REGULAR MEETING OF THE DES MOINES CITY COUNCIL

MINUTES February 12, 1998

The regular meeting of the Des Moines City Council was called to order by Mayor Thomasson at 7:36 p.m. in the Council Chambers, 21630 11th Avenue South.

Pledge of Allegiance to the Flag was led by Councilmember Sheckler.

ROLL CALL - Present: Mayor Scott Thomasson, Mayor Pro Tem Terry Brazil, Councilmembers Dave Kaplan, Bob Sheckler, Dan Sherman, and Don Wasson. Absent: Councilmember Gary Towe (ill). Also present were City Manager Bob Olander, Assistant City Manager Tony Piasecki, City Attorney Gary McLean, Finance Director Jim Hathaway, Public Works Director Tim Heydon, Civil Engineer Jim Seitz, and City Clerk Denis Staab.

> **MOTION** was made by Councilmember Sherman, seconded by Councilmember Sheckler and passed unanimously, to excuse Councilmember Towe.

COMMENTS FROM THE PUBLIC

Richard Larson, 920 South 226th Place

> Mr. Larson informed Council that he is a runner, and has used the Des Moines Field House play field for many years. He advised Council that he feels he has been treated unprofessionally by the Des Moines Parks Manager when he has complained about muddy conditions on the main ball field next to 3rd base. He stated that barricades have been placed in the area where he runs and he was informed by the Park Manager that he may be barred for running through the park as it is his fault that the area is so muddy by the path he has created. Mr. Larson felt that this is not appropriate treatment by City staff for use of a Park paid for by taxpayers.

Jack Dovey, 917 South 294th Place, Federal Way

> Federal Way Councilmember Dovey, encouraged Council to approve the Interlocal Agreement with Federal Way for assumption of the Lakehaven Utility District. He advised Council that as a small business owner and Councilmember, he felt it is important to be able to offer citizens "one-stop shopping" when it comes to local government and utilities. He felt that the City of Federal Way can provide a more economic and quality utility service to the citizens.

Steven Hansen, 21227 4th Avenue South

> As a real estate broker, Mr. Hansen spoke in support of the City of Federal Way taking over the utilities. He stated that being able to get information on zoning, water and sewer availability all at one location is a small step in a positive direction. He encouraged Des Moines do to the same in the future as it would save tax payers money in the long run.

Bob McMurtray 1125 South 276th Place

> Mr. McMurtray informed Council that the water quality and quantity, along with customer service, has been deteriorating in the Lakehaven Utility District. He spoke of excessive chlorine, diminished water pressure, and interrupted services as some of the problems. He encouraged Council to approve the Interlocal with the City of Federal Way.

William Kilburn, 2080 South 222nd

Mr. Kilburn, President and Director of Moms and Dads located at 22035 Pacific Highway South, presented Council with a petition request from approximately 40 business owners in Kent, and 30 in Des Moines along Highway 99. The request was for Des Moines to support placing cameras for safety on Highway 99 to cut crime, stop drug dealing and end prostitution. He informed Council that the same petition has been given to Kent City Council. In conclusion, Mr. Kilburn noted that the proposed redevelopment of Highway 99 is a good step for future planning.

Sven Kalve, 27024 8th Avenue South

Mr. Kalve noted that he has been served by the Lakehaven Utility District for approximately 30 years and generally has been served well. However, Mr. Kalve spoke in support of the Interlocal as he feels City government is more accountable and will provide better service

Mark Mannard, 24327 22nd Place South

Mr. Mannard noted that he supports the City of Federal to manage the Lakehaven Utility District. He advised that the water and sewer demands of the area are increasing and Federal regulations are getting tougher. He cited strains on technology and system designs are stressing even the best managed utility districts. He concluded by noting that it is his opinion that the City of Federal Way can best protect and guarantee citizens the quality of water and sewer services they deserve.

Richard Kennedy, 1017 South 251st

Mr. Kennedy informed Council that he and Dick Thomas, President of the Historical Society, have obtained bound volumes of all issues of the now out of business Des Moines News newspaper.

Mr. Kennedy advised Council that the former Mayor of Renton, Charles “Charlie” Delaurenti, passed away last Monday.

Gene Achziger, 28708 Sound View Drive South

Mr. Achziger stated that he is representing the Redondo Community Club. He advised Council that the Club voted unanimously to oppose the take over of the Lakehaven Utility District by the City of Federal Way, on the grounds that those area residents in Des Moines would lose any kind of control over the utility services. He noted that under the assumption of Federal Way, Des Moines residents would have no voice in electing the people who are governing the utilities. He encouraged Council to oppose the proposed interlocal.

