REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES April 6, 2006

The regular study session of the Des Moines City Council was called to order by Mayor Sheckler at 7:37 p.m. in the Council Chambers, 21630 11th Avenue South.

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

ROLL CALL - Present: Mayor Bob Sheckler, Mayor Pro Tem Scott Thomasson, Councilmembers Dave Kaplan, Carmen Scott and Dan Sherman. Absent: Councilmembers Ed Pina and Susan White. Also in attendance were City Manager Tony Piasecki, City Attorney Linda Marousek, Planning, Building and Public Works Director Grant Fredericks, Assistant City Engineer Loren Reinhold, Parks and Recreation Director Patrice Thorell and City Clerk Denis Staab.

> **MOTION** was made by Councilmember Kaplan, seconded by Councilmember Sherman and passed unanimously, to excuse Councilmembers Pina and White.

DISCUSSION ITEMS

Beach Park Auditorium Design

Parks and Recreation Director Thorell introduced the subject advising that the Auditorium is an integral part of the Covenant Beach Historic District which is listed on the National Register of Historic Places and is also a King County and State Landmark site. She noted that the Auditorium project was remanded to the Council's Municipal Facilities Committee for review. At the Committee's March 24, 2006 meeting the Auditorium conceptual design and cost estimates were reviewed, and the project has been forwarded back to the full Council for review to determine the policy issue of "what is the goal for flexible open space within the building?'. She advised that the answer to this question will drive its use options and event capacity. She stated that after meeting City Code requirements for mechanical and life safety spaces, decisions whether to keep the stationary stage or purchase portable removable staging, how much storage is required and the number and location of restrooms will impact the remaining usable space. She reminded the Council that the Auditorium's location is in an environmentally sensitive area, at the base of the hillside and immediately adjacent to Des Moines Creek, which impact building options, particularly on the exterior. She introduced Rhoda Lawrence, BOLA Architecture + Planning, hired to provide design and engineering services, who proceeded to review four options that were distributed to Council for consideration. She concluded by noting that staff does not consider Option 4 a viable option.

Ms. Lawrence began review of the four options as follows:

OPTION 1

- Building Options:
  - Compliant Restrooms within building
  - 2 exterior access ADA Restrooms
  - 10 LF counter space
  - Janitor Closet
  - Mechanical Room
  - Retain Ex. Storage at East end
  - Retain Ex. Electrical location

- Code Requirements:
    - ADA restrooms and access, fire suppression, seismic and energy upgrades
    - Provides adequate storage for building capacity
    - Design has been reviewed & is acceptable to King County Landmarks Commission Design Committee; does not negatively impact exterior appearance & would not impact interior historic elements

- Seated Capacity:
    - With stationary stage 3,769 net SF, 200 banquet tables = 546 SF with stage. Without stage 4,315 SR , 25 tables with 260 seats
    - 248 theatre style seating
    - Storage: 450 SF in building, 200 SF elsewhere
    - Portable staging storage approx. 25 SF for 24x24 stage

OPTION 2

- Building Options:
    - Compliant restrooms within building
    - 1 exterior access ADA restroom
    - 33 LF counter space
    - No janitor closet
    - Mechanical space above restrooms
    - Retain Ex. storage at East end
    - Retain ex. electrical location

- Code Requirements:
    - ADA restrooms and access, fire suppression, seismic & energy upgrades
    - Design has been reviewed & is acceptable to King County Landmarks Commission Design Committee with minor modifications to fenestration patterns; does not impact interior historic elements
    - Storage & event staging areas to be provided along walls, at Sun Home Lodge or at Park Restroom building when mothballed and/or equipment may be rented based on event requirements

- Seated Capacity:
    - With stationary stage 4,152 net SR, 25 tables = 250 banquet style seats
    - Without stage 4,698 net SF, 30 tables = 300 banquet style seats
    - 276 theatre style seating
    - Storage: 257 SF in building, 493 SF elsewhere
    - Portable staging storage approx. 250 SF for 24x24 stage

