcrete Project - \$379,800 for 2006

Assistant City Engineer Reinhold reminded Council that this item was removed from the original bridge project bid. He advised that after further discussions with the project engineer, the shotcrete is more than looks, it is necessary for structural long term needs.

Mayor Pro Tem Thomasson noted that this project has to do with finishing the bridge, so if the Committee is unwilling to fund it to finish the project, Des Moines will have to. However, he felt this part of the negotiation of the missing \$4 million. He felt this project should be done sooner, than later, so the funding should be provided with a footnote that we expect reimbursement from the Committee.

MOTION was made by Mayor Pro Tem Thomasson, seconded by Councilmember Sherman, to leave this project in the CIP, with the funding source changed to "to be determined" through negotiation with the Committee. Motion passed 6 to 1, Councilmember Benjamin opposed.

EXCUSED ABSENCE

MOTION was made by Mayor Pro Tem Thomasson, seconded by Councilmember Sherman and passed unanimously, to excuse Councilmember Petersen from the December 5, 2005 meeting. (Vote was 6 to 0 as Councilmember Petersen did not participate.)

PUBLIC HEARING

Shoreline Master Program Update

Mayor Sheckler declared the hearing open.

MOTION was made by Mayor Pro Tem Thomasson, seconded by Councilmember Sherman, to continue the Hearing to January 26, 2006. Motion passed unanimously.

CONTINUED PUBLIC HEARING

Highline Community College Shoreline Conditional Substantial Development Permit

MOTION was made by Mayor Sheckler, seconded by Councilmember White and passed unanimously, to continue the Hearing to January 12, 2006.

NEW BUSINESS

Donation of 160 Feet of Waterfront Property in Redondo

MOTION was made by Mayor Sheckler, seconded by Mayor Pro Tem Thomasson and passed unanimously, to place this item on the December 22, 2005, agenda.

OLD BUSINESS

Draft Ordinance No. 05-216 2004/2005 Comprehensive Plan Amendments

MOTION was made by Mayor Sheckler, seconded by Mayor Pro Tem Thomasson, to place this item on the December 22, 2005 agenda. Motion passed 6 to 1 with Councilmember Benjamin opposed.

NEXT MEETING DATE

Mayor Sheckler noted the next regular meeting will be December 22, 2005.

ADJOURNMENT

The meeting adjourned at 10:30 p.m. as time expired.

Respectfully submitted,

Denis Staab
City Clerk

PRELIMINARY
REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

December 22, 2005

The regular meeting of the Des Moines City Council was called to order at 7:31 p.m. by Mayor Sheckler in the City Council Chambers, 21630 11th Avenue South, Suite B.

PLEDGE OF ALLEGIANCE to the Flag was led by Councilmember Sherman.

ROLL CALL - Present: Mayor Bob Sheckler, Mayor Pro Tem Scott Thomasson, Councilmembers Dan Sherman, and Susan White. Absent: Councilmembers Richard Benjamin, Gary Petersen, and Maggie Steenrod. Also in attendance were City Manager Tony Piasecki, City Attorney Linda Marousek, Finance Director Paula Henderson, Assistant City Engineer Loren Reinhold, Harbormaster Joe Dusenbury, Planning, Building, and Public Works Director Grant Fredricks, Park and Recreation Director Patrice Thorell and Deputy City Clerk Angela Chaufty.

BOARD AND COMMITTEE REPORTS

2004 Financial Audit

Councilmember Sherman reported that he had attended the State Auditors' exit interview on December 9, 2005. No findings were identified.

Suburban Cities Association

Councilmember White announced that she had attended the Suburban Cities Association Board meeting and the Governor's Dinner last week. She noted that the Suburban Cities Association was seeking councilmembers to attend the public issues committee meetings.

ADMINISTRATION REPORT

2004 Financial Audit

City Manager Piasecki reiterated that the City had received no findings in the 2004 financial audit.

Mount Rainier Swimming Pool

City Manager Piasecki informed Council that the swimming pool's temperature controls had broken. As a result, energy costs for the facility had increased. The following options to resolve the situation were currently being studied:

- Purchase of a swimming pool cover.
- Purchase of a new temperature control computer system.
- Replacement of the sand filters.

CONSENT CALENDAR was read by Deputy City Clerk Chaufty.

1. Findings: Vouchers audited and certified by the auditing officer as required by RCW 42.24.080, and those expense reimbursement claims certified as required by RCW 42.24.090, have been recorded on a listing which has been made available to the City Council.

Motion: As of this date the Des Moines City Council, by unanimous vote, does approve for payment those vouchers and payroll transfers included in the above list and further described as follows:

Claim checks #102107 through #102321 & electronic fund transfers in the total amount of \$1,658,448.26

Payroll fund transfers in the total amount of \$345,815.31

MOTION was made by Councilmember White, seconded by Mayor Pro Tem Thomasson, and passed unanimously to approve the consent calendar as read.

OLD BUSINESS

Draft Resolution No. 05-240 [Assigned Res. No.1004] – Years 2006 – 2011 Draft Capital Improvement Plan

Assistant City Engineer Reinhold briefly reviewed the following proposed projects:

- Woodmont Culvert
- Barnes Creek Detention Facility/Culvert
- Barnes Creek/Kent-Des Moines Road Culvert Replacement
- Lower Massey Creek Channel
- McSorley Creek Basin Plan
- Normandy Creek Basin Improvements
- North Hill NE Trunk Line Project
- 199th North Hill Trunk Line
- Decant Station

Mayor Pro Tem Thomasson suggested that staff contact Normandy Park regarding the lack of maintenance in the Normandy Creek Basin area.

As the Marina Master Plan was in the process of being updated and the rate study results were not yet finalized, City Manager Piasecki noted that the 2006 and 2007 Marina Depreciation and Improvement Fund figures were placeholders only.

Harbormaster Dusenbury displayed a drawing of the existing Redondo boat ramp and identified the proposed relocation of the floating breakwater. He briefly highlighted the following proposed projects:

- Redondo Improvements
- Marina Master Plan Update
- Commercial Building – West Marine
- Boat Yard Building and Expanded Work Yard
- New Decking for N & M Docks
- M Dock Electrical Upgrades
- Piling Replacement
- Fire Suppression System Stand Pipes on K & L Docks
- Security Camera System
- Marina Office Remodel
- Expanded Guest Moorage – Phase 1

- South Marina Restroom Replacement
- Commercial Building – Marina Office Complex
- North Seawall and Sidewalk
- Seawall Replacement Project N to I Docks
- Seawall Replacement Project A to H Docks

Mayor Pro Tem Thomasson recommended that the “Commercial Building, West Marine” project be renamed “Commercial Building, Marine Hardware Store” as it was not yet known whether West Marine would be the commercial store at that location.

Upon questioning from Mayor Pro Tem Thomasson, Harbormaster Dusenbury confirmed that operating and replacements costs for the security camera system had been budgeted.

Mayor Pro Tem Thomasson voiced his preference for rebuilding the restrooms and laundromat rather than remodeling the marina office.

Harbormaster Dusenbury said that the marina office remodel project could be discussed in detail when the Master Plan was presented to Council for review and adoption. He explained that the City hoped to use revenue generating improvements to fund non-revenue generating improvements.

Councilmember Sherman requested that the Des Moines Memorial Drive Project be included in the 2007 Arterial Streets CIP. He asked that the City Manager’s monthly report address whether funding for the Des Moines Creek Trail could be moved up.

Planning, Building, and Public Works Director Fredricks said that staff was working with the City of SeaTac to secure grant funds for the Des Moines Creek Trail project.

Councilmember Sherman said that the pedestrian connection of the trail to the downtown area should be done after the trail improvements were complete.

MOTION was made by Councilmember White and seconded by Mayor Sheckler to adopt Draft Res. No. 05-240 approving the City of Des Moines 2006-2011 Capital Improvement Plan.

Finance Director Henderson reviewed the revisions to the Municipal Capital Improvement Plan resulting from Council’s prior direction. She also noted that \$100,000 had been added to the Arterial Streets maintenance program for 2006.

Councilmember White asked that the Activity Center Expansion Study be moved to 2007.

Mayor Pro Tem Thomasson noted that the identified allocation of traffic impact fees did not comply with Section 6 of the proposed resolution.

MOTION was made by Mayor Pro Tem Thomasson to amend the Traffic Impact fees so that they were allocated based upon the policies identified and that other fund balances be moved as a result of the policies. The maker and seconder of the original motion **accepted this motion as a friendly amendment.**

Mayor Pro Tem Thomasson said that he was not in favor of using debt service to fund the Des Moines Beach Park improvements. He would not support the proposed resolution due to the Municipal Capital Improvement Fund.

Councilmember Sherman concurred with Mayor Pro Tem Thomasson's comments regarding the use of debt service to fund Des Moines Beach Park improvements. As the proposed projects would not occur without further Council discussion however, he would support the resolution. Councilmember Sherman questioned why the City should spend \$1.8 million to purchase Zenith Park.

Mayor Pro Tem Thomasson said that he was interested in the City maintaining a playfield at Zenith Park. He suggested that the City see if seven or eight acres could be purchased rather than twelve acres.

VOTE ON MOTION: Motion passed, 3 – 1, with Mayor Pro Tem Thomasson opposed.

At 9:01 p.m., Mayor Sheckler declared a break.

Draft Ordinance No. 05-226 Adoption of Year 2006 Budget

Planning, Building and Public Works Director Fredricks reviewed the proposed duties of the CIP Coordinator position. He showed a chart illustrating conceptually the project funding breakdown for the proposed position. He stated his intention to establish a billable rate to charge against each projects so that no project subsidized another project.

Councilmember White voiced support for the position.

Finance Director Henderson confirmed that the proposed position was included in the presented budget. She provided a recap of the proposed 2006 budget.

Mayor Pro Tem Thomasson noted that the proposed 2006 deficit was greater than the previous year's deficit. He said that he was not comfortable with the proposed budget as the underlining problem was being ignored.

Councilmember Sherman concurred with Mayor Pro Tem Thomasson's comments. He recommended that staff cut the proposed budget so that the deficit did not exceed the 2005 deficit. He said that the proposed budget was balanced but not sustainable. Councilmember Sherman voiced his preference for leaving money in the Airport Defense Fund rather than transferring it to the general fund. He wished to approve the request from RCAA for \$20,000 and fund it out of the Airport Defense Fund.

Mayor Sheckler voiced agreement with Councilmember Sherman's comments regarding the RCAA.

Mayor Pro Tem Thomasson said that he would support some level of support for services.

City Manager Piasecki said that he and the department directors would review the revenue projections and discuss possible cuts.

At 9:56 p.m., Mayor Sheckler declared a five-minute break.

Regarding the CIP, Councilmember Sherman said that the project description sheets needed to be updated.

MOTION was made by Mayor Pro Tem Thomasson, seconded by Councilmember Sherman, and passed unanimously to pass Draft Ordinance No. 05-226 to a second reading on December 29, 2005.

City Manager Piasecki read the title of the proposed ordinance into the record.

Draft Ordinance No. 05-217 (A&B) Mitchell/Chamlian Comprehensive Plan Amendment and Rezone
Consultant Judith Kilgore reviewed the changes to the proposed ordinance per Council's direction.

MOTION was made by Councilmember White, seconded by Mayor Sheckler, and passed unanimously to suspend Rule 26b to adopt Draft Ordinance No. 05-217B on the first reading.

MOTION was made by Councilmember White and seconded by Councilmember Sherman to adopt Draft Ordinance No. 05-217B relating to the Mitchell/Chamlian Comprehensive Plan amendment.

Mayor Pro Tem Thomasson said that he would not support the motion as he felt that it was contrary to the long range interest of the City to change the zoning of the property from commercial to residential.

VOTE ON MOTION: 3 – Yes; 1 – No, with Mayor Pro Tem Thomasson opposed. Motion failed as four affirmative votes are required for the passage of an ordinance.

NEW BUSINESS

Donation of 160 feet of Waterfront Property in Redondo

Planning, Building, and Public Works Director Fredricks introduced the subject. He noted that the State's Department of Natural Resources was also interested in the property. Mr. Fredricks said that there was a general public benefit for public versus privately owned tidelands.

Councilmember White noted that access to the area was a problem.

Mayor Pro Tem Thomasson said that he favored public ownership of the property as the stream might be better controlled.

Upon questioning, City Attorney Marousek confirmed that the property would require a short plat.

MOTION was made by Councilmember Sherman and seconded by Mayor Pro Tem Thomasson to direct staff to prepare a resolution and appropriate deed accepting the gift of 160 feet of waterfront tidelands from Dr. and Mrs. Hong. **VOTE ON MOTION:** Motion passed, 3 – 1, with Councilmember White opposed.

NEXT MEETING DATE – Thursday, December 29, 2005, 6:30 p.m.

Absence – Councilmember Benjamin

Mayor Sheckler announced that Councilmember Benjamin had left a message regarding his inability to attend the meeting on the City Manager's voice mail.

MOTION was made by Councilmember Sherman and seconded by Mayor Pro Tem Thomasson to excuse Councilmember Benjamin from attendance. **VOTE ON MOTION**: Motion failed, 2 – 2, with Mayor Sheckler and Councilmember White opposed.

ADJOURNMENT

At 10:18 p.m., **MOTION** was made by Councilmember White, seconded by Mayor Pro Tem Thomasson, and passed unanimously to adjourn the meeting.

Respectfully submitted,

Angela M. Chaufty
Deputy City Clerk

ACTION ITEMS FROM MEETING OF 12/22/05

- Confirm proposed budget revenue projections.
- Review the proposed budget for potential cuts.

PRELIMINARY
REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

January 12, 2006

The regular meeting of the Des Moines City Council was called to order at 7:30 p.m. by Mayor Sheckler in the Council Chambers, 21630 11th Avenue South, Suite B.

PLEDGE OF ALLEGIANCE to the Flag was led by Councilmember Elect Scott.

OATH OF OFFICE

City Attorney Marousek administered the Oath of Office to Councilmembers Elect Dave Kaplan, Ed Pina, Carmen Scott and Susan White.

ROLL CALL - Present: Mayor Bob Sheckler, Mayor Pro Tem Scott Thomasson, Councilmembers Dave Kaplan, Ed Pina, Carmen Scott, Dan Sherman and Susan White. Also in attendance were City Manager Tony Piasecki, City Attorney Linda Marousek, Land Use Planner Jason Sullivan and City Clerk Denis Staab.

ELECTION OF MAYOR

Mayor Sheckler read the City Council rules for conducting the election of Mayor and Mayor Pro Tem.

City Clerk Staab declared the nominations for Mayor were opened.

Councilmember Scott nominated Bob Sheckler. As there were no further nominations, City Clerk Staab declared Mr. Sheckler as Mayor, for the next two years, by unanimous consent.

ELECTION OF MAYOR PRO TEM

Mayor Sheckler asked for nominations for Mayor Pro Tem.

Councilmember Sherman nominated Scott Thomasson. As there were no further nominations, Mayor Sheckler declared Mr. Thomasson as Mayor Pro Tem, for the next two years, by unanimous consent.

COMMENTS FROM THE PUBLIC

James Chastain, 32849 38th Ave. S., Federal Way

Mr. Chastain informed Council that he owns rental property in the area of 30th and South 216th. He stated that it is a basic human right to expect that government provides a degree of safety from gangsters, thugs and scum. He stated that beautifying Highway 99 was nice, but you cannot walk the streets day or night and feel safe. He reported that the other day on his property, he was having a window replaced that had been shot out, when he witnessed a man shot in the head. He further reported having tenants door kicked in by a drug user. He informed Council that the type of activities that are occurring in the neighborhood are not good for the landowners or the community. He stated he cannot rent the units, or sell the property, comfortably with this criminal activity occurring.

Jane Chastain, 32849 38th Ave. S., Federal Way

Ms. Chastain informed Council that she and her husband own two rental properties in the area of 30th and South 216th. She stated they are proud of the rentals as clean, with new carpeting, but seven of the twelve units are vacant as no one wants to live in the neighborhood because of the crime. She told Council that people hang out in their parking lot to sell and use drugs, prostitutes have worked out of their laundry room, hoodlums hang out in the common hall ways, and locks are broken. She advised that drugs are sold 24/7. She concluded by advising that if this criminal activity is ignored it will only get worse. She requested City help in cleaning up the area.

(Unable to Determine Name), 21637 30th Avenue South

The gentleman informed Council that he owns the four-plex and he has lived in one of the units for the past two years. He advised that this area is a drive through for buying and selling drugs. He stated that he has had storage units broken into, found bullets and there are thugs lurking in the bushes. He informed Council that he is afraid to live and own property here due to the overwhelming criminal elements and that by summer Des Moines will be one of the most dangerous places to live. He asked for more police protection.

BOARD & COMMITTEE REPORTS and COUNCILMEMBER COMMENTS

Suburban Cities

Councilmember Sherman reported attending a recent meeting for people who represent Suburban Cities on regional committees, as he is the alternate for Public Health. The meeting was to advise members that they are representing Suburban Cities and not their individual positions on the various committees.

Newly Elected Councilmembers

Councilmember Sherman took this opportunity to congratulate the new Councilmembers and noted he is looking forward to working with each one, having agreements and disagreements, but hopefully productive discussion over the next few years.

Pacific Highway South Criminal Activity

Councilmember Sherman noted Council is well aware of the problems and have implemented some programs such as the 'Crime Free Program' with rental properties. He advised that we need to restore the City's police force and again asked fellow Councilmembers to put on the ballot a levy lid lift to provide funding to bring police staffing levels up to where they were 5 or 6 years ago.

Small Business Developmental Center

Councilmember White noted the group is composed of a coalition of neighboring cities, Highline College and King County. The goal is to provide information to anyone interested in opening a business in the area.

Suburban Cities Association

As a member of the Board of Directors, Executive Committee, Councilmember White stated that the organization addresses various issues within the cities. She stressed the organization is making great progress and noted that there is a vacancy on the Public Issues Committee, which meets monthly. She noted that the Mayor will address this later on the Agenda.

Four Culture Group

Councilmember White reported the City applied for a \$50,000 grant. She expressed optimism that the City will get the grant to help the Beach Park. She thanked Parks and Recreation Director Thorell and Councilmember Scott for their assistance in applying for the grant.

Passenger Ferry Coalition

Councilmember White reported the next meeting will be January 20th and the group is currently looking for funding for a feasibility study which would create a pilot project for Des Moines, Gig Harbor, and Tacoma, to see how effective passenger ferry service might be.

Looking Forward

Councilmember Pina noted that he looks forward to successfully working with the Councilmembers. He expressed hope Council can work together to restore the Police force to its proper size as there is a great need to solve the safety and security problems that exist in Des Moines. He further advised that he wants the City's budget restored, one that is not depending on one time money for recurring costs.

City Manager's Performance Evaluation Committee

Mayor Pro Tem Thomasson noted the Mayor formed the Committee last Fall, and forms were sent to Councilmember's for comment and the return of the forms was very low. He noted with three new Councilmembers it is difficult to ascertain the City Manager's performance. He noted he is sad to report nothing conclusive has been done yet.

ADMINISTRATION REPORTS

Fire District Merger

City Manager Piasecki announced the successful merger of Fire Districts 26 and 39 as of the first of the year. He reported that he and Mayor Sheckler attended the Open House Celebration. He stated he is excited about the large, very flexible organization and its ability to provide a bunch of really cool services. The name of the merged districts is "South King Fire & Rescue".

Rain Caused Slides

Planning, Building and Public Works Director Fredericks reported that the City was doing well until yesterday, when the earth fell out at two areas as follows:

1. Des Moines Memorial Drive: A section of embankment on the Des Moines Creek side of the road. North bound lane closed temporarily, and recommendations were made and implemented and the lane re-opened this morning. There are 'jersey' barriers along 200' feet as there is no shoulder. Will monitor closely until permanent repairs can be made.
2. Northwest Edge of Marine View Drive Bridge: A significant wash-out carried with it one of the storm drains from North Hill. Drain has been diverted and pumps will be working. Situation is under control and is optimistic this will work until the rains stop and can fully assess the issues.

He noted there has been a few other less significant flooding in a few neighborhoods. He reported City crews are working hard and there has only been 8 calls for service.

He concluded by reporting that the City Manager has formally declared an emergency to bypass the normal contracting process to allow immediate response. He advised, as the law requires, a full report will be brought back to Council at the meeting of January 26th.

PRESIDING OFFICER'S REPORT

Presentation by Samoan Christian Fellowship Church

Mayor Sheckler reported that last November he attended a full day event for dedication of the Samoan Christian Fellowship Church in North Hill. He was very impressed and invited the Church to attend this meeting. Mayor Sheckler introduced Pastor Tuugasala Fuga.

Pastor Fuga advised that the Church is happy to become a member of Des Moines and expressed offers of support to the community and Council. He informed Council that once the Church construction is complete, the facility is being offered as a 'relief center' for the entire City in the event of any critical emergency. He introduced Rudy Allen, one of the High Talking Chiefs of the Church.

Mr. Allen presided over a ceremony of respect to the Mayor and Councilmembers, which is seldom done outside their culture. A large thatched blanket, a Samoan gift of respect, was presented as a symbol of shelter. In addition other gifts included a large roasted pig, cans of corned beef and tuna were presented representing a plat for the King, and leis were given to each Councilmember and staff on the dais.

At the end of the presentation a standing ovation was given to the Church members by Council and the audience.

8:30 p.m. Mayor Sheckler called for a 10 minute break.

CONSENT CALENDAR was read by City Clerk Staab.

1. Findings: Vouchers audited and certified by the auditing officer as required by RCW 42.24.080, and those expense reimbursement claims certified as required by RCW 42.24.090, have been recorded on a listing which has been made available to the City Council.

Motion: As of this date the Des Moines City Council, by unanimous vote, does approve for payment those vouchers and payroll transfers included in the above list and further described as follows:

Claim checks # 102330 through #102496 & electronic fund transfers in the total amount of \$819,661.28

Payroll fund transfers in the total amount of \$351,028.73

~~2. Motion is to accept a 60 month lease with Kelley Imaging Systems in the monthly amount of \$1,383.40, excluding sales tax, and authorize the City Manager to sign said agreement in a form approved by the City Attorney.~~ [ED NOTE: Item removed by Mayor Pro Tem Thomasson.

3. Motion is to approve the transfer up to \$28,525 from the Municipal Capital Improvement City Hall Parking Lot Project budget to the Municipal Capital Improvement Activity Center Street Frontage Improvement Project, and to award the contract for the Des Moines Activity Center Street Frontage Improvement Project to the lowest bidder, Precision Earthworks, in the amount of \$54,400 plus tax, and authorize the City Manager to sign the contract substantially in the form as submitted. And to authorize the City Manager to approve change orders not to exceed 10% of the total contract amount.

4. Motion is to authorize payment of registration and travel expenses of approximately \$300 each for Mayor Sheckler and Councilmembers White, Pina and Scott to attend the Association of Washington Cities Legislative Action Conference in Olympia on January 25-26, 2006.

Mayor Pro Tem Thomasson requested Consent Item #2 be removed.

MOTION was made by Mayor Pro Tem Thomasson, seconded by Councilmember Pina to approve the Consent Calendar as amended. Motion passed unanimously.

REMOVED CONSENT ITEM #2

Photocopy Agreement with Kelley Imaging Systems

Upon questioning by Mayor Pro Tem Thomasson, City Manager Piasecki stated it is best to lease versus purchasing, as technology changes so quick. He noted that some of the copiers are multi-functional and are compatible with the City's computers. Each department has their own unique needs and are in separate locations.

MOTION was made by Mayor Pro Tem Thomasson, seconded by Councilmember Pina and passed unanimously, to accept a 60 month lease with Kelley Imaging Systems in the monthly amount of \$1,383.40, excluding sales tax, and authorize the City Manager to sign said agreement in a form approved by the City Attorney.

CONTINUED PUBLIC HEARING

Highline Community College, Shoreline Conditional Substantial Development Permit

Mayor Sheckler introduced the topic.

City Attorney Marousek noted that this is a quasi-judicial matter, and inquired of the three new Councilmembers as to whether they had reviewed the previous minutes and documents regarding this matter in order to participate in this public hearing. The response was in the affirmative from Councilmembers Kaplan, Pina and Scott. She further noted that Councilmember Pina served as a Planning Agency Member and has reviewed the matter in that capacity. She advised that under RCW 42.36.070, the statute specifically states "Participation by a member of a decision making body in earlier proceedings that result in an advisory recommendation, to a decision making body, shall not disqualify that person from participating in any subsequent quasi-judicial proceeding". Therefore, her decision is that Mr. Pina is fully qualified to act as a member of the Council on this matter.

Land Use Planner Sullivan noted Council must determine if the proposed project satisfies the criteria for a Shoreline Conditional Substantial Development Permit and either approve, approve with conditions, or disapprove per DMMC 18.56.180(2). He briefly reviewed progress from the November 10 and December 2, 2005, Council meetings of the College's request for replacement of their Marine Science and Technology Center in Redondo. He reminded Council this is a four step process consisting of 1) Environmental Review (done), 2) Conditional Shoreline Permit (tonight), 3) Design Review and 4) Building Permit. He informed Council all four steps must be completed before construction can begin.

Land Use Planner Sullivan reviewed questions submitted to staff and commented as follows:

- *It would be helpful to have a copy of the agreement between the College and the City pertaining to parking at Redondo.*

A meeting was held between the College and City Manager, and an informal agreement was made that the students could park in the City's parking lot for free if they displayed a Highline College parking pass.

City Manager Piasecki noted this was an informal agreement and the intention was that the staff from Highline College would get with Des Moines Harbormaster and finalize the agreement. He advised this action never occurred so in his opinion there is no parking agreement in place.

Land Use Planner Sullivan stated this would mean the College students would be required to pay if they use the City's facility.

- *How large is the lot/land owned by the College at the site?*

Land Use Planner Sullivan advised there is 3,663 square feet of Shoreline, some underwater. He noted there is no upland area to establish a separate parking facility on the land side of the bulkhead.

- *If no land available, how do we solve perspective of parking issues?*

Land Use Planner Sullivan advised that based on City Code, when land is not available for parking on the same site as the proposed building, the Planning, Building and Public Works Director has the authority to grant off-site parking. He noted this is attachment 2 in tonight's packet. He noted any agreement would be done as part of the Design Review phase.

City Manager Piasecki advised that any type of parking agreement that requires Council approval, it would come back to Council before it passed the Design Review phase. He stated the College is very aware that the City Code requires them to have 10 spaces.

- *If the parking issue continues to be a 'show stopper' would creating street parking or improvements equivalent to 20 spaces, up the road past Wootton Park, be a satisfactory in lieu exchange?*

Land Use Planner Sullivan informed Council that any impacts we require the College to mitigate have to be targeted and we have to show a direct connection between those impacts and the mitigation.

Land Use Planner Sullivan displayed a parking survey prepared by the College, noting that there are currently 39 parking stalls in the Redondo facility and that does not include the boat or trailer parking stalls. He pointed out that during the time classes were in session there is a very low parking count at the site. He noted this was done in November, but noted the College does not offer classes during the peak boating season.

Land Use Planner Sullivan concluded by noting administration believes the proposed project to replace the existing structure with a new modern structure to be utilized in an identical manner, will not create any substantial detrimental impact to the Community and does not impede the communities access to the shoreline, but will provide recreational uses of the shoreline. Further, it will work to protect the eco system and the project is consistent with the objectives of RCW 9.58.020, Shoreline Management Act, and it does not adversely effect the public health, the terrestrial environment or the aquatic environment. Furthermore, it does not reduce the public's

right to use the shoreline. The project is consistent with the criteria and goals of both the Shoreline Master Program and the Shoreline Management Act; therefore administration sees no reason why the Council should not approve the request.

Upon questioning by Mayor Pro Tem Thomasson as to whether there are any established parking requirements that are related to schools, Land Use Planner Sullivan noted staff used DMMC 18.44.060(19) to determine the parking stalls, which is based on the Fire Occupancy Load of the building for the class room. However he noted the final review will be done during the Design Review process.

Mayor Pro Tem Thomasson stated he has a problem with approving the application when he only knows half the story and feels that Council is being prematurely asked to make a decision. He noted that when the old structure is torn down, you start from scratch in terms of Code compliance. He stated he is worried that there may be a dozen of other issues that staff is not yet aware of. He further stated that he has not been shown that the project does not adversely effect the public health, safety or interests, and the public will not suffer any detrimental effect. He felt that he does not have enough information to reach a decision and thought it would be better to have the building permit submitted, and the Design Review complete, so that Council's action is just a confirmation that everything is okay.

Councilmember Pina advised that the College is planning on doing exactly what they have been doing and the Shoreline Plan allows that they can, since they are not damaging the environment. He felt that if the College plans on increasing the number of students or classes, then the request would have to come back to Council again, but as long as no changes are made then they are okay.

Councilmember Scott noted that classes are held mainly when there are not many visitors in the area, such as during the week, but not during the summer, therefore it does not seem to be a great demand for more parking. However, she agreed with Councilmember Pina, that should the College make changes to the use that increase parking needs, such as having the aquarium open on week-ends especially during the summer, then there may be case for concern over adequate parking, otherwise it is a non issue.

Councilmember Sherman stated that when the College's current facility was built it was not in the City. By annexation it is now in the City and any new construction must be built to our Code. He expressed agreement with Mayor Pro Tem Thomasson that Council should not approve the application until after Design Review approval and application for a building permit is made. He expressed some concern that there should be consideration given to the possibility that the College could hold classes during the summer or other peak times when parking is a problem. In regards to parking, he felt that the College should either pay for parking, or perhaps an arrangement for in-lieu services.

Upon questioning by City Attorney Marousek, Land Use Planner Sullivan advised that the College has the option that they could seek design approval, apply for a building permit and a Shoreline Permit concurrently. However, they cannot get approval for a building permit unless they have a Shoreline Permit first. He further advised that design approval is conceptual in nature so they could apply for that without actually apply for the building permit. He advised that staff must be sure that the Shoreline Permit is acceptable to Council, and will not significantly impact the neighborhood or marine environment. He further advised that only the

Planning, Building and Public Works Director has the authority to decide design review and building permits, not the City Council.

Councilmember White felt that the College facility may not have negative impacts on the shoreline, but has concerns that a new beautiful new facility will impact the community with parking issues.

Upon questioning from Councilmember Pina regarding potentially expanding the parking lot, City Manager Piasecki stated there is the potential to expand the paid parking area, but there is the question of how to fund such an expansion.

City Manager Piasecki advised that the Code states that parking is either on site or you figure out a way to do it off site. In regards to a parking agreement with the College, he noted it might say they are going to pay for ten stalls, but they can only be used during the lower peak hours.

Land Use Planner Sullivan noted that in DMMC 18.44.020 it states regarding pre-existing parking spaces 'a facility that was in operation before May 8, 1987, may continue to operate with a parking deficiency as no enlargement or changes are made that require additional parking spaces.' He pointed out that there is no enlargement of the facility, or change, that would require additional parking spaces.

Mayor Sheckler declared the Public Hearing closed.

MOTION was made by Councilmember Pina, seconded by Councilmember Kaplan, to direct staff to prepare a resolution, and draft finding of fact and conclusions consistent with the following conditions of approval:

1. The applicant shall seek approval from the City Council to significantly increase frequency 'or seasons' of usage of the new Marine Science and Technology Center over the current usage as describe below:
 - a. Six class periods per week
 - b. Public Aquarium view one day a week
 - c. Public lecture series twice a month
2. The applicant shall follow all applicable plans, codes and regulations during the land use permitting and building construction phase of the Marine Science and Technology Center.
3. The applicant shall develop a construction staging plan acceptable to City administration prior to submittal of a building permit.

A FRIENDLY AMENDMENT was offered, and accepted by Councilmember Sherman, to insert "or seasons" in item one between 'frequency' and 'of'.

Councilmember Sherman commented that while overall he approves of the use, he feels there is a trust issue in what staff will do, and whether they will apply the proper regulations. He felt there is a lot of concern over potential parking issues.

Mayor Pro Tem Thomasson advised he can support the motion, it is more a matter of when. He noted it would be better if staff completed design review prior to bringing a resolution back to Council to approve the Shoreline Permit.

Councilmember Pina stated it is important for Council to trust staff, monitor what they are doing and respond to actions they are taking, not to Council's fears.

Councilmember Kaplan felt that the conditions as outlined ensure that if there is going to be any additional impact, it will have to come back to Council. He felt it is not right to hold up this permit over a larger issue of parking in Redondo, which everyone is aware of and if it is that bad, then Council needs to address that issue on a more global scale. Holding the College hostage over the permit, that will beautify and enhance the area, is a mistake.

VOTE ON MOTION: Motion passed 6 to 1 with Mayor Pro Tem Thomasson opposed.

NEW BUSINESS

Appointment of City's South County Transportation Board Representative & Alternate and, Appointment of Council Representative & Alternate to Suburban Cities Association's Public Issues Committee

Mayor Sheckler inquired if any Councilmember would be interested in serving in either of these capacities.

Councilmember Sherman remarked that that he has served on the South County Transportation Board for the past 10 years and on the Public Issues Committee for the past year. He stated they are both great organizations and the City does receive benefits. He advised that he is feeling over-extended and will be unable to continue. He noted that Councilmember White, also over-extended, has served as the alternate on the Public Issues Committee. He informed Council that the Committee will be making some upcoming important decisions in shaping policy that will effect all the cities in King County.

MOTION was made by Councilmember Sherman, seconded and passed, to appoint Planning, Building and Public Works Director Fredricks as the alternate to the South County Transportation Board.

As there were no volunteers for the appointments, Mayor Sheckler announced that he will be contacting all Councilmembers in the next week to determine interests for appointments to Council's standing committees and other liaison assignments.

NEXT MEETING DATE - Regular Meeting January 26, 2005

Mayor Sheckler announced that the next regular meeting will be January 25, 2005.

ADJOURNMENT

At 10:04 p.m. MOTION was made by Councilmember White, seconded by Mayor Pro Tem Thomasson and passed unanimously, to adjourn.

Respectfully submitted,

Denis Staab
City Clerk

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Agreement with JSH Properties, Inc.
for Services in Finding and Developing
Commercial Leases in The Marina.

ATTACHMENTS:

Draft Agreement and Scope of Work from
JSH Properties, Inc.

FOR AGENDA OF: February 9, 2006
DEPT. OF ORIGIN: Marina

DATE SUBMITTED: January 19, 2006

CLEARANCES:

[X] Marina

[X] Legal

APPROVED BY CITY MANAGER

FOR SUBMITTAL:

A. Purpose & Recommendation

The purpose of this Agenda Item is to gain Council approval for an agreement with JSH Properties, Inc. to provide commercial real estate brokerage services in the Marina.

Suggested Motion: "I move that the City Council approve the agreement with JHS Properties, Inc., with commissions paid to JHS Properties not the exceed \$30,000 without further Council action, and authorize the City Manager to sign the agreement substantially in the form as submitted."

B. Background

At the retreat in September of 2005, the Council and staff discussed the update of the Marina Master Plan. At that meeting, a preferred alternative emerged that included the expansion of the boat repair yard and the creation of some more commercial space in the area of the boat yard and to the north of the Marina office. The uses of these commercial spaces were discussed and at that time, the Council preferred Marina related uses such as a marine hardware store and another restaurant. In order to find successful operators of the types of business that the Council would like to see in the Marina, the staff recommended retaining a commercial real estate broker to act on behalf of the City.

C. Discussion

There has been an on-going discussion for several years about the appropriate level of commercial activity in the Marina. In 2003 the Marina hired Ravenhurst Development, Inc. to determine what types of commercial activities would be successful on the Marina floor. Ravenhurst developed a wide range of alternatives that ranged from actually reducing the

commercial activities in the Marina in favor of a more park-like facility to a large retail development of 30,000 plus square feet. The studies showed that the highly seasonal nature of recreational boating would not support many types of business, and any large-scale development would generate parking and traffic issues that would be expensive to deal with.

The preferred alternative that emerged from the work that Ravenhurst did in the initial investigation and subsequent work they did for the city's Economic Development Plan was a moderate increase in the level of commercial activity with business that would complement the recreational boating industry. The types of businesses that were identified as having the greatest chance of success in the Marina were boat yards, marine related retail, and well promoted restaurants. This recommendation is being developed in the Update to the Marina Master Plan.

During the Council retreat last September and at Municipal Facilities Committee meetings, the staff has put forward the idea of retaining a commercial real estate broker to help find successful business that want to locate in the Marina and to help negotiate leases that will be of a long-term benefit to the City. The City Manager and the Harbormaster interviewed two firms and selected JSH Properties, Inc. to forward to the Council for consideration. JSH Properties commission structure is similar to the industry standard which is based on a percentage of the total rents collected in the first 10 years of the lease. For example, the City can expect to pay about \$24,000 in total commissions for a long-term lease that generates \$64,000 per year.

D. Alternatives

Alternative 1. Accept the recommendation of the recommendation of the staff and authorize the City Manager to enter into an agreement with HSH Properties, Inc.

Alternative 2. Give Staff further direction on the development of commercial uses in the Marina.

E. Financial Impact

Initially commissions paid to a real estate broker would reduce lease revenues. The staff reasons that, in the long term, the City will come out ahead if the process results in finding successful business and produces good leases that minimize the chances of conflict in future years.

F. Recommendation

The Marina staff recommends approval of the agreement with JSH Properties, Inc.

Concurrence

The City Attorney has reviewed this agreement.



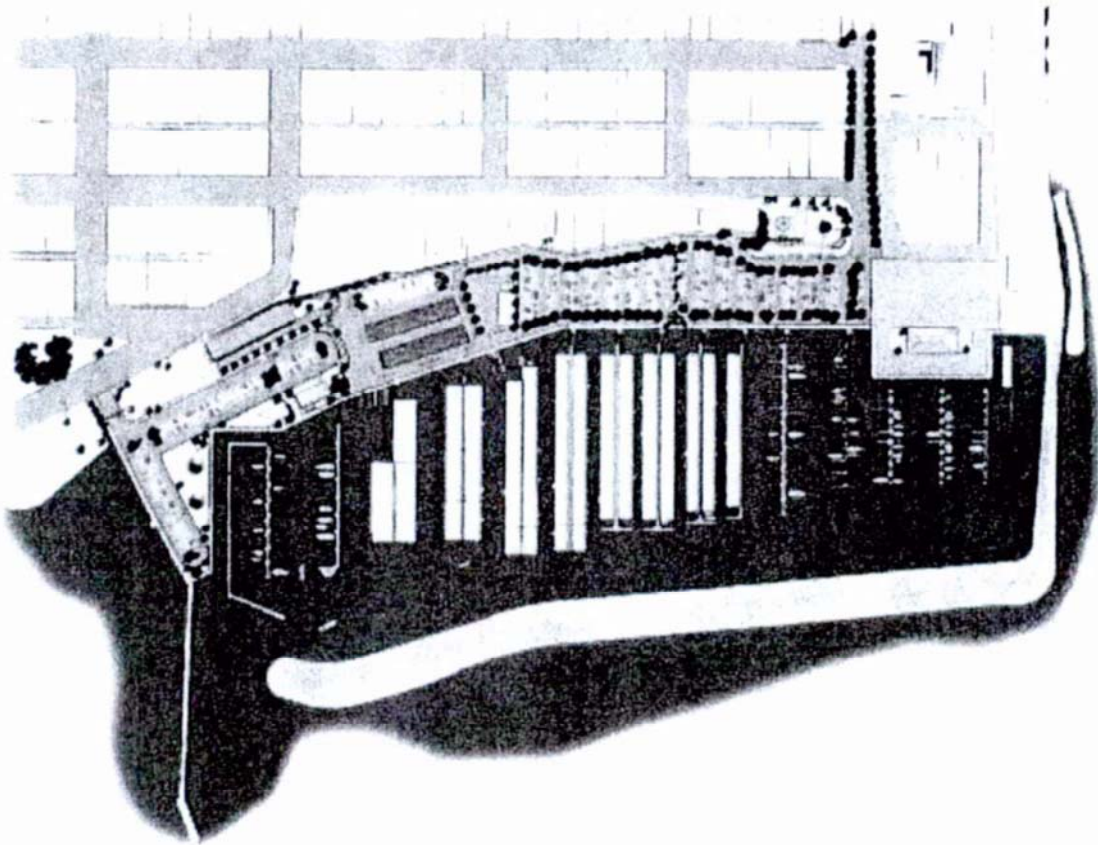
JSH PROPERTIES, INC.



JSH PROPERTIES, INC.

Leasing Proposal

Prepared For:
City of Des Moines Marina
Redevelopment



Des Moines, Washington
Decemembr 7, 2005



JSH PROPERTIES, INC.

- I. JSH COMPANY OVERVIEW**
- II. PROJECT PROPOSAL**
- III. LEASING PROPOSAL**
- IV. LEASING TEAM BIOGRAPHIES**
- V. JSH PROPERTIES LEASING MAP**
- VI. CLIENT REFERENCE LISTS**
- VII. EXCLUSIVE LEASING LISTING PROPOSAL**

JSH PROPERTIES, INC.

JSH Properties, Inc. was established in 1986 to provide custom property management and leasing services to a select group of property owners. Our client base includes pension fund advisors, real estate partnerships, major developers and a few high net worth individuals. Through strong landlord-tenant relations, quality maintenance, and aggressive marketing, JSH Properties, Inc. is able to exact peak performance from its portfolio, resulting in a greater return on the owner's investment.

JSH Properties, Inc. is one of the largest fee managers for owners of institutional properties in the greater Puget Sound region. Our main objective is to provide tailored management services that meet the performance requirements our clients demand in today's competitive marketplace.

Our management team is dedicated to providing tenants with prompt, personal service. We believe that positive tenant relations are a key ingredient to a successful property. By meeting the needs of your tenants, we are able to negotiate favorable lease renewals that both increase and stabilize the project cash flow.

JSH Properties, Inc. provides expertise in sales and leasing. By maintaining a constant pulse on the market, we are able to negotiate leases favorable to our clients, including attracting national tenants and obtaining higher rents. We have a comprehensive understanding of internal rates of return, cash flow projections, and an appreciation of the correlation between capital improvements and increased real estate value.

JSH Properties, Inc. closely monitors vendor services to ensure the properties are clean and appealing to tenants at all times. With our management offices located in Bellevue, the Kent Valley, and Kirkland, we are able to closely monitor properties through frequent site visits. The property manager is sensitive to competitive reimbursable expenses, and takes all major service contracts out to bid annually. Additionally, all building and tenant improvement work is bid and monitored by the property manager.

Our accounting team provides timely, accurate financial information designed to aid owners in appropriate decision making and analysis. We utilize state of the art software packages including Skyline, Yardi, MRI, AMSi, and Timberline, which are capable of producing sophisticated, yet understandable, financial reports. Included with your monthly package will be a statement from your property manager summarizing current market conditions, unusual maintenance and repair issues specific to the property, a delinquency status update and a report explaining significant variances to the annual budget.

In conjunction with the above activities, JSH Properties, Inc. develops Real Estate with Village Properties on both a speculation and build to suit basis. We offer Real Estate consulting services, assistance in locating financing for projects, and evaluation expertise.

PROJECT PROPOSAL

Our goal is to be a Development and Leasing advisor on the expansion of the City of Des Moines Marina. This is a prime piece of real estate and there is tremendous opportunity to raise the revenue and image of the marina.

JSH will help to renegotiate the lease with the marine repair as they desire to expand their space and extend their lease. The current restaurant lease will be negotiated for early termination or a buyout, in order to make room for the marine repair expansion.

In synergy with the marine repair we will procure and negotiate a lease for a marine supply store in a neighboring building. There is a potential tenant list that we are currently working with to successfully fill the space.

Regarding the development of an office/retail building as a possible expansion of the guest dock facilities, our goal is to help in deciding what to build and advising in what types of tenants to expect. We will market the space to an upscale seafood/waterfront restaurant to occupy a portion of this building.

JSH will bring experience and ideas to the development of a boutique hotel on the current gravel storage site at the marina. This would bring broader synergy and growth to the marina. JSH has an ultimate goal to bring the best tenants possible to this incredible site and advise on the overall development.

LEASING PROPOSAL

LEASING SERVICES

- Survey competing projects to determine current market trends (i.e. rents, concessions, etc.). This provides the information needed to evaluate current and potential tenants, resulting in maximizing the effective rental rate for each lease.
- Install JSH leasing sign(s) on the property and window sign(s) in available space(s).
- Renegotiate the early termination or buyout of the existing restaurant lease. This will allow us to demo the existing building and make room for the upgrade and expansion on the marine repair and to build a new building for the marine store. We will also find the best tenant for the marine store.
- Renegotiate the lease with the current onsite marine repair facility.
- Market space to upscale Seafood/Waterfront restaurants.
- JSH will also advise on the development of a boutique hotel on the current gravel storage site at the marina. Silver Cloud Inn is a potential candidate.
- Interaction with the Brokerage Community, including a monthly e-mail listing all available properties and specific spaces, marketing brochures, flyers, and providing Property information to cooperating brokers and/or potential tenants.
- Property and market tours with cooperating brokers and prospective tenants.
- Upon Landlord's review and written approval, prepare and negotiate all Letters of Intent and counter Letters of Intent.
- Upon Landlord's review and written approval, prepare and negotiate all Leases.
- For new tenants and as applicable for lease renewals, work with the Landlord, tenant and contractors to coordinate, manage, and complete the respective parties improvement work. This facilitates clear communication between all parties throughout the leasing and improvement process and the transition to property management upon the tenant opening for business.
- Upon Landlord review and written approval, prepare and negotiate all lease renewals. The Lease renewal process includes evaluating potential renewal tenants by reviewing

the terms and conditions set forth in the tenant's lease as they pertain to their right to renew. If permitted in the lease, the tenant will be requested to update or provide missing information that may include such things as gross sales reports or current financial statements. A walk through of the space will help to determine the physical appearance of the store and provide an opportunity to make constructive suggestions to help improve the tenants merchandise mix or presentation. Based on available information for gross sales, minimum rents and additional charges that the tenant is responsible for, an approximate gross cost of occupancy will be calculated. This will help to determine the viability of the tenant with respect to similar businesses in the greater Seattle/Eastside market. Once a determination is made to renew the tenant, the appropriate documents will be drafted for all parties to review, negotiate and execute. If there are any tenant improvement issues to complete, these will be coordinated with contractors and the property management team.

LEASING COMMISSIONS

- | | | |
|---------------|------------|---|
| • New Leases: | Years 1-5 | Five percent (5%) of minimum rent |
| | Years 6-10 | Two and one-half percent (2.5 %) of minimum rent |
| • Renewals: | Years 1-5 | Two and one-half percent (2.5 %) of minimum rent |
| | Years 6-10 | One and one-quarter percent (1.25%) of minimum rent |

Commissions will be billed as follows: 50% upon lease execution by Owner, removal of all contingencies, and the receipt by Owner of all security and rent deposits specified in the lease. The remaining 50% shall be paid upon tenant's opening for business in the premises. JSH Properties, Inc. agrees to cooperate with, and split commissions 50/50, with outside brokers for new leases. Outside brokers will not be paid commissions on options or renewals.

LEASING TEAM

- Stephen J. Hansen, President
- Massimo Backus, Leasing Broker
- John Chelico, Leasing Broker

LEASING TEAM BIOGRAPHIES

Stephen J. Hansen, President

Steve has been in the commercial real estate business since 1982, with focus on development, sales, and leasing. Prior to establishing JSH Properties, Inc. in 1986, he was vice president of Metropolitan Development Corporation, providing leasing and retail site acquisition for the Seattle and Los Angeles areas. He is in partnership with Village Properties, Inc. a San Francisco based retail development company. Steve attended the University of Washington and is licensed as a Washington State real estate broker. He is an active member of the International Council of Shopping Centers.

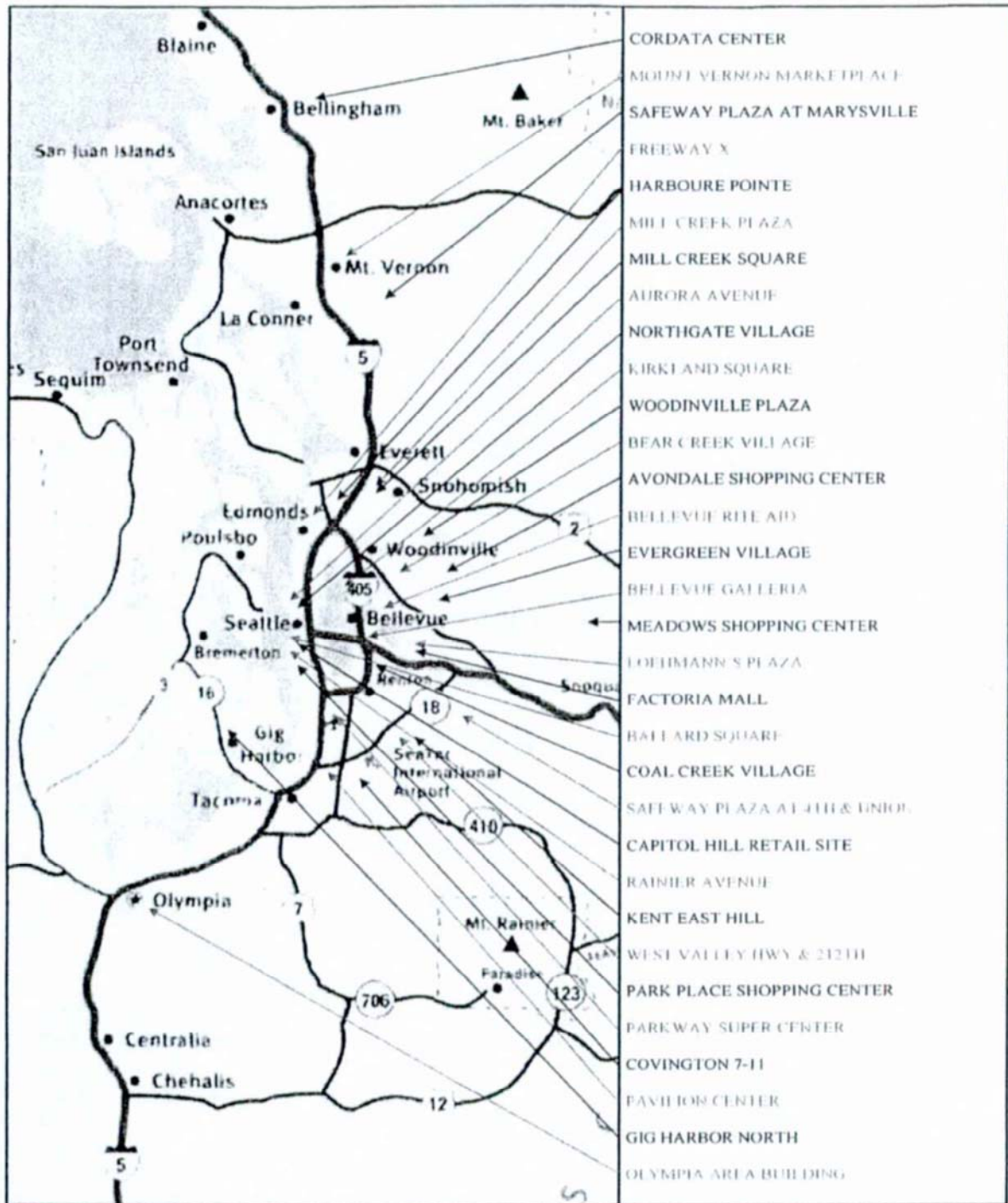
Massimo Backus, Leasing Agent

Massimo started with JSH Properties, Inc. in 2005. Before starting at JSH he was a sales executive for a regional marketing firm. He has an education in Film and Media Studies from the University of San Francisco. Massimo previously worked for GVA Kidder Mathews in Seattle, Washington, where his responsibilities were market analysis and marketing. He is an active member of the International Council of Shopping Centers.

