

PRELIMINARY
REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

April 4, 1996

The regular meeting of the Des Moines City Council was called to order by Mayor Thomasson at 7:30 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 Bruce Roberts, Bob Sheckler, Dan Sherman, Gary Towe and Don Wasson. Also present were City Manager Bob Olander, City Attorney Gary McLean, Community Development Director Judith Kilgore, Senior Planner Robert Ruth and City Clerk Denis Staab.

COMMENTS FROM THE PUBLIC

Tom Sitterley, 601 South 227th #203S

Mr. Sitterly referenced a letter to the editor by Steve Swank that was in Wednesday's edition of the Des Moines News supporting the existing government in Des Moines. Mr. Sitterly spoke against the current form of government stating that an elected Mayor would be more accountable to the citizens. He noted that citizens have properly filed a petition to vote on changing the form of government. He voiced the opinion that administration tried to stop this effort and even notified citizens that they could remove their names from the petitions. In conclusion he requested current Councilmembers stay impartial and keep their opinions to themselves so citizens can regain respect of current government.

BOARD & COMMITTEE REPORTS

Environment Committee

Councilmember Roberts informed Council that the Committee met recently regarding the draft ordinance on regulatory reform. He noted the Committee's comments have been given to staff and the Committee will meet next Tuesday to continue review.

King County Parks & Open Space Future Funding Initiative Bond Issue

Councilmember Brazil reported that a couple of issues still remain unanswered, in particular who will pay for maintenance and operation funding, and how will funding be allocated. The two options for allocating funding are by assessed valuation or by population. He advised that Des Moines would benefit most if it is by population. He further advised that the Municipal Facilities Committee is meeting to explore ideas for draft projects to be submitted. He reminded Council that criteria for projects has been established. He noted that the proposed projects are conceptual in design and have been taken directly from the Park Master Plan and must be into the County by April 30th.

ADMINISTRATION REPORTS

Rebuttal of Statement by Tom Sitterly

City Manager Olander noted he wished to correct a misstatement made by Mr. Sitterley made earlier under comments from the public. He stated emphatically that administration was not responsible for sending any letters to petitioners regarding change of government.

CONSENT CALENDAR was read by City Clerk Staab.

1. Motion is to approve the minutes of March 14 and 21, 1996.
2. Motion is to authorize the City Manager to approve all vouchers for payment of the following claims during the period of March 22, 1996 through April 11, 1996:
 - a. All vouchers for payment of payroll checks, including Marina payroll, and
 - b. All vouchers for payment of claims and marina checks, provided that all vouchers and checks approved by the City Manager in accordance with this motion shall be presented to the Council for ratification at the City Council meeting of April 25, 1996.
3. Motion is to authorize the transfer of \$25,000 from the Marina Depreciation and Improvement Fund to the Marina Revenue Fund for the purchase of new electric meters.
4. Motion is to confirm Mayor Thomasson's appointment of Liz Kormandy to fill an unexpired position on the Des Moines Planning Agency, such term to terminate on December 31, 1998.
5. Motion is to authorize an increase in Des Moines Field House Renovation Project funding in the amount not to exceed \$17,768, including tax, plus a 15% contingency, and further authorize the City Manager to sign said contract change in Scope of Work.
6. Motion is to accept the park project proposal recommendations made by the Municipal Facilities Committee for Des Moines' inclusion in the King County Parks and Open Space Future Funding Initiative Bond Issue, and further authorize the City Manager to sign proposals.
7. Motion is to award the contract for construction of the Des Moines Police Service Center to Shinstine Associates Inc. General Contractors, in the amount of \$2,172,800 plus sales tax, a 10% contingency, and further to authorize the City Manager to sign said contract.

Councilmember Brazil advised Council that the Municipal Facilities Committee met earlier this evening and reviewed the bids details in respect to Item #7 on the Consent Calendar and concur with staff recommendations.

MOTION was made by Councilmember Roberts, seconded by Councilmember Sherman and passed unanimously, to approve the Consent Calendar as read.

PUBLIC HEARING CONTINUED

Draft Ordinance No. 95-167 - Street Vacation and Rezone from RS 7200 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

Mayor Thomasson introduced the subject.

City Attorney McLean explained the rules for conducting the public hearing. He advised that Council is bound by the Appearance of Fairness Doctrine and questioned Council whether there has been any new matters to report. Councilmember Towe reported a telephone conversation with Debi DesMarais where she raised a procedural question regarding public testimony and he referred her to the City Attorney. He stated, however, that at no point did Ms. Des Marais attempt to influence his decision and his objectivity has not been affected regarding the project.

Councilmember Wasson advised the City Attorney that he listened to the audio tapes of the March 14th Council meeting in its entirety in order to continue participation in this Public Hearing process. Mayor Pro Tem Brazil stated that he has viewed the video tape of the March 14th Council meeting in its entirety so that he can continue participation in this Public Hearing.