OPTION 3

- Building Options:
    - 2 Unisex restrooms within building - Not compliant
    - 4 additional toilets required within 100' of building
    - No exterior access restrooms
    - 20 LF counter space

- No janitor closet
- Small mechanical room
- Reduce Ex. Storage at East end of building
- Retain Ex. electrical location

\- Code Requirements:

- ADA restrooms and access, fire suppression, seismic & energy upgrades. Does not provide adequate storage for building capacity
- Storage & event staging areas to be provided along walls, at Sun Home Lodge or at Park restroom building when mothballed and/or equipment may be rented based on event requirements.
- Design has been reviewed & is acceptable to King County Landmarks Commission Design Committee with minor modifications to fenestration patterns; does not impact exterior appearance of the Auditorium and would not impact interior historic elements

OPTION 4

\- Building Options:

- 2 Unisex restrooms within building - Not compliant
- 4 additional toilets required within 100' of building
- No exterior access restrooms
- 32 LF counter space
- Mechanical space above restrooms
- Remove East end storage
- Relocate Ex. Electrical

\- Code Requirements

- New construction in a 100 year flood plain would trigger FEMA and SEPA regulations. Under the federal guidelines the City can make cosmetic & structural repairs to historic buildings, not structural changes.
- If permitted, wetland mitigation would be required
- Staff does not consider this a viable option without additional study. The City may not be able to permit the necessary building expansion due to its critical areas ordinance.

Councilmember Scott advised that needed restroom space for public functions, pretty much makes Options 3 and 4 not viable.

Council discussion ensued and consensus was achieved that Options 3 and 4 were not viable.

Upon questioning concerning code requirements, Ms. Lawrence advised that when the roof is replaced, then it will be brought up to code for insulation, and windows will have double or triple glazing. She further noted that hard wall insulation could be used to help reduce impacts on the buildings historic feel while achieving higher ratings for temperature control and noise impacts.

Mayor Pro Tem Thomasson advised that he prefers Option 1 and stressed the importance of maintaining storage on site and that all improvements should be done well. He felt that a mechanical room over the restrooms is the best plan for space concerns. He further noted that a lot of the proposed improvements for the Auditorium could reduce the need for many of the improvements that had been discussed for the Activity Center.

Councilmember Kaplan questioned whether the outdoor extension area would be flat. Ms. Lawrence responded in the affirmative that the area will handle chairs and there is an option for a potential canopy that would make the outdoor area even more useable.

Councilmember Sherman advised that the Council Committee had reviewed the options, and after he personally toured the site today, feels that the stage is currently in the right spot. He felt it is important to restore the front architecture including the colored windows and to retain the historic feel by using French doors to open out to the outside rather than a "roll-up, garage door" type, and stressed a need for flexible walls and dividers. He further noted that while a separate vestibule is nice, but not having one is more authentic and truer to the original design of the building. In regards to drainage problems in the area, he felt it is in important to include Sun Home Lodge at same time, and would save money in the future. He would like to see a covered walkway connection between the two buildings.

Upon questioning, Parks and Recreation Director Thorell advised she favors the option with the most flexibility and maximum capacity, and that storage is a major issue. She stated she can work with either option 1 or 2.

MOTION was made by Councilmember Scott, seconded by Mayor Sheckler, to direct staff to proceed with Phase 2 of the agreement with BOLA Architecture and Planning to complete Construction Documents, Permitting and Bidding of the Des Moines Beach Park Auditorium Project based on Option 2. Costs are to include drainage for Sun Home Lodge, French Doors, code windows with color, janitor closet and leave the current stage.

Mayor Pro Tem Thomasson noted that a skylight was included in one of the proposals, but he expressed concern over problems that may occur over the sound and energy codes. He further expressed some concern that if a canopy was added it could conflict with code set-backs over environmental issues. He felt including drainage for the Sun Home Lodge makes sense and that it would be a mistake to proceed without adequate permanent storage. He felt Option 1 offered adequate seating with the best storage options.

