

Linda

AMENDED
EXECUTIVE SESSION - 6:30 p.m. Property & Litigation

AGENDA
REGULAR MEETING DES MOINES CITY COUNCIL
April 24, 2003 - 7:30 p.m.

CALL TO ORDER - Mayor Steenrod

all six present

PLEDGE OF ALLEGIANCE

INVOCATION

ROLL CALL

CORRESPONDENCE

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

BOARD & COMMITTEE REPORTS

PRESIDING OFFICER'S REPORT

ADMINISTRATION REPORTS

Dave Kaplan - traffic impact fees
Allie Hanken - the beach

- Sven Kalve - planning agency - council
- Earline Byers - State Service - council
- Steve Zedinski - Mt
- Del Rivera - fishing

Presentation - Harborview Medical Center Community Update on Bond Program

CONSENT CALENDAR*

1. Motion is to approve the regular minutes of April 3, and the special and regular minutes of April 10, 2003.

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

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

Claim checks # through # & electronic fund transfers in the total amount of \$

Payroll fund transfers in the total amount of \$

3. Motion is to approve the increase in the authorized contract amount with Global Diving and Salvage, Inc. by \$450, plus sales tax, and authorize the City Manager to sign said change in order in a form as approved by the City Attorney.

4. Motion is to approve the fee increase requested by Reid Middleton Engineers for consulting and construction management services on the repairs to the Public Fishing Pier Project and to authorize the City Manager to sign an addendum to the agreement that would increase the contract amount by \$5,500. The addendum shall be in a form approved by the City Attorney.

- Recess
& Second
Reading
Consent
6.0*
5. Motion is to approve the Consent Judgment & Decree of Appropriation in King County Superior Court Cause No. 02-2-19401-0 KNT and to authorize the City Attorney to approve said Judgment and Decree and present it to the court, for approval and entry, substantially in the form as submitted.
6. Motion is to approve the expenditure of \$3,750 to be used as the City of Des Moines' match to the Economic Development Administration's Trade promotion grant and authorize the City Manager to transfer these funds to King County based on the approved scope of work from EDA.
- approved 6.0*
7. Motion is to approve the Interlocal Agreement between the City of Des Moines and Federal Way Public Schools regarding joint development and use of Woodmont Elementary School Soccer Field and authorize the City Manager to sign the agreement substantially in the form as submitted.
- continued to 5/8 6.0*
8. Motion is to approve the lease of a location near a Des Moines Field House Park ballfield light standard for installation of a replacement ballfield light standard and equipment storage area to Cingular Wireless LLC for use as a wireless antenna location and to authorize the City Manager to sign the lease substantially in the form as submitted.
- Scott removed*
9. Motion is to approve the Consent & Decree of Appropriation in King County Superior Court Cause No. 02-2-33610-8 KNT, and to authorize the City Attorney to approve said Judgment and Decree and present it to the court, for approval and entry, substantially in the form as submitted.
- Petersen
Stewart
recess*
10. Motion is to approve the Contract for Des Moines Field House Facility Improvements Project construction services with Mayer Construction Co., Inc. in the amount of \$38,450.00 plus tax, and authorize the City Manager to sign the contract substantially in the form as submitted. And, to authorize the City Manager to approve change orders in amounts not to exceed 10% in total.
11. Motion is to approve the Rental Agreement between City of Des Moines Parks, Recreation and Senior Services Department and Joseph and Peggy Dusenbury and to have the Rental Agreement signed by the Parks, Recreation & Senior Services Director substantially in the form as submitted.
12. Motion is to approve the lease agreement with Classic Yachts, Inc., with the modifications as shown, and authorize the City Manager to sign the lease substantially in the form as submitted.
13. Motion is to enter into the agreements with Troy & Banks and Help-U-Save and to authorize the City Manager, or his designee, to sign said agreements substantially in the form as submitted.
14. Motion is to approve the purchase of a John Deere 2653A 84 Professional Recycling Utility Mulching Mower for the amount of \$22,702.21 of which the King County Waste
15. Motion is to set the final assessment roll Public Hearing date for LID 1-97-9 on June 26, 2003.

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

OLD BUSINESS

1. Draft Ordinance No. 03-165 Planning Agency Duties - 2nd Reading

SUMMARY: In 2001 the duties of the Planning Agency were expanded to include approval of preliminary subdivisions, preliminary modified subdivisions, preliminary alterations or vacation of subdivisions, preliminary alterations or vacations of short subdivisions with public dedication,

preliminary alteration or vacation of binding site plans with public dedication, preliminary alteration or vacation of binding site plan with more than four lots and not involving public dedication, preliminary binding site plan with more than four lots, and preliminary townhouse development with more than four lots. At a Public Hearing held on March 13, 2003, Council passed this ordinance on for a second reading. The purpose of the draft ordinance is to rescind those expanded duties and return the duties to the City Council.

NEW BUSINESS

1. Consideration to Move to Future Agenda: Draft Ordinance No. 02-264 Traffic Impact Fees - 2nd Reading

Handwritten: moved to 5/22/03 6-0

SUMMARY: Rule 9 of the City Council Rules of Procedure allows the Presiding Officer the "option of deleting any item from the agenda until the next regular Council meeting when the full Council shall vote on whether to introduce the item on the agenda of a subsequent Council Meeting". At the April 10, 2003 meeting, the Presiding Officer deleted this item from the Agenda. The purpose of this item is to provide the City Council an opportunity to decide whether or not to place this item on a future meeting agenda for action.

2. ACC Funding and Amended Interlocal Agreement

Handwritten: failed 3-3

SUMMARY: This item was placed on the agenda for discussion by Councilmembers Sheckler, Thomasson and White per Council Rules of Procedure, Rule 9.

3. Draft Resolution No. 03-098 Requiring All Eligible Incumbent Councilmembers Participate In Final Appointment to Vacant Council Position

Handwritten: failed 3-3

SUMMARY: The draft resolution relates to the appointment of a new Councilmember. If approved it would require that all eligible incumbent Councilmembers be given the opportunity to vote on the final appointment of a new Councilmember to fill the vacant position.

4. Planning Agency History/Background Presentation of Potential Duties Discussed in Fall of 2001

SUMMARY: The purpose of this agenda item is to present Councilmembers with a background history of discussions and actions leading to the changing of Planning Agency duties in the year 2001.

5. Draft Resolution No. 03-088 2003 Waterland Festival

SUMMARY: The purpose of this presentation is to inform the City Council about the plan for this years Waterland Festival and to present the Chamber of Commerce's request for the Council's approval for the use of City property at the Des Moines Marina for the 2003 Festival. The Festival is scheduled to run from July 23rd through July 27th. To conduct the Festival the Chamber of Commerce must get permission for the Council in the form of a resolution.

NEXT MEETING DATE - Study Session May 1, 2003

ADJOURNMENT

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Cingular Wireless Lease
Agreement- Des Moines Field House
Park

ATTACHMENTS:

- A. Draft Lease Agreement
- B. Proposed Site Construction Plan

FOR AGENDA OF: April 24, 2003

DEPT. OF ORIGIN: Parks, Recreation and
Senior Services

DATE SUBMITTED: April 16, 2003

CLEARANCES:

- [x] Park & Recreation Director
- [x] Community Development Director
- [x] City Attorney

APPROVED BY CITY MANAGER

FOR SUBMITTAL:

Purpose and Recommendation

Administration recommends approval of Cingular Wireless LLC's request to enter into a Lease Agreement with the City of Des Moines for the use of a portion of Des Moines Field House Park for the purpose of installing, maintaining and operating, at its expense a facility for an antenna and equipment storage.

Motion is to approve the Lease of a location near a Des Moines Field House Park ballfield light standard for installation of a replacement ballfield light standard and equipment storage area to Cingular Wireless LLC for use as a wireless antenna location and to authorize the City Manager to sign the lease substantially in the form as submitted.

Background

Cingular Wireless LLC is requesting to enter into a Lease Agreement with the City of Des Moines for the use of a portion of Des Moines Field House Park for the purpose of installing, maintaining and operating, at its expense a facility for an antenna and equipment storage. The proposed facility would be installed in 2003.

Discussion

Staff has been working with Cingular Wireless LLC to locate an appropriate site for the light pole and support equipment area to minimize impacts to potential future park uses based on the current park master plan. The antenna would be co-located on a new ballfield light pole installed to the east of Field No. 1, outside of the in-play area. The new pole would be

installed by Cingular Wireless LLC at its expense and would be required to provide for a or better ballfield lighting to replace existing lighting as specified by the Des Moines Park Recreation and Senior Services Director. The replacement light pole and required lighting fixtures would become the property of the city of Des Moines upon agreement termination. The existing light pole would be removed from service and delivered to a location specified by the city at Cingular Wireless LLC's expense. Light pole installation and de-installation would be scheduled in a manner to provide seamless operation of the park's ballfields. The city reserves the right to access the light pole to repair city-owned ballfield lighting fixtures.

The city retains right of entrance to all city-owned property for access to city-owned facility equipment, repairs, restoration and co-location of additional utility services as needed.

Alternative

Do not authorize Cingular Wireless LLC's request to enter into a Lease Agreement with the City of Des Moines.

Financial Impact

The Lease would be in effect for a maximum period of thirty years and facility rental begins at \$14,400.00 annually, \$1,200 per month. Additionally, Cingular Wireless LLC will pay leasehold tax directly to Washington State, if applicable. The Lease includes an annual escalation clause of the greater of 3% or CPI-U beginning on the anniversary of the first year.

Recommendation

Staff recommends approval of a Lease between the city of Des Moines and Cingular Wireless LLC for the use of a portion of Des Moines Field House Park for a wireless antenna and area for support equipment.

Concurrence

Park and Recreation, Community Development and Legal Departments are working with Cingular Wireless LLC regarding the Lease and permitting process. If Council authorizes the Lease, Community Development Department will process the Cingular's request consistent with the city's telecommunications code. Currently, the Community Development and Legal Departments are discussing if the request should be processed under a co-location permit or as an unclassified use. SEPA will be done under either scenario which will involve notice to surrounding property owners, an opportunity to comment, and an appeal period.

COMMUNICATIONS SITE LEASE AGREEMENT

THIS COMMUNICATIONS SITE LEASE AGREEMENT ("Lease") dated as of _____, 2003, is between **CINGULAR WIRELESS LLC**, a Delaware limited liability company, on behalf of Pacific Bell Wireless Northwest, LLC, a Delaware limited liability company, d/b/a Cingular Wireless ("Lessee"), whose address is 2445 – 140th Avenue, NE, Suite 202, Bellevue, WA 98005, and City of Des Moines, a municipal corporation ("Lessor"), whose address is 21630 11th Avenue South, Des Moines WA 98198.

The parties hereto agree as follows:

1. **Premises.** Lessor represents that Lessor owns the real property legally described in Exhibit "A" commonly known as 1000 S. 220th Street, Des Moines WA 98198 (Assessor's Parcel Number 082204903403). Subject to the following terms and conditions, Lessor leases to Lessee that portion of Lessor's property ("Lessor's Property") approximately TBD square feet of space as depicted in Exhibit "B", including any applicable easements for access and utilities (the "Premises").
2. **Use.** The Premises may be used by Lessee for any lawful activity in connection with the provision of mobile/wireless communications services, including without limitation, the transmission and the reception of radio communication signals on various frequencies and the construction, maintenance and operation of related communications facilities. Lessor agrees, at no expense to Lessor, to cooperate with Lessee in making application for and obtaining all licenses, permits and any and all other necessary approvals that may be required for Lessee's intended use of the Premises.
3. **Condition Precedent.** This Lease is conditioned upon Lessee, or Lessee's assigns, obtaining, at Lessee's sole cost and expense, all governmental licenses, permits and approvals enabling Lessee, or its assigns, to construct and operate mobile/wireless communications facilities on the Premises.
4. **Term.** The term of this Lease ("Term") shall be five (5) years commencing with the date Lessee commences construction of its mobile/wireless communications facilities on the Premises, excluding preliminary testing, survey and utilities work (the "Commencement Date"). Lessee shall have the right to extend the Term of this Lease for five (5) additional Terms ("Renewal Term") of five (5) years each. Each Renewal Term shall be on the same terms and conditions as set forth herein. This Lease shall automatically be extended for each successive five (5) year Renewal Term unless Lessee notifies Lessor in writing of Lessee's intention not to extend this Lease at least thirty (30) days prior to the expiration of the first five year Term or any Renewal Term.
5. **Rent.**
 - (a) Upon the Commencement Date, Lessee shall pay Lessor, as rent, the sum of Twelve Hundred Dollars (\$1,200.00) ("Rent") per month. Rent shall be payable on the 1st day of each month, in advance, to Lessor at Lessor's address specified at the beginning of this Lease. Rent shall be adjusted annually as of the anniversary of the Commencement Date to the extent of any percentage change which occurred in the Consumer Price Index (All Items, Base 1982-84 = 100) as published by the United States Department of Labor, Bureau of Labor Statistics for All Consumers for the Seattle Metropolitan area (hereinafter "CPI"). The rental adjustment shall be calculated by multiplying the Rent then in effect by a fraction, the denominator of which is the CPI in effect as of the calendar month fourteen full months prior to the anniversary date, and the numerator of which is the CPI in effect two full months prior to the anniversary date. Notwithstanding the foregoing, in no event shall Rent be increased by more than 3% of the Rent paid during the previous year.
 - (b) **Market Rent.** If Lessor feels that Rent is not equal to market rent for similar sites in similar geographic areas ("Market Rent"), then at the beginning of each five-year term, Lessor can require that Rent be increased to the then-current market rent for similar sites in similar geographic areas. If Lessor and Lessee cannot agree upon Market Rent within thirty (30) days after Lessor presents its proposal for Market Rent, then the matter shall be settled by binding arbitration by a single arbitrator who has experience in real estate leasing matters. The arbitration will be administered by the American Arbitration Association in accordance with its Commercial Arbitration rules if the parties have not otherwise agreed to use a different arbitrator or arbitration process. At least

ten (10) days in advance of the hearing, each party will submit to the arbitrator and to each other their best offers of Market Rent. The arbitrator shall be limited to choosing one of the two proposed Market Rent figures, and the arbitrator shall award the Market Rent figure that is closest to the true Market Rent. The costs of the arbitration, expert witnesses and attorney's fees shall be borne by the party whose Market Rent figure was not selected by the arbitrator.

(c) If the Commencement Date is other than the first day of a calendar month, Lessee may pay on the first day of the Term the prorated Rent for the remainder of the calendar month in which the Term commences, and thereafter, Lessee shall pay a full month's Rent on the first day of each calendar month, except that payment shall be prorated for the final fractional month of this Lease, or if this Lease is terminated before the expiration of any month.

6. Improvements; Access.

(a) Lessee shall have the right (but not the obligation) at any time following the full execution of this Lease and prior to the Commencement Date, to enter the Premises for the purpose of making necessary inspections and engineering surveys (and soil tests where applicable) and other reasonably necessary tests (collectively "Tests") to determine the suitability of the Premises for Lessee's Facilities (as defined herein) and for the purpose of preparing for the construction of Lessee's Facilities. During any Tests or pre-construction work, Lessee will have insurance as set forth in Section 14, Insurance. Lessee will notify Lessor of any proposed Tests or pre-construction work and will coordinate the scheduling of same with Lessor. If Lessee determines that the Premises are unsuitable for Lessee's contemplated use, then Lessee will notify Lessor and this Lease will terminate.

(b) Lessee has the right to construct, maintain, install, repair and operate on the Premises radio communications facilities, including but not limited to, radio frequency transmitting and receiving equipment, batteries, utility lines, transmission lines, radio frequency transmitting and receiving antennae and supporting structures and improvements ("Lessee's Facilities"). In connection therewith, Lessee has the right to do all work necessary to prepare, add, maintain and alter the Premises for Lessee's communications operations and to install utility lines and transmission lines connecting antennas to transmitters and receivers. All of Lessee's construction and installation work shall be performed at Lessee's sole cost and expense and in a good and workmanlike manner. Title to Lessee's Facilities and any equipment placed on the Premises by Lessee shall be held by Lessee or its equipment lessors or assigns. Lessee's Facilities shall not be considered fixtures. Lessee has the right to remove any or all of Lessee's Facilities at its sole expense on or before the expiration or termination of this Lease.

(c) Lessor shall provide Lessee, Lessee's employees, agents, contractors, subcontractors and assigns with access to the Premises twenty-four (24) hours a day, seven (7) days a week, at no charge to Lessee. Lessor represents and warrants that it has full rights of ingress to and egress from the Premises, and hereby grants such rights to Lessee to the extent required to construct, maintain, install and operate Lessee's Facilities on the Premises, and to remove them therefrom. Lessee's exercise of such rights shall not cause undue inconvenience to Lessor.

(d) Lessor shall maintain all access roadways from the nearest public roadway to the Premises in a manner sufficient to allow reasonable access. Lessor shall be responsible for maintaining and repairing such roadways, at its sole expense, except for any damage caused by Lessee's use of such roadways. If Lessee causes any such damage, it shall promptly repair same.

(e) Lessee shall have the right to install utilities, at Lessee's expense, and to improve the present utilities on or near the Premises (including, but not limited to the installation of emergency back-up power). Subject to Lessor's approval of the location, which approval shall not be unreasonably withheld, Lessee shall have the right to place utilities on (or to bring utilities across) Lessor's Property in order to service the Premises and Lessee's Facilities. Upon Lessee's request, Lessor shall execute recordable easement(s) evidencing this right.

(f) Lessee shall fully and promptly pay for all utilities furnished to the Premises for the use, operation and maintenance of Lessee's Facilities.

(g) Upon the expiration, cancellation or termination of this Lease, Lessee shall surrender the Premises to Lessor in good condition, less ordinary wear and tear.

7. Interference with Communications.

(a) Lessor acknowledges and agrees that it will not permit the installation of any additional antennas or equipment on the property, if such installation or relocation would adversely affect Lessee's space on the property or Lessee's operation, use or enjoyment of its Lessee Facilities, taking into account customary and commercially reasonable practices for multi-tenant wireless communication sites and towers thereon

(b) Lessor shall not, and shall not permit any licensee, tenant, subtenant or other user of the property for wireless communications purposes (collectively, other than Tenant, "Other Tenants") to, (i) install or change, alter or improve the frequency, power, or type of any communications equipment that interferes with the operation of Lessee's Facilities or is not authorized by, or violates, applicable Laws or is not made or installed in accordance with good engineering practices, or (ii) implement a configuration which interferes with the operation of Lessee's Facilities.

(c) In the event of any interference occurring at the property as a result of any actions of Lessor or any Other Tenants described in Section 7(b) above, Lessor shall be responsible for coordinating and resolving any such interference problems caused by Lessor or such Other Tenants, including, without limitation, using its best efforts to correct and eliminate the interference within forty-eight (48) hours of receipt of notification from Lessee and, if appropriate, performing an interference study in accordance with industry-standard procedures and practices. If the interference cannot be corrected or eliminated within such 48-hour period, Lessor shall cause, at Lessor's option, any of Lessor's or its Other Tenants' communications equipment that interferes with the operation of Lessee's Facilities or Lessee's authorized frequency spectrum or signal strength, to be immediately powered down or turned off, with the right to turn such interfering equipment back up or on only during off-peak hours specified by Lessee in order to determine whether such interference continues or has been eliminated; provided, however, that if any interference continues at the time the interfering equipment is powered down, the communications equipment that interferes with the operation of Lessee's Facilities shall be turned off. If Lessor or any such Other Tenant cannot correct or eliminate, to the satisfaction of Lessee, such interference within twenty (20) days of receipt of written notice from Lessee, Lessor shall or shall cause such Other Tenant to cease the operations of the objectionable communications equipment and to stop providing services from the property until the interference problems are resolved. In no event will Lessor be liable for any consequential damages (including, without limitation, lost profits) arising from any such interference.

(d) Lessee shall not (i) install or change, alter or improve the frequency, power, or type of any communications equipment that interferes with the operation of Lessor's or any Other Tenant's communications equipment installed at the property or in the vicinity, or is not authorized by, or violates, applicable Laws or is not made or installed in accordance with good engineering practices, or (ii) implement a configuration which interferes with the operation of Lessor's or any Other Tenant's communications equipment installed at the property or in the vicinity.

(e) In the event of any interference occurring at the property or in the vicinity as a result of any actions of Lessee described in Section 7(d) above, including but not limited to interference with radio, television, telephone or public safety communications, Lessee shall be responsible for coordinating and resolving any such interference problems caused by Lessee, including, without limitation, using its best efforts to correct and eliminate the interference within forty-eight (48) hours of receipt of notification from Lessor. If the interference cannot be corrected or eliminated within such 48-hour period, Lessee shall cause any of Lessee's communications equipment that interferes with the operation of Lessor's or any Other Tenant's communications equipment or their authorized frequency spectrum or signal strength, to be immediately powered down or turned off, with the right to turn such interfering equipment back up or on only during off-peak hours specified by Lessor in order to determine whether such interference continues or has been eliminated; provided, however, that if any interference continues at the time the interfering equipment is powered down, the communications equipment that interferes with the operation of Lessor's or any Other Tenant's communications equipment shall be turned off. If Lessee cannot correct or eliminate, to the satisfaction of Lessor, such interference within twenty (20) days of receipt of written notice from Lessor, Lessee shall cease the operations of the objectionable communications equipment and stop providing services from its Facilities until the interference problems are resolved. In no event will Lessee be liable for any consequential damages (including, without limitation, lost profits) arising from any such interference.

8. Taxes.

(a) Lessee shall pay all personal property taxes assessed against Lessee's Facilities and shall pay, if applicable, the leasehold tax levied by Chapter 82.29A RCW.

(b) Lessor shall pay all real property taxes and all other taxes, fees and assessments attributable to the Premises or this Lease.

9. Termination.

(a) This Lease, in addition to any other remedies which may be pursued in law or in equity, may be terminated by either party upon a material default of any covenant, condition, or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default. This Lease may be terminated by Lessee without further liability for any reason or for no reason, provided Lessee delivers written notice of termination to Lessor prior to the Commencement Date.

(b) This Lease may also be terminated by Lessee without further liability on thirty (30) days prior written notice (i) if Lessee is unable to reasonably obtain or maintain any certificate, license, permit, authority or approval from any governmental authority, thus, restricting Lessee from installing, removing, replacing, maintaining or operating Lessee's Facilities or using the Premises in the manner described in Paragraph 2 above; or (ii) if Lessee determines that the Premises are not appropriate for its operations for environmental reasons.

(c) This Lease may be terminated by Lessee upon thirty (30) days written notice for economic or technological reasons, including without limitation, signal strength, coverage or interference, so long as Lessee pays Lessor a termination fee equal to six (6) months Rent, at the then current rate.

10. Redevelopment. Subject to the other provisions of this Lease, in the event Lessor desires to redevelop, modify, remodel or in any way alter its property and any improvements thereon ("Redevelopment"), Lessor shall in good faith use its best effort to fully accommodate Lessee's continuing use of the Premises. Should any proposed Redevelopment necessitate the relocation of the Premises or Lessee's Facilities, and/or any alterations to Lessee's Facilities (subject to Lessee's prior written consent, which consent may be withheld in Lessee's discretion), Lessee shall relocate or make the necessary alterations, at Lessor's sole cost, expense and risk; provided however, that Lessor has provided Lessee with no less than one year prior written notice of Lessor's proposed Redevelopment. Upon demand from Lessee, Lessor shall reimburse Lessee for any costs or expenses arising out of, or associated with, such relocation or alteration. Lessor shall only be entitled to relocate Lessee's Facilities as set forth above following the expiration of the second (2nd) renewal term. Lessor shall not be entitled to relocate Lessee more than one (1) time during the term of this Lease.

11. Destruction of Premises. If the Premises or Lessor's Property is destroyed or damaged so as in Lessee's judgment, to hinder its effective use of Lessor's Property, Lessee may elect to terminate this Lease as of the date of the damage or destruction by so notifying Lessor no more than 30 days following the date of damage or destruction.

12. Condemnation. If a condemning authority takes all or a portion of Lessor's Property, which in Lessee's opinion is sufficient to render the Premises unsuitable for Lessee's use, then Lessee may terminate this Lease as of the date when possession is delivered to the condemning authority. In any condemnation proceeding each party shall be entitled to make a claim against the condemning authority for just compensation (which for Lessee shall include, the value of Lessee's Facilities, moving expenses, prepaid rent, business dislocation expenses, bonus value of the lease and any other amounts recoverable under condemnation law). Sale of all or part of the Premises to a purchaser with the power of eminent domain in the face of the exercise of its power of eminent domain, shall be treated as a taking by a condemning authority.

13. Indemnification.

(a) Lessee agrees to indemnify, defend and hold Lessor harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly out of the installation, use, maintenance, repair or removal of the Communication Facility or Lessee's breach of any provision of this Agreement, except to the extent

attributable to the negligent or intentional act or omission of Lessor, its employees, agents or independent contractors.

(b) Lessor agrees to indemnify, defend and hold Lessee harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly out of the actions or failure to act of Lessor or its employees or agents, or Lessor's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Lessee, its employees, agents or independent contractors

14. Insurance. Lessee shall maintain the following insurance: (1) Commercial General Liability with limits of \$5,000,000.00 per occurrence, covering Lessee's use, occupancy and operations on the Premises; (2) Automobile Liability with a combined single limit of \$1,000,000.00 per accident; (3) Workers Compensation as required by law; and (4) Employer's Liability with limits of \$1,000,000.00 per occurrence. Each party to this Lease shall each maintain standard form property insurance ("All Risk" coverage) equal to at least 90% of the replacement cost covering their respective property. Each party waives any rights of recovery against the other for damages or loss due to hazards covered by their property insurance and each party shall require such insurance policies to contain a waiver of recovery against the other. Lessee shall name Lessor as an additional insured with respect to the above Commercial General Liability insurance. Lessee shall have the right to self-insure with respect to any of the above insurance.

15. Assignment/Sublease/Additional Users.

(a) Lessee may assign or sublet this Lease at any time to any of Lessee's partners or affiliates. Any other assignment or sublease requires Lessor's prior written approval.

(b) Approval by Lessor of an assignment or sublease shall not be unreasonably withheld, however it shall not be deemed unreasonable for Lessor to refuse to consent to an assignment or sublease without reasonable additional compensation to Lessor for additional users of the premises and/or facilities.

(c) Lessee shall, to the extent technology and space permit and to the extent that it does not interfere with Lessee's operations or other rights herein, make the facility available for joint use by existing or future users of the property, including Lessor or other lessees of Lessor. Lessee shall be permitted to charge reasonable value to any joint user, other than Lessor, for use of Lessee's facilities or structures

16. Title and Quiet Enjoyment.

(a) Lessor represents and warrants that it has full right, power, and authority to execute this Lease. Lessor further warrants that Lessee shall have quiet enjoyment of the Premises during the Term of this Lease or any Renewal Term. Lessor hereby represents and warrants that it has obtained all necessary approvals and consents, and has taken all necessary action to enable Lessor to enter into this Lease and allow Lessee to install and operate Lessee's Facilities on the Premises, including without limitation, approvals and consents as may be necessary from other tenants, licensees and occupants of Lessor's Property.

(b) Lessee has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice. If, in the opinion of Lessee, such title report shows any defects of title or any liens or encumbrances which may adversely affect Lessee's use of the Premises, Lessee shall have the right to terminate this Lease immediately upon written notice to Lessor.

17. Repairs/Removal/Restoration.

(a) All portions of the Communication Facility brought onto the property by Lessee will be and remain Lessee's personal property and Lessee shall properly maintain and repair all of its property in a timely and workmanlike manner, however, the light standard structure will become property of Lessor upon completion of construction of the Communication Facility, Lessee shall be responsible for maintenance of the light standard structure. Lessor's lighting equipment and associated wiring and cables shall be maintained by Lessor.

(b) Lessee shall not be required to make any repairs to the Premises except for damages to the Premises caused by Lessee, its employees, agents, contractors or subcontractors

(c) Within sixty (60) days of the termination of this Agreement, Lessee will remove all Lessee improvements, with the exception of the light standard structure, and will restore the property to its original conditions, less ordinary wear and tear.

18. Environmental. Lessor represents that the Premises have not been used for the generation, storage, treatment or disposal of hazardous materials, hazardous substances or hazardous wastes. In addition, Lessor represents that no hazardous materials, hazardous substances, hazardous wastes, pollutants, asbestos, polychlorinated biphenyls (PCBs), petroleum or other fuels (including crude oil or any fraction or derivative thereof) or underground storage tanks are located on or near the Premises. Notwithstanding any other provision of this Lease, Lessee relies upon the representations stated herein as a material inducement for entering into this Lease.

19. Mediation/Arbitration.

(a) If a dispute, other than a disagreement regarding "market rent," arises from or relates to this Agreement or the breach thereof, and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under the American Arbitration Association's Rules before resorting to arbitration. The mediator may be selected by agreement of the parties or through the American Arbitration Association. Following mediation, any unresolved controversy or claim arising from or relating to this Contract or breach thereof shall be settled through arbitration which shall be conducted under the American Arbitration Association's Arbitration Rules. The arbitrator may be selected by agreement of the parties or through the American Arbitration Association. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

(b) Any dispute regarding "market rent" for the premises shall be resolved in accordance with Section 5 (b), above.

20. Miscellaneous.

(a) Notices shall be in writing and shall be delivered to:

Lessee:

Cingular Wireless Lease Administration
6100 Atlantic Boulevard
1st Floor
Mail Code: GAN02
Norcross, GA 30071

with a copy to:

Counsel - West Region
Cingular Wireless
2521 Michelle Drive, 2nd Floor
Tustin, CA 92780

and with a copy to:

Cingular Wireless
2445 - 140th Avenue, Suite 202
Bellevue, WA 98005
Attn: Property Manager

and to Lessor, Attn: City Manager, to the address given at the beginning of this Lease, or to the address specified in the most recent written notice of any change in address. Delivery of notices shall be made by hand, U.S. mail return receipt requested or reliable overnight courier.

(b) If Lessee is to pay Rent to a payee other than the Lessor, Lessor shall notify Lessee in advance in writing of the payee's name and address.

(c) The substantially prevailing party in any legal claim arising hereunder shall be entitled to its reasonable attorney's fees and court costs, including appeals, if any.

(d) Subordination. Lessor shall obtain for the benefit of LESSEE a commercially reasonable subordination, non-disturbance and attornment agreement (a "Non-Disturbance Agreement") from each holder of a mortgage, deed of trust, deed to secure debt or other similar instrument now or hereafter encumbering the Leased Property (a "Mortgage"), confirming that Lessee's right to quiet possession of the Leased Property during the term of this Agreement (including any extensions thereof) shall not be disturbed as long as LESSEE is not in default hereunder. No such subordination shall be effective unless the holder of such Mortgage shall, either in the Mortgage itself or in a separate agreement with LESSEE, agree that in the event of a foreclosure, or conveyance in lieu of foreclosure, of Lessor's interest in the Leased Property, such holder shall recognize and confirm the validity and existence of this Agreement and the rights of Lessee hereunder, and this Agreement shall continue in full force and effect and Lessee shall have the right to continue its use and occupancy of the Leased Property in accordance with

the provisions of this Agreement as long as Lessee is not in default of this Agreement beyond applicable notice and cure periods. Lessee shall execute in a timely manner whatever instruments may reasonably be required to evidence the provisions of this paragraph. In the event the Leased Property is encumbered by one or more Mortgages on the Commencement Date, Lessor, no later than thirty (30) days after the Commencement Date, shall obtain and furnish to Lessee a Non-Disturbance Agreement in recordable form from the holder of each such Mortgage.