John S. Chelico, Leasing Agent

John joined JSH Properties, Inc. in January of 1996. His initial duties consisted of assisting in the management of the company's industrial and retail portfolios. In 1997, John's primary focus became leasing the shopping center portfolio managed by the company. In the year 2000, John took a brief hiatus from JSH Properties and joined the Stamford, Connecticut office of Insignia/ESG, one of that regions premier tenant representation firms. During this time John's primary focus was representing tenants in office leasing transactions. John returned to JSH Properties in January 2001 and has resumed his position as a member of the leasing team for the company's retail portfolio. John holds a Bachelor of Science Degree in Psychology from Syracuse University and is a member of the International Council of Shopping Centers.

JSH PROPERTIES LEASING MAP





JSH PROPERTIES, INC.

JSH PROPERTIES, INC.

Exclusive Leasing Listing Agreement

THIS EXCLUSIVE LEASING LISTING AGREEMENT (the "Agreement") made as of this ____ day ____, 2__ by and between _____ (hereinafter referred to as "Owner"), and JSH Properties, Inc., a real estate brokerage company licensed in the State of Washington, (hereinafter referred to as "Broker") with reference to the following facts:

- A. Owner is the owner of that certain land and improvements commonly known _____ (hereinafter referred to as the "Property").
- B. Owner desires to lease the available space in the Property to acceptable tenants in accordance with rent schedules and other such leasing guidelines to be established by Owner.
- C. Broker (as hereafter defined) is a duly licensed real estate brokerage organization engaged in the marketing of the type of space contained in the Property.
- D. Owner desires to retain Broker as exclusive leasing broker of the Property, and Broker desires to serve as exclusive leasing broker for the Property upon the terms and conditions hereafter set forth.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt whereof and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

- 1. Appointment by Broker. Owner hereby authorizes JSH Properties, Inc. ("Broker") to act as its sole and exclusive leasing broker hereunder, and hereby grants to Broker the exclusive right to lease all or any part of the Property, on terms to be provided Broker from time to time by Owner, and subject to periodic revision by Owner.
- 2. Term of Agreement. The term of this Agreement shall begin _____ and end at midnight _____ subject to the termination provisions set forth in Section 6. The term may extend for such additional period(s) as the parties shall agree upon in writing.
- 3. Broker's Responsibilities. Broker shall use its best efforts and due diligence, in order to obtain proposals from qualified prospective tenants, and shall present all such proposals to Owner for his consideration. Such proposals to Owner will be accompanied by financial statements, guarantees and other data pertaining to prospective tenants as reasonably requested by Owner, and to the extent such information or data is available to Broker. Broker makes no representations or warranties as to the accuracy or reliability of such information or data, provided however, that the Broker hereby represents and warrants that it shall have no actual knowledge that (i) the information or data provided is not accurate and true and (ii) no further information or data is necessary to make the disclosed information or data not misleading. Broker also shall be responsible for delivering to Owner such advance rents and security deposits as required under the terms of a tenant's lease to be paid by the tenant on execution thereof. Broker under this Agreement is not authorized to execute any leases or related documents on Owner's behalf.

Broker shall make all information with respect to the Property or prospective tenants for the Property available to Owner upon Owner's request, except for confidential information that concerns a prospective tenant and that Broker obtains in its role as agent for such tenant.

Any sums paid to or received by Broker in connection with the Property as rent, security deposits or otherwise shall be remitted to Owner immediately upon receipt together with a full accounting of all such receipts. Broker shall not accept rents, security deposits or other remittances other than in the form of checks and drafts payable to the order of Owner.

Once a month, Broker shall submit to Owner a written progress report describing efforts made during the previous month, and efforts to be made during the following month. The reports shall include prospect's name, current building (if any), date contacted, result of contact, and status of potential deal.

Broker shall, at its own cost and expenses develop and implement an advertising brochure describing the Property. Such brochures shall be commensurate with the highest standards of similar brochures in the area where the Property is located.

Owner authorizes Broker to place a sign or signs on the Property if, in Broker's opinion, such would facilitate the leasing of the Property. All advertising and signage shall be subject to Owner's written reasonable consent.

In addition to the foregoing, Broker agrees to perform such other services as are customarily performed or rendered by leasing agents in the area of the Property.

4. Compensation to Broker. Owner agrees to pay Broker for its services hereunder a lease commission in accordance with Exhibit A (the "Leasing Commission Schedule"), attached hereto and made a part hereof, during the term of this Agreement, whether the tenant is procured or obtained by Broker, Owner, or anyone else.

Broker shall pay any lease commission earned by an independent outside broker cooperating with Broker in connection with the leasing of the Property. In no event shall the total amount paid by Owner to Broker and all brokers cooperating with Broker in connection with a given lease be in excess of the amount determined in accordance with Exhibit A.

Lease commissions shall be calculated on the fixed minimum base rent payable by a tenant, exclusive of parking fees, amounts paid under any percentage rent clause, amounts paid pursuant to escalation or "billback" clauses for taxes and operating costs, amounts paid pursuant to cost of living adjustment clauses, amounts paid for amortization of non-standard tenant improvement work and exclusive of any charge, adjustment or increase in rent similar to any of the foregoing.

For any expansion space which a tenant is obligated to take without any contingency and which is provided for in the original lease, the lease commission shall be calculated by using the commission rates applicable to the lease years during which the additional rent for the expansion space is applicable. No lease commissions shall be payable for any lease expansion after termination of this Agreement if such expansion is not expressly set forth in such lease.

Lease commissions payable hereunder shall, in the case of either new leases or mandatory expansion of space under existing leases, be earned and payable one-half (1/2) within fourteen (14) days after the execution of the lease by Owner and the tenant or of the exercise of the mandatory expansion by the tenant, as the case may be, and one-half (1/2) within fourteen (14) days after occupancy by the tenant of all the premises demised under the lease or expansion right as the case may be, or rent commencement, whichever first occurs.

For the purpose of calculating the lease commission earned by Broker, the term of a lease shall be deemed to commence on the date the lease commences and shall include any period of rent concession.

In the event that a lease provides for a right of cancellation at a specified time (not including a right to cancel as of a particular event, the time of occurrence of which is uncertain, such as the death or disability of the tenant), then the lease commission payable hereunder shall be calculated and paid as if such lease provided for an initial term extending from the commencement of the term through the earliest possible cancellation date. In the event such cancellation provision is not exercised or is waived, Owner shall pay Broker an additional commission calculated in accordance with this Agreement on the balance of the lease term, as if such balance was part of the original lease term and such additional commission shall be payable at the time the right to cancel expires or is waived, as the case may be.

Owner shall remit payment of any commission invoices to Broker within fourteen (14) days following receipt thereof.

Broker may assist and cooperate with tenants and prospective tenants in connection with the leasing of space vacated by such tenants in order to occupy the Property; provided, however, that Broker shall not receive any compensation from Owner with respect to such activities.

5. Owner's Responsibilities. Owner may negotiate leases directly with prospective tenants and may discuss directly with prospective tenants any and all terms of such leases. Owner shall keep Broker fully informed at all times as to the status of such discussions or negotiations, and Broker shall be entitled to leasing commissions as outlined in Exhibit A for any tenants directly procured by Owner. Owner agrees to immediately refer to Broker all inquiries of anyone interested in the Property.

Owner will provide Broker with a standard form of lease for the Property. Owner will, from time to time, provide Broker with leasing guidelines outlining the leasing requirements of Owner.

Owner agrees to make commercially reasonable efforts to disclose to Broker and to prospective tenants any information which Owner knowingly has in its possession regarding the condition of the Property, including, but not limited to, the presence and location of asbestos, PCB transformers, other toxic, hazardous or contaminated substances and underground storage tanks in, on, or about the Property.

6. Termination and Recognition. Owner shall have the absolute right to terminate this Agreement effective as of any date after three (3) months from the date of this Agreement, for any reason whatsoever, by giving written notice to Broker not less than thirty (30) days prior to the date of such termination. A termination effected under this Section 6 shall take effect at the conclusion of the notice period or upon expiration of the term, whichever occurs first; provided, however, that at no expense to Owner, Broker shall, upon receipt of such notice and to the extent reasonably requested by Owner in such notice, immediately stop its activities hereunder, and prepare a final report itemizing all leasing activities and all receipts and remittances for the calendar year in which such termination occurs to the date of termination.

In the event of termination of this Agreement by Owner, pursuant to this Section 6 or upon the expiration of the term, Owner and Broker shall continue to be fully liable for any obligations which have accrued up to and including such termination. Provided Broker uses its best efforts and due diligence to aid in the consummation of any such leases, Owner shall continue to be fully liable to Broker for the payment of leasing commissions on any leases executed by Owner and a new tenant up to and including one hundred and twenty (120) days after such termination date which have been set forth in a list certified by Broker to be true and correct, and delivered to Owner within ten (10) days after such termination date reflecting prospective tenants with whom Owner had been negotiating for leases, and to whom Broker had submitted, or from whom Broker has received a written proposal, for a lease on or before such termination date.

Provided, however, if the sole cause for Broker not using its best efforts as required herein is due to Owner requiring Broker to cease its activities in connection with leases being negotiated during the one hundred twenty (120) day period following the termination date and if during this period Owner executes a lease with a tenant whose name appears on the list previously furnished to Owner by Broker, then a leasing commission shall be payable to Broker. The amount of any leasing commission payable to Broker under this Section 6 shall be determined in accordance with Section 4.

7. Notices. Any and all notice provided herein shall be deemed served when personally served or three (3) days after deposited in the United States mail postage prepaid, by registered or certified mail, addressed to the Owner as follows:

With Copy to:

and to Broker as follows:

JSH Properties, Inc.
10655 NE 4th Street Suite 300
Bellevue, WA 98004
Attn: Stephen J. Hansen
(425) 455-0500

or at such other address as may be establish by notice in writing.

8. Employees. All employees of Broker shall be in the sole employment of Broker, and Owner shall have no liability to such employees for wages or compensation, nor to third parties for the acts or omissions on the part of such employees.
9. Compliance with Laws. Broker and Owner shall comply with all rules, orders, determinations, laws or ordinances of any federal, state, or local authority having or exercising jurisdiction over the subject matter of this Agreement, including without limitation, laws proscribing discrimination in the rental of real property. Broker shall obtain and require its agents and employees to obtain all licenses and permits necessary for the performance of its obligations hereunder.
10. Representations and Indemnification. Broker represents and warrants to Owner that Broker has the skill and professional competence, experience and expertise to undertake the obligations imposed by this Agreement.

Broker is duly organized and validly existing corporation under the laws of the State of Washington, and is fully qualified to do business in the state in which the Property located. This Agreement has been duly authorized, executed and delivered by Broker and accepted by Owner.

Owner is a Limited Partnership and validly existing under the laws of the State of Washington, and is fully qualified to do business in the state in which the Property is located. This Agreement has been duly authorized, executed, and delivered by Owner.

Owner and Broker agree to indemnify and hold each other harmless from and against any and all actions, causes of action, claims, damages, losses or liabilities (i) incurred in connection with claims or demands of any third party broker, leasing person or finder arising out of its efforts to lease space in or procure prospective tenants for the Property, except claims or demands of third parties claiming by or through

Owner or anyone other than Broker, or (ii) any third person to the extent caused by any acts of commission or omission by Broker that are not in accordance with this Agreement or written instructions from Owner or by reasons of any negligent or tortious acts by Broker, its agents or employees or (iii) to any tenant arising out of agreements made by Broker with such tenant that are not expressly set forth in such tenant's lease or approved in writing by Owner. Subject to thirty (30) days' prior written notice to Broker, Owner shall have the right, in its sole discretion, but without being required so to do, to defend, adjust, settle or compromise any claim, obligation, debt demand, suit or judgment against Owner arising out of or in connection with matters covered by the foregoing indemnity. Owner shall not undertake such unilateral action so long as Broker, at its sole expense, is in good faith contesting any such claim, obligation, debt demand or suit does not have or threaten to have material adverse effect upon Owner's assets, reputation or business affairs. The rights of Owner under the preceding sentence shall not be deemed or construed as a waiver of Broker's right to object to the applicability of its obligation to indemnify Owner with respect to the claims or demands made by a third party. All representations, warranties, and indemnifications made or given by the parties herein, together with any cause of action, rights and remedies which Owner or Broker may have as a result of breach of any term of this Agreement shall survive any expiration or termination of this Agreement.

11. Assignment. Each party binds itself, its respective successors, assigns, and legal representatives to the other and to the partners, successors, assigns and legal representative of the other with respect to all the covenants of this Agreement. Broker may not assign or transfer its interest in this Agreement without the prior written consent of Owner, which consent may be withheld at Owner's sole and absolute discretion. For purposes of this Agreement, the merger or consolidation of Broker, or the transfer of all or substantially all of the outstanding stock of Broker, shall not be deemed an assignment.
12. Status of Broker. Broker acknowledges and agrees that it is acting under this Agreement solely as an independent contractor and not as a partner, joint venturer, or employee of Owner, and Broker shall have no authority to act of or bind or obligate Owner in any manner whatsoever, except only to the extent specifically set forth herein or as may hereafter be specifically authorized by Owner. Broker acknowledges a fiduciary relationship of trust and confidence between it and Owner and agrees to perform its services hereunder in a diligent, efficient, skillful manner commensurate with the highest standards of its profession.
13. Status of Owner. Broker acknowledges and agrees that except as expressly set forth herein Owner shall have no obligations or liabilities of any kind whatsoever to Broker in connection herewith.
14. Modifications. This Agreement represents the entire and integrated agreement between Broker and Owner concerning its subject and supersedes all prior negotiations, representations, or agreements, either oral or written. This Agreement may be amended only by written instrument signed by both Broker and Owner.
15. Governing Law. This Agreement shall be governed by the laws of the state in which the Property is located.
16. Arbitration. Any dispute or controversy arising under, out of, in connection with, or in relation to, this Agreement, any amendments hereof or any breach hereof, shall be determined and settled by arbitration to be held in Seattle, Washington, in accordance with the provisions of Chapter 7.04 of the Revised Code of Washington, as amended, and with respect to such matters not covered therein, by the Rules of the

American Arbitration Association; provided, however that in the event of any conflict between such statute and such rules, the provisions of the statute shall control; and, provided further, that notwithstanding anything in such statute or rules to the contrary, the arbitrator's decision and award shall be made according to the terms and provisions of this Agreement and applicable law, and such award shall set forth findings of fact and conclusions of law of the arbitrator upon which the award is based in the same manner as is required in a trial before a judge or a superior court of the state of Washington. The arbitrator's shall award attorney's fees to the prevailing party in accordance with Section 16. Judgment upon the award may be entered in the Superior Court of the state of Washington for King County.

17. Third Party Rights. No rights hereunder shall accrue to the benefit of any person or entity not a party hereto, including, without limitation, any cooperating brokers.
18. Default. If Broker (a) becomes a debtor under any federal or state bankruptcy act, or if a petition is filed therefore, (b) makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, or (c) is in violation of any material provision of this Agreement, such event shall be a default hereunder, and if such default is not cured within thirty (30) days after its occurrence, then Owner may, without prejudice to any right or remedy and after giving Broker three (3) days' written notice, terminate this Agreement. In such event, Broker shall be entitled to receive from Owner all amounts which it would have been entitled to receive under Section 6 hereof.
19. Disclosure of Information. Broker shall not, without the prior written approval of Owner, make any news release, public announcement, denial, or confirmation of any part of the subject matter of this Agreement without the prior written consent of Owner of any privileged or confidential information obtained in connection with this Agreement except to the extent required by law and subject to Broker giving Owner a prior written explanation as to why such disclosure is mandated by law.
20. Waiver. The waiver of either party of any breach or violation of, or default under, any provisions of this Agreement shall not be deemed a continuing waiver by such party of any other provision or of any subsequent breach or violation of this Agreement or default thereunder.
21. Time is of the Essence. Time is of the essence with respect to each and every provision of this Agreement.
22. Legal Proceedings. Broker shall not institute any legal actions or proceedings on behalf of Owner without Owner's express prior written consent.
23. Headings. The section headings in this Agreement are for purposes of reference only, and shall not limit or otherwise affect any of the terms hereof.
24. Services Prior to Execution. Notwithstanding the fact that this Agreement is executed as of the date first set forth above, the parties recognize that a portion of the work and services required hereunder was performed prior to such date, all of which work and services shall be governed by the terms and conditions of this Agreement. Without limiting the foregoing, all of each party's liabilities and obligations to the other hereunder shall apply to all work and services provided by Broker prior hereto, notwithstanding the fact that such work or services may have been performed pursuant to prior negotiations, representations, agreements, understandings or otherwise.

IN WITNESS HEREOF, the parties hereto have caused this Agreement to be duly executed this _____ day of _____, 20____.

OWNER:

BROKER:

JSH PROPERTIES, INC.

EXHIBIT A
Leasing Commission Schedule

NEW TENANTS

- 1) 5% of base rents for the first five years of the original lease term for new tenants and for the obligated expansion space of existing tenants, to be paid to Broker. "Obligated expansion space" is defined in paragraph 4 of the Listing Agreement, Compensation to Broker.
- 2) 2.5% of base rents for the second five years of the original lease term and for the obligated expansion space of existing tenants, to be paid to Broker.

COMMISSIONS TO BE PAID

- a) 1/2 upon lease execution to Owner and the receipt by Owner of all rent deposits and security deposits specified by the lease.
- b) The remaining half to be paid upon occupancy and full operation by the Tenant.

LEASE STRUCTURE

New Lease Transactions:

\$___ per square foot, on spaces up to 10,000 square feet
\$___ per square foot, on spaces 10,001 and over
Co-brokered transactions would be \$___ per square foot
These rates apply to expansions also.

Lease Renewals:

Lease renewals would be at one half the above rates.

Services Provided:

Survey competing projects to determine current market trends, i.e. rents, concessions, etc.

Interaction with the Brokerage Community

Lease Negotiations and Lease Preparation

Renewal contact of all tenants prior to lease expiration

CLIENT REFERENCE LIST

1. William Lowe
Quality Food Centers
10116 NE 8th Street
Bellevue, WA 98004
(425) 462-2210
2. Julia Kruger
City of Bellevue
11511 Main Street
PO Box 90012
Bellevue, Washington 98009
(425) 452-6864
3. Lee Kranz
City of Bellevue
301-116th Ave SE, Suite 405
PO Box 90012
Bellevue, Washington 98009
(425) 452-6864
4. Mike Hart
Panera Bread
13849 SE Happy Valley
Portland, OR 97236
(503) 762-6844
5. Brian Hunter
Walgreen's
106 Wilmot Rd., MS #1640
Deerfield, IL 60015
(847) 914-2503

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Registration and Travel Expenses for
Councilmember White's Attendance
at the NLC Conference in
Washington, DC, March 11-15, 2006

ATTACHMENTS:

1. Excerpt of City Council Minutes of 3/10/05
2. Excerpt of the City Council Minutes of 1/26/06
3. Cost Breakdown

FOR AGENDA OF: February 9, 2006

DEPT. OF ORIGIN:

DATE SUBMITTED: February 1, 2006

CLEARANCES:

[] _____

APPROVED BY CITY MANAGER

FOR

SUBMITTAL: 

RECOMMENDED ACTION

It is suggested that City Council approve the following motion:

"MOTION is to approve an additional expenditure of \$600 for the payment of registration and travel expenses for Councilmember White's attendance at the National League of Cities Conference in Washington, DC, March 11-15, 2006."

SUMMARY STATEMENT

At the City Council meeting of March 10, 2005 (minutes attached), a motion was passed requiring City Council approval of travel expenses over \$150. The attached breakdown lists approximate costs associated with the conference. Councilmember White will share a room, which will be paid for by the Association of Washington Cities.

At the Council meeting of January 26, 2006, Council approved expenditures in the amount of \$700. It has now become apparent that figure was considerably short of what the actual expenses for the trip will be. Approval for an additional \$600 is requested at this time.

**EXCERPT
DES MOINES CITY COUNCIL MINUTES
March 10, 2005**

OLD BUSINESS

City Council Travel and Conference Funding

Mayor Sheckler introduced the subject and noted the following three options for funding City Council travel and conferences:

1. Transferring funds from the General Fund ending fund balance.
2. Transferring funds from the Airport Defense Fund.
3. Utilizing savings from General Fund's existing appropriates.

Mayor Sheckler noted, perhaps inadvertently, that no funds were budgeted in the 2005 budget for Councilmembers to travel and participate in national and local conferences and meetings.

Upon questioning, Finance Director Henderson noted the following amounts were in the 2004 budget:

Travel: \$5,000 (mileage, airfare, meals, lodging)
Seminars/Conferences: \$2,500 (registration fees)

MOTION was made by Mayor Pro Tem Thomasson, seconded by Councilmember White, to appropriate \$3,000 for travel and \$1,500 for registration to be transferred from the General Fund ending fund balance.

Councilmember White advised that she has found tremendous benefit in outside meetings. She felt that ACW Legislative Conferences are essential and any lobbying that can be done on behalf of the City to obtain funding for projects that need funding, makes a lot of sense. She hopes this dollar amount is large enough to cover all the upcoming conferences.

Councilmember Sherman spoke in support of having funds to attend essential meetings. He noted Councilmembers are not paid for their time to attend the meetings. However, with a limited amount of funds available, he felt it important that all have an opportunity to use the funds.

MOTION was made by Councilmember Sherman, seconded by Mayor Pro Tem Thomasson, to amend the motion that expenditures for individual Councilmembers greater than \$150.00, be approved by the Council as a whole.

Councilmember Petersen stated that eliminating these funds in the 2005 budget, was not an oversight, but intentional with the budget restrictions the City is facing. He noted he will not support the motion.

Councilmember Benjamin recalled that these funds were purposely left out to help keep expenses down and to balance the budget. He felt it is important for Council to keep its word and therefore he will not support the motion.

Councilmember Steenrod remembers at budget time saying, Council must set an example. She noted she had great difficulty eliminating line items in the budget, cut employee salaries and jobs without Council also making difficult decisions. She noted Council must weigh needs versus wants, and she feels this is a want. She cannot support the motion.

Councilmember Sherman pointed out that his amendment would allow oversight of unnecessary expenditures. He cited Councilmember White's recent trip, clearly linked to a mission of this Council, which may very well bring a significant amount of money to the City. He agreed Council needs to be careful of how money is spent. He also spoke in support of attendance at Association of Washington Cities meetings to allow networking with other cities and to know about what is going on in the State.

CALL FOR THE QUESTION: Councilmember Steenrod called for the question. Motion passed 6 to 1, with Mayor Pro Tem Thomasson opposed.

VOTE ON AMENDMENT: Motion passed 4 to 3 with Councilmembers Benjamin, Petersen and Steenrod opposed.

VOTE ON MAIN MOTION: Motion passed 4 to 3 with Councilmembers Benjamin, Petersen and Steenrod opposed.

**EXCERPT
DES MOINES CITY COUNCIL MINUTES
January 26, 2006**

CONSENT CALENDAR was read by City Clerk Staab.

1. Motion is to approve the regular minutes of December 5, 2005.
2. Findings: Vouchers audited and certified by the auditing officer as required by RCW 42.24.080, and those expense reimbursement claims certified as required by RCW 42.24.090, have been recorded on a listing which has been made available to the City Council.

Motion: As of this date the Des Moines City Council, by unanimous vote, does approve for payment those vouchers and payroll transfers included in the above list and further described as follows:

Claim checks #102497 through #102697 & electronic fund transfers in the total amount of \$1,042,134.05

Payroll fund transfers in the total amount of \$344,129.16

3. Motion is to approve payment of registration and travel expenses in the approximate amount of ~~\$1,300~~ \$700.00 for Councilmember White's attendance at the National League of Cities Conference in Washington, DC, March 11-15, 2006.
4. Motion is to approve amending the agreement with Waldron Resources to continue the contract for the Acting City Transportation Manager, and for the City Manager to sign said agreement substantially in the form as submitted.
5. Motion is to confirm Mayor Sheckler's appointments to the Citizens Ad Hoc Advisory Committee for the Marina Rate Study Project. The appointments are: Ray Valpey, representing Three Tree Point Yacht Club; with alternate Tim McCahe; Hart Anderson representing the Des Moines Marina Association; Doug Andrews and Tom Wilke at large tenants; Arlene Knight at large community member, and George Faler and Warren Elfstrom representing the Des Moines Yacht Club.

City Manager Piasecki advised that Councilmember White has made other arrangements for hotel accommodations and therefore has requested that the dollar amount in Consent Item #3 be reduced to \$700.00.

In regards to Consent Item #5, Mayor Pro Tem Thomasson noted that in reading the comments from the individuals appointed to the Ad Hoc Committee, that they want a lot more to say about it than the limited charge of the Committee was. He advised that a preamble to the group needs to be said about what the limits of their charge is.

MOTION was made by Mayor Pro Tem Thomasson, seconded by Councilmember Scott, to approve the Consent Calendar as read. Motion passed unanimously.

Approximate Costs Associated with NLC Conference
Washington D.C., March 11-15, 2006

	Estimate	Actual
Registration	\$400	\$400
Food	400	
Hotel	none	
Airfare	400	\$536
Miscellaneous (airport shuttle, taxis, etc.)	100	
Total	\$1,300	

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Mayor's Appointments to the Human Services Advisory Board, Library Board and Planning Agency

FOR AGENDA OF: February 9, 2006

DEPT. OF ORIGIN: Legislative

DATE SUBMITTED: January 31, 2006

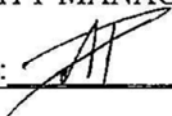
ATTACHMENTS:

1. Human Services Applications
2. Library Board Application
3. Planning Agency Application

CLEARANCES:

[]
[]

APPROVED BY CITY MANAGER

FOR SUBMITTAL: 

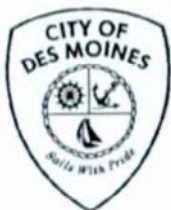
RECOMMENDED ACTION

It is recommended that Council approve the following motion on the Consent Calendar:

"Motion is to confirm Mayor Sheckler's appointments of Nadine Byers, Michael Adams and Ann Berney and re-appointments of Debbie Hickman and Florence McMullin to 2 year terms on the Human Services Advisory Board; appointment of Simon Yang to a 3 year term on the Library Board; second term re-appointments of Natalie Wilcox McCann, Rena Humburger and Kaylene Moon to the Sr. Services Advisory Committee, and appointment of Robert Polwarth to an unexpired 4 year term on the Planning Agency. All terms to be effective January 1, 2006."

SUMMARY STATEMENT

Currently three vacancies exist on the Human Services Advisory Board, one on the Library Board and one unexpired term on the Planning Agency. The City Clerk dully posted and advertised for the vacancies, seeking candidates interested in appointment to the vacancies. At this time, Mayor Sheckler, is recommending the appointments of the above as individuals who will bring valued interest to the Boards.



CITY OF DES MOINES
APPLICATION FOR APPOINTEE OFFICE
21630 11th Avenue South
Des Moines, WA 98198

Recvd. _____

Please Check

NAME: Nadine Byers
ADDRESS: 26241 - 13 Pl. So
CITY, ZIP: Des Moines 98198
PHONE: Home 253-839-2332 Work _____
LENGTH OF RESIDENCE AT THE ABOVE ADDRESS 38 yrs
REGISTERED VOTER? Yes
EMPLOYMENT SUMMARY LAST FIVE YEARS:
Retired since 1998 from Kent School District
Now Volunteer at Woodmont Library + Salt Water State Park

- ☐ Civil Service Commission
☐ Planning Agency
☐ Library Board
☒ Human Services
☐ Senior Services

Are you related to anyone presently employed by the City or a member of a City Board? No
If yes, explain: _____

Do you currently have an owning interest in either real property (other than your primary residence or a business) in the Des Moines planning area? No If so, please describe:

IN ORDER FOR THE APPOINTING AUTHORITY TO FULLY EVALUATE YOUR QUALIFICATIONS FOR THIS POSITION, PLEASE ANSWER THE FOLLOWING QUESTIONS USING A SEPARATE PAPER IF NECESSARY.

1. Why do you wish to serve in this capacity and what can you contribute? see enclosed

2. What problems, programs or improvements are you most interest in? see enclosed

3. Please list any Des Moines elective/appointive offices you have run/applied for previously.

see enclosed

1. Why do you wish to serve in this capacity and what can you contribute?

My education and work experience has been in health care and prevention. I was on a board for community family services organization and this agency received money from the city of Kent. I worked for many years as a school nurse and a program specialist in health education and substance abuse prevention. I am now retired and with my past work experience I feel that I can contribute to the Human Services Board in many ways. One is that I have free time to visit human service organizations and secondly I am knowledgeable about health needs, i.e. physical, emotional and social needs of individuals. Providing human services is vital for a healthy and safe community.

2. What problems, programs or improvements are you most interested in?

I am most interested in programs that promote healthful living and assisting individuals to reach their fullest potential. I feel that the city can provide assistance to programs that addresses human services and needs which are not provided in other settings.

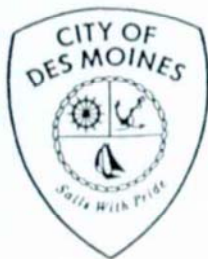
3. Please list any Des Moines elective/appointive offices you have run/applied for previously.

I am presently a member of the Des Moines City Library Board. If I am appointed to the Human Services Advisory Board I would resign from the Library Board.

Thank you for considering my application to Human Services Advisory Board.

Nadine Byers, R.N.

Nadine Byers
12/22/2005



CITY OF DES MOINES
APPLICATION FOR APPOINTEE OFFICE
21630 11th Avenue South
Des Moines, WA 98198

Recvd _____

Please Check

NAME: Michael Adams
ADDRESS: 24712-12th Ave S
CITY, ZIP: Des Moines WA 98148
PHONE: Home 206-874-5434 Work _____
LENGTH OF RESIDENCE AT THE ABOVE ADDRESS 5 yrs
REGISTERED VOTER? yes
EMPLOYMENT SUMMARY LAST FIVE YEARS: Retired in 2000

- ☐ Civil Service Commission
☐ Planning Agency
☐ Library Board
☒ Human Services
☐ Senior Services

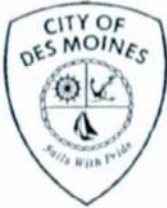
Are you related to anyone presently employed by the City or a member of a City Board?
If yes, explain: Volunteer, Enhanced Public Safety Comm

Do you currently have an owning interest in either real property (other than your primary residence or a business) in the Des Moines planning area? No If so, please describe: _____

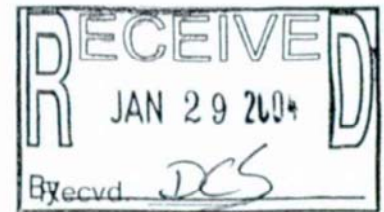
IN ORDER FOR THE APPOINTING AUTHORITY TO FULLY EVALUATE YOUR QUALIFICATIONS FOR THIS POSITION, PLEASE ANSWER THE FOLLOWING QUESTIONS USING A SEPARATE PAPER IF NECESSARY.

1. Why do you wish to serve in this capacity and what can you contribute? As a Des Moines resident, I am interested in our city's operations and the application of budgetary funds. I feel that I can contribute unbiased, realistic thinking to the problem solving process.
2. What problems, programs or improvements are you most interest in? I am interested in social service programs for seniors, disabled and economically disadvantaged.
3. Please list any Des Moines elective/appointive offices you have run/applied for previously. _____

email address: MBAVEA@aol.com



CITY OF DES MOINES
APPLICATION FOR APPOINTEE OFFICE
21630 11th Avenue South
Des Moines, WA 98198



Please Check

Rev. NAME: Ann Berney
ADDRESS: 1010 S. 219th
CITY, ZIP: Des Moines, WA 98198
PHONE: Home (206) 878-3990 Work (206) 878-8301
LENGTH OF RESIDENCE AT THE ABOVE ADDRESS 24 yrs.
REGISTERED VOTER? yes
EMPLOYMENT SUMMARY LAST FIVE YEARS:
Des Moines United Methodist Church - Senior Pastor
Riverton Park United Methodist Church - Pastor (Tukwila, WA)

- ☐ Civil Service Commission
☐ Planning Agency
☐ Library Board
☒ Human Services
☐ Senior Services

Are you related to anyone presently employed by the City or a member of a City Board? _____
If yes, explain: NO

Do you currently have an owning interest in either real property (other than your primary residence or a business) in the Des Moines planning area? NO If so, please describe:

IN ORDER FOR THE APPOINTING AUTHORITY TO FULLY EVALUATE YOUR QUALIFICATIONS FOR THIS POSITION, PLEASE ANSWER THE FOLLOWING QUESTIONS USING A SEPARATE PAPER IF NECESSARY.

1. Why do you wish to serve in this capacity and what can you contribute? _____

2. What problems, programs or improvements are you most interest in? _____

3. Please list any Des Moines elective/appointive offices you have run/applied for previously.

None

Email annberney@earthlink.net

ice
attached

HUMAN SERVICES APPLICATION

1. I would like to work with others to help facilitate meeting basic needs of our community. I have a keen interest in the Human Services of Des Moines as a church pastor and leader of the church where the Des Moines Area Food Bank began and is now housed, for daily here we interface with many struggling local people and their needs. As well as a passion for people's dignity, I can contribute recent experience--having worked in the City of Tukwila with their Human Services in a non-official way and was part of the founding team of the Tukwila Food Pantry. I also directed the development of a community garden (of approximately 60 plots) to provide garden space and neighborhood interaction in a growing ethnically mixed neighborhood. My experience has taught me how to work with all kinds of people, and how to carefully examine and address human needs from many aspects. It has also helped me learn ways to get various groups (city, schools, churches) to work together for the enhancement of life for the people in our community.
2. I would like to come to a better understanding of the Human Services work of the City of Des Moines, and to participate on a team of people interested in seeing how our community work might be strengthened.

ANN BERNEY



CITY OF DES MOINES
APPLICATION FOR APPOINTEE OFFICE
21630 11th Avenue South
Des Moines, WA 98198

RECEIVED
NOV 22 2005

ym
Please Check

NAME: SIMON YANG
ADDRESS: 25653 32ND PL. S.
CITY, ZIP: KENT, WA 98032
PHONE: Home 253-941-6975 Work —
LENGTH OF RESIDENCE AT THE ABOVE ADDRESS 25 YEARS
REGISTERED VOTER? YES

- ☐ Civil Service Commission
☐ Planning Agency
☒ Library Board
☐ Human Services
☐ Senior Services

EMPLOYMENT SUMMARY LAST FIVE YEARS: RETIRED FROM U.S. ARMY CORPS OF ENGINEERS ON JULY 14, 2003, AFTER 28 YEARS OF SERVICE AS CIVIL ENGINEER AND PROGRAM MANAGER OF THE VALUE ENGINEERING PROGRAM.

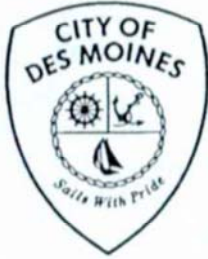
Are you related to anyone presently employed by the City or a member of a City Board? NO
If yes, explain: _____

Do you currently have an owning interest in either real property (other than your primary residence or a business) in the Des Moines planning area? NO If so, please describe: _____

IN ORDER FOR THE APPOINTING AUTHORITY TO FULLY EVALUATE YOUR QUALIFICATIONS FOR THIS POSITION, PLEASE ANSWER THE FOLLOWING QUESTIONS USING A SEPARATE PAPER IF NECESSARY.

1. Why do you wish to serve in this capacity and what can you contribute? I HAVE A LIFE-LONG INTEREST IN BOOKS AND LEARNING. I ALSO HAVE 38 YEARS OF PROFESSIONAL EXPERIENCE AS AN ENGINEER AND MANAGER. I HAVE A STRONG RESPECT FOR KNOWLEDGE AND LEARNING AS WELL AS THE CONVICTION THAT LIBRARY SERVICES ARE CRUCIAL TO THE DEVELOPMENT AND THE FUTURE OF OUR YOUNG PEOPLE AND OUR SOCIETY. I HAVE IDEAS TO ENHANCE THE DEVELOPMENT, IMPROVEMENT & FACILITIES OF OUR LIBRARY.
2. What problems, programs or improvements are you most interest in? PHYSICAL FACILITIES, FUTURE ORIENTED PLANNING & IMPROVEMENTS IN SERVICES OF OUR LIBRARY SYSTEM.

3. Please list any Des Moines elective/appointive offices you have run/applied for previously. NONE



CITY OF DES MOINES
APPLICATION FOR APPOINTEE OFFICE
21630 11th Avenue South
Des Moines, WA 98198

Recvd. _____

Please Check

NAME: ROBERT JAY POLWARTH
ADDRESS: 19617 7th AVENUE SOUTH
CITY, ZIP: DES MOINES, WA. 98148
PHONE: Home (206) 824-0206 Work (206) 324-4448
LENGTH OF RESIDENCE AT THE ABOVE ADDRESS 4 YR.
REGISTERED VOTER? YES

- ☐ Civil Service Commission
☒ Planning Agency
☐ Library Board
☐ Human Services
☐ Senior Services

EMPLOYMENT SUMMARY LAST FIVE YEARS: CONSTRUCTION PROJECT MGR.,
M.J. TAKISAKI, INC., A COMMERCIAL PUBLIC WORKS GENERAL
CONTRACTOR IN SEATTLE.

Are you related to anyone presently employed by the City or a member of a City Board? NO
If yes, explain: _____

Do you currently have an owning interest in either real property (other than your primary residence or a business) in the Des Moines planning area? NO If so, please describe: _____

IN ORDER FOR THE APPOINTING AUTHORITY TO FULLY EVALUATE YOUR QUALIFICATIONS FOR THIS POSITION, PLEASE ANSWER THE FOLLOWING QUESTIONS USING A SEPARATE PAPER IF NECESSARY.

1. Why do you wish to serve in this capacity and what can you contribute? ATTACHED

2. What problems, programs or improvements are you most interest in? ATTACHED

3. Please list any Des Moines elective/appointive offices you have run/applied for previously. CANDIDATE FOR CITY COUNCIL, POSITION 1, 2005.

Responses

(1.) I am motivated by a desire to participate more fully in community affairs, and this position matches my interests, my experience, and my abilities. I believe my experience in commercial construction and a familiarity with the development process may be of value as a member of the agency.

(2.) Land use policy plays a major role in the shape of the community we experience, the type of businesses that take root here, the nature of our housing and neighborhoods, and the public amenities we enjoy. Attaining a workable and sustainable balance amongst competing interests is of the highest priority. Decent, affordable housing is of particular concern to me.

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Approval of an Extension to the Lease
Agreement with Classic Yachts.

FOR AGENDA OF: February 9, 2006
DEPT. OF ORIGIN: Marina

ATTACHMENTS:

Draft Extension
Exhibit "A" showing slip L-02 and
additional leased area.
Exhibit "B" original and current lease
agreement

DATE SUBMITTED: January 23, 2006

CLEARANCES:

[X] Marina

[X] Legal

APPROVED BY CITY MANAGER

FOR SUBMITTAL:

A. Purpose & Recommendation

The purpose of this Agenda Item is to gain Council approval for an extension to the lease between the City and Classic Yachts, Inc. This extension would allow the owners of Classic Yachts, Jerry and Cathy Reece to extend the lease for another five years. Under normal circumstances, Council action in this matter would not be required, but due to a misunderstanding of the wording in the option clause, (paragraph 5 in the lease); the lessee did not exercise their option rights in a timely manner. Because the owners of Classic Yachts continue to provide good and valuable service to the tenants of the Marina, the staff recommends that the Council approve the extension to the lease and allow the Reece's to continue the lease for another five years under the present terms. The lease presented to the Council with this agenda item is the same lease document that was approved by the Council in 2001, and modified by Council action in 2003, with a minor change involving exchanging slip M-46 for L-03 in paragraph (2), Use of Other Marina Facilities.

Suggested Motion: "I move that the City Council adopt the extension to the lease to extend the lease for another five years, under the same terms with the exception of the minor modification involving the slip exchange.

B. Background

Classic Yachts was started over twenty years ago by Milo Moen, and the business has operated continuously in the Marine since then. In 1996, the Moen's sold the business to Jerry and Cathy Reece, who are residents of Des Moines. At this time, Classic Yachts occupies a slip at the foot of L Dock, where they moor their floating office, and four other slips that are used to moor boats that they are listing for sale. Over the years, this business has provided a valuable service to the

Marina tenant's by helping them buy and sell their boats. Classic Yachts has also been a very good tenant, with an excellent payment record.

C. Discussion

In April of 2001, the Council approved a lease between the City and Jerry and Cathy Reece, the current owners and operators of Classic Yachts, Inc. At that time, the lease conveyed the right to use slips L-02, where their office is located, and slips M-46, I-04, L-01, and L-10. In 2003 the lease was modified to exchange slip I-04 for L-08. In this lease, Slip M-46 is exchanged for slip L-03. With the completion of this exchange, all of the slips used by Classic Yachts will be clustered around their office space.

D. Alternatives

Alternative 1. Accept the recommendation of staff and approve the addendum to the lease.

Alternative 2. Direct the staff to negotiate another lease with the owners of Classic Yachts.

E. Financial Impact

Under the terms of the lease, the rental rate is increased each year by the greater of the CPI or the increase approved by the City Council. The current lease calls for the increases to take effect on the first of January each year. Unless the Council decides to increase the moorages rates again sometime during the year, there would be no financial impacts to approving the addendum. If the Council does decide to increase rates during the year, under the terms of this lease, the rate increases would not apply to Classic Yachts until January 1, 2007. In that case, depending on the timing and amount of the increase, there would be some loss of revenue.

F. Recommendation

The Marina staff recommends approval of the extension to the lease.

G. Concurrence

The City Attorney's Office prepared the Lease Extension document.

EXTENSION OF LEASE FOR MARINA FACILITIES

This Extension of Lease is entered into between the CITY OF DES MOINES, a municipal corporation (Lessor) and CLASSIC YACHTS, Inc., (Lessee).

(1) Terms. Paragraph (5) of the Lease for Marina Facilities between the CITY OF DES MOINES, a municipal corporation, and CLASSIC YACHTS, Inc., executed on May 2, 2001, as modified on April 24, 2003 permits a one-time five (5) year extension of the original lease. Lessee now wishes to enter into that extended lease. Pursuant to Paragraph (5) of the Lease for Marina Facilities, Lessor grants to Lessee an Extension of Lease for a term of five (5) years, commencing on the first day of January, 2006, for the exclusive right to use and occupy certain real and personal property located at the Des Moines Marina.

(2) Leased Premises. The leased premises are schematically depicted in the diagram attached hereto as Exhibit "A" and by this reference incorporated herein. The leased premises are described as follows:

- (a) Slip L-02, to be used as sales office for a boat brokerage business.
- (b) Slips L-01, L-03, L-08, L-10, and the north side of the L Dock's main walkway between L-02 and L-08, to be used as moorage for vessels owned or consigned to Lessee for the purpose of selling such vessels.

(3) Other Provisions. All other terms and conditions of the Lease for Marina Facilities between the CITY OF DES MOINES, a municipal corporation, and CLASSIC YACHTS, Inc., executed on May 2, 2001, as modified on April 24, 2003, shall remain in full force and effect. The Lease for Marina Facilities between the CITY OF DES MOINES, a municipal corporation, and CLASSIC YACHTS, Inc., executed on May 2, 2001, as modified on April 24, 2003 are attached hereto as Exhibit "B" and by this reference incorporated herein.

IN WITNESS WHEREOF, Lessor and Lessee have affixed their signatures on the dates below written signifying agreement to the terms and conditions of the foregoing Lease for Marina Facilities.

LESSEE: Classic Yachts, Inc.

LESSOR: City of Des Moines

By: _____
Jerry Reece, Its President

By: _____
Anthony A. Piasecki, Its City Manager

At the direction of the City Council by
motion regularly passed in its open public
meeting on February 9, 2006.

Date: _____

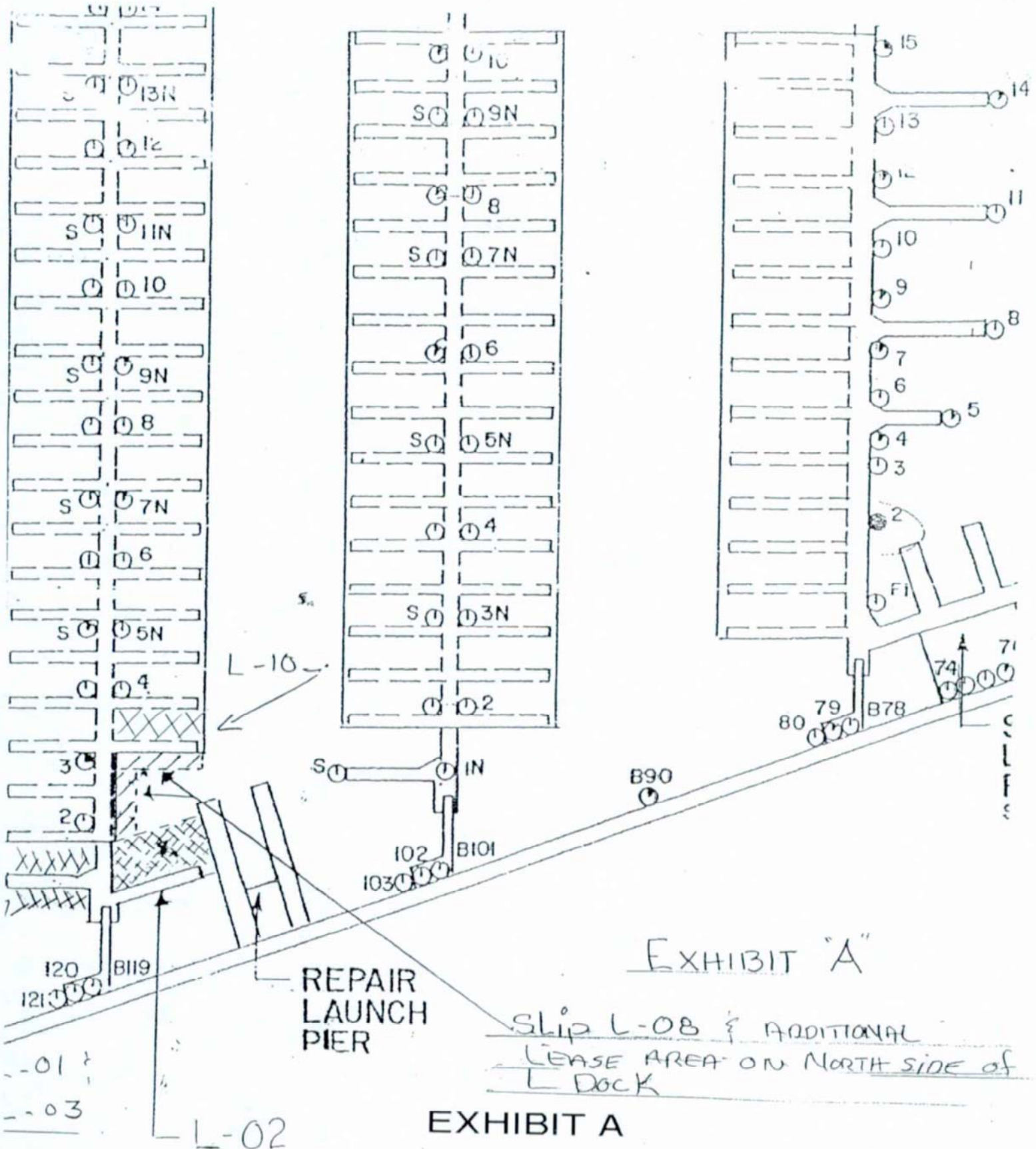
Date: _____

APPROVED AS TO FORM:

Linda A. Marousek, WSBA No. 12045
City Attorney

"L" Dock

"M" Dock



LOCATION OF FLOATING
SALES OFFICE FOR CLASSIC YACHTS

LEASE FOR MARINA FACILITIES

This Lease is entered into between the CITY OF DES MOINES, a municipal corporation (hereinafter "Lessor") and CLASSIC YACHTS, Inc., (hereinafter "Lessee").

(1) Terms and Premises. Lessor grants to Lessee for a term of five (5) years, commencing on the first day of January, 2001, the exclusive right to use and occupy certain real and personal property located at the Des Moines Marina. Such property shall be hereinafter referred to as "premises". The premises are generally described as slip L-02, in which a floating sales office will be moored. Owing to the difficulty of writing a legal description for the premises. The premises are schematically described on the diagram attached hereto as Exhibit "A" and by this reference incorporated herein.

