

PRELIMINARY
REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

February 29, 1996

The regular meeting of the Des Moines City Council was called to order by Mayor Thomasson at 7:40 p.m. in the Council Chambers, 21630 11th Avenue South.

Mayor Thomasson announced that the late start was due to an executive session held just before the regular meeting.

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

ROLL CALL - Present: Mayor Scott Thomasson, Mayor Pro Tem Terry Brazil, Councilmembers Bruce Roberts, Dan Sherman, Gary Towe and Don Wasson. Absent: Councilmember Bob Sheckler (vacation). Also present were City Manager Bob Olander, City Attorney Gary McLean, Senior Planner Robert Ruth and City Clerk Denis Staab.

MOTION was made by Mayor Pro Tem Brazil, seconded by Councilmember Wasson and passed unanimously, to excuse Councilmember Sheckler.

PUBLIC HEARING CONTINUED

Draft Ordinance No. 95-167 - Street Vacation and Rezone from RS 7100 to BP (Business Park), and Draft Resolution No. 95-166 - Approving Request to Vacate Plats and Approving a Master Plan Providing for Development of a 54 Acre Site for Business Park Use - Applicant: Port of Seattle, File No. MP 94-050

City Attorney McLean explained the process noting we are continuing the public comments on SEPA appeals by the appellants. He proceeded to read the rules for conducting the public hearing and questioned Council whether there has been any new matters under the Appearance of Fairness Doctrine. There were none.

PUBLIC COMMENTS

Steve Buttler, Principal Planner, City of SeaTac Planning Department

With the use of an overhead view foil, Mr. Buttler proceeded to review the following points of appeal, noting that although the City of SeaTac believes in the concept it felt that there are some undue adverse impacts:

Mitigation Measure #14 - "Encourage tenants to participate in transportation demand management programs. . . "

SeaTac Comment: Concurs with the revised mitigation language.

Mitigation Measure #18 - Direct vehicular access to and from S. 216th Street shall be prohibited for the proposed master planned areas . . .

SeaTac Comments: Concur with the revised mitigation language.

Mitigation Measures #22 and #23 - Street frontage improvements for 24th Avenue South . . . based on a 48 foot wide arterial street design section improved initially with 3 traffic lanes, bike lanes, . . .

SeaTac Comments: The suggested design configuration for 24th Ave. S. is not consistent with the 28th/24th Corridor project and its EIS, which contemplates:

- Street width of 78 feet (curb-to-curb), with 4-5 traffic lanes.
- Curbs, gutters, sidewalks and landscaping.

SeaTac Requested Action: Revise this mitigation measure; street frontage improvements consistent with the 28th/24th road project EIS.

Mitigation Measure #24 - Install curb, gutter, drainage, and lighting and widen the existing pavement section to provide for a 36 foot-wide, 3 lane road section for S. 208th Street . . .

SeaTac Comment: Given that 82 p.m. peak trips would be generated by the DMCTC project onto S. 208th Street by 1997 and that a large amount of pedestrian traffic is expected between the CTI site and SR 99, adequate mitigation must also include the provision of:

- sidewalks,
- street trees,
- undergrounding of utilities, and
- a street overlay.

SeaTac Requested Action: Revise the mitigation language to include the additional street improvements.

Mitigation Measure #31 - South 208th Street shall be the designated truck route for each phase of construction and overall site operation . . .

SeaTac Comment: Places almost the entire impact of the truck traffic upon S. 208th Street (a SeaTac road). Does not sufficiently address steps for minimizing impacts to S. 208th Street and International Boulevard.

SeaTac Requested Action: Designate another street, other than South 208th Street, as the truck route.

Mitigation Measure #37 - Should an alternative be selected for the completion of SR 509 and be constructed prior to the required construction of any non frontage street system improvements . .

SeaTac Comment: The City of SeaTac is concerned that this measure could conceivably result in the S. 208th Street improvement monies being used for another project that would not adequately address DMCTC's negative traffic impacts to the SeaTac transportation system.

SeaTac Requested Action: Revise Mitigation Measure #37 to ensure that S. 208th Street improvements shall not be reallocated without the written agreement of the City of SeaTac.