(e) If any provision of the Lease is invalid or unenforceable with respect to any party, the remainder of this Lease or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

(f) Terms and conditions of this Lease, which by their sense and context survive the termination, cancellation or expiration of this Lease, will so survive.

(g) This Lease shall be governed under Washington law, and be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

(h) Upon request, either party may require that a Memorandum of Lease attached as Exhibit C be recorded confirming the (i) Lease commencement, (ii) expiration date of the Term, and (iii) the duration of any Renewal Terms.

(i) This Lease constitutes the entire Lease between the parties, and supersedes all understandings, offers, negotiations and other leases concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth herein. Any amendments, modifications or waivers of any of the terms and conditions of this Lease must be in writing and executed by both parties.

IN WITNESS WHEREOF, the parties have entered into this Lease effective as of the date first above written.

LESSOR:

CITY OF DES MOINES, a Washington Municipal Corporation

By: _____

Tony Piasecki, City Manager
City of Des Moines

LESSEE:

CINGULAR WIRELESS LLC, a Delaware limited liability company, on behalf of Pacific Bell Wireless Northwest, LLC, a Delaware limited liability company, d/b/a CINGULAR WIRELESS

By: _____

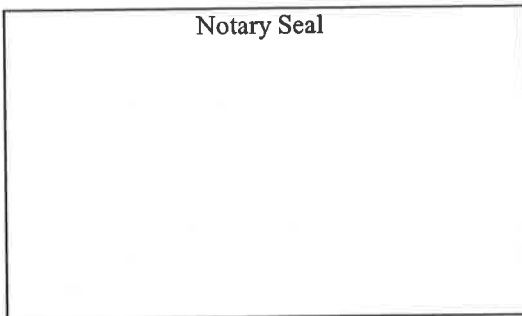
E. Don MacLeod
Seattle Network Director

LESSOR'S ACKNOWLEDGMENT:

STATE OF WASHINGTON)
) SS.
 COUNTY OF KING)

I certify that I know or have satisfactory evidence that **Tony Piasecki** is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the City Manager of the **City of Des Moines**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____.



 (Signature of Notary)

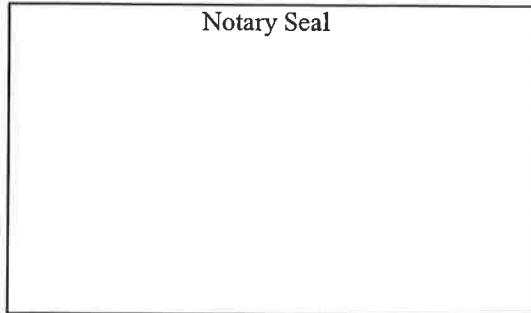
 (Legibly Print or Stamp Name of Notary)
 Notary Public in and for the State of Washington
 My appointment expires: _____

CINGULAR'S ACKNOWLEDGMENT:

STATE OF WASHINGTON)
) SS.
 COUNTY OF KING)

I certify that I know or have satisfactory evidence that **E. Don MacLeod** is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the Seattle Network Director of **Cingular Wireless**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____.



 (Signature of Notary)

 (Legibly Print or Stamp Name of Notary)
 Notary Public in and for the State of Washington
 My appointment expires: _____

EXHIBIT A

LEGAL DESCRIPTION OF LESSOR'S PROPERTY

Lessor's Property, situated in the County of King, State of Washington, of which the Premises are a part, is legally described as follows:

Legal Description:

(Type or copy the full legal description from the title report, or check here ☐ and attach survey as Exhibit A, Page 2.)

EXHIBIT B**DESCRIPTION OF PREMISES**

The Premises consist of those areas described/shown below and where Lessee's communications antennae, equipment, cables and utilities occupy Lessor's Property. The Premises and the associated utility connections and access, including easements, ingress, egress, dimensions, and locations as described/shown below, are approximate only and may be adjusted or changed by Lessee at the time of construction to reasonably accommodate sound engineering criteria and the physical features of Lessor's Property.

(Insert drawing of Site below, or check here ☐ and attach drawing as Exhibit B, Page 2.)

A final drawing, Site Plan, or copy of a property survey substantially depicting the above will replace this Exhibit "B" when initialed by Lessor.

Notes

1. This Exhibit may be replaced by a land survey or Site Plan of the Premises once it is received by Lessee.
2. Setback of the Premises from the Lessor's boundaries shall be the distance required by the applicable governmental authorities.
3. Width of access road shall be the width required by the applicable governmental authorities, including police and fire departments.
4. The type, number and mounting positions and locations of antennas and transmission lines are illustrative only. Actual types, numbers, mounting positions may vary from what is shown above.
5. Exhibit B1, SCOPE OF WORK, attached and incorporated herein by this reference, is a part of this agreement, however the list of responsibilities included on Exhibit B1 are not exclusive of other responsibilities of the parties hereto as set forth in the Lease Agreement.

EXHIBIT B1

SCOPE OF WORK

Cingular Wireless LLC Construction at Des Moines Field House Park

General

- A. Per § 3 of the Lease, Tenant is preparing, executing, filing, and complying with all required Governmental Approvals and Regulations.
- B. Tenant to clean site daily during construction. At end of each day, site must be left safe and secured.
- C. Per § 13 of the Lease, Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage, or liability, costs or expenses arising directly out of the installation, use, maintenance, repair or removal of the Communication Facility.
- D. Tenant understands that this is a public facility, and that it must be in service during most, if not all, hours of construction required by this Contract. Tenant to ensure that construction will not interfere with the Americans with Disabilities Act (ADA) accessible entrance.

Scope of Work

- A. Tenant to remove existing left field light pole, which will be retained by Landlord to be used at another ball field. Tenant to replace with new left field light pole to new area agreed upon by Tenant and Landlord as depicted in approved Construction Drawings.
- B. Daily removal and disposal of all materials, debris and trash generated by this project.
- C. One-year guarantee on all work performed by Tenant.
- D. Verify location of all underground utilities before commencement of Work. Remove no utilities, unless depicted on approved Construction Drawings. All utilities to run underground. If unexpected conditions arise, stop work and immediately notify Landlord. In all phases of the work, the Tenant, at no additional cost, shall repair all damage caused by the Tenant to any existing utilities.

Landlord Responsibilities

- A. Locate all above-ground utilities
- B. On-site Landlord observation and construction supervision.

**RECORDING REQUESTED BY, AND
WHEN RECORDED, RETURN TO:**

CINGULAR WIRELESS LLC
2445 – 140th Ave. NE, Suite 202
Bellevue, WA 98005

MEMORANDUM OF AGREEMENT

Grantor: CITY OF DES MOINES, a Washington Municipal Corporation
Grantee: CINGULAR WIRELESS LLC, a Delaware limited liability company, on
behalf of Pacific Bell Wireless Northwest, LLC, a Delaware limited liability
company, d/b/a Cingular Wireless

Legal Description: _____ (abbreviated legal)
Official legal description attached as Exhibit A

Assessor's Tax Parcel ID No.:

Site Number & Name:

This Memorandum of Agreement is made by and between CINGULAR WIRELESS LLC, a Delaware limited liability company, on behalf of Pacific Bell Wireless Northwest, LLC, a Delaware limited liability company, d/b/a Cingular Wireless, whose address is 2445 – 140th Avenue, Ave. NE, Suite 202, Bellevue, WA 98005 (hereinafter referred to as "Lessee"), and CITY OF DES MOINES, a Washington Municipal Corporation, whose address is 21630 – 11th Ave S., Des Moines WA 98198 (hereinafter referred to as "Lessor").

RECITALS

WHEREAS, Lessor and Lessee have executed that certain Communication Site Lease Agreement ("Agreement") dated as of _____, 2002, covering certain premises ("Premises") situated on certain real property located in the County of King, State of Washington, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference; and

WHEREAS, Lessor and Lessee desire to record notice of the Agreement in the county's official records;

NOW, THEREFORE, in consideration of the foregoing, Lessor and Lessee hereby declare as follows:

1. **Demise**. Lessor has leased Premises to Lessee (together with access rights), and Lessee has hired the Premises from Lessor, subject to the terms, covenants and conditions contained in the Agreement for the purpose of installing, operating and maintaining a radio communications facility and other improvements. All of the foregoing are set forth in the Agreement.

2. **Expiration Date**. The term of the Agreement is scheduled to commence with the issuance of a local building permit and shall expire five (5) years thereafter, subject to Lessee's option to extend the term for five (5) additional terms of five (5) successive years each.

Exhibit C

3. **Agreement Controlling.** This Memorandum is solely for the purpose of giving constructive notice of the Agreement. In the event of conflict between the terms of the Agreement and this Memorandum, the terms of the Agreement shall control.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement as of the day and year first above written.

LESSOR:

CITY OF DES MOINES, a Washington
Municipal Corporation

LESSEE:

CINGULAR WIRELESS LLC, a Delaware
limited liability company, on behalf of Pacific Bell
Wireless Northwest, LLC, a Delaware limited
liability company, d/b/a CINGULAR WIRELESS

By: _____
Tony Piasecki
City Manager

By: _____
E. Don MacLeod
Seattle Network Director

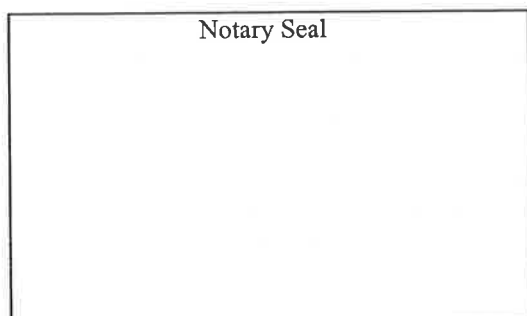
(print name)

LESSOR'S ACKNOWLEDGMENT:

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that **Tony Piasecki** is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the City Manager of the **City of Des Moines** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____.



(Signature of Notary)

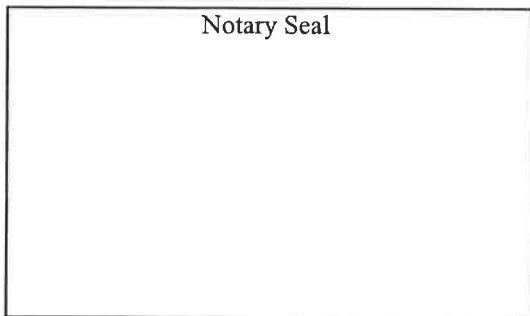
(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of Washington
My appointment expires: _____

CINGULAR'S ACKNOWLEDGMENT:

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that **E. Don MacLeod** is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the Seattle Network Director of **Cingular Wireless**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____.



(Signature of Notary)

(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of Washington
My appointment expires: _____



DT DES MOINES

1000 S. 220TH STREET
DES MOINES, WASHINGTON 98198
WA-455-01

REVISED FINAL CONSTRUCTION DOCUMENTS

04-15-03
NOT TO BE ROUTED
THROUGH CINGULAR

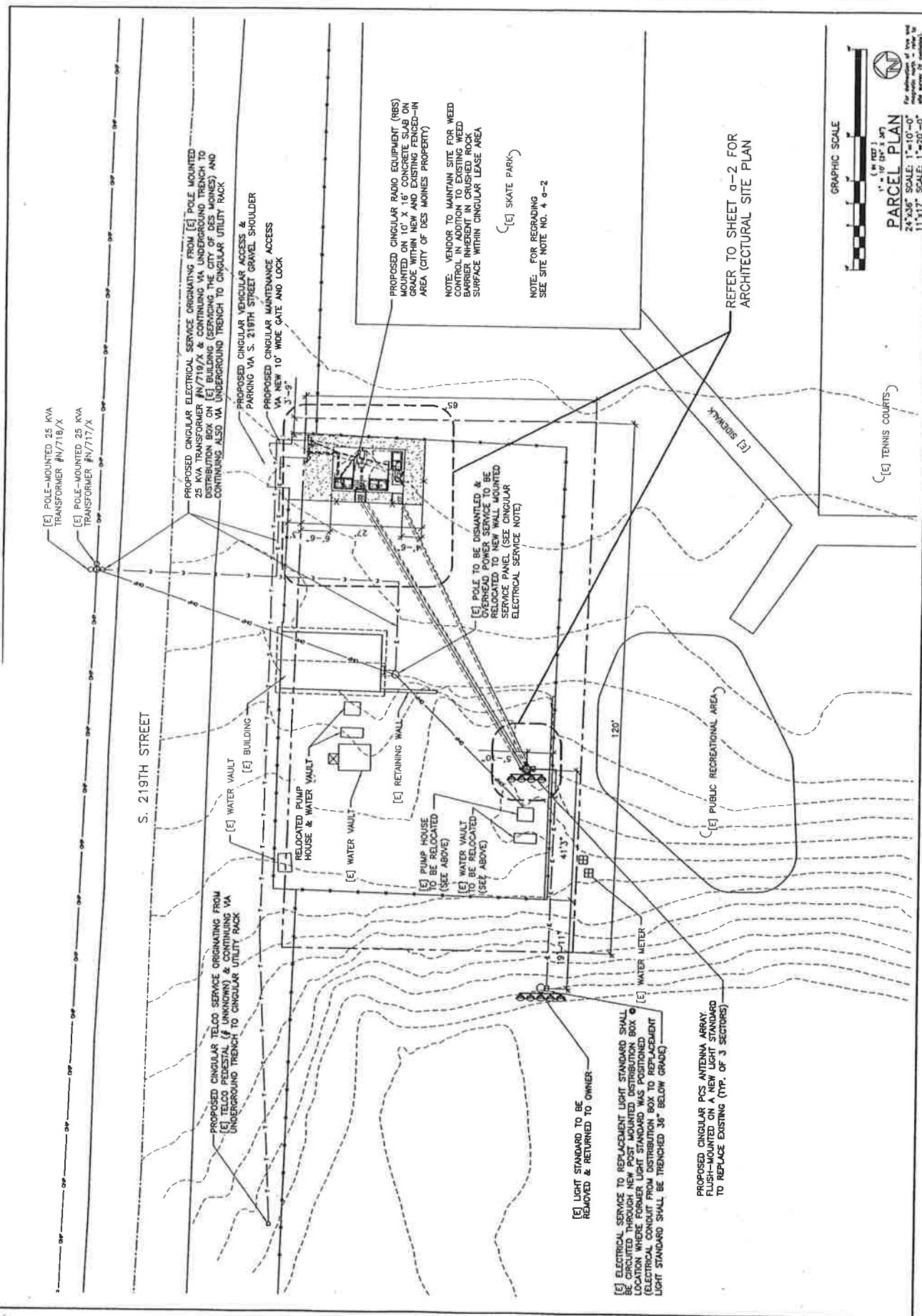
[illegible]

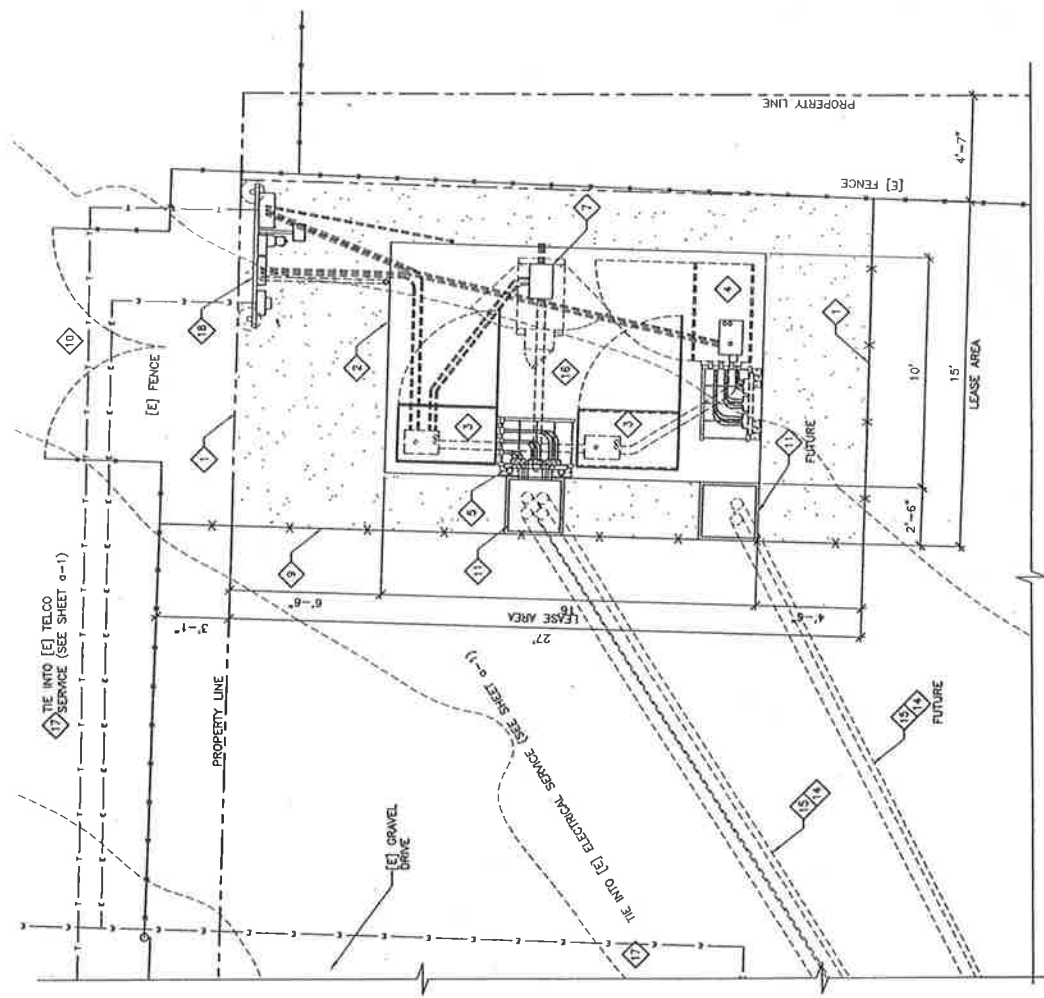
GENERAL NOTES

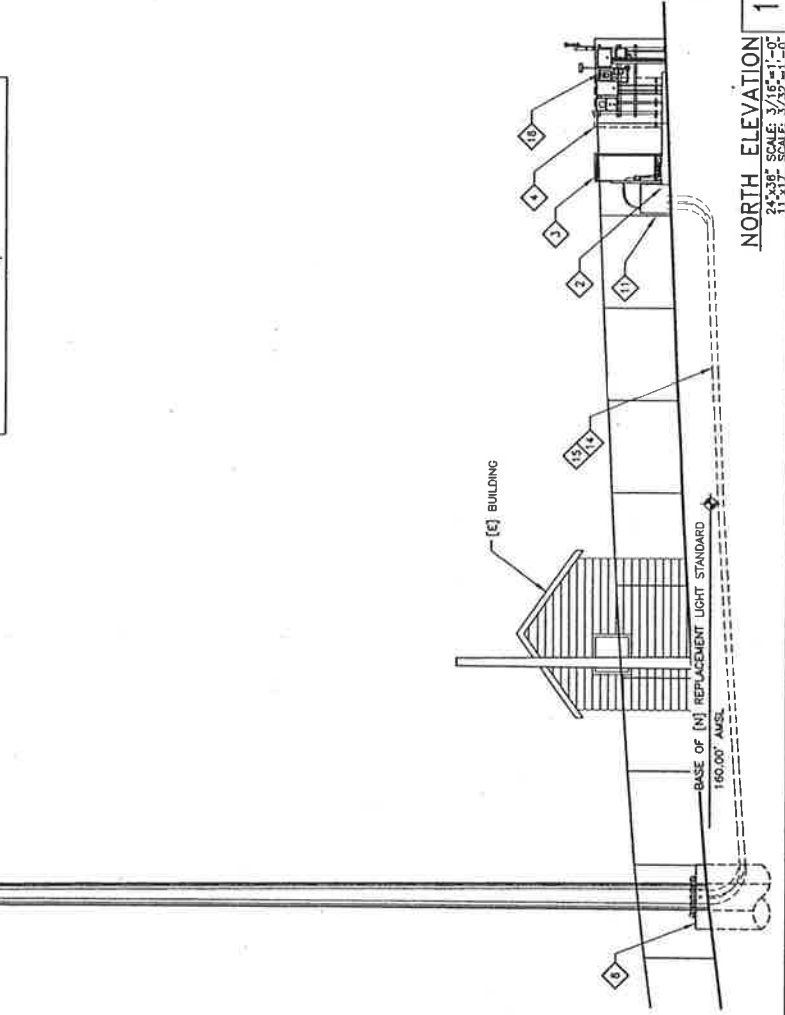
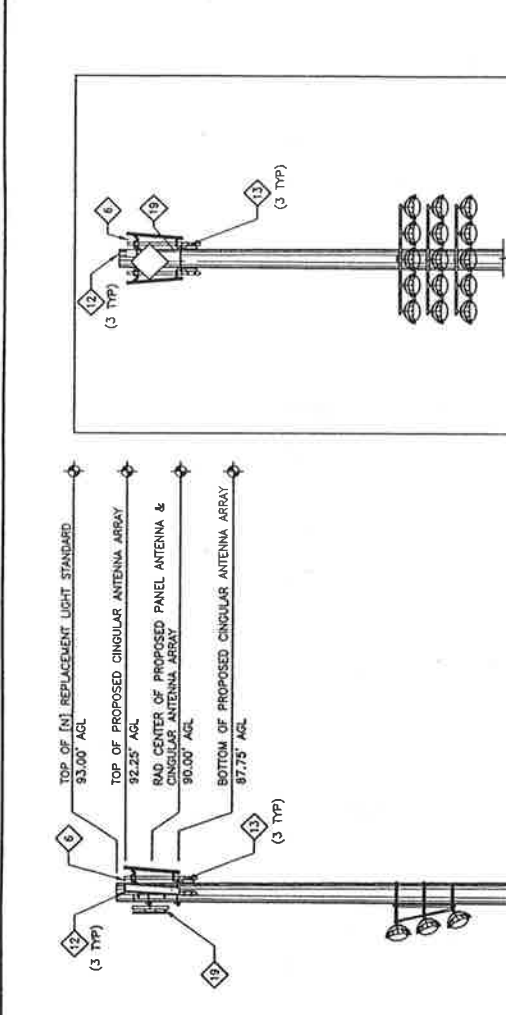
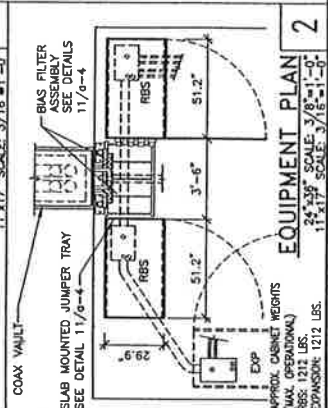
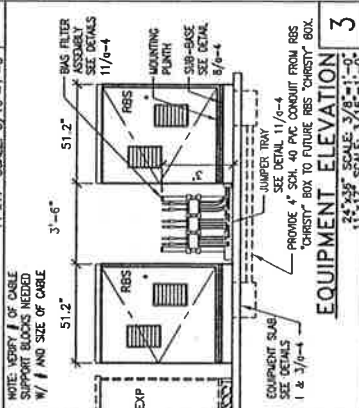
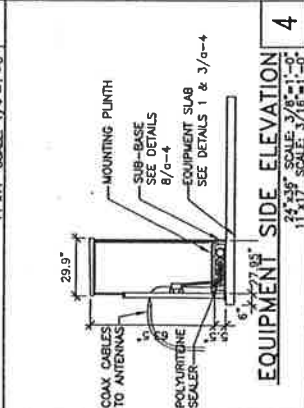
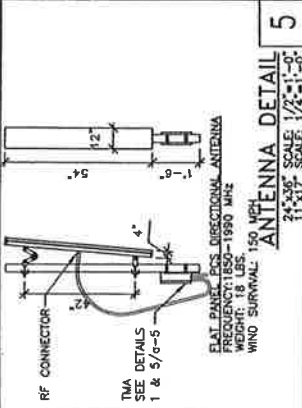
1. DRAWINGS ARE NOT TO BE SCALED. WRITTEN DIMENSIONS TAKE PRECEDENCE OVER DIMENSIONS SHOWN ON THE DRAWINGS. DIMENSIONS ARE TO BE USED FOR CONSTRUCTION PURPOSES ONLY, UNLESS NOTED OTHERWISE. THE GENERAL CONTRACTOR'S SCOPE OF WORK SHALL INCLUDE FURNISHING ALL MATERIALS, EQUIPMENT, LABOR, AND ANY REQUIREMENTS DEEMED NECESSARY TO COMPLETE INSTALLATION AS DESCRIBED IN THE DRAWINGS AND OWNER'S PROJECT MANUAL.
2. DRAWINGS WERE PREPARED FROM STANDARDIZED DETAILS DEVELOPED AND PROVIDED BY W. KNOX FITZPATRICK III AND ASSOCIATES, AND CINGULAR WIRELESS, LLC. STANDARDIZED DETAILS ARE TO BE CONFIRMED AND CORRELATED AT THE SITE BY THE CONTRACTOR. THE CONTRACTOR IS RESPONSIBLE FOR OBTAINING DIMENSIONS, STANDARDIZED DETAILS, AND REQUIREMENTS MUST BE SUBMITTED TO THE FIELD CONDITIONS AND REQUIREMENTS MUST BE PRIOR TO START OF WORK.
3. PRIOR TO THE SUBMISSION OF BIDS, CONTRACTORS INVOLVED IN THE PROJECT SHALL REVIEW THE DRAWINGS AND SPECIFICATIONS AND CONDITIONS AFFECTING THE PROPOSED PROJECT. CONTRACTORS SHALL VISIT THE CONSTRUCTION SITE WITH THE ARCHITECT/ENGINEER AND CONFIRM THAT THE PROJECT WILL BE CONSTRUCTED IN ACCORDANCE WITH THE DRAWINGS AND SPECIFICATIONS. ANY DISCREPANCIES OR DISCREPANCIES SHALL BE BROUGHT TO THE ATTENTION OF THE ARCHITECT/ENGINEER VERBALLY AND IN WRITING.
4. THE GENERAL CONTRACTOR SHALL RECEIVE WRITTEN AUTHORIZATION FROM THE ARCHITECT/ENGINEER PRIOR TO STARTING WORK ON ANY FIELD NOT CLEARLY DERIVED BY THE CONSTRUCTION DRAWINGS/CONTRACT DOCUMENTS.
5. THE CONTRACTOR SHALL SUPERVISE AND DIRECT THE PROJECT DESCRIBED IN THE CONTRACT DOCUMENTS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ALL CONSTRUCTION MEANS, METHODS, TECHNIQUES, SEQUENCES, AND PROCEDURES FOR COORDINATING ALL PORTIONS OF THE WORK UNDER THE CONTRACT.
6. THE CONTRACTOR SHALL INSTALL ALL EQUIPMENT AND MATERIALS ACCORDING TO MANUFACTURER'S/VEHICLE'S SPECIFICATIONS, UNLESS OTHERWISE WHERE LOCAL CODES OR ORDINANCES TAKE PRECEDENCE.
7. ALL WORK PERFORMED ON THE PROJECT AND MATERIALS INSTALLED SHALL BE IN STRICT ACCORDANCE WITH ALL APPLICABLE CODES, ORDINANCES, AND REGULATIONS. THE CONTRACTOR SHALL OBTAIN ALL NECESSARY PERMITS AND COMPLIANCE WITH ALL LAWS, ORDINANCES, RULES, REGULATIONS AND LAWFUL ORDERS OF ANY PUBLIC AUTHORITY, MUNICIPAL AND UTILITY COMPANY SPECIFICATIONS, AND LOCAL AND STATE JURISDICTIONAL CODES BEARING ON THE PERFORMANCE OF THE WORK.
8. THE GENERAL CONTRACTOR SHALL PROVIDE, AT THE PROJECT SITE, A FULL SET OF CONSTRUCTION DOCUMENTS UPDATED WITH THE LATEST REVISIONS AND ADDENDA OR CLARIFICATIONS FOR USE BY ALL PERSONNEL INVOLVED WITH THE PROJECT. THE CONTRACTOR SHALL MAINTAIN A RECORD OF ALL REVISIONS TO THE CONSTRUCTION SHEET, AND EACH SUCCESSIVE SHEET BEARS THE ARCHITECT'S SIGNED WET STAMP.
9. THE STRUCTURAL COMPONENTS OF ADJACENT CONSTRUCTION OR FACILITIES ARE NOT TO BE ALTERED BY THIS CONSTRUCTION PROJECT UNLESS NOTED OTHERWISE.
10. SEAL ALL PENETRATIONS THROUGH FIRE-RATED AREAS WITH U.L. LISTED OR FIRE MARSHALL APPROVED MATERIALS IF APPLICABLE TO THIS FACILITY AND OR PROJECT SITE.
11. CONTRACTOR TO PROVIDE A PORTABLE FIRE EXTINGUISHER WITH A RATING OF NOT LESS THAN 2-A OR 2-A10BC WITHIN 75 FEET TRAVEL DISTANCE TO ALL PORTIONS OF PROJECT AREA DURING CONSTRUCTION.
12. CONTRACTOR SHALL MAKE NECESSARY PROVISIONS TO PROTECT EXISTING IMPROVEMENTS, EASEMENTS, PAVING, CURBING, ETC. DURING CONSTRUCTION. UPON COMPLETION OF WORK, CONTRACTOR SHALL REPAIR ANY DAMAGE THAT MAY HAVE OCCURRED DUE TO CONSTRUCTION ON OR ABOUT THE PROPERTY.
13. CONTRACTOR SHALL KEEP GENERAL WORK AREA CLEAN AND HAZARD FREE DURING CONSTRUCTION AND DISPOSE OF ALL DIRT, DEBRIS, AND RUBBISH. CONTRACTOR SHALL REMOVE EQUIPMENT NOT SPECIFIED AS REMAINING ON THE PROPERTY OR PREMISES. SITE SHALL BE LEFT IN CLEAN CONDITION AND FREE FROM PAINT SPOTS, DUST, OR SMUDGES OF ANY NATURE.