Upon questioning from Councilmember Towe regarding surface water management credits, Jack McCullough from the Port of Seattle stated that the Port's concern was that the specific condition of SWM limited their ability to receive credit for existing impervious surface, i.e. existing roads. Other development in the City is required to conform to the King County Manual and there was some concern that the Port was being held to a different standard. The Port wanted an opportunity to demonstrate that they should be allowed to receive credits under the King County Manual.

Senior Planner Ruth advised Council that if the project were constructed on a vacant site they would have to compute all the impervious surface for everything on the project area, and that the streets that are on the site now should not be relevant to this total redevelopment for this project.

Councilmember Towe questioned whether there are future plans to manufacture different compounds that might be more flammable in nature.

Maury Schuarz of Cell Therapeutics, informed Council that there is a possibility they would manufacture other compounds and they would like the flexibility to be able to do that. He noted they are planning on building the facility to allow for this possibility. He noted that they would be following the same rules and standards that are already established.

Senior Planner Ruth noted that in the business license review process staff will evaluate all uses and compare uses against the Code to determine compliance.

Upon questioning from Council, Geri Poor of the Port of Seattle, stated that no specific dollar amount has been determined for the viability of the project, and noted this would be a decision of the Port Commissioners.

Councilmember Towe noted that the Port states there will be no radioactive materials. He questioned Ms. DesMarais on why she feels there will be.

Ms. DesMarais stated she is using a similar chemical manufacturing company that the Port is supporting in another area. She advised that her research shows many similarities and therefore she concludes there will be radioactive materials on this site too.

Senior Planner Ruth reminded Council that the entire chapter in the EIS regarding hazardous materials does not mention radioactive material at all.

Councilmember Towe questioned whether the Church run school near the site was contacted about this proposal. Community Development Director Kilgore informed Council that staff met with both Highline School District and the Christian Faith Center and the only concern from the church school was over traffic and cars cutting through their facility.

Upon questioning from Councilmember Towe regarding air quality, Ms. DesMarais stated that she feels that the combination of jet fuel from air planes and emissions from CTI would create bad smog situations in the area. She did note that the EPA is still reviewing material and has not made an official determination regarding air quality concerns for this project.

Upon questioning from Councilmember Roberts, Senior Planner Ruth advised that it will be difficult to enforce keeping truck traffic off of 24th Avenue South. However with most street improvements planned at the north end of the project, traffic will be enticed to use the northern routes and it will make it more impractical to use southerly streets.

Upon questioning from Mayor Thomasson, Jack McCullough stated that FAA rules prohibit the Port from granting a statutory warranty deed to Des Moines for the proposed park site.

Mayor Thomasson questioned how the City can proceed with confidence that the City will have the park. Geri Poor noted that the Port has requested 6 months to work out details regarding arrangements, lease or other method to Council's satisfaction. She reminded Council that they still would have the opportunity to stop the whole project if all the conditions, including the park, cannot be met by the applicant.

Mr. McCullough noted that originally the proposed project contained trails to meet the recreation requirements, but through the City's staff negotiation they have agreed to giving up prime property to be dedicated as a park. He further noted that the applicant has agreed to develop the street frontage along the park.

Community Development Director Kilgore informed Council that they are reviewing the master plan now because it can make a difference in proceeding with the preliminary plat design. She noted that everything must be in place when the application comes back to Council in six months and if everything is not in place, then everything on this site reverts to its original condition. She noted that Item #39 provides that zoning shall revert back to RS 7200.

City Attorney McLean advised that with GMA there are new regulations and that the rezone would not revert back to single family.

Councilmember Roberts noted that the City's Comprehensive Plan designates this area as business park and he feels it would be hard not to grant the zoning.

Mayor Thomasson declared the public hearing closed.

8:50 p.m. Mayor Thomasson declared a 10 minute break.

Councilmember Sherman stated that he sees a lot of benefits to the City for a business park proposal however he advised that he has a problem with the type of tenant in CTI. He cited the following regarding his concerns:

- Business Park Classification DMMC 18.25 (Number 12), Page 18-70 18.25.020: Only those uses, determined by the Community Development Director, excluding manufacture of flammable, dangerous or explosive materials.
- Page 18-74, 18.25.050, Environmental Performance Standards - (1) No use, activity or equipment shall be permitted which creates a nuisance, offensive, objectionable or hazardous by reason of creation or odors, noise, sound, vibrations, dust, dirt, smoke or other pollutants, noxious, toxic or corrosive fumes or gases, radiation, explosion or fire hazard, or by reason of the generation, disposal, or storage of hazardous or dangerous wastes or materials. (2)(c) The use or handling of hazardous substances is permitted as an accessory use only; provided, that the transport, storage, containment, application, and disposal of such hazardous substances shall be performed so as not to jeopardize the health and safety of an individual or harm the environment.
- Draft EIS, Chpt. 9, Hazardous Materials: "The potential for impacts to the environment during phase I is posed primarily by the use of hazardous materials." Defined as: "Hazardous materials are defined under the Federal Hazardous Materials Transportation Act Regulations as materials that pose an unreasonable risk to human health or the environment. Hazardous substances are defined by the Clean Water Act as chemicals that are harmful to people animals or the environment if released in an uncontrolled manner. Hazardous materials and hazardous substances are used interchangeably in this document.