(ED NOTE: Written material on the above presentation was entered into the record as Exhibit #7.)

Don Monahan, Assistant Public Works Director, City of SeaTac

Mr. Monahan reviewed the following issues:

Issue #1 - No Changes.

Issue #2 - No Changes

Issue #3 - SeaTac's suggested change:

Revise the Agenda Item language as follows: Action Taken by City SEPA Official
Items 22 and 23 have been modified to clarify that the 48 wide street section will eventually include 4 striped lanes, that a bio-filtration strip will be placed on the site west of 24th Ave. So., and that a 90 foot wide right-of-way will be created along 24th Avenue South.

Conclusion - The road section specified in items 22 and 23 of the mitigation measures is consistent with the City Council adopted Transportation Plan and the 28th/24th Corridor Project EIS.

Issue #4- SeaTac's suggested change:

Revise the Agenda Item language as follows: Action Taken by City SEPA Official Item 24 of the mitigation measures has been modified to clarify that a sidewalk on the southern side portion of the roadway, undergrounding of utilities, and a designed and construction pavement section are required.

Conclusion The action by the City SEPA Official is being taken for the following reasons:

6. South 208th Street currently functions as a residential local street. It is to be classified by the City of SeaTac as a future collector arterial street.
8. Truck traffic . . will use South 208th Street, 24th Avenue South and South 216th Street.

[Delete reasons #3, 4, 9, and 12, and renumber accordingly.]

Issue #6 - No Changes.

(ED NOTE: Written material on the above presentation was entered into the record as Exhibit #8.)

SEPA Officials Response to Appellant's Appeals:

Robert Ruth, Senior Planner, City of Des Moines

Senior Planner Ruth noted the following conclusions to issues raised by the appellants:

APPEAL #1 CITY OF SEATAC APPEAL OF FINAL ENVIRONMENTAL IMPACT STATEMENT

Issue 1: Transportation - Project impacts on SeaTac's road are not adequately mitigated.

- The adoption of project mitigation on February 2, 1996 fulfilled requirements of a FEIS and provided for full and completed mitigation of project impacts to City of SeaTac streets.

Issue 2: Land Use - Business Park development alternatives in the EIS that include a significant amount of office and R&D use undermine future development of the City of SeaTac as an urban center and are not consistent with County-wide planning policies.

- No specific action by the City SEPA Official was taken or is necessary in response to this issue.

APPEAL #2, CITY OF SEATAC APPEAL OF ADOPTED ENVIRONMENTAL MITIGATION MEASURES

Issue #1: Transportation Demand Management - Item 14 of the adopted mitigation measures does not require participation in transportation demand management and commute trip reduction programs, it only encourages participation.

- Item 14 of the mitigation measures has been modified to reflect concerns identified by the City of SeaTac.

Issue #2: Access Restrictions - Item 18 of the adopted mitigation measures is not clear enough and can be misinterpreted to mean that no vehicular trips are to be directed to S. 216th Street.

- Item 18 of the mitigation measures has been modified to reflect the City of SeaTac's concerns.

Issue #3: 24th Avenue Street Design - Items 22 and 23 of the mitigation measures specify a street section that is 48 feet wide which does not appear to be consistent with the 28/24th Corridor EIS.

- No action has been taken or is necessary in response to this issue. Comments do not relate to environmental impacts created by the proposal. The road section specified in items 22 and 23 of the mitigation measures is consistent with the City Council adopted Transportation Plan.

Issue #4: Improvements to 208th Street - Item 24 of the adopted mitigation measures does not include sidewalks, street trees, undergrounding of utilities and a street overlay.

- Item 24 of the mitigation measures has been modified to clarify that a street overlay is required.
- The City SEPA Official also concedes that sidewalk on the south side of 208th is merited.

Issue #5: Designated Truck Route - Item 31 of the adopted mitigation measures identifies South 208th Street, a SeaTac Street, as the truck route for the proposed business park without rationale.

- No action has been taken or is necessary in response to this issue. Regardless of which jurisdiction the street may be in, South 208th Street appears to be the most appropriate street for routing of truck traffic. Or, as an alternative, the Council may want to consider that operation and construction truck trips be separated and assigned to different streets which has been the topic of recent discussions between administration and the SeaTac Public Works Director.