SYMBOLS & ABBREVIATIONS

—	POWER & TELCO LINE
— T —	TELEPHONE
— E —	POWER
— X —	CHAINLINK FENCE
— W —	WOOD FENCE
⊠	ANTENNA
A1	ANTENNA MARK NO.
⊕	CENTERLINE
[E]	EXISTING
[N]	NEW
W/	WITH
P80	PROVIDED BY OWNER
⊗	DETAIL NUMBER
⊗	SHEET NUMBER
V.I.F.	VERIFY IN FIELD







- ### CONSTRUCTION PLAN KEYED NOTES
1. CONCRETE SLAB ON GRADE (PROVIDED BY CINGULAR) SEE DETAILS 1 & 3/6-4.
 2. HOLLOW CONCRETE PILES - PROVIDED BY CINGULAR. SEE DETAIL 11/6-4.
 3. HOLLOW CONCRETE PILES - PROVIDED BY CINGULAR. SEE DETAIL 11/6-4.
 4. EXPANSION CABINET (PROVIDED BY CINGULAR) SEE DETAIL 8/6-4.
 5. NEW ANTENNA MOUNTS (PROVIDED BY CONTRACTOR) SEE DETAIL 8/6-4.
 6. SITE TO BE PILED WITH 12\"/>

- ### SITE NOTES
1. VERIFY ANTENNA RAD CENTER & AZIMUTHS WITH FINAL SITE CONFIGURATION SHEET FROM R.F. ENGINEER.
 2. ALL EXPOSED ANTENNAS, COAX, AND MOUNTING HARDWARE TO BE PAINTED TO MATCH NEW LIGHT STANDARD.
 3. CONTRACTOR TO NOTE MICROWAVE ANTENNA RAD CENTER AND SIZES ON SHEET 6-3. MICROWAVE AZIMUTH INFORMATION SHALL BE PROVIDED TO CONTRACTOR PRIOR TO INSTALLATION BY CINGULAR INTERCONNECT ENGINEER.
 4. CONTRACTOR SHALL REGRADE ALL DISTURBED AREAS.

COAX LENGTH SCHEDULE

SECTOR	LENGTH	DIAMETER
SECTOR "A"	158'	1 5/8"
SECTOR "B"	158'	1 5/8"
SECTOR "C"	158'	1 5/8"

cingular
WIRELESS

WIRELESS FACILITIES, INC.
575 ANDOVER PARK WEST
SUITE 201
TUMWATER, WA 98148

2445 140th NE #202
BELLEVUE, WA 98005

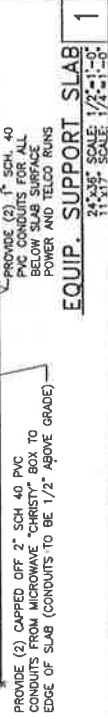
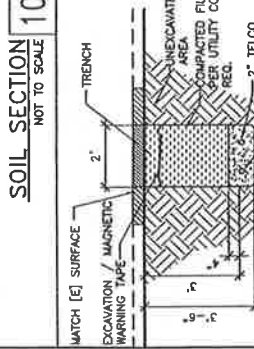
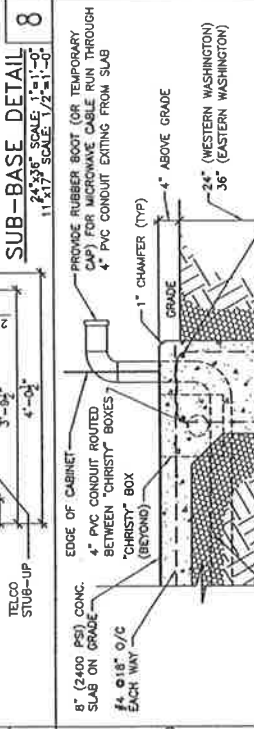
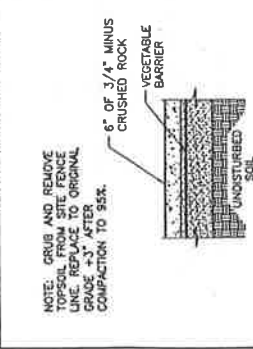
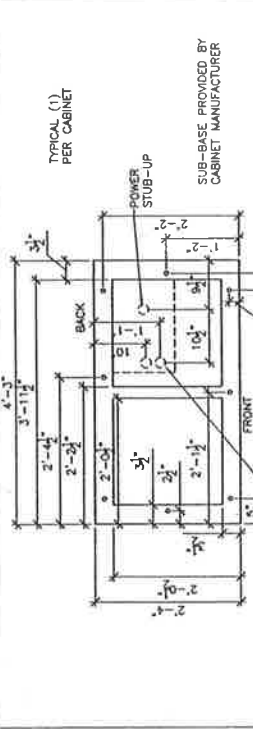
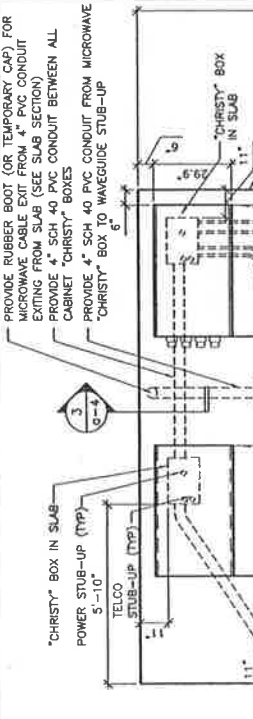
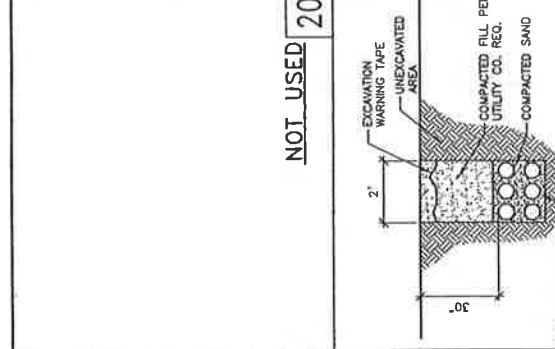
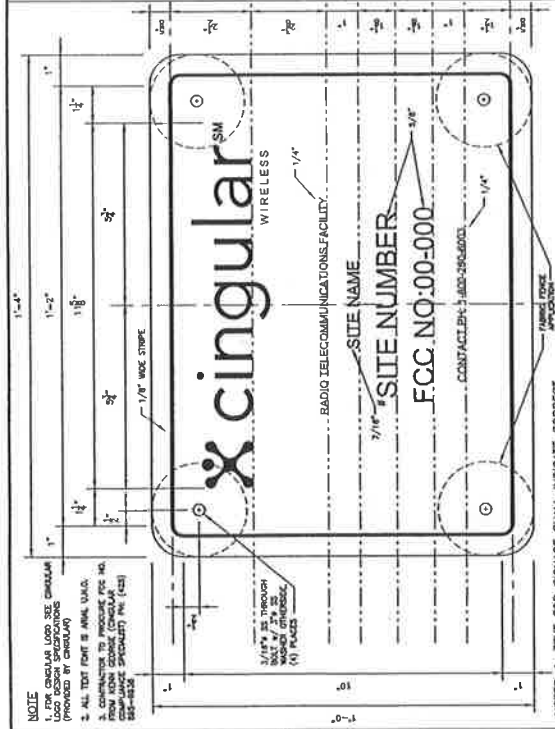
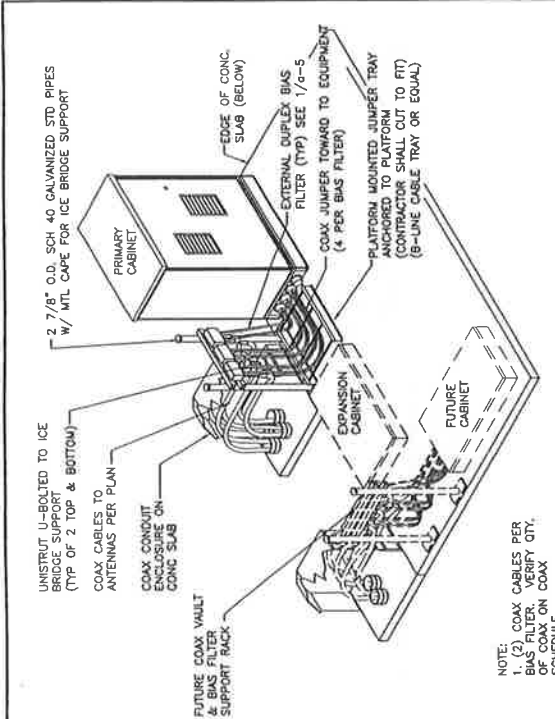
2445 140th NE #202
BELLEVUE, WA 98005

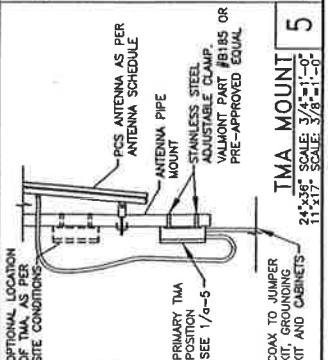
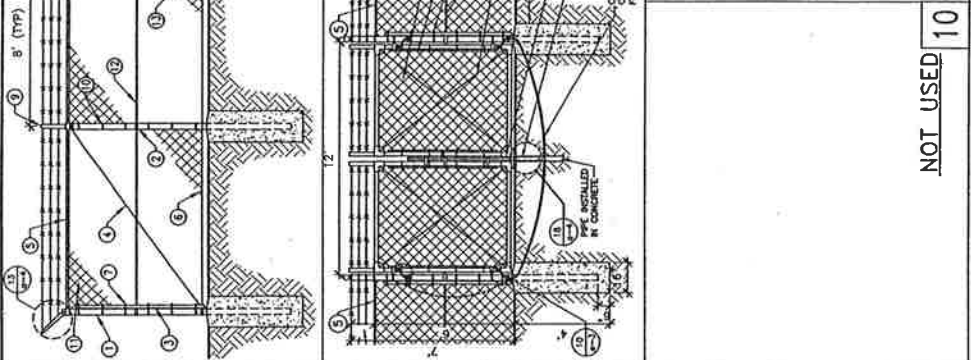
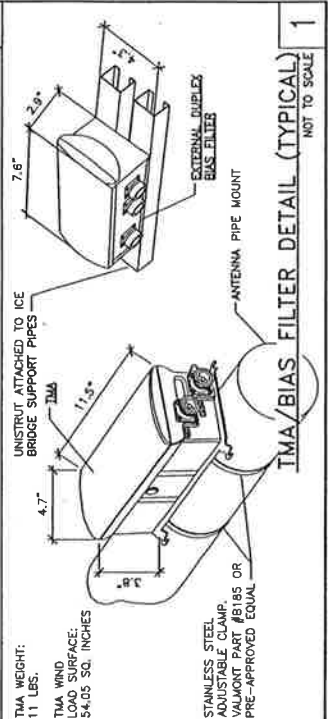
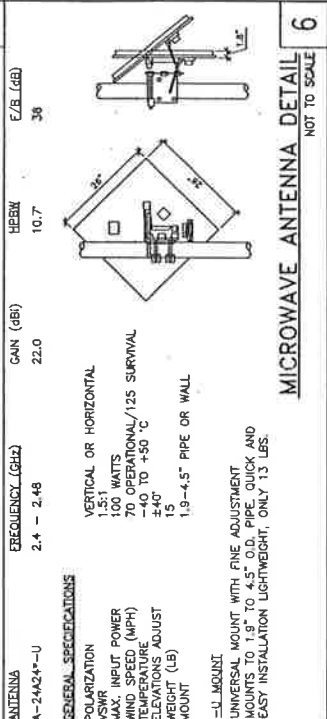
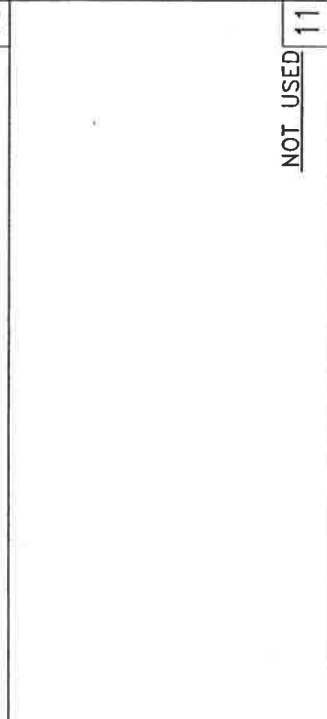
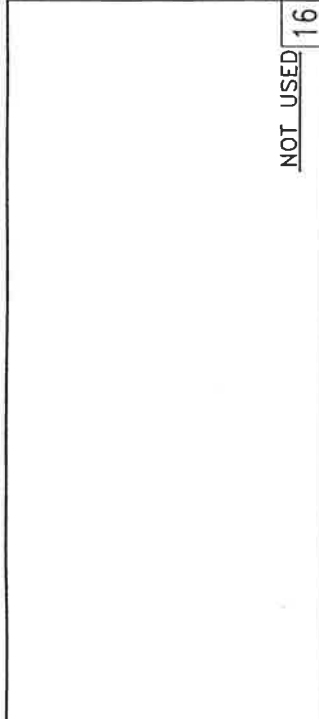
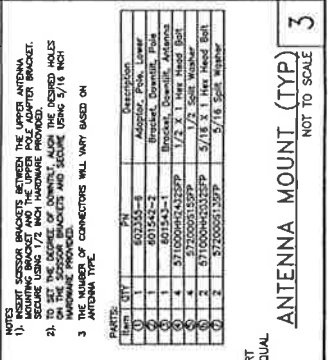
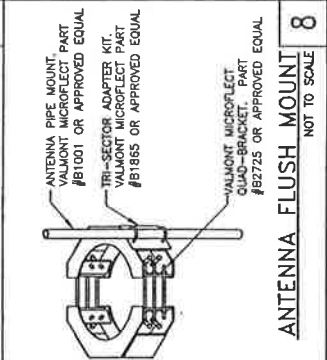
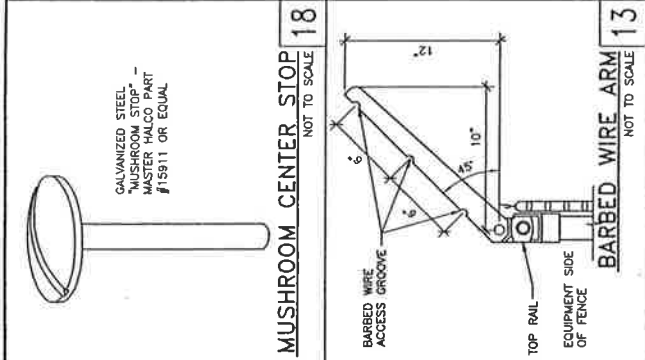
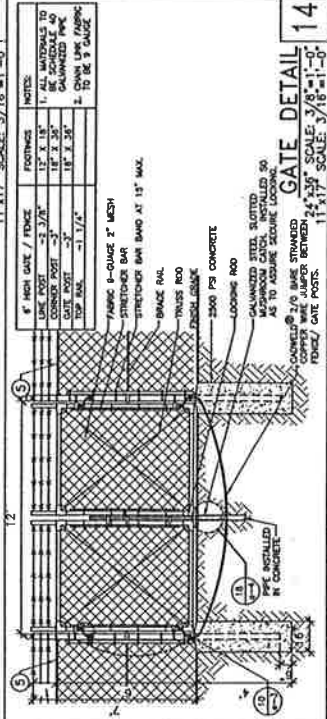
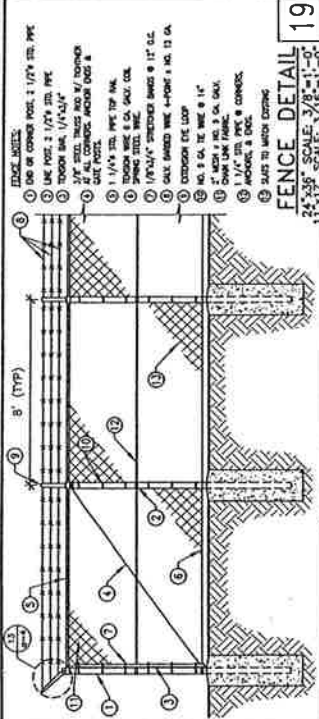
2445 140th NE #202
BELLEVUE, WA 98005

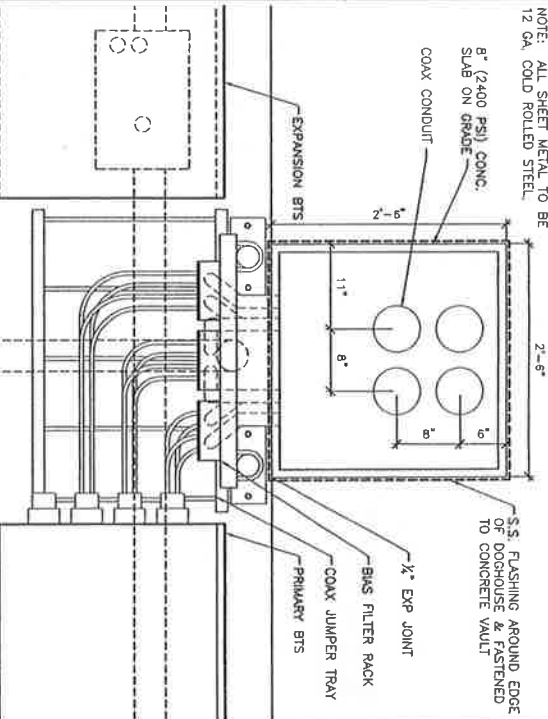
2445 140th NE #202
BELLEVUE, WA 98005

2445 140th NE #202
BELLEVUE, WA 98005

2445 140th NE #202
BELLEVUE, WA 98005

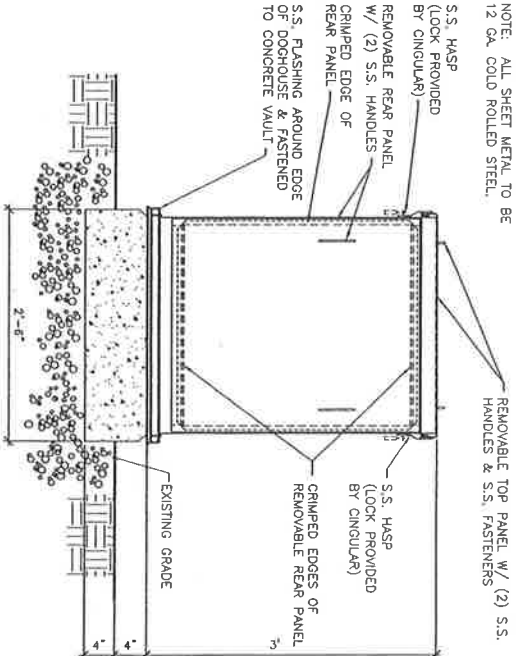






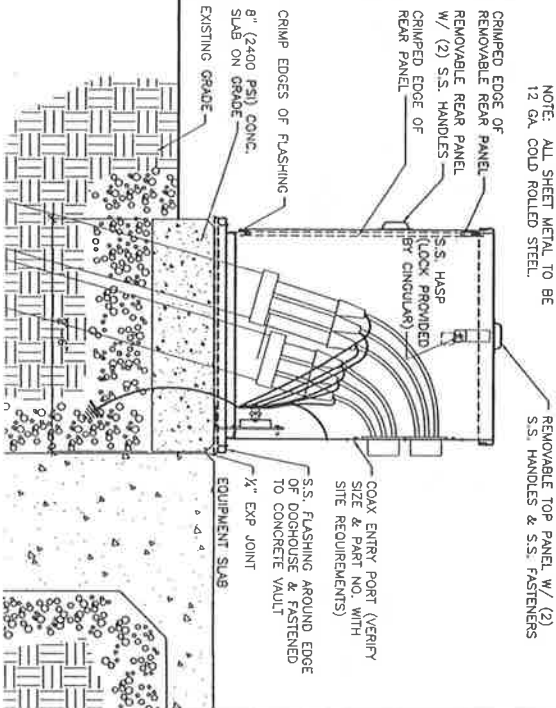
DOGHOUSE PLAN
24"x36" SCALE: 1/2"=1'-0"
11"x17" SCALE: 3/4"=1'-0"

NOT USED
15



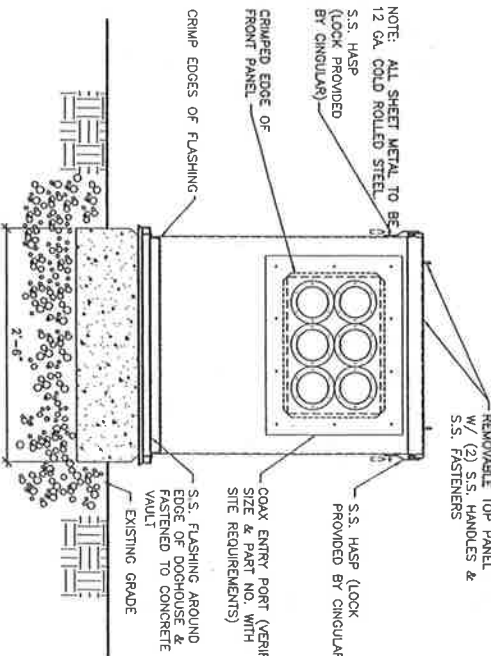
DOGHOUSE REAR ELEVATION
24"x36" SCALE: 1/2"=1'-0"
11"x17" SCALE: 3/4"=1'-0"

NOT USED
20



DOGHOUSE SECTION
24"x36" SCALE: 1/2"=1'-0"
11"x17" SCALE: 3/4"=1'-0"

NOT USED
5



DOGHOUSE FRONT ELEVATION
24"x36" SCALE: 1/2"=1'-0"
11"x17" SCALE: 3/4"=1'-0"

Site Name

Site Number

Market

Latitude (NAD 83) N

Longitude (NAD 83) W

Ground Elevation (AMSL) (ft)

Structure Type

Structure Owner

Existing Structure Height (ft)

Dt. Des Moines

WA455

Seattle

47-24-20.00

122-19-16.01

161

Light Standard

Des Moines Park

90

RF Engineer : Carlos Barboza

Date

2/17/2003

Structure Owner

Description

Description

City

State/Zip

Contact

Phone

Site Address

Description

Description

City/County

State/Zip

Contact

Phone

RADIO PARAMETERS

Sector

Sector 1

Sector 2

Sector 3

Antenna Rad Center (AGL) ft

Antenna Azimuth (TN deg)

Max Power from Antenna

Antenna Vendor

Antenna Model

No. of Antenna

Horizontal separation

Polarisation

Antenna Gain (dBi)

Antenna (H+V Beamwidth) (deg)

Downtilt Mechanical

Antenna Dimensions (LXWXD) (in)

Antenna Weight (lbs)

TMA (Number/Type/Location)

EDB (Number/Type/Location)

Feeder Cable Type

Number of Cables from equipment to Antenna

Number of TRUs

Frequency band (MHz)

CDU Type

Downlink - : 1930.20 - 1939.8

Uplink - : 1850.20 - 1859.8

CDU-A

CDU-A

CDU-A

Equipment or Cabinet

TYPE

SECTOR Comments:

2102 A/B/C

Terminate only two cables per sector in the cabinet and leave other two cables for future use. All feeder lines need to be connected to the antennas.

W. West Fitzgerald, II

12810 N.E. 178th Street

Wood Creek Business Park

Woodinville, WA 98072

Phone: (425) 415-0746

Fax: (425) 415-0799

DATE: 02-24-03

DRAWN BY: JBK

CHECKED BY: RBH

REVISIONS

DATE DESCRIPTION

1 02-24-03 JBK

2 02-24-03 JBK

3 02-24-03 JBK

SITE NUMBER

WA-455-01

D.T. DES MOINES

1000 S. 220TH ST.

DES MOINES, WA 98198

a-7

SWEEP TEST REQUIREMENTS

Cingular Wireless
Seattle, WA

Antenna and Transmission Line
Test Requirements

REQUIRED EQUIPMENT:

1. Wiltron/Auruba elite master SS31A/9/G or equivalent.
2. Open, Short, Load.
3. Din female to N type male adapter (Low Loss).
4. Din male to N type male adapter (Low Loss).
5. Din female to Din female adapter (Low Loss).
6. Phase stable cable.
7. True-RMS multi-meter.

FREQUENCIES TO BE USED:

PCS Frequency Band 1850MHz-1900MHz

Transmit Frequency 1930MHz-1940MHz

Receive Frequency 1850MHz-1860MHz

TRANSMISSION LINE AND ANTENNA SYSTEM TEST

- (1) INSERTION LOSS/CABLE LOSS
- (2) ANTENNA/TRANSMISSION LOSS
- (3) ANTENNA SYSTEM WITH DUPLEXER/TMA/ANTENNA RETURN LOSS
- (4) TRANSMISSION LINE CONTINUITY TEST

INSERTION LOSS- This test will measure the Cable Loss of the transmission line and jumpers between the cabinet and antenna.

Test Frequencies: F1=1850 F2=1990

1. Enter the frequencies to be used in F1 and F2.
2. Re-calibrate test equipment.
3. Connect the two jumpers going to the antenna (Bypass TMA) and the cabinet (Bypass Duplexer) using the Din (f) to Din (f) connectors.
4. Connect a Short at the end of the last TX jumper before the antenna.
5. Perform measurement. Verify results with steps 10 through 13.
6. Disconnect TX jumper, then connect the RX jumper (Yellow/Green) to Din (f) adapter.
7. Connect test equipment to the last RX jumper (Yellow/Green) before the cabinet, of the line under test.
8. Connect test equipment to the last RX jumper (Yellow/Green) before the cabinet, of the line under test.
9. Add the maximum peak to the minimum valley then divide by two. This is the Cable Insertion Loss. This value should not be greater than -4dB.
10. Repeat steps 1 through 12 for the rest of the Transmission Lines.
11. Peak Max (M1) + Valley Min (M2)/2= Cable Insertion Loss.
12. Record calculated/measured value on sweep data sheet, then save memory location.
13. Repeat steps 1 through 12 for the rest of the Transmission Lines.

ANTENNA/TRANSMISSION LINE Distance to Fault (RL)- This test is a performance verification and failure analysis tool for the antenna.

Test Frequencies: F1=1850 F2=1990

1. Enter the frequencies to be used in F1 and F2.
2. Re-calibrate test equipment.
3. Connect the two jumpers going to the antenna (Bypass TMA) and the cabinet (Bypass Duplexer) using the Din (f) to Din (f) connectors.
4. Connect the antenna to the line under test.
5. Connect test equipment to the last TX jumper (Yellow/Red) before the cabinet, of the line under test.
6. Perform measurement. Verify results with steps 10 through 13.
7. Disconnect TX jumper, then connect the RX jumper (Yellow/Green) to Din (f) adapter.
8. Connect test equipment to the last RX jumper (Yellow/Green) before the cabinet, of the line under test.
9. Perform measurement. Verify results with steps 10 through 13.
10. Verify each Din connector has a RL less than -32dB, N Type -28dB.
11. Verify the transmission line has a RL less than -45dB.
12. Record PASS/FAIL on sweep data sheet, then save sweep to a memory location.
13. Repeat steps 1 through 13 for the rest of the Antenna's and Transmission Lines.

QUESTIONS CONTACT:

JAMES FUGATE

206-240-9006

253-241-6436

DOUG BROWNING

transmission line terminating into the antenna without the TMA and Duplexer.

Test Frequencies: F1=1850 F2=1990

1. Enter the frequencies to be used in F1 and F2.
2. Re-calibrate test equipment.
3. Connect the two jumpers going to the antenna (Bypass TMA) and the cabinet (Bypass Duplexer) using the Din (f) to Din (f) connectors.
4. Connect the antenna to the line under test.
5. Connect the equipment to the last TX jumper (Yellow/Red) before the cabinet, of the line under test.
6. Perform measurement. Verify results with steps 10 through 13.
7. Disconnect TX jumper, then connect the RX jumper (Yellow/Green) to Din (f) adapter.
8. Connect test equipment to the last RX jumper (Yellow/Green) before the cabinet, of the line under test.
9. Verify results with steps 10 through 13.
10. Verify Antenna system using 1 5/8" wave-guide has a RL less than -17dB, 200ft max.
11. Verify Antenna system using 7/8" wave-guide has a RL less than -16dB, 200ft max.
12. For systems above 200ft 1 5/8" RL -15.5dB, 7/8" RL -14dB.
13. Record results on sweep data sheet, then save sweep to a memory location.
14. Repeat steps 1 through 13 for the rest of the Antenna Systems.

ANTENNA SYSTEM WITH DUPLEXER AND TMA RETURN LOSS- This test measures the RL of the complete antenna network on the TX path.

TX Test Frequencies: F1=1850 F2=1940

1. Enter the frequencies to be used in F1 and F2.
2. Re-calibrate test equipment.
3. Remove Din (f) to Din (f) from both top and bottom jumpers.
4. Connect top jumper to TMA and connect bottom jumper to Duplexer.
5. Connect test equipment to TX 1 (Yellow/Red).
6. Perform measurement.
7. Verify Antenna Network using 1 5/8" wave-guide has a RL less than -15.5dB, 200ft max.
8. Verify Antenna Network using 7/8" wave-guide has a RL less than -14.5dB, 200ft max.
9. For Antenna Network above 200ft 1 5/8" RL -14dB, 7/8" RL -13.5dB.
10. Record test results on sweep data sheet, then save sweep to a memory location.
11. Repeat steps 1 through 10 for the rest of the TX Antenna Networks.

ANTENNA SYSTEM WITH DUPLEXER AND TMA RETURN LOSS- This test measures the RL of the complete antenna network on the RX path.

TX Test Frequencies: F1=1850 F2=1860

1. Enter the frequencies to be used in F1 and F2.
2. Re-calibrate test equipment.
3. Remove Din (f) to Din (f) from both top and bottom jumpers.
4. Connect top jumper to TMA and connect bottom jumper to Duplexer.
5. Connect test equipment to RX 1 (Yellow/Green).
6. Perform measurement.
7. Verify Antenna Network using 1 5/8" wave-guide has a RL less than -16.5dB, 200ft max.
8. Verify Antenna Network using 7/8" wave-guide has a RL less than -15.5dB, 200ft max.
9. For Antenna Network above 200ft 1 5/8" RL -14dB, 7/8" RL -13.5dB.
10. Record test results on sweep data sheet, then save sweep to a memory location.
11. Repeat steps 1 through 10 for the rest of the RX Antenna Networks.

TRANSMISSION LINE CONTINUITY TEST- This test will verify the continuity of the RX path between the BTS and the TMA for the 15 YOC network.

1. Connect a Short at the end of the last jumper before the TMA, of the line under test.
2. Connect multi-meter to last jumper before the BTS, RX 1 (Yellow/Green). Place the black lead on the outer part of the connector and the red lead on the center pin of the connector.
3. Verify continuity. Short should be present.
4. Remove Short and verify meter reads Open.
5. Record PASS/FAIL on sweep data sheet.
6. Re-connect jumpers to TMA and BTS.
7. Repeat steps 1 through 6 for the remaining receive paths.

NOTE: EDIT AND SAVE ALL SHEETS TO A 3.5" DISKETTE AND EMAIL SHEETS TO james.fugate@cingular.com and doug.browning@cingular.com. PROVIDE A COPY OF ANTENNA SYSTEM TEST RESULTS WITH DISKETTE ON FINAL SITE WALK.