Councilmember Sherman noted that CTI proposes to manufacture an intermediate liquid compound, to create a drug used to treat the side effects of chemotherapy. In conclusion, he stated that it is his opinion that the hazardous substances that CTI will be using are not incidental or an accessory use. He cited major concerns with potential releases into the air, surface water, or ground water. It is his opinion that CTI is actually a chemical manufacturing plant.

Upon questioning from Council, City Attorney McLean stated that chemical manufacturing is a permitted use and that the Community Development Director has determined any uses of hazardous materials as secondary and accessory.

Discussion ensued regarding whether materials that may be hazardous are used to create an end product are still classified as accessory, even if they are used in large quantities.

City Manager Olander noted that pharmaceutical is a permitted use and there are some hazardous materials used.

Mayor Thomasson stated that he is not opposed the general concept of a business park, but is uncomfortable adopting an ordinance saying the City approves the rezone until a final master plan is ready. He noted he would rather take this application in smaller steps. He stated that the street vacations and plat will need detailed boundaries and property lines. He further advised that he will not vote for the street vacations until FAA transfers the park property to the City.

Mayor Pro Tem Brazil noted that Council is not elected to micro-manage. The city has excellent staff with the authority to handle the details. Council needs to approve this rezone if the

proposed uses meet the intent of the zoning. He reminded Council that applicant is giving up valuable land from their development to give the City a park.

Councilmember Roberts advised that the zone has been established in the Comprehensive Plan. He felt Council should approve the rezone application to show good faith and then take a detailed look at the final master plan. However, he does not want to approve the rezone if CTI is an improper tenant.

MOTION was made by Mayor Pro Tem Brazil, seconded by Councilmember Sheckler, to uphold the City SEPA Official's determination of adequacy of the Final Environmental Impact Statement and deny the City of SeaTac appeal dated May 26, 1995.

Councilmember Sherman offered the following amendment to change the motion to read: I move to deny the City of SeaTac appeal dated May 26, 1995. This was accepted as a FRIENDLY AMENDMENT by the maker and the seconder.

Councilmember Roberts questioned whether this language removed the grounds for denying the appeal. He felt that Council needs to state that the Final EIS is adequate.

City Attorney McLean pointed out that Motion 5 in Council's packet adopts the findings of fact and conclusions for the SEPA process and are substantial enough to uphold anything Council decides to do regarding SEPA.

Mayor Thomasson noted that SeaTac's letter cites two points of appeal, one is transportation and the other land use. He suggested that each point should be addressed separately. He noted that the transportation issue was whether South 208th was improved enough and the land use issue was that major office development is not appropriate. He would prefer separate findings for these two issues.

City Attorney McLean strongly advised Council not to take separate issues.

City Manager Olander questioned Councilmember Sherman if the basis for his amendment is that he is reluctant to approve the Final Environmental Impact Statement because of his concerns on whether this is a properly permitted use. Councilmember Sherman replied yes. City Manager Olander suggested Council may need to determine this issue before going any further as many points of the proposal hinge on this particular issue.

City Attorney McLean informed Council that staff has prepared and he has approved, the findings of facts and conclusions that deals with each issue altogether because they do overlap extensively. If Council is more comfortable dealing with findings and conclusions prior to decisions on any of the appeals then he would advise Council to withdraw the current motion and to either adopt and approve the findings of fact and conclusions, or to modify, add, subtract as Council deems fit, and then proceed with rulings on denial or upholding of any particular appeal.

Mayor Thomasson noted that he does not know that the Findings of Facts really has the correct acreage of rezone that is based on the staff recommendation to delete a portion of the rezone.

Councilmember Towe noted he would like to reconsider the sequencing of how to proceed. He felt Councilmember Sherman has raised a legitimate issue that Council may need to think on with more time than is left this evening. He also would like to review the Findings of Fact in more detail.

MOTION WAS WITHDRAWN BY MAKER AND SECONDER AGREED.

Mayor Thomasson suggested Council review each of the Findings of Fact, section 36, prior to the next meeting.

Councilmember Towe urged Councilmembers to review Findings of Fact and conclusions so that when Council meets on April 18th, issues are framed with some resolution in mind in the form of a proposal to either modify or adopt the Findings of Fact or Conclusions. He encouraged Council to come prepared to take action.

Mayor Thomasson advised that Council should be prepared to begin discussion on Section 36.

Upon questioning from Council, City Attorney McLean advised that Council still should not discuss this with anyone other than staff. He commended Councilmembers on how conscientious they have been on observing the standards under the Appearance Fairness Act.

NEXT MEETING DATE

Mayor Thomasson stated the next meeting will be April 18, 1996.

ADJOURNMENT

The meeting was adjourned at 10:19 p.m.

Respectfully submitted,

Denis Staab
City Clerk