Issue #6: Reassigning Street improvements due to SR 509 completion - Item 37 gives sole authority to the City of Des Moines to determine how street improvements should be reallocated in the event that SR 509 is extended.

- No action has been taken or is necessary in response to this issue. It is highly unlikely that SR 509 improvements will be constructed prior to the first phase of the business park (1997) which is the timing of the South 208th Street improvements.

APPEAL #3, PORT OF SEATTLE APPEAL OF ADOPTED ENVIRONMENTAL MITIGATION MEASURES

Issue 1: Surface Water Management - Item 9 of the adopted mitigation measures does not allow the applicant to credit existing street surface area within the site for sizing future detention systems.

Requested Action by the Port of Seattle: Eliminate language that requires detention systems to be sized with credit for existing impervious surface area.

- No action has been taken or is necessary in response to this issue. It is appropriate to require the storm water system be designed so that all of the surface water runoff created by the proposed new development be captured by a storm water system. If credit is given to the existing streets, approximately 5 acres of impervious surface runoff from the existing streets would pass through the system undetained which would exacerbate flooding in the Des Moines Creek basin.

Issue 2: Screening - Item 16 of the adopted mitigation measures allows the applicant to deviate in some situations from berming requirements in the B-P code if an alternative form of screening is provided.

Requested Action by the Port of Seattle: Substitute the landscape screening design offered in the Master Plan for B-P code berming requirements.

- No action has been taken or is necessary in response to this issue.

Issue 3: Future Access Coordination - Item 17 of the adopted mitigation measures requires the applicant to cooperate in coordinating access to surrounding properties should they develop in the future and alternative access to these sites is restricted.

Requested Action by Port of Seattle: Eliminate the entire requirement because it clouds the title to the property.

- No action has been taken or is necessary in response to this issue.

Issue 4: Street Improvements - Items 22, 23, 24, and 27 of the adopted mitigation measures require the applicant to construct a variety of street improvements but it is unclear whether these requirements also include the applicant to relocate existing utilities.

Requested Action by Port of Seattle : Add language that makes it clear that relocation of utilities is not the responsibility of the applicant

- No action has been taken or is necessary in response to this issue.

Issue 5: Street Signal Installation - Item 28 of the adopted mitigation measures requires the installation of a street signal, but it should be required only if warrants have been met.

Requested Action by Port of Seattle: Add language making the installation contingent upon signal warrants being met.

- Item 28 has been modified to include provisions for meeting signal warrants.

Issue 6: Revocation of Approvals - Item 39 of the adopted mitigation measures automatically revokes Council approval of the project within a certain time frame - should it be approved - if the applicant does not produce plans and information necessary to complete the review process.

Requested Action by Port of Seattle: Establish the deadline for revocation based on when the Council makes its decision and afford the Port of Seattle more time to complete the punchlist of items.

- Item 39 has been modified to allow the applicant 4 months after the Council makes its decision to produce required information. However, applicant has requested 6 months, and staff agrees.

Issue 7: Effect of Approvals - Item 40 of the adopted mitigation measures specifies when and under what circumstances requirements will take place, but does not include provisions for acceptance by the Port Commission.

Requested Action by Port of Seattle: Modify language to include Port Commission acceptance of final conditions and mitigation.

- No action has been taken or is necessary in response to this issue.

(ED NOTE: Council packet was entered as Exhibit #14.)

City Attorney McLean called for any appellant rebuttals regarding the SEPA appeals.

Geri Poor, Port of Seattle

Ms. Poor noted that Des Moines and Port staff have worked together to ensure that the language and the costs are within a range that will work for the future tenants. She noted that the Port feels that the conditions more than mitigate any impacts. She emphasized a large concern is the cost of the project and requested that everyone continue to work to make sure the project is marketable.

Jack McCullough, Attorney Port of Seattle, 2025 1st Avenue, #1130, Seattle, 98121 introduced Mr. Lloyd Skinner, Project Manager of CH2M Hill and noted they will be reviewing the issues the Port presented in their appeal and the issues presented by the City of SeaTac appeal. He advised that they will be reserving their comments on the rezone, master plan, etc. until the public testimony portion.