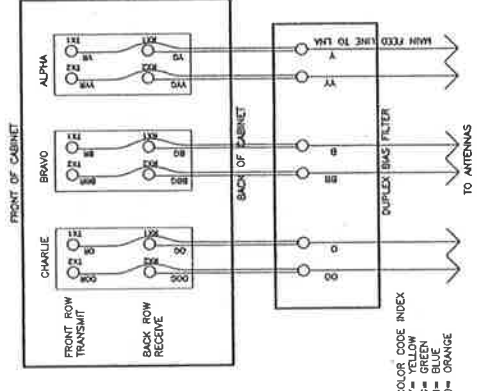
SECTOR COLOR CODE

SECTOR A	FROM	TO
TX 1	YELLOW/RED	INSIDE CABINET
TX 2	YELLOW/RED	INSIDE CABINET
TX 3	YELLOW/RED	INSIDE CABINET
TX 4	YELLOW/RED	INSIDE CABINET
TX 5	YELLOW/RED	INSIDE CABINET
TX 6	YELLOW/RED	INSIDE CABINET
TX 7	YELLOW/RED	INSIDE CABINET
TX 8	YELLOW/RED	INSIDE CABINET
TX 9	YELLOW/RED	INSIDE CABINET
TX 10	YELLOW/RED	INSIDE CABINET
TX 11	YELLOW/RED	INSIDE CABINET
TX 12	YELLOW/RED	INSIDE CABINET
TX 13	YELLOW/RED	INSIDE CABINET
TX 14	YELLOW/RED	INSIDE CABINET
TX 15	YELLOW/RED	INSIDE CABINET
TX 16	YELLOW/RED	INSIDE CABINET
TX 17	YELLOW/RED	INSIDE CABINET
TX 18	YELLOW/RED	INSIDE CABINET
TX 19	YELLOW/RED	INSIDE CABINET
TX 20	YELLOW/RED	INSIDE CABINET
TX 21	YELLOW/RED	INSIDE CABINET
TX 22	YELLOW/RED	INSIDE CABINET
TX 23	YELLOW/RED	INSIDE CABINET
TX 24	YELLOW/RED	INSIDE CABINET
TX 25	YELLOW/RED	INSIDE CABINET
TX 26	YELLOW/RED	INSIDE CABINET
TX 27	YELLOW/RED	INSIDE CABINET
TX 28	YELLOW/RED	INSIDE CABINET
TX 29	YELLOW/RED	INSIDE CABINET
TX 30	YELLOW/RED	INSIDE CABINET
TX 31	YELLOW/RED	INSIDE CABINET
TX 32	YELLOW/RED	INSIDE CABINET
TX 33	YELLOW/RED	INSIDE CABINET
TX 34	YELLOW/RED	INSIDE CABINET
TX 35	YELLOW/RED	INSIDE CABINET
TX 36	YELLOW/RED	INSIDE CABINET
TX 37	YELLOW/RED	INSIDE CABINET
TX 38	YELLOW/RED	INSIDE CABINET
TX 39	YELLOW/RED	INSIDE CABINET
TX 40	YELLOW/RED	INSIDE CABINET
TX 41	YELLOW/RED	INSIDE CABINET
TX 42	YELLOW/RED	INSIDE CABINET
TX 43	YELLOW/RED	INSIDE CABINET
TX 44	YELLOW/RED	INSIDE CABINET
TX 45	YELLOW/RED	INSIDE CABINET
TX 46	YELLOW/RED	INSIDE CABINET
TX 47	YELLOW/RED	INSIDE CABINET
TX 48	YELLOW/RED	INSIDE CABINET
TX 49	YELLOW/RED	INSIDE CABINET
TX 50	YELLOW/RED	INSIDE CABINET
TX 51	YELLOW/RED	INSIDE CABINET
TX 52	YELLOW/RED	INSIDE CABINET
TX 53	YELLOW/RED	INSIDE CABINET
TX 54	YELLOW/RED	INSIDE CABINET
TX 55	YELLOW/RED	INSIDE CABINET
TX 56	YELLOW/RED	INSIDE CABINET
TX 57	YELLOW/RED	INSIDE CABINET
TX 58	YELLOW/RED	INSIDE CABINET
TX 59	YELLOW/RED	INSIDE CABINET
TX 60	YELLOW/RED	INSIDE CABINET
TX 61	YELLOW/RED	INSIDE CABINET
TX 62	YELLOW/RED	INSIDE CABINET
TX 63	YELLOW/RED	INSIDE CABINET
TX 64	YELLOW/RED	INSIDE CABINET
TX 65	YELLOW/RED	INSIDE CABINET
TX 66	YELLOW/RED	INSIDE CABINET
TX 67	YELLOW/RED	INSIDE CABINET
TX 68	YELLOW/RED	INSIDE CABINET
TX 69	YELLOW/RED	INSIDE CABINET
TX 70	YELLOW/RED	INSIDE CABINET
TX 71	YELLOW/RED	INSIDE CABINET
TX 72	YELLOW/RED	INSIDE CABINET
TX 73	YELLOW/RED	INSIDE CABINET
TX 74	YELLOW/RED	INSIDE CABINET
TX 75	YELLOW/RED	INSIDE CABINET
TX 76	YELLOW/RED	INSIDE CABINET
TX 77	YELLOW/RED	INSIDE CABINET
TX 78	YELLOW/RED	INSIDE CABINET
TX 79	YELLOW/RED	INSIDE CABINET
TX 80	YELLOW/RED	INSIDE CABINET
TX 81	YELLOW/RED	INSIDE CABINET
TX 82	YELLOW/RED	INSIDE CABINET
TX 83	YELLOW/RED	INSIDE CABINET
TX 84	YELLOW/RED	INSIDE CABINET
TX 85	YELLOW/RED	INSIDE CABINET
TX 86	YELLOW/RED	INSIDE CABINET
TX 87	YELLOW/RED	INSIDE CABINET
TX 88	YELLOW/RED	INSIDE CABINET
TX 89	YELLOW/RED	INSIDE CABINET
TX 90	YELLOW/RED	INSIDE CABINET
TX 91	YELLOW/RED	INSIDE CABINET
TX 92	YELLOW/RED	INSIDE CABINET
TX 93	YELLOW/RED	INSIDE CABINET
TX 94	YELLOW/RED	INSIDE CABINET
TX 95	YELLOW/RED	INSIDE CABINET
TX 96	YELLOW/RED	INSIDE CABINET
TX 97	YELLOW/RED	INSIDE CABINET
TX 98	YELLOW/RED	INSIDE CABINET
TX 99	YELLOW/RED	INSIDE CABINET
TX 100	YELLOW/RED	INSIDE CABINET

COAX CABLE COLOR CODING

A. TO PROVIDE EASY IDENTIFICATION AND UNIFORM MARKING OF ANTENNA CABLES, THE FOLLOWING SHALL APPLY:

1. LOCATION: MARKINGS SHALL BE MADE BY USE OF 3M COLORED, 2-INCH WIDE TAPE AFFIXED AT TYPICALLY FOUR PLACES ON THE COAX CABLE RUN AS FOLLOWS:



COAX BOOT SPECIFICATION

ENTRY BOOTS TO SEAL COAX WITHIN 6" CONDUITS SHALL BE: MICROFLECT P/N B1344F FOR 7/8" COAX (4 HOLE ONLY)

PLUGS FOR HOLES NOT BEING USED SHALL BE: P/N B1385

FOR 1 5/8" COAX: MICROFLECT P/N B1465F (3 HOLE)

BOOTS SHALL HAVE A 6 5/8" INSIDE DIAMETER TO FIT OVER 6" CONDUIT

CONTRACTOR SHALL USE THE ABOVE PRODUCTS OR APPROVED EQUAL

a-8

W. Koor Fitzpatrick & Associates
12810 1st Ave. SW
Woodinville, WA 98077
Tel: (206) 415-0716
Fax: (206) 415-0789

DATE: 02-24-03

CHECKED BY: RBH

DRAWN BY: JBK

REVISIONS

DATE DESCRIPTION

02-24-03 PRELIM CO'S JBK

03-11-03 FINAL CO'S JBK

03-11-03 FINAL CO'S JBK

SITE NUMBER

WA-455-01

D.T. DES MOINES

1000 S. 220TH ST.

DES MOINES, WA 98196

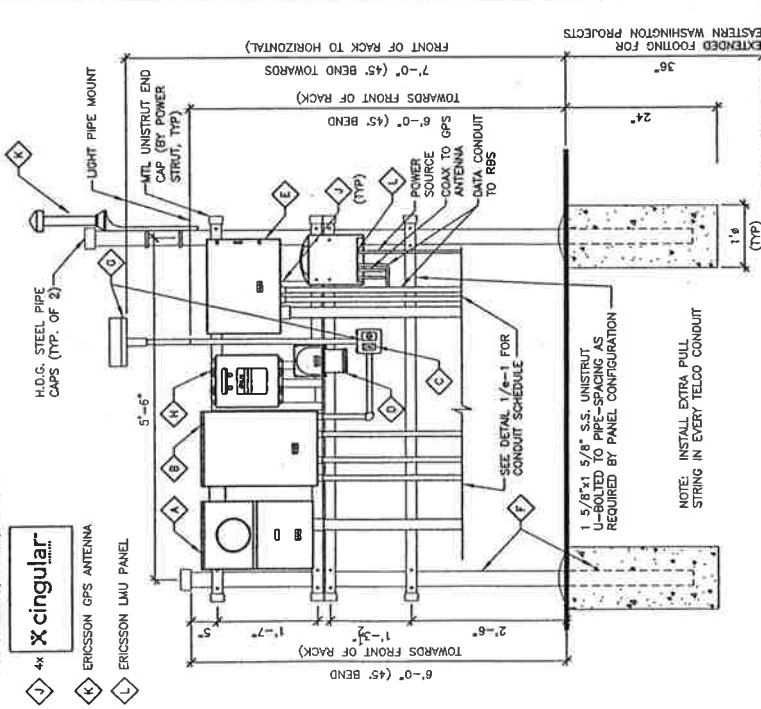
WIRELESS FACTORIES, INC.
575 ANDOVER PARK WEST
SUITE 201
TUMWALA, WA 98166

cingular
WIRELESS

2445 140th NE 202
BOLLEVILLE, WA 98005

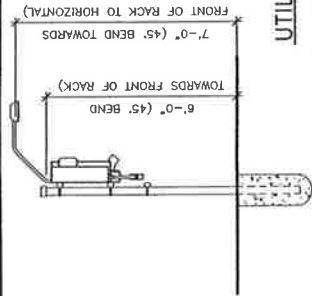
UTILITY RACK KEYED NOTES

- A. CUTLER-HAMMER OUTDOOR METER BASE 14-1/4"x23"x6-1/2" W/100A MAIN BREAKER (MODEL C03T200R/SC). ELECTRIC SERVICE METER ENCLOSURE SUPPLIED AND INSTALLED BY CONTRACTOR PER LOCAL UTILITY CO. REQUIREMENTS
- B. *EYELANDER BOX ELECTRICAL PANEL WITH MAIN DISCONNECT, BREAKERS & TRANSFER SWITCH (CATALOG #M15100) (12-20)-1-100, MAX RATING 100 AMPS 100 AMP PANEL / LOAD CENTER / +12 POSITION MIN. (SQUARE D)
- C. (1) 60 AMP DOUBLE POLE BREAKER FOR SURGE SUPPRESSOR
(1) 20 AMP SINGLE POLE BREAKER FOR LIGHTING & OUTLET
(1) 30 AMP DOUBLE POLE BREAKER FOR ELECTRONICS CABINET
(1) 40 AMP ELECTRICAL BOX W/ (2) 15 AMP SINGLE POLE GFI OUTLET WITH COVER & LIGHT SWITCH
- D. APPLETON RECEPTACLE (CATALOG #AOR 1044RS) 100 AMP/4W/4P/5TY 1
- E. TEL-TREND BOX (MODEL #CP604GT) NOTE: SUBSTITUTE WITH NEMA 3R (18x24x8) RATED TELCO DEMARC BOX WHEN TEL-TREND BOX NOT REQ'D. GROUND WITH 12 POSITION BUSS BAR (TO BE VERIFIED W/ LOCAL SERVICE PROVIDER).
NOTE: HOFFMAN BOX MODEL #A-1612BFGORR W/ PLYWOOD BACKBOARD INSIDE TO BE SUBSTITUTED FOR TEL-TREND BOX WHEN VERIZON IS TELCO PROVIDER
- F. 2.7/8" HOT DIP GALVANIZED SCHED. 40 STEEL PIPE SET IN 3000 PSI CONCRETE
- G. RECENT 300W HALOGEN LIGHT (LIGHT NO. 1) WITH ONE HOUR TIMER/SWITCH (MODEL # QF300W). WHEN NEEDED PROVIDE LIGHT NO. 2 MOUNTED TO ICE BRIDGE SUPPORT PIPE OR BUS FILTER MOUNTING
- H. JOSELYN SURGE SUPPRESSOR 126V-450W/120/240 VAC/ SINGLE PHASE/3 WIRE/50-60 HZ
- I. X cingular
- J. ERICSSON GPS ANTENNA
- K. ERICSSON LRU PANEL
- L. ERICSSON LRU PANEL



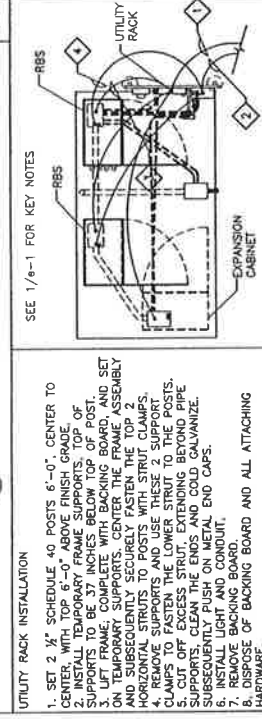
UTILITY RACK
NOT TO SCALE

4



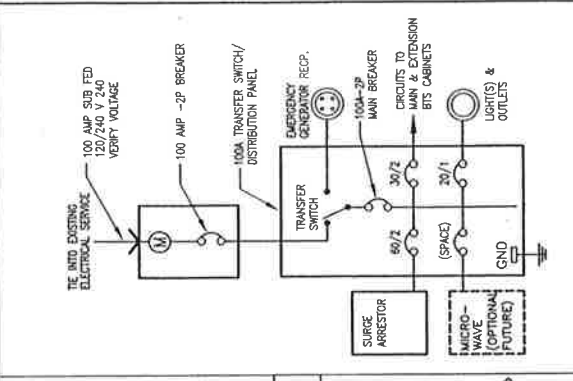
UTILITY RACK ELEVATION
NOT TO SCALE

17



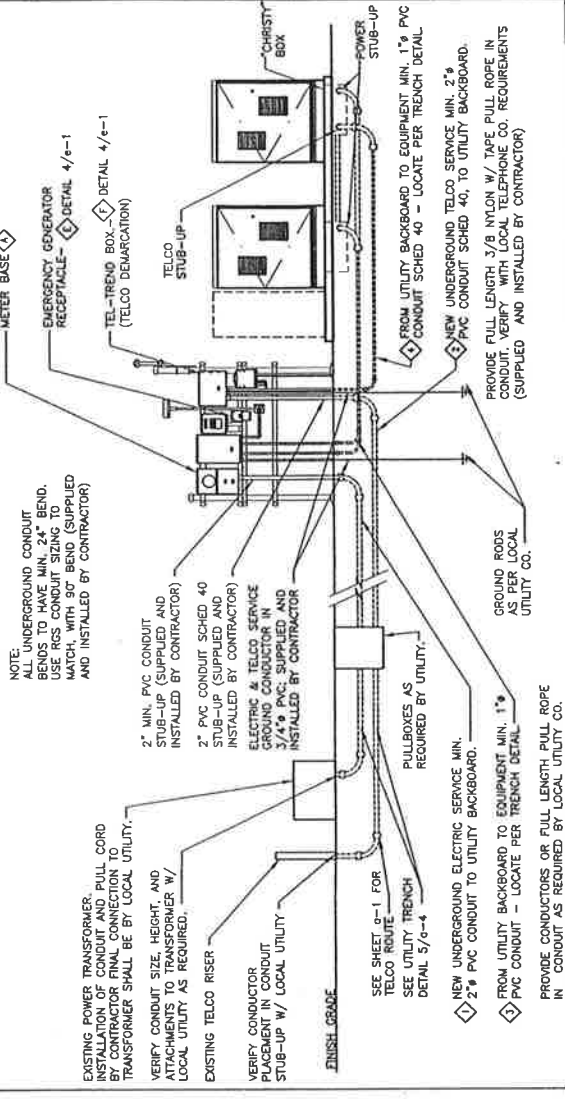
ELEC./TELCO SCHEMATIC
NOT TO SCALE

12



POWER ONE LINE DIAGRAM
NOT TO SCALE

11



POWER RISER DIAGRAM
NOT TO SCALE

1

DATE	DESCRIPTION	REVISED
02-24-03	PRELIM CD'S/JBK	1
03-11-03	FINAL CD'S/JBK	2
03-11-03	FINAL CD'S/JBK	3

SITE NUMBER
WA-455-01
D.T. DES MOINES
1000 S. 220TH ST.
DES MOINES, WA 98194

e-2

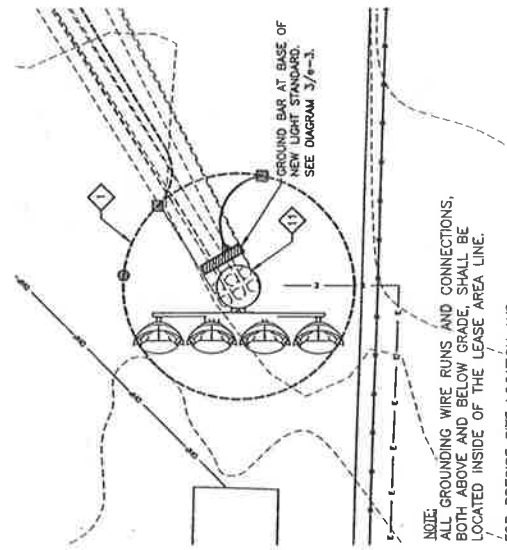
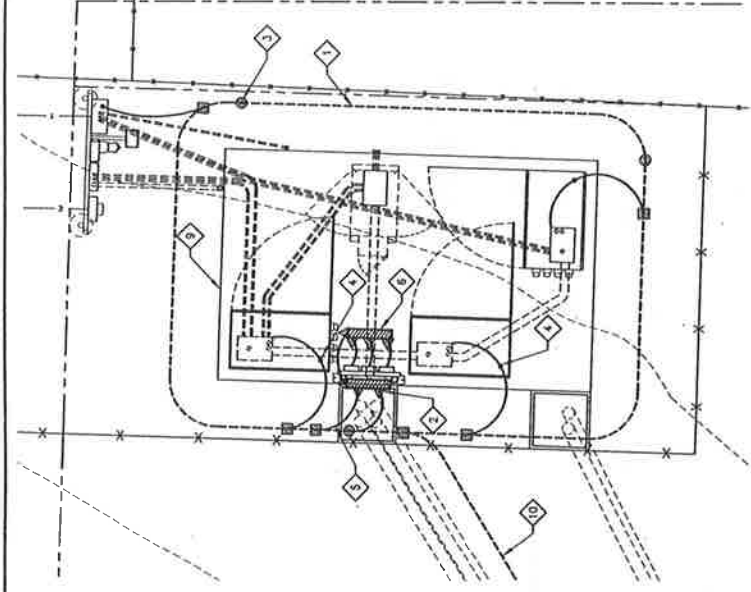
- ### GROUNDING KEYED NOTES
- EXTERNAL GROUND RING: #2 SOLID TINNED WIRE AT 24" BELOW GRADE.
 - MAIN GROUND CONNECTION POINT.
 - 5/8" X 8'-0" COPPER GROUND ROD, SPACING OF GROUND ROD TYPICAL AS REQUIRED.
 - GROUND FROM INTERNAL RBS GROUND BAR TO GROUND RING.
 - FROM GROUND RING RUN #2 GROUND WIRE IN 1" SCHEDULE 40 PVC HEAT RADIUS CONDUIT TO MGB AS SHOWN, STRAP AT 2 POINTS MIN.
 - GROUND BUSH BAR, SEE DIAGRAM 14/s-3
 - CONCRETE EQUIPMENT SLAB ON GRADE.
 - #2 SOLID TINNED GROUNDING WIRE.
 - NEW LIGHT STANDARD

- ### GROUNDING NOTES & LEGEND
- #### GENERAL GROUNDING NOTES
- ALL DETAILS ARE SHOWN IN GENERAL TERMS. ACTUAL INSTALLATION AND CONSTRUCTION MAY VARY DUE TO SITE SPECIFIC CONDITIONS.
 - GROUND ALL ANTENNA BASES, FRAMES, CABLE RUNS, AND OTHER METALLIC STRUCTURES TO THE GROUNDING SYSTEM. FOLLOW MANUFACTURER'S PRACTICES FOR GROUNDING REQUIREMENTS. GROUND COAX SHIELD AT BOTH ENDS AND EXT FROM TOWER OR POLE USING WIRE'S PRACTICES.
 - ALL GROUND CONNECTIONS SHALL BE CAWELDED. ALL WIRES SHALL BE COPPER THIN/THIN. ALL GROUND WIRE SHALL BE GREEN INSULATED WIRE ABOVE GROUND.
 - CONTRACTOR TO VERIFY AND TEST GROUND TO SOURCE. GROUNDING AND OTHER OPERATIONAL TESTING WILL BE WITNESSED BY CINGULAR WIRELESS, LLC. REPRESENTATIVE.
 - REFER TO DAWSON 16 GENERAL ELECTRIC; GENERAL ELECTRICAL PROVISION AND COMPLY WITH ALL REQUIREMENTS OF GROUNDING STANDARDS.
 - ELECTRICAL CONTRACTOR TO PROVIDE DETAILED DESIGN OF GROUNDING SYSTEM, AND RECEIVE APPROVAL OF DESIGN BY AUTHORIZED CINGULAR WIRELESS, LLC. REPRESENTATIVE PRIOR TO INSTALLATION OF GROUNDING SYSTEM. PHOTO DOCUMENT ALL CAWELDS AND GROUND RING.
 - NOTIFY CONSTRUCTION MANAGER IF THERE ARE ANY DIFFICULTIES INSTALLING GROUNDING SYSTEM DUE TO SITE SOIL CONDITIONS.

GROUNDING ROD NOTES	PROPRIETARY INFORMATION
(WHERE APPLICABLE) ELECTRICAL CONTRACTOR SHALL ORDER ELECTRICAL GROUNDING RODS IN THIS SET OF CONSTRUCTION DOCUMENTS IS PROPRIETARY BY NATURE. ANY USE OR DISCLOSURE OTHER THAN THAT WHICH RELATES TO CINGULAR WIRELESS, LLC. SERVICES IS STRICTLY PROHIBITED.	THE INFORMATION CONTAINED IN THIS SET OF CONSTRUCTION DOCUMENTS IS PROPRIETARY BY NATURE. ANY USE OR DISCLOSURE OTHER THAN THAT WHICH RELATES TO CINGULAR WIRELESS, LLC. SERVICES IS STRICTLY PROHIBITED.

SYMBOL	DESCRIPTION
●	COPPER GROUND ROD
▲	CAWELDED CONNECTION
■	SIDE SPURCE CAWELDED
⚡	FIELD VERIFY & TIE INTO EXISTING GROUNDING SYSTEM

NOTE: #2/0 CU GROUND WIRE IN A 1" SCHEDULE 40 PVC CONDUIT TO SIDE SPURCE CAWELDED @ GROUND RING. HEAT RADIUS CONDUIT TO PRODUCE LARGE RADIUS BENDS. CONTRACTOR SHALL REFER TO SOILS CURRY OF ALLCLEAR TELECOM PH: (310)-530-8534 AND COMPLY TO RECOMMENDATIONS IN THE REPORT PRIOR TO GROUNDING INSTALLATION



SCHEMATIC GROUNDING PLAN
NOT TO SCALE

NOTE: ALL GROUNDING WIRE RUNS AND CONNECTIONS, BOTH ABOVE AND BELOW GRADE, SHALL BE LOCATED INSIDE OF THE LEASE AREA LINE. FOR PRECISE SITE LOCATION AND CONFIGURATION REFER TO SHEET e-2.

CINGULAR CONSTRUCTION QUALITY CONTROL CHECKLIST

ADMINISTRATION

Redlined Construction Drawings
 Written and Signed Responsibility Test Report (S OHMS or less)
 Concrete Cylinder Test Report
 Certificate of Occupancy (or equivalent)
 Inspection Signoff Card
 Final Release of Lien (conditional)
 Building Permit (original)
 Other:

SITE WORK

Access Road
 Site Grading & drainage
 Erosion Control
 Vegetation Control
 Landscaping
 Irrigation System
 Erosion:
 Gully, Silt & Sediment
 Erosion Control Measures
 Fencing & Barbed Wire
 Gate Grounding
 Gate Ground Strap
 Multiroom Type Latch
 Utilities:
 Commercial Power Entrance Facility
 Commercial Power Meter Installed
 Ground Rod For Commercial Power
 Padlock All Exterior Disconnect Panels
 Utility Enclosures
 Building Penetrations Weather Sealed
 Weather Heads (Proper Height)

Grounding:
 Ground Ring
 Bond Wire From Service Power Grid To Grid Ring
 XIT Ground Rod (When Required)
 ACB Connected to Bonding System
 Ground Test Nail (one test nail w/ test loop)

TOWER / ANTENNA MOUNTS

Foundation
 Base Plate Grouting / Drain Hole
 Anchor Bolt Projection / Lock Nuts
 Erection
 Height
 Alignment
 Orientation
 Step Bolts
 Set Screws
 Conical Ladder
 Paint
 FAA Tower Lighting
 Grounding - Bend Radius / Locations
 Slip Band
 Cooldown Quality

Antenna Mounts:
 Antenna Located per Drawings
 Hot Dip Galvanization
 Orientation
 Flashing
 Roof Leak Tested
 Grounding - Bend Radius / Locations
 Cooldown (mounts / bus bar)
 Hardware Secure

Exterior Cable Tray:
 Installation
 Grounding
 Horizontal / Vertical Protection
 Hot Dip Galvanization
 Grounded to Ground Bus
 Cooldown Locations:
 Bridge Protection Coax Adequately
 Hot Dip Galvanization (all materials)
 Grounding / Cooldown Quality
 Weather Seal Where Attached to Building

Grounding:
 Materials
 Bonding System
 Tight Connections
 Double Lug Mechanical Connections
 Cooldown Quality
 Cooldown Locations
 No OX Grease Bus Bar Connections

C = Complete
 NC = Not Complete
 NA = Not Applicable

C / NC / NA

COMMENTS

C / NC / NA

COMMENTS

C / NC / NA

COMMENTS

Building, Doghouse:
 Galvanized
 Weatherproof / Flashing
 ANTENNA & HELIX

Antennas:
 Meter / Model #
 Quantity
 Some Horizontal Plane (per sector)
 Plumbness of Mount
 Downhill Bracket (confirm ea. panel antenna has one)
 Measure of Downhill (if applicable)

Coax:

Site:
 Strapped @ 3'-0" Max.
 Bend Radius (20")
 Jumper Flows Directly Into Antennas
 Hangers @ 3'-0" O.C. (no plastic devices)
 Weatherstripping (Connectors & Grounding Kits)
 Coax Casing (3 Phase Minimum)
 Drip Loop
 Grounding (3 Ground Kits)
 Tight Connection (At Bus Bars)
 Antenna Specification Sheet (Filed In)
 Antenna Ground Bus (File)
 Installation: Below coax port & on above on dogs.
 Strapped @ 3'-0" with (27"-7/16" hoses)
 Insulated Standoffs
 Bonding Jumpers
 Bend Radius
 Cooldown Locations (two bolt lugs except ground kits)
 Cooldown Download
 No OX Grease all Connections

EQUIPMENT ROOM

Math. Microcircuit
 Riser (if applicable)
 Interior Cleanliness

Distribution Board:
 Meter / Model # (Square D)
 Rating Capacity (200 Amp)
 Panel Labeling (Framing/Laminoid)
 Circuit Labeling (Typed Card)
 Breaker Size (Matches Drawings)
 Hardware Cleanliness
 Wiring Quality

Weather Sealed / Coiled

Master Ground Bus (MGB)

Installation:
 Bend Radius
 Insulated Standoffs
 Bonding Jumpers
 Bend Radius
 Cooldown Locations (two bolt connections)
 Down Lead (two bolt through or cast-lead)
 Down Lead through wall properly sealed

Tables:

Backboard
 Conduit Grounded (Bushing)
 Painted White

Cable Ladder:

Installation Quality
 Bonding Jumpers (two bolt connections)
 All Threads Copper
 Cable Ladder End Caps
 Height (7'-6" above finish floor to bottom of tray)

Chandeliers:

Building Interior
 Electrical Boxes and Panels
 Clean, Wax (Anti-Static) & Buff Floors
 Construction Debris Removed

Other:

ADDITIONAL COMMENTS:

C / NC / NA

COMMENTS

C / NC / NA

COMMENTS



WIRELESS FACILITIES, INC.
 575 ANDOVER PARK WEST
 SUITE 201
 TUKWILA, WA 98160



2445 140th NE #202
 BELLEVUE, WA 98005



W. Knox Fitzpatrick, II,
 Architect & Associate
 12810 N.E. 17th Street
 Suite 234
 Woodinville, WA 98072
 PH: (206) 455-5663
 FAX: (206) 415-0799

DATE: 02-24-03
 DRAWN BY: JBK
 CHECKED BY: RBH

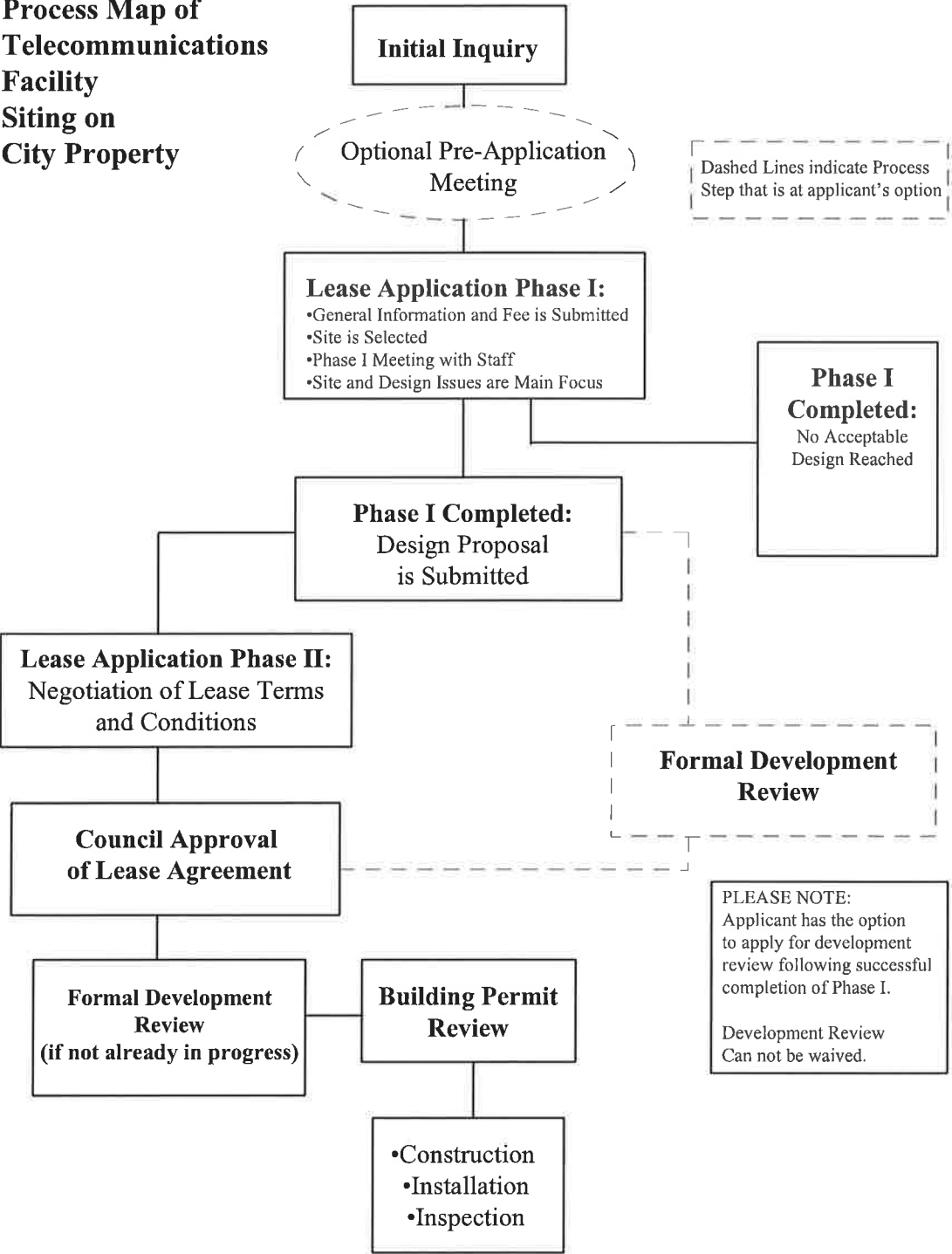
REVISIONS

DATE	DESCRIPTION	INITIALS
2-24-03	PRELIM CD'S JBK	
2-24-03	FINAL CD'S JBK	
2-24-03	REV. FINAL CD'S JBK	

SITE NUMBER
WA-455-01
 D.T. DES MOINES
 1000 S. 220TH ST.
 DES MOINES, WA 98198

q-1

**Process Map of
Telecommunications
Facility
Siting on
City Property**



AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Des Moines Field House
Facility Improvements

FOR AGENDA OF: April 24, 2003

DEPT. OF ORIGIN: Parks, Recreation &
Senior Services

DATE SUBMITTED: April 17, 2003

ATTACHMENTS:

- A. Draft Contract between City and Mayer Construction Co., Inc. for Field House Facility Improvements
- B. Des Moines Field House Facility Improvements Bid Tabulation
- C. Field House ADA Renovation 2003 C.I.P. Request Form

CLEARANCES:

- ☒ Park & Recreation Director
- ☒ City Attorney

**APPROVED BY CITY MANAGER
FOR SUBMITTAL:**

Purpose and Recommendation:

Administration recommends approval of Des Moines Field House Facility Improvements Project Contract with Mayer Construction Co., Inc.