(2) Use of Other Marina Facilities. In addition to Slip L-02, the Lessor shall have the use of Slips M-46, I-04 L-01 and L-10 for the purposes of conducting a boat brokerage and sales business. The following conditions shall apply to the use of the slips.

(a) The slips shall be used to moor boats that are for sale and are either owned by or consigned to the Lessee.

(b) Casual use of the slips by invitees of the Lessee, or any other use that may compete with the guest moorage business of the Lessor, is not allowed.

(c) The Lessee expects the Lessor to charge customers for the use of the slips in the regular course of the business, but long term sub-leasing is not allowed, unless such sub-leases comply with Marina Rule 4.0.

Lessee may sub-lease other slips in the Marina, subject to Marina Rule 4.0. Lessee will be charged the regular and customary rate for such sub-leases. Marina facilities other than Leased or sub-leased facilities, will be available to the Lessee at the regular posted rates therefor.

(3) Additional Facilities. Lessor and Lessee reserve the right to negotiate for expansion, and/or relocation of the premises, (sales office). Lessee may also be placed on the waiting list for additional slips if the Lessee can demonstrate to the City of Des Moines that such slip(s) are necessary for the success of the business. The decision to allow the Lessee to Lease additional slips shall be at the sole discretion of the City of Des Moines.

(4) Option. The Lessee shall have the option to extend the Lease for an additional five (5) years. Such option must be exercised in writing by the Lessee not later than one (1) year before the expiration date of the original term. In the event Lessee shall exercise such option, the rent for the option period shall be determined in accordance with paragraph 5 herein. In the event the parties shall be unable to agree upon such rent, the parties agree to resolve the matter using the Mediation/Arbitration process as provided in paragraph 19 below.

EXHIBIT B

app
extended
lease
#

Cy reserves right to move
you to comparable slips if
needed as part of
delete arbitration

on
slip exchange
4 delete
clause +
allow city to

(5) Rent. Monthly rent shall be \$1175.00 per month, plus State Leasehold Tax, payable in advance on or before the first day of each month of this Lease. This rate shall take effect on January 1, 2001. Beginning January 1, 2002, and effective on January 1st of each succeeding year of the original Lease period, plus the option period if necessary, the rental rate shall be established by applying the greater of:

(a) The same percentage increase that is applied to all other slips as a result of an action by the Des Moines City Council.

(b) An amount equal to the rental rate for the previous year multiplied by the Consumer Price Index, U.S. City Average, All Urban Consumers, for the 12-month period ending August 31st of the previous year. (Published by the U.S. Department of Labor, Bureau of Labor Statistics).

(6) Deposit. Lessor acknowledges receipt of a deposit in the amount of one (1) month's rent to ensure faithful performance of all provisions of this Lease. This sum shall be applied towards the last month's rent provided all provisions of this Lease are complied with.

(7) Inspection of Moorage. During business hours, the City Manager, or his designated agent, shall have the right to inspect the dock structure where the premises, (sales office), is moored. The right of inspection reserved to the City hereunder shall impose no obligation of the City to make inspections to ascertain the conditions of the premises and shall impose no liability upon the City for failure to make such inspections.

(8) Utilities. In addition to the above rent, Lessee shall be required to pay, within ten (10) days after billed, all utilities furnished to the premises, except surface water management charges and water, which are included in the monthly rent. Power rates billed to the Lessee shall be billed at the rates posted in the Marina office.

(9) Sales and Real Property Taxes. If required by law, Lessee shall be required to pay any sales tax on the rent or any property taxes or Leasehold tax, if levied.

(10) Permitted Uses.

(a) Slip L-02 - sales office for a boat brokerage business.

(b) Slips M-46, I-04, L-01 & L-10 – moorage for vessels owned or consigned to Lessee for the purpose of selling such vessels.

(11) Restrictions on use of Leased Premises.

(a) The sale of gas, diesel fuels and propane gas is prohibited except when used by Lessee to test work performed and the excess conveyed to customer.

(b) The dock structure where the premises are moored, (L-02), may be structurally modified by Lessee only after prior written consent of Lessor. All additions and modifications permanently attached to structures shall be at the expense of Lessee and shall become the property of Lessor at the termination of this Lease and any extension thereof. Any non-attached additions, lighting fixtures, furniture and trade fixtures ever added by Lessee, which are removable without injury to the premises, shall be and remain the property of Lessee. *Lessee may modify slips M-46, I-04 or L-10 only after prior written consent of Lessor. Only such modifications that would normally be approved under the current Rules and Regulations of the Des Moines Marina will be allowed.*

(12) Conduct of Business. Lessee shall be required to follow all City Ordinances, Federal, State and County laws and the Rules and Regulations of the Des Moines Marina. The Lessor shall have the right to restrict certain types of operations during the hours of 10 P.M. to 6 A.M. if they create a nuisance or have a detrimental effect upon adjacent residents and Marina tenants.

(13) Duties of Lessor. Lessor will at all times during the tenancy:

(a) Comply with all City ordinances, state, and federal regulations and any special provisions in this Lease related to environmental protection.

(b) Maintain the premises to substantially comply with all applicable codes, statutes, ordinances, or regulations pertaining to the Leased premises;

(c) Except where the conditions attributable to normal wear and tear, make repairs and arrangements necessary to put the premises in as good condition as it was at the commencement of the tenancy;

(d) Maintain all electrical, plumbing, heating, and other facilities in reasonably good working order;

(e) No duty shall devolve upon the Lessor to repair a defective condition where the defective condition complained of was caused by the conduct of Lessee.

(14) Duties of Lessee. Lessee accepts the premises in its present condition, and will at all times during the tenancy:

(a) Comply with all city, state, and federal regulations related to environmental protection, and any special provisions described in this Lease.

(b) Keep the Leased premises as clean and sanitary as the conditions of the premises permit;

(c) Properly dispose all solid waste, liquids, and hazardous waste in a clean and lawful manner at reasonable and regular intervals;

(d) Properly use and operate all electrical, gas, heating, plumbing and other fixtures.

(e) Not permit a nuisance or common law waste.

(f) Not allow junk or debris to accumulate on the demised premises;

(g) At the expiration of the Lease term, or any extension thereof, surrender the premises in as good condition as they were at the beginning of the term, reasonable wear and tear excepted.

(15) Minimum Hours of Operation. The parties recognize that Lessor's primary intent in granting this Lease is to provide the boating community with a service, specifically a boat brokerage and sales business and to that extent it is vital that the facilities and services be available on a regular basis throughout the year. Accordingly, Lessee agrees that *the business shall remain open a minimum of eight (8) hours per day, five (5) days per week, from May 1 to July 31 of each year.*

(16) Indemnification and Insurance. Lessee shall be responsible to Lessor for damages to the premises caused by Lessee, Lessee's agents, and parties using the premises with the permission of Lessee. Lessee shall keep the premises insured for fire, and other casualty. Lessee shall purchase and maintain a general liability insurance policy insuring against claims for personal injury and property damage in an amount with an annual aggregate limit of not less than one million dollars (\$1,000,000). Lessor shall be named as an additional insured under such general liability policy. Appropriate certifications of insurance coverage shall be delivered to Lessor. Lessee agrees to save, keep, defend and otherwise hold harmless Lessor, its officers, agents, employees and volunteers, from all damages, costs or expenses in law or equity that may at any time arise or be set up because of damage to property or personal injury received by reason of or in the course of activities involving Lessee's use and occupancy of the premises or adjacent areas, including, but not limited to, claims arising out of the condition of the premises. Lessee's indemnification is intended to apply to all claims which are occasioned by any willful or negligent act or omission of Lessee, its employees, or any party using the premises with the permission of Lessee.

(17) Sign. Lessee shall be permitted to paint or install such signs as are permitted by the Des Moines Municipal Code.

(18) Assignment. Lessee shall not assign this Lease or the rights granted

hereunder or sublet the premises or any part thereof without first obtaining written consent of the City Manager. Such consent shall not be unreasonably withheld. Lessor and Lessee recognize that the primary purpose of this Lease is to provide a boat brokerage and sales service for of customers of the Des Moines Marina, and the boating community, and, accordingly, the primary standards for approving assignment or sublease shall be as follows: the qualifications, business ability, financial capability, technical competence, and personal reputation & integrity of the proposed assignee or sublessee.

(19) Mediation/Arbitration Clause. If a dispute arises from or relates to this Agreement or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under applicable rules of the American Arbitration Association. The mediator may be selected by agreement of the parties or through the American Arbitration Association. Following mediation, or upon the mutual written agreement of the parties to forgo the mediation process, any unresolved controversy or claim arising from or relating to this Agreement or breach thereof shall be settled through arbitration which shall be conducted under the American Arbitration Association's Arbitration Rules. The arbitrator may be selected by agreement of the parties or through the American Arbitration Association. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

(20) Default.

(a) Event of Default. Each of the following shall be deemed an Event of Default:

- (i) Failure to make full and timely payment of rent;
- (ii) Failure by Lessee to perform or observe any covenant or condition of this Lease which is to be performed or observed by Lessee;
- (iii) Abandonment of the premises;
- (iv) The filing of execution or occurrence of:
 - (A) An adjudication of Lessee as a bankrupt or insolvent in the bankruptcy or equity sense, or;
 - (B) An assignment for the benefit of creditors, whether by trust or otherwise, or;
 - (C) The taking by any person of the rights hereunder upon execution or attachment or other process of law or equity.

(b) Cure of Default. Lessee may cure a default, except for failure to make full and timely payment of rent, and this Lease shall remain in effect, provided that Lessee cure such default or enters into good faith efforts with Lessor to cure such default, within fifteen (15) days of receiving written notice of default by Lessor. Lessee shall notify Lessor in writing of his intent to cure default and the amount of time required to cure the default. Subsequent failure of Lessee to cure the default under this subsection within a reasonable time shall be grounds for termination of the Lease.

(c) Termination of Lease. If Lessee fails to cure any default within the period of time described in the preceding subsection "b" herein, the Lessor may at its option, in addition to any other remedy or right given hereunder or by law,

(i) Except for failure to make full and timely payment of rent, give notice to Lessee that this Lease shall terminate upon the date specified in the notice, which date shall be not earlier than thirty (30) days after the giving of such notice, or

(ii) Immediately or at any time after occurrence of such Event of Default, and without notice or demand, enter upon the premises or any part thereof in the name of the whole, and upon the date specified in such notice or in any other notice pursuant to law, or upon such entry this Lease and the term thereof shall terminate.

(d) Repossession. Upon termination of this Lease as herein above provided, the Lessor may enter forthwith without further demand or notice and resume possession either by summary proceedings, or by action at law or in equity or by force or other-wise, as the Lessor may determine, without being liable in trespass. In no event shall such reentry or resumption of possession or reletting as hereinafter provided be deemed to be a waiver of the rights and remedies of the Lessor hereunder.

(e) Reletting. Upon termination of this Lease in any manner above provided, the Lessor shall use reasonable efforts to relet the premises. The Lessor shall be deemed to have used reasonable efforts if it Leases the whole or any part of the premises, separately or with other premises, for any period equal to or less than, or extending beyond, the remainder of the original term, for any sum or to any tenant or for any use it deems reasonably satisfactory or appropriate. Refusal to let to any person or for any use the Lessor deems objectionable, or for a use not expressly permitted under paragraph 10 of this Lease shall also be deemed a reasonable effort to relet.

(f) Damages. Upon termination of this Lease in any manner above provided, the Lessee shall pay the Lessor forthwith without demand or notice the sum of the following:

(i) All rent accrued to the date of such termination and a proportionate part of the rent otherwise payable for the month in which such termination occurs;

(ii) The cost of making all repairs, alterations and improvements

required to be made by the Lessee hereunder, and of performing all covenants of the Lessee relating to the condition of the dock structure during the term, such cost to be deemed prima facie to be that cost estimated by a reputable architect or contractors selected by the Lessor or the amounts reasonable expended or incurred thereafter by the Lessor; and

(iii) Such other damages as are proper under applicable provisions of statutory and common law.

(21) Cancellation by Lessee. Lessee shall have the right to cancel this Lease upon ninety (90) days written notice. During such ninety-(90) day period the parties shall enter into a cancellation agreement defining the rights and duties of the parties upon cancellation of this Lease. There shall be two (2) mandatory provisions contained in the cancellation agreement: (1) following the ninety (90) day notice period, Lessee shall have no further obligation to pay rent, (2) on the effective date of the ninety (90) day notice, Lessee shall vacate the premises and Lessor shall have the right to re-enter and re-let. As to any other term of the cancellation agreement, should the parties be unable to agree on any provision, it shall be submitted to arbitration as provided in paragraph 19 herein.

(22) Conversion of Slip. If the Lessee cancels this Lease following the procedure set forth in paragraph 21, or if the Lessee assigns this Lease as part of the sale of the underlying business, or if the corporation is sold, the Lessee shall have the option to convert and retain one slip listed in this agreement for the personal use of Jerry or Cathy Reece.

IN WITNESS WHEREOF, Lessor and Lessee have affixed their signatures on the dates below written signifying agreement to the terms and conditions of the foregoing Lease for Marina Facilities.

LESSEE: Classic Yachts, Inc.

LESSOR: City of Des Moines

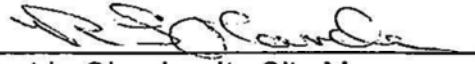
By:


Jerry Reece, its President

Date:

4-18-01

By:


Robert L. Olander, Its City Manager

Date:

5-2-01

LEASE FOR MARINA FACILITIES

This Lease is entered into between the CITY OF DES MOINES, a municipal corporation (hereinafter "Lessor") and CLASSIC YACHTS, Inc., (hereinafter "Lessee").

(1) Terms and Premises. Lessor grants to Lessee for a term of five (5) years, commencing on the first day of January, 2001, the exclusive right to use and occupy certain real and personal property located at the Des Moines Marina. Such property shall be hereinafter referred to as "premises". The premises are generally described as slip L-02, in which a floating sales office will be moored. Owing to the difficulty of writing a legal description for the premises. The premises are schematically described on the diagram attached hereto as Exhibit "A" and by this reference incorporated herein.

(2) Use of Other Marina Facilities. In addition to Slip L-02, the Lessor shall have the use of Slips M-46, L-01, L-08, L-10, and the north side of the L Dock's main walkway between L-02 and L-08 for the purposes of conducting a boat brokerage and sales business. The following conditions shall apply to the use of the slips.

(a) The slips shall be used to moor boats that are for sale and are either owned by or consigned to the Lessee.

(b) Casual use of the slips by invitees of the Lessee, or any other use that may compete with the guest moorage business of the Lessor, is not allowed.

(c) The Lessee expects the Lessor to charge customers for the use of the slips in the regular course of the business, but long term sub-leasing is not allowed, unless such sub-leases comply with Marina Rule 4.0.

Lessee may sub-lease other slips in the Marina, subject to Marina Rule 4.0. Lessee will be charged the regular and customary rate for such sub-leases. Marina facilities other than Leased or sub-leased facilities, will be available to the Lessee at the regular posted rates therefor.

(3) Additional Facilities. Lessor and Lessee reserve the right to negotiate for expansion, and/or relocation of the premises, (sales office). Lessee may also be placed on the waiting list for additional slips if the Lessee can demonstrate to the City of Des Moines that such slip(s) are necessary for the success of the business. The decision to allow the Lessee to Lease additional slips shall be at the sole discretion of the City of Des Moines.

(4) Modification of Lease Necessitated by Marina Master Plan. Lessee recognizes that implementation of the Marina improvements contemplated by the Des Moines Marina Master Plan may necessitate changes to Lessee's use of the leased premises. In the event of such changes, Lessor and Lessee reserve the right to negotiate in good faith for modification of this lease. If Lessor and Lessee are unable to reach agreement concerning such modification, the dispute shall be submitted to

mediation and arbitration under the terms of Paragraph 20 of this lease.

(5) Option. The Lessee shall have the option to extend the Lease for an additional five (5) years. Such option must be exercised in writing by the Lessee not later than one (1) year before the expiration date of the original term. In the event Lessee shall exercise such option, the rent for the option period shall be determined in accordance with paragraph 6 herein. In the event the parties shall be unable to agree upon such rent, the parties agree to resolve the matter using the Mediation/Arbitration process as provided in paragraph 20 below.

(6) Rent. Monthly rent shall be \$1,175.00 per month, plus State Leasehold Tax, payable in advance on or before the first day of each month of this Lease. This rate shall take effect on January 1, 2001. Beginning January 1, 2002, and effective on January 1st of each succeeding year of the original Lease period, plus the option period if necessary, the rental rate shall be established by applying the greater of:

(a) The same percentage increase that is applied to all other slips as a result of an action by the Des Moines City Council.

(b) An amount equal to the rental rate for the previous year multiplied by the Consumer Price Index, U.S. City Average, All Urban Consumers, for the 12-month period ending August 31st of the previous year. (Published by the U.S. Department of Labor, Bureau of Labor Statistics).

(7) Deposit. Lessor acknowledges receipt of a deposit in the amount of one (1) month's rent to ensure faithful performance of all provisions of this Lease. This sum shall be applied towards the last month's rent provided all provisions of this Lease are complied with.

(8) Inspection of Moorage. During business hours, the City Manager, or his designated agent, shall have the right to inspect the dock structure where the premises, (sales office), is moored. The right of inspection reserved to the City hereunder shall impose no obligation of the City to make inspections to ascertain the conditions of the premises and shall impose no liability upon the City for failure to make such inspections.

(9) Utilities. In addition to the above rent, Lessee shall be required to pay, within ten (10) days after billed, all utilities furnished to the premises, except surface water management charges and water, which are included in the monthly rent. Power rates billed to the Lessee shall be billed at the rates posted in the Marina office.

(10) Sales and Real Property Taxes. If required by law, Lessee shall be required to pay any sales tax on the rent or any property taxes or Leasehold tax, if levied.

(11) Permitted Uses.

(a) Slip L-02 - sales office for a boat brokerage business.

(b) Slips M-46, L-01, L-08, L-10, and the north side of the L Dock's main walkway between L-02 and L-08 – moorage for vessels owned or consigned to Lessee for the purpose of selling such vessels.

(12) Restrictions on use of Leased Premises.

(a) The sale of gas, diesel fuels and propane gas is prohibited except when used by Lessee to test work performed and the excess conveyed to customer.

(b) The dock structure where the premises are moored, (L-02), may be structurally modified by Lessee only after prior written consent of Lessor. All additions and modifications permanently attached to structures shall be at the expense of Lessee and shall become the property of Lessor at the termination of this Lease and any extension thereof. Any non-attached additions, lighting fixtures, furniture and trade fixtures ever added by Lessee, which are removable without injury to the premises, shall be and remain the property of Lessee. Lessee may modify slips M-46 or L-10 only after prior written consent of Lessor. Only such modifications that would normally be approved under the current Rules and Regulations of the Des Moines Marina will be allowed.

(13) Conduct of Business. Lessee shall be required to follow all City Ordinances, Federal, State and County laws and the Rules and Regulations of the Des Moines Marina. The Lessor shall have the right to restrict certain types of operations during the hours of 10 P.M. to 6 A.M. if they create a nuisance or have a detrimental effect upon adjacent residents and Marina tenants.

(14) Duties of Lessor. Lessor will at all times during the tenancy:

(a) Comply with all City ordinances, state, and federal regulations and any special provisions in this Lease related to environmental protection.

(b) Maintain the premises to substantially comply with all applicable codes, statutes, ordinances, or regulations pertaining to the Leased premises;

(c) Except where the conditions attributable to normal wear and tear, make repairs and arrangements necessary to put the premises in as good condition as it was at the commencement of the tenancy;

(d) Maintain all electrical, plumbing, heating, and other facilities in reasonably good working order;

(e) No duty shall devolve upon the Lessor to repair a defective

condition where the defective condition complained of was caused by the conduct of Lessee.

(15) Duties of Lessee. Lessee accepts the premises in its present condition, and will at all times during the tenancy:

(a) Comply with all city, state, and federal regulations related to environmental protection, and any special provisions described in this Lease.

(b) Keep the Leased premises as clean and sanitary as the conditions of the premises permit;

(c) Properly dispose all solid waste, liquids, and hazardous waste in a clean and lawful manner at reasonable and regular intervals;

(d) Properly use and operate all electrical, gas, heating, plumbing and other fixtures.

(e) Not permit a nuisance or common law waste.

(f) Not allow junk or debris to accumulate on the demised premises;

(g) At the expiration of the Lease term, or any extension thereof, surrender the premises in as good condition as they were at the beginning of the term, reasonable wear and tear excepted.

(16) Minimum Hours of Operation. The parties recognize that Lessor's primary intent in granting this Lease is to provide the boating community with a service, specifically a boat brokerage and sales business and to that extent it is vital that the facilities and services be available on a regular basis throughout the year. Accordingly, Lessee agrees that the business shall remain open a minimum of eight (8) hours per day, five (5) days per week, from May 1 to July 31 of each year.

(17) Indemnification and Insurance. Lessee shall be responsible to Lessor for damages to the premises caused by Lessee, Lessee's agents, and parties using the premises with the permission of Lessee. Lessee shall keep the premises insured for fire, and other casualty. Lessee shall purchase and maintain a general liability insurance policy insuring against claims for personal injury and property damage in an amount with an annual aggregate limit of not less than one million dollars (\$1,000,000). Lessor shall be named as an additional insured under such general liability policy. Appropriate certifications of insurance coverage shall be delivered to Lessor. Lessee agrees to save, keep, defend and otherwise hold harmless Lessor, its officers, agents, employees and volunteers, from all damages, costs or expenses in law or equity that may at any time arise or be set up because of damage to property or personal injury received by reason of or in the course of activities involving Lessee's use and occupancy of the premises or adjacent areas, including, but not limited to, claims arising

out of the condition of the premises. Lessee's indemnification is intended to apply to all claims which are occasioned by any willful or negligent act or omission of Lessee, its employees, or any party using the premises with the permission of Lessee.

(18) Sign. Lessee shall be permitted to paint or install such signs as are permitted by the Des Moines Municipal Code.

(19) Assignment. Lessee shall not assign this Lease or the rights granted hereunder or sublet the premises or any part thereof without first obtaining written consent of the City Manager. Such consent shall not be unreasonably withheld. Lessor and Lessee recognize that the primary purpose of this Lease is to provide a boat brokerage and sales service for of customers of the Des Moines Marina, and the boating community, and, accordingly, the primary standards for approving assignment or sublease shall be as follows: the qualifications, business ability, financial capability, technical competence, and personal reputation & integrity of the proposed assignee or sublessee.

(20) Mediation/Arbitration Clause. If a dispute arises from or relates to this Agreement or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under applicable rules of the American Arbitration Association. The mediator may be selected by agreement of the parties or through the American Arbitration Association. Following mediation, or upon the mutual written agreement of the parties to forgo the mediation process, any unresolved controversy or claim arising from or relating to this Agreement or breach thereof shall be settled through arbitration which shall be conducted under the American Arbitration Association's Arbitration Rules. The arbitrator may be selected by agreement of the parties or through the American Arbitration Association. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

(21) Default.

(a) Event of Default. Each of the following shall be deemed an Event of Default:

- (i) Failure to make full and timely payment of rent;
- (ii) Failure by Lessee to perform or observe any covenant or condition of this Lease which is to be performed or observed by Lessee;
- (iii) Abandonment of the premises;
- (iv) The filing of execution or occurrence of:

(A) An adjudication of Lessee as a bankrupt or insolvent in the bankruptcy or equity sense, or;

(B) An assignment for the benefit of creditors, whether by trust or otherwise, or;

(C) The taking by any person of the rights hereunder upon execution or attachment or other process of law or equity.

(b) Cure of Default. Lessee may cure a default, except for failure to make full and timely payment of rent, and this Lease shall remain in effect, provided that Lessee cure such default or enters into good faith efforts with Lessor to cure such default, within fifteen (15) days of receiving written notice of default by Lessor. Lessee shall notify Lessor in writing of his intent to cure default and the amount of time required to cure the default. Subsequent failure of Lessee to cure the default under this subsection within a reasonable time shall be grounds for termination of the Lease.

(c) Termination of Lease. If Lessee fails to cure any default within the period of time described in the preceding subsection "b" herein, the Lessor may at its option, in addition to any other remedy or right given hereunder or by law,

(i) Except for failure to make full and timely payment of rent, give notice to Lessee that this Lease shall terminate upon the date specified in the notice, which date shall be not earlier than thirty (30) days after the giving of such notice, or

(ii) Immediately or at any time after occurrence of such Event of Default, and without notice or demand, enter upon the premises or any part thereof in the name of the whole, and upon the date specified in such notice or in any other notice pursuant to law, or upon such entry this Lease and the term thereof shall terminate.

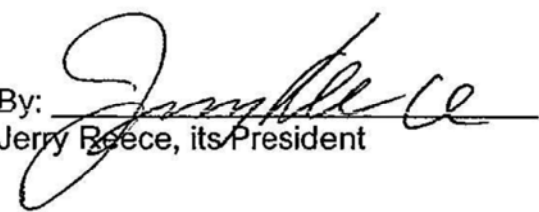
(d) Repossession. Upon termination of this Lease as herein above provided, the Lessor may enter forthwith without further demand or notice and resume possession either by summary proceedings, or by action at law or in equity or by force or other-wise, as the Lessor may determine, without being liable in trespass. In no event shall such reentry or resumption of possession or reletting as hereinafter provided be deemed to be a waiver of the rights and remedies of the Lessor hereunder.

(e) Reletting. Upon termination of this Lease in any manner above provided, the Lessor shall use reasonable efforts to relet the premises. The Lessor shall be deemed to have used reasonable efforts if it Leases the whole or any part of the premises, separately or with other premises, for any period equal to or less than, or extending beyond, the remainder of the original term, for any sum or to any tenant or for any use it deems reasonably satisfactory or appropriate. Refusal to let to any person or for any use the Lessor deems objectionable, or for a use not expressly permitted under paragraph 11 of this Lease shall also be deemed a reasonable effort to relet.

option to convert and retain one slip listed in this agreement for the personal use of Jerry or Cathy Reece.

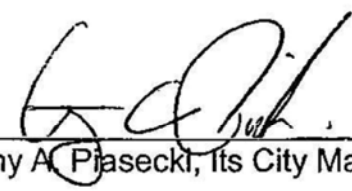
IN WITNESS WHEREOF, Lessor and Lessee have affixed their signatures on the dates below written signifying agreement to the terms and conditions of the foregoing Lease for Marina Facilities.

LESSEE: Classic Yachts, Inc.

By: 
Jerry Reece, its President

Date: 04/30/2003

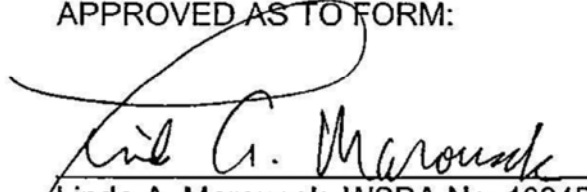
LESSOR: City of Des Moines

By: 
Anthony A. Plasecki, Its City Manager

At the direction of the City Council by motion regularly passed in its open public meeting on April 24, 2003.

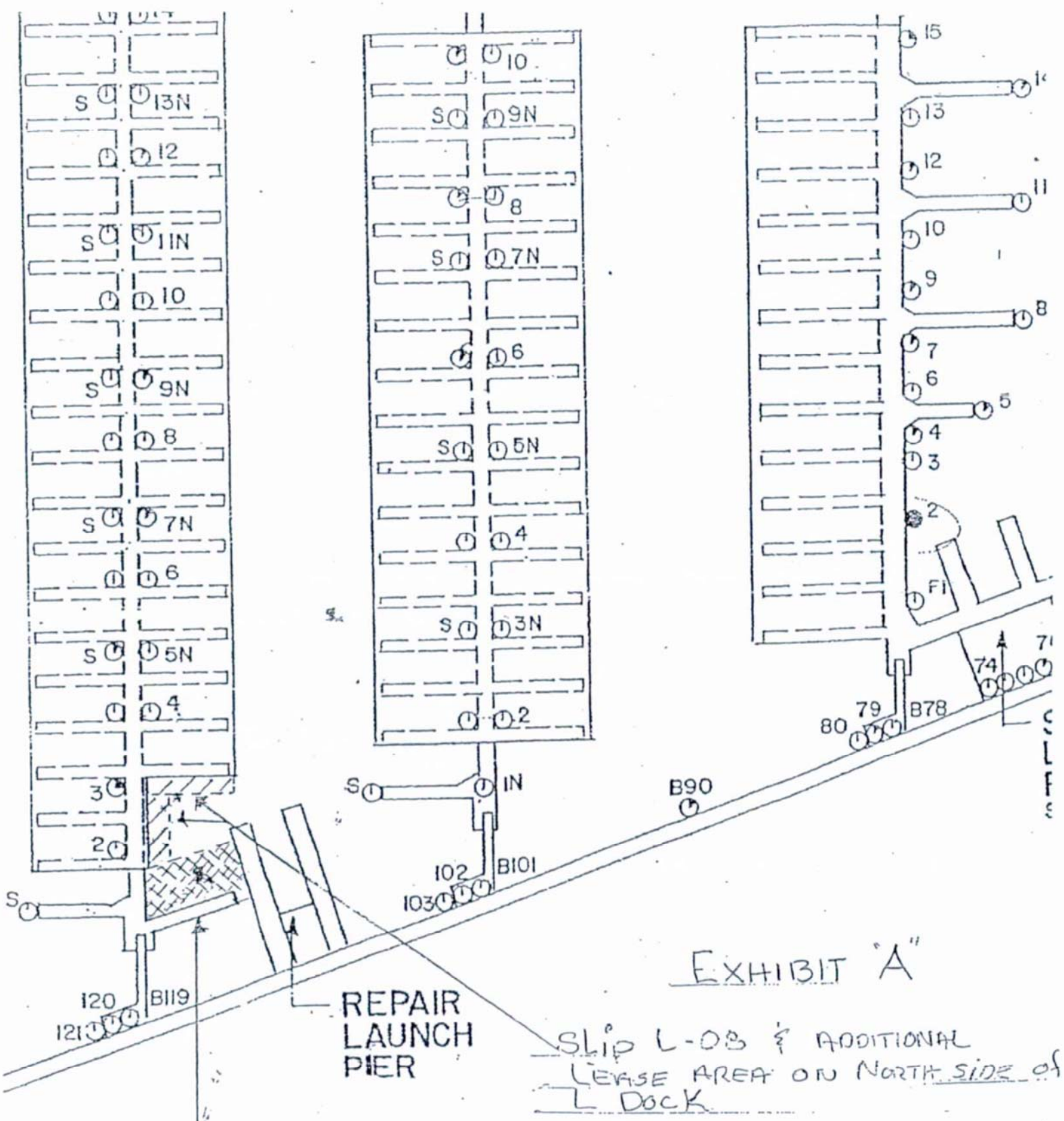
Date: April 30, 2003

APPROVED AS TO FORM:


Linda A. Marousek, WSBA No. 12045
City Attorney

"L" Dock

M. Dock



LOCATION OF FLOATING
SALES OFFICE FOR CLASSIC YACHTS

AGENDA ITEM

SUBJECT: Consultant Contract for 16th
Avenue S. Improvement Project
- Phase I (between S. 260th and
S. 272nd Streets) - Right of Way
Acquisition

ATTACHED DOCUMENTS:

1. Standard Consultant Agreement with
Universal Field Services, Inc.
2. CIP Budget

AGENDA OF: February 9, 2006

DEPT. OF ORIGIN: Planning, Building &
Public Works

DATE SUBMITTED: January 30, 2006

CLEARANCES:

[X] Finance

[X] PB&PW

[X] Legal

APPROVED BY CITY MANAGER
FOR SUBMITTAL:

Purpose and Recommendation:

The purpose of this agenda item is to request approval of a consultant contract with Universal Field Services, Inc. for right of way acquisition for Phase I of the 16th Avenue South Improvement Project between S. 260th and S. 272nd Streets.

Suggested Motion:

The following motion will appear on the Consent Calendar:

- 1) "I move to approve the Standard Consultant Agreement with Universal Field Services, Inc. in the amount of \$71,391, plus 10% contingency, and for the City Manager to sign said agreement substantially in the form as submitted."

Background:

The 16th Avenue South Improvement Project - Phase I has been a part of the 6-year Transportation Improvement Program and Transportation Comprehensive Plan for some time. This project cannot move forward without purchase of some right of way due to widening as well as easements for necessary retaining walls along the affected corridor, 16th Avenue South between S. 260th and S. 272nd Streets. Utility coordination meetings were held in December and January. Right of way acquisition is the next step in the process to keep the project moving.

Discussion:

Staff sent out a request for Statement of Qualifications (SOQ) from the Consultant Roster and had four responses. A staff panel reviewed the SOQ's and determined that Universal Field Services submitted the best proposal. They are a very experienced agency in the acquisition of right of way and come highly recommended. They also have experience working with the

City of Des Moines staff, as they were the subcontractor to CH2M Hill on the Pacific Highway South Project right of way acquisition which affected about 70 parcels of land. Staff was pleased with their performance as well as the subs they used for appraisal and appraisal review. Universal Field Services, Inc. was accurate, timely and helpful in working with staff. For this project, KPG is the lead consultant for design and we again expect good results. KPG has identified 16 parcels that will be affected either by actual right of way purchase and/or retaining wall easements. There is no Federal Funding involved which should make the process simpler.

Attachment I of the Standard Consultant Agreement is the Scope of Work and Exhibit A of Attachment I spells out the estimated cost of the contract \$71,391. Exhibit A-1 lists the parcel Nos., owners and property rights to be acquired. Exhibit B lists the costs for the License to Construct as referred to in the Scope of Work. Exhibit C lays out the expected timeframe. It is anticipated to have the right of way items concluded by August 31, 2006.

Alternatives:

There are no viable alternatives short of suspending the 16th Avenue South Project and risk loss of a construction season and possibly project funding.

Financial Impact:

Loss of project funding, increased right-of-way purchase and construction costs as time goes on.

Recommendation/Conclusion:

Staff recommends signing the contract as soon as possible in order to continue to move this project along to maximize the construction season.

Concurrence:

City Manager, Legal and Planning, Building and Public Works Director.

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STANDARD CONSULTANT AGREEMENT		CONSULTANT/ADDRESS/TELEPHONE Universal Field Services, Inc. 111 Main St, #105 Edmonds, WA 98020	
AGREEMENT NUMBER FEDERAL AID NO.		425.673.5559	
AGREEMENT TYPE	PROJECT TITLE AND WORK DESCRIPTION 16 th Ave S. Improvement Project; Phase 1		
	☒ COST PLUS FIXED FEE OVERHEAD PROGRESS PAYMENT RATE <u>69.9%</u> OVERHEAD COST METHOD ☐ ACTUAL COST NOT TO EXCEED <u>69.9</u> % ☐ FIXED RATE _____ % FIXED FEE \$5,856 _		
	DBE PARTICIPATION ☐ YES ☒ NO _____ % WBE PARTICIPATION ☐ YES ☒ NO _____ %		
	FEDERAL ID NO. OR S.S. NO.		Do you require a 1099 for IRS? ☐ YES ☒ NO
	COMPLETION DATE August 31, 2006	MAXIMUM AMOUNT PAYABLE \$71,391	

THIS AGREEMENT, made and entered into this _____ day of _____, _____, between the Local Agency of **City of Des Moines, Washington**, hereinafter called the "AGENCY", and the above organization hereinafter called the "CONSULTANT".

WITNESSETH THAT:

WHEREAS, the AGENCY desires to accomplish the above referenced project, and

WHEREAS, the AGENCY does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary services for the PROJECT; and

WHEREAS, the CONSULTANT represents that he/she is in compliance with the Washington State Statutes relating to professional registration, if applicable, and has signified a willingness to furnish Consulting services to the AGENCY,

NOW THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

I GENERAL DESCRIPTION OF WORK

The work under this AGREEMENT shall consist of the above described work and services as herein defined and necessary to accomplish the completed work for this PROJECT. The CONSULTANT shall furnish all services, labor and related equipment necessary to conduct and complete the work as designated elsewhere in this AGREEMENT.

II SCOPE OF WORK

The Scope of Work and project level of effort for this project is detailed in ATTACHMENT I attached hereto, and by this reference made a part of this AGREEMENT.

III GENERAL REQUIREMENTS

All aspects of coordination of the work of this AGREEMENT, with outside agencies, groups or individuals shall receive advance approval by the AGENCY. Necessary contacts and meetings with agencies, groups or individuals shall be coordinated through the AGENCY.

The CONSULTANT shall attend up to five (5) coordination, progress and presentation meetings with the AGENCY or such Federal, Community, State, City or County officials, groups or individuals as may be requested by the AGENCY. The AGENCY will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum number of hours or days notice required shall be agreed to between the AGENCY and the CONSULTANT and shown in ATTACHMENT I attached hereto and made part of this AGREEMENT. The CONSULTANT shall prepare a monthly progress report, in a form approved by the AGENCY, that will outline in written form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated. Goals for Disadvantaged Business Enterprises (DBE) and Women Owned Business Enterprises (WBE) if required shall be shown in the heading of this AGREEMENT.

All reports, PS&E materials, and other data, furnished to the CONSULTANT by the AGENCY shall be returned. All designs, drawings, specifications, documents, and other work products prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for this PROJECT and are property of the AGENCY. Reuse by the

AGENCY or by others acting through or on behalf of the AGENCY of any such instruments of service, not occurring as part of this PROJECT, shall be without liability or legal exposure to the CONSULTANT.

IV TIME FOR BEGINNING AND COMPLETION

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the AGENCY. All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT under completion date.

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the AGENCY, in the event of a delay attributable to the AGENCY, or because of unavoidable delays caused by an act of GOD or governmental actions or other conditions beyond the control of the CONSULTANT. A prior supplemental agreement issued by the AGENCY is required to extend the established completion time.

V PAYMENT

The CONSULTANT shall be paid by the AGENCY for completed work and services rendered under this AGREEMENT as provided in ATTACHMENT III attached hereto, and by this reference made part of this AGREEMENT. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in ATTACHMENT I, "Scope of Work". The CONSULTANT shall conform with all applicable portions of 48 CFR 31.

VI SUBCONTRACTING

The AGENCY permits subcontracts for those items of work as shown in ATTACHMENT I, Exhibit "A" to this AGREEMENT.

Compensation for this subconsultant work shall be based on the cost factors shown on Attachment I; Exhibit "A", attached hereto and by this reference made a part of this AGREEMENT.

The work of the subconsultant shall not exceed its maximum amount payable unless a prior written approval has been issued by the AGENCY.

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the

subconsultant shall be substantiated in the same manner as outlined in Section V. All subcontracts exceeding \$10,000 in cost shall contain all applicable provisions of this AGREEMENT.

The CONSULTANT shall not subcontract for the performance of any work under this AGREEMENT without prior written permission of the AGENCY. No permission for subcontracting shall create, between the AGENCY and subcontractor, any contract or any other relationship.

VII EMPLOYMENT

The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the AGENCY shall have the right to annul this AGREEMENT without liability, or in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the AGENCY, and any and all claims that may or might arise under any Workmen's Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full or part time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the United States Department of Transportation, the STATE, or the AGENCY, except regularly retired employees, without

written consent of the public employer of such person.

VIII NONDISCRIMINATION

The CONSULTANT agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, sex, age or handicap except for a bona fide occupational qualification with regard to, but not limited to the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, a layoff or terminations, rates of pay or other forms of compensation, selection for training, retention of services. The CONSULTANT understands and agrees that if it violates this provision, this AGREEMENT may be terminated by the AGENCY and further that the CONSULTANT shall be barred from performing any services for the AGENCY now or in the future unless a showing is made satisfactory to the AGENCY that discriminatory practices have terminated and that recurrence of such action is unlikely.

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

A. COMPLIANCE WITH REGULATIONS: The CONSULTANT shall comply with the Regulations relative to nondiscrimination in the same manner as in Federal-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this AGREEMENT. The CONSULTANT shall comply with the American Disabilities Act of 1992, as amended.

B. NONDISCRIMINATION: The CONSULTANT, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, creed, color, sex, age, marital status, national origin or handicap except for a bona fide occupational qualification in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix II of the Regulations.

C. SOLICITATIONS FOR SUBCONSULTANTS, INCLUDING PROCUREMENTS OF MATERIALS AND EQUIPMENT: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this AGREEMENT and the Regulations relative to nondiscrimination on the grounds of race, creed, color, sex, age, marital status, national origin and handicap.

D. INFORMATION AND REPORTS: The CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the AGENCY to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the AGENCY, or the United States Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

E. SANCTIONS FOR NONCOMPLIANCE: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this AGREEMENT, the AGENCY shall impose such sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the CONSULTANT under the AGREEMENT until the CONSULTANT complies, and/or
2. Cancellation, termination or suspension of the AGREEMENT, in whole or in part.

F. INCORPORATION OF PROVISIONS: The CONSULTANT shall include the provisions of paragraphs (A) through (G) in every subcontract, including

procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subconsultant or procurement as the AGENCY or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the AGENCY to enter into such litigation to protect the interests of the AGENCY, and in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

G. UNFAIR EMPLOYMENT PRACTICES: The CONSULTANT shall comply with RCW 49.60.180.

IX TERMINATION OF AGREEMENT

The right is reserved by the AGENCY to terminate this AGREEMENT at any time upon ten days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the AGENCY other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT as shown in ATTACHMENT IV for the type of AGREEMENT used.

No payment shall be made for any work completed after ten days following receipt by the CONSULTANT of the Notice to Terminate. If the accumulated payment made to the CONSULTANT prior to the Notice of Termination exceeds the total amount that would be due computed as set forth herein above, then no final payment shall be due and the CONSULTANT shall immediately reimburse the AGENCY for any excess paid.

If the services of the CONSULTANT are terminated by the AGENCY for default on the part of the CONSULTANT, the above formula for payment shall not apply. In such an event, the amount to be paid shall be determined by the AGENCY with consideration given to the actual costs incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination,

whether that work is in a form or a type which is usable to the AGENCY at the time of termination; the cost to the AGENCY of employing another firm to complete the work required and the time which may be required to do so, and other factors which affect the value to the AGENCY of the work performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount which would have been made using the formula set forth in the previous paragraph.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without it or its employees' fault or negligence, the termination shall be deemed to be a termination for the convenience of the AGENCY in accordance with the provision of this AGREEMENT.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the project, or, dissolution of the partnership, termination of the corporation or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of this AGREEMENT, if requested to do so by the AGENCY. The subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the AGENCY, if the AGENCY so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the AGENCY's concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

Payment for any part of the work by the AGENCY shall not constitute a waiver by the AGENCY of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the AGENCY. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

X CHANGES OF WORK

The CONSULTANT shall make such changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the AGENCY, without additional compensation

thereof. Should the AGENCY find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the AGENCY. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

XI MEDIATION/ARBITRATION CLAUSE

If a dispute arises from or relates to the AGREEMENT or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under the American Arbitration Association's Commercial or Construction Rules before resorting to arbitration. The mediator may be selected by agreement of the parties or through the American Arbitration Association. Following mediation, any unresolved controversy or claim arising from or relating to this AGREEMENT or breach thereof shall be conducted under the American Arbitration Association's Commercial or Construction Arbitration Rules. The arbitrator may be selected by agreement of the parties or through the American Arbitration Association. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence. The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees against the AGENCY and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW. The CONSULTANT recognizes that this waiver was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation.

XII VENUE, APPLICABLE LAW AND PERSONAL JURISDICTION

All questions related to this AGREEMENT shall be resolved under the laws of the State of Washington. In the event that either party deems it necessary to institute legal action arising from this AGREEMENT, such action shall be instituted in the King County Superior Court. The parties each consent to the personal jurisdiction of such court. Except as otherwise provided by law, it is expressly understood that neither party can institute any legal action against the other based on this AGREEMENT

until the parties have exhausted the mediation and arbitration procedures required by the previous paragraph.

XIII LEGAL RELATIONS AND INSURANCE

Indemnification / Hold Harmless

Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the negligent acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Insurance

The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

A. Minimum Scope of Insurance

Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Consultant's profession.

B. Minimum Amounts of Insurance

Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant's insurance coverage shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

D. Acceptability of Insurers

Insurance is to be placed with insurers with a current A. M. Best rating of not less than A:VII.

E. Verification of Coverage

Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

**XIV
EXTRA WORK**

- A. The AGENCY may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the AGENCY shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.
- C. The CONSULTANT must submit its "request for equitable adjustment" (hereafter referred to as claim) under this clause within 30 days from the date of receipt of the written order. However, if the AGENCY decides that the facts justify it, the AGENCY may receive an act upon a claim submitted before final payment of the AGREEMENT.
- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

**XV
ENDORSEMENT OF PLANS**

The CONSULTANT shall place his endorsement on all plans, estimates or any other engineering data furnished by him.

**XVI
FEDERAL AND STATE REVIEW**

The Federal Highway Administration and the Washington State Department of Transportation shall have the right to participate in the review or examination of the work in progress.

**XVII
CERTIFICATION OF THE CONSULTANT AND
THE AGENCY**

Attached hereto as ATTACHMENT II-A, are the Certifications of the CONSULTANT and the AGENCY, and ATTACHMENT II-B Certification regarding debarment, suspension and other responsibility matters--primary covered transactions.

**XVIII
COMPLETE AGREEMENT**

This document and referenced attachments contains all covenants, stipulations and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

**XIX
EXECUTION AND ACCEPTANCE**

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal, and the supporting materials submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all the terms and conditions thereof.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year first above written.

By _____

By _____

Consultant _____

Agency _____
City Manager

APPROVED AS TO FORM:

By: _____
Title: City Attorney

ATTACHMENT I

SCOPE OF WORK

City of Des Moines – 16th Avenue South Phase 1 Improvement Project Right of Way Acquisition Services

Universal shall acquire on behalf of the City of Des Moines (CITY) the real property needs referenced and discussed below, using procedures specified by the CITY. It is understood the CITY has implemented Right of Way Acquisition Policies and Procedures approved by WSDOT as a guide, particularly for federally funded projects. According to the CITY, this project does not include federal aid participation for any part of the project, therefore, some deviations from the CITY'S approved policies and procedures for Right of Way Acquisition may be allowed. This scope of work and attached fee estimate is based on a project site visit, one meeting with CITY and KPG, Inc. staff, review of draft Right of Way plans, and the positive community desire for the project.

As part of the real property rights valuation process, Universal will prepare up to two (2) short form limited appraisal reports, appraisal reviews and fifteen (15) Administrative Offer Summary worksheets (AOS). One (1) of the two (2) short form appraisal reports may not be required but is included for budget contingency. Due to the nature of the appraisal problem and lack of federal funding, Appraisal Reviews may not be necessary. Upon completion of the valuation process and with the City's written authorization, offers will be made to property owners by Universal and commence negotiations towards a settlement with each property owner. Universal will acquire various property rights as described in final right of way plans provided by the City's engineering consultant, KPG, estimated as a total of sixteen (16) parcels, see Exhibit A – Attachment 1. It is assumed the final right of way plans will not change this scope of work and the estimated fee herein. Any changes to this scope of work as derived from the draft right of way plans, will entitle Universal to an equitable adjustment as described herein. For those property owners failing to respond to the City's request, Universal will follow up with each of the parcels to assist the City in securing License to Construct Agreements as described below. Upon settlement for the various rights to be acquired, including fee simple and permanent easements, the property owners will be compensated and the individual parcel files will be closed. The project goal is to acquire all the necessary property rights on or before August 1, 2006.

Prior to Universal commencing negotiations, the CITY will contact and deliver by mail or in person, approximately forty-four (44) Temporary License to Construct Agreements, or a similar access agreement, to property owners impacted along the corridor and request each property owner sign and return each document to the CITY to construct the related roadway improvements. Under the CITY's direction, License to Construct Agreements will be requested without payment to property owners in exchange for right of way improvements, considered a mutual benefit. It is assumed that approximately ten (10) property owners may not respond. If so, subject to receipt of written notice to proceed from the City, Universal will follow up and contact up to ten (10) additional property owners to acquire the necessary agreements without payment to the property owners, unless directed otherwise. A separate budget item to acquire ten (10) License to Construct Agreements is shown in the attached fee estimate, Exhibit B.

Universal Field Services, Inc. will provide:

A. Title / Ownership Reviews

1. Conduct reviews of existing right of way information.
2. If requested, coordinate and order preliminary commitments (title reports) for the parcels affected by the project's real property right requirements. For those parcels requiring temporary access only (License to Construct Agreements), ownership information may be obtained directly from last deeds of conveyance and the County's on-line public records system in-lieu of title reports.
3. Provide the CITY with a parcel summary listing all ownerships, title exceptions, encumbrances of public record and comments for each parcel.
4. Universal will review special exceptions described in each title report and coordinate the CITY's acceptance of title at closing.

B. Preparation and Administration

1. Meet with the CITY and KPG, Inc. to further obtain project background information.
2. Using the CITY's electronic forms approved by the City Attorney, prepare draft acquisition documents (i.e. offer letters, escrow instructions, easements, deeds, etc.) for the CITY's approval and use as needed. If requested, Universal will provide sample forms to the CITY.
3. Prepare tracking and status report formats.
4. Schedule up to five (5) progress meetings with the City outlining the acquisition negotiations progress.
5. Prepare parcel files to include fair offer letters, documents, a standard diary form indicating all contacts with owner(s), and other items necessary for negotiations.

C. Appraisal and Appraisal Review

1. Universal will subcontract Appraisal and Appraisal Review services to our qualified and, state certified Appraisers. The Appraisal reports and Administrative Offer Summary Worksheets will be in accordance with the Uniform Standards of Professional Appraisal Practices, Washington State Department of Transportation (WSDOT) Local Agency Guidelines, the Federal Uniform Relocation Assistance and Real Property Acquisitions Policy Act. Appraisal scope of work and expenses thereof for specialty studies including hazardous materials, septic costs, timber cruising, etc., are excluded. It is assumed up to two (2) short form narrative appraisal reports will be required and fifteen (15) Administrative Offer Summary Worksheets (AOS). One (1) of the two (2) short form appraisal reports may not be required but is included for budget contingency. AOS worksheets are allowed for those parcels in lieu of Appraisals where estimated just compensation is at or below the City's adopted Appraisal Waiver Limit and the acquisition is uncomplicated, referred to as the Appraisal Waiver process. This could significantly reduce the time and

appraisal cost needed to complete right-of-way acquisition. It is assumed all properties to be appraised are clean of hazardous materials.