Mr. McCullough noted that although some of the changes appear minor to the condition document, that since the Port was placed in a position of having to respond to these conditions as being adopted SEPA conditions, it is out of an excess of caution that they will try to identify all of the tweaks, even editorial ones.

City Attorney McLean noted that all conditions were adopted as SEPA mitigation measures.

Mr. McCullough addressed City of SeaTac appeal number one which appeals the adequacy of the EIS. He asked Mr. Skinner to address issue #1.

Lloyd Skinner, 3564 NE 165th, Project Manager for CH2M Hill

Mr. Skinner noted there were joint lead agencies for preparation of the EIS which were the Port of Seattle and the City of Des Moines. He proceeded to review impacts of concern as follows:

1. South 208th - Agree with the City of Des Moines of improvements in lieu of impact fee payment.

Jack McCullough addressed the following regarding the City of SeaTac's positions:

- Appeal 1, Issue 2, Land Use in rebuttal to the SeaTac position, he noted that the issue of not allowing business parks develop outside of urban centers was struck down by the Growth Hearing Board in 1993.
- Appeal 2, Issue 1, Transportation Demand Management. Agrees with Des Moines' position and agrees with suggested modifications.

- Appeal 2, Issue 2, Access Restrictions. Concurs with Des Moines' position and has no objections to the suggested modifications.

Mr. Skinner addressed the following:

- Appeal 2, Issue 3, 24th Avenue Street Design. The EIS does not indicate that the level of service will change at 24th/216th intersection from project traffic. Agrees with Des Moines' recommendations.

Mr. McCallough addressed the following:

- Appeal 2, Issues 4, 5 and 6 Improvements to 208th Street. The Port concurs with the position of the City of Des Moines.

Mr. McCallough stated that he now will review the Environmental Mitigation Measures, Attachment 20 in Council's packet, dated February 29, 1996.

- Condition #3: Need a threshold for identifying exactly when a modification of building conditions can rise to the level where an amendment is required. He noted that they will suggest that if the modifications result in an environmental impact significantly greater than identified in the EIS, then an amendment would be required.
- Condition #9: There is no intent to discharge surface water into Des Moines Creek, therefore they want a smaller drainage design as allowed by the King County Design Manual.
- Condition #11: Regarding easements for the construction and maintenance of the park. Noted that they had asked that the terms be acceptable to the FAA. If FAA does not agree the project will not go forward. He further noted that they requested language that provided that development and maintenance of the park is a City of Des Moines responsibility, which was included. However, street frontage improvements for the park area are stated to be the responsibility of the applicant. He noted that this was not the understanding of the applicant as the development of the park is subject to Des Moines's plans and the applicant will not know curb cuts, sidewalk styles, etc.
- Condition #13: Had asked that the final sentence be struck which reads: "All maintenance shall be performed to the satisfaction of the City." He noted the reason they asked for this is that this condition would deal with maintenance on private property. He feels it is unreasonable for the City to establish the standards for maintenance of private occupancy spaces.
- Condition #16: Want to clarify that the authority of the City to modify landscaping and screening requirements, also includes the authority to modify the type and density of landscaping.
- Condition #22: This condition is acceptable except the City should assume responsibility for utility reallocations.
- Condition #24: Suggest that only the Public Works Director of the City of Des Moines should have this decision.
- Condition #38: Agree with change except, want \$35,00 for entire project NOT each hazardous occupancy.
- Condition #39: Want 6 months struck because this is too soon especially for the final development plan and the wetland mitigation plan.

Mr. McCallough reviewed conditions that clarified that mitigation payments or facilities constructed under these conditions will be credited against future mitigation obligations. This

would ensure that there is no “double dipping”. Also that the obligations and conditions would be binding upon subsequent owners and that prior owners would be released. He further stated that he wanted it made clear that the obligations are contingent upon construction and development.

Mr. McCallough then addressed the following zoning issues:

1. Des Moines Code requires that the rezone becomes void unless a building permit is applied for within 3 years of the effective date of the ordinance unless a separate period of time is set forth in the enacting ordinance. He suggested that the period of time be set at 5 years.
2. Suggested incorporating a general statement of policy of cooperation dealing with late comer agreements, local improvement districts, and such.