Motion: "I move to approve the Contract for Des Moines Field House Facility Improvements Project construction services with Mayer Construction Co., Inc. in the amount of \$38,450.00 plus tax, and authorize the City Manager to sign contract, substantially in the form as submitted. And to authorize City Manager to approve change orders in amounts not to exceed 10% in total."

Background:

Over the past many years the City has budgeted Capital funds, and applied for Community Development Block Grant Funds and Washington Capital Heritage Funds to rehabilitate the aging Des Moines Field House historic landmark. The facility does not meet safety and accessibility standards and it is the intent of the City to continue to make the required repairs as funds are available.

There are three small works projects planned and budgeted for the Field House recreation center in the 2003 Capital Improvement Plan. This is the first the three projects to be addressed this year. It includes upgrades to update the building's electrical system, improvements to connect incomplete elements of the building's plumbing system and the installation of new doors and door hardware as needed to meet city ADA and fire codes (See Attachment B for the scope of work and items costs).

Later this year, two additional projects are planned including: 1) improve building drainage and retrofit sidewalks, exterior ramps and entrance handrails to meet basement entrance grade

and to repair, and 2) paint and chink the exterior logs and make minor interior improvements. The building's original drainage system installed in 1940 is clogged with sediment and cannot be replaced rendering the basement unusable during periods of extended rainfall due to basement flooding and clean up. Sump pumps are currently being used to relieve some of the water storage problems. The repair of exterior logs is another top priority because they must have regular maintenance to avoid dry rot and deterioration.

Discussion

The Field House Improvement Project was originally budgeted in 1999 and included the above elements as part of a larger ADA Renovation Project to provide access to the building basement. However, the ADA project was downsized by approximately \$200,000 and MCI funds appropriated for this work were transferred to the proposed Community Center project, a higher City Council priority in 2000. The Field House project was then redefined as three smaller projects funded through grants sources. In 2003, \$44,505 MCI funds were added back to the Field House Improvement Project. All of the above project plans have been reviewed and approved by State and King County Historic Preservation agencies, follow Federal Community Block Grant Requirements and are ready to complete at this time. Because of multiple project delays, granting agencies require that the work be completed in 2003 or lose the allocated funding.

This Field House Improvement Project went out to bid on March 27, 2003. Two contractors submitted bids on Wednesday, April 16. Bid Proposals were tabulated, reviewed by staff and the project Architect and the references of apparent low bidder were checked prior to this request for City Council award of the bid. Mayer Construction Co., Inc. has completed numerous public facility remodel construction projects with Kent School District and the cities of Kent, Normandy Park and SeaTac.

Financial Impact:

Capital funds are budgeted in the amount of \$160,090.00 for the three Field House projects identified in the 2003 Municipal Capital Improvement Fund. The initial engineers estimate for this Des Moines Field House Facility Improvements Project (electrical work, plumbing improvements and doors and door hardware) was \$80,000 to include engineering and project construction oversight. The low bid including sales tax is \$41,833.60 and project engineering and construction oversight is \$5,200.00. Therefore \$113,056.40 remains to complete the two remaining small works projects.

Funding Sources:

Community Development Block Grant	\$115,585.00
MCI	<u>\$ 44,505.00</u>
Total Funds	\$160,090.00

Recommendation/Conclusion:

Staff recommends that City Council award the bid for Des Moines Field House Facility Improvements Project to Mayer Construction Co., Inc. in the amount of \$38,450.00 plus tax.

Concurrence:

Parks, Recreation and Senior Services Staff and the City of Des Moines Community Development Building Official concur with this request.

**CITY OF DES MOINES
FIELD HOUSE FACILITY IMPROVMENTS
PROJECT #310.700.000.594.00.64.33**

CONTRACT DOCUMENTS

CONTRACT CHECKLIST

NOTE:

FINAL CONTRACTS WILL BE SIGNED SUBSTANTIALLY IN THE FORM AS ATTACHED. ANY MODIFICATIONS ARE SUBJECT TO WRITTEN APPROVAL OF THE PARTIES UPON SELECTION OF THE FINAL BIDDER.

THE FOLLOWING FORMS ARE TO BE EXECUTED AFTER THE CONTRACT IS AWARDED:

☐ (a) Agreement

This agreement to be executed by the successful bidder. Four (4) copies are required.

☐ (b) Performance and Payment Bond

To be executed by the successful bidder and his surety company. Four (4) copies are required.

☐ (c) Certificate of Insurance

All insurance certificates must show thirty (30) days cancellation notice by certified mail and Hold Harmless Statement. Insurance certificates are required for the prime contractor and all subcontractors prior to commencement of any work.

☐ (d) Progress Schedule

Prior to beginning any work on site, a progress schedule, either in the form of a C.P.M. or Bar Chart, shall be submitted showing: (1) each element of work; (2) dates each element of work will be accomplished; and (3) materials order and delivery dates.

☐ (e) Department of Labor and Industries Fees

The Contractor is responsible for all fees relating to the processing of the Department of Labor and Industries: (1) Intent to Pay Prevailing Wages, (2) Certificate of Prevailing Wages Paid.

AGREEMENT FOR FIELD HOUSE FACILITY IMPROVEMENTS PROJECT
BETWEEN THE CITY OF DES MOINES AND MAYER CONSTRUCTION CO., INC.

PROJECT #310.700.000.594.76.64.33

THIS AGREEMENT made and entered into this 25th day of April, 2003 by and between The City of Des Moines, Washington, hereinafter called the "Owner", and Mayer Construction Co., Inc. hereinafter called the "Contractor".

WITNESSED that the Owner and the Contractor for the hereinafter established consideration agree as follows:

- I. The work to be performed under this Contract shall be known as the Owner's "Field House Facility Improvement Project". The Contract shall be performed and completed under the supervision of and subject to the approval of the Owner or its authorized representative. The Contractor agrees to furnish all materials, tools, labor, equipment and other incidentals, and to perform all services and work as described in this Agreement and the contract documents, which consist of this Agreement and the following items, which are by this reference incorporated herein:

Exhibit A:	Bid Documents
Exhibit B:	Contract Documents
Exhibit C:	Field House Facility Improvement Project Manual Specifications Bid Set
Exhibit D:	Construction Bid Documents, Details and Plans Sheet Numbers: A1, M1.0, E1.0, E2.0, and E3.0

Standard Specifications for Road, Bridge and Municipal Construction, 2002, including the Division 1 APWA Supplement, prepared by the Washington State Department of Transportation and the American Public Works Association – Washington State Chapter.

- II. In consideration for the complete and faithful performance of the Contract, the Contractor shall be paid in accordance with the unit prices and/or lump sum prices set forth in the Proposal-Bid Schedule, Exhibit A. Payment shall be made for the actual quantities of work performed at the unit prices set forth in the bid. Actual quantities may be more or less than the estimated quantities set forth in the bid, for purposes of comparing bids, and the Contractor shall make no claim for anticipated profits for any decreases in the quantities. Quantities may be increased or decreased by the Owner.

IN WITNESS THEREOF, four (4) identical counterparts of this Agreement, each of which shall be deemed an original thereof, have been duly executed by the parties herein named, on the day and year first above written.

CITY OF DES MOINES,
WASHINGTON
(Owner)

By: _____
City Manager

ATTEST:

This _____ day of _____, 20____

City Clerk

APPROVED AS TO FORM:

City Attorney

CONTRACTOR: MAYER CONSTRUCTION
CO., INC.

By: _____

Title: _____

Address: _____

(Corporate Seal)

ATTEST: (If Corporation): _____

Title: _____

WITNESS (If individual or partnership)

GENERAL CONDITIONS

G-1. CONTRACT DOCUMENTS

The intent of these documents is to include all labor, material, appliances, transportation, utilities, and services necessary for the proper execution of the work and the terms and conditions of payment therefore. The documents are to be considered as one, and whatever is called for by one shall be binding as if called for by all of them.

G-2. MATERIALS, APPLIANCES, EMPLOYEES

The Contractor shall provide and pay for all labor, materials, tools, transportation, utilities, bonds, permits, insurance, and all other things necessary to properly and safely complete the work, unless otherwise provided in the Technical Provisions. Unless otherwise specified, all materials shall be new, and both materials and workmanship shall be of good quality. The Contractor shall only utilize workmen and subcontractors who are experienced and skilled in their trade.

G-3. ROYALTIES AND PATENTS

The Contractor shall pay all royalties and license fees. He shall defend any and all suits or claims for infringement of any patent or copyrights and shall save the Owner harmless from loss on account thereof.

G-4. PROTECTION OF WORK AND PUBLIC

The Contractor shall be responsible for any damage or claims resulting from her/his act or negligence while performing the work under this Contract. Materials delivered and work performed as well as adjacent property and the general public shall be adequately protected.

G-5. INSPECTION AND DEFECTIVE WORK

The Contractor shall permit and facilitate inspection of the work by the Owner and his agents and public authorities at all times. Any work which does not conform to the requirements of the Contract shall be repaired or replaced to the satisfaction of the City Project Manager. Any defects due to faulty materials or workmanship which become apparent within one (1) year from the date of final acceptance by the Owner shall be repaired or replaced unless otherwise provided in the Special Conditions.

G-6. CHANGES IN THE WORK

During the period when this Contract is in force, the Owner may find it necessary or advisable to make additions to, deductions from, or other changes in the nature of the work. No change shall be made without the prior written approval of the Owner establishing the nature of the change and compensation therefore. All changes

involving an increase in the contract amount or time of completion will require a written Change Order.

G-7. FAILURE TO PERFORM THE WORK

In the event the Contractor should fail or refuse to prosecute the work properly, or fail to perform any provision of the Contract, the Owner may, after ten (10) days written notice to the Contractor and/or her/his Surety, without prejudice to any other remedy he may have, make good the deficiencies and may deduct the cost thereof from the payment due or which thereafter may become due the Contractor, or, at his option, may terminate the Contract and take possession of all materials, tools, facilities, and appliances which may be on the site of the work and finish the work by such means which, in his opinion, are the most expeditious, and at the expense of the Contractor, and her/his Surety shall be liable to the Owner for any excess costs or other damages occasioned by the Owner thereby.

G-8. PAYMENTS TO THE CONTRACTOR

At the end of each month, or other period as set forth in the Special Provisions, the Project Manager will approve an estimate of the value of work satisfactorily performed to that time. Payment will be made in the amount said estimate less the total of all previous payments and retainage, payable on or before the 15th of the following month or as near after the first of the following month as the legally established regular meeting times of the governing and disbursing agencies will permit. All payments shall be in accordance with the laws of the place where the work is being performed. Payments due may be withheld on account of defective work not remedied, liens filed, damage by the Contractor to others not adjusted, or failure to make payments properly to subcontractors, or for material or labor.

Consistent with RCW 60.28.011, the City of Des Moines shall reserve a contract retainage of 5% (five percent) of the moneys earned by the Contractor as a trust fund for the protection and payment of claims by any person arising under the Contract and/or State of Washington, with respect to taxes imposed pursuant to Title 82 RCW which may be due from such Contractor.

As provided in WAC 82-32-010, the Contractor shall be required to exercise its option in writing on whether or not monies reserved from the amounts due the Contractor shall be retained by the public body, deposited by the public body in an interest bearing account in a bank, mutual savings bank, or saving and loan association, or placed in escrow by the public body. This provision shall constitute official notice informing the Contractor of the options available and the method for exercising the option selected. Said option must be exercised prior to or at the time of submission of invoices for the first progress payment to be made under the contract. No progress payment shall be made until the Contractor has exercised its option in writing.

G-9. FINAL PAYMENT APPLICATION

Final payment to the Contractor will be made upon completing or receiving the following items:

1. Items specified for completion after substantial completion certification.
2. Ensure in writing that all claims have or will be settled.
3. Transmittal of required project construction records to the Owner to include: all as-built documents, warranty information, product information and owners manuals.
4. Proof that taxes, wages, fees, and similar obligations were paid (certificates from Labor and Industries and the Department of Revenue.)
5. A signed Lien Release in a form acceptable to the Owner signed by all subcontractors and major suppliers.
6. Removal of all temporary facilities, markings, rubbish and similar elements.

G-10. PARK MANAGERS' STATUS

The Park Manager (Project Manager) shall have general supervision of the work. They have authority to stop the work, if necessary in their opinion, to ensure its proper execution. The Contractor shall comply with instructions given by the Project Manager in accordance with the terms of the Contract, or by their authorized representatives acting within the scope of the duties assigned to them.

G-11. SURVEYS, PERMITS, AND REGULATIONS

The City will furnish control points sufficient to properly control the construction of the work.

G-12. INSURANCE & INDEMNIFICATION REQUIREMENTS

Indemnification / Hold Harmless

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

Should a court of competent jurisdiction determine that this Agreement is subject to RCW4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence

of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

Insurance

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

A. Minimum Scope of Insurance

Contractor shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insurance contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The City shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO additional insured endorsement CG 20 10 11 85 or a substitute endorsement providing equivalent coverage.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Builders Risk insurance covering interests of the City, the Contractor, Subcontractors, and Sub-subcontractors in the work. Builders Risk insurance shall be on a all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including flood and earthquake, theft, vandalism, malicious mischief, collapse, temporary buildings and debris removal. This Builders Risk insurance covering the work will have a deductible of \$5,000 for each

occurrence, which will be the responsibility of the Contractor. Higher deductibles for flood and earthquake perils may be accepted by the City. Any increased deductibles accepted by the City will remain the responsibility of the Contractor. The Builders Risk insurance shall be maintained until final acceptance of the work by the City.

B. Minimum Amount of Insurance

Contractor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.
3. Builders Risk insurance shall be written in the amount of the completed value of the project with no coinsurance provisions.

C. Other Insurance Provisions

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

1. The Contractor's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.
2. The Contractor's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, or forty-five (45) days prior written notice by regular U.S. Mail to the City Manager, has been given to the City.

D. Contractor's Insurance For Other Losses

The Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor's employee owned tools, machinery, equipment, or motor vehicles owned or rented by the Contractor, or the Contractor's agents, suppliers or contractors as well as to any temporary structures, scaffolding and protective fences.

E. Waiver of Subrogation

The Contractor and the City waive all rights against each other, any of their Subcontractors, Sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other periods to the extend covered by Builders Risk insurance or other property insurance obtained pursuant to the Insurance Requirements Section of this

Contract or other property insurance applicable to the work. The policies shall provide such waivers by endorsement or otherwise.

F. Acceptability of Insurers

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

G. Verification of Coverage

Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Contractor before commencement of the work. Before any exposure to loss may occur, the Contractor shall file with the City a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms and endorsements related to this project.

H. Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall finish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the same insurance requirements as stated herein for the Contractor.

G-13. COMPLIANCE WITH APPLICABLE LAWS

The Contractor agrees to fully comply with all applicable Federal, State and local laws, orders, rules, regulations and ordinances, including but not limited to workmen's compensation, pension and social security laws, safety standards and building codes, and the Contractor shall indemnify and save harmless the Owner from any claim, liability or expense by reason of the failure of the Contractor or any of his subcontractors to comply with such laws, orders, rules, regulations or ordinances.

G-14. PERMITS AND REGULATIONS

The Contractor shall obtain and pay for all permits and licenses, but not permanent easements required in connection with the work, and shall give all notices, pay all fees and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the Contractor observes that the drawings and specifications are at variance therewith, he shall promptly notify the Project Manager in writing and any necessary changes shall be adjusted. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules, and regulations, and without such notice to the Engineer, he shall bear all costs arising therefrom.

G-15. WAGE RATES

In conformity with the R.C.W. 39.12, no laborer, workman or mechanic employed in the performance of this Contract either by the Contractor or a subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by this Contract shall be paid less than the minimum hourly rate for his trade or occupation hereinafter set forth or, if none is set forth, the minimum hourly wage rates for his trade

or occupation which prevail in the locality where the work is to be performed, and the Contractor agrees that no such laborer, workman or mechanic shall be paid less than such rate. In case any dispute arises to what are the prevailing rates of wages for work of a similar nature and it cannot be adjusted by the parties involved, the matter shall be referred to the Director of Labor & Industries and his decision shall be final. These rates are subject to change to reflect increases and decreases in the rates which may prevail in the area from time to time during the performance of the Contract. No change in these rates or the rates actually paid by the Contractor shall constitute the basis for a change in the Contract Price.

G-16. RELATIONS WITH OTHER CONTRACTORS

The Contractor shall cooperate with all other contractors who may be performing work in behalf of the Owner on any work in the vicinity of the work to be done under this Contract, and he shall so conduct his operations as to interfere to the least possible extent with the work of such contractors. He shall promptly make good, at his own expense, any injury or damage that may be sustained by other contractors at his hands. Any difference or conflict which may arise between the Contractor and other contractors in regard to their work shall be adjusted and determined by the Project Manager. If the work of the Contractor is delayed because of any acts or omissions of any other contractor or contractors, the Contractor shall have no claim against the Owner on that account other than for an extension of time.

When two or more contracts are being executed at one time in such manner that work on one contract may interfere with that on another, the Project Manager shall decide which contractor shall cease work and which shall continue, or whether the work on both contracts shall progress at the same time, and in what manner.

When the territory of one contract is the necessary or convenient means of access for the transportation or movement of men, material, or appliances required for the execution of another contract; such privileges of access or any other reasonable privilege may be granted by the Project Manager to the contractor so desiring, to the extent and amount, in the manner, and at the time, which may be reasonably necessary.

G-17. MEDIATION/ARBITRATION CLAUSE

If a dispute arises from or relates to the Agreement of the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under the American Arbitration Association's Commercial or Construction Rules before resorting to arbitration. The mediator may be selected by agreement of the parties or through the American Arbitration Association. Following mediation, any unresolved controversy or claim arising from or relating to this Agreement or breach thereof shall be conducted under the American Arbitration Association's Commercial or Construction Arbitration Rules. The arbitrator may be selected by agreement of the parties or through the American Arbitration Association. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own council, experts, witnesses, and preparation and presentation of evidence.

G18. VENUE, APPLICABLE LAW AND PERSONAL JURISDICTION

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

G19. RECORD KEEPING

All records or papers of any sort relating to the City and the project will at all times be the property of the City and shall be surrendered to the City upon demand. The Contractor is entitled to retain a complete set of work project for historical and evidentiary purposes. All information concerning the City and said project, which is not otherwise a matter of public record by law to be made public, is confidential and the Contractor will not, in whole or in part, now at any time, disclose that information without the express written consent of the City.

G20. LIQUIDATED DAMAGES

The Contract shall be completed within the time limit, number of working days, as set forth in the proposal. Liquidated damages will be assessed as indicated in Section 1-08.9 of the Standards for time overruns.

If the Contractor is delayed at any time in the commencement or progress of the Project by an act or neglect caused by:

1. Acts or omissions of the Owner or Project Manager, or persons acting for the Owner or Project Manager, an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Project, or by delay authorized by the Owner
pending mediation and arbitration, then the Contract Time shall be extended by Change Order for such reasonable time as the Engineer may determine, and the Contractor shall be entitled to make a Claim for additional cost as provided in Section 1-09.11 of the Standards.
2. Acts or omissions of the Contractor, or persons acting for the Contractor, then the Contractor shall be obligated to pay to the Owner reasonable liquidated damages in the amount as specified in Section 1-08-9 of the Standards for the each working day that the Project is not substantially complete after the Contract Time has expired and notwithstanding language contained in any other provision of the Contract Documents, the Contractor shall not be entitled to receive any extension in the Contract Time.

3. Third parties, acts of God, or any other acts, omissions or occurrences, that are beyond the Contractor's control and are not caused by the acts or omissions of the Owner or persons acting for the Owner, the Contract Time shall be extended by Change Order for such reasonable time as the Project Manager may determine, and, notwithstanding language contained in any other provision of the Contract Documents, the Contractor shall not be entitled to receive an increase in the Contract Sum, or otherwise make a Claim for Additional Cost as provided for in Section 1-09.11 of the Standards.

PERFORMANCE AND PAYMENT BOND

NOW ALL MEN BY THESE PRESENTS: That whereas the CITY OF DES MOINES, WASHINGTON has awarded

_____ hereinafter
designated as the "Contractor", a Contract for the construction of:

"Field House Facility Improvements Project"

and whereas said principal is required under the terms of said Contract to furnish a bond for the faithful performance of said Contract.

NOW, THEREFORE, we the "Contractor", _____, as Principal, and _____, a Corporation organized and existing under and by virtue of the laws of the State of Washington, and duly authorized to do business in the State of Washington, as Surety, are held and firmly bound unto the CITY OF DES MOINES and the State of Washington, in the penal sum of _____ dollars (\$ _____) lawful money of the United States, for the payment of which sum well and truly be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by those presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above bonded Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements and in the said Contract and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said Contract that may hereafter be made, at the time and in the manner therein specified, and shall pay all laborers, mechanics, subcontractors and material suppliers, and all persons who shall supply such person or persons or subcontractors with provisions and supplies for the carrying on of such work, on his or their parts, and shall indemnify and save harmless the CITY OF DES MOINES, WASHINGTON, its officers and agents; and shall further save harmless and indemnify said CITY OF DES MOINES, WASHINGTON, from any defect or defects in any of the workmanship or materials entering into any part of the work or designated equipment covered by said Contract, which shall develop or be discovered within one (1) year after the final acceptance of such work, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect; provided that the liability hereunder for defects in materials and workmanship for a period of one (1) year after the acceptance of the work shall not _____ exceed _____ the _____ sum _____ of _____

_____ Dollars, (\$ _____). (100%, one hundred percent of contract sum)

PROVIDED FURTHER, that the said surety, for value received, hereby further stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the work to be performed thereunder of the specifications accompanying the same shall in no way affect its obligation on this bond, and it does hereby waive notice of any change, extension of time, alterations or additions to the terms of the Contract or the work or to the Specifications provided that said change and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

In the event that any suit is brought in order to enforce the provisions of this bond, the City shall be awarded and permitted its reasonable costs and attorney's fees.

IN WITNESS THEREOF, this instrument is executed in four (4) counterparts, each of which shall be deemed an original, this _____ day of _____, 20____.

Contractor

By: _____

Title

TWO WITNESSES:

ATTEST (if corporation)

Corporate seal

Surety

By _____

Its _____

Address of local office and agent of Surety Company is:

APPROVED AS TO FORM:

City Attorney

Note: Date of bond must not be prior to date of contract. If contractor is partnership, all partners should execute bond.

DES MOINES FIELD HOUSE FACILITY IMPROVEMENTS
ELECTRICAL UPGRADE/PLUMBING IMPROVEMENTS/DOOR/DOOR HARDWARE
 Project No. 310.700.000.594.76.64.33

#	ITEM DESCRIPTION	Mayer Construction Co. SKM Construction, Inc.	
		TOTAL COST	TOTAL COST
	Base Bid		
a.	Mobilization	3,000.00	\$200.00
b.	Exterior Underground Trenching	2,650.00	\$4,800.00
c.	Electrical Upgrade Complete	16,000.00	\$35,945.00
d.	Plumbing Installation	7,800.00	\$9,500.00
e.	Door and Door Hardware Install.	9,000.00	\$15,125.00
	Subtotal Base Bid	\$38,450.00	\$65,570.00
	Sales Tax (8.8%)	\$3,383.60	\$5,770.16
	Total Base Bid	\$41,833.60	\$71,340.16
			\$0.00
			\$0.00
			\$0.00

CAPITAL IMPROVEMENT PLAN REQUEST FORM

CATEGORY	General Government	PROJECT NO.	
PROJECT	Field House ADA Renovation	PROJECT STATUS:	
LOCATION	1000 South 220th Street	Preliminary Estimate	
		Plans in Preparation	<u> X </u>
		P.S.E. Complete	

DESCRIPTION: The Des Moines Field House is the only city-owned indoor activity facility/gymnasium complete with multi-purpose fields, tennis courts, play equipment, and skateboard park. The 1939 WPA-built log field house has been designated a King County Historic Landmark.*

*This project is part of a multi-phased Field House renovation project using City, County, State, and Federal Funding sources.

EXPENDITURE SCHEDULE

COST ELEMENTS	TOTAL	FY 03	FY 04	FY 05	FY 06	FY 07	FY 08
ADMINISTRATION	1,500	1,500					
DESIGN/ENG							
FIRE SUPPRESSION							
BUILDINGS	65,000	65,000					
ELECTRICAL/MECHANICAL	80,000	80,000					
INSPECTION							
CONTINGENCY	830	830					
SALES TAX	12,760	\$ 12,760					
OTHER							
TOTAL	160,090	160,090					

FUNDING SOURCE	TOTAL	FY 03	FY 04		FY 06	FY 07	FY 08
2000 CDBG	115,585	115,585					
MCI	44,505	44,505					
WSHG							
TOTAL	160,090	160,090					

OPERATING COSTS							
PERSONNEL							
SUPPLIES							
UTILITIES							
CAPITAL							
OTHER							
TOTAL							

A G E N D A I T E M

SUBJECT: Approval of Rental Agreement for the residence at Sonju Park to Joseph and Peggy Dusenbury

AGENDA OF: April 24, 2003

DEPT. OF ORIGIN: Parks, Recreation & Senior Services

DATE SUBMITTED: April 16, 2003

ATTACHMENTS:

1. Copy of Rental Agreement
2. Rent Documentation

CLEARANCES:

- [] Parks, Recreation & Senior Services
- [] Legal

APPROVED BY THE CITY MANAGER
FOR SUBMITTAL

Purpose and Recommendation:

Administration recommends approval of the Rental Agreement of the Sonju residence located at Sonju Park to Joseph and Peggy Dusenbury.

Motion: "To approve Rental Agreement between City of Des Moines Parks, Recreation and Senior Services Department and Joseph and Peggy Dusenbury and to have the Rental Agreement signed by Parks, Recreation & Senior Services Director substantially in the form as submitted."

Background:

The City of Des Moines Parks, Recreation and Senior Services Department has been landlord for the residence located at 24728 16th Avenue South within Sonju Park since 1998. The property was donated by Daisy Sonju to the City in December 1996. The former tenant paid \$850.00 rent per month. The residence built in 1940 has approximately 1,000 square feet (living space) with two bedrooms, one bath and a basement garage. A second story attic is not accessible to the tenant for safety reasons. The tenant is responsible for all utilities including water, electricity, garbage, phone, and cable and will provide basic home and lawn maintenance. The residence has been vacant since the former tenant moved out in November 2002, and it is clearly in the interest of the city to have this property occupied and maintained by a tenant.

Discussion:

The attached Rental Agreement authorizes the Des Moines Parks, Recreation and Senior Services Department to rent the Sonju residence to Joseph and Peggy Dusenbury. Mr. Dusenbury is a City employee. The rental to Mr. Dusenbury is on the same basis that such a rental would be made to any member of the public. Specifically, the Rental Agreement is month to month for \$900.00 per month rent which represents a 6% increase in rent and includes 12.84% Leasehold Tax. As a condition of the agreement, the tenant also pays a \$300.00 non-refundable cleaning deposit and a \$500.00 refundable security deposit. Staff compared the Sonju residence to similar rental homes (number of bedrooms and baths, square footage, vintage and other amenities) advertised by property management companies on the market in Des Moines and surrounding cities to set the rental rate. Rental rates advertised are from \$795.00 per month (one home found), to \$895.00 (three homes found) and \$1,095.00 (one home found). Documentation is attached. The rate of \$900.00 seems to be a reasonable and fair monthly rental rate for the property.

Alternatives:

Not Applicable

Financial Impact:

The Sonju residence is budgeted to provide \$9,040.00 rental income in 2003 for the City or \$850.00 per month less 12.84% Lease Hold Tax.

Recommendation/Conclusion:

Staff recommends approval of Rental Agreement as proposed.

Concurrence:

Parks, Recreation and Senior Services staff agree to oversee all aspects of the Rental Agreement for the Sonju residence.

RENTAL AGREEMENT

Property owner City of Des Moines ("Lessor"), whose mailing address is 21650 11th Avenue South, Des Moines, Washington, 98198, does hereby rent and lease on a month-to-month tenancy, unto Joseph and Peggy Dusenbury, ("Lessee"), for the use of the Lessee as a residence located in King County at 24728 16th Avenue South, Des Moines, Washington 98198.