Jean Burbage, Federal Way City Councilmember

Councilmember Burbage spoke in support of the proposed interlocal agreement, noting this is an important element in coordinating Federal Way’s plans for the future. This would enable them to ensure a long term reliable source of water, protect against health risks and maintain and update the water and sewer infrastructure for the citizens of their City. She advised that working cooperatively with Des Moines, through the interlocal agreement, will restore control over urban services to both cities.

Mary Gates, Federal Way City Councilmember

Councilmember Gates noted that the nature of the area served by the Utility District has changed from rural to urban and there is a great need to coordinate water and sewer with growth issues. She reminded Council that the legal and political battles, and all expenses are being shouldered by Federal Way. She stated that Des Moines and Federal Way can work well together to serve the citizens.

Cary Roe, Federal Way Public Works Director

Mr. Roe informed Council that since 1996 he has never gotten a reaction from Lakehaven to coordinate AC pipe replacement when Federal Way has notified them of street overlayment projects. He showed Council diagrams of the last couple of years where major projects were accomplished with no pipe replacement by Lakehaven.

Bev Tweddle, Commissioner Lakehaven Utility District

Ms. Tweddle noted that Lakehaven Utility District has always had a cooperative working relationship with the City of Federal Way. She advised that the Commissioners have hired a highly trained engineer as the new manager of the Utility. She noted that if Federal Way takes over the utility, Des Moines residents will have no say in raising rates, surcharges, or potential new taxes. She noted that all of this would have been avoided if this issue had been allowed to go to a vote of the people. She remarked in reference to Federal Way's comment that the District has no maintenance of planning objectives, that a report was done last fall that would show the Des Moines Council that this is not true. She stated that one of the criteria for an assumption by the City of Federal Way is that they must be able to provide the same or better service than what currently exists.

Larry Burrows, Attorney For Lakehaven

Mr. Burrows advised Council that if they approve the interlocal agreement and Federal Way takes over the Utility District, Des Moines will be wed to Federal Way and subject to all their decisions including rates. He also noted that Des Moines may have to take over the sewer treatment plan and assume all payments based on outstanding indebtedness.

Bev Tweddle, Lakehaven Utility Commissioner

Ms. Tweddle contended that Federal Way does not have any water quality or disinfection procedures in place. She advised that the Utility District has been involved in a two year corrosion control study and it is moving forward. She concluded by stating that this is just a simple way for Federal Way to raise funds through an unregulated utility.

BOARD & COMMITTEE REPORTS

Suburban Cities Association

Mayor Pro Tem Brazil reported that at last night's Suburban Cities meeting the topic was the environment and endangered species. He informed Council that he will place material on this matter in Councilmember's boxes for reading. He also stated he has an 8 minute video on "Car Smart - Car Safe" that he encourages each Councilmember to review.

ADMINISTRATION REPORTS

Draft Responses to Council Correspondence (Cliff and Julie Griffin, Glenn and Sally Macrael)

City Manager Olander requested Council to review his draft correspondence in response to concerns of these residents to see if they had any concerns or questions regarding his response.

Executive Session

City Manager Olander requested Council have a brief Executive Session this evening to discuss a personnel appointment and the qualifications for that appointment.

PRESIDING OFFICER'S REPORT

Standing Council Committee and Liaison Appointments for 1998

Mayor Thomasson noted the draft committee appointments as distributed at the last Council meeting will be effective for 1998. They are as follows:

STANDING COMMITTEES

ENVIRONMENT: Bob Sheckler, Chair; Dave Kaplan; Scott Thomasson
MUNICIPAL FACILITIES: Gary Towe, Chair; Bob Sheckler; Don Wasson
PUBLIC SAFETY & TRANSPORTATION: Dan Sherman, Chair; Scott Thomasson; Don Wasson
AD HOC ZONING MAP: Don Wasson, Chair; Scott Thomasson; Gary Towe

LIAISON ASSIGNMENTS

ACC: Bob Sheckler
Terry Brazil, Alternate
HUMAN SERVICES ADVISORY BOARD: Gary Towe
HUMAN SERVICES ROUNDTABLE: Gary Towe
PLANNING AGENCY: Dave Kaplan
SENIOR ADVISORY COMMITTEE: Bob Sheckler
SR 509 STEERING COMMITTEE: Dan Sherman
SOUTH COUNTY TRANSPORTATION BOARD: Dan Sherman
Don Wasson, Alternate

CONSENT CALENDAR was read by City Clerk Staab.