(ED NOTE: Submitted written documentation to these comments, entered into the record as Exhibit #10.)

Steve Butler, Principal Planner, City of SeaTac

Mr. Butler asked City Attorney McLean was it proper that the Port of Seattle as an appellant, was able to respond to SeaTac’s appeals points. He does not believe this is contained in Des Moines Municipal Code.

City Attorney McLean duly noted Mr. Butler’s objection. He advised the City Council that comments that were related to the City of SeaTac’s appeal that were not addressed by the City of Des Moines, not be considered for purposes of considering the City of SeaTac’s comments.

Mr. Butler spoke concerning land use. He clarified that the City of SeaTac understands that the County wide planning policies original language about business parks was changed. They believe though that the intent of the revised and currently adopted County wide planning policies is to have significant office development occur in urban centers. And noted that the Des Moines Creek Technology Campus is not within an urban center and that is why they believe that the master plan should focus primarily on the industrial uses and less on the retail and office uses.

In regards to the passed deadline for appealing Des Moines Comp Plan, Mr. Butler noted that the action of rezoning the property to business park would constitute an action implementing the Des Moines Comprehensive Plan which would be open to appeal.

Don Monahan, Assistant Public Works Director City of SeaTac

Mr. Monahan noted that he does not believe that in the EIS the South 208th Street was designated as a truck route. He stated that if it had been so designated the City of SeaTac would have raised as a part of the appeal issue an objection to South 208th being an exclusive designated truck route. He advised that SeaTac has a major objection to this exclusive designation. He cited that there are potential hazardous impacts to what is a primarily residential area. He requested that the term exclusive be dropped.

Administration Rebuttal

Senior Planner Ruth advised that he does not feel it necessary to rebut any information so far. The only general statement he has is that he wants to make sure the City Council is aware that the City is forced to respond to the written appeal and the information on that appeal. He noted that there is an explicit comment period and the information in the appeals that are filed is largely based upon what staff responds to. Any additional information beyond the scope of the appeals letters, staff objects to, and he requested Council keep this in mind.

City Attorney McLean instructed Council that to the extent testimony given tonight is consistent with the written appeals that were received in a timely manner, Council may consider it. Beyond that, Council should ignore any information that attempts to broaden the scope of the written appeal from any side.

8:58 p.m. Mayor Thomasson declared a 10 minute break.

Mayor Thomasson noted that we are through the testimonies and rebuttals for the SEPA appeal and requested whether there are any points of order that need to be clarified.

City Attorney McLean clarified that the City of SeaTac, properly within their rights, raised an objection to certain comments made by the Port of Seattle regarding the SeaTac appeal. He advised Council that generally speaking, when that occurs, Council is advised not to consider things that are beyond that appeal. However, since the City of SeaTac's representative proceeded after having heard that I would advise to accept his objection, he thereby waived the objection. In other words, Council has a full and complete record to consider on the SEPA appeals related to the written matters that were submitted by others parties.

Mayor Thomasson noted that Council is now ready to accept public testimony on the applications at hand. He noted that proponents will be allowed to speak first, then opponents and then followed by proponents rebuttal. He noted that due to the lateness of this meeting that he will keep the public hearing open and continue the subject to March 14, 1996 to receive further oral or written testimony.

PROPOSERS:

Lew Anderson, read a letter into the record supporting the project, from the Greater Des Moines Chamber of Commerce. (ED NOTE: Entered into the record as Exhibit #11.)

Maury Schuarz, Executive Vice President of Product Development for Cell Therapeutic Incorporated (CTI), 3819 46th Avenue South, Seattle 98118. - With the use of view foils, Mr. Schuarz showed Council some of the products the company is in the process of developing for

the relief of people who have cancer. He Swartz emphasized the following points in support of the application:

- Company is locally owned, original founder lives in Burien.
- CTI will be a responsible corporate citizen abiding by local, state and federal laws.
- CTI is market driven and is in a highly competitive business which will bring financial rewards to the community.