UPON THE FOLLOWING TERMS AND CONDITIONS:

1. Lessee agrees to pay, as monthly rent in advance, the sum of \$900.00 (including 12.84% Lease Hold Tax), beginning the day of April 25, 2003, and continuing in advance on the first day of each month thereafter until the termination of this Agreement. All payments are to be made payable to the City of Des Moines and shall be received by on or before the above due date. Payment made after the 10th of the month will be considered a late payment and will be assessed a \$50.00 late fee.
 - a. Lessee shall pay, in addition to the above rent, all charges for electricity, gas, telephone, garbage, sewer, water, cable, lessee personal property insurance, and all other services supplied to the premises.
 - b. The Lessee shall be responsible for maintaining the interior of the rental house to the following specifications: Keep interior (doors, walls, floorings, cabinets, tiles, windows, toilets/sinks, etc.) in a clean and orderly manner. Lessee shall be responsible for keeping surrounding premises (within driveway perimeter) free and clear of all obstructions, debris and excess vehicles and for watering area plants and lawn as specified by Park Manager.
 - c. The Lessee shall make all repairs to the premises caused by lessee, except that the Lessor shall maintain all electrical, plumbing, heating, and other facilities and appliances supplied by Lessor in reasonably good working order. Lessee shall properly use and operate all electrical, gas heating, plumbing and other fixtures and appliances supplied by the Lessor. In the case appliance, plumbing, mechanical system or fixture replacement is needed caused by lessee, lessee agrees to pay all replacement and installation costs of said items.
 - d. The Lessee shall not remove any fixtures, paint, wallpaper, alter or make any minor or major improvements to the premises without prior written approval of the Lessor. If approved, Lessee shall submit the name of a licensed contractor to complete improvements to Lessor prior to improvements. Lessee agrees to reverse all alterations made to the house in the same manner as stated above prior to the agreement terminating, unless Lessor gives written approval that the alterations may remain.
 - e. Either party may terminate this Agreement at any time by giving written notice thirty (30) days in advance of the end of a monthly rental period.
 - f. Lessor shall give thirty (30) days written notice to the Lessee that a rent adjustment is being made. This notice shall include the amount of the adjusted rental rate and the date the new rental rate will become effective. Failure or refusal by the Lessee, to pay the adjusted rental rate, shall constitute a breach of this Agreement and entitle the Lessor to legal recourse.
 - g. Lessee shall properly dispose of all rubbish, garbage and other organic or flammable waste, in a clean and sanitary manner at reasonable and regular intervals, and Lessee shall assume all costs of extermination and fumigation for infestation caused by Lessee.

- h. Lessee agrees that the existing locks for the premises are reasonably adequate and that, upon termination of the tenancy, Lessee shall return all keys in his/her possession to the Lessor. Lost or stolen keys must be reported to Lessor immediately. Lessor agrees to pay \$10.00 per key not returned to Lessor at end of a rental agreement.
 - i. Lessee shall maintain the smoke detection devices in accordance with the manufacturer's recommendations, including the replacement of batteries as required for the proper operation of the smoke detection device.
 - j. Lessor reserves the right to make periodic inspections and necessary repairs to the premises upon two days notice to the Lessee and to come on to said premises with or without such notice to make necessary emergency repairs to said premises.
2. Lessee hereby acknowledges his/her deposit of Eight Hundred Dollars (\$ 800.00), of which three hundred dollars (\$300) is paid to Lessor as a non-refundable cleaning deposit. The amount remaining, five hundred dollars (\$500) shall become a security deposit, receipt of which shall be delivered to Lessee. Lessee also agrees to pay all repair or replacement costs associated with extraordinary wear and tear (damage) of the premises as defined in item 5. listed below based on invoices presented by Lessor for work completed. A premises condition checklist and photos (Attachment A) will be completed at the time of rental occupancy and/or signing of rental documents regarding the existing condition of the condominium to be retained with the rental documents.
 3. Lessee shall not assign this lease or sublet any part of these premises, without Lessor's prior written consent. Lessee covenants that this lease is entered into as a principal and that he/she is not acting for any undisclosed principal.
 4. Lessee shall not have pets including but not limited to: birds, cats, dogs, or rodents without prior Lessor consent in writing. Lessee agrees to pay all repair and replacement costs associated with animal damage.
 5. Lessee shall immediately establish, keep and maintain the premises in a neat, clean, safe and sanitary condition at all times, as the conditions of the premises permit, and at the end of the lease Lessee shall surrender the premises and dwelling to Lessor in a clean, good and sanitary condition as reasonable use and wear and tear permit. Extraordinary wear and tear of the premises and dwelling include: non-removable stains, water damage, mold, or holes to carpeting and linoleum; animal odors or stains, broken or scratched tile or stained tile grout, scratches, water damage, holes or gouges to cabinetry, walls or doors requiring repair or replacement; broken or removed lighting fixtures, windows, or window screens; damage to appliances, plumbing, and/or other mechanical systems, etc. caused by lessee misuse or lack of proper maintenance. Lessee agrees to notify lessor immediately of premise damage caused by Lessee for repair work to be scheduled and completed.
 6. Lessee covenants to hold Lessor harmless from all claims, demands, causes of action, judgments, attorney's fees, costs and expenses arising from or connected with Lessee's use or occupancy of said premises or the area adjacent thereto, and from all claims, demands, causes of action, judgments, attorney's fees, costs and expenses for property damage, bodily injuries, or death suffered or caused in or about said premises or the area adjacent thereto, resulting directly or indirectly from the acts of omissions of Lessee, or any agent or guests of Lessee.
 7. Should said dwelling be totally destroyed by fire, lightning, earthquake or any other casualty, this

- Agreement shall be deemed terminated, forthwith. Should fire, lightning, earthquake or any other casualty partially damage said dwelling, whether or not the premises are affected thereby, Lessor may elect to terminate this Agreement or to repair such damage. If Lessor elects to repair, the rent shall be abated in the same ratio which that portion of the premises rendered for the time being unfit for occupancy and not used or occupied by Lessee shall bear to the whole premises unless the loss was occasioned by the Lessee in which case no abatement shall occur.
8. Upon taking possession of the premises by the Lessor, either upon termination of this Agreement or upon abandonment of said premises by the Lessee, the Lessor or his Agent may remove from the premises all personal property of the tenant located therein and place the same in storage at a public warehouse at the expense and risk of the owners thereof. Personal property so stored shall be subject to the rules and regulations as set down by such public warehouse. Disposition of any personal property shall be subject to the Residential Landlord-Tenant Act, Chapter 59.18 RCW.
9. This instrument contains all the agreements and conditions made between the parties hereto pertaining to the rental of the property herein described and may not be modified orally or in any other manner other than by an agreement in writing signed by all parties hereto. The receipt of rent by the Lessor with knowledge of any breach of this Rental Agreement by the Lessee or of any default on the part of the Lessee in the observance or performance of any of the conditions or covenants of this Agreement, shall not be deemed to be a waiver of any provision of this Agreement. No failure on the part of the Lessor to enforce any covenant or provision herein contained, nor any waiver of any right thereunder by the Lessor unless in writing, shall discharge or invalidate such covenant or provision or affect the right of the Lessor to enforce the same in the event of any subsequent breach or default.

DATED _____

DATED _____

Lessee

Lessor

Subject Property Photographs



Front view of 24728 16th Avenue South viewed to the southwest from the northerly driveway.



Rear view of 24728 16th Avenue South.

Property Management
& Rentals

**MacPherson's
Real Estate**

Properties
For Sale

Relocation

Office/Agent
Finder

Buying/Selling
Resources

About Us

Use the menu above and to the left to browse through the s

- Open House Schedule
- Property Management
- Rental Database
- New Construction
- Find A Home
- Home Page

MacPherson's Property Management, Inc. Rental Division

Rental Database

 [Email this page](#)

Des Moines \$795.00

- 19521 8th Avenue S
- 2 Bedrooms
- 1 Bathrooms
- 795 Square Feet
- Cute vintage home on large fenced lot. Close to airport.
- Pets Considered
- Waterfront: N/A
- Acres: N/A

Please contact **Audrey** at the **SouthEnd** MacPherson's Property Management office.

SouthEnd

555 S Renton Village PL #110
Renton, WA 98055
Phone: 425-228-7337
Fax: 425-271-4044
Email: audreyw@macphersonspm.com



New Search

· [Home](#) · [Properties for Sale](#) · [Relocation](#) · [Office/Agent Finder](#) · [Buying/Selling Resources](#) · [About Us](#) · [Cor](#)

Phone: 1-888-584-4747 or 425-747-5900

Questions or Comments: webmaster@prudentialmacphersons.com

© 1997 - 2002 MacPherson's Real Estate

Web site design © 1998 - 2002 [Webbs, Inc.](#) All rights reserved

Search Complete

Here is a list of properties that match your search criteria. They are listed from highest price to lowest price.

key

Photo Available



Photo Gallery



360 Virtual Tour



Premier Property SM



Builder Gallery



Properties with the , ,  icon(s) are courtesy of the Northwest, Whatcom, Walla Walla, Olympic MLS's respectively. If there are more than 25 properties, click "next" at the bottom of the page. To change your search criteria please click on the "New Search" link below.

Your search returned 4 properties:

Des Moines View 4BD!

Bedrooms: 4 Bathrooms: 2.00



\$1,395

Des Moines
Year Built:0

Square Feet: Not Listed

22218 5th Ave S

Bedrooms: 1 Bathrooms: 1.00



\$1,100

Des Moines
Year

Square Feet: Not Listed

Built:2000

NEW: Des Moines 2 bd house

Bedrooms: 2 Bathrooms: 1.00

\$895

Des Moines
Year Built:0

Square Feet: Not Listed

Top Floor Des Moines Condo

Bedrooms: 2 Bathrooms: 2.00

\$695

Des Moines
Year Built:0

Square Feet: 900



Rent: 775

Deposit: 500

Features: Newer Double Wide.
Very nice inside, roomy. No pets,
no smoking please.

Bedrooms: 3

Baths: 2

Square Ft: Roomy

Refrigerator: True

Heat:

Garage:

Fireplace: False

Drapes: True

Pets: False

Appliances: Range, Refrig,
Dishwasher

Terms: 1 year lease



Rent: 875

Deposit: 600

Features: Cozy Rambler with
CarPort, Large yard, W/D

Address: 905 S. 304th

Federal Way , WA 98003

Driving Directions: Pacific Highway S. to 304th
Turn West go to 905 S. 304th

Map & Driving Directions

(Adobe Acrobat Required): [Map](#)

Virtual Tour

(Requires Media Player)

(Takes several minutes with 56K)

(Not available for all properties)

**To arrange an appointment or
request more information please**

Email: Wendy@zaran.com

Refer to this Prop# 919

We've Got a Place for You!

~~~~~  
Renters Insurance Required. This property may have special conditions or  
restrictions. Price, terms, or availability may change without notice.

**Prop #: 217 0**

***You are free to drive by the properties  
but do not enter upon the property  
without an appointment from our office.***

**Address:** 31224 28th Ave. S.

Federal Way , WA 98003

***Driving Directions:*** From Pacific Hwy Go East on  
304th, Right on 28th Ave. S. House on the left.

**Map & Driving Directions**

(Adobe Acrobat Required): [Map](#)

**bkups, Great location by Parks,  
close to shopping, call for an  
appointment today!**

**Bedrooms:** 3  
**Baths:** 1  
**Square Ft:** 950  
**Refrigerator:** True  
**Heat:** Electric  
**Garage:** None  
**Fireplace:** False  
**Drapes:** True  
**Pets:** False  
**Appliances:** Range  
**Terms:** 1 year lease

**Virtual Tour**

(Requires Media Player)  
(Takes several minutes with 56K)  
(Not available for all properties )

**To arrange an appointment or  
request more information please**

Email: [Wendy@zaran.com](mailto:Wendy@zaran.com)

Refer to this Prop# 217

*We've Got a Place for You!*

~~~~~  
Renters Insurance Required. This property may have special conditions or
restrictions. Price, terms, or availability may change without notice.



Rent: 895

Deposit: \$600

Features: Great location,
partially fenced large yard,
utility room, breakfast bar, close
to shopping and on bus line.

Bedrooms: 2
Baths: 1
Square Ft: 952
Refrigerator: True
Heat: Electric
Garage: 1 Car
Fireplace: False
Drapes: True
Pets: False
Appliances: Range, D/W, W/D

Prop #: 460

***You are free to drive by the properties
but do not enter upon the property
without an appointment from our office.***

**Address: 4917 31st St NE
Tacoma , WA 98422**

Driving Directions: Pacific Hwy. S. to 356th Turn
right, follow towards the NE Tacoma area, stay on
this road, this road will turn into 31st, after the "S"
curve. House on Right side of road.

Map & Driving Directions

(Adobe Acrobat Required): **Map**

Virtual Tour

(Requires Media Player)
(Takes several minutes with 56K)
(Not available for all properties)

**To arrange an appointment or
request more information please**

Email: Wendy@zaran.com

Refer to this Prop# 460

We've Got a Place for You!

~~~~~  
Renters Insurance Required. This property may have special conditions or  
restrictions. Price, terms, or availability may change without notice.

## PROPERTY FOR RENT

*How to Rent from us.*

(Multiple page report, click arrow at end of page)



**Rent: 1095**

**Deposit: \$800**

**Features:** Newly remodeled home on an acre w/fruit trees. Very private & secluded. New appliances & paint, vaulted ceilings & triple paned windows. Certified fireplace. Home backs to a greenbelt, close to marina & easy access to freeways.

**Bedrooms: 2**

**Baths: 1**

**Square Ft: 1100**

**Refrigerator: True**

**Heat: Electric**

**Garage: 1 Car**

**Fireplace: True**

**Drapes: False**

**Pets: True**

**Appliances: Stove, d/w, g/d, w/d**

**Terms: 1 year lease**

**Prop #: 322**

*You are free to drive by the properties  
but do not enter upon the property  
without an appointment from our office.*

**Address: 1251 S 230th  
Des Moines, WA 98198**

**Driving Directions:** Go south on Pac Hwy. Take a left on Kent-Des moines Rd. Follow down to 230th. At 230th take a right and follow to almost the end of the road. Look for the mailbox with the address in it and take a right into the driveway. Home is at the end.

**Map & Driving Directions**

(Adobe Acrobat Required): [Map](#)

**Virtual Tour**

(Requires Media Player)

(Takes several minutes with 56K)

(Not available for all properties)

**To arrange an appointment or  
request more information please**

**Email: [Wendy@zaran.com](mailto:Wendy@zaran.com)**

**Refer to this Prop# 322**

*We've Got a Place for You!*

~~~~~  
Renters Insurance Required. This property may have special conditions or restrictions. Price, terms, or availability may change without notice.

Prop #: 271

You are free to drive by the properties

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Woodmont Elementary School
Soccer Field Renovation- Draft Interlocal
Agreement between City of Des Moines
And Federal Way Public Schools

FOR AGENDA OF: April 24, 2003

DEPT. OF ORIGIN: Parks, Recreation
and Senior Services

DATE SUBMITTED: April 14, 2003

ATTACHMENTS:

1. Interlocal Agreement- City of Des Moines
and Federal Way Public Schools
2. Capital Improvement Plan

CLEARANCES:

☐ Park & Recreation
☐ Legal

APPROVED BY CITY MANAGER
FOR SUBMITTAL:

Purpose and Recommendation:

Administration recommends approving the following motion on the City Council consent calendar of April 24, 2003.

"Motion is to approve the Interlocal Agreement between the City of Des Moines and Federal Way Public Schools regarding joint development and use of Woodmont Elementary School Soccer Field and authorize the City Manager to sign the agreement substantially in the form as attached."

Background:

The city of Des Moines collaborated with Federal Way Public Schools and King County to provide funding for the design and renovation of a soccer field located at Woodmont Elementary School on Federal Way Public Schools property in Des Moines. The city of Des Moines Parks, Recreation and Senior Services Department wrote the grant to King County for youth sports facility funding. Federal Way Public Schools assumed the role as project manager and built the field, therefore Des Moines will forward King County grant funds collected in the amount of \$50,000.00 to the School District as reimbursement for project expenses incurred. The City initially committed \$50,000.00 in the 2002 Capital Improvement Plan. That amount was reduced to \$35,000.00 because as the youth sports project sponsor, Des Moines Midway Soccer Club was required to commit \$15,000.00 funds and sign an Use and Maintenance Agreement with Federal Way Public Schools to provide ongoing soccer field maintenance by the King County Youth Sports Facility Grant.

The actual soccer field project construction cost is estimated at \$167,944.00. Federal Way Public Schools will pay all costs over the budgeted amount of \$157,000.00. An overview of agency financial commitments is listed below and in the attached City of Des Moines 2002 Capital Improvement Plan project sheet.

Discussion:

The Interlocal Agreement between the City of Des Moines and Federal Way Public Schools establishes a joint use agreement for the use of city and district recreational facilities outlining procedures for availability, supervision, and special conditions of facility priority use. This is the first such agreement between Des Moines and Federal Way Schools to establish a working relationship between the public

entities serving the best interest of our citizens. The Woodmont Elementary School Soccer field project construction was completed in summer 2002 and Federal Way Public Schools has requested reimbursement from its partners at this time. The field will remain fenced and closed during the 2002-2003 school year for field turf establishment. Once the soccer field is open for play in late spring 2003, Federal Way Public Schools and Des Moines Midway Soccer Club will share responsibility for ongoing field maintenance as agreed in the Use and Maintenance Agreement dated March 26, 2002. Based on King County requirements the maintenance agreement would be honored by the school district and soccer club for ten years.

Alternatives:

None Provided

Financial Impact:

City funds were approved for the Woodmont Elementary School Soccer Field project in the 2002 Capital Improvement Plan. Overall funding to pay for field construction came from four sources: King County Youth Sports Facilities Grant, Federal Way Public Schools, City of Des Moines and Des Moines Midway Soccer Club. Project allocations are as follows:

Woodmont Elementary School Soccer Field Renovation Project Budget

Federal Way Public Schools	\$57,000
King County	\$50,000
City of Des Moines MCI*	\$35,000
Des Moines Midway Soccer Club	<u>\$15,000</u>
Project Total	\$157,000

* City of Des Moines and Federal Way Public Schools staff made additional contributions to the project in the area of in-kind services for contract and project management.

Recommendation/Conclusion:

Staff recommends the Agreement.

Concurrence:

Federal Way Public Schools has agreed to the Interlocal Agreement.

City Attorney's First Draft – 3/26/03

**INTERLOCAL AGREEMENT
FOR DEVELOPMENT AND USE OF
THE WOODMONT ELEMENTARY SCHOOL SOCCER FIELD
BETWEEN
THE CITY OF DES MOINES AND
FEDERAL WAY PUBLIC SCHOOLS**

THIS AGREEMENT is entered into between the CITY OF DES MOINES ("City") and FEDERAL WAY PUBLIC SCHOOLS ("District") (collectively known as "the Parties"), for the purpose of setting forth the terms and conditions under which the City and the District shall share in the development and use of the Woodmont Elementary School Soccer Field (the "Field") located at 26454 16th Avenue South, Des Moines, King County, Washington.

In consideration of the covenants and agreements set forth herein and the contributions, financial and otherwise, made by the parties for the construction and improvement of the Field, the District and City agree to share the planning, development and use of the Field as follows:

I. TERM AND TERMINATION

The term and conditions of early termination of this Agreement shall be as follows:

A. Unless terminated earlier as set forth below, the term of this agreement shall be for ten (10) years from the date of execution.

B. Subject to the early termination conditions set forth below, either party hereto may terminate this Agreement at any time by giving written notice to the other in accordance with section IX hereof at least ninety (90) days prior to the intended effective date of termination.

C. In the event of termination of this Agreement by the District before the end of the agreed ten (10) year term, then, subject to statutory and constitutional limitations then in effect, the District shall reimburse the City for the capital expenditures for improvements placed upon the Field by the City with the use of King County Funds. Such reimbursement shall be in cash in an amount equal to the replacement costs of that portion of the improvements paid for by the City and County, less depreciation thereon.

II. SHARING AGREEMENT

The City and District shall share site use, maintenance and operations responsibility for the Field as follows:

A. AVAILABILITY OF FACILITIES

1. Upon request and when not needed for the conduct of school programs, the District will make the Field available to the City's Park and Recreation Department for use in connection with community recreational programs under the supervision or control of the City. There will be no charge to the City for use of the Field unless such use requires additional custodial services, or agreed upon prorated utility charges or supplies. In this case the City agrees upon written invoice to reimburse the District its share of expenses for direct cost of operating the Field.

2. The first priority for use of the Field shall be school events and programs, the second shall be recreation activities and programs of the City, and the third shall be any activities and programs of other agencies or groups as may be approved or permitted by the District. The City shall use the Field for parks and recreational purposes only. The City may authorize groups, clubs, or organizations to use the Field for purposes authorized by this Agreement, and shall have the right to charge and collect reasonable fees from persons or entities other than the District for such uses.

3. On or before September 1 of each year during the term of this Agreement, the District shall give the City notice, in accordance with section X hereof, of its schedule for use of the Field. The District's scheduled uses shall have priority over the City's right to authorize use of the Field for other recreational purposes.

B. RESERVATIONS

1. The schedule of dates for use of the Field will be worked out in advance to avoid conflict between the City and the District. Once an event or activity is booked, every effort shall be made to honor the commitment. If, however, activities are in conflict, each party will notify the other as far in advance as possible. To ensure effective communication between City and District, the parties shall each provide annually, or on or before September 1, a list of contact persons and phone numbers whose responsibilities are to schedule, maintain or program facilities. Reservations shall be booked according to each entities policy.

C. SUPERVISION AND STAFFING

1. Each party agrees to provide adequate adult personnel to supervise its activities that take place on the Field. The adequacy of the level of supervision is subject to review by the other party. Either party

may ask the other to clearly determine and define the role expected of a supervisor and/or staff.

2. Security and crowd control are the responsibilities of the party using the property, which party shall ensure that good order is maintained at all times. Such party assumes full responsibility for the conduct of persons involved in the party's activity or who are on the property with the consent of, at its invitation, or as a result of that party's activities. Such responsibility also includes cost of repair to or replacement of property damaged or destroyed by the act or omissions of the user, its agents, or invitee.

D. SPECIAL CONDITIONS:

1. Equipment and Supplies

The equipment used in the conduct of the programs shall, to the extent practicable, be furnished by the party using the Field. Each party will furnish and supply all expendable materials (except sanitation supplies) necessary for operating its programs on the Field. Any damage to such equipment will be immediately reported and a mutually agreeable method and amount of payment for replacement or repair determined.

2. Services and Utilities

The District shall furnish all necessary routine services and utilities except as otherwise specified in writing. The user will pay the costs of any extra janitorial services required as a result of their use of a facility.

3. Maintenance

The cost of maintaining and operating the Field and the improvements and equipment installed thereon shall be borne by the District. Maintenance costs shall be borne by the City when such maintenance involves extra costs to the District, unless maintenance duties/equipment are exchanged in lieu of payments. Game preparation and lining of tracks and fields will be done by the user unless other arrangements are made.

- a. The District shall maintain all improved soccer field turf areas, irrigation systems and drainage improvements at a level consistent with current District practices and allocation of assets.
- b. The District shall execute a use and maintenance agreement with Des Moines Midway Soccer Club that will provide additional terms concerning use and maintenance of the field for youth soccer purposes. Upon the full execution of such use and maintenance agreement by the parties thereto, the terms and

conditions of such agreement shall be incorporated herein to the extent applicable (see Attachment C).

- c. The parties agree to jointly provide for litter control and refuse collection as needed and especially during times of active public use.
- d. The parties covenant to exercise best efforts to develop such additional joint operation and maintenance agreements as needed and as evolving circumstances may dictate, and in that regard, the parties agree to meet and confer as to maintenance and operations, by meetings between the City Parks, Recreation and Senior Services Director, or designee and Federal Way Public Schools Director of Facilities Services, or designee, on at least an annual basis, either party being entitled to call such a meeting.

III. LIABILITY

Each party agrees to indemnify, save and hold harmless the other and all its officers, agents and employees from any claims, costs, expenses or liability (including reimbursement for all legal costs and reasonable attorney's fees) for any and all claims for damages or injuries to persons, property or agents of the user which arise from its negligent or intentional acts or omissions. In the event of such claims or lawsuits, each party shall assume all costs of its defense thereof, and shall pay all resulting judgments that may be obtained against it or its agents or employees. Further, each party has insured against its own liability herein and will promptly notify the other of any material changes in such coverage.

Any claims for liability arising out of the failure to maintain facilities or keep them in good structural repair, unless such failure is caused by the acts of the user, its agents, employees or invitee, shall be the responsibility of the owner and the indemnification by the user herein shall not include such claims.

IV. INSURANCE

It is hereby understood and agreed that whenever either party to this agreement shall use, operate, occupy or have the care, custody or control of any facility owned by the other party, the party using the facility shall bear risk of loss or damage to the facility being used and shall obtain and maintain public liability insurance in an amount of no less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000) single limit liability. Each party hereto agrees to bear the risk of loss and agrees to indemnify the other to the extent of liability arising out of the party's use, occupancy, or control of the property. Each party shall provide the other

party with a certificate of public liability insurance naming the other party as an additional insured and showing proof of the required insurance coverage. Insurance coverage shall be maintained at all times.

V. DISPUTE RESOLUTION

In the event of a disagreement between the City and the District on the interpretation of any provision of this Agreement, the City Manager and District Superintendent, or their designees, shall meet within thirty (30) days of notice of the problem to resolve the difference. The parties will endeavor to effectuate the full intent and purposes of this agreement and to resolve any differences through mutual cooperation to assure that such matters are handled in a timely and efficient manner. In the event the School District and City should reach an impasse as to any matter covered in this agreement, including interpretation of this agreement, the parties agree that such matters can be referred to the American Arbitration Association for arbitration to be conducted under its voluntary arbitration regulations. The decision of the arbitrator regarding any arbitral difference shall be final, conclusive, and binding upon the District and the City. The cost of the arbitrator shall be borne equally by the District and the City and each party shall bear the cost of presenting its own case.

VI. ANNUAL REVIEW

Each January, the District and City will meet to consider and recommend changes to this agreement that may be needed. Annual review participants will consist of the following: School District - District Superintendent or Designee(s), Activities Director and Director of Maintenance and Operations; City - City Manager or Designee (s), Director of Parks, Recreation and Senior Services and Park Manager. Any change to this agreement shall be presented to the appropriate governing bodies for approval.

VII. NOTICES

Any notice given by either party to the other under the provisions of, or with respect to, this Agreement, shall be in writing, delivered in person or by certified or registered mail to the following addresses:

City: City Manager
City of Des Moines
21630 11th Avenue South
Des Moines, WA 98198-6398

District: Superintendent

Federal Way Public Schools
31405 18th South
Federal Way, WA 98003

Or to such other address(es) as each party hereto may notify the other in writing.

VIII. TOTAL AGREEMENT/MODIFICATION

The Parties agree that this Agreement sets forth completely the terms of the Parties' agreement and understanding, that this Agreement supersedes any and all prior agreements or understanding, and that this Agreement cannot be modified without the express written consent of all Parties hereto.

IXI. NO CONVEYANCE

No real property interest in the Field is conveyed or conferred to the City by this Agreement, it being specifically understood by the parties that this Agreement does not create nor vest any interest in or title to the Field in the City.

X. COUNTERPARTS

This Agreement may be signed in counterpart originals.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on their behalf.

Dated this ____ day of _____, 2003.

Dated this ____ day of _____, 2003.

FEDERAL WAY PUBLIC SCHOOLS
By direction of its Board of Directors
Taken _____

CITY OF DES MOINES
By direction of the Des Moines City
Council
taken _____

By:

By:

Tom Murphy
Superintendent

Tony Piasecki
City Manager

APPROVED AS TO FORM this
____ day of _____, 2003.

APPROVED AS TO FORM this
____ day of _____, 2003.

By:

By:

Title: General Counsel for

City Attorney

Federal Way Public Schools

City of Des Moines

ATTEST:

By:

Denis Staab, City Clerk
City of Des Moines

INTERLOCAL AGREEMENT
FOR DEVELOPMENT AND USE OF
THE WOODMONT ELEMENTARY SCHOOL SOCCER FIELD
BETWEEN
THE CITY OF DES MOINES AND
FEDERAL WAY PUBLIC SCHOOLS
ATTACHMENT A

Woodmont Soccer Field Site Map and Legal Description

INTERLOCAL AGREEMENT
FOR DEVELOPMENT AND USE OF
THE WOODMONT ELEMENTARY SCHOOL SOCCER FIELD
BETWEEN
THE CITY OF DES MOINES AND
FEDERAL WAY PUBLIC SCHOOLS

ATTACHMENT B

King County Contract No. D29843

INTERLOCAL AGREEMENT
FOR DEVELOPMENT AND USE OF
THE WOODMONT ELEMENTARY SCHOOL SOCCER FIELD
BETWEEN
THE CITY OF DES MOINES AND
FEDERAL WAY PUBLIC SCHOOLS

ATTACHMENT C

**Use and Maintenance Agreement between Federal Way Public Schools and
Des Moines Midway Soccer Club**

CAPITAL IMPROVEMENT PLAN REQUEST FORM

CATEGORY	General Government	PROJECT NO.
		PROJECT STATUS:
		Preliminary Estimate _____
PROJECT	Woodmont Elementary School	Plans in Preparation _____
	Soccer Field Renovation Project	P.S.E. Complete _____
LOCATION	26454 16th Avenue South	

DESCRIPTION: Woodmont Elementary School proposed improvements include renovation of one turf soccer field as part of a multi-phased facility master plan.

EXPENDITURE SCHEDULE

COST ELEMENTS	TOTAL	FY 02	FY 03	FY 04	FY 05	FY 06	FY 07
ADMINISTRATION	1,700	1,700					
DESIGN/ENG	20,000	20,000					
BUILDINGS							
IMPROVEMENTS	115,166	115,166					
INSPECTION	9,000	9,000					
CONTINGENCY (10%)	14,870	14,870					
SALES TAX	11,264	11,264					
BOND ISSUANCE							
TOTAL	172,000	172,000	-				

FUNDING SOURCE	TOTAL	FY 02	FY 03	FY 04	FY 05	FY 06	FY 07
MCI	50,000	50,000					
Federal Way School Dist. Confirmed	57,000	57,000					
King Co. Confirmed	50,000	50,000					
DMMSC Confirmed	15,000	15,000					
TOTAL	172,000	172,000					

OPERATING COSTS							
PERSONNEL							
SUPPLIES							
UTILITIES							
CAPITAL							
OTHER							
TOTAL			7,000	7,000	7,000	7,000	7,000

CAPITAL IMPROVEMENT PLAN REQUEST FORM

CATEGORY	General Government	PROJECT NO.	
		Preliminary Estimate	X
PROJECT	Woodmont Elementary School	Plans in Preparation	
	Soccer Field Renovation Project	P.S.E. Complete	
LOCATION	26454 16th Avenue South		

JUSTIFICATION:

At City Council direction school field improvement projects have been created to foster new partnerships between the city, school districts, and citizen groups in Des Moines. Projects could include the acquisition, development or renovation of parks, sports fields, trails and recreation centers. Matching contributions could include in-kind donations of land, labor or facilities.

Woodmont Elementary School soccer field renovation in partnership with Federal Way School District and Des Moines Midway Soccer Club is proposed in this request.

The proposed sports field enhancements will improve a dangerous playing field, increasing facility safety, maintenance efficiency, accessibility, and maximize usable hours. The final design, plans, specifications, and estimates, site clearing and preparation, and construction will begin in 2002.

Maintenance costs for the project would be \$7,000 annually (not including utilities.)