1. Motion is to approve the minutes of January 22, 1998.
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 42.24.080, 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 check #59654 through #59916 in the total amount of $384,270.47
Payroll fund transfers in the total amount of $204,520.72

3. Motion is to authorize the City Manager to sign substantially in the form as attached the memorandum of understanding with King County regarding disposal of severe storm debris.

4. Motion is to award the contract for construction of the Des Moines Creek Trail Project Phase I, Part B Connector Trails to Northwest Trails, Inc. in the amount up to $69,982.93 plus a 10% contingency, and authorize the City Manager to sign said contract substantially in the form as attached.
5. Motion is to approve surplusing the following telephone systems and associated equipment: AT&T Partner Plus, AT&T Merlin Legend, and AT&T Merlin Plus and authorize disposing of by auction, sale or transfer to other department or agencies.
6. Motion is to accept the base bid plus alternative 2 from Marcor Construction for the upgrade of the Marina Fuel Facility in the amount of $291,440 plus a 10% contingency of $29,144 for a total of $320,584, and authorize the City Manager to sign said contract substantially in the form as attached.
7. Motion is to approve the Interlocal Agreement between the City of Des Moines, King County, the City of SeaTac and the Port of Seattle to share costs to conduct specific activities to implement the Des Moines Creek Basin Plan, jointly prepared by the parties to this Agreement, the total cost share for Des Moines, as outlined in the agreement, shall not exceed $53,250, and further to authorize the City Manager to sign such agreement substantially in the form as attached.
8. Motion is to refer the issue of the maximum reserve accumulation for the Facility Repair and Replacement Fund to the Municipal Facilities Committee for discussion and recommendations.
9. Draft Ordinance No. 98-045 ***[ASSIGEND ORDINANCE NO. 1206]*** - Title: An Ordinance of the City of Des Moines, Washington relating to rules and regulations for appointive agencies, boards, commission, and committees and amending DMMC 4.24.040.

TWO MOTIONS: First motion is to suspend Council Rule 26(b). Second motion is to approve Draft Ordinance No. 98-045.

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

NEW BUSINESS

Bond Sale Agreement to Fund Land Purchase - Senior Center and Recreation Fields

Finance Director Hathaway reminded Council that at the January 8, 1998 meeting, the City Council voted to purchase ten acres from Alexander Myers Investors for $827,640 for use in the future development of sports fields. At the November 13, 1997 meeting, Council voted to purchase 4.14 acres of property owned by the Columbia Conference Church Growth Fund for development of a Community/Senior Center. Mr. Hathaway proceeded to review the bond repayment schedule, noting that this bond issue will provide the proceeds to tentatively close with both sellers on March 9, 1998. The total amount of the bond issue to include the cost of issuance will be $1,230,000. He concluded by informing Council that the economic climate for debt issuance is good, as interest rates remain very low.

MOTION was made by Councilmember Sheckler, seconded by Mayor Pro Tem Brazil, to direct the City Manager to proceed with the sale of $1,230,000.00 of General Obligation bonds to finance land purchases for a future senior center and recreation fields with the repayment of the senior center's portion of the debt to be repaid by Community Development Block Grant funds to the extent they are available.

Councilmember Sherman commented that initially he was not in favor of purchasing park land without further public input, but the majority of Council was in favor therefore, he will vote yes on this funding issue.

Councilmember Wasson stated that since the majority of Des Moines's voters were not in favor of the park purchase, he will vote no on this issue.

City Manager Olander reminded Council that they have already voted to purchase the land and staff has moved ahead based on that direction. This matter tonight is for the final financing of the purchases.

VOTE ON MOTION: Motion passed 4 to 2 with Councilmembers Kaplan and Wasson voting NO.

PUBLIC HEARING

Street Vacation, 10' of 11th Avenue South, Between South 251st Street to the North and Approximately South 252nd Street to the South, and the South Five Feet of South 251st Street Right-of-way Adjacent to 1017 S. 251st

Councilmember Sherman announced that he will excuse himself from these proceedings and left the Council Chambers.

With the use of view foils, Civil Engineer Seitz showed the exact location of the proposed street vacations. In regards to South 251st he noted it is classified as a Class A right-of-way, a neighborhood collector and currently meets the minimum right-of-way width requirement as set forth in the City's 1996 Street Development Standards. He stated that South 251st Street is a main route between Marine View Drive to the west and 16th Avenue to the east, and is a designated pedestrian and bicycle route, and presently serves a Metro bus line. Any reduction in width would make the right-of-way substandard as it is needed to provide sufficient width for utilities and/or future improvements such as sidewalks, bike lanes, street lights, bus pull-outs, intersection radii, etc. He detailed this future development with the use of view foils. He advised that staff opposes any vacation of right-of-way along South 251st Street.