Jack McCullough, Port of Seattle

Mr. McCullough noted that the Port will not represent the project at this time, but will reserve the right to speak again in rebuttal.

Dick Meyers, 911 Western Avenue, Seattle

Mr. Meyers informed Council that he owns 10 acres in the South Sub Area near the proposed project. He feels this application is a winning situation for everyone in that it creates new jobs, benefits cancer patients, the Port and the City of Des Moines. He applauds Des Moines' high standards, but cautioned against financially killing the project. Mr. Meyers expressed concern that if he wishes to develop his property in the future that he will be penalized because of the amount of traffic generated from TCI that he would be required to have to put a lot of money into street improvements on South 216th or 24th Avenue South. He felt that maybe some of the funds allocated for South 208th should be used on 24th Avenue and South 216th Streets.

Jim Polhamus, Fire Marshall, King County Fire District #26, 2238 South 223rd, Des Moines

Mr. Polhamus noted that the Fire District is taking a neutral/agency stance on the proposal. He advised Council that CTI has provided definitive documentation to the Fire District that the immediate compound being manufactured at the facility is combustible in nature and not flammable. He noted that the Fire District, Port of Seattle and CTI are actively in the process of putting together an interlocal agreement that will protect the Fire District financially during the construction and operation of CTI, and the park in general. He advised that the Fire District recommends that in the mitigation measures that Council keeps Items 29, 38 and 39 in force. He informed Council that the Fire District recommended that South 208th be used as the only truck route because of the topography. He noted that in the event of a contamination spill, South 208th is in only one drainage basin, where South 216th is in 2 basins. In regards to Item #35, concerning containment, Mr. Polhamus noted the District agrees with the intent of the item, but suggested removal of the percentage figure and instead have it based strictly on performance level or specify enforcement of existing codes.

OPPONENTS

Debi DesMarais, 24322 22nd Avenue South, Des Moines

Ms. DesMarais showed Council a map from Seattle-Tacoma International Airport Environmental Impact Statement for the Master Plan Update, Exhibit IV.23-1, showing site borrow source areas and airport vicinity haul routes (ED NOTE: Entered into the record as Exhibit #12). She expressed concern that the Port plans on taking 9 million cubic yards of fill dirt to be used for the 3rd runway, and noted that these areas are within the proposed development. She noted that there is a discrepancy in the mitigation measures as it states 518 thousand cubic yards will be removed from the CTI site, wherein the Port plan calls for 4 million cubic yards to be removed. Some of the other points of concern raised by Ms. DesMarais were as follows:

- A kindergarten to 12th grade school (Christian Faith Center) across the street from the proposed development. Schools and churches are sensitive land uses and with the hazardous chemicals that will be trucked in and out of the CTI site on 24th Avenue South this poses a definite risk.
- Feels the Port of Seattle is using the CTI only to help generate revenue to help construct the third runway project.
- CTI development will attract similar business.
- Detailed air quality testing needs to be done.
- CTI is not a compatible land use with the surrounding zoning.
- Area would be better used as a parking facility to promote rapid transit due to extreme noise and pollution that already exists.

(ED NOTE: Ms. DesMarais also gave Council an enlarged map showing borrow site areas which was entered into the record as Exhibit #13.)

Pat Dunham, 23223 27th Avenue South

Ms. Dunham expressed a strong interest in the wetlands and streams in the area. She voiced concerns regarding topography and surface water run-off from the proposed site. She stated that there are not enough safe guards in the mitigation proposal and requested that retention times not be lessened in regards to this proposed project as she has grave concerns regarding Des Moines Creek and Puget Sound. In conclusion, Ms. Dunham also requested that all traffic generated by this proposal be restricted to South 208th and not allowed to use South 216th. She cautioned Council to take their time and thoroughly study this proposal.

MOTION was made by Councilmember Roberts, seconded by Councilmember Sherman and passed unanimously, to continue the public hearing to March 14, 1996.

NEXT MEETING DATE

Mayor Thomasson noted the next regular meeting will be March 7, 1996.

ADJOURNMENT

The meeting was adjourned at 10:26 p.m.

Respectfully submitted,

Denis Staab
City Clerk