**SCOPE OF WORK:
Drawing/Site Plan
Attached**

<u>Renovation Improvements</u>	
Turf Soccer Field- Woodmont Elem.	\$115,166
Sales Tax @ 8.8%	\$11,264
Design, Permits & Administration @ 12%	\$21,700
Inspection	\$9,000
Contingency	<u>\$14,870</u>
TOTAL	\$172,000

INTERLOCAL AGREEMENT
FOR DEVELOPMENT AND USE OF
THE WOODMONT ELEMENTARY SCHOOL SOCCER FIELD
BETWEEN
THE CITY OF DES MOINES AND
FEDERAL WAY PUBLIC SCHOOLS

THIS AGREEMENT is entered into between the CITY OF DES MOINES ("City") and FEDERAL WAY PUBLIC SCHOOLS ("District") (collectively known as "the Parties"), for the purpose of setting forth the terms and conditions under which the City and the District shall share in the development and use of the Woodmont Elementary School Soccer Field (the "Field") located at 26454 16th Avenue South, Des Moines, King County, Washington.

In consideration of the covenants and agreements set forth herein and the contributions, financial and otherwise, made by the parties for the construction and improvement of the Field, the District and City agree to share the planning, development and use of the Field as follows:

I. TERM AND TERMINATION

The term and conditions of early termination of this Agreement shall be as follows:

A. Unless terminated earlier as set forth below, the term of this agreement shall be for ten (10) years from the date of execution.

B. The City agrees to transmit funds to the District to pay for construction of the Field in the amount of \$35,000.

C.B. Subject to the early termination conditions set forth below, either party hereto may terminate this Agreement at any time by giving written notice to the other in accordance with section IX hereof at least ninety (90) days prior to the intended effective date of termination.

D.C. In the event of termination of this Agreement by the District before the end of the agreed ten (10) year term, then, subject to statutory and constitutional limitations then in effect, the District shall reimburse the City for the capital expenditures for improvements placed upon the Field by the City with the use of King County Funds. Such reimbursement shall be either:

4. ~~in~~ cash in an amount equal to the investment~~replacement~~ costs of that portion of the improvements paid for by the City and County, less depreciation thereon, ~~or~~

~~2.1. By redevelopment by the District of an equal facility within the Federal Way Public School District in the City of Des Moines planning area.~~

II. SHARING AGREEMENT

The City and District shall share site use, maintenance and operations responsibility for the Field as follows:

A. AVAILABILITY OF FACILITIES

1. Upon request and when not needed for the conduct of school programs, the District will make the Field available to the City's Park and Recreation Department for use in connection with community recreational programs under the supervision or control of the City. There will be no charge to the City for use of the Field unless such use requires additional custodial services, or agreed upon prorated utility charges or supplies. In this case the City agrees upon written invoice to reimburse the District its share of expenses for direct cost of operating the Field.

2. The first priority for use of the Field shall be District school events and programs, the second shall be youth recreation activities and programs of the City, and the third shall be any activities and programs of Des Moines Midway Soccer Club, and the fourth shall be other agencies or groups as may be approved or permitted by the District. The City shall use the Field for parks and recreational purposes only. The City may authorize groups, clubs, or organizations to use the Field for purposes authorized by this Agreement subject to District regulations and policies, and shall have the right to charge and collect reasonable fees from persons or entities other than the District for such uses.

3. On or before September 1 of each year during the term of this Agreement, the District shall give the City notice, in accordance with section X hereof, of its schedule for use of the Field. The District's scheduled uses shall have priority over the City's right to authorize use of the Field for other recreational purposes.

B. RESERVATIONS

1. The schedule of dates for use of the Field will be worked out in advance to avoid conflict between the City and the District. Once an event or activity is booked, every effort shall be made to honor the commitment. If, however, activities are in conflict, each party will notify the other as far in advance as possible. To ensure effective communication between City and District, the parties shall each provide annually, or on or

before September 1, a list of contact persons and phone numbers whose responsibilities are to schedule, maintain or program facilities. Reservations shall be booked according to each entities policy.

C. SUPERVISION AND STAFFING

1. Each party agrees to provide adequate adult personnel to supervise its activities that take place on the Field. ~~The adequacy of the level of supervision is subject to review by the other party. Either party may ask the other to clearly determine and define the role expected of a supervisor and/or staff.~~

2. Security and crowd control are the responsibilities of the party using the property, which party shall ensure that good order is maintained at all times. Such party assumes full responsibility for the conduct of persons involved in the party's activity or who are on the property with the consent of, at its invitation, or as a result of that party's activities. Such responsibility also includes cost of repair to or replacement of property damaged or destroyed by the act or omissions of the user, its agents, or invitee.

D. SPECIAL CONDITIONS:

1. Equipment and Supplies

The equipment used in the conduct of the programs shall, to the extent practicable, be furnished by the party using the Field. Each party will furnish and supply all expendable materials (except sanitation supplies) necessary for operating its programs on the Field. Any damage to such equipment will be immediately reported and a mutually agreeable method and amount of payment for replacement or repair determined.

2. Services and Utilities

The District shall furnish all necessary routine services and utilities except as otherwise specified in writing. The user will pay the costs of any extra janitorial services required as a result of their use of a facility.

3. Maintenance

The cost of maintaining and operating the Field and the improvements and equipment installed as part of the original Field project thereon shall be borne by the District. Maintenance costs shall be borne by the City when such maintenance involves extra costs to the District, unless maintenance duties/equipment are exchanged in lieu of payments. Game preparation and lining of tracks and fields will be done by the user unless other arrangements are made.

- a. The District shall maintain all improved soccer field turf areas, irrigation systems and drainage improvements at a level consistent with current District practices and allocation of assets.
- b. The District shall execute a use and maintenance agreement with Des Moines Midway Soccer Club that will provide additional terms concerning use and maintenance of the field for youth soccer purposes. Upon the full execution of such use and maintenance agreement by the parties thereto, the terms and conditions of such agreement shall be incorporated herein to the extent applicable (see Attachment C).
- c. The parties agree to jointly provide for litter control and refuse collection as needed and especially during times of active public use.
- d. The parties covenant to exercise best efforts to develop such additional joint operation and maintenance agreements as needed and as evolving circumstances may dictate, and in that regard, the parties agree to meet and confer as to maintenance and operations, by meetings between the City Parks, Recreation and Senior Services Director, or designee and Federal Way Public Schools Director of Facilities Services, or designee, on at least an annual basis, either party being entitled to call such a meeting.

III. LIABILITY

Each party agrees to indemnify, save and hold harmless the other and all its officers, agents and employees from any claims, costs, expenses or liability (including reimbursement for all legal costs and reasonable attorney's fees) for any and all claims for damages or injuries to persons, property or agents of the user which arise from its negligent or intentional acts or omissions. In the event of such claims or lawsuits, each party shall assume all costs of its defense thereof, and shall pay all resulting judgments that may be obtained against it or its agents or employees. Further, each party has insured against its own liability herein and will promptly notify the other of any material changes in such coverage.

~~Any claims for liability arising out of the failure to maintain facilities or keep them in good structural repair, unless such failure is caused by the acts of the user, its agents, employees or invitee, shall be the responsibility of the owner and the indemnification by the user herein shall not include such claims.~~

IV. INSURANCE

It is hereby understood and agreed that whenever either party to this agreement shall use, operate, occupy or have the care, custody or control of any facility owned by the other party, the party using the facility shall bear risk of loss or damage to the facility being used and shall obtain and maintain public liability insurance in an amount of no less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000) single limit liability. Each party hereto agrees to bear the risk of loss and agrees to indemnify the other to the extent of liability arising out of the party's use, occupancy, or control of the property. Each party shall provide the other party with a certificate of public liability insurance naming the other party as an additional insured and showing proof of the required insurance coverage. Insurance coverage shall be maintained at all times.

V. DISPUTE RESOLUTION

In the event of a disagreement between the City and the District on the interpretation of any provision of this Agreement, the City Manager and District Superintendent, or their designees, shall meet within thirty (30) days of notice of the problem to resolve the difference. The parties will endeavor to effectuate the full intent and purposes of this agreement and to resolve any differences through mutual cooperation to assure that such matters are handled in a timely and efficient manner. In the event the School District and City should reach an impasse as to any matter covered in this agreement, including interpretation of this agreement, the parties agree that such matters can be referred to the American Arbitration Association for arbitration to be conducted under its voluntary arbitration regulations. The decision of the arbitrator regarding any arbitral difference shall be final, conclusive, and binding upon the District and the City. The cost of the arbitrator shall be borne equally by the District and the City and each party shall bear the cost of presenting its own case.

VI. ANNUAL REVIEW

Each January, the District and City will meet to consider and recommend changes to this agreement that may be needed. Annual review participants will consist of the following: School District - District Superintendent or Designee(s), Activities Director and Director of Maintenance and Operations; City - City Manager or Designee (s), Director of Parks, Recreation and Senior Services and Park Manager. Any change to this agreement shall be presented to the appropriate governing bodies for approval.

VII. NOTICES

Any notice given by either party to the other under the provisions of, or with respect to, this Agreement, shall be in writing, delivered in person or by certified or registered mail to the following addresses:

City: City Manager
City of Des Moines
21630 11th Avenue South
Des Moines, WA 98198-6398

District: Superintendent
Federal Way Public Schools
31405 18th South
Federal Way, WA 98003

Or to such other address(es) as each party hereto may notify the other in writing.

VIII. TOTAL AGREEMENT/MODIFICATION

The Parties agree that this Agreement sets forth completely the terms of the Parties' agreement and understanding, that this Agreement supersedes any and all prior agreements or understanding, and that this Agreement cannot be modified without the express written consent of all Parties hereto.

IXI. NO CONVEYANCE

No real property interest in the Field is conveyed or conferred to the City by this Agreement, it being specifically understood by the parties that this Agreement does not create nor vest any interest in or title to the Field in the City.

X. COUNTERPARTS

This Agreement may be signed in counterpart originals.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on their behalf.

Dated this ____ day of
_____, 2003-2.

Dated this ____ day of
_____, 20032.

FEDERAL WAY PUBLIC SCHOOLS
By direction of its Board of Directors
Taken _____

CITY OF DES MOINES
By direction of the Des Moines City
Council
taken _____

By:

Tom Murphy
Superintendent

APPROVED AS TO FORM this
_____ day of _____, 20032.

By:

Title: General Counsel for
Federal Way Public Schools

By:

Tony Piasecki
City Manager

APPROVED AS TO FORM this
_____ day of _____, 20032. |

By:

City Attorney
City of Des Moines

ATTEST:

By:

Denis Staab, City Clerk
City of Des Moines

INTERLOCAL AGREEMENT
FOR DEVELOPMENT AND USE OF
THE WOODMONT ELEMENTARY SCHOOL SOCCER FIELD
BETWEEN
THE CITY OF DES MOINES AND
FEDERAL WAY PUBLIC SCHOOLS
ATTACHMENT A

Woodmont Soccer Field Site Map and Legal Description

INTERLOCAL AGREEMENT
FOR DEVELOPMENT AND USE OF
THE WOODMONT ELEMENTARY SCHOOL SOCCER FIELD
BETWEEN
THE CITY OF DES MOINES AND
FEDERAL WAY PUBLIC SCHOOLS

ATTACHMENT B

King County Contract No. D29843

INTERLOCAL AGREEMENT
FOR DEVELOPMENT AND USE OF
THE WOODMONT ELEMENTARY SCHOOL SOCCER FIELD
BETWEEN
THE CITY OF DES MOINES AND
FEDERAL WAY PUBLIC SCHOOLS

ATTACHMENT C

**Use and Maintenance Agreement between Federal Way Public Schools and
Des Moines Midway Soccer Club**

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: ACC Interlocal

FOR AGENDA OF: April 24, 2003

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: April 18, 2003

CLEARANCES:

[X] Legal

- ATTACHMENTS:
1. Email from Kelly Evans, Of ACC;
 2. ACC Memorandum to Participating Cities & Highline School District;
 3. ACC Interlocal Agreement for 2002; and
 4. 2003 ACC Interlocal Agreement Attachment A.

APPROVED BY CITY MANAGER

FOR SUBMITTAL:

PURPOSE AND RECOMMENDATION

Per Council's request, here is the updated ACC interlocal.

*Motion to approve ACC interlocal
payments to
ACC assessments
from gen fund
\$159000
↓*

From: Kelly Evans [kellye@nwlink.com]
Sent: Thursday, April 17, 2003 12:47 PM
Subject: ILA info



cover memo ila ACC2003 ACC2002.doc
2003.doc attachment A.do

Attached is the info on the ILA for 2003.

You have a cover memo that went to all City Managers in December (except Des Moines because I had it to mail and then the Council pulled the funding), Attachment A and the 2002 ILA, which is just being renewed (note the language in the cover memo).

Call me with questions.

Kelly
206-790-0276

Memorandum

To: Gary Long, City Manager, City of Burien
John McFarland, City Administrator, City of Tukwila
Tony Piasecki, City Manager, City of Des Moines
David Moseley, City Manager, City of Federal Way
Merlin MacReynold, City Manager, City of Normandy Park
Joe McGeehan, Superintendent, Highline School District

From: Kelly Evans, Administrative Consultant

Date: December 15, 2003

Re: ACC 2003 Interlocal Agreement

Enclosed please find two copies of the Attachment A to the Airport Communities Coalition Interlocal Agreement. Please give one to your City/District Clerk for the official record, and one to your City/District Attorney.

You will note that Attachment A indicates "2003 ACC Interlocal Agreement." In Section III. Duration and Conditions of Withdrawal, the 2002 Interlocal Agreement (ILA) states:

"This Agreement may be reviewed annually but shall remain in full force and effect from January 1, 2002 unless terminated or modified by separate agreement, pursuant to Section X.A., so long as at least two parties continue the operation of this Agreement."

Therefore, the 2002 ILA shall remain in effect for 2003 and you will not see a new version of the ILA. However, the new Attachment A provides you with funding details of each ACC member.

In addition, I am enclosing an invoice for payment of your full 2003 contribution. As previously discussed with each of you (except the City of Burien and the Highline School District), it is imperative that ACC receive full funding the first week in January 2003, in order to carry out its work program and meet its obligations throughout this coming year. Please process this invoice for immediate payment the first week in January.

We appreciate your support this past year. We've made a lot of progress and we have certainly earned the significant "wins" we now enjoy. We are confident 2003 will bring additional victories for each of our members and I encourage you to continue your resolve in this important effort. The sacrifices being made now will surely pay off and will ensure a vibrant and healthy community in the future. I look forward to working with each of you this coming year.

C:\ACC Data\I L A\cover memo ila 2003.doc

INTERLOCAL AGREEMENT, AIRPORT COMMUNITIES COALITION
January 1, 2002 through December 31, 2002

In accordance with the Interlocal Cooperation Act (Revised Code of Washington, Chapter 39.34) the City of Normandy Park, the City of Des Moines, the City of Burien, the City of Federal Way, the City of Tukwila, and the Highline School District (hereafter the "Parties"), each of which is a Washington Municipal Corporation hereby enter into the Agreement set forth.

RECITALS

1. The presence and operations of Sea-Tac Airport affect fundamental economic, social, physical and environmental characteristics of each Party.

2. The Parties believe that the presence of Sea-Tac Airport and other regional transportation facilities such as Interstates 5 and 405 and State Routes 509 and 518 and eventually a regional transportation rail line can have either negative or positive effects on the members depending on the manner in which adverse impacts are addressed.

3. The Parties hereto have expressed their opposition to the development of a third runway, and other system improvements leading to increased air traffic at Seattle-Tacoma International Airport and Boeing Field.

4. The Parties further believe that regional public transportation needs must be resolved on a regional basis and that only equitable solutions to those needs should be adopted. Additional air traffic at Seattle Tacoma International Airport and Boeing Field does not constitute equitable or responsible regional solutions. Equitable solutions are those which recognize that the impacts and the benefits of transportation projects are often not realized in the same community, therefore necessitating an attempt to equalize that disparity among affected communities.

5. The Parties believe that a collective effort, including the pooling of resources and the execution of this Agreement to express and administer policy matters, is the most effective and expeditious method of achieving the goals stated herein.

6. The Parties agree to promote the following goals:

A. To stop the construction of any additional runways at Seattle-Tacoma International Airport.

B. To achieve proper noise mitigation of schools with associated air quality and temperature controls.

C. To limit or reduce the number of flight operations in King County, at both Seattle-Tacoma International Airport and at Boeing Field, to a specific level and to eliminate night flights from 10:30 p.m. to 7:00 a.m.

D. To limit expansion of airport facilities in King County, at both Seattle-Tacoma International Airport and at Boeing Field, in order to prevent a significant increase in the number of flight operations which is likely to have substantial, adverse environmental impacts.

E. To seek revisions to the Four Post Plan which accommodate community concerns about overflights, including those which produce noise in areas outside the 65 dB DNL contour.

F. To develop and promote equitable solutions to regional transportation needs on a regional basis, working to develop mutually beneficial partnerships and agreements that promote economic development and protect the environment.

G. To improve abatement and mitigation of airport impacts on the Highline School District and member cities to this agreement.

H. To ensure that all past impacts from operations at Sea-Tac Airport and Boeing Field are fully mitigated. To support fair distribution among ACC members of public dollars for the mitigation of impacts from operations of Sea-Tac Airport and Boeing Field.

I. To participate in efforts to plan effectively, site appropriately and fully mitigate any regional surface transportation projects including RTA and extensions or improvements to State Routes 509 and 518, and I-5 and I-405.

J. To create an economic, political and social climate in which the parties can realize meaningful benefits from being neighbors of Sea-Tac Airport and Boeing Field and other regional surface transportation facilities which are consistent with the community objectives of these parties.

K. Such other and further related goals as may be determined by the Executive Committee.

NOW THEREFORE THE PARTIES HEREBY AGREE AS FOLLOWS:

I. DEFINITIONS AND USAGES

A. Each of the parties hereto shall be referred to as "Normandy Park", "Des Moines", "Burien", "Tukwila", "Federal Way", Highline School District or such other public agency as may be admitted.

B. "Airport Communities Coalition" hereinafter referred to as "ACC" is the entity created by this Interlocal Agreement.

C. "Executive Committee" means the assembly of representatives from the parties hereto, comprised of one representative, or one alternative, from each party hereto, the function of which is to administer the policy and purposes of this Agreement.

D. "Chair" means the presiding member of the Executive Committee, who shall be elected by the other representatives of the Executive Committee.

E. "Vice chair" means the member of the Executive Committee who shall be elected by the other representatives of the Executive Committee to preside in the absence of the chair.

F. "Treasurer" means the member of the Executive Committee who shall be elected by the other representatives of the Executive Committee responsible for reviewing and keeping the Executive Committee informed about the financial activities of the ACC and report to the Executive Committee on the yearly audit.

G. "Participate" or "participation" means the right of a party to vote on any matter submitted to the Executive Committee for a vote, upon payment of the minimum financial contribution specified hereunder.

H. "Public agency" means the ACC member cities and school district(s) impacted by the operation of the Sea-Tac Airport (see Eligibility Section).

I. "Operating expenses" means financial obligations, enforceable in law or equity, which have been incurred by the Executive Committee.

II. UNDERSTANDING AND PURPOSES

A. The Parties understand and agree to promote the goals set forth in the Recital 6 above and such other goals and policies as are determined by the Executive Committee.

B. The Parties agree and understand that they will rely on the Executive Committee's faithful and responsible representation of the parties' collective and individual interests in making decisions under this Agreement that mutually benefit the parties.

C. In furtherance of this Agreement the parties will:

1. Establish and maintain clear lines of communication through their representatives on the Executive Committee.

2. Coordinate participation in continued planning and environmental review processes concerning air transportation and environmental matters arising therefrom, both as to existing facilities, surface transportation projects or planned alternatives.

3. Prepare for and undertake litigation or other actions that may be required in order to further the parties' common objectives.

4. Conduct meetings of the Executive Committee in order to carry out necessary and proper functions of ACC as set forth herein.

5. Establish and fund a budget, with amendments thereto as necessary in order to carry on the activities of ACC. This operating fund shall be known as the "Operating Fund of ACC Executive Committee Joint Board."

6. The Executive Committee shall not acquire any real property. Personal property shall be acquired as necessary to carry out the purposes of this Agreement.

III. DURATION AND CONDITIONS OF WITHDRAWAL

This Agreement may be reviewed annually but shall remain in full force and effect from January 1, 2002 unless terminated or modified by separate agreement, pursuant to Section X.A., so long as at least two Parties continue the operation of this Agreement. Any party may withdraw from this Agreement prior to its expiration by delivering written notice to the Executive Committee. Following such notification the

withdrawing party shall remain liable for the full amount of its obligation to the ACC Operating Fund, as set forth in Section VII.A.

To assure compliance with each party's affirmative obligations set forth in section VIII.A, and to protect the confidentiality of the ACC's legal affairs, notice of a party's intent to withdraw from the ACC shall serve to immediately terminate the withdrawing party's right to participate in Executive Committee business, including votes. Further, a notice of withdrawal shall serve to eliminate the withdrawing party's right to attend any executive session held by the ACC or any of its committees or subdivisions, specifically including the Executive Committee.

Upon a party's notice of withdrawal, such party shall not be entitled to a refund of any payment previously made to the Operating Fund unless all parties remaining to the Agreement unanimously determine to terminate this Agreement. Upon such termination, the remaining assets of ACC, if any, will be divided in proportion to the Parties' respective contributions to the Operating Fund to the date of termination, as set forth under Section VII below.

IV. ELIGIBILITY

Eligibility to participate in this Interlocal Agreement ("ILA") shall be limited to any "public agency" as defined in the definition section of the ILA who demonstrates support for ACC's goals as outlined in the Recitals Section of the ILA. A public agency seeking to participate in this Agreement may be allowed to do so, upon approval of the Executive Committee, pursuant to the existing terms hereof and upon payment of an agreed amount by the member parties.

The Executive Committee by unanimous vote of all member parties may allow admission by a public agency on terms other than those set forth herein, including entitling said public agency to participate in ACC matters and specifically to vote on matters submitted to the Executive Committee.

The Executive Committee by unanimous vote of all member parties may allow admission by a public agency on terms other than those set forth herein, including entitling said public agency to participate in ACC matters but not entitling said public agency to vote on matters submitted to the Executive Committee. Any public agency so admitted shall be deemed an ex officio party hereto.

Admission of a public agency under the terms described in this section may be accomplished through separate agreement signed by all members and the agency being admitted.

V. CREATION OF AIRPORT COMMUNITIES COALITION (ACC) - EXECUTIVE COMMITTEE

There is hereby created the Airport Communities Coalition (ACC). This organization shall be a voluntary association of the parties hereto. The association shall be governed by the Executive Committee. The Executive Committee shall be comprised of one voting member from each party who shall be an elective official of such party.

The voting member of each party shall be duly selected annually by the legislative body of each party thereof. Each party shall similarly select an alternate voting member of the Executive Committee who shall serve in the absence of the voting member. Such alternate may be either an elected or appointed official of the party.

The Executive Committee shall approve, by unanimous vote of all member parties, decisions that are major policy decisions. Major policy decisions are defined as: 1) accepting or rejecting legal, financial or negotiated settlements, and 2) accepting new member applications or rejecting existing members. Prior to voting upon any negotiated settlement, all ACC Executive Committee members, or alternate(s) as the case may be, shall receive by governing Council or Board, resolutions from their respective jurisdictions authorizing approval or rejection of such settlement which shall be binding upon said representative. Any jurisdiction which fails to vote upon such resolution within 14 days of such proposed settlement shall be deemed to approve the vote or abstention of the representative to the Executive Committee. The Executive Committee shall approve by majority vote concerning the following, but not limited to: 1) to adopt and administer a budget, 2) hire or conclude consulting contracts, and 3) all other activities surrounding the daily operations of the ACC.

When there are an even number of voting members which results in a tie vote, the issue shall be remanded back to a smaller committee of the Executive Committee in an attempt to resolve the issue. This smaller committee will consist of one Executive Committee member each who voted for and against the contested measure and the ACC Executive Director or another ACC staff person. This committee will be required to report back to the Executive Committee within two weeks with an alternative resolution.

Regular meetings of the Executive Committee shall be held as determined by the Executive Committee. The Executive Committee shall elect annually by majority vote a "chair" to conduct its meetings, and may similarly elect a "vice chair" to serve in the chair's absence and a "treasurer" to review the financial activities of ACC. Neither the chair, vice chair nor treasurer shall forfeit, by virtue of their positions, any power

vested in him/her and shall continue to preside at the pleasure of a majority of the voting members of the Executive Committee, and may be replaced at any time.

A quorum for the conduct of business by the Executive Committee shall be a majority. Notice of any special meeting shall be circulated to all members of the Executive Committee by the chair, or upon the written notice of a voting majority of the Executive Committee not less than twenty-four (24) hours before such meeting is scheduled. No action will be taken without a quorum and without an absolute majority of the eligible voting members of the Executive Committee voting in favor of the matter under consideration. Executive Committee members may attend meetings and vote telephonically as may be necessary for the orderly and timely conduct of business. Written notice of any special meeting may be waived as to any member who at the time of the meeting is actually present or who has filed with the chair a written waiver of notice. The parties further agree and understand that the ACC Executive Committee may have executive sessions under RCW 42.30.110(i).

VI. PROFESSIONAL SERVICES

A. The Executive Committee may, from time to time, retain legal or other professional assistance or contribute to the retention by one of the parties of legal or other professional assistance to carry out the purposes of this Agreement. A contract or engagement letter shall be provided for each consultant so retained, which contract or engagement letter shall subsequently be marked as an Exhibit and incorporated into this Agreement, subject to all terms herein. All such contracts may be reviewed and updated annually for modifications or termination.

B. Information and materials developed by providers of professional services, who are retained and are compensated pursuant to the provisions of this Agreement, shall be made available to each party to this Agreement which has borne its share of the cost of providing such services in the manner provided herein, and to all parties admitted to membership in ACC pursuant to the provision of Section IV.

VII. SHARING OF COSTS

A. In order to pay such fees, costs, and other expenses as are incurred by the Executive Committee on behalf of ACC including costs incurred in connection with the retention of legal or other professional assistance, it is the intention of the parties to this Agreement that each party will make available to ACC consistent with the provisions herein, funds for ACC operating expenses as indicated in Attachment A.

B. Each party pledges its best efforts to approve appropriations providing for the sharing of costs specified in this Section VII, but no party shall be liable for any

monetary assessment unless and until the governing body of such party has appropriated funds for such specific purpose.

C. In the event that one or more of the parties to this Agreement fail to contribute to the sharing of costs in the amounts set forth above and in a manner consistent with provisions of this Agreement, the party in default will refrain from further participation in the Executive Committee's business, and its rights pursuant to this Agreement shall be suspended.

D. In the event one or more parties fail to ratify this Agreement or having initially ratified this Agreement and thereafter defaults or withdraws from this Agreement, the cost sharing for any outstanding or future operating expenses shall be adjusted following the elimination of the party or parties on a basis proportional to the annual amounts set forth above in Section "A", adjusted to allow for any other parties admitted pursuant to Section IV but not included in Section "A", above, and; provided that the annual financial obligation of the remaining Party or Parties shall not exceed that amount set forth above in Section "A", unless modified by subsequent agreement hereto.

VIII. COOPERATION

A. Each of the parties participating in, or otherwise admitted to, this endeavor shall cooperate with the ACC Executive Committee. In that regard, each party hereto, whether involved by participation, admission, or otherwise, hereby covenants and agrees that, in the event of withdrawal, each such party shall not sue, harass, or in any form or manner interfere with the entity created by this Agreement or with any of the remaining parties, except as necessary to obtain the return of funds as provided in Section III. This covenant shall specifically prohibit the sharing of any information obtained in any manner, directly or indirectly, as a result of the withdrawing party's involvement in ACC or otherwise pursuant to this Agreement unless otherwise required by public records law.

B. To accomplish the intent and purposes of the ACC, the parties expressly understand that legal proceedings may be pursued in various forums on behalf of ACC members. The parties recognize that legal proceedings are costly and complex endeavors and that it is necessary to assure that legal efforts are not compromised due to internal disputes and/or funding concerns. In this light, the parties hereby express their intent that legal matters shall be pursued in a manner consistent with policies and directives issued by the Executive Committee. Following initiation of any legal action authorized by the Executive Committee and filed on behalf of any or all coalition members, the parties expressly agree that, during the term of this Agreement, such matters will be conducted, resolved and/or settled as directed by the Executive

Committee. No party shall have authority to enter into any settlement or compromise of claims asserted by the ACC without the Executive Committee's acceptance and unanimous approval of such settlement, unless such party has terminated its participation, pursuant to Section III.

IX. INDEMNIFICATION

A. In executing this Agreement, the ACC does not assume liability or responsibility for or in any way release the Parties from any liability or responsibility which arises in whole or in part from the existence, validity or effect of city ordinances, rules or regulations. If any such cause, claim, suit, action or administrative proceeding is commenced, the Parties shall defend the same at their sole expense and if judgment is entered or damages are awarded against the Parties, ACC, or both, the Parties shall satisfy the same, including all chargeable costs and attorneys' fees.

B. ACC shall indemnify and hold harmless the Parties and their officers, agents, volunteers and employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, which are caused by or result from a negligent act or omission of the ACC, its officers, agents, and employees in performing services pursuant to this Agreement. In the event that any suit based upon such a claim, action, loss, or damage is brought against the Parties or the Parties and ACC, ACC shall defend the same at its sole cost and expense; and if final judgment be rendered against the Parties and their officers, agents, and employees or jointly against the Parties and ACC and their respective officers, agents, and employees, ACC shall satisfy the same.

C. The Parties shall indemnify and hold harmless ACC and its officers, agents, and employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, which are caused by or result from a negligent act or omission of the Parties, their officers, agents, and employees. In the event that any suit based upon such a claim, action, loss, or damage is brought against ACC or the Parties and ACC, the Parties shall defend the same at their sole cost and expense; and if final judgment be rendered against ACC, and its officers, agents, and employees or jointly against ACC and the Parties and their respective officers, agents, and employees, the Parties shall satisfy the same.

X. MISCELLANEOUS PROVISIONS

A. This Agreement shall be effective upon ratification by at least two of the Parties admitted pursuant to Section IV above. This Agreement may be amended only upon consent of all parties thereto. Any amendment hereto shall be in writing.

B. The waiver by any party of any breach of any term, covenant, or condition of this Agreement shall not be deemed a waiver of such term, covenant, or condition or any subsequent breach of the same of any other term, covenant, or condition of this Agreement.

C. Any party hereto shall have the right to enjoin any substantial breach or threatened breach of this Agreement by any other party, and shall have the right to recover damages and to specific performance of any portion of this Agreement.

D. This Agreement is solely for the benefit of the parties hereto and no third party shall be entitled to claim or enforce any rights hereunder except as specifically provided herein.

E. In all contractor services, programs or activities, and all contractor hiring and employment made possible by or resulting from this Agreement, ACC and the Parties shall abide by all federal, state, and local laws prohibiting discrimination.

F. The records and documents with respect to all matters covered by this Agreement shall be subject to audit by the Parties during the term of this contract and three (3) years after termination.

G. If any provision of this Agreement or application thereof to any party or circumstance, is held invalid by a court of competent jurisdiction, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are declared to be severable.