2. Prepare a simplified preliminary acquisition budget estimate worksheet commonly referred to as a Project Funding Estimate (PFE) summary sheet. Data obtained and prepared by Universal and the appraiser in preparation of the AOS worksheets and other project cost estimating techniques will be used to prepare the PFE summary sheet. The PFE summary sheet will be similar to that described in the WSDOT LAG manual, Section 25.

D. Negotiations

1. Acquire various combinations of fee simple, permanent easement rights from a total of sixteen (16) parcels as shown herein on Exhibit A – Attachment 1. For those parcel owners 1 thru 15 failing to respond to the City's request to provide License to Construct Agreements, Universal will follow up with each as part of the negotiations to assist the City in securing License to Construct Agreements.
2. In addition to the owners describe above in item 1, Universal will follow up and contact up to ten (10) additional property owners to acquire ten (10) License to Construct Agreements. A separate budget item to acquire ten (10) License to Construct Agreements is shown in the attached fee estimate, Exhibit B.
3. Negotiate with each property owner and/or their representative in accordance with statutory and regulatory requirements, and as directed by the CITY to secure the required right-of-way for the project.
4. Negotiate as necessary with lien holders, assisting escrow in the closing process.
5. Maintain a current acquisition diary on each parcel.
6. Negotiations shall not be deemed completed until at least three significant meaningful contacts have been made with each owner and/or their representative to secure the needed right-of-way through direct personal contacts. Contacts with owners to acquire License to Construct Agreements will be limited to two personal contacts for each parcel.
7. Out-of-area owner(s) will be contacted by telephone and by certified mail.
8. Forward all administrative settlements to the CITY for approval, utilizing appropriate CITY Administrative Settlement procedures.
9. If negotiations reach an impasse, provide the CITY with written notification. The filing and cost of condemnation proceedings shall be the responsibility of the CITY.

E. Relocations

According to the CITY and review of the draft Right of Way plans, there will be no businesses or residential occupants displaced. Relocation services not required for this project.

F. Parcel Closeout – Escrow Closing

1. Upon securing required acquisition agreements, Universal will submit the necessary documents and instructions to the designated Title / Escrow Company.
2. Work with the Title / Escrow Company to obtain release documentation from the encumbrance(s) of public record that are not acceptable to the CITY in order to provide clear title to the property being acquired.
3. The Escrow Company shall prepare and obtain the owner(s) signature on the necessary closing documents.
4. Coordinate signatures on closing documents for submittal to the CITY and payment(s) to the owner(s).
5. Coordinate with the Escrow / Title Company in filing documents with King County.
6. Deliver completed files to the CITY.

The CITY will provide:

1. Ownership information including preliminary commitments (title reports) for permanent rights to be acquired, and last deeds of conveyance for parcels requiring only temporary access. Payment for title reports, title support and related escrow services performed.
2. Complete and approved Right of Way Plans, Plan & Profile Drawings, Maps, Exhibits, Right of Way Staking, etc., as necessary.
3. Legal descriptions for all property rights to be acquired in electronic word format.
4. Samples of the CITY's forms approved by the City Attorney, in electronic word format, of all necessary acquisition conveyance documents prior to use (i.e. offer letters, purchase and sale agreements, escrow instructions, easements, deeds, leases, etc.) and provide approval for use.
5. Review and approve all estimates of just compensation provided by the project appraiser to establish determinations of value. Provide written authorization prior to making offers to property owners.
6. Prior to commencing negotiations, establish guidelines of minimum offer amounts to property owners.
7. Payment of all legal services, escrow services, the recording of instruments, payments to all property owner(s), relocation payments if applicable and any incidental costs which may arise to complete each transaction.
8. Determination of real property rights required by utilities, including legal descriptions, exhibits, etc., in a timely manner prior to negotiations according to the project schedule.

ATTACHMENT I; Exhibit A

UNIVERSAL FIELD SERVICES,
INC.

City of Des Moines - 16th Avenue South Improvement Project, Phase 1
Right of Way Acquisition
Services
January 30, 2006

<u>Universal Field Services</u>	<u>Direct</u>	<u>Direct</u>	<u>Direct</u>
<u>Direct Labor</u>	<u>Labor</u>	<u>Labor</u>	<u>Labor \$</u>
<u>Labor Classification</u>	<u>Hours</u>	<u>Rate/Hour</u>	<u>Total</u>
Project Manager	60	\$41.35	\$2,481.00
Acquisition Agent	536	\$35.00	\$18,760.00
Senior Administrative Specialist	91	\$24.00	\$2,184.00
Direct Labor Subtotal	687		\$23,425
Overhead @ 69.9%			\$16,374
Fixed Fee on Direct Labor @ 25%			\$5,856
Acquire 10 License to Construct Agreements			\$8,973

UFS Direct Costs

Miscellaneous (*See Below)		\$500
Mileage @ \$0.445 / mile	5640	\$2,510.00

UFS Direct Costs Subtotal **\$3,010**

UFS Subtotal **\$57,638**

Subconsultant(s)

Appraisal Group of the Northwest	Appraisal (2 ea)	\$5,600
	AOS Worksheets (15 ea)	\$6,750
The Granger Company	Appraisal Review (2 ea)	\$1,200
B&O Tax of 1.5%		\$203

Subconsultants Subtotal **\$13,753**

Estimated Total **\$71,391**

Notes:

- 1.) Universal reserves the right to re-negotiate estimate total if Notice to Proceed not provided within 180 days from the date of this estimate.
- 2.) Estimate total based upon review of draft Right of Way plans prepared by KPG, Inc., one scoping meeting with the City and KPG staff conducted January 17, 2006
- 3.) Includes negotiations with sixteen (16) parcels.
- 4.) Includes preparation of two (2) Appraisal / Appraisal Reviews.
- 5.) Includes preparation of fifteen (15) Administrative Summary Worksheets - Appraisal waiver.
- 6.) Mileage to be billed at \$0.445/mile or the approved IRS rate at the time mileage is incurred.
- 7.) Preparation of a PFE Summary Worksheet included in AOS Worksheet cost.

Parcels and Real Property Rights to be Acquired: See Attachment I.A-1.

ATTACHMENT I; Exhibit A-1

No.	Parcel No.	Owner	Property Rights to be Acquired				
			Fee Simple	Public Utility Esmt	Slope Esmt	Storm Drainage Esmt	Temp License to Construct
1	953660-2065	Kingen	1	3			1
2	282204-9201	Caswell	1				1
3	953720-0020	Wallace		4			1
4	953720-0015 & 0016	Schroeder		3	1		1
5	953720-0005	Salvation Army		3	1	1	1
6	788830-0360	Nguyen	1				1
7	788830-0010	Ornburn	1		1		1
8	788830-0020	Saephanh (Previously HUD)			1		1
9	292204-9084	Hanley			1		1
10	292204-9004	Pan		3	1		1
11	292204-9085	Mcqueary			1		1
12	292204-9101	Fahim	1	3			1
13	282204-9113	Straight			1		1
14	282204-9114	Konopaski			1		1
15	282204-9205	Bush			1		1
16	282204-9226	Karpenko		3			
1		To Be Determined					2
2		To Be Determined					2
3		To Be Determined					2
4		To Be Determined					2
5		To Be Determined					2
6		To Be Determined					2
7		To Be Determined					2
8		To Be Determined					2
9		To Be Determined					2
10		To Be Determined					2

NOTES:

- Property rights required by the City of Des Moines under this agreement. Universal to followup with property owners who failed to return requested License to Construct Agreements to the City.
- Potential License to Construct Agreements, excludes parcels 1 thru 16 above.
- Universal shall negotiate a general public utility easement concurrent with negotiations for fee and/or other easements as required by the City's ROW plan. These easements may be combined as slope and utility easements where appropriate. Universal shall not be negotiate on behalf of, or be liable for failure to secure adequate easements necessary for private utilities to meet their schedules. Universal will prioritize these parcels as among the first property owner contacts.
- The purposes of this Public Utility Easement is for street luminaire and related appurtenances.

ATTACHMENT I; Exhibit B

UNIVERSAL FIELD SERVICES,
INC.

City of Des Moines - 16th Avenue South Improvement Project, Phase 1
Right of Way Acquisition
Services

January 27, 2006

<u>Universal Field Services</u>	<u>Direct</u>	<u>Direct</u>	<u>Direct</u>
<u>Direct Labor</u>	<u>Labor</u>	<u>Labor</u>	<u>Labor \$</u>
<u>Labor Classification</u>	<u>Hours</u>	<u>Rate/Hour</u>	<u>Total</u>
Project Manager	5	\$41.35	\$206.75
Acquisition Agent	100	\$35.00	\$3,500.00
Senior Administrative Specialist	20	\$24.00	\$480.00
Direct Labor Subtotal	125		\$4,187
Overhead @ 69.9%			\$2,927
Fixed Fee on Direct Labor @ 25%			\$1,047
UFS Direct Costs			
Miscellaneous (*See Below)		\$100.00	
Mileage @ \$0.445 / mile	1600	\$712.00	
UFS Direct Costs Subtotal			\$812
	UFS		
	Subtotal		\$8,973
Subconsultant(s)			
Appraisal Group of the Northwest - Appraiser		\$0	
The Granger Company - Review Appraiser		\$0	
B&O Tax of 1.5%		\$0	
Subconsultants Subtotal			\$0
Estimated Total			\$8,973

Notes:

- 1.) Universal reserves the right to re-negotiate estimate total if Notice to Proceed not provided within 180 days from the date of this estimate.
- 2.) Acquire up to ten (10) License to Construct Agreements as a followup to mailings from the CITY.
- 3.) Mileage to be billed at \$0.445/mile or the approved IRS rate at the time mileage is incurred.

Parcels and Real Property Rights to be Acquired: See Attachment I-A-1.

ATTACHEMENT II-A
Certification of Consultant

16 th Ave S. Improvement Project	City of Des Moines
---	--------------------

I hereby certify that I am

_____ a duly

authorized representative of the firm of

_____ whose

address is

_____ and that neither I nor the above firm I here represent has:

- (a) Employed or retained for a commission, percentage, brokerage, contingent fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this contract.
- (b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of a firm or person in connection with carrying out the contract.
- (c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation or consideration of any kind for, or in connection with procuring or carrying out the contract; except as here expressly stated (if any):

I further certify that the firm I hereby represent is authorized to do business in the State of Washington and that the firm is in full compliance with requirements of the Board of Professional Registration.

I acknowledge that this certificate is to be available to the Transportation Improvement Board (TIB), in connection with this contract involving participation of TIB funds and is subject to applicable State and Federal laws, both criminal and civil.

_____ *Date*

_____ *Signature*

Certification of Agency Official

I hereby certify that I am the AGENCY Official of the City/County of _____ Des Moines, Washington and that the above consulting firm or his/her representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract to:

- (a) Employ or retain, or agree to employ or retain, any firm or person, or
- (b) Pay or agree to pay to any firm, person or organization, any fee, contribution, donation or consideration of any kind, except as here expressly stated (if any).

I acknowledge that this certificate is to be available to the TIB, in connection with this contract involving participation of TIB funds and is subject to applicable State and Federal laws, both criminal and civil.

_____ *Date*

_____ *Signature*

ATTACHMENT II -B

Certification Regarding Disbarment, Suspension, and other Responsibility Matters -Primarily Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 - b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission or fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph 1.b. of this certification; and
 - d. Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal

Consultant (Firm): Universal Field Services, Inc

Date:

Signature: _____

President or Authorized Official or Consultant

ATTACHMENT III

Payment (Cost Plus Fixed Fee)

The CONSULTANT shall be paid by the AGENCY for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for all work performed or services rendered and for all labor, materials, equipment, and incidentals necessary to complete the work specified in ATTACHMENT I, "Scope of Work."

A. Actual Costs

Payment for all consulting services for this project shall be on the basis of the CONSULTANT's actual cost plus a fixed fee. The actual cost shall include direct salary cost, overhead, and direct nonsalary cost.

1. Direct Salary Costs

The direct salary cost is the direct salary paid to principals, professional, technical, and clerical personnel for the time they are productively engaged in work necessary to fulfill the terms of this AGREEMENT.

2. Overhead Costs

Overhead costs are those costs other than direct costs which are included as such on the books of the CONSULTANT in the normal everyday keeping of its books. Progress payments shall be made at the rate shown in the heading of this AGREEMENT, under "Overhead Progress Payment Rate." Total overhead payment shall be based on the method shown in the heading of the AGREEMENT. The three options are explained as follows:

- a. Actual Cost: If this method is indicated in the heading of the AGREEMENT, the AGENCY agrees to reimburse the CONSULTANT the actual overhead costs verified by audit, up to maximum amount payable, authorized under this AGREEMENT, when accumulated with all other actual costs.
- b. Actual Cost Not To Exceed Maximum Percent: If this method is indicated in the heading of this AGREEMENT, the AGENCY agrees to reimburse the CONSULTANT at the actual overhead rate verified by audit up to the maximum percentage shown in the space provided. Final overhead payment when accumulated with all other actual costs shall not exceed the total maximum amount payable shown in the heading of this AGREEMENT.
- c. Fixed Rate: If this method is indicated in the heading of the AGREEMENT, the AGENCY agrees to reimburse the CONSULTANT for overhead at the percentage rate shown. This rate shall not change during the life of the AGREEMENT.

A summary of the CONSULTANT's cost estimate and the overhead computation are attached hereto in ATTACHMENT I and by this reference made part of this AGREEMENT. When an actual cost overhead rate or actual cost not to exceed overhead rate is used, the actual overhead rate determined at the end of each fiscal year shall be used for the computation of progress payments during the following year and for retroactively adjusting the previous year's overhead cost to reflect the actual rate.

The CONSULTANT shall advise the AGENCY as soon as possible of the actual overhead rate for each fiscal year and of the actual rate incurred to the date of completion of the work. The AGENCY and/or TIB may perform an audit of the CONSULTANT's books and records at any time during regular business hours to determine the actual overhead rate, if they so desire.

3. Direct Nonsalary Cost

Direct nonsalary costs will be reimbursed at the actual cost to the CONSULTANT applicable to this contract. These charges may include, but are not limited to the following items: travel, printing, long distance telephone, supplies, computer charges, and fees of subconsultants. Air or train travel will only be reimbursed to economy class levels unless otherwise approved by the AGENCY. The billing for nonsalary cost, directly identifiable with the Project, shall be an itemized listing of the charges supported by original bills or legible copies of invoices, expense accounts, and miscellaneous supporting data retained by the CONSULTANT. Copies of the original supporting documents shall be provided to the AGENCY upon request. All of the above charges must be necessary for services to be provided under this AGREEMENT.

4. Fixed Fee

The fixed fee, which represents the CONSULTANT's profit, is shown in the heading of this AGREEMENT under Fixed Fee. This fee is based on the scope of work defined in this AGREEMENT and the estimated man-months required to perform the stated scope of work. In the event a supplemental agreement is entered into for additional work by the CONSULTANT, the supplemental agreement may include provision for the added costs and appropriate additional fee. The fixed fee will be prorated and paid monthly in proportion to the percentage

of work completed by the CONSULTANT and reported in the monthly progress reports accompanying the invoices.

Any portion of the fixed fee earned by not previously paid in the progress payments will be cover in the final payment, subject to the provisions of Section IX, Termination of Agreement.

5. Maximum Total Amount Payable

The maximum total amount payable, by the AGENCY to the CONSULTANT under this AGREEMENT, shall not exceed the amount shown in the heading of this AGREEMENT as maximum amount payable, which includes the Fixed Fee, unless a supplemental agreement has been negotiated and executed by the AGENCY prior to incurring any costs in excess of the maximum amount payable.

B. Monthly Progress Payments

The CONSULTANT may submit invoices to the AGENCY for reimbursement of actual costs plus the calculated overhead and fee not more often than once per month during the progress of the work. Such invoices shall be in a format approved by the AGENCY and accompanied by the monthly progress reports required under Section III, General Requirements, of the AGREEMENT. The invoices will be supported by itemized listing and support document for each item including direct salary, direct nonsalary, and allowable overhead costs to which will be added the prorated Fixed Fee.

C. Final Payment

Final Payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports, and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such final payment by the CONSULTANT shall constitute a release of all claims of any nature which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said final payment shall not, however, be a bar to any claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims.

D. Inspection of Cost Records

The CONSULTANT and his subconsultants shall keep available for inspection by representatives of the AGENCY and/or TIB, for a period of three years after final payment, the cost records and accounts pertaining to this AGREEMENT. If any litigation, claim, or audit arising out of, in connection with, or related to this contract is initiated before the expiration of the three-year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

ATTACHMENT IV
Payment Upon Termination of Agreement
by the Agency Other than for Fault of the Consultant

Lump Sum Contracts

A final payment shall be made to the CONSULTANT which when added to any payments previously made shall total the same percentage of the Lump Sum Amount as the work completed at the time of termination is to the total work required for the PROJECT. In addition, the CONSULTANT shall be paid for any authorized extra work completed.

Cost Plus Fixed Fee Contracts

A final payment shall be made to the CONSULTANT which when added to any payments previously made, shall total the actual costs plus the same percentage of the fixed fee as the work completed at the time of termination is to the total work required for the PROJECT. In addition, the CONSULTANT shall be paid for any authorized extra work completed.

Specific Rates of Pay Contracts

A final payment shall be made to the CONSULTANT for actual hours charged at the time of termination of this AGREEMENT plus and direct nonsalary costs incurred at the time of termination of this AGREEMENT.

Cost Per Unit of Work Contracts

A final payment shall be made to the CONSULTANT for actual units of work completed at the time of termination of this AGREEMENT.



2006 - 2011 CAPITAL IMPROVEMENT PLAN

Arterial Street

CAPITAL IMPROVEMENT PLAN REQUEST FORM

CATEGORY	Arterial Street	PROJECT NO.	123
PROJECT	16th Avenue South Improvement (Phase 1) Pedestrian Facilities	PROJECT STATUS:	
LOCATION	South 260th Street to South 272nd Street	Preliminary Estimate	
DESCRIPTION:	Install curbs, gutters, sidewalks, enclosed drainage system, and bike lanes along both sides of the street. Improve the existing crosswalk and lighting, and install left turn lanes.	Plans in Preparation	X
		P.S.E. Complete	

EXPENDITURE SCHEDULE									
COST ELEMENTS	TOTAL	Prior Year	FY 05 ESTIMATE	FY 06	FY 07	FY 08	FY 09	FY 10	FY 11
DESIGN / ENGINEERING	\$ 530,687	\$ 94,768	\$ 77,924	\$ 357,995	\$ -				
ADMIN (CITY STAFF)	169,346	1,731	10,037	72,539	85,039				
LAND	260,000			260,000					
BUILDINGS									
IMPROVEMENTS	3,995,000			800,000	3,195,000				
INSPECTION	482,000			87,000	395,000				
CONTINGENCY	786,739			150,310	636,429				
SALES TAX									
OTHER									
TOTAL	\$ 6,223,772	\$ 96,499	\$ 87,961	\$ 1,727,844	\$ 4,311,468				

FUNDING SOURCE	TOTAL	Prior Year	FY 05 ESTIMATE	FY 06	FY 07	FY 08	FY 09	FY 10	FY 11
PWTF Loan (unconfirmed)	\$ 1,335,000	\$ -	\$ -	\$ -	\$ 1,335,000				
FEDERAL TEA-21	-			-					
TRAFFIC IMPACT FEES	500,000				500,000				
KING COUNTY (In Lieu) **	313,710			313,710					
IN-LIEU FEES **	29,498			17,500	11,998				
TIB (Confirmed)	2,956,764	91,126	87,961	1,396,634	1,381,043				
ARTERIAL STREETS	1,088,800	5,373			1,083,427				
TOTAL	\$ 6,223,772	\$ 96,499	\$ 87,961	\$ 1,727,844	\$ 4,311,468				

OPERATING COSTS	TOTAL	Prior Year	ESTIMATE	FY 06	FY 07	FY 08	FY 09	FY 10	FY 11
PERSONNEL									
SUPPLIES									
UTILITIES									
OTHER									
TOTAL									

** Already received

ATTACHMENT 2

A G E N D A I T E M

SUBJECT:
Allocation of 2006 CDBG funds

AGENDA OF: February 9, 2006

DEPT. OF ORIGIN: Parks, Recreation &
Senior Services

DATE SUBMITTED: February 2, 2006

ATTACHMENTS:
1. King County Contract No. D35883D

CLEARANCES:
☐ LEGAL

APPROVED BY THE CITY MANAGER
FOR SUBMITTAL

Purpose and Recommendation:

The purpose of this agenda item is to request Council's approval of the 2006 King County Public Entity Services Contract allocating \$28,573 of Community Development Block Grant funds to Des Moines Senior Services Support.

Proposed Motion: I move to approve the contract to allocate 2006 Community Development Block Grant funds in the amount of \$28,573 to Des Moines Senior Services Support and authorize the City Manager to sign the contract, substantially in the form as submitted.

Background:

In 2005, Des Moines signed a three-year agreement to become a member of the new King County Community Development Block Grant (CDBG) Consortium which includes most of the suburban cities in King County, as well as the unincorporated areas of the county. (It does not include Seattle, Auburn or Kent which receive direct entitlements from HUD). The CDBG Consortium's inter-jurisdictional policy body, the Joint Recommendations Committee (JRC), goals are to reduce duplication, save on administrative costs, and ensure that as many of the dollars as possible go into projects serving communities.

To this end, significant changes were made in the King County Community Development Block Grant (CDBG) program that impact Des Moines and other suburban "pass-through" cities in 2006 and beyond. King County CDBG Consortium funds have been pooled into two sub-region "pots"- one for the South sub-region and one for the North/East sub-region. Des Moines is represented in the South sub-regional advisory group that helps select the CDBG projects for our sub-region.

Discussion:

In past years, Des Moines (and other pass-through cities and the small cities fund) received a share of the Human Services Projects funds to allocate locally.

For more than a decade, Des Moines' share of CDBG Human Services Project funds have been allocated for pay a portion of Des Moines Senior Services positions providing direct services to senior citizens and low and moderate income residents.

Due to Federal cuts to the Community Development Block Grant Program, Des Moines share of 2006 CDBG Human Services Project funds was reduced 22% from \$36,666 in 2005 to \$28,573 in 2006.

Beginning in 2007, Des Moines along with other South sub-region cities and human services providers will have to enter into a competitive RFP process to receive those dollars.

Alternatives:

None recommended.

Financial Impact:

CDBG Human Services Project funds are anticipated revenue to fund a portion of the Senior Services 2006 Budget.

Recommendation/Conclusion:

Staff Recommends approval of the 2006 King County Public Entity Services Contract between the King County Community and Human Services/Community Services Division and the City, allocating \$28,573 of Community Development Block Grant funds to Des Moines Senior Center Support. This funding will provide support for a portion of the Senior Center program coordinator position.

Concurrence:

King County Community Development Block Grant (CDBG) Consortium, the Joint Recommendations Committee (JRC), and the Senior Advisory Committee.

King County Contract No. D35883D
 Federal Taxpayer ID No. 91-6016496

Department/Division Community and Human Services/Community Services Division

Agency City of Des Moines

Project Title Des Moines Senior Center Support (C06161)

Contract Amount \$ 28,573 Fund Code CDBG

Contract Period From: January 1, 2006 To December 31, 2006

KING COUNTY PUBLIC ENTITY SERVICES CONTRACT – 2006

THIS CONTRACT is entered into by KING COUNTY (the "County"), and City of Des Moines (the "Agency"), whose address is 21630 11th Avenue South, Suite D, Des Moines, WA 98198.

WHEREAS, the County has been advised that the following are the current funding sources, funding levels and effective dates:

FUNDING SOURCES	FUNDING LEVELS	EFFECTIVE DATES
COUNTY		to
FEDERAL Federal Catalogue No. 14.218	\$28,573	01/01/2006 to 12/31/2006
STATE		to
TOTAL		to

and

WHEREAS, the County desires to have certain services performed by the Agency as described in this Contract, and as authorized by Ordinance No. 15333;

NOW THEREFORE, in consideration of payments, covenants, and agreements hereinafter mentioned, to be made and performed by the parties hereto, the parties covenant and do mutually agree as follows:

**This form is available in alternate formats for
people with disabilities upon request.**

- B. These records shall be maintained for a period of six years after termination hereof unless permission to destroy them is granted by the Office of the Archivist in accordance with Revised Code of Washington (RCW) Chapter 40.14.
- C. The Agency shall inform the County in writing of the location, if different from the Agency address listed on page one of this Contract, of the aforesaid books, records, documents, and other evidence and shall notify the County in writing of any changes in location within ten working days of any such relocation.

VII. AUDITS

- A. The Agency shall submit to the County a copy of its annual report of examination/audit, conducted by the Washington State Auditor, within 30 days of receipt.
- B. Additional federal and/or state audit or review requirements may be imposed on the County, and the Agency shall be required to comply with any such requirements

VIII. EVALUATIONS AND INSPECTIONS

- A. The Agency shall provide right of access to its facilities, including those of any subcontractor, to the County, the state, and/or federal agencies or officials at all reasonable times in order to monitor and evaluate the services provided under this Contract. The County shall give advance notice to the Agency in the case of fiscal audits to be conducted by the County.
- B. The records and documents with respect to all matters covered by this Contract shall be subject at all time to inspection, review, or audit by the County and/or federal/state officials so authorized by law during the performance of this Contract and six years after termination hereof, unless a longer retention period is required by law.
- C. The Agency agrees to cooperate with the County or its agent in the evaluation of the Agency's performance under this Contract and to make available all information reasonably required by any such evaluation process. The results and records of said evaluations shall be maintained and disclosed in accordance with RCW Chapter 42.17.

IX. CORRECTIVE ACTION

If the County determines that a breach of contract has occurred, that is, the Agency has failed to comply with any terms or conditions of this Contract or the Agency has failed to provide in any manner the work or services agreed to herein, and if the County deems said breach to warrant corrective action, the following sequential procedure shall apply:

- A. The County shall notify the Agency in writing of the nature of the breach;
- B. The Agency shall respond in writing no later than ten working days following receipt of such notification, which response shall indicate the steps being taken to correct the specified deficiencies. The corrective action plan shall specify the proposed completion date for bringing the Contract into compliance, which date shall not be more than 30 days from the date of the Agency's response, unless the County, at its sole discretion, specifies in writing an extension in the number of days to complete the corrective actions;
- C. The County shall notify the Agency in writing of the County's determination as to the sufficiency of the Agency's corrective action plan. The County shall have sole discretion in determining the sufficiency of the Agency's corrective action plan;

Funding or obligation under this Contract beyond the current appropriation year is conditional upon appropriation by the County Council of sufficient funds to support the activities described in the Contract. Should such appropriation not be approved, this Contract shall terminate at the close of the current appropriation year.

- D. The Agency may terminate this Contract upon seven days written notice, should the County commit any material breach of this Contract.
- E. This Contract may be terminated by the Agency without cause, prior to the date specified by providing the County 90 days advance written notice of the termination. The Agency shall provide the County 90 days advance written notice of its intent not to renew this Contract, in whole or in part.
- F. Nothing herein shall limit, waive, or extinguish any right or remedy provided by this Contract or law that either party may have in the event that the obligations, terms, and conditions set forth in this Contract are breached by the other party.

XII. FUTURE SUPPORT

The County makes no commitment to support the services contracted for herein and assumes no obligation for future support of the activity contracted herein except as expressly set forth in this Contract.

XIII. HOLD HARMLESS AND INDEMNIFICATION

- A. In providing services under this Contract, the Agency is an independent Contractor, and neither it nor its officers, agents, or employees are employees of the County for any purpose. The Agency shall be responsible for all federal and/or state tax, industrial insurance, and Social Security liability that may result from the performance of and compensation for these services and shall make no claim of career service or civil service rights which may accrue to a County employee under state or local law.

The County assumes no responsibility for the payment of any compensation, wages, benefits, or taxes, by, or on behalf of the Agency, its employees, and/or others by reason of this Contract. The Agency shall protect, indemnify, and save harmless the County, its officers, agents, and employees from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from (1) the Agency's failure to pay any such compensation, wages, benefits, or taxes, and/or (2) the supplying to the Agency of work, services, materials, or supplies by Agency employees or other suppliers in connection with or support of the performance of this Contract.

- B. The Agency further agrees that it is financially responsible for and shall repay the County all indicated amounts following an audit exception that occurs due to the negligence, intentional act, and/or failure, for any reason, to comply with the terms of this Contract by the Agency, its officers, employees, agents, and/or representatives. This duty to repay the County shall not be diminished or extinguished by the prior termination of the Contract pursuant to the Duration of Contract or the Termination sections.
- C. The Agency shall protect, defend, indemnify, and save harmless the County, its officers, employees, and agents from any and all costs, claims, judgments, and/or awards of damages, arising out of, or in any way resulting from, the negligent acts or omissions of the Agency, its officers, employees, and/or agents, in its performance and/or non-performance of its obligations under this Contract. The Agency agrees that

If coverage is approved and purchased on a "claims made" basis, the Agency warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of Contract termination, and/or conversion from a "claims made" form to an "occurrence" coverage form.

By requiring such minimum insurance, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Agency under this Contract. The Agency shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded by said policies, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(ies). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Contract.

B. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. General Liability:

Insurance Services Office form number (CG 00 01) covering COMMERCIAL GENERAL LIABILITY.

2. Professional Liability:

Professional Liability, Errors, and Omissions coverage. In the event that services delivered pursuant to this Contract either directly or indirectly involve or require professional services, Professional Liability, Errors, and Omissions coverage shall be provided. "Professional Services", for the purpose of this Contract section, shall mean any services provided by a licensed professional or those services that require professional standards of care.

3. Automobile Liability:

In the event that services delivered pursuant to this Contract require the use of a vehicle or involve the transportation of clients by Agency personnel in Agency-owned vehicles or non-owned vehicles, the Agency shall provide evidence of the appropriate automobile coverage.

Insurance Services Office form number (CA 00 01) covering BUSINESS AUTO COVERAGE, symbol 1 "any auto"; or the appropriate coverage provided by symbols 2, 7, 8, or 9.

4. Workers' Compensation

Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable federal or "Other States" state law.

2. All Policies

Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after 45 days prior written notice has been given to the County.

F. Acceptability of Insurers

Unless otherwise approved by the County, insurance is to be placed with insurers with a Bests' rating of no less than A: VIII, or, if not rated with Bests, with minimum surpluses the equivalent of Bests' surplus size VIII.

Professional Liability, Errors, and Omissions insurance may be placed with insurers with a Bests' rating of B+VII. Any exception must be approved by the County.

If, at any time, the foregoing policies shall fail to meet the above minimum requirements the Agency shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with appropriate certificates and endorsements, for approval.

G. Verification of Coverage

The Agency shall furnish the County certificates of insurance and endorsements required by this Contract. Such certificates and endorsements, and renewals thereof, shall be attached as exhibits to the Contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on forms approved by the County prior to the commencement of activities associated with the Contract. The County reserves the right to require complete, certified copies of all required insurance policies at any time.

H. Subcontractors

The Agency shall include all subcontractors as insureds under its policies or shall require separate certificates of insurance and policy endorsements from each subcontractor. If the Agency is relying on the insurance coverages provided by subcontractors as evidence of compliance with the insurance requirements of this Contract then such requirements and documentation shall be subject to all of the requirements stated herein.

I. Municipal or State Agency Provisions

If the Agency is a Municipal Corporation or an agency of the State of Washington and is self insured for any of the above insurance requirements, a certification of self-insurance shall be attached hereto and be incorporated by reference and shall constitute compliance with this Section.

XV. NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY

A. Nondiscrimination in Employment Provision of Services

During the performance of this Contract, neither the Agency nor any party subcontracting under the authority of this Contract shall discriminate or tolerate harassment on the basis of race, color, sex, religion, national origin, marital status, sexual orientation, age, or the presence of any sensory, mental, or physical disability in

6. Using the services of available community organizations, contractor groups, local assistance offices, the County, and other organizations that provide assistance in the recruitment and placement of small businesses, including M/WBEs.
7. The Washington State Office of Minority and Women's Business Enterprises (OMWBE) can provide a list of certified M/WBEs. Contact OMWBE office at 360-753-9693 or on-line through the web site at www.wsdot.wa.gov/omwbe/.

E. Fair Employment Practices

County Code Chapters 12.16 and 12.18 are incorporated by reference as if fully set forth herein and such requirements apply to this Contract. During the performance of this Contract, neither the Agency nor any party subcontracting under the authority of this Contract shall engage in unfair employment practices.

F. Record-Keeping Requirements and Site Visits

The Agency shall maintain, for at least six years after completion of all work under this Contract, the following:

1. Records of employment, employment advertisements, application forms, and other pertinent data, records and information related to employment, applications for employment or the administration or delivery of services or any other benefits under this Contract; and
2. Records, including written quotes, bids, estimates or proposals submitted to the Agency by all businesses seeking to participate on this Contract, and any other information necessary to document the actual use of and payments to subcontractors and suppliers in this Contract, including employment records.

The County may visit, at any time, the site of the work and the Agency's office to review the foregoing records. The Agency shall provide every assistance requested by the County during such visits. In all other respects, the Agency shall make the foregoing records available to the County for inspection and copying upon request. If this Contract involves federal funds, the Agency shall comply with all record keeping requirements set forth in any federal rules, regulations or statutes included or referenced in the contract documents.

G. Sanctions for Violations

Any violation of the mandatory requirements of the provisions of this Section shall be a material breach of contract for which the Agency may be subject to damages, withholding payment and any other sanctions provided for by the Contract and by applicable law.

H. Reporting

The Agency shall complete all reports and forms provided by the County and shall otherwise cooperate fully with the County in monitoring and assisting the Agency in providing nondiscriminatory programs.

XVI. SECTION 504 AND AMERICANS WITH DISABILITIES ACT (ADA)

The Agency has completed a 504/ADA Self-Evaluation Questionnaire for all programs and services offered by the Agency (including any services not subject to this Contract) and has

XIX. POLITICAL ACTIVITY PROHIBITED

None of the funds, materials, property, or services provided directly or indirectly under this Contract shall be used for any partisan political activity or to further the election or defeat of any candidate for public office.

XX. EQUIPMENT PURCHASE, MAINTENANCE, AND OWNERSHIP

- A. The Agency agrees that any equipment purchased, in whole or in part, with Contract funds at a cost of \$1,000 per item or more when the purchase of such equipment is reimbursable as a Contract budget item, is upon its purchase or receipt the property of the County and/or federal/state government.
- B. The Agency shall be responsible for all such property, including the proper care and maintenance of the equipment.
- C. The Agency shall ensure that all such equipment shall be returned to the County or federal/state government upon termination of this Contract unless otherwise agreed upon by the parties.
- D. The Agency shall admit County staff to the Agency's premises for the purpose of marking such property with County property tags.
- E. The Agency shall establish and maintain inventory records and transaction documents (purchase requisitions, packing slips, invoices, receipts) of equipment purchased with Contract funds.

XXI. NOTICES

Whenever this Contract requires that notice be provided by one party to another, such notice shall be:

- A. In writing; and
- B. Directed to the chief executive officer of the Agency and the director of the County department specified on page one of this Contract.

Any time within which a party must take some action shall be computed from the date that the notice is received by said party.

XXII. PROPRIETARY RIGHTS

The parties to this Contract hereby mutually agree that if any patentable or copyrightable material or article should result from the work described herein, all rights accruing from such material or article shall be the sole property of the County. The County agrees to and does hereby grant to the Agency, irrevocable, nonexclusive, and royalty-free license to use, according to law, any material or article and use any method that may be developed as part of the work under this Contract.

The foregoing products license shall not apply to existing training materials, consulting aids, checklists, and other materials and documents of the Agency which are modified for use in the performance of this Contract.

XXVIII. COMPLIANCE WITH THE HEALTH INSURANCE PORTABILITY ACCOUNTABILITY ACT OF 1996 (HIPAA)

Terms used in this section shall have the same meaning as those terms in the Privacy Rule, 45 CFR Parts 160 and 164.

A. Obligations and Activities of the Agency

1. The Agency agrees not to use or disclose protected health information other than as permitted or required by law.
2. The Agency agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the protected health information that it creates, receives, maintains, or transmits on behalf of the County as required by 45 CFR Part 164, Subpart C.
3. The Agency agrees to mitigate, to the extent practicable, any harmful effect that is known to the Agency of a use or disclosure of protected health information by the Agency in violation of the requirements of this Contract.
4. The Agency agrees to report all unauthorized or otherwise improper disclosures of protected health information or security incident, to the County within two days of the Agency's knowledge of such event.
5. The Agency agrees to ensure that any agent, including a subcontractor, to whom it provides protected health information received from, or created or received by the Agency on behalf of King County, agrees to the same restrictions and conditions that apply through this Contract to the Agency with respect to such information.
6. The Agency agrees to make available protected health information in accordance with 45 CFR § 164.524.
7. The Agency agrees to make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR § 164.526.
8. The Agency agrees to make internal practices, books, and records, including policies and procedures and protected health information, relating to the use and disclosure of protected health information received from, or created or received by the Agency on behalf of King County, available to the Secretary, in a reasonable time and manner for purposes of the Secretary determining King County compliance with the privacy rule.
9. The Agency agrees to make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528.

B. Permitted Uses and Disclosures by Business Associate

The Agency may use or disclose protected health information to perform functions, activities, or services for, or on behalf of, King County as specified in this Contract, provided that such use or disclosure would not violate the Privacy Rule if done by King County or the minimum necessary policies and procedures of King County.

21-Nov-05

Cert#: 4312

Phone: 206-575-6046

Fax: 206-575-7426

King County Dept. of Community & Human Services
Attn: Kathy Tremper
821 Second Ave., Suite 500
Seattle, WA 98104-1598

RE: City of Des Moines
2006 Community Development Block Grant Program

Evidence of Coverage

The above captioned entity is a member of the Washington Cities Insurance Authority (WCIA), which is a self insured pool of over 115 municipal corporations in the State of Washington.

WCIA has at least \$1 million per occurrence combined single limit of liability coverage in its self insured layer that may be applicable in the event an incident occurs that is deemed to be attributed to the negligence of the member.

WCIA is an Interlocal Agreement among municipalities and liability is completely self funded by the membership. As there is no insurance policy involved and WCIA is not an insurance company, your organization cannot be named as an "additional insured".

Sincerely,



Eric B. Larson
Deputy Director

cc: Anthony Piasecki
Patrice Thorell

cletter

A G E N D A I T E M

SUBJECT:

Shoreline Master Program Update
City File No. LUA 2005-041

ATTACHMENTS:

1. Draft Shoreline Master Program Update (SMP);
2. Powerpoint overview of SMP
3. Planning Agency Minutes

2-9-06
2-2-06
AGENDA OF: January 26, 2006

DEPT OF ORIGIN: Planning, Building,
and Public Works

DATE SUBMITTED: January 17, 2006

CLEARANCES:

☒ P.B.P.W. *MS*

☒ LEGAL *R. Smith for LAM*

APPROVED BY CITY MANAGER FOR
SUBMITTAL *[Signature]*
atc/m

PURPOSE AND RECOMMENDATION:

The purpose of this item is to conduct a public hearing on the update to the Des Moines Shoreline Master Program (SMP). The area affected by this update is all land extending landward from the shoreline for 200' in all directions as measured from the ordinary high water mark (OHWM) and all associated floodplains and wetlands.

It is recommended that the City Council open the public hearing to allow staff to introduce the SMP update and discuss at this meeting:

1. The organization of the SMP
2. The inventory/characterization component
3. The shoreline environment designations component
4. Questions raised by Council related to the SMP update process.

It is further recommended that the City Council provide feedback, general direction, and recommendations to staff regarding the above SMP elements before continuing the public hearing to February 9, 2006 when other components of the SMP will be reviewed.

BACKGROUND:

The City of Des Moines Shoreline Master Program (SMP) was adopted in 1988 and was focused on our jurisdiction as it existed at that time. Since 1988 Des Moines has had nine annexations and added several miles of shoreline to the City. Our existing SMP contains outdated maps and inventory information. Consequently, it is only marginally useful as a regulatory tool for shoreline use evaluation and protection of ecological functions.

The City of Des Moines received grants from the Washington State Department of Ecology to complete an update of the Shoreline Master Program. Cities within King County are required to amend their local shoreline master programs consistent with Ecology's revised guidelines. With the assistance of the grant administered by the Department of Ecology, Des Moines is conducting a comprehensive SMP update, consistent with new state guidelines. The grant is offered to certain jurisdictions who have agreed to be "early adopters" of required SMP updates.

The SMP update process requires review by both the Des Moines Planning Agency and City Council prior to forwarding to the Department of Ecology for its review. The city formally embarked on the SMP process in the fall of 2004 and has contracted with Adolfson Associates to revise the city's SMP consistent with Department of Ecology requirements. Adolfson Associates prepared various SMP components and along with city staff incrementally reviewed them with the Planning Agency. The Planning Agency reviewed the SMP at 5 different meetings during 2005. It concluded its review on November 21, 2005 when it conducted a required public hearing on the SMP. In addition to these meetings, the city held 2 open houses and advertised through a variety of mediums to solicit public input for this process. The Planning Agency voted 4-0 to recommend Council adoption of the SMP. Two versions of the draft SMP were previously provided to Council (except the new Councilmembers) --one containing the most recent revisions by the Planning Agency and the other with only partial edits from earlier meetings. The City Council was provided the partial edit draft to give it additional time to become familiar with the organization and general content of this large document. This version is now out-of-date and Council should remove and discard it from its binders (except for the tabs) and replace it with the revised version included as Attachment 1 to this agenda item. The most current version of the SMP can be quickly identified because it has many words scattered throughout the text of the document that have bold font emphasis. Binders have already been updated for the new Council members who only recently received their packet on this item for the first time.

DISCUSSION:

The organization of the draft SMP provided for Council's consideration has been significantly changed from the current 1988 SMP. This was done intentionally to create a distinct separation of subject matter that currently is very commingled and lacks structure and clarity. Staff believed that the current SMP had too much cross discussion and blending of policies with technical information, terminology, and regulatory studies. This makes the current SMP, at times, difficult for the reader to understand. Key topical information has now been separated out and assigned chapters and subsections. Updated technical or background studies are still integrated into the document, but in an appendix format rather than inserted into the body of the SMP where it was believed to bog down and disrupt the flow of information. The draft SMP is also organized as a stand alone document which is referenced from DMMC 18.90 for regulatory purposes and from Chapter 14 of the Comprehensive Plan to be used for overall policy direction.

Another focus of the December 8, 2005 meeting will involve a staff discussion and review of the findings related to the Shoreline Inventory and Characterization report. The report is a science based assessment that provides a baseline analysis of existing conditions along the shoreline. The shoreline character and area have changed significantly since the 1988 SMP. Des Moines has had several annexations since that time. Most noteworthy are the Woodmont and Redondo annexation areas. These annexations have added about 2 miles of additional shoreline to the City of Des Moines. The physical and environmental conditions in these areas are unique and different than other portions of the city. Continued development over the last 17 years in other areas has also changed pre-existing near shore conditions. A full description of what near shore conditions exist in the city is detailed in Appendix A of the draft SMP. Chapter 2 of the draft SMP summarizes the physical and biological conditions conclusions, and opportunities for enhancement.

Consistent with state requirements, once an analysis of the shoreline conditions is complete, the SMP must assign shoreline environment designations to different geographic areas to take into account current conditions as well as the city's desire for appropriate uses and related physical development near the shoreline in each of those geographic areas. The 1988 SMP contains two shoreline environment designations—Urban Environment and Conservancy Environment. The draft SMP update contains four different shoreline environments—Aquatic Environment, Shoreline Residential Environment, Urban Conservancy Environment, and High Intensity Environment. These different shoreline environment designations will function as an overlay to provide additional regulation and restrictions above and beyond the protections afforded in underlying city zoning classifications. Chapter 5 of the draft SMP contains a map and text which work together to identify specific areas of the shoreline, explain why certain designations were selected for certain areas (Designation Criteria) and list policies to manage activities and actions affecting the different shoreline environments.

ALTERNATIVES:

1. No formal action is required of the City Council at this time; therefore no alternative motions or recommendation of final actions are necessary. The public hearing process must be maintained through-out discussion of the entire SMP review. Because the draft SMP update is a large and critical policy and regulatory tool, staff is recommending that it not be reviewed in full at one meeting. Instead, staff recommends that the Council conduct the public hearing on the SMP update in a logical segmented manner over the course of 2-3 meetings. If this method of review is acceptable, the public hearing would have to be continued, and final action would not occur until later. It is further recommended that the public be afforded an opportunity to provide testimony on the subjects of the SMP update discussed at each individual meeting rather than deferring testimony to the very end of the public hearing.

FINANCIAL IMPACT:

As previously mentioned, the city is receiving grant money from the State of Washington to complete the SMP update process. The combined grant amount

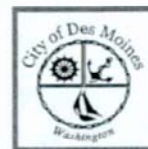
awarded to the city is \$109, 500. The City has accepted this grant and in doing so is obligated to update its SMP consistent with new state requirements.

RECOMMENDATION/CONCLUSION:

Administration recommends the City Council commence with the public hearing on the SMP update for those subjects discussed earlier in this agenda item and direct staff to make modifications as it deems necessary after receiving public testimony.

CONCURRENCE:

Staff in the Planning, Engineering, and Public Works Department is directing the work of the contract service provider (Adolfson Associates) for the SMP update. Staff and Adolfson have been primarily working with the Department of Ecology since it ultimately will determine if the SMP update complies with State requirements. The Des Moines Planning Agency has also been extensively involved and has endorsed the draft SMP. Numerous other individuals and agencies have also been contacted during this process. A list of these individuals and agencies is listed on Pages 56-59 of the draft SMP.

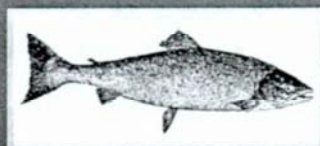


Des Moines Shoreline Master Program Update



Des Moines Planning Agency

November 21, 2005



ATTACHMENT 2



Overview

- Project Overview
- SMP Components
- Public Outreach
- Key Findings
- Key Changes
- Next Steps

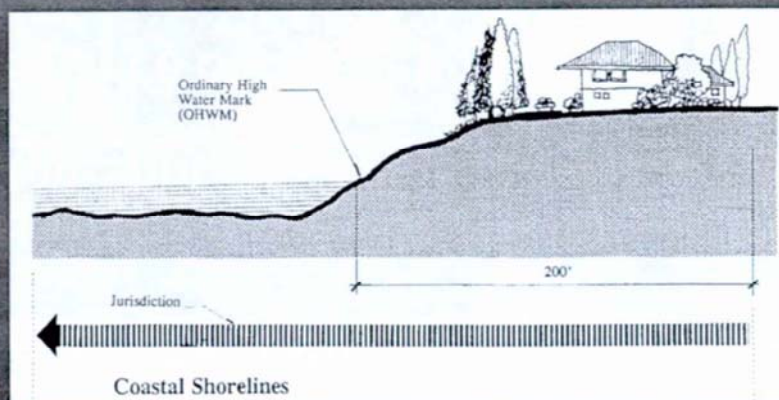


Washington Shoreline Management Act

- Balance of competing goals
 - Water-Dependent Uses
 - Public Access
 - Environmental Protection
- Local Master Programs

Where does the SMA apply?

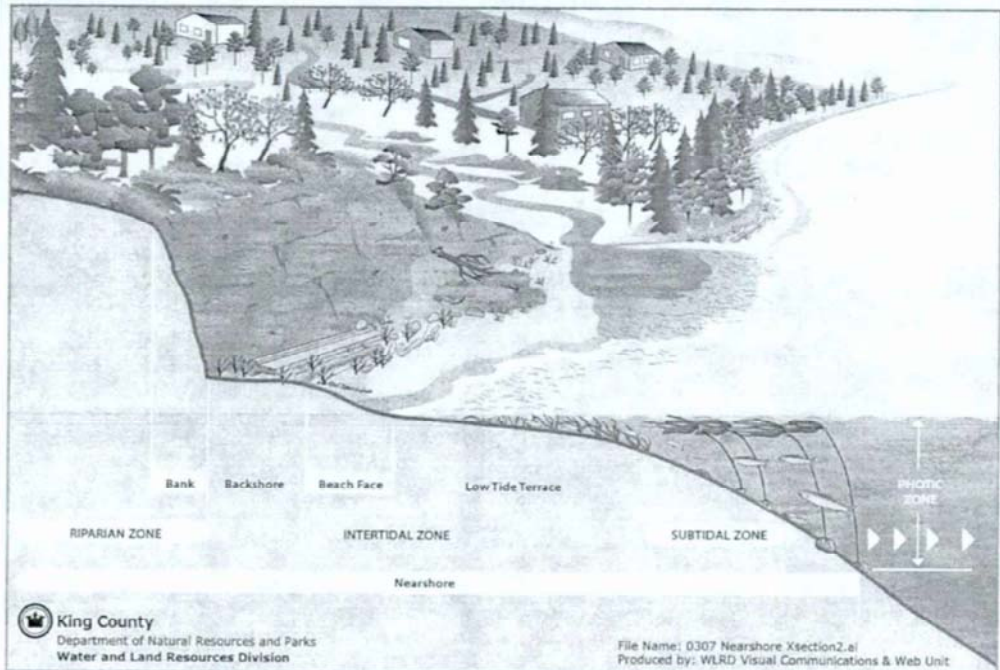
- Generally, 200' landward of the OHWM for marine and freshwater shorelines of the state
- Puget Sound shorelines in Des Moines





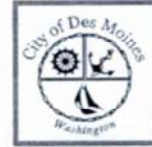
Focus on Nearshore Environment

THE NEARSHORE...Vital Connection Between Land and Water



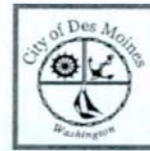
Graphic courtesy of King County Department of Natural Resources and Parks

A typical cross section of the Puget Sound nearshore extends from the top of the adjacent bluff to the limits of the photic zone (depth of light penetration in water, approximately 10 meters in Puget Sound).