Councilmember Kaplan expressed a preference for Option 1.

VOTE ON MOTION: Motion passed 3 to 2 with Councilmember Kaplan and Mayor Pro Tem Thomasson opposed.

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

Planning, Building, Public Works Department Positions - Limited Term to Regular

Planning, Building and Public Works Director Fredericks advised Council that he is seeking approval to convert three positions in his department from limited term to regular.

MOTION was made by Mayor Pro Tem Thomasson, seconded by Councilmember Kaplan, to approve the reclassification of the following limited term positions to regular positions: Building Inspector I (Building Division), Permit Specialist (Building Division) and Planning Technician (Development Services), on the condition that this need is evaluated during the budget process. Motion passed 4 to 0. [ED NOTE: Councilmember Sherman had not returned to the Chambers from the break.]

9:10 p.m. Councilmember Sherman returned to the Council Chambers.

Memorandum of Understanding Des Moines Creek Basin Funding

Assistant City Engineer Reinhold reminded Council that the Basin Committee members include the cities of Des Moines and SeaTac, the Port of Seattle, King County and Washington State Department of Transportation. In 2004 Des Moines Council approved a Interlocal with the Basin Committee partners agreeing to implement the projects identified in the Basin Plan adopted in 1997. The projects include the Marine View Drive Bridge under construction, the Regional Detention Facility also under construction with phase 2 work beginning this summer, the Creek Bypass Pipeline project scheduled to be constructed this summer, Stream Habitat Improvements, and the Low Flow Augmentation facility. He informed Council that $18,300,000 of funding was provided to construct the five projects with $9,000,000 being contributed each from the Port and WSDOT and $300,000 contributed by Des Moines. He advised that since implementation of the Interlocal there have been severe cost overruns encountered such as:

- High bid for Marine View Drive Bridge exceeded original budget by almost $1,900,000
- Naturally occurring arsenic encountered in the soils of Regional Detention Facility exceeded original budget by $5,400,000

Assistant City Engineer Reinhold noted that the proposed Memo of Understanding (MOU) exhibits the project costs of the three major projects, noting that the costs do not include the Habitat Project or the Low-Flow Augmentation Project, which together amount to $1,800.000. The MOU identifies a $3,882,731 budget shortfall for the first three projects, following a $1,400,000 contribution made by the Port to help fund the Regional Detention Facility. It proposes to split the cost, whereby Des Moines would contribute 18% of the shortfall or $698,892. He advised that several policy questions were raised by the Environment Committee to be discussed with the full Council as follows:

1. Should Des Moines Pay more? If so,
   - What amount (18% - $700,000 would be our "fair Share")
   - What should be the basis of cost sharing
   - What do the 3rd Runway project permits require of the Port
2. What are the consequences if Des Moines says no?
3. How do we pay more?
   - Delay other CIP funded projects
   - Borrow and repay with a rate increase
   - Impose additional connection charges for the Creek basin only, which raises system-wide equity questions & creates a cash flow problem for the SWM utility

Assistant City Engineer Reinhold noted the requested $700,000 for funding the Basin MOU, would not impact of alter the current schedule of projects contained in the summary of the CIP SWM program's projects as listed in the 2006-2011 Capital Improvement Program, which has been included in Council's packet. In conclusion, he noted some of the consequences of saying no to the increase in funding would include putting the Pipe Line By-pass project on hold and until finished, buildings in the Beach Park would not be protected. He noted that if we pay the additional funding Des Moines would still only be paying less than 5% of the overall costs which is a real bargain when you consider the many benefits Des Moines is receiving with the improvements. He also noted that WSDOT has agreed to pay for the shotcrete for the Bridge Project and any overruns in an amount up to $475,000.