In regards to the 11th Avenue South vacation, Civil Engineer Seitz informed Council that it is essentially a dead end street south of 251st Street, and that ten feet of right-of-way could be vacated and still be in reasonable compliance with the City's standards. Therefore, staff would not object to a five foot reduction in width on each side of the right-of-way, however staff recommends the following stipulations:

- At the intersection with S. 251st, the City retain all the existing right-of-way and get additional right-of-way at the corners for future sidewalk and street radius improvements.
- Since there are a number of existing utilities in the five feet in question, utility easements need to be recorded before any street vacation is approved.
- The five feet should not be vacated in front of Lots 13, 14, 15, 28, 29, and 30 as the space is needed for vehicles to turn around.
- Require compensation at the full appraised value as of the effective date of the vacation.

Upon questioning, Public Works Director Heydon advised Council that he is strongly opposed to any vacation of South 251st.

8:59 p.m. Mayor Thomasson declared a recess and advised that Council will convene in Executive Session for approximately 15 minutes to discuss personnel matters. At 9:13 p.m. Council adjourned the Executive Session and took at 2 minute break.

City Attorney McLean advised that this public hearing is not a Quasi Judicial matter and cited a couple of court cases to support this, and noted that Municipal Research Center attorneys concur. He read into the record the rules for conducting the public hearing and noted that the appearance of fairness doctrine does not apply to this matter.

PROPONENTS:
Richard Kennedy, 1017 South 251st
Mr. Kennedy addressed the Council advising that his attorney, James Gorham, does believe this is a quasi judicial matter. He informed Council that he is requesting Council recognize a street vacation that occurred by operation of law in 1895 and that he is representing 100% of the property owners that will be effected by the vacation. With the use of view foils and photos Mr. Kennedy informed Council of the following:

- History: Plat was recorded in 1890 and unopened until 1926, with construction in 1933.
- South 251st is currently unstable, labeled Environmental Sensitive, just to the east of his property on the south side of 251st. He noted there is a 40 drop off behind the City's guard rail, with a stream and poor wet sliding soil conditions.
- Cost to City to develop S. 251st, as shown by staff, would be extremely expensive due to the environmental factors.

Mr. Kennedy proceeded to show that South 251st could be constructed if shifted to the north. Therefore, he stated that the area requested to be vacated is not reasonably necessary for an easement.

Mr. Kennedy stated that staff is in error in noting that 11th Avenue South is a Class A right-of-way as he believes it is a Class C. He further noted the following details regarding 11th Avenue South:

- Constructed at residents expense.
- Utility Poles on the east side are all on private property.
- Compensation should not be requested as 11th Avenue as a Class "C" street, was built through an LID, so residents should not have to pay twice.

Mr. Kennedy proceeded to continue to review his reasons why the vacation should be granted highlighting some of the following items:

- South 250th/251st is not listed for any improvements in the Comprehensive Plan or the 6 Year Transportation Plan, therefore no reasonable necessity to keep right-of-way.
- South 251st is not listed as a primary route.
- A bicycle route is only noted on the north side of South 251st.
- South 251st is a METRO bus route, but no turnouts are needed as it does not stop in the area.
- The streets in question are not a major gateway to Saltwater Park as the neighborhood uses an existing trail at the dead-end of 11th and 13th Avenues South.

Mr. Kennedy concluded by stating that in his opinion, staff's report contained pertinent factual errors such as being inconsistent with City's Comprehensive Plan, ignores legal topographical implications, and there should be no compensation for 11th Avenue South as it has never been opened. Therefore, Mr. Kennedy requested Council ignore staff recommendations and adopt an ordinance vacating the streets as outlined in Resolution No. 835.

Larry Burrows, Bainbridge Island
Mr. Burrows advised Council that he and his neighbors successfully sued the City of Bainbridge Island after they refused to vacate a road that had never been opened. He noted that this was an unnecessary expenditure on the part of the City of Bainbridge Island.

As there were no further individuals wishing to speak, Mayor Thomasson closed the public testimony portion of the Public Hearing.

Mayor Thomasson noted that since this is a legislative matter, Councilmembers are free to visit the areas in question prior to the continuation of this matter.

MOTION was made by Councilmember Sheckler, seconded by Mayor Pro Tem Brazil, to continue the public hearing to February 26, 1998 meeting. Motion passed unanimously.

OLD BUSINESS

Continued Discussion - Interlocal Agreement with Federal Way Regarding Lakehaven Utility
City Attorney McLean reviewed for Council changes to the proposed Interlocal Agreement that have been incorporated since the February 5th meeting.