Why update Des Moines SMP?

- Original Des Moines SMP adopted 1988
- Puget Sound shoreline has doubled with annexations
- City received grant funding as "Early Adopter"
- Update plan by December 2005



Shoreline Master Program Components

- Inventory and Characterization – Map Folio
- Goals and Policies
- Shoreline Environment Designations
- Development Standards / Use Regulations
- Restoration Plan
- Administrative Procedures



Public Outreach

- 2 Open houses – Fall 2004, Spring 2005
- 5 Planning Agency meetings
- Articles
- MAST Presentation
- Ongoing

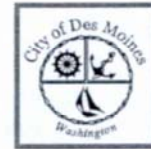




Key Findings

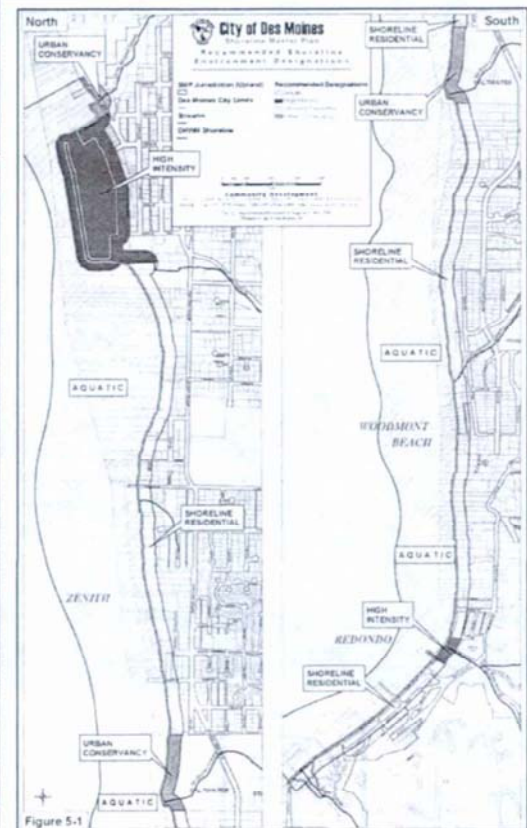
- Majority of shoreline development is single-family residential (~57%)
- Great public access to the shoreline
- Landslide / erosion / slope stability issues
- Fish/wildlife habitat
- Shoreline modified by marina, riprap, residential bulkheads (~75%)
- Upland modified by urban/suburban development (increased impervious surface)

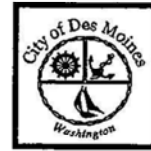




Key Changes

- Environment Designations
- Critical Areas
- Prohibited Uses
- Over water structures
- Bulkheads
- Restoration Planning





Next Steps

- City Council Review
- SEPA
- Ecology Review and Approval
- Adoption
- Public Process - ongoing



DRAFT
PRELIMINARY DOCUMENT
SPECIAL MEETING DES MOINES PLANNING AGENCY

MINUTES

November 7, 2005

At 7:01 p.m., Chair Sven Kalve called to order the Des Moines Planning Agency in the Council Chambers, 21630 11th Avenue South, Suite B.

PLEDGE OF ALLEGIANCE led by Vice Chair Mark Proulx.

ROLL CALL—Present: Chair Sven Kalve, Vice Chair Proulx, Agency Members Drebeck-Brown, Pina, Savage, Colvard and Riecks. Staff included Planning, Building and Public Works Director Grant Fredricks and Development Services Manager Robert Ruth.

APPROVAL OF MINUTES

MOTION was made by Agency Member Savage, seconded by Agency Member Colvard, and passed unanimously to approve the minutes of the April 4, 2005 meeting of the Planning Agency.

MOTION was made by Agency Member Riecks, seconded by Agency Member Pina, and passed unanimously, to approve the minutes of the October 3, 2005 meeting of the Planning Agency.

CORRESPONDENCE: None.

ADMINISTRATION REPORTS

Mediterranean Heights

Chair Kalve asked for a status report for the Mediterranean Heights project at the corner of S. 272nd St. and 10th Ave. S. Development Services Manager Ruth reported the following:

- The developer is building a model home on one of the lots.
- He has notified Staff of his intention to turn in a modified subdivision plan in order to "recapture" a twelfth lot, paying a Park In-Lieu fee rather than building a park.
- He has submitted an "As-built Survey" of all the improvements he has done to date.
- It will be important that his new plan match up with what has been done already.
- His new application could possibly move very quickly from preliminary plat to final plat because he has already done accomplished many of the necessary improvements.
- He has dedicated a portion of the northwest corner of the property, outside the retaining wall, which will be public property maintained by the City after the plat is accepted.

OLD BUSINESS

Shoreline Master Program Update—Restoration Plan and Administrative Procedures Elements

Reviewing the overall process of the Update, Development Services Manager Ruth suggested that it would be timely if there could be an Agency meeting on November 21, 2005 which could be advertised as a Public Hearing. He said Staff would be working on consolidating all the work

done by the Agency to date into one bound document which would be ready for public discussion.

Kent Hale, consultant from Adolfson & Associates, reflected that the Restoration Plan is a new requirement under State guidelines, needing to contain Goals, Policies, Identified Potential Actions/Strategies and Funding Mechanisms. He reviewed the outline of the Restoration element and called attention to the section entitled Goals and Policies, asking for guidance from the Agency to assure that the Goals and Policies reflect its best judgment fully.

Development Services Manager Ruth commented that since cities are being required to include this element in their Programs, but are not being required to implement any particular aspects of the element, he believes the State is simply trying to plant the thought about Restoration in the minds of leaders so that it might grow into some future implementations over time.

Vice Chair Proulx asked that we include definitions of "Goals" and "Policies" in the document. Mr. Hale suggested that they could be included in the introduction of the general Goals and Policies section.

Mr. Hale noted that part of the reason for targeting areas around stream mouths as Restoration Opportunities is that wider-area programs already in existence (like Water Resource Inventory Area 9 forum) may help provide or support funding for such restoration in Des Moines. Additionally, though, he also suggested that a given neighborhood might form a Local Improvement District or use some other type of format to consider replacing hard armoring techniques with soft shore techniques.

Agency Member Riecks turned the discussion toward the appropriate use of "goal" and "policy" language. Consensus developed that some of the language in "Goals and Policies", particularly in its "Conservation and Restoration Element," needed to be reworked so that it did not reflect program actions so much as reasons and directions that would support them.

Agency Member Savage noted that there seem to be many good ideas about what needs to be done, but suggested the need to be clearer and more specific about prioritizing these. He suggested that funding would more likely follow clarity about the importance of any action plan and suggested that the Agency looks to the consultant to provide some guidance about what seems to be the most important. Chair Kalve suggested that the City Council could be understood as setting priorities as it develops regulations based on these Goals and Policies.

Agency Member Colvard pointed out that Development Standards and Use Regulations, later in the document, actually move to the implementation of these Goals and Policies.

Chair Kalve noted the Agency's agreement on the concepts in Goals and Policies as well as its lack of comfort with some of the language. He suggested moving on while asking Staff to do some more work on how to express the concepts more effectively.

Mr. Hale indicated that in the Restoration Planning Chapter, "Existing Plans and Programs" is a brief description of some of the programs that do exist and which might be either a source for funding for site specific projects in Des Moines or a resource for information and guidance in developing educational materials and programs. When Vice Chair Proulx suggested it, Mr. Hale

also agreed that supplying some contact information (e.g., websites) might be a good addition. Chair Kalve suggested that a goal to maintain a database of these plans and programs might be included.

Following Agency Member Pina's and Agency Member Savage's suggestions, consensus built to change the title of the Restoration Plan to "Restoration Planning: Assessment, Long-Term Goals and Opportunities," moving the entire Restoration section out of the Appendices and into the main body of the Shoreline Master Program document. Supporting this, Vice Chair Proulx voiced the hope that people would be more likely to read the Chapter and readily understand that it contains more visionary, long-term goals and ideas. Chair Kalve expressed hope that the list of projects would interest people in coming to the Public Hearing and discussing the Program together.

When Agency Member Pina suggested that all homeowners in the shoreline area be sent notification of the upcoming Public Hearing with copies of the documents, Chair Kalve countered that he considered the entire community to be stakeholders together with an interest in the health and quality of our Shoreline. Chair Kalve said he would be reticent to re-invite just the homeowners along the Shoreline. Discussion that followed noted that normal public notice procedures are established and have been used up to now. Development Services Manager Ruth mentioned that he would develop the legal ad for the Public Hearing in a way to provide more description of the subject matter and not just a title.

Chair Kalve noted that it was an appropriate time to move on to Administrative Procedures.

At 8:48 p.m. Agency Member Savage excused himself from the remainder of the meeting. Chair Kalve thanked him for attending the portion of the meeting he could.

Mr. Hale prefaced the Administrative Procedures discussion with two points:

1. The updated State guidelines do not address Administrative Procedures. This made reorganizing and streamlining the existing Program's material.
2. Rather than working through the entire document, he suggested it might be better to point out a few of the changes that might be more critical.

He then distributed a document representing a Flow Chart of the permitting process and discussed the hierarchy of permitting/non-permitting situations, as follows:

1. Some proposals are exempt from the substantial development permit process.
2. Substantial Development Permit--After initial application (JARPA means Joint Aquatic Resource Permit Application), public notice and technical review by staff, this kind of project is subject to Administrative Decision which would be sent to the Department of Ecology for Notification. Ecology then authorizes the City to Commence Activity, after which the applicant is notified.
3. Shoreline Conditional Use Permit--After initial application, public notice and technical review by staff, this level of project then undergoes a Public Hearing Process through the Planning Agency, which recommends a decision to the City Council. The Council will then approve, condition, or deny the permit and forward its decision to the Department of Ecology. Ecology will approve condition or deny the permit and send authorization to commence activity to the City, after which the applicant will be notified.
4. A Variance undergoes the same process as the Conditional Use Permit.

Mr. Hale said that in any of the three procedures, an Appeal after Ecology's decision would be referred to the Shoreline Hearings Board.

Development Services Manager Ruth added that in the situation of a Substantial Development Permit, when Ecology receives the City's recommendation it has thirty days to determine whether the application is complete. Then, he said, from the day of that decision they have thirty days to allow for any appeal to the Shoreline Hearing Board. He was pointing out that this, the simplest Shoreline process, could easily take four months. He added that Conditional Use Permits or Variances would probably take at least two months longer than that if there were no problems or appeals.

Further, Manager Ruth noted that this clarification of processes separates the new Shoreline Master Program from the existing one. He said experience has shown the existing language to be vague about whether or not a Public Hearing was in order for a Substantial Development Permit. He also pointed out that the City would be one of the largest stakeholders in this decision because many Marina, Beach Park and Public Works projects would not be exempt from the Public Hearing process and would take much time and Staff energy to see them through.

When Agency Member Riecks raised the question whether it was appropriate to allow an applicant to give public notice before technical review by Staff, Mr. Hale suggested that a "Pre-Application Meeting" be added as the first step. That way, the Agency agreed, any glaring problems with a proposal could be sent "back to the drawing board" before the public was hit with a premature notice.

When Chair Kalve noted that he was not overly concerned with the "time-consumptiveness" of the process, Agency Member Pina raised the issue of comparing Des Moines' process to other neighboring cities' and recognizing that many developers will simply go where it takes less time and energy to produce a profitable result. Mr. Pina suggested that our process should be efficient, but not unnecessarily long in order not to hurt our tax base's potential for growth. He said that as we have a right to protect the City from unreasonable developments, we also have a right not to obstruct reasonable developments.

Agency Member Colvard mentioned that he works with Contractors and Developers all the time and does not believe that Des Moines has a reputation as being either better or worse than other jurisdictions.

Chair Kalve instructed Staff that they have raised the problem of the constraints for the City of the process described here and should come back with suggestions about how to make things better. He said he wanted to move on to look at the rest of the Administrative Procedures document in the time remaining to see if there might be further points to be clarified and sharpened. He then pointed out that:

1. At 5.2.1 the Shoreline Administrator is mentioned but not defined. He suggested that that refers to the Planning Department and should be so noted.
2. The references listed as criteria to follow should only be two: WAC 173.27, Department of Ecology Rules and the Des Moines Municipal Code.

Agency Member Pina referred to 5.3.2 on page 2 of the document and questioned whether the direction of the earlier discussion had anything to do with any element of time regarding an exemption from substantial development permits. Development Services Manager Ruth commented that he remembered the discussion being about a situation where a property owner delays a needed repair or maintenance too long. He suggested that the structure involved might decay even further or that the property might even change ownership. He said the question is, "How long is too long?"

When Agency Member Drebeck Brown suggested twelve months, the question was pressed, "Twelve months from what time?" Agency Member Colvard suggested the commonly used language of "constructive notice," meaning "from the time a reasonable person should have known of the need" for repair. He also said that since there is an appeal process for any decision given by the Planning Division, it might not be so important to define the timeline in too much exactness.

Development Services Manager Ruth suggested that instead of defining a time frame, the language be about the percentage of a structure that needs to be repaired, and mentioned that industry uses 50% commonly. Consensus quickly developed to make a change to say that if a structure is damaged more than 50%, then an owner would have one year to make repairs, otherwise leaving "reasonable period" in place for lesser damages.

At 5.3, paragraph 6, Chair Kalve asked whether it would be better to lower the number of cubic yards of fill that would keep a project exempt from the Shoreline Substantial Development Permit. Agency Member Colvard agreed that 50 yards would be a good number. Development Services Manager Ruth indicated that anything over fifty yards already involves a review by the Planning Division Staff. But he also suggested that the number be close to whatever is a normal amount of fill/cut for a new Single Family Residence, around 100 or 150 cubic yards. Mr. Hale suggested that the new language reflect the existing grading code in the City and be at least as strict as that.

Agency Member Pina asked whether the Agency is in a position to hold a Public Hearing in two weeks. Development Service Manager affirmed that there would be sufficient time to have a good document produced. Consensus developed around a meeting date of November 21, 2005, at which time an overview of the document and description of the process producing the document would be presented for the Public to witness.

Next meeting will be November 21, 2005, at 7 p.m.

MOTION to adjourn was made by Agency Member Pina, seconded by Agency Member Drebeck Brown, and passed unanimously.

The meeting was adjourned at 9:59 p.m.

Respectfully submitted,

David Steen
Agency Clerk

NEXT MEETING DATE: Monday, November 7, 2005.

ADJOURNMENT

At 10:10 p.m., MOTION was made by Ms. Drebeck Brown, second by Mr. Riecks, and passed unanimously, to adjourn the meeting.

Respectfully submitted,
David C. Steen, Planning Agency Clerk

DRAFT
PRELIMINARY DOCUMENT
SPECIAL MEETING DES MOINES PLANNING AGENCY

MINUTES

October 24, 2005

At 7:08 p.m., Vice Chair Mark Proulx called to order the special meeting of the Des Moines Planning Agency in the Council Chambers, 21630 11th Avenue South, Suite B.

PLEDGE OF ALLEGIANCE led by Agency Member Don Riecks.

ROLL CALL—Present: Vice Chair Proulx, Agency Members Drebeck-Brown, Pina and Riecks. Chair Sven Kalve participated through a special telephone hook-up. Staff included Planning, Building and Public Works Director Grant Fredricks, Development Services Manager Robert Ruth, City Planner Jason Sullivan and Permit Specialist David Steen, Agency Clerk.

MOTION was made by Mr. Riecks, second by Ms. Drebeck Brown and passed unanimously, to excuse the absences of Agency Members Savage and Colvard.

OLD BUSINESS

Shoreline Master Program Update—Development Regulations and Restoration Plan Components

Following Vice Chair Proulx's request, Development Services Manager Robert Ruth briefly recapped the last meeting, introduced the outline of this meeting and suggested that at the next meeting, the Agency would be considering the Administrative Procedures of the Shoreline Master Program. He mentioned that since this was a specially called meeting with a narrow focus, there would be no approval of minutes until the next regular meeting. He then introduced Kent Hale of Adolphson and Associates.

Mr. Hale handed out a Draft of the Table of Contents for the Shoreline Master Program to use as an aid in conveying the scope of the document. Next, he circulated copies of a Draft Permitted Use Matrix (October 24, 2005), mentioning that this table clearly indicates for any Shoreline Modification or Shoreline Use whether it is Permitted, a Conditional Use, or Prohibited. His final handout was a "Key Issues" matrix intended to help elicit direction from the Agency for further draft work.

Critical Areas—Mr. Hale noted that for Department of Ecology approval, Critical Areas, as defined by the Growth Management Act (wetlands, fish & wildlife habitat conservation areas, geologically hazardous areas, steep slopes), which exist in the Shoreline area must be regulated through the Shoreline Master Program. Additionally, he said cities need to provide at least an equal degree of protection for the Shoreline Critical Areas that they do for other Critical Areas. He mentioned that the option of citing the Zoning Code in the Shoreline Master Program would be difficult for two reasons: 1) the State does not have to approve the Critical Areas Ordinance of the Zoning Code, while it does need to approve it in the Shoreline Master Program, and thus may not accept such an attempt or would require approval of that whole section of the Zoning Code; and 2) each time the Zoning Code might be changed, the potential would be that a city would need to update the Shoreline Master Program to keep its references meaningful, a cumbersome process.

He pointed out that the recommended option of creating new development standards might put the City in the position of inconsistent treatment of Critical Areas between Shoreline jurisdiction and other parts of the City.

Agency Member Pina said that it seemed to make sense that there might be different treatment of the two areas. Mr. Hale agreed, offering the example that erosion and slide hazards may be very different and more critical at the beach than they are at other places.

Ms. Lang clarified that at any time, the more stringent policy would prevail. She said that if the circumstances of developments in the code ever left the Shoreline Master Program momentarily weaker, then the Critical Areas Ordinance in the Zoning Code would prevail in the Shoreline jurisdiction.

Development Services Manager Ruth mentioned that separating the two Critical Area Ordinances would have longer term implications as science develops deeper understanding of the impacts of development in Shoreline areas. He suggested it would be easier at a later time to add new understandings to the Shoreline Master Program Critical Areas Ordinance if it is separate from the Upland Critical Areas Ordinance.

Mr. Hale noted the growing consensus to follow Option 2 from the matrix, developing separate regulations for the Shoreline Master Program Critical Areas Ordinance. Vice Chair Proulx affirmed this consensus after being assured that Agency Members would speak up if they disagree. Mr. Proulx added that he would suggest that the upland Critical Areas Ordinance specifically state that it does not apply to the Shoreline Jurisdiction.

Bulkheads—Mr. Hale noted that to date the new Goals and Policies express a preference for “soft-shore” alternatives to hard bulkheads. At Agency Member Pina’s request Mr. Hale explained that these would be design options less intrusive on the natural shoreline functions, as opposed to “hard” options like concrete and rip rap. He also said “soft shore” alternatives attempt to restore a more natural gradient to the beach rather than a vertical wall, and might include anchored logs or large pieces of driftwood as well as vegetation planting that would help provide protection from erosion.

Development Services Manager Ruth inquired whether “less intrusive” was from an appearance or functional standpoint. He said he could anticipate property owners’ concerns that they not lose property to erosion and wondered whether the “soft shore” techniques provide a balance that allows erosion that the beaches need or emphasize minimizing erosion to protect property.

Mr. Hale explained that “hard” armoring refract the wave energy which can scour out the sediment, impacting fish and wildlife habitat, particularly forage fish like salmon which need finer grain sediment. He mentioned that there are some residential places in Des Moines where a house and lawn are near a bulkhead right out to the water. There, he said, removal of the bulkhead would take away protective function. At other places where the house is farther back from the bulkhead, he added, there might be a time when the question whether the bulkhead is providing a protective function might need to be asked. In the meantime, though, he suggested that where the City’s Parks have streams at the shoreline would be a more advantageous place to begin making changes. Mr. Hale also noted that in residential neighborhoods where many lots in

a row have "hard" armoring, it might not be advantageous for any one owner to change to "soft shore" techniques. Feed back from the Department of Ecology about such situations has been that it might be better to wait until there can be a community effort to consider these changes.

Agency Member Riecks clarified his understanding that this policy would not mandate removal of bulkheads, but encourage the use of other approaches.

Mr. Hale confirmed that the focus is on redevelopment where the City is stating a preference for "soft shore" techniques. He mentioned the possibility that the Agency might recommend requiring that when a homeowner replaces an entire bulkhead, he or she must demonstrate that the "soft shore" techniques would not provide the needed protection before being allowed to reinstall "hard" armoring.

Agency Member Pina stated that he would not want to begin expecting people in "bluff" areas to regrade their property to provide a shallower gradient approaching the shoreline. He said he is concerned that we engage in rational, reasonable behavior.

Mr. Hale said that in bluff areas, the section of concern for such shallower gradient would be from the toe of the bluff to the intertidal area.

Development Services Manager Ruth concurred that we would not be able to have a "one size fits all" policy. Mr. Hale reiterated that projects would have to be reviewed on a case-by-case basis. But he sought guidance from the Agency about whether to include wording about requiring homeowners to explore other alternatives before installing or re-installing bulkheads. He said most of the issues will arise around repair or replacement of existing bulkheads and asked how stringent the Agency would want to be regarding regulations conditioning permits for work around the shoreline.

Vice Chair Proulx mentioned that we will need very clear language defining repair and maintenance. Mr. Riecks agreed, strongly recommending that new single-family bulkheads be treated differently than repair and maintenance of existing bulkheads. Development Services Manager Ruth stated his agreement that if specific definitions are not given, then some of the regulations could be far too easily sidestepped.

Mr. Pina reminded the group that most of the Shoreline is covered with bulkheads anyway and asked why we would care if someone were intending simply to put back what was there in the first place. He argued that we would be trying to save marine life that is not there because these walls have been in place for a long time. He indicated he would not want homeowners to be required to sacrifice for marine life that is not there.

Vice Chair Proulx held that we care because philosophically, that is not how we want the City to evolve. He said we would be asking homeowners to be stewards of land they have chosen to own according to the best available science. He indicated he could see no harm in assigning the burden to the property owner to demonstrate why newer techniques are not going to be effective.

Agency Member Riecks stated that he agreed with Mr. Pina that it is a property owner's right to maintain what he or she has.

Development Services Manager Ruth mentioned that such is also the expectation of Des Moines property owners according to his experience here over 15 or more years. He noted that seawalls often represent very large investments and most owners want to be able to maintain them and repair them after storms. But he mentioned the situation where a state of disrepair has been allowed to exist for a long time and it becomes unclear what was there. In some situations, he said, a new owner might want to rebuild such a bulkhead that has virtually not existed for several years, raising a bit trickier question. He said this might be the more appropriate time to require the property owner to demonstrate the need for the bulkhead rather than allowing rebuilding in all cases. He indicated his awareness of the environmental issues at stake, but said we would want to be careful of a potential backlash. He called for a balance between the environmental concerns and the desires of the constituency.

Agency Member Riecks suggested that by not allowing bulkheads to be installed the City would be acting consistently with what it does in other areas. He likened it to a time when the City might require a remodeling homeowner to install sidewalks along the right of way.

Chair Kalve interjected his understanding that we are considering this entire subject because we have an existing condition of armoring along the shoreline which is harming Puget Sound. He said he understood the object of the Shoreline Management Act to be to see a gradual improvement in that. Whatever we decide, he stated, should improve from our situation today. Further, he said that eventually means property owners will have to face that need to support Puget Sound. He drew the comparison with a Gulf Coast FEMA Director speaking of restoring New Orleans levees to "pre-Katrina" levels, which were often somewhat deteriorated levels. He suggested that we would do well to look at the options in any situation, expecting reasonably that property owners be willing to work with the City in eventually achieving a "soft shore" situation.

Ms. Lang mentioned that the Department of Ecology will look for regulations about setbacks so that new development or redevelopment does not increase the need for protection. She indicated that the goal is to promote the natural roll-up of waves that would reduce the unnatural scouring of the sea floor nearby.

Vice Chair Proulx asked if there was a consensus that in the case of new construction the responsible party be required to demonstrate that "soft shore" techniques will not work before building bulkheads. He said he does not agree that single family residences should be exempt from the permitting process when installing bulkheads. Both Agency Members Riecks and Pina responded that in new construction owners should be required to consider "soft shore" techniques.

Mr. Hale noted that there seems to be a need to differentiate between new bulkheads and repair or maintenance of existing bulkheads. He also mentioned that the exemption from permitting has to do with situations where bulkheads protect from erosion, but not where bulkheads are being built for the purpose of filling to increase property size. He agreed with Vice Chair Proulx that we would need to be very specific in the Design Regulations about definitions for different scenarios that might arise.

Vice Chair Proulx affirmed that he was hesitant to automatically exempt any property owner from showing a good faith effort toward moving to soft shore techniques. Agency Member Riecks cautioned that although this is a goal, it may take 25 to 50 years to realize much of it.

Vice Chair Proulx responded that he prefers to put the onus of proof on property owners and Agency Member Riecks agreed.

Mr. Hale's summary was that as we develop the Use Regulations, in the Permit Process, it will be clarified what types of situations require this kind of conditioning. Further, he said, it would be more stringent for new development or significant redevelopment as opposed to repair and maintenance.

Vice Chair Proulx strongly suggested that a Glossary of terms be included to define situations and actions as closely as possible. Mr. Hale made it clear that a Glossary is part of the plan.

Sandra Lang mentioned that the standard that the State looks for that would constitute substantial development is now \$5,000. Mr. Hale pointed out that work on a bulkhead would be exempt under a separate exemption from the \$5,000 threshold.

Development Services Manager Ruth suggested that we earmark this item and come back to it after the document is presented and see how well we do in representing the direction of the Agency. There was consensus for moving forward through the material at hand. Mr. Hale gave encouragement that he thought the remainder of the items would require far less discussion and did not reflect many changes to the existing Program.

Mr. Hale worked through the following topics, reflecting the contents of the "Key Issues" document:

- Breakwaters would only be allowed in the High-Intensity areas (Marina & Redondo Commercial area). (Development Services Manager Ruth mentioned that Saltwater State Park has inquired about creating a breakwater to aid them in presenting scuba opportunities to the public. He mentioned he would be seeking direction about how to answer their inquiries. Mr. Hale responded that the present Program allows an artificial reef and that Saltwater State Park does have one and advertises it as a scuba feature. But he said that the Aquatic area is designated as a Marine Protection Area by the Department of Fish and Wildlife and suggested that before the question ever would come to Des Moines, it would likely be set aside by that Department.)
- There were no Jetties and Groins found in the City and they should be prohibited because of their disruption of the natural coastal process. (Mr. Hale added that anytime anything is proposed seaward of the Ordinary High Water Mark, a State permit is needed.)

At 9:07 p.m., Vice Chair Proulx called for a five-minute break. At 9:13 p.m., the Agency was reconvened.

- The existing Program allows dredging everywhere as a Conditional Use and it would be allowed in the future. (Development Services Manager Ruth mentioned that there needs to be some acknowledgement of the City's occasional need to dredge at stream mouths after severe storms to protect against flooding. He also mentioned that anytime this is done the State must permit the work.)
- Fill is allowed as a Conditional Use in any environment.
- Non-conforming Uses and Developments is a new section required by State guidelines and will require a Policy Element which will need to be consistent with the Zoning Code.

- Commercial Development, considered separate from the Marina, will be allowed only in the High-Intensity Environment through a substantial development process.
- Public Marinas and Private Marinas will only be allowed in the High-Intensity Environments. Private Marinas require a Conditional Use permit.
- Residential Development would be allowed only in Shoreline Residential Environment, not in the High-Intensity or Urban Conservancy Environments.
- Installation of Utilities in the Aquatic Environment would require a Conditional Use Permit.
- Prohibited Uses in all environments are Commercial Aquaculture, Agriculture, Forest Practices, Mining, Ports and Related Industry. In-stream Structural Uses would require a clearer definition and a Conditional Use Permit, perhaps only for Surface Water Management purposes.
- Piers and Docks, not in the Draft Document, should be included with Breakwaters and Bulkheads as prohibited in Residential Environment.
- Unclassified Uses, anything not explicitly defined in the Program, would require a Conditional Use permit in all shoreline Environments.
- Outdoor Advertising (billboards being otherwise prohibited) will only be allowed in the High Intensity Environment.
- Recreational development would be allowed in all Shoreline Environments except Aquatic.
- Solid Waste Disposal would be prohibited in all Shoreline Environments.
- Transportation facilities would be allowed in all Shoreline Environments except Aquatic. A Public Ferry Terminal would be excluded from this definition, but would require a Conditional Use Permit.

Next meeting will be November 7, 2005, at 7 p.m.

MOTION to adjourn was made by Agency Member Drebeck-Brown, seconded by Agency Member Riecks, and passed unanimously.

The meeting was adjourned at 10:12 p.m.

Respectfully submitted,

David Steen
Agency Clerk

NEXT MEETING DATE: Monday, November 7, 2005.

ADJOURNMENT

At 10:10 p.m., MOTION was made by Ms. Drebeck Brown, second by Mr. Riecks, and passed unanimously, to adjourn the meeting.

Respectfully submitted,
David C. Steen, Planning Agency Clerk

DRAFT
PRELIMINARY DOCUMENT
REGULAR MEETING DES MOINES PLANNING AGENCY

MINUTES

October 3, 2005

At 7:00 p.m., Temporary Vice Chair Don Riecks called to order the regular meeting of the Des Moines Planning Agency in the Council Chambers, 21630 11th Avenue South, Suite B.

ROLL CALL—Present: Agency Members Drebeck-Brown, Pina, Colvard and Riecks. Staff included Planning, Building and Public Works Director Grant Fredricks, Development Services Manager Robert Ruth, City Planner Jason Sullivan and Permit Specialist David Steen, Agency Clerk.

MOTION was made by Mr. Colvard, second by Ms. Drebeck Brown and passed unanimously, to excuse the absences of Agency Members Proulx, Savage and Chair Kalve.

MINUTES

MOTION was made by Mr. Pina, second by Ms. Drebeck Brown, and passed unanimously to approve the minutes of the July 11, 2005 meeting as presented.

CORRESPONDENCE: None.

COMMENTS FROM THE PUBLIC

When Vice Chair Riecks opened the floor Public Comment, one person stepped forward.

Mr. Jerry Kingen, owner of Salty's at Redondo restaurant, mentioned he is aware of the Highline Community College proposal for the Marine Science and Technology Center next to his restaurant. He spoke of his concern about potential obstruction of views from the restaurant since building at the end of the pier is proposed to be about five feet higher than it has been. He also said he had spoken with people from the College whom he had found amenable to trying to work out some change that could accommodate his concern. Mr. Kingen concluded by saying he wanted to be here to say he is supportive of the project, but with caveats.

There being no further Public Comment, Vice Chair Riecks closed this opportunity.

ADMINISTRATION REPORTS

Development Services Manager Robert Ruth suggested a change in the order of the agenda since several members of the public were in attendance because of their interest in the last agenda item, introduction of the Conditional Shoreline Substantial Development Permit for the Highline Community College Marine Science and Technology Center. Mr. Ruth suggested this item was brief in comparison to others and might well be moved ahead of them and be considered immediately.

Vice Chair Riecks reported a consensus of agreement from the Planning Agency Members.

NEW BUSINESS

Conditional Shoreline Substantial Development Permit; Highline Community College Marine Science and Technology Center

Noting that this would not be a Public Hearing item, Mr. Ruth introduced City Planner Jason Sullivan. Mr. Sullivan reported that in January 2005, Highline Community College submitted the requisite permits to remodel its Marine Science Center on the same fixed-pile pier in Redondo. He indicated that tonight's review would be for the Shoreline Permit for that project, noting that all projects on State shorelines are required to obtain a Shoreline Substantial Development Permit. Because it is an educational facility, he mentioned, that is required to be a Conditional permit.

Planner Sullivan pointed out the objectives of the facility:

1. It works on various environmental awareness and educational goals.
2. It monitors the water quality in three of our creeks, Redondo outfall and Poverty Bay.
3. Whereas the current facility was designed as a "dive" facility, it is now planned as an educational facility and an aquarium, upgrades to its existing use.

He mentioned that the size of the classroom will not be changing, but the size of the aquarium will be increasing by 478 s.f., extending the aquarium out 19.25 feet. He said this is all to be placed over the existing pier with no new over-water construction.

Mr. Sullivan said that this application meets all six requirements from both the Shoreline Master Program and R.C.W. Briefly, he noted, it provides public access to the shoreline both through educational goals and through public viewing of the aquarium on Saturdays, from 10 a.m. to 2 p.m.

He pointed out that an educational facility in this zone is an outright permitted use in accordance with DMMC 18.26.

Mr. Sullivan mentioned that any time there is a proposal that will be over any marine ecosystem, caution must be taken about any impact on the ecosystem and to the native species that are listed on the Endangered Species Act. He reported that the applicants had submitted a biological evaluation to the Army Corps of Engineers and to the National Oceanic and Atmospheric Administration, both of which agencies have responded that this project does not propose any adverse long-term impacts to the marine ecosystem, the species or the essential fish habitat in the area.

Planner Sullivan also noted the need to be aware of the impact on surrounding neighborhoods. There are, he said, concerns about parking. But he mentioned that the remodel of the facility does not increase the demand for parking, since enrollment is limited to 24 students and classes are scheduled for off-peak hours.

Mr. Sullivan said that there also must be benefits to the public, calling attention to the monitoring program mentioned earlier, which would allow the City and other government agencies an early warning if there might be a toxic spill upstream.

Mr. Sullivan reported that Staff has conducted an Environmental Assessment of this proposal and issued a Determination of Non-Significance on September 13, 2005, after which in the

proper time frame there was no appeal of the SEPA determination filed. He mentioned that for the three issues that arose in Staff assessment--Endangered Species, Groundfish and Parking--mitigation already existed on Code so that there was no need for mitigation through SEPA. Finally, then, he reported that Staff urged the Agency to forward the permit to City Council for official review and public hearing.

Development Services Manager Ruth added that the Agency is acting in an advisory capacity so that its input to the Council will be appreciated along with any that might come from the public in attendance. Vice Chair Riecks opened the floor to those who might like to address this proposal and there were none.

When Agency Member Colvard asked whether the description of the vegetation was a natural condition, Planner Sullivan answered that it was the natural topography of the land. Manager Ruth also responded that the condition of the beaches and the long shore current effects from bulkheading as a broader issue was the crux of the question. He reported that the project itself is not believed to create that condition, but it is an existing condition. He mentioned that we are noticing less "fines" in the sand sediments and concluding this is a side effect of bulkheading along the shorelines generally.

When Mr. Colvard inquired about an existing impervious structure, Planner Sullivan explained that there had been a storage shed that had deteriorated and that it was going to be rebuilt.

Mr. Colvard then asked about traffic mitigation during construction. Mr. Sullivan mentioned that Staff are recommending that the Building Permit require a Traffic Mitigation Plan and Staging Plan before it is issued in order to limit impacts to the surrounding area.

Vice Chair Riecks and Agency Member Pina checked with Mr. Kingen, Salty's owner, to see if he was able to work with the College to resolve any problems with the aquarium. Mr. Kingen responded that he was and that he did not think it unreasonable to pass the project on to the City Council. A representative from Highline Community College (unnamed) spoke up to say that designers were working on ways to make the aquarium building more transparent.

MOTION was made by Mr. Pina, seconded by Mr. Colvard and passed unanimously to recommend that the City Council approve the Conditional Shoreline Substantial Development Permit with the conditions of approval recommended by the administration.

PUBLIC HEARING

2004/2005 Comprehensive Plan Update

Consultant Judith Kilgore reviewed some history of the Comprehensive Plan Update, mentioning that after the Agency's October 2004 recommendation of the Comprehensive Plan to the City Council, the Council chose in November 2004 to look at the Plan in more detail. She reported that the City Council had created a committee including Mayor Sheckler and Councilmembers Thomasson (Chair) and Peterson. The committee, she said, had begun its work in February 2005 and completed it in September 2005. Noting that the SEPA appeal period had passed with no appeals she suggested that after her review of the revisions and the Public Hearing it would be appropriate for the Agency to recommend the work to the City Council for consideration and

approval. She mentioned that the City Council will be considering the Comprehensive Plan Update at its October 13, 2005 meeting.

Ms. Kilgore noted that King County cities are required to plan under the Growth Management Act and that Des Moines was supposed to have submitted its new plan by December 2004. She said that even though that has not happened and is now proposed for November 2005, the City has been in touch with the Washington State Department of Community Trade and Economic Development and is not considered out of compliance because we have been working closely with them through our process.

As a whole, Ms. Kilgore said, the changes dealt mostly with "cleaning up" the language of the document, maps and modernizing the 1995 document for 2005. For example, she mentioned:

1. "Findings" had been changed to "Background and Context."
2. The out of date Environmental Impact Study was removed.
3. A comprehensive legislative history was added.
4. References to "Greater Des Moines" were changed to "City of Des Moines" since annexation work is now complete.
5. "Sensitive" areas are now referred to as "Critical" areas.
6. References to the Des Moines Municipal Code have been removed because the Code changes and each change should not necessitate an update of the Comprehensive Plan.

She then noted the following changes, chapter by chapter:

1. In Ch. 1, language was changed to reflect current boundary conditions and acknowledge that annexation is complete with the "Redondo triangle" now slated to be annexed by Federal Way.
2. In Ch. 2, Land Use, the biggest change is in the Maps.
 - a. Tables 2.1 and 2.2, the generalized Zoning and Land Use Designations, were removed.
 - b. Specific demographic data were replaced by a summary statement and the current Buildable Lands Report in the Appendices.
 - c. Following the Department Community Trade and Economic Development's comments last year that because of Urban Densities, Des Moines' designations did not reflect the "bright line" of 4 dwelling units per acre required by the Growth Management Act, the committee followed their recommendation to remove special Single Family Residential zoning designations and just have one Single Family designation.
 - d. The need for a Public Facilities Zone was restated.
 - e. Language for allowance for lot averaging, required by State Law, was included.
3. In Ch. 3, Transportation, the City's Comprehensive Transportation Plan was incorporated as part of the element.
4. In Ch. 4, Conservation, much work was done last year bringing language up to current standards. Policy direction to the City to explore limiting the review processes for land use decisions in or near Critical Areas.
5. In Ch. 5, Capital Facilities, Administration is recommending adding the Six Year Capital Improvement Plan to the Comprehensive Plan to satisfy the Growth Management Act requirement of establishing a funding strategy for capital improvement.
6. In Ch. 6, Parks, Recreation and Open Space, little was done since this is a newer element which underwent extensive review by the Agency in 2003.

7. In Ch. 7, Housing, policy language was added to allow accessory dwelling units in single family neighborhoods, to give direction for criteria for allowing cottage housing, and to satisfy Growth Management Act requirements regarding manufactured housing.
8. In Ch. 8, Community Character, no policy was changed. Rather, editing was done to modernize the language.
9. In Ch. 9, North Central Neighborhood (the Port Buyout area), there was much discussion about when to allow large retail uses. The element was revised to allow "big box" developments when they are done with a Master Plan and to allow some outdoor storage.
10. In Ch. 10, Downtown Neighborhood, there were only formatting changes and information updates.
11. In Ch. 11, Pacific Ridge Neighborhood, there were many strikeouts because much of the policy language in the old Comprehensive Plan is now reflected in the Zoning Code. The Comprehensive Plan gave policy directions to the Code which have now been adopted, leaving no need for them to remain in the Comprehensive Plan.

After Ms. Kilgore's presentation, a question of clarification regarding Accessory Dwelling Units was raised by an unidentified member of the public. She responded that the policy has always been in the Comprehensive Plan to investigate revisions to the Accessory Dwelling Unit Code. The changes included in 7.04.13 now provide direction to allow for kitchen facilities in Accessory Dwelling Units.

At this time, Vice Chair Riecks gave three invitations for Proponents and three invitations for Opponents to speak. None spoke. He then congratulated Ms. Kilgore and the City Council committee on a good piece of work and closed the Public Hearing.

MOTION was made by Agency Member Colvard, seconded by Agency Member Pina and passed unanimously to recommend the 2004/2005 Comprehensive Plan Update to the City Council for consideration and adoption.

OLD BUSINESS

Shoreline Master Program, Shoreline Environment Designations, Draft Regulations, and Restoration Plan Components

Development Services Manager Ruth introduced Ms. Sandra Lang from the Department of Ecology and Mr. Kent Hale from Adolfson and Associates, who were both in attendance to help in the evening's presentation. Mr. Ruth reviewed the timeline of the Update process:

1. Received Ecology grant in June, 2004.
2. Open House in November, 2004, to review the key findings of the Draft Inventory Report.
3. Open House in April, 2005, to review Goals and Policies and Shoreline Environment Designations.
4. In August, 2005, received grant extension to December 31, 2005.
5. Tonight's meeting and two projected special sessions in October to finalize the Agency's work, including a Public Hearing at the Agency level, in time for the required first and second readings in City Council in November and December.

Then Mr. Ruth outlined the three elements to be reviewed in this meeting:

1. Revisiting the Shoreline Designations, last reviewed in the April 4, 2005 meeting.

2. Draft Regulations that are in tonight's packet for the first time.
3. The Restoration Plan, also new tonight.

Sandra Lang then came forward with handouts from the RCW and WAC. She reviewed the history of the Shoreline Management Act:

1. In 1969 there was a strong public initiative to protect shorelines along both salt water and Lake Washington, which would have been quite restrictive if codified.
2. The Shoreline Management Act (RCW 9058) emerged as a tempered document that provided for Protection and Thoughtful Development along Washington's shorelines.
3. This law directed the Department of Ecology to work with local governments to produce and occasionally revise Shoreline Master Programs it could approve.

Ms. Lang noted the following handouts and spoke of the importance of each.

1. WAC 173.27 handout, Shoreline Management Permit and Enforcement Procedures. She pointed out that Des Moines' procedures must reflect at least the strength of this code. She called attention especially to the Permit Data Sheet at the end of this code.
2. The Administrator's Manual which is the Policy of the Shoreline Management Act.
3. WAC 173.26 describes the Amendment process.
4. Focus sheet for RCW 9058.

Thanking Ms. Lang, Development Services Manager Ruth then asked Kent Hale to present his material. Mr. Hale noted that since there has been significant new area, with shoreline, annexed into Des Moines since the present 1988 Shoreline Master Plan was adopted; and since the State has enacted new Department of Ecology Guidelines for such work, the City has decided to move forward with this update.

Mr. Hale then outlined the work completed and the work yet to be done, referring to a handout he shared with the Agency members, as follows:

1. The Inventory and Characterization/Map Folio has been completed and already approved by the Dept. of Ecology. This will be Appendix A to the Shoreline Master Program.
2. Goals and Policies draft was completed in April, 2005, and were included in the Agency Members' September 12, 2005 packet as Attachment 5.
3. Shoreline Environment Designations represent Attachments 3 and 4 in the September 12 packet. These Designations act as a Zoning Overlay for properties or portions of properties within 200 feet landward of the Ordinary High Water Mark along Puget Sound Shoreline.

Mr. Hale indicated the Shoreline Environment Designations are one of the topics to be discussed this evening. He mentioned that the Existing Designations are somewhat out of date according to the new State guidelines. He also said the Woodmont and Redondo areas still carry King County Master Program designations from the time before they were annexed. He noted that the result was that we had one Residential area designated as Conservancy (Zenith) and another designated Urban (Woodmont, Redondo). Since these designations are very different, Mr. Hale said it seemed good to use more consistent terminology, Shoreline Residential, for somewhat similar areas.

Agency Member Pina commented that he sees Woodmont and Redondo as far different shorelines than Zenith and does not like the idea of using the same designation for both. He said he understood that the Shoreline Residential would allow dense development along high cliffs.

He suggested he would like to see a different designation for Zenith than that chosen for the other areas.

Vice Chair Riecks mentioned agreements and covenants that accompanied annexations. He noted, for example, that the City agreed as it annexed Woodmont that there would be no changes to the zoning. He said that we may not like those agreements, but we cannot change them soon. Rather, he suggested, we are setting goals that might be accomplished over a period of years.

Development Services Manager Ruth reminded the group that the Inventory work had provided a surprise in that where we had a "conservancy" designation along the Zenith shoreline which would denote a place with no development, what we had in reality was much single family development. He said the interest has been to make the designations match what is really there on the shoreline so that the Shoreline Master Program could be a real document, consistent with present development patterns. He noted that some people would say that any single family house built on a bluff over the shoreline is a very intense development. Finally, he suggested that the approach taken in the Designations so far is a "middle ground" approach.

Agency Member Colvard noted that there are actually houses on the beach in Woodmont and suggested that the ramification of a "conservancy" designation might be that there should be no more houses built there.

Mr. Hale mentioned that cities have the freedom to develop hybrid designations if they can show reason to do so. Also, he said parallel designations are allowed where the near water portion of a property is very different from the upland portion. But he reminded that other "overlay" regulations regarding, for instance, steep slopes, also come to bear, controlling development near the toe or peak of a bluff. He also said that the Shoreline Master Program's Use Regulations and Development Standards are required to be at least as restrictive as the Critical Areas ordinances in the same jurisdiction. Additionally, he indicated many cities are tweaking the Shoreline Regulations to be even more restrictive than equivalent Critical Areas ordinances.

Ms. Lang interjected that the Shoreline Management Act in no way wants to parrot or follow in the footsteps of the Growth Management Act. She affirmed that there is no effort in the Shoreline Management Act to densify the shoreline.

At the suggestion of Development Services Manager Ruth, the meeting focused on the Designations maps and considered each part of the Des Moines shoreline from north to south. During this time, Agency Member Pina gave voice to his concern that developments like Whaler's Village (just south of the Marina) not be allowed farther down along the shoreline. He ultimately pointed to the criteria for the designation "Shoreline Residential" and suggested that if the words "multi-family" could be stricken, then he would be satisfied.

At this point Manager Ruth indicated that a development like Whaler's Village (condos) would not be able to be built at all today, even where it now is, because of the changes in regulations and additions of zoning overlays that now exist. Mr. Hale cautioned that any designation we use needs to meet the State Shoreline Management Act's criteria for that designation. Ms. Lang interjected that even much single family development can be very intense with excessive pavement and no vegetation, suggesting that striking multi-family does not necessarily protect the shoreline any better.

MOTION by Agency Member Pina, to use the Shoreline Residential designation but strike from the criteria the words "multi-family," was not seconded.

As the group moved through the other areas of the shoreline and considered the suggested designations, there was general agreement that those designations were appropriate.

Agency Member Drebeck Brown asked whether the three condo developments, one near Downtown and two in Redondo, could share a separate "High intensity" designation. Both Mr. Hale and Ms. Lang suggested that such a designation indicated water-dependent or water-oriented uses, which would not apply to multi-family developments.

At 9:15 p.m., Agency Member Colvard made it clear that because of his professional work load his further time for this meeting was limited and that he would need to leave within the next 30 minutes, ending the quorum for this Agency meeting. He suggested that if there were other substantive issues, then the groups should move to their consideration as quickly as possible.

MOTION by Agency Member Colvard, seconded by Agency Member Drebeck Brown and passed on a 3 to 1 vote (Agency Member Pina voted nay), to accept the Shoreline Environment Designations as presented.

At Manager Ruth's suggestion, Mr. Hale briefly continued his earlier presentation of the work yet to be done by the Agency, Staff and Consultants. He said the Draft of Use Regulations/Development Standards and the Restoration Plan are in the packet for the Agency's consideration. He indicated that the last item in the Shoreline Master Plan will be the Administrative Procedures section, currently being written. He did note that he sees little need for change in that section, since the City's current Administrative Procedures satisfy the appropriate WAC code.

Referring further to the Use Regulations/Development Standards, Mr. Hale emphasized that overriding concern in the draft has been to make the process more accessible and easily understandable by Staff who are responsible to apply these Regulations and Standards. He pointed out a "Permitted Use Table" which was designed particularly for that purpose. Since it seemed clear that time was limited, Mr. Hale invited the Agency Members to study the packet contents and ready themselves to give further feedback in the future.

Manager Ruth agreed that further discussion seemed out of order given the late hour. He encouraged the Agency Members to hold on to their packets and be ready to bring them to the next meeting. He asked that each Member communicate with him by noon Thursday, October 6, to indicate their availability for both October 10 and October 24 for possible Special Meetings.

NEXT MEETING DATE: Unknown at this time. Possibly, Monday October 10, 2005

ADJOURNMENT

At 9:35 p.m., MOTION was made by Mr. Pina, second by Mr. Colvard, and passed unanimously, to adjourn the meeting.

Respectfully submitted,
David C. Steen, Planning Agency Clerk

PRELIMINARY DOCUMENT
REGULAR MEETING DES MOINES PLANNING AGENCY

MINUTES

April 4, 2005

At 7:00 p.m., Chair Sven Kalve called to order the regular meeting of the Des Moines Planning Agency in the Council Chambers, 21630 11th Avenue South, Suite B.

PLEDGE OF ALLEGIANCE to the Flag was led by Kristi Drebeck-Brown.

ROLL CALL—Present: Mr. Kalve, Mr. Colvard Jr., Mr. Proulx, Ms Drebeck-Brown and Mr. Riecks. Also present Community Development Director Judith S. Kilgore, Development Services Manager Robert Ruth and Permit Specialist David Steen, Agency Clerk.

MOTION was made by Mr. Colvard, second by Ms. Drebeck-Brown and passed unanimously, to excuse the absence of Mr. Savage.

MINUTES

MOTION by Mr. Riecks, second by Ms. Drebeck-Brown, and passed unanimously to adopt the minutes of the February 2, 2005 meeting.

CORRESPONDENCE—None.