Councilmember Sherman questioned why the 18% now, when the original agreement called for 5%.

Mayor Pro Tem Thomasson advised that the Environment Committee discussed this issue, and although we are on better terms with the Port, most of the history goes back to the 3rd Runway issues. He questioned that if we say no to increase funding, it may happen anyway because of the requirements put on the Port through 401 permits and other approvals. He remarked that Des Moines is in a very financially strained position. He needed better understanding, that if the Port is being required to do this project anyway, and/or if when the State builds 509 they are required to do this, should Des Moines offer up more money or not. He even called attention to the Port's project for the business park and that they may be required to do this then. He felt Council may be too eager to spend the citizens money instead of trying hard negotiations to get the best deal we can. He felt 18% might be fair, but is not sure we have tried serious negotiations. He stated he is unclear how much leverage Des Moines may have.

Upon questioning, Assistant City Engineer Reinhold advised it is important to have this issue settled in order to go out to bid in May. If the project is delayed a year costs of construction will continue to rise.

Councilmember Kaplan remarked that he understands Mayor Pro Tem Thomasson's concerns, but he feels there is a possibility that if we say no, they could pull the plug on the portions we want or need, opposed to the portions we would like to have. He also expressed concern about the time line to keep moving forward.

Mayor Sheckler felt that the Environment Committee could meet and discuss this further within the next week. He also noted that two Councilmembers are absent tonight. He recommended this item be remanded to Committee and come back to the full Council early as possible.

Upon questioning, Assistant City Engineer Reinhold advised that the original agreement had no clause addressing overruns, as the group had a large contingency. It was determined that the agreement would need to be amended to handle the unexpected overrun. He informed Council that Des Moines paid $300,000 as a place holder that the City wanted to be part of the agreement and this is what we could afford.

Councilmember Sherman stated he does not like being "held hostage" that a critical portion of the flood control will not be done. He expressed concern that now we are being expected to kick in a much higher percentage than was originally agreed to.

City Attorney Marousek stated that Des Moines had an incredibly low contribution because we were contributing the bottom of our creek, our bridge and work by Mr. Reinhold. Assistant City Engineer Reinhold acknowledged that he has spent years administrating the design of the bridge.

City Attorney Marousek advised that at this point the City is being asked to contribute cash because cash is what no one has and the percentages are within one point, one way or the other, of the actual size of the project. She called attention to Attachment 4 of Council's packet to answer the question of whether the Port is getting a 'sweetheart deal' because of the participation in the Des Moines Creek Basin Project, she advised that they are not, and they are not required to participate in this at all as a condition of their development of the 3rd Runway.

Mayor Pro Tem Thomasson remarked that if the increases that are being proposed were on the order of magnitude of the original commitments he would have no issue. He pointed out that the $700,000 in the CIP is only there to be used for matching funds for a separate project. He noted the Port did pick up $1 million from the last overages, but he felt the State needs to be back at the table with their 509 and bridge investment. He noted when the bridge went to bid, the City suffered as the esthetic features were pulled and Des Moines was told we would have to pay for them separately if we wanted them. He stated that until the full funding of the bridge is in the package for the way it was originally intended, he will not support any expenditure from Des Moines. He felt what we are being asked to pay now is way out of line with the commitment we made when we entered into the original agreement. He stated he believes the Port or the State will need to cause this to happen when they proceed with their projects. He proposed staff go back and negotiate a better deal, complete the bridge design and get Des Moines' share down to around 5%.

Councilmember Scott expressed concern over impacts to Des Moines from the Port's 2nd runway along with the new 3rd runway and that the initial impacts from the 3rd runway may cause even more flooding to our City. She further questioned impacts from the proposed development of the Port's business park in the Des Moines Creek area. She felt the Port has contributed a lot of damage to Des Moines Creek and she is not happy with the amount that Des Moines is being asked to contribute.