Upon questioning from Council regarding AC pipe replacement, Federal Way Public Works Director Roe advised that he would take a very pro-active role to replace this pipe by coordinating replacement with the City's overlayment program. He reminded Council that Lakehaven's current schedule would take 155 years to replace all the AC pipe.

Federal Way's Finance Director replied to Council questioning, that Federal Way has $44 million in reserves with $26 million in the Capital Improvement Plan dedicated to various projects, and $18 million to "rainy day" projects.

Federal Way Public Works Director Roe noted, upon questioning by Council, that Federal Way would create a separate division for water and sewer.

Upon questioning from Council, Lakehaven's representative advised that the Utility District currently has approximately $22 million in liquid assets.

Councilmember Wasson stated that he cannot accept the one-stop shopping idea as a valid argument as it would not apply to residents in Des Moines.

Mayor Pro Tem Brazil noted that an interlocal is the only way to protect Des Moines citizens who will not be able to vote on any representation. He feels Federal Way will go forward with the assumption.

10:29 p.m. Motion was made, seconded and passed, to extend the meeting to 10:45 p.m.

Mayor Thomasson stated that it is his opinion that in the long run city government is the best equipped to run utility districts. He felt that the proposed interlocal would be in the best interests of the residents of Des Moines at this time.

Councilmember Kaplan noted that he feels the interlocal provides the best terms possible to protect Des Moines residents.

MOTION was made by Councilmember Sheckler, seconded by Mayor Pro Tem Brazil, to approve the Interlocal Agreement between the cities of Des Moines and Federal Way regarding the Lakehaven Utility District, and authorize the City Manager to sign such Agreement substantially in the form as attached.

Councilmember Wasson noted that he cannot support the proposed interlocal. He noted that the $22 million in assets the Lakehaven Utility District currently has will go to the City of Federal Way and since these funds were raised by rate payers, Des Moines residents will be losing. He reminded Council that the Redondo Community Club spoke in opposition and he will support their wishes.

Mayor Thomasson expressed some concern that the proposed agreement may not cover everything, but feels it is important to move forward and allow the Boundary Review Board to make the proper decisions.

Councilmember Sherman stated that the interlocal will help protect Des Moines residents and that is his main concern should Federal Way be successful in taking over the Utility District.

VOTE ON MOTION: Motion passed 5 to 1 with Councilmember Wasson voting NO.

NEW BUSINESS

Appointment of Municipal Court Judge

MOTION was made by Councilmember Kaplan, seconded by Councilmember Wasson, to confirm City Manager Olander's appointment of Albert M. Raines as the new Des Moines Municipal Court Judge. Motion passed unanimously.

Draft Ordinance No. 98-019 Distribution of Council Compensation - 1st Reading

MOTION was made by Councilmember Sheckler, seconded by Mayor Pro Tem Brazil, to suspend Council Rule 26(b) in order to enact the draft ordinance on a first reading. Motion passed 5 to 1 with Councilmember Wasson voting NO.

MOTION was made by Councilmember Sheckler, seconded by Mayor Pro Tem Brazil, to approve Draft Ordinance No. 98-019.

City Attorney McLean read the draft ordinance by title into the record.

10:45 p.m. Motion was made, seconded and passed, to extend the meeting another 5 minutes.

Councilmember Sheckler advised Council that the Draft Ordinance does not increase Council compensation but changes the method of payment and disbursement. The proposal is to take the same annual compensation based on 36 meetings and divide it on a monthly basis. This would avoid the problem of having no compensation toward year end after the 36 meeting limit is exceeded.

Mayor Thomasson noted that he reads the ordinance to actually take away the per meeting pay and replaces it with a monthly pay. He stated that he is not in support of this method of payment even though he does support the idea of a meeting limit cap.

City Attorney McLean noted that it does change the salary to a monthly pay, based on a 36 meeting limit.

Councilmember Wasson remarked that during his life time of work, and he has never gotten paid for not showing up for work.

Councilmember Kaplan stated that if there are less than 36 meeting held, the compensation could actually be more by this method of payment.

Councilmember Sherman felt it important to note that if this new method of Council salary is implemented, anyone wanting to file for office of Councilmember would be required to pay a 1% fee because this would be considered a salaried position.

VOTE ON MOTION: Motion failed by a 3 to 3 vote with Councilmembers Kaplan, Wasson and Mayor Thomasson voting NO.

NEXT MEETING DATE

Mayor Thomasson noted the next meeting will be an Executive Session on February 19, 1998 to discuss with Counsel litigation issues. He noted the next regular meeting will be February 26, 1998.

ADJOURNMENT

Meeting was adjourned at 10:50 p.m.

Respectfully submitted,

Denis Staab
City Clerk