PUBLIC COMMENT--None

ADMINISTRATION REPORT

Development Activity Update

Director Kilgore reported receiving no new large projects since the last meeting. She offered brief updates on the following projects:

1. Grace PUD—Civil plan review is in progress. Dirt should be moving there soon.
2. North Hill Elementary is still in construction.
3. Olympic Interim School—Plan review is in progress.
4. Cedarbrook is in progress at 20th Ave. S. & S. 240th St.
5. Walgreen's at Pac. Hwy. S. & Kent - Des Moines Road—Permits have been issued. Demolition of the building now on the lot should start within 2 weeks.
6. Mediterranean Heights—We are still working with the developer on correcting some issues.

Robert Ruth reported that the Tobin plat has been sold to a developer who is doing grading now.

Economic Development Activity Update

Director Kilgore announced that Economic Development strategy had been the central topic of the City Council's all-day retreat on March 26, 2005. She reported that the consultant Ravenhurst Development created a Core Decisions Memo, through the discussion of which, the Council gave the consultant its decisions concerning:

1. Possible revisions of regulations in the Pacific Ridge area.

2. Marine View Dr. S. as a priority.
3. The future of Beach Park.
4. The possibility of having Townhouse development in additional places.

She indicated that in the next month or so, the consultant will be wrapping up its project and presenting it.

Director Kilgore also mentioned the work of the City Council's Economic Development Committee (including Chair, Councilmember Susan White, Mayor Sheckler and Councilmember Maggie Steenrod). She noted that Tom Beckwith, a consultant, is trying to fit our Zoning Code into a new, more graphic and user-friendly format. She indicated this work will go on for many months.

She also reported on the work of the Comprehensive Plan Committee (Chair Scott Thomasson, Mayor Sheckler and Councilmember Gary Peterson) which is taking a careful look at the Plan. She indicated there are about 4 chapters left to address, after which there will be some "cleaning up." Then, she said, it will come back before the Planning Agency, perhaps in June or July, 2005. She suggested that the Shoreline Master Program work would probably take longer than the Comprehensive Plan work, but that it could be added in during the next amendment cycle.

OLD BUSINESS

Shoreline Master Program

Development Services Manager Robert Ruth explained that since the previous city project manager (Celeste Carlson) is no longer employed with the City, he would be filling in on behalf of the City for this project for this meeting until a new project manager could be assigned. He noted that the purpose at this meeting was to present to the Agency the first draft of the Goals and Policies of the new Shoreline Master Program. He said that because the information in the packets was only very recently delivered to the Agency, the purpose of tonight's meeting is to familiarize the Agency with the way it is organized and to provide an overview. He also suggested the Agency map out a plan for future actions, proposing that the Agency take time to review the material and provide feedback to Staff so they can prepare for a productive use of time for the next meeting.

Manager Ruth reminded the Planning Agency that this work is being funded through a grant from the Department of Ecology, with a certain level of public outreach. He pointed out that the number of meetings outlined for the work will be exhausted soon. He said the City has applied for a supplemental grant to help extend the time for the project, but we are not sure yet if it will materialize. So he suggested that we need to keep in mind making the best use of our time and be ready to live with what we can accomplish under the funding available.

Mr. Kent Hale, from Adolfson & Associates, began by introducing Alex Cohen, a Planner with Adolfson who has been helping with the process, Ikuno Masterson, Adolfson's Director of Environmental Services and David Pater, our project manager from the Department of Ecology (replacing Sandra Lang).

Reviewing, Mr. Hale mentioned that the Shoreline Master Program is tied to the Shoreline Management Act, initially passed in the 1970's, which sets goals and management for the State's

shorelines, including Puget Sound. Therein, he said, is the provision that local jurisdictions develop Shoreline Master Programs to regulate development and plan for uses for the shorelines within their jurisdictions. He noted the City's existing Shoreline Master Program was developed in 1988, before several annexations that have almost doubled the City's shoreline jurisdiction. He also indicated that there have also been recent changes to the Master Shoreline Guidelines which are administered by the Department of Ecology, so that each local jurisdiction's program is reviewed and approved by that department. He said the changes are partly to fulfill new requirements from the State, and partly to bring the Shoreline Master Program in line with the City's development plans for the newly incorporated areas.

Completed in November, he reported, the Inventory and Characterization of the City's shoreline resources opened the process. After sending the report to the Planning Agency for comments, and receiving those back and revising accordingly, Mr. Hale stated that the consultants sent the report to the Department of Ecology in December. He reported that after comments came back from the Department of Ecology in January, the consultants revised the report once more to take those comments into consideration. He said he considers the Inventory complete, but that he sees it as a "living document" and open to modification if new information arises.

Mr. Hale said the next phase is to look at Goals and Policies of the existing Shoreline Program and compare them to the State guidelines. Beyond that, he indicated, would be a look at the Development Regulations that would accompany those Goals and Policies, ending by packaging the entire Shoreline Master Program into one document that will go to City Council and then the Department of Ecology for approval.

At this point Mr. Hale turned the floor over to Mr. Cohen to go over a few things in the Draft Goals and Policies, Attachment 1 from tonight's agenda. Mr. Cohen pointed out three things about the format of the document:

1. The numbering (e.g., 14-2, 14-3) anticipates the Shoreline Master Program fitting in as one element in the Comprehensive Plan.
2. Existing language from the present Shoreline Master Program shows up in *italics*, while new language is in regular font.
3. There are nine elements to the Goals and Policies, each containing one or more Goals, followed by the Policies that support each goal.

He reported that the new State guidelines stress "no net loss of ecological functions," and "restoration of ecological functions where possible." He pointed out that the Residential Element was not a part of the guidelines, but was left in the Draft document because it represents the character of the Des Moines shoreline.

Mr. Cohen stated that the Department of Ecology's Guidelines require Restoration Goals, Policies and Plans which are designed to improve overall shoreline ecological functions over time. That has been included as the Conservation and Restoration Element.

He raised three issues that he anticipates discussing at the next meeting:

1. Critical areas
2. A range of options for shoreline modification, especially repairing and rebuilding bulkheads.

3. New language in the guidelines that puts new emphasis on vegetation and conservation (see 14.3.9, p. 10).

Mr. Hale then went over the tables of Shoreline Environment Designations (Attachment 2). He pointed out that Table 2 indicates existing Designations and the rationale for changing those, while Table 1 shows the new Designations with descriptions. He pointed out that in recent annexations of shoreline areas the City adopted King County's Designations, which were not consistent with those in the existing Shoreline Master Plan. So he said part of the rationale of the changes is to make the Shoreline Master Plan internally consistent.

He explained that Environmental Designations are like a Zoning overlay, so that the underlying Zoning for the land is still intact. But he said that the Shoreline Environment Designations look at the character of that land and provide additional Goals, Policies, and Regulations for how that shoreline area is to be managed, reflecting what is there now as well as the City's vision of the future. On a large map he showed that the existing Program shows:

1. Des Moines Beach Park is a Conservancy area, acknowledging it is a natural area.
2. The Marina is designated Urban.
3. The rest of the City was designated Conservancy.

But he indicated King County had designated the entire area as Urban, which means Woodmont and Redondo are now Urban while similar areas in Zenith are Conservancy.

Mr. Hale pointed out that the Shoreline Inventory and Characterization Report showed that most of the City shoreline is developed and has long been a residential community, while there are some important Public Use areas and Water Dependent Use areas. He noted that jurisdictions can use the State designation guidelines or describe their own. In the case of Beach Park and Salt Water State Park, he said that they fit the Urban Conservancy designation with the following characteristics:

1. Heavy use by the public
2. Stream mouths
3. Potential for restorative projects
4. Important ecological functions going on
5. Surrounded by urban area

For the more residential areas (Zenith, Woodmont, Redondo), he noted that the Shoreline Residential designation fits, which is more of a balance between Urban Conservancy and Urban. He reflected that the Marina would be designated High Intensity, with highly water-dependent uses, the breakwater and other intense development. Finally, he said Redondo would fit under the same designation as the Marina with its public boat launch, the boardwalk and beach access.

Mr. Hale then asked the Planning Agency to review the Goals and Policies, Environment Designation Tables and Maps, share comments in the meantime, and come back at the next meeting for fuller discussion.

Development Services Manager Ruth emphasized that it would be important to digest this large amount of information before forging ahead too far. Director Kilgore suggested that the Agency members hear the Public be given opportunity to speak their concerns, read the material presented and then send emails by April 15 with any suggestions or issues of concern. She indicated that would give Staff and consultants time to prepare to address those concerns at the next meeting.

Chair Kalve agreed with the suggested plan, but indicated there might be some questions at this meeting. He then opened the floor to any people from the Public.

Sharon Kushner (22997 Marine View Dr. S., Whaler's Village) came forward to mention her concern for the building where she lives, which is built over a creek. She stated she is wondering if there are going to be Zoning changes as well as if there will be other opportunities for public involvement in the process.

Chair Kalve assured her there would be a number of other opportunities for public involvement.

Ms. Kushner indicated she had always appreciated the work of the City. But she noted that she had received no notice of the process to this point and would be interested in being informed of future meeting opportunities. She said she and other owners at her condominium are interested in protecting their property and would be glad to help where they could. Another concern she mentioned is that the beach area in front of their property, just to the south of the Marina, was becoming a catchall basin for wood debris that cannot go into the Marina and is forced into their area. She noted there had been a fire there several years ago while homeowners have continued not knowing what they can remove from the beach and what they must leave. She thanked the Agency for the opportunity to speak.

Chair Kalve offered the floor to any others, but no one came forward.

Agency Member Riecks, raised a question about the change in designation from Urban to Shoreline Residential, suggesting that it is unfortunate that this City is called The Waterland City while the average homeowner has very little opportunity to walk on the beach. He asserted that it seemed it was being made harder to access the beach because of the Shoreline Residential designation and asked what difference is made by the change.

Mr. Hale repeated that when the southern areas were annexed, the Shoreline Master Program adopted the King County designation. He indicated that Shoreline Residential is a truer reflection of what is there, predominantly Single Family Residential. He noted that Urban would be a more appropriate designation for high intensity uses like the Marina. He mentioned that looking for opportunities to enhance public access to the shoreline was one of the tasks of the Inventory Report process. He did say that in comparison to other locales, Des Moines has great access through the parks, the Marina and the Redondo boardwalk. He noted that the team had looked for other points like the 239th St. Access and found one possibility a few blocks south.

Agency Member Riecks suggested that the focus of this work usually goes toward protecting the waterfront areas for fish and wildlife, while he thought the focus might also need to be helping the people enjoy meeting the water.

Mr. Hale agreed that the Shoreline Management Act is a balancing act, trying to provide access to the water and water-oriented uses as well as protecting the ecological functions of the shoreline in providing habitat for fish and birds.

Agency Member Proulx asked Staff if someone from the Public were to send comments they would be received as valid just as if they had been here. Director Kilgore assured him that they

would. She added that a brochure had been mailed and that she was unsure why Ms. Kushner had not received it.

Agency Member Proulx asked about whether other jurisdictions would be using the same terms and moving in the same direction with their revisions of Shoreline Master Plans. Mr. Hale answered that they might be on somewhat different schedules, but that all shoreline jurisdictions would be working from the same guidelines from the Shoreline Management Act. Mr. Proulx asked if there could be some "textbook examples" of some of the designations for the benefit of folks who do not live everyday in the descriptive language of the charts.

Manager Ruth underscored importance of using a "common language" for shoreline regulation purposes. He asked if the Agency felt like it had enough of a grasp of the Department of Ecology guidelines in order to review the work on Shoreline Master Plan update. He offered to provide members more information, perhaps in the form of a synopsis of key issues to steer Agency decision-making.

Chair Kalve mentioned he had the impression that some of the language was fairly nebulous. But he said he does not believe the Agency has received quite what it needs in order to proceed. Agency Member Proulx clarified that a synopsis would be better than having the whole detail of the code provided. Chair Kalve agreed and Manager Ruth said he would work with David Pater on providing that information.

Chair Kalve sought clarification of the red line that appeared offshore on the provided maps. Mr. Hale pointed out that they represent the City Limits.

NEXT MEETING DATE: May 2, 2005

ADJOURNMENT

At 8:15 p.m., MOTION was made by Mr. Proulx, second by Mr. Colvard, and passed unanimously, to adjourn the meeting.

Respectfully submitted,

David C. Steen
Planning Agency Clerk

REGULAR MEETING DES MOINES PLANNING AGENCY

MINUTES

November 1, 2004

At 7:00 p.m., Chair Sven Kalve called to order the regular meeting of the Des Moines Planning Agency in the Council Chambers, 21630 11th Avenue South, Suite B.

PLEDGE OF ALLEGIANCE to the Flag was led by Chair Kalve.

ROLL CALL—Present: Mr. Kalve, Mr. Colvard Jr., Mr. Proulx, Mr. White and Mr. Savage. Also present Community Development Director Judith S. Kilgore, Land Use Planner II Celeste Carlson, and Permit Specialist David Steen acting as Planning Agency Secretary.

MOTION was made by Mr. Colvard, seconded by Mr. White, and passed unanimously to excuse the absences of Mr. Riecks and Ms. Drebeck-Brown.

APPROVAL OF MINUTES

MOTION was made by Mr. Proulx, seconded by Mr. White, and passed unanimously to approve the minutes of the October 4, 2004 meeting of the Agency.

CORRESPONDENCE—None.

PUBLIC COMMENT—None

ADMINISTRATION REPORT

Ms. Kilgore reported that there would likely be revisions to the Mitchell/Chamlian Rezone and Plan Amendment Request. She said she had met with Mr. Mitchell after the October meeting of the Planning Agency, at which time he indicated he is trying to buy property to the west of his site to help with the access issue. Ms. Kilgore said Mr. Mitchell asked for his Requests to be put on hold. She also indicated that, according to the Code, since his Requests had been timely, he would not have to wait until this time next year, but could ask for them to be reactivated as soon as he is ready. She reported that he thought he would be ready some time after the first of the year.

Mr. Proulx sought clarification that these issues are separate from the 2004 Comprehensive Plan Update, and that nothing in that process would otherwise preclude the action Mr. Mitchell is seeking. Ms. Kilgore assured Mr. Proulx that the actions were separate and the larger Update would not provide hindrance to Mr. Mitchell's proposals.

OLD BUSINESS

2004 Comprehensive Plan Updates and Requested Amendments

Community Development Director Kilgore mentioned that on October 4, 2004 the Planning Agency held a Public Meeting on the 2004 Comprehensive Plan Amendments. She indicated that the process of getting all the comments together in the document had been lengthy and that the final draft was still being printed. She recommended that the Agency first close the Public Hearing, then move to recommend the amended Comprehensive Plan to the City Council.

MOTION was made by Mr. Proulx, seconded by Mr. Colvard, and passed unanimously to close the Public Hearing for the 2004 Comprehensive Plan Updates and Requested Amendments.

MOTION was made by Mr. Proulx, seconded by Mr. Colvard, and passed unanimously to recommend the Comprehensive Plan as amended to the City Council.

NEW BUSINESS

Public Meeting: Shoreline Master Program Draft Inventory and Characterization Report

City Planner II Celeste Carlson, project planner for the Shoreline Master Program Update, indicated that tonight's Public Meeting is the first of at least three meetings to take place before the Planning Agency. She mentioned that numerous mailings had been sent out to try to include as much of the public as possible in both the Open House which happened before this meeting and this meeting as well. Ms. Carlson stated that the City has received a grant from the Washington State Department of Ecology to update the Shoreline Master Plan to meet new regulations that have come into effect. She said the current Shoreline Master Plan dated from 1988, which was before annexation of much of the City.

Ms. Carlson then introduced Kent Hill and Steve Krueger of Adolfson Associates, Inc. to provide a presentation of background information including an inventory and characterization of the Shoreline. She also introduced Sandra Laney from the Department of Ecology as a resource for this evening's meeting.

Mr. Hill indicated that he would be covering the main points of a printed report he had provided to the Agency members for this meeting. He said he was open to comments and questions tonight and would look for formal comments in two weeks. He mentioned that new guidelines from the Dept. of Ecology were driving this process and that this first part of the work was to establish a baseline understanding of the conditions on the ground now—both natural and built environment. Mr. Hill said we would be trying to find opportunities to increase public awareness and education as well as doing site-specific habitat restoration projects. He indicated the inventory is the first step in updating the City's goals, policies and development regulations, which will be addressed in the spring of 2005.

Mr. Hill said the shoreline jurisdiction includes the area 200 feet landward from the Ordinary High Water Mark along Puget Sound, but that the bigger picture now includes looking at stream basins and upstream building regulations that affect the shoreline. Mr. Hill outlined the segmentation of the shoreline from north to south as follows:

- Segment A—Des Moines Beach Park
- Segment B—Des Moines Marina
- Segment C—Zenith
- Segment D—Saltwater State Park
- Segment E---Woodmont/Redondo
- Segment F – Redondo Boat Launch/Beach Park
- Segment G-- Redondo South

Mr. Hill introduced Steve Krueger, a fisheries biologist, to continue the presentation. Mr. Krueger reported that about 75% of the shoreline has been modified or armored, thus altering the

coastal process. He explained that beaches are formed by sediments from bluffs and streams, but that the process is interrupted by shoreline modifications. He also mentioned that riparian vegetation is limited, losing the regulation of microclimates and nutrients that it would provide. Mr. Krueger continued by noting upland modifications and development that include high areas of impervious surface. He said the effect at the shoreline is that sediments are blown farther out into Puget Sound when they would have settled closer to shore and provided habitat to encourage spawning.

Mr. Krueger reported that:

About 57% of development is single family residential.

There is great access through the Marina, Redondo, and Saltwater State Park.

All species of Pacific salmon use the near-shore area for rearing and migration

There are 7 streams flowing into the sound within the jurisdiction, of which salmon use all but one.

There is patchy eelgrass, used by salmon and shellfish.

Shellfish in the area are widespread but there is a low density of them.

There is much bird use of the area, including heron rookeries and nesting eagles.

Summarizing opportunity areas, Mr. Krueger listed the following:

1. Areas around stream mouths. (At Des Moines Creek, for example, removing riprap revetments and riprap armoring around the stream mouth, replacing them with large, anchored woody debris and riparian plantings.)
2. Coordination with other City capital improvement projects upstream to make sure the near-shore improvements are not lost by flooding.
3. Public education opportunities:
 - a. Public information kiosks at the Marina and public fishing pier
 - b. Interpretive signs at S. 239th St. access stairs
 - c. Outreach to private landowners, especially where streams run through residential areas

Mr. Hill indicated that Adolfson would be revising the report after comments from the public, the agency and staff, then sending it to the Dept. of Ecology. There, he said, Sandra Lange, Project Manager, along with others on a technical team will review it. When their comments come back, he said, the report could be finalized in January, after which the focus can shift to updating goals, policies, shoreline environment designations and development regulations.

After Mr. Savage asked about the bulkheads along the shoreline, Mr. Krueger said that although they were not good for the near-shore environment it would be difficult to ask any one homeowner with a failing bulkhead to be the only one to use "soft-shore" techniques. Rather, he said, it would be good to look first for the kind of opportunities for change that are presented at the parks and other public places.

Mr. Colvard asked whether the consultants had paid attention to invasive species, like English Ivy, along the shoreline. Mr. Krueger indicated that they had not. Mr. Hill suggested that there might be more attention paid to that in upstream areas where residential lawns come right down to the streams. He mentioned that with some public education it would be possible to encourage homeowners in such areas to replace invasive species with native plantings.

Mr. White raised the issue of the sea rising as much as 6 inches in 50 years and asked if all the shoreline improvements might eventually be washed away. Mr. Krueger affirmed the long-term concern and said it could be addressed as the work of inventory progresses.

Mr. Savage asked when this project would be revisited after it is completed. Mr. Hill deferred to Sandra Lange from the Dept. of Ecology. Ms. Lange noted that this work would bring Des Moines, an "early adopter", current ahead of the 2009 schedule. After that, the goal will be that Shoreline Master Programs will be updated on the same schedule with Comprehensive Plans. She continued by saying that the Goals and Policies that grow out of this work will become part of the Land Use Element of the Comprehensive Plan, but they always will come from the Shoreline Master Program, which is approved by the Dept. of Ecology. Ms. Lange also said future changes and amendments go through a different process than others in the Comprehensive Plan. They are submitted to the Dept. of Ecology and approved there.

Chair Kalve suggested that clarification of the relationship between the Shoreline Master Program and the Comprehensive Plan be reflected in the documents being produced in this process.

Ms. Carlson mentioned that the Shoreline Master Plan would be updated every five years, like the Comprehensive Plan. Mr. Hill suggested that amendments to Goals and Policies in the Comprehensive Plan that would affect the Shoreline Master Program could be submitted to the Department of Ecology without the necessity of an Inventory and Characterization process each time. Ms. Lange confirmed that.

Public Comments and Questions

When Chair Kalve opened the floor to comments and question from the public, one came forward:

Aly Larkin, 21937 7th Ave. S., Des Moines, WA 98198

Ms. Larkin applauded the Agency for looking at the Shoreline Master Plan. She emphasized her concern that the community should repair the damage that has been done along the shoreline over a long period. She suggested that education and information sharing is a key ingredient of the process. She emphasized that if we do not take care of the shoreline and inter-tidal area, we are not taking care of ourselves and that our future depends on it.

Chair Kalve then concluded the public comment period when no one else came forward. He asked that Agency Members review the present document and get their comments back to Ms. Carlson by November 14th, so they could be forwarded to the Department of Ecology in a timely manner.

NEXT MEETING DATE: December 6, 2004

ADJOURNMENT

At 8:10 p.m. a MOTION was made by Mr. Proulx, seconded by Mr. Colvard, and passed unanimously, to adjourn the meeting.

December 7, 2005

To: Bob Sheckler, Mayor
Scott Thomasson, Mayor Pro Tem
Richard Benjamin, Council Member
Dan Sherman, Council Member
Gary Petersen, Council Member
Maggie Steenrod, Council Member
Susan White, Council Member

EXHIBIT F

CC Tony Piasecki, City Manager
Grant Fredricks, Planning, Building and Public Works Director
Robert Ruth, Planning Manager

I am very pleased to have had the opportunity to participate in the drafting on the City of Des Moines Shoreline Master Program as a member of the Planning Agency. With our substantial shoreline it is appropriate for our City to test the planning implementation of the State's Shoreline Management Act.

The document that we on the Planning Agency reviewed and forwarded to the City Council with the recommendation that you approve it is very good. There are, however, a few issues that I differ with based on my several years as a volunteer with several Puget Sound conservation organizations, as well as my interest in planning efficiency.

There are, therefore, four further changes that I ask that you consider making in this minority report as a Planning Agency member:

Paragraph 3.2.1, second Goal, lines 28 and 29, (p3.2) states that the City will "ensure that land use patterns.....will be sensitive to *existing* shoreline habitats and ecological systems". I encourage the City Council to consider changing to ".....sensitive to *native* shoreline habitats and ecological systems".

There are remaining paragraphs that use the term "no net loss" of shoreline ecological functions. They are: Paragraph 3.1, line 14; 3.2.7.1 A; 3.2.7.2.3; 3.2.7.4.5 and 6; 5.1.2.3; 5.1.2.6; and 5.3.2.2. These are all paragraph statements of Goals or Policies. I wish to encourage these statements to be consistent with the Shoreline Management Act statement of "*Master program provisions should be designated to achieve overall improvements in shoreline ecological functions over time, when compared to the status upon adoption of the master program*" (WAC 173-260201 (2) (f)). (See paragraph 4.3 of the draft document). The Shoreline Master Program that the City Council adopts should give us a chance for cumulative net gain over time. It will be difficult achieve a "net gain" if we build to "no net loss".

Paragraph 7.2, page 7.4, Paragraph 7.2, Exemptions from Substantial Development Permit Requirements, includes an exemption in 7.2.6 of up to "two hundred fifty (250) cubic yards" for construction of a single family home. I believe that it is in the City's

best interest to limit the exemption to 100 cubic yards, the same as our SEPA requirements. I have walked the entire Des Moines shoreline, and I have a difficult time imagining anywhere along that shoreline where 250 cubic yards of grading is not a "substantial" shoreline development with the attendant permitting reviews.

A final item, which is not as urgent, but is unclear: Paragraph 6.2.2. refers to a "Shoreline Administrator" who may reduce buffers from 50 feet to 10 feet Paragraph 6.2.2.2), building setback lines (6.2.2.4), and "hillsides or seismic hazard restrictions (paragraph 6.2.2.1). Since we do not have a "shoreline administrator" we should name who the person is in our City government, such as the "City Manager or designee". Second, should we specify these exception processes, a regular report on all such exceptions granted by the identified responsible individual should be made to the City Council.

Respectfully submitted as a Planning Agency member's minority report.



Sven Kalve December 7, 2005

Shoreline Master Program

Review of Process and City Council Comments

February 9, 2006

SUMMARY OF REVIEW PROCESS

Consistent with the procedural requirements for a Type VI land use action as stated in the Des Moines Municipal Code, the City Council is reviewing the draft update of the City's Shoreline Master Program (SMP). The document has been reviewed, as required, by the Des Moines Planning Agency; it recommended in November 2005 that the City Council adopt the draft that the Council is now reviewing. The reason the city is updating the Shoreline Master Program is because our SMP (as well as the SMP's of other jurisdictions in Washington State) is required to be amended to be consistent with new state guidelines prepared by the Department of Ecology.

The last meeting of the City Council in which the SMP was reviewed and discussed was on February 2, 2006. The public hearing for this matter was opened on January 26, 2006, remained open for the February 2, 2006 meeting, and is continued to February 9, 2006. Staff completed the review of the shoreline environment designations (Chapter 5) and also presented the SMP goals and policies (Chapter 3) and the restoration planning element (Chapter 4) at the February 2, 2006 meeting. The Council asked questions about the shoreline designations component, but due to the lateness of the meeting, continued the hearing to February 9, 2006. There was no time to receive public testimony on the new information presented at the last meeting related to Chapters 3 and 4 (Master Program Goals and Policies and Restoration Planning). The Council needs to receive public comment on these topics, but it is recommended that Council allow staff to present the final two remaining SMP topics (Development Standards/Regulations and Administrative Procedures) and then receive public testimony for Chapters 3, 4, 6, and 7 together at this meeting.

At the conclusion of the February 9, 2006 meeting, staff should have completed presenting all portions of the SMP update to Council. The SMP is a large document, but Council should remember that the entire SMP is not being re-written. Accordingly Council may find it appropriate to target its review on those aspects of the SMP that have been funded by the state and mandated to be changed by the state. A complete rewrite of the SMP is not what is required to comply with the new state guidelines. The City has not received funding from the state for this level of work nor has the Council approved the contract with our consultant for tasks involving that level of work. After the public hearing has been closed and all Council deliberations have occurred, the Council will have to formalize its decision on this matter. The Council will not be taking action for final adoption of the SMP at this time. Staff mentioned in previous discussions that the Department of Ecology must first complete a review of the city's SMP and has the ability to accept, direct modifications, or reject the city's SMP.

Recommendation

Staff recommends that the City Council direct staff to forward to the Washington State Department of Ecology the draft SMP as recommended by the Planning Agency or with specifically directed modifications made by Council. Either of the follow motions is recommended.

Motion 1: "I move to direct city administration to forward the December 5, 2005 draft of the Des Moines Shoreline Management Program Update to the Washington State Department of Ecology for its technical review".

OR

Motion 1a: "I move to direct city administration to forward the December 5, 2005 draft of the Des Moines Shoreline Management Program Update to the Washington State Department of Ecology for its technical review with the following changes:

1.
2.
3. (etc.)".

City Council Comments (February 2, 2006)

The following comments were noted at the previous meeting. City staff responses follow each Council remark.

Comment 1: Should the portion of the shoreline adjacent to the Des Moines Beach Park be Urban Conservancy or High Intensity given future city desires to further develop the Des Moines Beach Park shoreline area for increased public access and perhaps a promenade that could involve hard structure improvements?

Staff Response- Staff recommends maintaining the Urban Conservancy designation. The High Intensity designation is tailored toward accommodating intense waterfront use and development, e.g. intensive commercial enterprises and transportation facilities. Neither designation would preclude the city from bulkhead work as mentioned at the previous meeting. The key difference would be that a bulkhead in the Urban Conservancy designation would require a higher level of review (Council review of a shoreline conditional use permit) instead of an administrative review of a bulkhead proposed in the High Intensity designation.

Comment 2: Should environment designation maps account for the "full extent" of improvements that make up the north bulkhead at the marina and the breakwater and designate them as High Intensity?

Staff Response- Yes. These are existing systems are appropriate to designate as High Intensity to ensure that ongoing maintenance can be achieved as provided for in the draft SMP. The maps that are contained in the SMP are cartographically represented and intended to depict generalized geographic conditions—not precise engineered plans or surveys of as-built conditions. The maps are intended to encompass the full extent of the systems that make up the marina, including submerged improvements or improvements in the tidal zone which are dynamic.

Comment 3: Should the fishing pier at the marina be wholly in the High Intensity designation or should the pier be partially in the Aquatic designation and partially in the High Intensity designation as currently recommended?

Staff Response- Ironically, mapping the entire fishing pier as High Intensity may be more limiting for the city if it plans to expand or change existing over water usage in this general area or the physical size of the pier in the future. The aquatic zone boundaries are broader and less defined than High Intensity and the City may benefit from that if it would like to keep options open for future transport systems (for example) that would use the pier or require physical modifications of the pier. This question has caused staff to re-evaluate supporting management policies in the Aquatic Environment (5.4.2) on page 5-7. If the Council agrees to keep the mapping the same as recommended, staff would also recommend bolstering policy 5.4.2 (1) to reflect future usage and expansion of existing piers in the Aquatic designation that abut High Intensity areas. This would give the city the most flexibility in planning for public dock/pier facilities both in the Marina and Redondo areas.

Comment 4: The lower Woodmont area has a private park along the shoreline area. Should this park be designated as Shoreline Residential or Urban Conservancy?

Staff Response- Staff recommends maintaining the Shoreline Residential designation to maintain the consistency of how the use of this area is supported by management policies in the draft SMP. The management policies contained in the draft SMP related to Urban Conservancy are generally tied to publicly owned shorelines whereas the recommended Shoreline Residential designation is oriented toward "community recreational facilities" for multi-family or multi-lot residential development.

Comment 5: The Redondo area has over water uses and improvements, but the shoreline environment designations map extends upland from the high water mark. Where does the High Intensity boundary start and stop relative to these uses and properties?

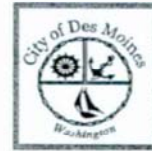
Staff Response- Similar to comment 2 above regarding mapping specificity, the map is intended to designate these areas as High Intensity. However, staff believes that mapped area around these uses/improvements could be more representative of and better mimic current conditions. Staff recommends some minor modifications to the map be made (some protrusions out into the water of the High Intensity color coding of an approximate shape to match what is there).

Comment 6: Should the SR designation at the southern City limits be extended to encompass all land within 200 feet of the high water mark?

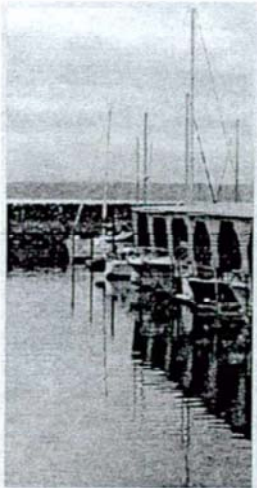
Staff Response- Yes, staff recommends that the map be changed to reflect this issue.

Comment 7: The environment designation map shows a small bulge upland at the mouth of Massey Creek. Is this intended to reflect tidal influences on the creek and should the other streams be mapped similarly?

Staff Response- This bulge in the map pattern does not accurately reflect the mapping of the regulated shoreline area from the high water mark and should be changed. Tidal influenced areas at the mouth of streams and creeks may impact the mapping of flood impacted areas (FEMA maps), but not how shoreline areas are regulated. Staff recommends removing the bulge and making the map consistent with other areas of the city where streams enter Puget Sound.



Des Moines Shoreline Master Program Update



Des Moines City Council

February 9, 2006

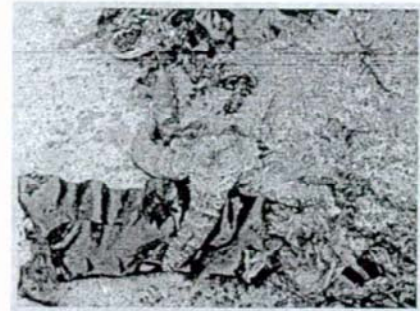
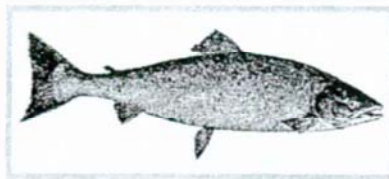
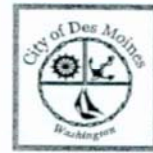
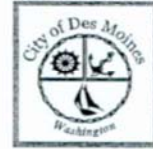


EXHIBIT 4



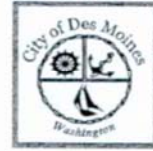
Overview

- Ch. 6 - Development Standards and Use Regulations
 - Ch. 7 - Administrative Procedures
 - Ch. 8 - Definitions
 - Next Steps
-



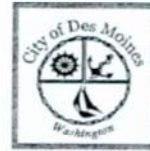
Chapter 6 – Development Standards and Use Regulations

- Link to Environment Designations (Chapter 5)
- Link to Permit Procedures (Admin Procedures – Chapter 7)
- Table 6-1 Permitted Use Table
- Distinguishes “modifications” versus “uses”
- New section for Critical Areas (DMMC 18.86)
- Clarifies “prohibited uses”
- Addresses “non-conforming uses and developments”



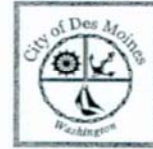
Chapter 7 – Administrative Procedures

- Permit procedures for SMP
 - Consistent with State requirements (WAC 173-27)
 - Clarifies current practice – Figure 7-1
 - Levels of review:
 - Exemptions (single-family development, repair and maintenance)
 - Shoreline Substantial Development Permit (Administrative decision)
 - Shoreline Conditional Use Permit (Quasi-judicial plus Ecology review)
 - Shoreline Variance (Quasi-judicial plus Ecology review)
-



Chapter 8 - Definitions

- 1988 SMP Glossary
- Shoreline Management Act (RCW 90.58) and Implementing Guidelines (WAC 173-26)
- Des Moines Zoning Code (DMMC 18.04)



Next Steps

- Ecology Review
- SEPA
- Adoption
- Public Process - ongoing



The following comprehensive set of shoreline goals *and policies* provide the foundation and framework on which the balance of the SMP has been developed, commensurate with the intent and objectives of the SMA.

3.2.1 Shoreline Use Element

An element that deals with the distribution, location and extent of: (1) the use of **shorelines** and adjacent areas for housing, commerce, transportation, public buildings, utilities, education and natural resources; (2) the use of the water for recreation and transportation; and (3) the use of the water, shoreline and uplands for other categories of land and water uses and activities not specified in this SMP.

GOAL

A. *Preserve or develop **shorelines** in a manner that assures a balance of shoreline uses with minimal adverse effect on the quality of life, water and environment. Recognize that land use and water management activities on adjacent uplands affect the quality of the City's shorelines.*

POLICIES

1. Encourage intensive uses to locate in **developments** in or adjacent to the **Marina**.
2. Protect the natural **topography** of undeveloped portions of the shoreline.
3. Encourage nonresidential uses or activities that are not shoreline dependent to locate or relocate away from the shoreline.
4. Minimize sprawl and inefficient use of shoreline areas by locating new commercial **development** where other commercial **development** already exists.
5. Design shoreline **structures** to be visually compatible with the shoreline character.
6. Locate shoreline **structures** to minimize view obstruction.
7. Consider the goals, objectives and policies in this SMP in land use and water management actions on adjacent uplands and associated **wetlands** or streams where such use or **development** may have an adverse effect on designated **shorelines**.

GOAL

A. *Ensure that the land use patterns within the shoreline will be compatible with adjacent land use and will be sensitive to existing shoreline habitats and ecological systems.*

POLICIES

1. Protect unique and fragile areas of the shoreline from upland or adjacent uses or activities that may have an adverse effect on the shoreline environment.
2. *Prohibit any proposed shoreline or adjacent land use **development** that would have a significant adverse impact on the **water quality** of Des Moines, Smith, Barnes, Massey, McSorley, Woodmont, Redondo, or Cold Creeks.*

3. Formal plats and short subdivisions *located in or adjacent to the shoreline* **shall** comply with SMP goals and policies.
4. No new construction, except shoreline stabilization **structures**, that significantly reduces the flood storage capacity of the **streambed** or increases flood hazards to upstream properties or otherwise endanger public safety **should** be allowed within the limits of the one hundred-year (100-year) **flood plain** unless reasonable flood and ecological protection is provided.

GOAL

- A. Preserve the character of existing single-family residential areas.

POLICIES

1. Single-family residential areas **should** be protected from encroachment by commercial or multifamily residential uses.
2. Residential densities **should** not exceed the **carrying capacity** of Des Moines shorelines.
3. Multifamily residential **developments** **should** be designed to adequately **buffer** single-family areas.
4. Residential construction **should** not adversely impact shoreline features or shoreline **ecological functions**.
5. **Permit** applications for single-family residences and accessory **structures** in the **shoreline jurisdiction** **should** be reviewed for compliance with the SMP, although a **Substantial Development Permit** may not be required.

3.2.2 Public Access Element

An element making provision for **public access** to publicly owned **shorelines** and assessing the need for providing **public access** to shoreline areas.

GOAL

- A. Increase **public access** to shoreline areas.

POLICIES

1. ***Public access** to the City's shoreline **should** be addressed in the City's Comprehensive Parks and Recreation Plan.*
2. ***Public access** improvements **should** not result in a net loss of shoreline **ecological functions**.*
3. Priority for access acquisition **should** consider resource desirability, availability and proximity of population.
4. ***Shoreline development** by public entities, including local governments, state agencies, and public utility districts **should** include **public access** measures as part of each **development project**.*

5. Where appropriate, utility and transportation rights-of-way on the shoreline **should** be made available for **public access** and use.
6. Publicly owned street ends that abut the shoreline **should** be retained when the goal of this element is met.
7. The **Marina** **should** be examined for its potential to provide additional **public access** to the Des Moines shoreline.
8. Where appropriate, shoreline recreational facilities and other **public access** points **should** be connected by trails, bicycle pathways and other access links.
9. Public pedestrian easements and access points **should** be of a nature and scale that will be compatible with the abutting and adjacent land use as well as natural features, including aquatic life.
10. Appropriate signs **should** be used to designate developed, publicly owned **shorelines**.
11. Within the shoreline environment, pedestrian and non-motorized access **should** be encouraged.
12. Access development **should** respect and protect ecological and aesthetic values in the **shorelines of the state**.
13. *Major public access improvements should be designed to meet Americans with Disabilities Act (ADA) standards.*
14. **Public access** to and along the water's edge **should** be available within publicly owned **shorelines** that are tolerant of human activity where municipal liability is an acceptable risk. *None of the above policies should be construed to take precedence over the City's obligation to provide for the public safety, to maintain publicly owned properties or to protect the assets of the City from unacceptable municipal liability.*

GOAL

- A. **Public access** development **should** respect rights of shoreline property owners.

POLICIES

1. Shoreline access and ancillary facilities **should** be designed and developed in consideration of adjacent private properties.

GOAL

- A. **Public access** **should** be maintained and operated to provide for the public health, safety, enjoyment of the users and minimize liability risks to the City.

3.2.5 Economic Development Element

This is an element for the location and design of transportation, port, tourist and commercial facilities, and other **developments** dependent upon shoreline locations.

GOAL

A. Provide long-range benefit to human economic pursuits while assuring compatibility with the environmental and physical conditions of the designated shoreline.

POLICIES

1. Priority **should** be given to **developments** that are dependent on a water location rather than water-oriented **developments**, which are less dependent on water access.
2. Priority **shall** be given to those water dependent and water-oriented commercial **developments** that would provide an opportunity for substantial numbers of people to enjoy the **shorelines**.
3. Over-the-water, non-water dependent **structures** on the **shorelines** **should** be prohibited.
4. Shoreline **developments** **should** be designed to accommodate or enhance scenic views and amenities of the Des Moines waterfront.
5. Economic developments within the shoreline **should** be compatible with the Des Moines Revitalization and Economic Development Plan.

3.2.6 Archeological and Historic Resources Element

This is an element for the protection and **restoration** of buildings, sites, and areas having historic, cultural, educational or scientific values, *including unknown archaeological resources that may be located in the shoreline area.*

GOAL

A. *Preserve, protect, and restore buildings, sites, and areas of the shoreline that have historical, archeological, or cultural value.*

POLICIES

1. *Within the **shoreline jurisdiction** all buildings and shoreline sites having archeological, historic, or cultural significance, as determined by the City, the State Department of Archeology and Historic Preservation, and any affected Indian Tribe, **should** be preserved.*
2. *Shoreline use regulations **should** encourage the **restoration, development** and interpretation of historical, cultural and educational *building or shoreline areas.**
3. Encourage the preservation of historic buildings within its **shoreline jurisdiction**.

8. *When evaluating alternate flood control measures, consider the removal or relocation of structures in flood-prone areas.*

3.2.8 Conservation and Restoration Element

An element for the preservation of the natural shoreline resources, considering such characteristics as scenic vistas, parkways, **water quality**, **vegetation**, beaches and other valuable natural or aesthetic features. *An element to promote and encourage restoration of shoreline functions and ecological processes that have been impaired as a result of past development activities.*

3.2.8.1 Shoreline Stabilization

An element for balancing protection of existing development with conservation and restoration of coastal processes and beach resources.

GOALS

Where necessary to protect existing or planned **development**, encourage shoreline stabilization designs that minimize alterations and adverse effects to natural coastal processes.

POLICIES

1. Where shoreline protection **structures** are required, contiguous property owners needing protection **should** be encouraged to participate.
2. Shoreline protection activities that may necessitate new or increased shoreline protection on the same or other affected properties where there has been no previous need for protection **should** be discouraged.
3. New **development** and shoreline dependent uses **should** be encouraged to locate so new shoreline protection measures are not needed.
4. Structural solutions to reduce shoreline damage **should** be allowed only after it is demonstrated that nonstructural solutions are not practical.
5. Whenever shoreline protection is needed, natural **berms** and vegetation **should** be favored over artificial means.
6. Naturalistic shoreline protection measures **should** be encouraged for **bluff** and shore stabilization, such as creation of beaches that absorb and dissipate wave energy.
7. **Breakwater** construction **should** be considered only in **marine** shoreline environments where protection from high wave action is essential.

3.2.8.2 Water Quality

An element for the preservation and improvement of water quality in waterbodies that influence the City's shoreline resources.

A G E N D A I T E M

SUBJECT:
2004/2005 Comprehensive Plan
Amendments

ATTACHMENTS:

1. Administration Memo
2. CTED review letter
3. Draft Ordinance 05-216

2-9-06
AGENDA OF: February 2, 2006
DEPT. OF ORIGIN: Administration. *JK*

DATE SUBMITTED: November 22, 2005

CLEARANCES:

[X] Pl. Bld. & PW *MS*
[X] LEGAL

APPROVED BY THE CITY MANAGER
TH

Purpose and Recommendation:

The purpose of this agenda item is to review and adopt the 2004/2005 Comprehensive Plan amendments. This new packet includes information from previous packets along with two additional items:

- **Reordered and updated Administration memo (attachment 1)**
- **Department of Community, Trade and Economic Development (CTED) review letter dated November 16, 2005 (attachment 2)**

At the November 17, 2005 meeting Council directed Administration to delay all redesignations on the land use maps. Earlier that evening Council directed Administration to include the Mitchell/ Chamlian redesignation in the 2004/ 2005 land use map update. The Council, at this meeting also heard from respected land use attorney Michael Walter on the issue of removal of single family density notations from the land use map. His written review of this issue is attached to Administration's memo (attachment 1).

For more efficient Council review Administration has reordered its memo (attachment 1) to reflect correct numbering and Council action thus far. Staff will respond to the CTED review letter at the Council meeting.

Suggested Motions:

Motion 1a:

"I move to suspend Rule 26b to adopt the 2004/ 2005 City of Des Moines Comprehensive Plan on first reading".

Motion 1b:

"I move to adopt draft ordinance 05-216 relating to the 2004/ 2005 City of Des Moines Comprehensive Plan".

OR

Motion 2: "I move to pass Draft Ordinance 05-216 to a second reading".

OR

Motion 3: "I move to pass Draft Ordinance 05-216 as amended to a second reading".

OR

Motion 4: "I move to pass Draft Ordinance 05-216 as amended including the Mitchell/Chamlian redesignation to a second reading."

OR

Motion 5a: "I move to suspend Rule 26b to adopt the 2004/2005 City of Des Moines Comprehensive Plan as amended on first reading".

Motion 5b: "I move to adopt draft ordinance 05-216 as amended on first reading."

OR

Motion 6a: "I move to suspend Rule 26b to adopt the 2004/2005 City of Des Moines Comprehensive Plan as amended including the Mitchell/ Chamilian map redesignation request on the first reading."

Motion 6b: I move to adopt draft ordinance 05-216 as amended to include the Mitchell/Chamilian map redesignation on first reading."

Background:

Cities in King County planning under the Growth Management Act were required to review and if needed, revise their comprehensive plans no later than December 1, 2004. While comprehensive plans and development regulations should be updated as necessary according to a schedule established by RCW 36.70A130(4) they must occur in a deliberate manner every seven years. In November 2004 the City Council choose to delay passage of these amendments until a more thorough review could be conducted. The State of Washington Department of Community, Trade and Economic Development was informed of the Council's decision and has been kept inform of the City's progress over the past several months. Through a resolution, the City of Des Moines agreed to adopt a revised Comprehensive Plan by November 10, 2005.

A Council committee was selected and the first meeting was held in February 2005. The committee completed its work in September 2005.

A Determination of Nonsignificance was issued according to SEPA regulations. There were no comments or appeals.

Discussion:

To assist the Council in review of this document review of the document, the list below provides a summary of the changes contained in the document.

Global changes, issues and comments

- Changed "Findings" to "Background and Context" to include all types of information provided in those sections
- Changed table of contents accordingly
- Removed out of date EIS from document
- Included lists of appendices and changed tables, and figures lists
- Included a legislative history
- Included demographic data, and buildable lands report in appendix
- Changed reference to "Greater Des Moines Planning Area" to "City of Des Moines" since most of the planning area has been annexed. Future large annexations are unlikely. The title of the document has been changed to reflect this situation.
- Removed DMMC chapter references

- Changed text from "sensitive areas" to "critical areas" to reflect current RCW language.
- As per Council direction at its July 8, 2005 retreat revised land use maps to reflect on single family residential(SF) designation as recommended by CTED.

Chapter 1 General Planning Element

- 1-02-04- Changed text to reflect current boundary conditions.
- 1-02-05-4-Urban growth boundary has been established
- 1-03-09- Woodmont/Redondo have been annexed
- 1-04-05-4- Since the "triangle" area has been resolved, language no longer necessary.

Chapter 2- Land Use Element

- Removed Figures 2-1 and 2-2
- 2-02-02 Replaced specific demographic data with summary statement of current conditions. Detailed demographic data will be presented in appendices to allow for simpler updating. Appendix A presents current demographics and future estimates. Appendix B includes the current Buildable Lands Report.
- 2-02-03-same as above
- Replaced various single family designations to one on land use maps.
- Revised and updated land use map designations
- Replaced out of date language throughout chapter
- 2-02-06/07-All density and demographic information moved to appendices
- 2-03-02 added language to comply with current state requirements.
- 2-03-11-added reference to comply with RCW 36.70A.510
- 2-04-03-consistency between development regulations and comprehensive plan achieved, tables no longer necessary.
- 2-04-05 restated need for development of a public facility zone
- 2-04-12 Included allowance for lot averaging as required by state law

Chapter 3 Transportation

- 3-02-01 Added statement to identify the requirements listed in the GMA for a comprehensive plan's transportation element.
- 3-02-02- Section added to explain the relationship between the City of Des Moines Comprehensive Plan and the Comprehensive Transportation Plan (CTP). The section should also direct the reader to the CTP for detailed information regarding the city's transportation planning.
- 3-02-03- same as above
- 3-02-04- The section was amended to reference the CTP.
- 3-02-06- Changed to establish the new planning horizon and refer to the CTP.
- 3-03-02- Added statement to direct the City to base the Transportation Element on the CTP and to keep the CTP current in compliance with RCW 36.70A.070.

- 3-04-01- (1) Changed for consistency with CTP definitions. (2) Changed to comply with RCW 36.70A.070. (3) Changed in consultation with Transportation Engineer. Previous information was out of date.
- 3-04-07- Changes made in consultation with the Transportation Engineer. Because the City is building very few roads and ongoing funding for tree maintenance is not foreseeable in the future.

Chapter 4- Conservation Element

- 4-01-01- Revised goals, policies and strategies sections to reflect inclusion of "best available science" (BAS) in protection critical areas in compliance with RCW 36.70A.172.
- 4-02-03- Added references to "best available science" to comply with RCW 36.70A.172.
- 4-02-08- Changed to define importance of critical areas as defined in GMA and WAC 365.195.
- 4-02-09- Statement added providing GMA background, definitions and requirements relating to critical areas and "best available science".
- 4-02-10- Added statement listing GMA defined critical areas that are in the City of Des Moines. Figures cited notate maps.
- 4-02-15- New language added to include BAS.
- 4-02-20- Updated language
- 4-03-02- Added policy statement directing City to comply with GMA critical areas requirements and timetables.
- 4-03-03- Added policy statement directing city to review and revise critical areas policies and regulations using BAS
- 4-03-04- Added policy statement, in compliance with RCW 36.70A.480 to establish level of protection for critical areas within shorelines governed by the Shoreline Management Program.
- 4-03-05- Added policy directing City to explore limiting the review process for land uses decisions in or near critical areas and shorelines.
- 4-04-01- (4) Provides better direction on erosion control practices during construction. (10) and (11) are derived from WAC 365-195-925 that deal with anadromous fish.
- 4-04-02- Amended critical areas strategies regarding protection of critical areas and BAS. Underlined statements reflect WAC 365-195-905 defining science and directing what to do in cases where science is not available or not used.
- 4-04-04- (11) reflects new information.