City Attorney Marousek responded concerning questions of how much the City has already negotiated, advising Council that since February she estimates that she has spent approximately 15 hours in e-mails, telephone conversations and drafting with the other lawyers involved. Assistant City Attorney Brown stated he has spent 8-10 hours and Assistant City Engineer Reinhold advised that since the end of last year he has attended meetings every two weeks for about 4 hours each.

Councilmember Sherman expressed anger over how the City is being treated by the Port, and voiced support for staff to negotiate a figure in line with a 5% contribution.

Upon questioning, Assistant City Engineer Reinhold noted any delays in completion of the projects would have him most nervous over the impacts to the structures at Des Moines Beach Park.

Councilmember Kaplan expressed some concern over the increase in percentage Des Moines is being asked to contribute now, but in terms of what we have actually put in for the entire project it is not very significant. He felt the requested amount may not have a significant impact to the CIP, with the exception of the Barnes Creek Detention Facility. He advised that he willing to ask staff to see if we can get our commitment lowered, but if in fact they cannot, he felt the Council must be committed to the project to see it through to protect the infrastructure we already have in place and if that means trying to recoup the costs at a later date, then Council should contemplate ways of doing that.

Mayor Sheckler summarized that while some are upset with the Port, Council needs to deal with the reality of today and what impacts may occur from a yes or no vote on this issue.

Upon questioning, City Manager Piasecki noted that the way the agreement is put together right now, he does not believe there is any obligation the Port has to put up the money and make sure that the facilities are completed.

CONSENSUS was for staff to go back and see what they can do to lower the cost for Des Moines.

Draft Resolution No. 05-124 - Amend Council Rule 8 - Allowing Special Notice Via Email - 1st Reading

City Attorney Marousek advised Council that under Council Rules an amendment can only be accomplished after two readings, therefore Council can make changes if they so desire. She stated that in 2005 the Legislature amended the RCW governing open public meetings to allow notice of special meetings by fax or email. She noted that the City Clerk would like, for efficiency purposes, to serve official notice to Councilmembers of special meetings by email and to accept waivers of special meetings by fax or email.

Mayor Pro Tem Thomasson noted that he understands the convenience of the request he has some concerns. He stated he may only read his email once a week and felt there needs to be a provision for a confirmation response. He advised that he can accept an email so long as other methods are used so Councilmembers are aware there is a meeting, such as a phone call.

Councilmember Sherman noted usually he receives a phone call that an official notice of a special meeting is in his box at City Hall. When he physically comes in and picks up the notice, then he feels this is a legal acknowledgement that his has received the notice. He felt that if an email notice is sent, it needs to be required that an email acknowledgment must be sent back.

City Attorney Marousek advised that if an acknowledgment is not received back within a specific time line, then the City Clerk would use other statutory means to advise of a special meeting.

Mayor Pro Tem Thomasson requested some clarification on exactly what constitutes proper preparation of special meeting notices.

City Attorney Marousek advised that she could add language to say something like "this rule is intended to implement the special meeting requirements of the Open Public Meetings Act. Any violation of this rule is considered to be a violation of the Open Public Meetings Act."

MOTION was made by Councilmember Kaplan, seconded by Mayor Sheckler and passed unanimously, to place the draft resolution as amended, amending Council Rule 8 of the Des Moines City Council Rules of Procedure as permitted by RCW 42.30.080, allowing electronic mail delivery of special meeting notices, and electronic mail and fax waiver of written notices, on a subsequent regular Council meeting agenda for adoption.

NEXT MEETING DATE

Mayor Sheckler noted that the meeting scheduled for April 13, 2006, is cancelled and the next regular meeting will be April 20, 2006. He advised that there is a special meeting on Saturday, April 15, 2006, at 9 a.m. at the Activity Center.

ADJOURNMENT

At 10:21 p.m. **MOTION** was made by Councilmember Sherman, seconded by Councilmember Scott and passed unanimously, to adjourn.

Respectfully submitted,

Denis Staab
City Clerk