Chapter 5- Capital Facilities, Utilities and Public Services Element

- 5-02-01-02-03 –reformatted language.
- 5-02-09- Reflects updated document list
- 5-02-10- Added statement includes state and regionally owned transportation as essential facilities in compliance with RCW 36.70A.200.
- Administration recommends adding Six Year Capital Improvement Plan to Comprehensive Plan as an appendix to satisfy GMA requirement of establishing a funding strategy for capital improvements.

Chapter 6- Parks, Recreation, and Open Space Element

- Generally, goals and policy chapter of the Parks, Recreation and Senior Services Master Plan, adopted January 2004 is incorporated in this Element. Primarily formatting activities in this Element that reflect Ordinance 1332.
- 6-03-06 Park Classification standards reformatted from 6-05-01

Chapter 7- Housing Element

- 7-02-04(5)- Replaced with Buildable Lands report.
- 7-02-06- Revisions reflect more detailed and current information contained in Appendix A and B.
- 7-02-12- Reflects new state law regarding manufactured housing.
- 7-04-13- Reflects RCW 36.70A.400 which requires cities planning under GMA to allow accessory dwelling units (ADU's) with kitchens in single family neighborhoods. Currently, our code allows for these facilities, but without kitchen facilities.
- 7-04-14- As pre Council direction at its July retreat, proposed policy language to allow cottage housing in single family and multifamily zones when appropriate criteria can be met.
- 7-04-17- Recommends textual code change to allow the design review process at the final, rather than preliminary plat process. Council reached consensus on this issue at its July retreat.

Chapter 8- Community Character Element

- 8-01-01- (2) (4)- changes recommended by Council committee
- 8-04-01 (c)- Editing Error: Statement should be included
-

Chapter 9- North Central Neighborhood Element

- Only minor formatting changes. Language updated and modernized to reflect adoption of zoning regulations
- 9-02-07- Relocation of east subarea into PR-C2 reflected
- 9-03-02- Statement revised to allow for large retail uses when part of an adopted master plan
- 9-04-09/10- Statement revised to reflect Steven J. Underwood Memorial Park access issues
- 9-04-14- As per Committee direction, statement revised to allow some outdoor storage through the master plan process.

Chapter 10- Downtown Neighborhood Element

- Generally, minor formatting changes and updating of information
- 10-02-04- Specific data removed and appendices referenced.
- 10-02-05- Statement deleted due to outdated information
- 10-03-03- Statement deleted due to outdated information
- 10-04-17 and 18- Statements deleted due to outdated information and completion of both projects.

Chapter 11- Pacific Ridge Element

- Generally, minor formatting changes. Language revised to reflect adoption of Pacific Ridge zoning regulations and design guidelines, completion of Pacific Highway improvements.

Alternatives:

1. Adopt 2004/2005 City of Des Moines Comprehensive Plan on first reading.
2. Pass 2004/2005 City of Des Moines Comprehensive Plan to second reading.

Financial Impact:

If the City misses its deadline it could significantly impact the City's ability to apply for certain grants and programs beginning in 2006.

Recommendation/Conclusion:

It is recommended that Council adopts the 2004/2005 Comprehensive Plan amendments that include the Mitchell/Chamlan redesignation and removal of the single family map notations (**Motion 4**). It is also recommended that if Council desires revisions to the schedule or amendment process to begin these discussions early in 2006.

Concurrence:

The Legal Department has reviewed this packet.

Memorandum

To: City Council members
Via: Tony Piasecki
From: Judith S. Kilgore
Date: 11/21/2005- updated
Re: Comprehensive Plan Remaining Issues

Based on the October 8, 2005 retreat Administration has organized the remaining Comprehensive Plan issues identified by Council for further discussion at the public hearing. Administration suggests using this memo as a guide at the public hearing and that the Council resolves each of the following issues by motion.

CHAPTER 1- GENERAL PLANNING ELEMENT

Issue 1: Based on the discussion at the retreat regarding this Comprehensive Plan Strategy should the Council revisit and possibly redesignate and rename neighborhood boundaries now or during the 2006 Comprehensive Plan review?

1-04-01 Planning Consistency

- (1) ———As part of the Comprehensive Plan, prepare plans guiding growth and development in each of the following neighborhoods in Des Moines, ~~and its planning for the surrounding area. Recognize this area as the Greater Des Moines Planning Area (see Figure 1-1, Neighborhoods Map):~~

- | | |
|-----------------------------------|---------------------------------------|
| (a) Central Des Moines | (f) Pacific Ridge |
| (b) Downtown | (g) Woodmont |
| (c) North Central ("Flight Path") | (h) North Hill [Ord. 1265, § 4, 2000] |
| (d) Zenith | (i) Redondo |
| (e) South Des Moines | |

Council decision: Revisit in 2006

ATTACHMENT 1

Issue 2: Should the Council adopt the following proposed schedule?

1-04-01 (7) Establish a schedule to review one or more elements of the Comprehensive Plan each year so that all elements may be regularly amended to present an accurate statement of existing city policy. This schedule should ensure that each element of the plan is reviewed as often as necessary to remain current, but at least once every five years. A proposed schedule is included in Appendix C. The plan should be amended no more frequently than once each year, except in emergency situations when the City Council determines that a more frequent amendment is necessary in the public interest.

APPENDIX C (proposed)

General Planning Element	2006
Downtown Element	
<u>Land Use Element</u>	
Land Use Element	2007
<u>Downtown Element</u>	
Transportation Element	2008
Conversation Element	
Capital facilities, Utilities and Public Service Element	2009
Parks, Recreation and Open Space Element	
Housing Element	
Community Character Element	2010
North Central Element	
Pacific Ridge Element	

Council Decision: Include schedule as amended in final document

Issue 3: Should public notice include posting on website and cable access?

1-04-031-04-02 Citizen Involvement

- (1) Involve citizens in the process of preparing and amending the Comprehensive Plan and development regulations by using such techniques as Planning Agency review, public opinion polls, advisory committees, newspaper articles, public hearings, and public workshops.
- (2) Conduct public hearings on all development proposals that seek changes from existing development regulations (e.g., rezones, variances and planned unit developments) or which are potentially incompatible with neighboring development (e.g., conditional and unclassified uses) prior to city approval of those proposals. Provide an opportunity for public comment on all development proposals subject to SEPA review. ~~(chapter 16.94 DMMC; chapter 18.64 DMMC)~~
- (3) Notify the public of all development proposals involving SEPA review or public hearings by **using the most efficient methods available**, mailing notice to nearby property owners, erecting public information signs on site, publishing notice in the newspaper, the City's website and cable access channel, notifying school districts, and posting notices at public buildings. ~~(chapter 16.04 DMMC)~~

Council decision: Include statement as revised in final document**CHAPTER 2-LAND USE ELEMENT**

Issue 4: Shall the Council include the following revision?

GOALS

~~2-01-01 To create a balance of land uses that p-~~ Preserve and enhance the diverse residential neighborhoods, of the community and serve them with vibrant business districts, open space, recreational facilities, affordable housing and other supportive land uses, protect environmentally sensitive areas, and promote economic development.

~~2-01-022-01-01 To create and maintain safe, healthy and diverse neighborhoods. These neighborhoods should contain a range of affordable housing and employment opportunities, school and recreational facilities and should be designed to protect the natural environment and significant cultural resources.~~

Council decision: Include statement as stated in final document

Issue 5: Shall the following revision be included in the final draft?

~~2-02-01 2-02-03~~—The City of Des Moines has more than adequate capacity to meet its GMA residential target. with a surplus of approximately 437 units over the target. The City also has surplus capacity for jobs over its GMA target. Details of the residential, commercial, and industrial land capacity, as well as housing densities and targets are provided in

Appendix B. Full development under the 1981-1990 Greater Des Moines Comprehensive Plan would result in a 34% increase in the number of apartments and condominiums and 19.5% increase in single family units within the City of Des Moines. This would result in 59% of the total dwelling units being apartments and condominiums, and 41% being single family. This Greater Des Moines Comprehensive Plan would result in 52% of total dwellings being apartments and condominiums and 46% single family, and the total number of dwelling units would be less than under the 1981-1990 plan.

Council decision: Include statement as written in final document

Issue 6: Shall the Council keep the following statement without revision?

2-02-0602-02-04 —Generally, the City of Des Moines meets the residential density requirement of 4 units per acre by neighborhood.

Council decision: Include statement as written in final document

Issue 7: Shall the Council remove the word "existing" from the following statement?

2-03-062-03-03 —————Ensure that Limit future development to areas where has adequate existing public facilities and services exist or such services can be concurrently provided.

Council decision: Remove the word "existing" as written in final document

Issue 8: Shall the statement below be revised as follows?

- (1) Promote new development and redevelopment within the Downtown Business District consistent with community character to reflect and enhance its ties to the waterfront, pedestrian orientation, and role in serving local shopping and service requirements. (chapter 18.27 DMMC)

Issue 9: Shall single family residential density designations be removed from the land use maps included in this Element?

i.2-04-01 —Classify land on the City of Des Moines Zoning Map consistent with the use and density designated by the Greater Des Moines Comprehensive Plan Land Use Map (Figures 2-4 through 2-12). (chapter 18.06 DMMC) Create consistency between the uses and density designated in the Greater City City of Des Moines Comprehensive Plan with those designated on the City of Des Moines Zoning Map.

(1) —Land designated by the Land Use Map for single family development should have the following densities and zoning: (chapter 18.08 DMMC)

Table 2-1. Single Family Residential Designations

Land Use Designation	Max. Density (DU/Acre)	Corresponding Zoning

Low-Density Single-Family	3	RS-15,000
Medium-Density Single Family	5	RS-9600, RS-8400
High-Density Single-Family	6	RS-7200

(2) — Land designated by the Land Use Map for multifamily development should have the following densities and zoning (chapters 18.10 through 18.18 DMMC):

Table 2-2. Multifamily Residential Designations

Land Use Designation	Max. Density (DU/Acre)	Corresponding Zoning
Townhouse/Duplex	9-12	RA-3,600
Medium-Density Multifamily	18	RM-2400
High-Density Multifamily	24	2.1.1 — RM-1800
Maximum-Density Multifamily	36	RM-900
Pacific Ridge Residential	n/a	2.1.2 — PR-R

[Ord. 1238 § 1, 1999]

(3) — Land designated by the Land Use Map for commercial development should have the following zoning:

Table 2-3. Commercial Designations

Land Use Designation	Planning Area Neighborhood	Zoning
Business Park	North-Central	B-P
Commercial	Downtown	D-C
Commercial	Pacific Ridge, South Des Moines, Woodmont, Redondo	H-C, C-C
Pacific Ridge	Pacific Ridge	PR-C-1, PR-C-2
Commercial	Zenith Neighborhood	B-N-B-N-N-C
Commercial	Central Des Moines	N-C
Commercial	Redondo	N-C

[Ord. 1265, § 4, 2000]

Administration Note: This issue was still being discussed by Council. Please refer to the attached legal analysis by Michael Walter on this issue. Based on early Council discussion a possible revision could state.

2-04-01 Create consistency between the uses designated in the City of Des Moines Comprehensive Plan with those designated on the City of Des Moines Zoning Map. The Zoning Map included as Appendix or as amended, shall officially designate land use and density in the City. Single family residential land uses designated by the Zoning Map must reflect and maintain existing neighborhood character by providing a variety of densities.

Issue 10: Shall the Council the following strategy be included in the final draft of the Comprehensive Plan?

The Des Moines Zoning Map should be amended to ~~includedesignate~~ a zone for public facilities. Properties designated by the Greater City of Des Moines Comprehensive Plan as public facilities should be zoned public facilities. ~~Zoning should be brought into conformance with the Greater Des Moines Comprehensive Plan Land Use Map as follows~~

Administration Note: This is a major policy issue. Council should be aware that currently our zoning map and Comprehensive Plan Land Use Elements are inconsistent. The Comprehensive Plan maps show specific public facilities while the zoning map does not. If Council adopts the statement above changes to the zoning code and the zoning map would be required. If Council chooses not to adopt the statement above, changes to the Comprehensive Plan Land Use Element maps would be required. This issue also effects 2-04-14.

~~2-04-162-04-14~~ Amend the zoning map to include a designation for Parks & Recreation and Public Facilities for properties that contain existing parks and public facilities and/or properties that are planned for future parks and public facilities. Amend the zoning code to include these two designations.

Issue 11: ~~How should the following properties be designated?~~ **Administration is recommending removal of this issue**

Map/site no.	Old Designation	Proposed new designation	Council decision
Downtown/6 (Beachstone condo)	Mixed-use(split parcel designation)	Residential	
Central-Des Moines/12 (SF residential/retail)	Mixed-use (split parcel designation)	Commercial	
Central-Des Moines/20 (Midway Cov. Church)	Mixed-use (split parcel designation)	Public-Facility-Church	
Pacific Ridge/25	Mixed-use (split parcel	Public-Facility	

(Puget Sound Energy)	designation)		
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CHAPTER 3-TRANSPORTATION ELEMENT

Issue 12: Shall the following revision be included in the final draft?

3-03-03 Create and maintain a road network containing a hierarchy of roads, with each road designed and improved to serve its desired function in the hierarchy.

Issue 13: Shall the following revision be included in the final draft?

~~3-03-133-03-13~~ Ensure adequate funding for needed transportation improvements and maintenance.

Issue 14: Shall the following revision be included in the final draft?

~~3-04-023-04-01~~ Public Transportation

- (1) Support programs of the King County Department of Metropolitan Services (METRO-King County) that expand the number of transit routes including intra-city, shuttle and circulator routes serving Des Moines, and that increase the frequency of service on existing routes.

Issue 15: Shall the following strategy be included in the final draft?

3-04-02(5) Encourage and support water-based transportation services that benefit Des Moines and the larger region.

Issue 16: Shall the following revision be included in the final draft?

3-04-05 Parking

- (1) Maintain standards that ensure new development provides a sufficient number of parking spaces on-site or in a shared facility to accommodate the expected demand under normal circumstances. ~~To minimize impervious surfaces, discourage the development of an excessive number of parking spaces.~~

Issue 17: Shall the following revision be included in the final draft?

3-04-07 Miscellaneous

- (1) Require developers to maintain *street-trees landscaping* when required as part of a subdivision, commercial, or other development.

Issue 18: Is the spelling of "anadromous" in the following Background and Context correct?

4-02-15

The Growth Management Act requires that cities give special consideration to conservation or protection measures necessary to preserve or enhance *anadromous* fisheries. The City must also included best available science when developing protection policies.

Administration Note: According to Random House Dictionary of the English Language (1971 edition) the spelling in above statement is correct.

Issue 19: Shall the following statement be included in the final draft?

~~4-03-27 The City of Des Moines should promote community designs that enable walking, bicycling and public transit use thereby reducing greenhouse gas emissions and regional air pollution.~~

CHAPTER 5- CAPITAL FACILITIES, UTILITIES, AND PUBLIC SERVICES ELEMENT

Issue 20: Shall the following statement be removed from the final draft?

~~5-02-08 City administrative services and staff have grown as the size of Des Moines has increased such that certain existing City facilities may require additional building or land area in the future.~~

Issue 21: Shall the following statements be revised in the final draft?

~~5-02-075-02-10 An inventory and analysis of the publicly owned capital facilities, and public/private utilities within the Planning AreaCity of Des Moines is are provided in section 15.7. These facilities and services can be summarized as follows:~~

- (1) **City Administration:** The City of Des Moines owns several properties and buildings that are used for the administration of City services. The maintenance, improvement and expansion of City facilities is guided by a six-year capital improvement program and an annual budget approved by the City Council. The capital improvement program prioritizes projects, establishes improvement schedules, and identifies revenue sources.

- (2) **Electricity:** The transmission of electricity to the City ~~Planning Area~~ is regulated by the Washington Utilities and Transportation Commission and is delivered by Puget Sound Energy ~~Power and Light~~.
- (3) ****Fire Protection:** Fire protection and other emergency services within the Planning Area ~~City~~ are provided by South King Fire and Rescue ~~King County Fire Districts 2 (Burien), 26 (Des Moines), and 39 (Federal Way)~~, and the fire departments of Kent and SeaTac. These services are guided by the comprehensive plans of the districts/departments.
- (4) **Hazardous Waste Collection and Disposal:** The collection and disposal of hazardous waste within the Planning Area ~~City~~ is provided for through an Interlocal Agreement between King County and the municipalities within the Planning Area ~~City~~. The Local Hazardous Waste Management Plan for Seattle-King County provides for regional coordination and funding of this program.
- (5) ****Library:** Library services in the Planning Area ~~City~~ are provided by King County Library District. The ~~City of SeaTac also receives library services from King County.~~ Adopted level of service guidelines direct the construction and expansion of library facilities. ~~A new King County library is planned for the was recently built in the Woodmont Neighborhood.~~ The Highline Community College also operates a library that is utilized by many residents of the Planning Area ~~City~~.
- (6) **Marina:** An A-836840-slip marina along Des Moines' shoreline is owned and operated by the City of Des Moines. The City's capital improvement program and annual budget guide the expenditure of funds for the operation of the facility. The 1995 Marina Facilities Master Plan will guide the scheduling and funding of future capital improvements. A The 2001 Comprehensive Marina Master Plan is in the process of adoption. The Plan will provide for new identifies near-term and long-term capital improvements, funding strategies and scheduling project schedules for the existing marina.
- (7) **Natural Gas:** Natural gas is distributed in the Puget Sound region by the ~~Washington Natural Gas Company~~ Puget Sound Energy. This utility is regulated by several governmental agencies. A franchise agreement authorized by the Des Moines City Council provides additional level of service requirements for the delivery of natural gas to customers within the City's corporate limits.
- (8) ****Parks and Recreation:** Publicly owned recreational facilities within the Planning Area ~~City~~ are operated by the Cities ~~y~~ of Des Moines ~~and Kent, King County,~~ the State of Washington, and the Highline and Federal Way School Districts. A regional dog park is operated in the of City of Seatac. City,

County and State Parks and Recreation Plans guide the administration of recreational programs of the respective jurisdictions. Various services, such as the Des Moines Senior Center, are provided at one or more of Des Moines' recreational facilities. The ~~1996-2003 Park and Recreation-2003 Parks, Recreation and Senior Services~~ Master Plan will help guide the scheduling and funding of future capital and programmatic improvements. (See Chapter 6)

- (9) **Police:** Police protection is provided by the Cities of Des Moines, ~~The City of Des Moines~~ also has interlocal agreements with the Cities of ~~SeaTac and Kent, Normandy Park, King County, the State of Washington, and the Port of Seattle. The City of SeaTac contracts for police protection within that city's boundary with the King County Police Department.~~
- (10) **Postal Service:** The US Postal Service operates ~~two~~ one facilities and one contract station within the ~~Planning Area~~City. ~~A new facility is planned for property within the corporate limits of Des Moines.~~
- (11) ****Sanitary Sewer:** The Midway, Southwest Suburban, and Lakehaven Utility Districts provide for the collection, treatment, and disposal of effluent. These services are directed by the comprehensive plans adopted by these districts. A portion of the City is still served by septic systems.
- (12) ****Schools:** Publicly owned educational facilities are operated by the Highline and Federal Way School Districts, and Highline Community College and Central Washington University. ~~Two private schools, St. Philomena Catholic School and Christian Faith Center, Several private schools~~ are also located within the ~~Planning Area~~City.
- (13) ****Solid Waste Collection and Disposal:** ~~Sea Tac Disposal Company and Kent Rabaneo Allied Waste Disposal Company~~ provides for the collection and disposal of solid waste within the ~~Planning Area~~City. These services are regulated by the Cities of Des Moines, Kent, and SeaTac, and the Washington Utilities and Transportation Commission. Recyclables collection service is available to households and businesses through solid waste haulers. ~~Non-recycled waste is disposed of in the King County Cedar Hill landfill.~~
- (14) **Surface Water Management:** The collection and disposal of stormwater in the ~~Planning Area~~City is provided by the ~~Cities of Des Moines, Kent, and SeaTac, and King County.~~
- (15) ****Telecommunication:** ~~US West Communications-Qwest~~ delivers telecommunication service for the ~~Planning Area~~City as regulated by the Washington Utilities and Transportation Commission. Cable Television is provided by ~~TCI CablevisionComcast Cable Services. of Washington.~~

Cellular telephone services ~~is~~are provided by AT&T Wireless, Cingular, Nextel, Qwest Cellular, Sprint PCS, T Mobile, and Verizon Wireless, primarily by ~~US West Cellular Verizon Wireless, TMobile, Cingular and AT&T Wireless.~~

- (16) **State and Regionally Owned Transportation Facilities:** State and Regionally owned transportation facilities are listed in the GMA as essential facilities to be sited. Details transportation facilities inventories, future needs, and plans are provided in the City of Des Moines Comprehensive Transportation Plan.

Water: Domestic water within the ~~Planning Area~~City is provided by King County Water District 54, Highline Water District, and Lakehaven Utility District. Each of these districts' operations ~~are~~is guided by a comprehensive water system plan. A significant portion of the water available in the ~~Planning Area~~City is purchased from the Seattle and Tacoma Water Departments.

Issue 22: Shall the following statement be revised in the final draft?

~~5-03-05~~5-03-05 City plans and development regulations should identify, and provide a process for consideration of, the siting of essential public facilities. Essential public facilities should include: A) domestic water, sanitary sewer, public schools, and fire protection; B) difficult-to-site facilities such as those identified by RCW 36.70A.200 and County-wide Planning Policies; and C) essential state facilities specified by the office of financial management. Des Moines should not accept a disproportionate share of the adverse impacts resulting from essential public facilities ~~air transportation~~.

Issue 23: Shall the following revision be included in the final draft?

5-04-13(4) Libraries: Continue to receive library services from the King County Library System as long as King County continues to provide a variety of library services from centrally located facilities with convenient hours of operation. Include level-of-service provisions in contract/annexation agreements. ~~Advocate patronage privileges for Des Moines residents at the Highline Community College Library~~

Issue 24: Shall the following revision be included in the final draft?

5-04-13(8) Postal Service: ~~Encourage the US Postal Service to remodel existing facilities and/or develop new facilities~~ Maintain US Postal Services as necessary to improve postal service to residents and businesses. ~~Encourage the US Postal Service to maintain a post office in Downtown~~

Issue 25: Shall the following revision be included in the final draft?

6-04-03 (1) Plan and encourage urban trail systems for maximum pedestrian and bicycle access to parks, schools, business districts and employment areas as an alternative to automobile access. Also, plan trail systems that link adjoining communities and urban areas leading to rural or natural areas.

CHAPTER 7- HOUSING ELEMENT

Issue 26: In light of the possible elimination of the CDBG program should the following statement be revised?

7-02-04(7) Identify existing low-cost housing that may be lost due to redevelopment and develop strategies to preserve or replace low-cost housing; (CWPP-AH-3);

Administration Note: Specific reference to a program is not required by GMA or the Comprehensive Plan. However, Council must be cognizant that if this program is eliminated, alternative methods of funding affordable housing must be found.

Issue 27: Shall the following statement be revised in the final draft?

~~7-03-087-03-01~~ Allow the siting of mobile/manufactured homes within mobile home parks when all applicable regulations can be satisfied. (~~chapter 14.48 DMMC~~)

Issue 28: Based on discussion at the October 8, 2005 retreat, should the following statement be revised?

~~7-04-137-04-10~~ Continue to allow accessory living quarters (~~without separate kitchen facilities~~) as permitted by the Zoning Code. Review and revise accessory living quarters regulations for limitations that are unnecessary. Consider Amending the Zoning Code to allow for kitchen facilities in accessory dwelling units when these and other criteria are met.

- Minimum lot size
- Parking
- Owner-occupied units
- Size of unit
- Density
- Height

Consider allowing accessory dwellings with separate kitchen facilities when specific mitigating conditions can be met. (chapter 18.04 DMMC, chapter 18.08 DMMC)

Issue 29: Shall the following statement be revised to be less specific?

7-04-11 Consider revising the Zoning Code to allow cottage housing in single family and multifamily zones when this and other appropriate criteria can be met

- ~~7-04-15a)~~ -Minimum lot area *shall be at least 10,000 sq.ft*
- b) ~~-Unit size~~ *Units cannot not be smaller than 600 sq.ft. or larger than 1,500 sq.ft*
- c) ~~-Parking must be completely on site~~
- d) ~~-Homeownership required~~
- e) ~~-sSeparation-separation~~ between cottage housing developments *of at least one block*
- f) ~~-Density no more than 1 unit per 2,900 sq. ft. Llot~~
- g) ~~-Height no greater than 25 feet~~

Issue 30: Shall the following editing changes be included in the final draft?

~~7-04-15~~ 7-04-17 ~~Continue to allow townhome developments, as provided by chapter 18.10 of the DMMC.~~ Consider textual code amendments that would allow the design review process of townhome developments to occur during the final plat process, rather than during preliminary review. *Still Continue to require a conceptual site plan at time of preliminary review.*

CHAPTER 8- COMMUNITY CHARACTER ELEMENT

Administration Note: Only minor editing changes in this chapter.

CHAPTER 9- NORTH CENTRAL NEIGHBORHOOD ELEMENT

Issue 31: Should the following statement be revised in the final draft as discussed at the October 8, 2005 Council retreat?

~~9-02-01~~ 9-02-11 ~~The North Central Neighborhood contains five~~ four Subareas, each with its own distinct characteristics, opportunities, and limitations. The Subareas are shown in Figure 9-1 and described below:

- (1) **Des Moines Creek Subarea.** This Subarea includes approximately 38 acres in the northwest corner of the North Central Neighborhood. As its name implies, this area includes land within and adjacent to Des Moines Creek and its ravine. Also included is land north and west of the ravine that is separated from the remainder of the North Central Neighborhood by Des Moines Creek.

Most of this Subarea area is heavily vegetated with native growth. A large portion of the area is publicly owned (Des Moines Creek Park) and a pedestrian/bicycle paved trail ~~is planned~~has been completed and should be extended to the Beach Park (Des Moines Creek Trail).

Issue 32: Should the following statement be revised in the final draft?

9-02-02 _____ The North Central Neighborhood is within the Des Moines Creek and Massey Creek basins, each of which has a history of flooding and water quality problems. Studies for Massey Creek and Des Moines Creek have been prepared ~~a study for Des Moines Creek is planned for 1995-96.~~

Issue 33: Shall the following statement be included in the final draft as per Council discussion?

9-04-09 ~~Locate and design~~ Advocate that any 24th Avenue and SR 509 -interchanges to any limited access highway be extended through or adjacent to the North Central Neighborhood to 1) provide direct access to and from the neighborhood; 2) alleviate existing traffic problems in the vicinity; and 3) provide improved access for the greater community 4)not serve as the sole south access to SeaTac International Airport.

Administration Note: There was considerable discussion at the October 8th retreat that the word "advocate" was not strong enough. Some suggested words include:

- Insist
- Strongly assert
- Resolve

CHAPTER 10-DOWNTOWN ELEMENT

Issue 34: Shall a new strategy be developed that states:

10-04-11 As part of next review of this Element investigate the possibility of creating specific subarea plans for the Downtown.

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ROBERT C. KEATING (1915-2001)

November 2, 2005

Mr. Anthony Piasecki, City Manager
City of Des Moines
21630 11th South
Des Moines, WA 98198

RE: Legal Opinion:

- GMA Requirements for Allowable Densities on Comprehensive Plan Map
- Advisability of Putting Allowable Densities on City's Comprehensive Plan Maps
- Recommendations Regarding Rezone Requests

Dear Mr. Piasecki:

You have asked our office for a legal opinion on two related questions involving the requirements for, and the propriety of, including allowable densities on the City's Comprehensive Plan maps. Specifically, you have asked us to research, analyze and address the following broad questions: (1) does state law (specifically, the state Growth Management Act, "GMA"¹) require a city to identify specific allowable densities on its comprehensive plan maps; and (2) if not, can or should the City put such densities in the plan maps? Each of these broad issues raises several sub-issues, all of which are discussed in this letter. You have also asked for general information and standards regarding rezone requests.

The opinions and analyses in this letter are based on my several telephone conversations with you, my office's review of the City's zoning and development regulations, review of specific regulations addressing rezone requests, and a review of the GMA, implementing administrative regulations, pertinent case law and relevant Growth Management Hearing Board decisions.

You requested that this letter be made available to the public; accordingly, this letter is not subject to the attorney-client privilege and can be disseminated at your discretion.

I. BACKGROUND AND FACTS

The City of Des Moines is in the process of updating its Comprehensive Plan pursuant to the requirements of the GMA. Historically, as we understand it, the City has put allowable density

¹ The state Growth Management Act, "GMA," is codified at RCW Ch. 36.70A, and was originally enacted in 1990 to help manage growth and prevent sprawl.

designations on the maps included as a part of its Comprehensive Plan. The City is questioning whether it is a good practice to put allowable densities on its Comprehensive Plan maps in addition to putting those densities on its zoning maps and in its zoning text. In light of this concern, you requested our analysis and opinions on the following specific questions:

- Does state law – specifically the GMA – *require* putting normative (allowable) densities on its Comprehensive Plan map or in its Comprehensive Plan?
- If this is not required, can or should the City include normative densities on its Comprehensive Plan map or in its Comprehensive Plan?
- Does the City incur liability for either including or not including normative density limits on its Comprehensive Plan map or in its Comprehensive Plan?
- How would inclusion of normative density limits on the City's Comprehensive Plan map or in its Comprehensive Plan affect rezone requests?
- How should the City handle rezone requests?

Each of these specific questions is analyzed below.

II. LEGAL ANALYSIS

A. Does the State Growth Management Act, RCW Ch. 36.70A, Require Cities to Put Specific Allowable Density Designations on its Comprehensive Plan Maps?

Answer: Yes and No. The specific elements of a Comprehensive Plan (CP) under the GMA are generally outlined in WAC 365-195-300:

(1) Requirements. The comprehensive plan shall consist of a map or maps and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan. The plan shall be an internally consistent document and all elements shall be consistent with the future land use map.

(a) Each comprehensive plan shall include a plan, scheme, or design for each of the following:

- (i) A land use element.*
- (ii) A housing element.*
- (iii) A capital facilities plan element.*
- (iv) A utilities element.*
- (v) A transportation element.*

Based on this general outline, a comprehensive plan (1) must have maps *and* text, and (2) must include a "land use element." The next question is whether density designations are required under the land use element required by the GMA.² WAC 365-195-305, which addresses the specifics of the land use element, actually describes two types of densities: one that *must* be included in the comprehensive plan, and one that *should* be included.

First, subsection (b)(1) *requires* that the comprehensive plan contain "[p]opulation densities, building intensities, and estimates of future population growth." WAC 365-195-305(b)(1). That language seems to indicate that a city must include *actual current* densities on the comprehensive plan maps.

Second, subsection (2)(e) *recommends* that the city select "commercial, industrial, and residential densities sought to be achieved and their distribution for the purposes of accommodating the anticipated growth." WAC 365-195-306(2)(e). In other words, the City *should* include in its Comprehensive Plan the densities *it would like to reach in the future*.

Based on these comprehensive plan guidelines, it's clear that the City not only *must* include *actual current densities* in the comprehensive plan, but also *should* include *desired future densities*. Both of these density designations are merely descriptive; the GMA essentially asks "what are your current densities, and what would you like them to be in the future?"

There is, however, a third type of density; the *actual allowable densities* for each specific area or parcel of land in the City. This is the type of density designation the City is concerned with currently: normative density designations that will have project-level, site-specific effect. On this point the law – the GMA and its implementing regulations – is relatively silent.

There are, however, several sections of the GMA that may shed some light on the issue. For example, RCW 36.70A.110(2) outlines requirements for urban growth areas when drafting a comprehensive plan:³

(2) Based upon the growth management population projection made for the county by the office of financial management, the county and *each city within the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period*, except for those urban growth areas contained totally within a national historical reserve.

² Since we are concerned with development densities, the "land use element" is obviously the only relevant portion.

³ As an incorporated City in King County, Des Moines is an urban growth area under the RCW; therefore, this section applies to the City.

Each urban growth area shall permit urban densities and shall include greenbelt and open space areas...An urban growth area determination may include a reasonable land market supply factor and shall permit a range of urban densities and uses.
(Emphasis added.)

The language in RCW 36.70A.110(2) clearly addresses normative density regulations. However, this section is also careful to use general, undefined language like “urban densities” and “densities sufficient to permit” projected growth. The commentary and cases surrounding the GMA’s treatment of urban growth areas interpret these sections as establishing minimum densities that cities must allow in urban growth areas. In other words, rather than requiring cities to include site-specific density requirements for all the property within its borders, the GMA merely reminds cities they are statutorily obliged to allow high-density, urban-level development in such areas. This prevents cities from trying to unreasonably restrict, or even reverse, high density development in urban growth areas.

This interpretation (that urban growth areas must include minimum density allowances, or ranges of densities allowed, rather than site-specific rules) is bolstered by the GMA’s description of the comprehensive plan amendment process in RCW 36.70A.130.

(3)(a) Each county that designates urban growth areas under RCW 36.70A.110 shall review, *at least every ten years*, its designated urban growth area or areas, *and the densities permitted* within both the incorporated and unincorporated portions of each urban growth area. *In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries*, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas.

(b) The county comprehensive plan designating urban growth areas, and the *densities permitted* in the urban growth areas by the comprehensive plans of the county and each city located within the urban growth areas, shall be revised to accommodate the urban growth projected to occur in the county for the succeeding *twenty-year period*.
(Emphasis added.)

These sections explain how and when to modify the density ranges established in RCW 36.70A.110 (quoted above). Here, the legislature makes it clear that the density designations established for urban growth areas via 36.70A.110 are *prospective accommodations* for growth over a 20-year period, and should be reviewed at least every 10 years. Consequently, it seems fairly evident that the density designations mandated by RCW 36.70A.110 are supposed to be general

ranges of allowable densities based on long-range planning, as opposed to the site-specific regulations typically included in City zoning or development regulations. Neither the GMA provisions in the RCW, nor the specific comprehensive plan requirements in the WAC ever suggest, let alone mandate, that the City include normative, parcel-specific or area-specific density regulations in the comprehensive plan or on plan maps.

So, the answer to the question "does the GMA require density designations to be included in the comprehensive plan" depends on what type of density designation is referenced: (1) actual current densities are required; (2) long-term minimum density allowances for urban growth areas are required; (3) desired future densities are recommended; and (4) site-specific, normative density regulations are not mentioned. Moreover, the GMA requirements for including actual current densities and long-term minimum allowances for urban growth areas, as well as desired future densities, are for inclusion in the comprehensive plan document itself; neither the GMA nor the administrative regulations (the WACs) require these types of density figures to be included on maps which are a part of the comprehensive plan. It is sufficient that the required or recommended densities be included within the text of the plan itself, or on a chart, scheme or design which is part of the comprehensive plan document itself. *See, e.g.,* WAC 365-195-300(1)(a).

B. Do the Courts or the Growth Management Hearing Boards Encourage or Discourage Including Specific Allowable Density Designations in the City's Comprehensive Plan?

Answer: Density designations in the comprehensive plan are NOT appropriate and NOT enforceable. Having decided that site-specific zoning regulations are not *required* or *specifically recommended* as part of the comprehensive plan, the next question is whether such normative designations are even *allowed*. While there is no indication that such site-specific regulations are expressly forbidden, there is strong evidence that such designations are not intended to be part of a comprehensive plan.

First, the fact that the GMA regulations in RCW Ch. 36.70A and WAC Ch. 365-195 specifically require actual current density figures and minimum long-term density allowances, and actively encourage future desired densities clearly shows that the Legislature was aware of the importance of population and development density in the comprehensive planning process. Given the Legislature's clear cognizance of the importance of density issues, the absence of any reference to normative site or area-specific density regulations in the GMA means one of two things: either (1) the Legislature didn't mention it because site-specific regulations were so obviously intended to be included in the comprehensive plan, or (2) the Legislature didn't address it because site-specific regulations were so obviously intended *not* to be part of the comprehensive plan but, rather, part of the zoning code. Considering that the issues addressed by a comprehensive plan are general, area-wide issues of long-range future planning, it seems unlikely that specific regulations (like density rules) were intended to be part of such plans. In contrast, the zoning code is a much more

specialized and particularized set of regulations. Consequently, site-specific, allowable density regulations are much more appropriate in the zoning code than the comprehensive plan.

Second, the court cases addressing the differences between a comprehensive plan scheme and zoning regulations have clearly held that *general planning considerations* are part of the comprehensive plan, while *specific regulations* should be part of the zoning code. These cases have involved allegedly site-specific regulations in comprehensive plans that seemed inconsistent with site-specific regulations in the zoning code. These courts have consistently ruled that in such a situation, the site-specific regulations of the zoning code take precedence over site-specific or area-wide regulations contained in a comprehensive plan. See, e.g.: *Ass'n of Rural Residence v. Kitsap County*, 141 Wn.2d 185, 4 P.3d 115 (2000); *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 947 P.2d 1208 (1997); *Timberlake Christian Fellowship v. King County*, 114 Wn. App. 174, 61 P.3d 332 (2002). For example, in *Timberlake*, *supra*, 114 Wn. App. 182, the court directly addressed this issue:

Timberlake argues that neither the GMA nor the comprehensive plan may be applied directly at the project-review level. Timberlake's argument has merit. The GMA does not have site-specific effect at the project level. Instead, it establishes a general framework in which local governments are required to plan in accordance with certain guidelines.

In *Ass'n of Rural Residents v. Kitsap County*, *supra* at 141 Wn.2d 188, the Washington Supreme Court held that the GMA is "a comprehensive planning framework under which local governments are required to plan according to *general mandates* established by the Legislature." (emphasis added). This echoed the Supreme Court's prior decision that "a county's comprehensive plan is generally to be used as a 'guide' or 'blueprint' and, as such, it is not usually appropriate to use it to make specific land use decisions." *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 873-74, 947 P.2d 1208 (1997) (cited in *Timberlake*). In fact, this issue appears to have been settled more than 20 years ago in *Carlson v. Beaux Arts Village*, 41 Wn. App. 402, 408, 704 P.2d 663 (1985), where the court held: "[A] comprehensive plan is no more than a general policy guide to the later adoption of official controls which is subordinate to specific zoning regulations."

Even prior to the adoption of the GMA, Washington courts clearly distinguished between the purposes of a comprehensive plan and zoning or other development regulations, and the legal effect of area- or site-specific regulations put in a comprehensive plan versus those contained in zoning regulations. See, e.g.: *Westside Hilltop Survival Committee v. King County*, 96 Wn.2d 171, 634 P.2d 862 (1981) (comprehensive plans are advisory rather than regulatory; "such a plan suggests regulatory measures but does not impose them and, thus, does not itself deprive the land owner of any use of his property." *Id.* at 96 Wn.2d 176); *Barrie v. Kitsap County*, 93 Wn.2d 843, 613 P.2d 1148 (1980) (comprehensive plans are a source of reference and a "policy guide" for other

adopted regulations and controls; comprehensive plan policies which have never been implemented by other adopted zoning or development controls have no force or legal affect); and *Toandos Peninsula Ass'n, et al. v. Jefferson County, et al.*, 32 Wn. App. 473, 648 P.2d 448 (1982) (a comprehensive plan is merely a policy guide for future land use regulations; the plan itself, without zoning or other land use regulations implementing it, does not provide a basis for restricting the use of property; zoning ordinances are the primary regulatory device under state law). These statements of law, while pre-GMA, remain consistent with post-GMA legal authorities and the important distinction between comprehensive plans and zoning and development regulations.

Based on the clear language of these Washington cases, there can be little doubt that site- or area-specific density designations *should not* be included in the comprehensive plan. Many of the cases cited above were instances in which a City tried (and failed) to enforce site-specific zoning and/or development regulations contained in the comprehensive plan. The underlying theme of these court cases is that a comprehensive plan is not truly a regulatory "law." For example, while various statutes mandate what must be included in the City's Comprehensive Plan, the Comprehensive Plan itself is not part of the Des Moines Municipal Code. Consequently, there is no specific basis on which any normative regulation contained in the Plan can be enforced the way a zoning code or adopted development regulations are enforced.

Specific, normative regulations that the City hopes to enforce – including specific allowable densities – should be included in the zoning code, because inconsistency between the zoning ordinance and the comprehensive plan must be resolved by application of the zoning ordinance. *Nagatani Bros., Inc. v. Skagit Cy. Bd. of Comm'rs*, 108 Wn.2d 477, 739 P.2d 696 (1987).

C. If Not Required by the GMA, Decisional Law, or Growth Board Decisions, Does the City Incur Any Liability for NOT Including Allowable Density Limitations on its Land Use Maps?

Answer: No. As described in the section above, specific regulations included in a comprehensive plan are not enforceable since the comprehensive plan is not a regulatory "law." Consequently, including such specific regulations in a comprehensive plan is completely useless, and the City would incur no liability by leaving such regulations out of its plan.

In our opinion, including particularized land use regulations, such as allowable densities, in its Comprehensive Plan can only expose the City to *more* potential liability by creating confusion among landowners and the general public as to which regulations are valid and enforceable. This was exactly what happened in many of the cases cited in the preceding section.⁴ Some of the claims

⁴ See, e.g.: *Ass'n of Rural Residence v. Kitsap County*, *supra*; *Citizens for Mount Vernon v. City of Mount Vernon*, *supra*; *Timberlake Christian Fellowship v. King County*, *supra*; and *Carlson v. Beaux Arts Village*, *supra*.

and causes of action which could result from including specific density regulations in the City's Comprehensive Plan include:

- Petition for Review to the Growth Management Hearings Board challenging (1) inclusion of particularized allowable densities in the comprehensive plan as violative of GMA, (2) inconsistencies between allowable densities contained in the comprehensive plan and specific densities contained in the City's zoning code, (3) inconsistencies between densities or other particularized regulations in the comprehensive plan and other zoning or development regulations, and (4) lack of authority to include such allowable densities in the plan or on plan maps;
- Declaratory judgment action challenging allowable densities in the City's zoning code as inconsistent with or in conflict with such densities in the City's comprehensive plan;
- Challenges to either the comprehensive plan or adopted regulations on the grounds that they violate substantive due process protections, are "void for vagueness," are inherently inconsistent and confusing, or that they are "arbitrary and capricious"; and
- Potential damages claims by permit or development approval applicants in situations where the City attempts to impose purported allowable densities from its comprehensive plan, rather than from adopted zoning or development regulations and where such densities are either inconsistent with zoning or internally conflicting.

In short, we see virtually no legitimate legal claim that could be asserted against the City for leaving such site-specific allowable densities out of the City's Comprehensive Plan, including out of Plan maps. Conversely, the City could incur legal liability by including such densities in its Comprehensive Plan, which could result in Growth Board challenges, superior court lawsuits under various theories, and potential damages claims.

D. How Will Inclusion of Allowable Densities on Land Use Maps Affect Rezone Requests and Processing?

Answer: It will likely slow and confuse the process. The answer to this question requires a brief overview of the zoning process and what it means to "rezone" property.

Zoning codes have two basic functions. First, they regulate the use of particular property or area; second, they control the limits of improvements that can be placed on the property, such as height, bulk, setback, set asides and so on. VI WASHINGTON REAL PROPERTY DESKBOOK, §97.1 (3d Ed., 1996). Most zoning regulations are usually enacted on the premise that they will promote the general welfare by conserving the value of properties and encouraging the most appropriate use of land. In general, the objective of encouraging the most appropriate use of land has been held to depend upon all prevailing conditions in the community, in addition to present and prospective needs. As a general rule, as long as zoning provisions are within the authorized purposes and conform to statutory guidelines, mere disagreement with zoning classifications and district regulations are not sufficient to set those aside. See, e.g., *Nopro Co. v. Town of Cherry Hills Village*, 504 P.2d 344, 348 (Co. 1972). In general, zoning ordinances are presumed valid and, where the reasonableness of the zoning ordinance or regulation is fairly debatable, the courts uphold their validity. See, e.g., *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 47 S. Ct. 114, 71 L.Ed.2d 303 (1926); *City of Phoenix v. Beall*, 524 P.2d 1314, 1318 (Az. App. 1974). It is proper for the City to consider the character, value and utility in conjunction with the features of the area and the effect that the use-zoning of each related segment may exert upon the other. "If [the] ordinance is otherwise a valid exercise of the [city's] police powers, the fact that it deprives the property of its most beneficial use does not render it unconstitutional." *Goldblat v. Town of Hempstead*, 369 U.S. 590, 592, 82 S. Ct. 987, 8 L.Ed.2d 130 (1962). Any zoning ordinance must merely be reasonable in light of the menace faced, the availability and effectiveness of less drastic alternatives, and the loss faced by the property owner. *Goldblat*, *supra* at 369 U.S. 594-95.

Zoning can be done on either an "area-wide" basis (covering several or many properties), or on a site-specific basis. See, e.g., *Raynes v. Leavenworth*, 118 Wn.2d 237, 248, 821 P.2d 1204 (1992); *Jones v. King County*, 74 Wn. App. 467, 874 P.2d 853 (1994). See also, RCW 42.36.010, which defines what local land use decisions should and should not be considered quasi-judicial, including the distinction between legislative area-wide zoning and quasi-judicial site-specific zoning.

A zoning code should have two distinct parts: text and maps. The *text* of the zoning code should do two things. First, it should outline all possible land use categories in the city (e.g., single family residential, high density commercial, light industrial, etc.). Second, the text should define the particular attributes of each zone type (density allowances, height and setback requirements, maximum square footage, etc.). Once the text is complete, the City will construct the zoning *map*, which merely indicates the category to which each specific parcel of land belongs.

Normally, the rezone process focuses on the zoning code itself rather than the comprehensive plan. Based on these two components of a zoning code, a landowner has a two-step process to determine restrictions on his property. First, he must go to the zoning map and find out how his property is zoned (single family residential, light commercial, etc.). Once he knows his

category, he can then go to the text of the code to find the specific regulations covering that type of property (height, setback, density, etc.).

Now, assume the property is zoned single family residential (according to the zoning map) which allows 1 dwelling unit per acre (according to the text). And assume the owner wants a higher density, such as 5 dwellings per acre. He has two options to obtain his desired density. First, he can ask the City to change the category to which his land belongs. This would involve merely changing the zoning *map* to put his land in a different category that will allow the higher density. That process (changing the map) is the most common type of re-zone for which landowners apply – a “map amendment.”

The second option, however, is to change the *text* of the zoning code to redefine the regulations of the category, without changing the property’s actual zoning designation. For example, the City could change the definition of “single family residential” to allow 5 units per acre instead of 1. This type of re-zone would not only affect that particular piece of property, but would also affect every other property in the same category since it would change the basic definition of that category. This type of textual change to the zoning code – known as a “text amendment” – is less common.

Either of these options (text or map amendment) can be considered by a city at any time. The only requirement is that any zoning amendment must generally be “consistent with” the comprehensive plan, which is discussed below. Note, however, that if allowable site-specific densities are included in the City’s comprehensive plan (or on plan maps) and the applicant for a zone change seeks to change the densities allowed for his or her property, the rezone process becomes much more complicated and time consuming. It will, by necessity, require a comprehensive plan amendment. Amendments to the City’s comprehensive plan are typically limited to only one change per year, and add an extra layer of time, effort and expense for both the applicant and the City – the taxpayers.

The “consistency” requirement has often caused confusion among local legislators regarding a city’s ability to zone and plan. For example, a city can amend the zoning code any time a landowner submits an application and meets the adopted rezone criteria.⁵ In contrast, the comprehensive plan can only be amended once a year under state law. *See, e.g.*, procedural requirements for adoption and amendment of comprehensive plans in RCW 36.70A.130. Consequently, local legislators wishing to slow development are often tempted to include specific regulatory provisions in the plan itself. The logic is as follows: if the zoning code must be “consistent with” the comprehensive plan, and the plan has specific regulations, the regulations in the zoning code cannot be amended until the plan is amended, which can only happen once a year.

⁵ The specific criteria are discussed below. We recommend adopting criteria to govern rezones.

Consequently, rezone applications can only be considered once a year (as comprehensive plan amendments), rather than any time they are submitted (as zoning code amendments). However, this logic is faulty. As discussed above, if there are inconsistencies between site-specific regulations (such as density) in the plan and the zoning code, the zoning code will control because the comprehensive plan is not designed to include such regulations. So, since rezones usually do not necessarily require a comprehensive plan amendment, including site-specific regulations in the comprehensive plan itself does not limit the frequency with which rezone permits can be considered. What it does do, as noted above, is unnecessarily burden applications for rezones, adding unnecessary cost and time, and creating potential confusion.

E. Under Accepted Rezoning Law, Can a Property Owner Get any Density They Want Simply by Making a Request for a Rezone?

Answer: No. Based on the two ways to rezone a property, it is unlikely that a property owner can use either process to simply change the density allowed on his or her property. The property owner must either (1) change the definition of the zone he or she is in (via a textual rezone), which will also affect every other property in the same zoning category or (2) change the zone designation (via a map rezone), which may change the density, but will also likely change a myriad of other requirements (heights, setbacks, environmental regulations, and so on). Regardless of which way a property is rezoned, the process necessary is fairly well-defined by both state and local law, and gives a local jurisdiction a great deal of deference in deciding rezone applications. See, e.g., *Henderson v. Kittitas County*, 124 Wn. App. 747, ___ P.2d ___ (2004); *Raynes v. Leavenworth*, *supra*; *Jones v. King County*, *supra*.

1. Textual Rezone

A rezone by way of an amendment to the text of the zoning code (the second method mentioned above) will affect all property classified under the zone that is amended. Because of this general applicability, such a change is generally seen as a legislative action. Consequently, the appearance of fairness doctrine does not apply. See *Raynes v. City of Leavenworth*, *supra*. So long as the amendment is properly enacted, and is generally consistent with the overall goals of the comprehensive plan, the City Council's decision on textual amendments will be fairly unchallengeable. Any citizen displeasure with such changes can be expressed mainly through the electoral process.

2. Map Rezone

On the other hand, an amendment to the zoning map to reclassify a particular piece of property is generally a "quasi-judicial" action, which requires public notice and public hearing

before a decision. In addition, these site-specific rezones are governed by state and local laws that give a great deal of deference to the local jurisdiction.

The proponent of a map – site-specific – rezone must satisfy two state law requirements for the rezone. First, “the proponent of a rezone must show a substantial change in circumstances since the last zoning.” *Parkridge v. City of Seattle*, 89 Wn.2d 454, 462-63, 573 P.2d 359 (1978); *Henderson v. Kittitas County*, 124 Wn. App. 747, 100 P.3d 842 (2004); *Tugwell v. Kittitas County*, 90 Wn. App. 1, 8, 951 P.2d 272 (1998).⁶ Second, the proponent must show that the rezone bears “a substantial relationship to the public health, safety, morals or welfare.” *Parkridge, supra* at 89 Wn.2d 462. Washington courts have identified other presumptions and requirements underlying map, or site-specific, rezones which should be followed:

- There is no presumption of validity favoring the action of rezoning – that is, there is no presumption that a rezone should or can be granted (*Parkridge v. Seattle, supra*, at 89 Wn.2d at 462);
- The proponent of the rezone has the burden of proof in demonstrating both the change of conditions and that the rezone bears a substantial relationship to the public health, safety, morals or welfare (*Id.*);
- Current views of the community urging a rezone may be given weight; they cannot, however, be controlling absent compelling reasons for a rezone for the public health, safety, morals or general welfare (*Id.*);
- A rezone request may not be denied on the basis of community opposition *alone* (*Henderson v. Kittitas Co., supra*);
- A rezone does not have to satisfy subdivision requirements or other non-zoning requirements; nor is it proper to evaluate a rezone request by speculating as to the impacts of possible future development if the rezone were granted (*Id.*);
- Local ordinance criteria for rezone must be satisfied (if they exist) (*Id.*);
- The City must create a *verbatim* record of the rezone application and hearing; and
- The rezone request must be supported by adequate findings of fact and conclusions of law (*Parkridge v. Seattle, supra*).

⁶ The applicant (property owner) bears the burden of demonstrating that the rezone criteria are met. *Parkridge v. City of Seattle*, 89 Wn.2d 454, 573 P.2d 359 (1978); *see, also, Belcher v. Kitsap County*, 60 Wn.App 949, 808 P.2d 750 (1991).

Regarding the "substantial change in circumstance" test, this test still doesn't *require* the City to approve a rezone application. Most county and city governments have imposed additional requirements for a rezone application, beyond those listed above. The City of Des Moines currently does not have rezone criteria in its code. We strongly urge the City Council to adopt rezone criteria to govern map – site-specific rezones. As noted above and within this letter, the courts provide local government with very broad discretion to establish rezone criteria. Local government-adopted rezone criteria and restrictions on rezoning property are permitted because of the intensely local nature of land use regulations. For example, the King County Code sets the bar very high for rezone applicants:

When the examiner issues a recommendation regarding an application for a reclassification of property or for a shoreline environment redesignation, the recommendation shall include additional findings that support the conclusion that at least one of the following circumstances applies:

- A. The property is potentially zoned for the reclassification being requested and conditions have been met that indicate the reclassification is appropriate;
- B. An adopted subarea plan or area zoning specifies that the property shall be subsequently considered through an individual reclassification application;
- C. Where a subarea plan has been adopted but subsequent area zoning has not been adopted, that the proposed reclassification or shoreline redesignation is consistent with the adopted subarea plan; or
- D. The applicant has demonstrated with substantial evidence that:
 - 1. Since the last previous area zoning or shoreline environment designation of the subject property, authorized public improvements, permitted private development or other conditions or circumstances affecting the subject property have undergone substantial and material change not anticipated or contemplated in the subarea plan or area zoning;
 - 2. The impacts from the changed conditions or circumstances affect the subject property in a manner and to a degree different than other properties in the vicinity such that area rezoning or redesignation is not appropriate; For the purposes of this subsection, "changed conditions or circumstances" does not include actions taken by the current or former property owners to facilitate a more intense development of the property including but not limited to changing tax limitations, adjusting property lines, extending services, or changing property ownership;
 - 3. For proposals to increase rural residential density, that the proposal meets the criteria in Comprehensive Plan policies R-205 through R-209;

4. For proposals to increase urban residential density, that the proposal meets the criteria in Comprehensive Plan policies U-118 through U-123; and
5. The requested reclassification or redesignation is in the public interest. (Ord. 14047 § 12, 2001: Ord. 4461 § 10, 1979).

King County Code 20.24.190.

Courts are extremely deferential to local decisions on this issue, and will rarely overturn a City's denial of a rezone application. In fact, the State Supreme Court has explicitly held that "courts simply do not possess the power to amend" zoning codes. *Teed v. King County*, 36 Wn. App. 635, 677 P.2d 179 (1984). The only real substantive limitation to the City's discretion in relation to rezone decisions is that the zoning code and any rezone request must be "consistent with" the comprehensive plan.⁷ However, even this requirement vests the City with wide latitude to determine the specific regulations that will be consistent with the general nature of long-range planning as reflected in the comprehensive plan. Consequently, it is extremely difficult for an applicant to overcome a City's rejection of his or her rezone application.

Based on the standards governing the rezone process, and the extent to which courts are deferential to City's local land use decisions, there is little threat that a landowner can simply "get any density he wants" through the rezone process. The proper way for the City to regulate requests for changes in density or map classifications is to legislatively establish specific criteria for approval of a rezone application as part of its city code. We would recommend rezone criteria that meets the City's local government needs and is consistent with the City's long-term plan and policies for the City. The King County Code section cited above is but one example; the City of SeaTac's rezone criteria, codified at SeaTac Municipal Code §15.22.050 is another option.⁸

III. CONCLUSION

There is simply no good reason, in our opinion, to put normative, site-specific densities or other regulations in the City's Comprehensive Plan or regulations on Plan maps currently under amendment. This is because:

⁷ There are obviously other procedural and constitutional considerations attached to a quasi-judicial decision on a rezone application. However, these requirements are well-defined and generally well-protected. It is unlikely that duly-considered and properly-enacted zoning regulations would violate these types of protections.

⁸ The City has various options to craft appropriate rezone criteria, including looking to other neighboring cities, obtaining suggestions or proposed criteria from respected agencies and associations such as AWC, MRSC, and CTED. Unfortunately, under the time constraints imposed by this project, we are unable to provide specific criteria or more elaborate guidance on this issue; however, if you wish our assistance in crafting or reviewing rezone code criteria, please let us know.

- It is not consistent with the general nature of a comprehensive plan, which is designed to be an overall guide – a “blueprint” – rather than a list of regulations;
- The comprehensive plan is not a regulatory law, an ordinance, or a statute, and cannot be directly enforced;
- It leaves the City open to litigation over conflicts between adopted densities in the City’s zoning code and those in the comprehensive plan;
- It unnecessarily burdens and delays requests for re-zones of property; and
- It invites further amendment of the comprehensive plan to include a myriad of other development standards (e.g., setbacks, street and frontage requirements, buffer widths, etc.).

We appreciate the opportunity to address these important and interesting issues and to assist the City of Des Moines as it works to amend its Comprehensive Plan and meet GMA planning goals. Please let us know if we can be of additional assistance.

Very truly yours,

Michael C. Walter
Jeremy W. Culumber



STATE OF WASHINGTON

DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT

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November 16, 2005

The Honorable Bob Sheckler
Mayor of Des Moines
21630 11th Avenue South
Des Moines, Washington 98198

RE: Proposed update to the Des Moines comprehensive plan

Dear Mayor Sheckler:

Thank you for sending the Washington State Department of Community, Trade and Economic Development (CTED) the proposed amendments to the City of Des Moines's comprehensive plan that we received on August 29, 2005. We recognize that this document is a second attempt at adopting an update to the Des Moines comprehensive plan. The concerns we noted in our letter dated November 12, 2004, on the previous draft of the update are still relevant. For your convenience, they are re-stated in this letter.

When cities and counties work with citizens to discuss their priorities for the future, they must balance important considerations—using land wisely, providing the foundation for economic vitality, and protecting environmental and natural resources. In crafting your comprehensive plan and development regulations to meet the unique needs of your community, you, along with other local governments planning under the Growth Management Act (GMA), have made important and long-lasting choices. These choices can sustain the quality of life that make Washington a remarkable place to live and create the predictability needed for economic investment.

We especially like the following revision in this draft of the plan:

It appears that you have significantly revised the Housing Element. Many new policies have been proposed. For example, Policy 7-02-12 proposed to allow manufactured homes to be sited anywhere within the city as required by 2004 amendments to the GMA. Policy 7-04-13 commits Des Moines to amend the zoning code to allow kitchens in accessory dwelling units (ADUs). With kitchens, ADUs become individual living units and provide more opportunities for affordable housing without changing the character of your community. Policy 7-04-14 allows for cottage housing in Des Moines. This has been successful in other parts of the region as a way to provide smaller living units for smaller households, which can be provided at a lower cost. We encourage you to revise your development regulations to be consistent with these policies.

It appears that your comprehensive plan is primarily composed of policy statements, and upon adoption, will include land use maps of each neighborhood. However, the GMA requires more information in the plan to ensure that readers understand the planning context, and how the pieces of the plan fit together. We continue to have concerns about the following that you should address:

ATTACHMENT 2



- In its current form, it is unclear how the Preferred Land Use map and zoning map fit together. Descriptions of the land use designations and types of development anticipated in each designation in the Land Use Element would help to convey information about the future character of your community. A table which clearly shows which zones implement each land use designation would help to provide clarity to prospective developers, and may help to resolve some of the inconsistencies between the zoning and land use maps. We also suggest you review WAC 365-195-305(2)(a-k) for a recommendation of how to meet the requirement in the Land Use Element.

A first step to being more clear might be to simplify your land use map to fewer land use designations. For example, a consolidated "low-density single-family" might correspond to R-SR, R-SE, RS-15,000, and RS-9,600 zones. A medium-density single-family zone could correspond to RS-8,400 and RS-7200 zones. One single-family designation would be simpler still. This would reduce the complexity of the map and be a first step to removing the inconsistencies between the land use and zoning maps. Some of your neighbors, such as SeaTac and Federal Way use this type of system.¹ Alternatively, many jurisdictions use identical land use and zoning maps for simplicity. In this way, any rezone is subject to the comprehensive plan amendment process – which provides greater control over how decisions are made. Whichever system you choose, once you have adopted the update to the comprehensive plan, including the land use map, a second step is to ensure that the zoning on each parcel is consistent with the land use designation it is supposed to implement.

- We continue to be concerned that the lower density zones in your community may interfere with your duty to prevent urban sprawl and promote urban development at a scale that is consistent with your comprehensive plan Policy 2-03-05 to "Promote a land use pattern, scale, and density that supports public transportation services and encourages people to walk and bicycle, as well as provide convenient and safe automobile usage."

We suggest that the city examine properties zoned RS-15,000 and determine ways to ensure urban densities are not precluded. The shore area of the Zenith neighborhood includes a large area where the minimum lot size is 15,000 square feet. However, Section 18.08.030 of the Des Moines Municipal Code allows lots zoned RS-15,000, containing more than 25,000 square feet, to be subdivided into two lots, each containing a minimum area of 12,500 square feet, provided sanitary sewer service is available to the lot. This provision gets Des Moines closer to providing urban densities; however, buildable lands data assume a density of only 2.5 units per acre. The Central Puget Sound Growth Management Hearings Board (CPSGMHB) has reviewed the issue of what constitutes compact urban development, and has determined that an urban density is at least four dwelling units per *net* acre.² We are concerned that, even with the allowed subdivision, your plan and regulations do not allow urban densities in this area. While the GMA does not compel cities to force property owners to redevelop, cities must allow urban densities, unless there is a unique, area-wide reason why urban densities should not be allowed.

Two zones, Suburban Residential and Suburban Estate (R-SR and R-SE) appear to be applied to areas with critical areas, or lands used for public purposes such as parks or public utilities. We suggest that these zones be reviewed in order to provide more clarity as to their purpose. You might consider establishing a zone for publicly-owned lands currently zoned suburban residential or suburban estate.

¹ SeaTac and Federal Way both use this type of system. SeaTac's land use map and zoning map are found at <http://www.ci.seatac.wa.us/localmaps/compplan.pdf> and <http://www.ci.seatac.wa.us/localmaps/zoning.pdf>. Federal Way's Land Use and zoning maps are at <http://www.cityoffederalway.com/Page.aspx?view=390>.

² Net density is determined as the density when undevelopable areas, such as critical areas and public right of ways, are subtracted from the gross acreage.

In areas where the use is residential, we recommend that your record show how this approach of very low residential density is necessary and how this provides better protection than your critical areas ordinance, acting on its own, can provide. For more information about what your record would need to show, please consult CTED's guidance paper on urban density.³ You may also consult the recent cases from the Central Puget Sound Growth Management Hearings Board where this issue has been addressed and summarized.⁴

- The comprehensive plan adopted in 1996 was accompanied by an environmental impact statement, which included a lot of background and inventory information that is missing from this plan. Instead, the proposed 2004 and 2005 draft comprehensive plans consist mostly of a collection of policies and strategies, and includes references to functional plans such as the *City of Des Moines Surface Water Management Program*, *Comprehensive Marina Master Plan*, *Comprehensive Transportation Plan*, and the *Parks, Recreation and Senior Services Master Plan*. The comprehensive plan would be much more useful if summaries from these plans were included in the Capital Facilities and Transportation elements summarizing what capital facilities currently exist and their general location, forecasted needs, and demonstration of adequate capacity or planned facilities to serve population growth as required by RCW 36.70A.070(3, 4 and 6). We realize that each plan includes a capital improvement program, but there should also be a comprehensive six-year (at least) capital improvement plan that shows and prioritizes all planned expenditures over the next six years, consistent with the comprehensive plan, and clearly identifies sources of funding for all expenditures. We understand that the city has such a plan, but it should be adopted as part of the comprehensive plan so readers can understand how priorities have been set for spending.
- We appreciate Strategy 5-04-13(10) to encourage development of sewer to all areas and allow interim septic fields only when certain conditions apply. We understand that there are some areas in the City of Des Moines that are not currently served by sewer. Given that all lands within an urban growth area must have urban services to develop at urban densities, we recommend that the city work with sewer providers to implement a plan to provide sewer service to all developed areas by the end of the 20-year planning period. This is especially important in shoreline areas and critical aquifer recharge areas where the Puget Sound and ground water resources could be susceptible to pollution by failing septic systems. A map showing not only the sewer districts, but the location of sewer lines would provide more information to decision makers and potential developers.
- The comprehensive plan does not demonstrate that sewer providers have adequate treatment capacity to serve the projected population increase, nor that water providers have adequate water rights to serve future growth. Part of the planning process is to ensure that adequate facilities, including water and sewer service, can be provided concurrent with development throughout the planning period.

³ The can be found at http://qa.cted.wa.gov/_CTED/documents/ID_1087_Publications.pdf.

⁴ 05-3-0007c, 1000 Friends VIII [Kaleas] v. Normandy Park, Final Decision and Order (July 19, 2005) http://www.gmhb.wa.gov/central/decisions/2005/05307c_KaleasFDO20050719.pdf, 05-3-0006, 1000 Friends VII v. City of Issaquah, Final Decision and Order (July 20, 2005) http://www.gmhb.wa.gov/central/decisions/2005/05306_1000FriendsFDO20050720.pdf.

- Policy 5-03-05 states that city plans and development regulations should identify and provide a process for siting essential public facilities. Strategy 5-04-04 of the Capital Facilities Element states that the city will adopt development regulations as needed to provide a process for siting essential public facilities. However, it does not appear that a process has been designated.

Also, the plan does not identify open space corridors as required by RCW 36.70A.160.

We have a suggestion for strengthening your planning process:

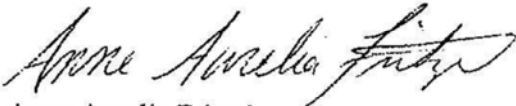
Many jurisdictions make use of their Web site as a way to cost-effectively provide copies of proposed comprehensive plan and development regulation amendments to the general public. Your Web site could be a great tool to provide opportunities for public participation and could include a link to the Des Moines Municipal Code.

RCW 36.70A.130 requires the city to take legislative action to review, and if necessary, revise its comprehensive plan and development regulations to ensure they comply with the requirements of the GMA. The required review should include both the comprehensive plan and development regulations, including your critical areas ordinance. The findings for the legislative action should detail the public participation process that was followed, should document the assumptions, facts, and analysis, and should clearly state the conclusions reached regarding which, if any, plan provisions and/or regulations are revised, and that the remaining comprehensive plan provisions and development regulations are currently in compliance with the GMA and do not need revision. For more information on completing this update, you may refer to Technical Bulletin 1.4 (enclosed). CTED's Web site also contains sample findings of fact to help you in drafting the adopting ordinance. Also enclosed are checklists to help you evaluate your comprehensive plan and development regulations.

The Legislature established a deadline of December 1, 2004, for jurisdictions in King County. The Legislature allowed an additional year of eligibility for certain grants and loans that are affected by compliance with the GMA. However, after December 1, 2005, the city will lose its eligibility for these programs until the required update is complete.

Thank you for your perseverance in this important task. If you have any questions or concerns about our comments or any other growth management issues, please call me at (360) 725-3064. We extend our continued support to the City of Des Moines in achieving the goals of growth management.

Sincerely,



Anne Aurelia Fritz
Associate Planner
Growth Management Services

AAF:lw

cc: Graham Fredricks, Community Development Director, City of Des Moines
Judith Kilgore, planning consultant, City of Des Moines
Leonard Bauer, AICP, Managing Director, Growth Management Services, CTED
David Andersen, AICP, Planning Review Team Manager, Growth Management Services, CTED

ADMINISTRATION'S FIRST DRAFT 10/03/05

DRAFT ORDINANCE NO. 05-216

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, adopting amendments to the City of Des Moines Comprehensive Plan and amending Chapter 18.84 of the Des Moines Municipal Code and finding that the Des Moines Comprehensive Plan has met the statutory requirement of RCW 36.70A.130(1).

WHEREAS, the Greater Des Moines Comprehensive Plan was adopted by the City Council on December 7, 1995 by enactment of Ordinance No. 1160, and

WHEREAS, the Growth Management Act requires that each jurisdiction produce a comprehensive plan which contains, at a minimum, elements pertaining to land use, transportation, capital facilities, housing, utilities, and

WHEREAS, there have been subsequent amendments to the Des Moines Comprehensive Plan and

WHEREAS, each amendment of the Comprehensive Plan was processed in accordance with the requirements of the State Environmental Policy Act and public hearings were conducted in accordance with law, and

WHEREAS, notice of the public hearing before the planning agency was given to the public in accordance with law and a public hearing was held on the 3rd day of October 2005 and all persons wishing to be heard were heard, and

WHEREAS, notice of the public hearing before the city council was given to the public in accordance with law and a public hearing was held on the 13th day of October 2005 and all persons wishing to be heard were heard, and

WHEREAS, the goals and policies for growth and the provision of services are guided by GMA requirements and are based in part upon state and regional goals, they primarily reflect the vision and goals of elected officials, community advisory groups and citizens, and

WHEREAS, a determination of nonsignificance (DNS) was issued on September 6, 2005 and the accompanying comment and appeal periods have lapsed, and

ATTACHMENT 3

WHEREAS, proper and timely notice was given to the Washington State Department of Community, Trade and Economic Development (CETED) of these amendments as required by RCW 36.70A, and

WHEREAS, the city council finds that the amendments contained in this ordinance are appropriate and necessary for the preservation of the public health, safety and welfare; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES DO ORDAIN AS FOLLOWS:

Sec. 1 DMMC 18.84.010 and section 1 of Ordinance 1160 are each amended to read as follows:

18.84.010 Adoption of comprehensive plan.

The document consisting of 10 chapters, entitled "Greater City of Des Moines Comprehensive Plan", each page of which is annotated with the number of the ordinance codified in this chapter and its date of enactment, is adopted and constitutes the comprehensive plan for the city.

Sec. 2 DMMC 18.84.020 and section 2 of Ordinance 1160 are each amended to read as follows:

18.84.020 Comprehensive plan filed and maintained in the office of the city clerk.

The city clerk shall file, maintain, and make available for public inspection the Greater City of Des Moines Comprehensive Plan adopted by the ordinance codified in this chapter.

Sec. 3 DMMC 18.84.030 and section 88 of Ordinance 1174 are each amended as follows:

18.84.030 Amendment of comprehensive plan.

(1) Amendment of the Greater City of Des Moines Comprehensive Plan shall be considered by the city council no more frequently than once every calendar year. Exceptions to this limitation are as follows:

(a) The initial adoption of a subarea plan.

(b) The adoption or amendment of the shoreline master program under the procedures set forth in chapter 90.58 RCW, as presently constituted or as may be subsequently amended.

(c) Whenever an emergency exists as declared by the city council, or to resolve an appeal.

(2) All requests for amendment of the comprehensive plan shall be considered by the city council concurrently so the cumulative effect of the various requests can be ascertained.

(3) The community development director shall maintain a docket of amendments to be considered by the city council during the annual amendment of the comprehensive plan.

(4) Requests for redesignation of property shall be considered and the final decision rendered prior to city council consideration of any request for reclassification of the same property.

Sec. 4 DMMC 18.84.040 and section 89 of Ordinance 1174 are each amended as follows:

18.84.040 Initiation of amendment.

Amendments to the Greater City of Des Moines Comprehensive Plan may be initiated as follows:

(1) Application by the owner(s) of property proposed for redesignation;

(2) Adoption of a motion by the city council directing the community development department to initiate the amendment;

(3) Adoption of a motion by the planning agency requesting the city manager to initiate the amendment through the community development department; or

(4) The community development department with the approval of the city manager.

Sec. 5 DMMC 18.84.050 and sections 1,2,3 of Ordinance 1185 are each amended as follows:

18.84.050 Development regulations to be consistent with and implement the Greater City of Des Moines Comprehensive Plan.

(1) For the purpose of compliance with RCW 36.70A.040(3)(d) as presently constituted or as may be subsequently amended, the development regulations contained in DMMC 10.28 (Weight Limits on City Streets), DMMC 12.04 (Right-of-Way Use Code), DMMC 19.20 (Parks of Local Significance), Title 17 DMMC (Subdivisions), and Title 18 DMMC (Zoning) on the date the ordinance codified in this section is adopted are hereby adopted as Des Moines' development regulations that are consistent with

and implement the ~~Greater~~ City of Des Moines Comprehensive Plan.

(2) Future amendments of city development regulations shall be consistent with the ~~Greater~~ City of Des Moines Comprehensive Plan.

(3) Where the ~~Greater~~ City of Des Moines Comprehensive Plan and development regulations adopted by subsection (1) of this section are in conflict, or in the absence of applicable development regulations, the goals, findings, policies and strategies of the ~~Greater~~ City of Des Moines Comprehensive Plan shall prevail.

Sec. 6 DMMC 18.84.060 and section 1 of Ordinance 1193 are each amended as follows:

18.84.060 **Schedule for initiation and review of amendments.**

(1) Applications for amendment of the ~~Greater~~ City of Des Moines Comprehensive Plan may be submitted to the community development department between January 1st and June 30th of each calendar year.

(2) Applications for amendment of the ~~Greater~~ City of Des Moines Comprehensive Plan that do not require an environmental impact statement as determined by the community development director shall be acted upon by the planning agency and the city council between September 1st and December 31st of the calendar year of application. In the event the city council cannot act upon the applications for amendment by December 31st of the calendar year, the city council may extend its review to the following calendar year.

(3) Applications for amendment of the ~~Greater~~ City of Des Moines Comprehensive Plan that require an environmental impact statement as determined by the community development director may be acted upon by the planning agency and city council between September 1st and December 31st of the year following completion of the environmental impact statement.

(4) By resolution, the city council may adopt an alternative review schedule from the schedule specified by this section for a particular calendar year.

Sec. 6 DMMC 18.84.070 and section 2 of Ordinance 1193 are each amended as follows:

18.84.070 **Contents of application for amendment.**

(1) Application for amendment of the ~~Greater~~ City of Des Moines Comprehensive Plan shall be submitted in writing to

the community development department. Every application for amendment shall include all of the following information:

(a) A completed application form as provided by the community development director.

(b) For an amendment of the text of the Greater City of Des Moines Comprehensive Plan, the requested change(s) shall be shown in legislative format (strikeouts and underlining).

(c) For an amendment of the preferred land use maps within the land use element, the request shall include a legal description of the subject property area and a parcel map identifying the subject property.

(d) An explanation of why the amendment is being proposed.

(e) The application fee as specified by the community development department fee schedule.

(2) The following information may also be required as determined by the community development director:

(a) A completed SEPA checklist with the applicable fee as specified by the community development department fee schedule.

(b) Property owner and tenant information as specified by DMMC 16.04.160(5) (Public notice procedure - Notice of DNS, mitigated DNS, or DS).

(c) One or more public notice signs as specified by DMMC 16.04.160(1) (Public notice procedure - Notice of DNS, mitigated DNS, or DS).

(d) One or more special studies, special public notice provisions, or other information as necessary to review and process the proposed amendment.

(3) Separate applications shall be required when the proposed amendment addresses more than one issue or policy, as determined by the community development director.

(4) The applicant shall be responsible for and may be required to reimburse the city for administrative costs associated with proposed amendments including special studies, staff review, mapping, printing, public notice, etc. as determined by the community development director.

(5) The community development director may waive specific submittal requirements determined to be unnecessary for review of an application.

(6) The community development director with the approval of the city manager may alter a privately-initiated amendment relating to a specific property in order to

allow the consideration of nearby property, similarly-situated property, or area-wide impacts.

Sec. 8 DMMC 18.84.080 and section 3 of Ordinance 1237 and section 3 of Ordinance 1193 are each amended as follows:

18.84.080 Decision criteria.

(1) Amendment of the Greater City of Des Moines Comprehensive Plan is a legislative action (Type VI land use action) and the planning agency and the city council shall be afforded the broadest possible discretion during review of amendment requests. The planning agency may recommend approval, approval with modifications, or denial of any application for amendment. The city council may approve, approve with modifications, or deny any application for amendment.

(2) The planning agency may recommend and the city council may approve or approve with modifications an amendment to the Greater City of Des Moines Comprehensive Plan when:

- (a) The amendment would correct a technical error; or
- (b) The amendment addresses changing circumstances or the needs of the city as a whole, and will benefit the city as a whole; and

(c) All of the following conditions are satisfied:

(i) The amendment is consistent with the Growth Management Act.

(ii) The amendment is not inconsistent with other elements or policies of the Greater City of Des Moines Comprehensive Plan.

(iii) The amendment will not adversely impact community facilities and bears a reasonable relationship to public health, safety, and welfare.

(iv) For amendments relating to a specific property:

(A) The amendment is compatible with adjacent land use and the surrounding development pattern as existing or as specified by the Greater City of Des Moines Comprehensive Plan, and

(B) The subject property is suitable for development as allowed by the development regulations of the potential zone.

(3) During the review of a proposed amendment to the Greater City of Des Moines Comprehensive Plan, factors that may be considered by the community development director, planning agency, and the city council include, but are not limited to, the following:

- (a) The effect upon the physical environment.

- (b) The effect upon the economic environment.
- (c) The effect upon the social environment.
- (d) The effect upon open space, surface waters, and environmentally sensitive areas.
- (e) The effect upon parks of local significance.
- (f) The effect upon historic and archeological resources of local significance.
- (g) The compatibility with an impact upon adjacent land uses and surrounding neighborhoods.
- (h) The adequacy of and impact upon capital facilities, utilities, and public services.
- (i) The quantity and location of land planned for the proposed land use type and density.
- (j) The current and forecasted population in the area or city.
- (k) The effect upon other aspects of the city or the Greater City of Des Moines Comprehensive Plan.

Sec. 9 The 2004/2005 Des Moines Comprehensive Plan Amendments attached to this ordinance as Exhibit "A" is hereby adopted as an addition to the Des Moines Comprehensive Plan.

Sec. 10. Severability - Construction.

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

(2) If the provisions of this ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this ordinance is deemed to control.

Sec. 10. Effective Date. This ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

PASSED BY the City Council of the city of Des Moines this ____ day of _____, 2005 and signed in authentication thereof this ____ day of _____, 2005.

A G E N D A I T E M

SUBJECT:
Police Department Sub-Station
Redondo Square

ATTACHMENTS:

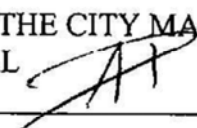
AGENDA OF: February 9, 2006

DEPT. OF ORIGIN: Police

DATE SUBMITTED: February 1, 2006

CLEARANCES:

[] POLICE _____

APPROVED BY THE CITY MANAGER
FOR SUBMITTAL 

Purpose and Discussion:

Should the City of Des Moines Council revisit the request of the police department and Joshua Green Corporation to enter into a partnership and lease agreement for office space (at no monthly or yearly lease costs for 5 years) in the Redondo Square Shopping Center to establish a Police Department Sub-Station,

And

Should the Council approve the one time funds of \$70,000 (not to exceed) for the building infrastructure, computers, and phone system. Yearly reoccurring operating costs of \$12,500 would be in addition to the tenant improvement.

Or

Should the Council accept the offer from Joshua Green Corporation to provide funding up to \$70,000 for tenant improvement to be repaid over the 5 year life of the contract, amortized at 7.5 percent interest (\$1,405 per month for 60 months). Yearly reoccurring operating costs of \$12,500 would be in addition to the tenant improvement repayment.

Suggested motions:

"I move to authorize staff to complete a lease for space at the Redondo Square Shopping Center to establish a Police Department Sub-Station with the Joshua Green Corporation at no monthly or year lease cost for 5 years and to bring the lease back to the City Council for final approval on the next available Consent Calendar."

"I move to authorize the use of \$51,630 of excess 2005 Real Estate Excise revenues for use in completing the necessary tenant improvements in the lease space at the Redondo Square Shopping Center for use as Police Department Sub-Station and direct staff to prepare a budget amendment to appropriate these funds to be place on the next available Consent Calendar."

Current Background/Discussion:

On January 27, 2006 a representative of the Joshua Green Corporation called Chief Baker expressing their desire for the Des Moines Police Department to become a tenant in Redondo Shopping Center. They indicated they have purposely not filled the vacant tenancy for over a year in hopes the City of Des Moines would create a partnership with their Corporation and the Redondo Square Business and neighboring Community by having a Police Sub-station as a tenant. The Joshua Green Corporation Representative indicated they may no longer be able to hold the tenant space vacant very far into the future and requested the partnership be brought up before Council. Joshua Green Corporation indicated the previous offer to sign the lease with the City of Des Moines giving the 1,950 square foot store front office space at no monthly or yearly lease costs for 5 years and to front all the necessary funds for leasehold improvements and infrastructure requirements in the amount of \$67,405, is still open to the city. These funds would be re-paid to Joshua Green over the term of the 5 year lease with interest if the city will accept their offer to provide the substation for the community of Des Moines. The previous offer was interest free.

Previous Background/Discussion:

On September 29, 2005 the following Memorandum was given to Council giving an update to requests by Joshua Green Corporation for a substation.

DES MOINES POLICE DEPARTMENT “PUTTING the needs of the community first”

M E M O R A N D U M

Date: September 29, 2005

To: Tony Piasecki
City Manager

From: Roger A. Baker
Chief of Police

Reference: Redondo Substation, Update Proposal from Joshua Green Corporation

Earlier this week we received a call from a representative of the Joshua Green Corporation expressing their continued desire and assistance to facilitate the tenancy of their Shopping Center to include a Des Moines Police Substation.

Specifically the Joshua Green Corporation has now offered to front all the necessary funds for Lease hold improvements and infrastructure requirements in the amount of \$67,405. These funds would be re-paid to Joshua Green over the term of the 5 year lease **without interest**. The monthly payment for the 60 month tenancy would be \$1,123.41. The lease agreement with Joshua Green Corporation for the actual office space will still remain at no monthly or yearly lease costs for 5 years.

Since Joshua Green Corporation has agreed to sign the lease with the City of Des Moines giving the 1,950 square foot store front office space at no monthly or yearly lease costs for 5 years we would only incur monthly maintenance costs and the up front lease hold improvements and infrastructure costs repayment in the amount of \$2,165.07 monthly (\$1,123 repayment and \$1,041 monthly reoccurring costs). *It is anticipated the department will incur the recurring costs of Power/Gas, Phone, Computer Communications (computer connections to city servers), Alarm Monitoring, Water/Sewer, Janitorial, Telephone, Office Supplies, and Minor Repair and Maintenance in the amount of \$12,500 yearly.*

The Joshua Green Corporation has come forward several times since this was first brought to council trying to find ways within their means to make this substation a reality. They obviously understand the need and value of such a partnership for their own corporation as well as all their leaseholders.

In our trying economic time I once again echo the need to create this neighborhood partnership if for nothing else but to help maintain the viability of the businesses and the economic base they bring to the City of Des Moines.

On July 7, 2005 this matter was presented to Council for consideration. Council requested additional information be gathered and remanded the Police Substation issue to the Public Safety and Transportation Committee for additional review and recommendation. On July 14, 2005 the PS&T Committee met prior to the regular Council Meeting. The Redondo Substation was discussed at length. There were four main concerns expressed both at the regular Council Meeting (July 7, 2005) and by Council Members of the PS&T Committee (July 14, 2005).

- **How will the Substation be staffed and what would be the hours of operation where it is open to the public for contact with City Staff?**

Initially the plan is to staff the substation from 9:00 AM to 11:00 AM and from 6:00 PM to 8:00 PM, Monday through Friday. These hours will remain flexible as the Woodmont/Redondo Community needs will help dictate the hours when the Substation will be staffed. Staffing for these hours of operation will be made from current department staff. Staff will be scheduled to work at the Substation for the hours scheduled rather than from main station offices.

- **How would the costs associated with this Police Substation be funded by the City of Des Moines at a time where General Funds as well as Reserve Funds are at such critical levels?**

Staff had requested \$67,405 of one-time funds for the building infrastructure, computer and phone systems for the Redondo Substation. These funds will come from two separate sources within the city's finances. The first being \$51,630 from excess Real Estate Excise Taxes (REET) collected in 2005. Since REET funds are extremely restricted and cannot be used for general fund or reserve fund purposes, the use of REET funds for the Redondo Substation meets the expectations and requirements of REET monies. The remaining \$15,775 would be expended from funds already programmed in the municipal capital improvement fund for 2005.

- **How would the effectiveness of a neighborhood police substation be measured annually and in the event the decision is made to close the Substations will the lease agreement allow the City of Des Moines to withdraw prior to the end of the lease?**

If approved by Council and prior to staffing the substation, complete crime analysis would be compiled on the Redondo Square Shopping Center as well as a specific geographical area surrounding the substation. In addition a survey would be designed and given to area residents, business owners, and business employees to ascertain their individual perceptions of safety and security. Annually thereafter

the crime analysis and surveys would be completed and reviewed before Council to determine if the impact and viability of the Redondo Substation best meets the needs of our community and meets the expectations of Council.

In the event a decision is made by council to close the Redondo Substation prior to the end of the five (5) year lease agreement, there will be provisions in the lease agreement allowing for "opt out" with proper notification.

- **Could development costs for the Redondo Substation be reduced by limiting the use of the facility?**

The funds estimated for the infrastructure for the facility were based off multiple estimates obtained from contractors specializing in those services. Half of the funds estimated to open the facility are strictly based on mandatory requirements or operations needs to make the facility operable. These mandatory requirements include HVAC, fire suppression and monitoring, security alarm and monitoring, electrical, access and locking devices, technology such as phones, computers, software licenses and printers, carpets and painting, and permits and inspections required by the city. This will not include any private office space for victim or witness interviews away from the public. It also will not allow for an area for the public to meet with staff away from city computers or phones and will not allow for a training or meeting room, brochure display racks, and signage.

By limiting the build out of this facility, it will not meet the intent or exposure of police activity the Joshua Green Corporation desires, nor will it accomplish the needs or goals of the police department in effecting the quality of life and crime rate in the Redondo Woodmont area. In the event the City is unable to fully fund the \$67,000 needed for this project, the police department feels it would be better to not pursue this endeavor.

From July 7, 2005 original Agenda Item

The Police Department is at a critical stage in the development of long term community policing strategies for our community. We are fully committed to implementing new strategies and goals to help shape the future of Des Moines and make this city a safer place to live, play, work or visit. We have already embarked on this path with the development and implementation of new ordinances designed to reallocate staff resources and address areas in our community where partnerships have a dramatic effect on crime.

- The Police Department is located in a geographical area with nearly all other City Service Offices. This was the central location for nearly all of Des Moines prior to the annexation of the Woodmont/Redondo areas. Officers needing to utilize department computers for report writing, data searches, report forms, victim interviews away from the crime environment, witness interviews, photo's of wanted persons, arrest or incident planning, etc., are now required to leave the Woodmont/Redondo patrol area and travel to the Des Moines Police Department central station to meet their needs.

Traditionally the use of sub-stations by police agencies is an effort to keep law enforcement officers in the patrol districts in which they are assigned as well as to give the community a place to go in their own neighborhoods to report crime, meet with officers, gain information on programs or crime prevention, and even to hold small community meetings. The use of police sub-stations is very common in the South King County Region. The Kent Police Department, Tukwila Police Department, Auburn Police Department, Federal Way Police Department, and Renton Police Department all operate these facilities for their staff and the community.

In today's world we are constantly focusing on emergency preparedness and planning. The City of Des Moines has traditionally used the Police Service Center for an emergency Operations Center (EOC). However, in the

event the Police Service Center was not available or was not appropriate for use in a major event in the South end of the City, the proposed police sub-station could be utilized as an EOC.

The Police Department has been assessing the feasibility of establishing a substation in the South end of the City for several years. The partnership proposed by Joshua Green Corporation provides an excellent opportunity to realize more of the strategies and goals of the Police Departments Strategic Plan. In this partnership Joshua Green Corporation has offered this store front to the Police Department at no cost (free) for a 5 year lease. The proposed substation would also be utilized for the following activities:

- Small Meeting Area for the Community
- Can be used by Code Enforcement, Parks Department, Public Works, Marina, Engineering, Planning, and City Administration for business contacts and small meetings.
- Can be used by Federal Way Police, Kent Police, WSP and King County Sheriff for business use since all these agencies meet Jurisdictional Boundaries in this area.
- Facilities use by Department of Corrections, Liquor Control Board, and Federal Housing and Urban Development Agents in conjunction with City of Des Moines investigations
- Sexual Offender Notification Meeting space
- Police Department Volunteer training area
- Police Department Volunteer programs can be based out of this facility
- Additional Training facility for police department personnel.

Financials:

The Police Department needs \$67,405 to pay for building improvements and equipment, including: office walls, ceiling grid panels, electrical, cabinets, counters, carpet, signage, office doors, communications wiring, painting, brochure display racks, computers, phones, security alarm installation, HVAC corrections, Fire Suppression System brought to code, permitting and permit fees (Structural, Electrical, Mechanical, and Low Voltage). Funds are not needed for office furnishings such as desks, chairs, tables and task lighting as those can be obtained free of charge from surplus State property. To cover the tenant improvement costs, staff proposes to use \$51,630 in excess 2005 REET revenues to fund those costs eligible to be paid for with REET funds, with the remaining \$15,775 coming from expected 2006 budget savings from the Police Department. Unanticipated revenue can be appropriated with a simple majority vote of the Council. REET revenue for 2005 came in \$200,000 greater than budget. This excess revenue was not programmed into the 2006-20011 CIP and is available for any eligible use. Also, the Police Department has historically under spent its budgetary appropriation by approximately \$100,000 per year as follows:

2003 - \$97,111

2004 - \$120,905

2005 - \$109,199

Since Joshua Green Corporation has agreed to sign the lease with the City of Des Moines giving the 1,950 square foot store front office space at no monthly or yearly lease costs for 5 years we would only incur yearly maintenance costs.

It is anticipated the department will incur the recurring costs of Power/Gas, Phone, Computer Communications (computer connections to city servers), Alarm Monitoring, Water/Sewer, Janitorial, Telephone, Office Supplies, and Minor Repair and Maintenance in the amount of \$12,500 yearly. The re-occurring costs will be absorbed by the Police Department in its yearly operating budget utilizing the savings noted above.

Alternatives:

Do nothing; keep doing business as we currently are and not take advantage of the free 5 year lease of the 1950 square foot store front.

Recommendations/Conclusion:

The success of our long term strategies/goals is critical and requires the implementation and use of better business practices and better utilization of our limited staff time. The opportunity for the Police Department and Joshua Green Corporation to become partners in the Police Sub-Station at Redondo Square will bring city/government services closer to the community we serve. The Police Department wholly supports this endeavor and feels it will be in the best interest of the City of Des Moines and the Woodmont/Redondo Communities.

A G E N D A I T E M

SUBJECT:

Interlocal Agreement between Normandy
Park and Des Moines for Senior Services

AGENDA OF: February 9, 2006

DEPT. OF ORIGIN: Parks, Recreation, &
Senior Services

ATTACHMENTS:

A. Interlocal Agreement

DATE SUBMITTED: January 10, 2006

CLEARANCES:

[☒] Park & Recreation Director 

[☒] City Attorney 

APPROVED BY THE CITY MANAGER

FOR SUBMITTAL 

Purpose and Recommendation:

The purpose of this Agenda Item is to seek City Council approval to enter into an Interlocal Agreement between the City of Des Moines and the City of Normandy Park whereby in fiscal year 2006, Normandy Park will contract for Senior Services from Des Moines.

Recommended Motion:

1. "I move to approve the Interlocal Agreement between the City of Normandy Park and the City of Des Moines for Senior Services in fiscal year 2006."

Background:

The City of Normandy Park and the City of Des Moines have entered into an Interlocal Agreement to provide senior services for Normandy Park residents since 1992. This agreement defines the scope of services provided and the details for compensation. The funding dollars received from the City of Normandy Park help Des Moines Senior Center to provide services to Normandy Park residents.

Discussion:

The funds provided in 2005 were approximately 5% of the senior services annual budget. The percentage of Normandy Park residents who benefit from the senior services provided were approximately 10% in fiscal year 2005. The agreed compensation amount has varied from \$7,500 to \$12,000 over the last ten years. The budgeted amount from Normandy Park for fiscal year 2006 is \$10,000. With this Interlocal Agreement Normandy Park residents are eligible to use the Senior Shuttle Transportation program and the Meals on Wheels program which are based on residence. Normandy Park residents also receive the monthly newsletter at four locations in the city boundaries. Several senior classes are also conducted at Normandy Park City Hall for easy access by Normandy Park residents. The unduplicated number of Normandy Park residents participating in senior center programs during 2005 was approximately 463. The number of Normandy Park visits to senior center programs in 2005 was approximately 2,156. At the end of the year, 793 meals on wheels were delivered to Normandy Park residents and 519 Normandy Park residents have used the Senior Shuttle transportation service.

The 2006 Interlocal Agreement includes a new ninety day early termination clause. The agreement is also an annual agreement where it has previously been a two year agreement when the City of Normandy Park converted to a two year budget in 1996. These are the two changes to the current Interlocal Agreement from previous years at the request of the City of Normandy Park Interim City Manager. Senior Center staff was responsible for updating the two year agreement. Staff erred and did not provide the City of Des Moines and the City of Normandy Park with the 2002 through 2004 agreement, as well as the 2005 and 2006 agreement. A state audit of the City of Normandy Park noted that there was not an agreement for 2005 and 2006. The City of Normandy Park has agreed to a letter from the City of Des Moines for 2005 funds.

Alternatives:

Do not approve the Interlocal Agreement and stop services to Normandy Park residents. Lose \$10,000 revenue for the City of Des Moines Senior Services budget.

Financial Impact:

The funds provided by the City of Normandy Park help the senior center to provide the many programs and services available to citizens fifty and older. Loss of these dollars would mean a decrease in services to Normandy Park residents and the need for senior center staff to generate the lost funds through another source.

Recommendation/Conclusion:

It is recommended that the City Council approve the Interlocal Agreement between Normandy Park and Des Moines for senior services.

Concurrence:

The Senior Services Advisory Committee and senior services staff recommend the approval of the 2006 Interlocal Agreement between the City of Des Moines and the City of Normandy Park.

INTERLOCAL AGREEMENT BETWEEN NORMANDY PARK AND DES MOINES FOR SENIOR SERVICES

THIS AGREEMENT, pursuant to Chapter 39.34 of the Revised Code of Washington, is entered into between the City of Des Moines (hereinafter "Des Moines") and the City of Normandy Park (hereinafter "Normandy Park") relative to the provision of senior services by Des Moines to Normandy Park. This Agreement shall be effective as of January 1, 2006.

Recitals

This Agreement is entered into on the basis of the following understandings, facts, and assumptions:

1. Des Moines and Normandy Park, through their respective city councils, have declared their intent to create a relationship wherein Normandy Park contracts for senior services from Des Moines.
2. Normandy Park and Des Moines recognize that the cost savings from shared senior services greatly outweigh the increased facility and administrative expenses in creating and maintaining separate facilities and accounting practices associated with senior services programs.
3. The purpose of this Interlocal Agreement is to set forth the relationship of the parties with respect to senior services.

Agreement

ACCORDINGLY, and in reference to the foregoing, the parties agree as follows:

1. **Scope of Services.** Des Moines agrees to provide and Normandy Park agrees to pay for senior services for the benefit of the fifty years of age and older residents of Normandy Park. Normandy Park seniors shall be entitled to participate in all programs which are offered by the Des Moines Parks, Recreation & Senior Services Department.
2. **Compensation.** Normandy Park agrees to pay Des Moines a set fee of ten thousand dollars (\$10,000) for fiscal year 2006 for senior services. Such ten thousand dollars (\$10,000) payment shall be paid in four (4) equal quarterly installments. It shall be the responsibility of Des Moines to invoice such payments.

3. ***Contract Negotiations.*** The parties agree that future contract costs are subject to negotiation by the parties, such negotiation to occur bi-annually during the second quarter of the year and be approved in each party's budget not later than December 31st, of the calendar year preceding the renewal date of the Agreement. Des Moines agrees to track usage of senior services by Normandy Park residents during the contract period to develop data for computing proportionate usage of facilities and services, and will provide quarterly reports to Normandy Park.

4. Des Moines agrees that its senior services manager will consult with Normandy Park and implement the following, as budgetary constraints permit:

(a) Assist designated Normandy Park staff with senior citizen needs assessment, and

(b) Assist Normandy Park in developing its own senior center or associated programs for future offering of services.

5. ***Indemnification and Hold Harmless.***

(a) Normandy Park shall indemnify and hold harmless Des Moines and its elected officials, officers, agents or employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, which are caused by or result from a negligent act or omission of Normandy Park, its officers, agents and employees that occurred prior to the effective date of this Agreement for Senior Services.

(b) Des Moines shall indemnify and hold harmless Normandy Park and its elected officials, officers, agents or employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, which are caused by or result from a negligent act or omission of Des Moines, its officers, agents and employees that occur after the effective date of this Agreement for Senior Services.

(c) The indemnification provisions in this section shall survive this Agreement.

6. ***Agreement Administration.*** The responsible party for administering this Agreement for Des Moines shall be the senior services manager, under the direction of the Des Moines city manager. The responsible party for administering this Agreement for Normandy Park shall be the Recreation Coordinator, under the direction of the Normandy Park city manager.

7. ***Amendments.*** This Agreement may only be amended in writing and with the mutual consent of the parties.

8. **Effective Date/Early Termination.** This Agreement shall take effect and be in full force as of January 1, 2006 and shall remain in force until December 31, 2006, provided however that either party may terminate this agreement at any time by written notice to the other party of such intent ninety (90) days in advance of the intended termination date.

payment due s/b prorated thru date of termination

DATED this _____ day of _____, 2006.

CITY OF DES MOINES

Tony Piasecki
Its City Manager

As directed by the Des Moines
City Council in Open Public
Meeting _____ of

APPROVED AS TO FORM:

Linda A. Marousek
City Attorney

DATED this _____ day of _____, 2006.

CITY OF NORMANDY PARK

Joyce Papke
Its Interim City Manager

APPROVED AS TO FORM:

Susan R. Sampson
City Attorney

Linda A. Marousek, City Attorney
Richard S. Brown, Assistant City Attorney
Vicki Sheckler, Legal Assistant
21630 11th Avenue So., Suite C
Des Moines, WA 98198
206.870.6553
Fax: 206.870.4387

**OFFICE OF THE
DES MOINES
CITY ATTORNEY**

Memo

Date: February 7, 2006
To: Des Moines City Council & City Manager
From: Linda A. Marousek, City Attorney
Re: Interlocal Agreement with Normandy Park, New Business, Item #2,

The City Attorney recommends that the underlined sentence in Section 8 (attached) be added to the Interlocal Agreement with Normandy Park for Senior Services being presented in Agenda Item #2 of New Business.

CONFIDENTIAL

THIS DOCUMENT CONTAINS PRIVILEGED
ATTORNEY WORK PRODUCT AND ATTORNEY-
CLIENT COMMUNICATIONS.

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DATED this _____ day of _____, 2006.

CITY OF DES MOINES

Anthony A. Piasecki
Its City Manager

As directed by the Des Moines
City Council in Open Public
Meeting of _____

APPROVED AS TO FORM:

Linda A. Marousek
City Attorney

DATED this _____ day of _____, 2006.

CITY OF NORMANDY PARK

Joyce Papke
Its Interim City Manager

APPROVED AS TO FORM:

Susan R. Sampson
City Attorney

Linda A. Marousek, City Attorney
Richard S. Brown, Assistant City Attorney
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DATED this _____ day of _____, 2006.

CITY OF DES MOINES

Anthony A. Piasecki
Its City Manager

As directed by the Des Moines
City Council in Open Public
Meeting of _____

APPROVED AS TO FORM:

Linda A. Marousek
City Attorney

DATED this _____ day of _____, 2006.

CITY OF NORMANDY PARK

Joyce Papke
Its Interim City Manager

APPROVED AS TO FORM:

Susan R. Sampson
City Attorney