H. This Agreement shall be effective whether signed by all parties on the same document or whether signed in counterparts.

I. This Agreement supersedes the Interlocal Agreement entered into between the parties by signatures dated November and December 2000, and and January 2001.

CITY OF NORMANDY PARK

APPROVED AS TO FORM this _____
day of _____, 200 ____.

DATED this _____ day _____ of
_____, 200 ____.

By _____

City Attorney of Normandy Park

By _____

Merlin MacReynold

Its City Manager

At the direction of the Normandy Park
City Council by motion regularly passed
at an open public meeting on

_____, 200 ____.

CITY OF DES MOINES

APPROVED AS TO FORM this _____
day of _____, 200 ____.

DATED this _____ day _____ of _____, 200 ____.

By _____
Gary N. McLean
City Attorney of Des Moines

By _____
Robert L. Olander
Its City Manager
At the direction of the Des Moines City
Council by motion regularly passed at
an open public meeting on
_____, 200 ____.

CITY OF BURIEN

APPROVED AS TO FORM this _____
day of _____, 200 ____.

DATED this _____ day _____ of _____, 200 ____.

By _____

City Attorney of Burien

By _____

Gary Long

Its City Manager

At the direction of the Burien City
Council by motion regularly passed at
an open public meeting on
_____, 200 ____.

CITY OF TUKWILA

APPROVED AS TO FORM this _____
day of _____, 200____.

DATED this _____ day _____ of _____, 200____.

By _____
Robert F. Noe
City Attorney of Tukwila

By _____
Steve Mullet
Its Mayor
At the direction of the Tukwila City
Council by motion regularly passed at
an open public meeting on
_____, 200____.

CITY OF FEDERAL WAY

APPROVED AS TO FORM this _____
day of _____, 200____.

DATED this _____ day _____ of _____, 200____.

By _____
Bob Sterbank
City Attorney of Federal Way

By _____
David Moseley
Its City Manager
At the direction of the Federal Way City
Council by motion regularly passed at
an open public meeting on
_____, 200____.

HIGHLINE SCHOOL DISTRICT

APPROVED AS TO FORM this _____
day of _____, 200____.

DATED this _____ day of
_____, 200____.

By _____
David T. Hokit
Attorney for Highline School District

Joseph R. McGeehan
Its Superintendent
At the direction of the Highline School
District Board by motion regularly
passed at an open public meeting on
_____, 200____.

ATTACHMENT A

Invoices will be sent quarterly in advance for payment in equal installments or in total.

City of Normandy Park	\$300,000 per year for 2002
City of Burien	\$475,000 per year for 2002
City of Tukwila	\$ 50,000 per year for 2002
City of Federal Way	\$ 30,000 per year for 2002
City of Des Moines	\$ 25,000 per year for 2002

/krl

R:\Users\Kimberly\I L A\ACC2002.doc

2003 ACC Interlocal Agreement ATTACHMENT A

Invoices will be sent quarterly in advance for payment in equal installments or in total.

City of Normandy Park	\$200,000 per year for 2003
City of Burien	\$150,000 per year for 2003
City of Tukwila	\$ 50,000 per year for 2003
City of Federal Way	\$ 20,000 per year for 2003
City of Des Moines	\$150,000 per year for 2003

AGENDA ITEM

SUBJECT: Requiring All Incumbent Councilmembers Who Are Eligible to Participate Do So In Final Appointment to Vacant Council Position

ATTACHMENTS:
Draft Resolution No. 03-098

AGENDA OF: April 24, 2003

DEPT. OF ORIGIN: Legislative

DATE SUBMITTED: April 26, 2003

CLEARANCES:

[]

[]

[]

APPROVED BY CITY MANAGER
FOR SUBMITTAL: *[Signature]*

Purpose and Recommendation:

The purpose of this agenda item is to review and discuss Draft Resolution No. 03-098 which was contained in Councils Agenda Packet regarding the appointment process to be followed for the vacant City Council position.

Suggested Motion:

"I move to approve Draft Resolution No. 03-098 requiring full Council participation in the final appointment for the vacant Council position".

Background:

The draft resolution was contained in Council's packet at the March 27, 2003 meeting. Due to the length of that meeting, no discussion was held regarding the resolution. This draft resolution was introduced at the request of Councilmembers Sheckler, Thomasson and White to ensure that all Councilmembers be given the opportunity to vote on the final appointment of a new Councilmember.

CITY ATTORNEY'S FIRST DRAFT 03/19/03

DRAFT RESOLUTION NO. 03-098

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, relating to the appointment of a new Councilmember, requiring that all eligible incumbent Councilmembers be given the opportunity to vote on the final appointment of a new Councilmember to fill the vacant position.

WHEREAS, Councilmember Don Wasson resigned from the Des Moines City Council, effective March 13, 2003, and

WHEREAS, the Des Moines City Council must appoint a new Councilmember pursuant to the procedures set forth in Des Moines Council Rule 33 and controlling state statute, and

WHEREAS, these required procedures will take some time to implement, and there is the possibility that not all Councilmembers may be able to be in attendance for all steps of these required procedures, and

WHEREAS, the Des Moines City Council has ninety days from March 13, 2002, that is, until June 11, 2003, to appoint a new Councilmember, and

WHEREAS, fairness to all applicants, the public, and incumbent Councilmembers requires that all eligible incumbent Councilmembers be given the opportunity to vote on the final appointment of the new Councilmember; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES RESOLVES AS FOLLOWS:

The Des Moines City Council shall not vote to appoint a new Councilmember unless all incumbent Councilmembers who are eligible to participate in the vote are present at the meeting at which the vote is taken.

ADOPTED BY the City Council of the City of Des Moines, Washington this ____ day of _____, 2003 and signed in authentication thereof this ____ day of _____, 2003.

M A Y O R

Resolution No. ____
Page 2 of ____

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

DRAFTRES:03-098

4/15/03 1:51 PM

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Modification of the Lease Agreement
with Classic Yachts.

ATTACHMENTS:

Draft Lease with Modifications.
Exhibit "A" showing slip L-08 and
additional leased area.

FOR AGENDA OF: April 24, 2003
DEPT. OF ORIGIN: Marina

DATE SUBMITTED: April 17, 2003

CLEARANCES:

[X] Marina

[X] Legal

APPROVED BY CITY MANAGER

FOR SUBMITTAL:

A. Purpose & Recommendation

The purpose of this Agenda Item is to gain Council approval for modifications to the lease between the City and Classic Yachts, Inc. *This item was discussed at the March 17th Council meeting.* **At that meeting, Council members expressed concerns about the City's ability to make modifications to this lease in the future, if it became necessary to do so because of the improvements planned for the Marina. The City Attorney and Mr. Reece negotiated the new language contained in Sec. 4 of the draft lease agreement. It is the staff's opinion that the new language will allow the City the flexibility to make changes in the lease if it becomes necessary to do so.**

Suggested Motion: "I move that the City Council approve the lease agreement with Classic Yachts, Inc., with the modifications as shown, and authorize the City Manager to sign the lease substantially in the form as submitted."

B. Background

In April of 2001, the Council approved a lease between the City and Classic Yachts, Inc., a yacht brokerage operated by Jerry and Cathy Reese, who are residents of Des Moines. At that time, the lease conveyed the right to use slip L-02, where their office is located, and slips M-46, I-04, L-01, and L-10.

C. Discussion

Slip L-08, which is the next slip out from L-02, where Classic's office is moored has always been a problem because of its proximity to the entrance to the travel lift pier, (see, Exhibit "A").

L-08 is a 36-foot open slip, but the Marina has always rented it as a 28-foot open slip and limited the length of the vessel placed in the slip to approximately 31 feet. Even at the reduced length, conflicts still occur, and generally, tenants that are assigned to L-08 want to trade out of it as soon as they can. When the last tenant in L-08 told the office that they wanted to move, the Marina staff approached Classic Yachts and offered to exchange L-08 and the north side of L Dock between L-02 and L-08, for their 28 foot covered slip on I dock, I-04. Both parties would benefit from this trade. Classic would have almost all of their slips located on the same dock near the office, plus the use of about 20 feet of additional space, and the Marina would have the use of an additional 28 foot covered slip, which would result in a net increase in revenue. The additional space along the north side of L dock that would be included in Classic's lease has never been rented out as a moorage space.

D. Alternatives

Alternative 1. Accept the recommendation of the recommendation of the staff and authorize the modifications to the lease with Classic Yachts.

Alternative 2. Direct the staff to maintain the lease in the present form.

E. Financial Impact

Under the terms of the modified lease, Classic's rent would remain the same, \$1,197 per month plus leasehold tax. Even though they would be trading a 28 covered slip for a 28 open slip, they would gain the use of that part of the north side of L Dock between L-02 and L-08 to use to moor consigned boats for sale. Under the terms of the modified lease, the Marina would have a net increase of about \$500 per year, which is the difference between the annual rent for a 28 foot open slip and a 28 foot covered slip.

F. Recommendation

The Marina staff recommends approval of the lease with Classic Yachts, as modified.

G. Concurrence

The City Attorney concurs with these changes.

LEASE FOR MARINA FACILITIES

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

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

(2) Use of Other Marina Facilities. In addition to Slip L-02, the Lessor shall have the use of Slips M-46, ~~((I-04))~~ L-01, L-08, ~~((and))~~ L-10, and the north side of the L Dock's main walkway between L-02 and L-08 for the purposes of conducting a boat brokerage and sales business. The following conditions shall apply to the use of the slips.

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

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

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

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

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

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

reach agreement concerning such modification, the dispute shall be submitted to mediation and arbitration under the terms of Paragraph 20 of this lease.

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

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

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

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

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

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

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

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

(11) Permitted Uses.

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

(b) Slips M-46, ((L-04)), L-01, L-08, ((&)) L-10, and the north side of the L Dock's main walkway between L-02 and L-08 – moorage for vessels owned or consigned to Lessee for the purpose of selling such vessels.

(12) Restrictions on use of Leased Premises.

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

(b) The dock structure where the premises are moored, (L-02), may be structurally modified by Lessee only after prior written consent of Lessor. All additions and modifications permanently attached to structures shall be at the expense of Lessee and shall become the property of Lessor at the termination of this Lease and any extension thereof. Any non-attached additions, lighting fixtures, furniture and trade fixtures ever added by Lessee, which are removable without injury to the premises, shall be and remain the property of Lessee. Lessee may modify slips M-46((, L-04,)) ((L-08)) or L-10 only after prior written consent of Lessor. Only such modifications that would normally be approved under the current Rules and Regulations of the Des Moines Marina will be allowed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(21) Default.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(22) Cancellation by Lessee. Lessee shall have the right to cancel this Lease upon ninety (90) days written notice. During such ninety-(90) day period the parties shall enter into a cancellation agreement defining the rights and duties of the parties upon cancellation of this Lease. There shall be two (2) mandatory provisions contained in the cancellation agreement: (1) following the ninety (90) day notice period, Lessee shall have no further obligation to pay rent, (2) on the effective date of the ninety (90) day notice, Lessee shall vacate the premises and Lessor shall have the right to re-enter and re-let. As to any other term of the cancellation agreement, should the parties be unable to agree on any provision, it shall be submitted to arbitration as provided in paragraph 20 herein.

(23) Conversion of Slip. If the Lessee cancels this Lease following the procedure set forth in paragraph 22, or if the Lessee assigns this Lease as part of the

//

//

//

//

//

//

//

//

//

//

//

//

sale of the underlying business, or if the corporation is sold, the Lessee shall have the option to convert and retain one slip listed in this agreement for the personal use of

Jerry or Cathy Reece.

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

LESSEE: Classic Yachts, Inc.

LESSOR: City of Des Moines

By: _____
Jerry Reece, its President

By: _____
Anthony A. Piasecki, Its City Manager

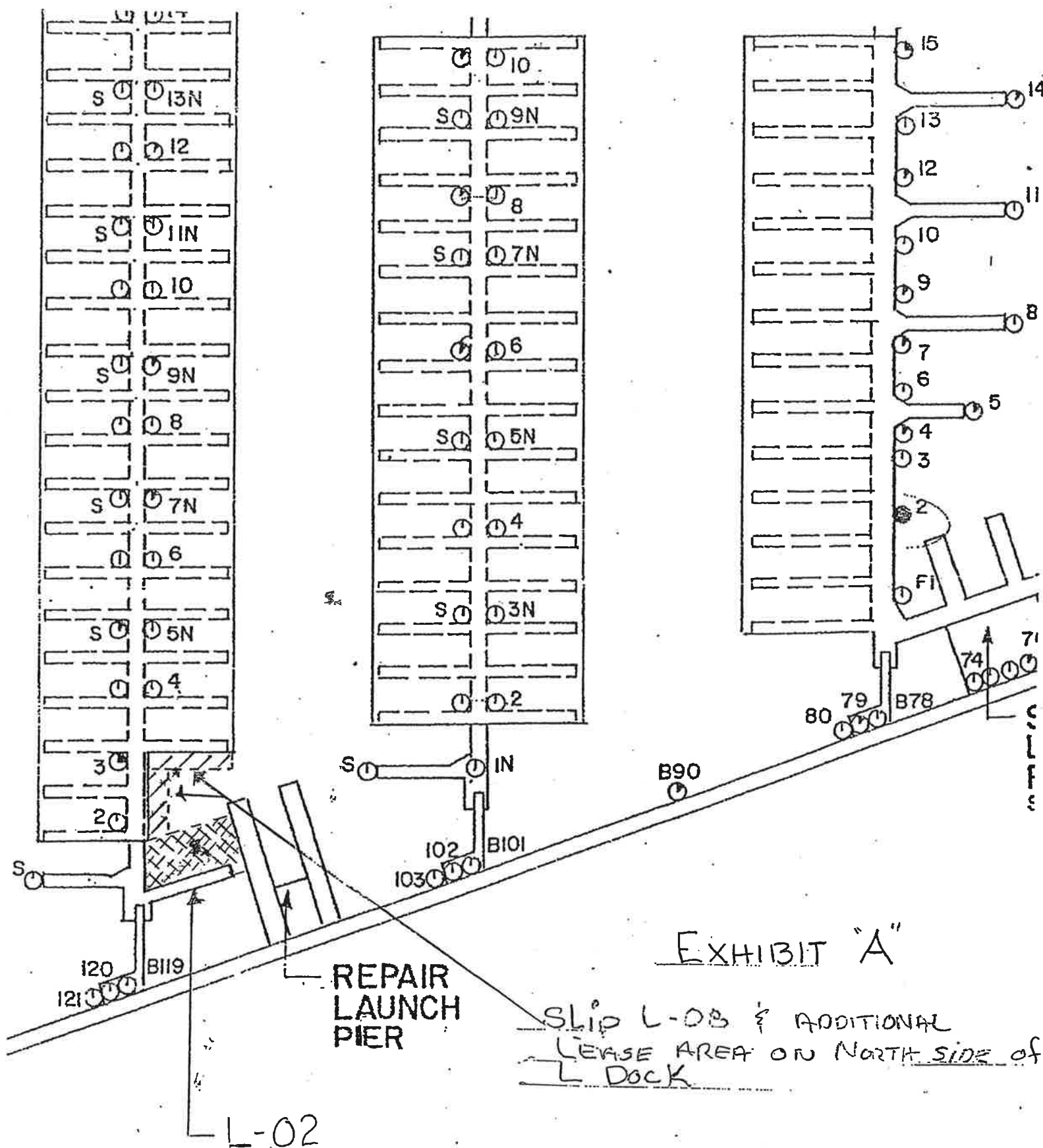
At the direction of the City Council by
motion regularly passed in its open
public meeting on _____, 2003.

Date: _____

Date: _____

↓ "L" Dock

← "M" Dock



AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

*Confirmed
to S/S
a by name*

SUBJECT: 2003 Waterland Festival

FOR AGENDA OF: April 24, 2003

DEPT. OF ORIGIN: Marina

ATTACHMENTS:

City Attorney's First Draft of Resolution
No. 03-088

DATE SUBMITTED: April 18, 2003

CLEARANCES:

"Alternative Sec. 4"

[X] Marina

"Alternative Sec. 5 and Sec. 6"

[X] Legal

Cover Letter From Greater Des Moines
Chamber of Commerce

Plan of Festival Layout

Minutes of Chamber/Condo owners
meeting

Memo – Waterland Costs for 2002.

APPROVED BY CITY MANAGER

FOR SUBMITTAL:

A. Purpose & Recommendation

The purpose of this presentation is to inform the City Council about the plan for this year's Waterland Festival and to present the Chamber of Commerce's request for the Council's approval for the use of City Property for the 2003 Festival.

Recommended Motion

"I move that the City Council adopt Resolution NO. 03-088 authorizing the Greater Des Moines Chamber of Commerce to conduct its 2003 Waterland Festival and listing conditions under which such permission is granted"

B. Background

Each year in July the Greater Des Moines Chamber of Commerce conducts the Waterland Festival and Parade. The Festival takes place on City owned property in the Marina and the Beach Park and the Parade takes place on City streets in the downtown area. To conduct the festival, the Chamber must get permission from the City Council in the form of a resolution.

C. Discussion

Draft Resolution NO. 03-088 is essentially the same as last year's resolution. The only difference is a change in the hours of operation for the festival. This year the hours of operation are listed in the resolution as 11:00 a.m. to 12:00 midnight on Wednesday, July 23rd, 11:00 a.m. to 11:00 p.m. on the following Thursday, Friday and Saturday, and 11:00 a.m. to 8:00 p.m. on Sunday, July 27th.

This year, the Chamber is planning to return to the layout used for the 2001 Festival. The food vendors will be located in the central parking lot east of the boat launch, and the carnival rides will be located in the north parking lot. The Arts & Crafts will be located in the Beach Park, in front of the Rotary Hole-in-One golf island. The parking lot will be managed as before, with a \$5.00 fee for parking in the general parking area. The north end of the lot will be reserved for Marina tenant parking.

C. Alternatives

The Council has the option of adopting Draft Resolution NO. 03-088 as submitted or adding language to the resolution that responds to the concerns expressed by some Council Members about the Festival's cost to the City. The Staff has included two possible changes to the Resolution in the packet for purposes of discussion. The attachment labeled "Alternative Sec. 4" would add language to Sec. 4 of the Draft Resolution that would require the Chamber to reimburse the City for all costs of City Services except those associated with the parade. The attachment labeled "Alternative Sec. 5 and Sec. 6" would add language to the Draft Resolution that would require the Chamber to disclose the financial details of the Festival and all other Chamber operations. In this alternative, Sec. 6 is the former Sec. 5, with the same wording.

D. Financial Impact

Last year the Council directed the staff to track and report the costs incurred by the City for helping to prepare for and stage the Waterland Festival. Those costs were summarized and reported to the Council last year. (See attached memo). Generally, the City incurred indirect costs of about \$14,000 and direct costs of about \$35,500. Indirect costs are those regularly scheduled hours that City employees spent facilitating the Festival. The City would have paid for these hours anyway. Direct costs are those over-time hours that the employees spent working on the Festival. Typically, these are hours spent by the Police Department providing security for the Festival. The total cost of security is driven by the number of police reserves that are available. The Police command staff tries to use as many reserve hours as possible, because the Chamber budgets \$10,000 for security and pays the reserves directly. If any of the budgeted funds are left after paying the reserves, the balance is given to the City. Off-duty officers provide the remainder of the hours needed for security, usually on over-time. Obviously, it is an advantage to the Chamber and the City to use as much reserve officer time as possible. There was also a small amount, (less than \$500), of equipment and material cost reported in 2002.

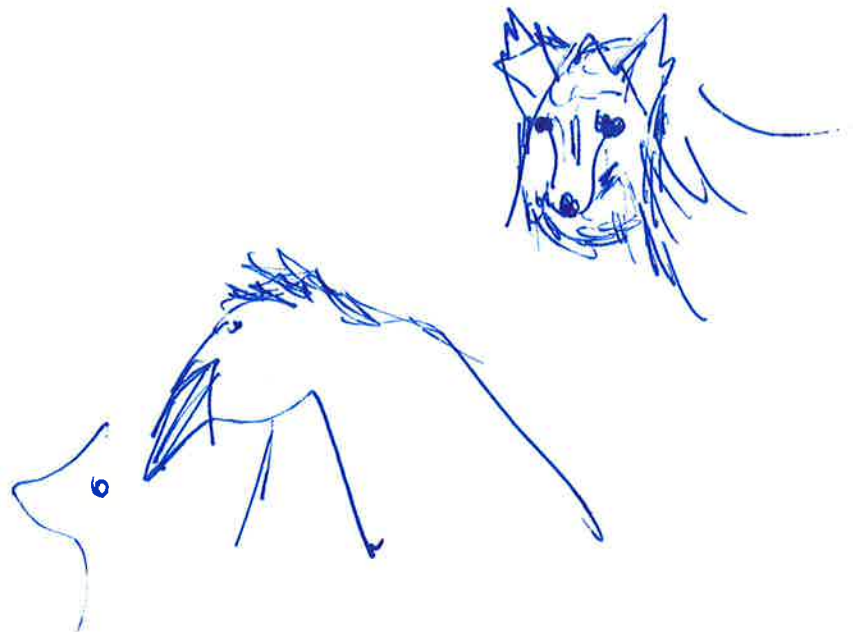
There were some revenue impacts for the Marina operation, but they are harder to quantify. As in the past, the public launch was shut down for the week of the Festival, and there was a corresponding loss of revenue. This loss was offset somewhat by increases in fuel sales. Guest moorage revenue was down for that week also, but it was down all season last year.

Some Council Members have expressed concerns about the costs to the City for the Festival. The staff has met with the Chamber to discuss some options for reducing those costs. One option would be to reimburse the City for more of its direct expenses. Another option would be to reduce the indirect costs. Unfortunately, most of the direct costs are related to security, which

is the responsibility of the Police Department and not controllable by the Chamber. Some of the indirect cost is related to clean up in the Marina and the downtown area. If the Chamber could assume those duties, indirect costs could be lowered significantly, although that would not result in a direct savings to the City, because those employees would be working anyway. Some of the indirect costs are related to the parade. The parks and public works crews have to sign and barricade the parade route. For liability reasons, these are duties that are not easily assumed by the Chamber.

E. Recommendation

F. Concurrence



CITY ATTORNEY'S FIRST DRAFT 03/11/03

DRAFT RESOLUTION NO. 03-088

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, authorizing the Greater Des Moines Chamber of Commerce to conduct its 2003 Waterland Festival and listing conditions under which such permission is granted.

WHEREAS, the City Council finds that the Waterland Festival, a continuation of an annual community event begun in 1919, enhances the quality of life for all residents of the City of Des Moines, and

WHEREAS, the Greater Des Moines Chamber of Commerce ("Chamber of Commerce") as sponsor of the event carries out all activities as a Chamber of Commerce function, and

WHEREAS, the City of Des Moines wishes to permit the Waterland activities of the Chamber of Commerce while at the same time being held harmless from any liability arising from the existence of such activities; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES RESOLVES AS FOLLOWS:

Sec. 1. Permission to conduct the 2003 Waterland Festival during the period July 23, 2003 through July 27, 2002 is granted to the Chamber of Commerce, subject to the following conditions:

(1) That the Chamber of Commerce shall defend and hold the City of Des Moines harmless from any liability which may result from the conduct of the Waterland event or its activities.

(2) That the prime leadership of all Waterland committees shall be non-City personnel and that it be clearly understood that assistance by City personnel is advisory to the Chamber of Commerce.

(3) The Chamber of Commerce shall purchase liability insurance in the amount of two million dollars (\$2,000,000) and shall name the City of Des Moines as a named additional insured. Proof of such insurance must be delivered to the City ten (10) days prior to the event.

(4) The Chamber shall be permitted to erect such special signage as is appropriate in the thirty (30) days prior to and during the event. The Chamber of Commerce must remove all such signage within ten (10) days after the final day of the Waterland Festival.

(5) Normal fees for conduct of a community event shall be waived where possible excepting those fees required by another governmental agency, provided the event subject to such permit or fee is fully sanctioned by the Chamber of Commerce and complies with all necessary requirements including health regulations.

(6) The Chamber of Commerce shall acknowledge in writing its responsibilities for the conduct of Waterland activities accepting such limitations as are contained in this resolution in addition to such limitations as may be imposed by the City Council or City Manager, including but not limited to:

(a) The City Manager is authorized to close the boat launch facility at the Des Moines Marina during the Waterland Festival for the purpose of public safety

(b) The Chamber of Commerce agrees to take whatever measures are necessary to prevent damage to the Marina facility and to be responsible for any damage which may occur.

(c) The hours of operation of the festival shall be as follows:

11:00 a.m. to 12:00 midnight	↗	Wednesday
11:00 a.m. to 11:00 p.m.	↗	Thursday, Friday and Saturday
11:00 a.m. to 8:00 p.m.	↗	Sunday.

A Des Moines Police Department command officer will have the authority to close the festival down earlier should it be necessary following assessment of any security issues.

(d) The Waterland Pub shall be closed at 11:30 p.m. on Wednesday; 10:30 p.m. on Thursday, Friday and Saturday; and 7:30

6
.75
450

p.m. on Sunday; or earlier at the discretion of a Des Moines Police Department command officer.

(e) The Chamber of Commerce will use all reasonable efforts to advertise the festival as a family-oriented community festival.

(f) All retail sales of food and merchandise will be subject to permission of the Chamber of Commerce and fees collected by the Chamber of Commerce by such licensing shall include a percentage for security services to be provided by the Des Moines police department.

(g) ~~The Chamber of Commerce shall pay such sums for security as are determined by the City Manager,~~ based on projected police services, which shall include funds collected by the Chamber from the carnival operator.

(h) The Chamber of Commerce shall be authorized to contract with a private business to regulate and charge for parking, which charge shall not exceed five dollars (\$5.00) per vehicle per visit.

(i) To enhance the security of the patrons of the festival, the Chamber of Commerce shall be authorized to fence the main festival grounds in the Marina, with entrance gates located at the north and south ends of the festival. The gates will be staffed by Chamber of Commerce personnel at all times. A general admission fee will be charged as follows:

General Admission	\$1.00
Seniors (62 and Over)	\$.50
Children (Under 12)	Free

Sec. 2. The City Manager is authorized, at his discretion, to grant permission to the Chamber of Commerce to use and occupy for the purpose of the Waterland Festival City facilities and property, including, but not limited to, the Des Moines Marina, City parks, and public rights-of-way.

Sec. 3. The City Manager is directed and authorized to issue to the Chamber of Commerce, without cost, a right-of-way permit for the Waterland parade.

Sec. 4. The City Manager is authorized to provide City assistance to the Waterland Festival, which may include, without limitation, services by the police, public works, parks, and marina departments. The City Manager shall provide a report to the City Council on services provided and costs thereof.

Sec. 5. Permission is granted for the Chamber of Commerce to utilize the official City of Des Moines logo in connection with the annual Waterland Festival.

ADOPTED BY the City Council of the City of Des Moines, Washington this ____ day of ____, 2003 and signed in authentication thereof this ____ day of ____, 2003.

M A Y O R

APPROVED AS TO FORM:

Acting City Attorney

ATTEST:

City Clerk

ALTERNATIVE SEC. 4

Sec. 4. The City Manager is authorized to provide City assistance to the Waterland Festival, which may include, without limitation, services by the police, public works, parks, and marina departments. The City Manager shall provide a report to the City Council on services provided and costs thereof. The Chamber of Commerce shall reimburse the City of Des Moines for the costs of the City services provided in connection with the Waterland Festival. [except for those services provided in connection with the Waterland Parade.]

ALTERNATIVE SEC. 5 AND SEC. 6

Sec. 5. To ensure that the expenditure of City funds in support of the Waterland Festival is in compliance with the requirements of the Washington State Constitution prohibiting gifts of public funds, the Chamber of Commerce shall, within sixty (60) days after close of the Waterland Festival, provide the City of Des Moines with a complete accounting of the revenues and expenses of the Festival; and shall, within sixty (60) days after close of the Chamber of Commerce fiscal year, provide the City of Des Moines with a complete accounting of the overall revenues and expenses of the Chamber of Commerce.

Sec. 6. Permission is granted for the Chamber of Commerce to utilize the official City of Des Moines logo in connection with the annual Waterland Festival.

ADOPTED BY the City Council of the City of Des Moines, Washington this ____ day of _____, 2003 and signed in authentication thereof this ____ day of _____, 2003.

M A Y O R

APPROVED AS TO FORM:

Acting City Attorney

ATTEST:

City Clerk



April 18, 2003

City Council Members
City of Des Moines
21630 11th Avenue South, Suite A
Des Moines, Washington 98198

Re: Waterland Festival Resolution

Dear Council Members:

We respectfully submit herein our Resolution to the City of Des Moines for your consideration, support and approval.

Enclosed please find a diagram detailing the marina floor layout and the proposed changes to the Waterland Festival floor plan. In an effort to best serve the City, community, and our vendors we propose the following changes to last years program.

- Arts & Craft Site** Located outside the North entrance, partnering in the same location as the Rotary "Hole in One" fundraiser.
- Benefit:** The Arts & Crafts vendors will have increased visibility and traffic to their site. Additionally, "Hole in One" and the Arts & Crafts fair will compliment each other.
- Pub & Eatery:** Will be set up on the dock, North of the Harbormaster office extending out to the curb.
- Benefit:** Still a prime location on the waterfront overlooking the boat moorage, in view of the entertainment stage and away from the entrances.
- Carnival Rides:** Will be staged in the North and Northwest parking lot area of the marina.
- Benefit:** The large carnival rides will be located to the far west with the carnival game booths along the east. This will reduce the noise level affecting the condominium residents.
- Entertainment Stage:** The stage will be erected in front of the Harbormaster office in the parking lot on the Northwest diagonal facing the Pub & Eatery.
- Benefit:** This location will protrude the noise away from the condominium residents, yet will still be in a prime location to entertain the audience.

Traffic Management Issues:

1. All vendors will enter and exit from the South parking lot.
Benefit: Reduce the congestion and noise.
2. In order to expedite crowd access, there will be two ticket booths located at the North parking lot entrance and one on the South entrance on Wednesday night. One of the North booths will be for exact change and prepaid tickets. Ticket booths will be promptly removed at the end of the Festival.
Benefit: Facilitate crowd entrances on opening night; and reduce teardown time at closure.
3. A shuttle will be available to transport patrons from Highline Community College parking lot to the Festival. Additional emphasis will be placed on advertising this service.
Benefit: Alleviate traffic congestion and ease the management of traffic on the marina floor parking.
4. Condo residence access lane will be provided and limited to their use and that of official vehicles.
Benefit: 24-Hour access to the residents without the inconvenience of waiting in line. Facilitate any potential emergency rescue to the residents.

We have established a community volunteer Waterland Committee (see enclosed organization chart) to assist in the successful management of the Festival. The specific issues addressed in this letter will be assigned to the appropriate chair representative who will have full authority to carry them through.

As sponsors of the Waterland Festival, we at the Chamber of Commerce too have felt the impact of our economy. Living in the beautiful Pacific Northwest we absorb the risk that our Festival may be rained out; thus suffering financial reproactions. Naturally, we are sensitive to the City's investment of their support of this event. As in any endeavor, we must exercise good business practices. The Chamber of Commerce has graciously accepted the support of our community organizations without question or input as to scheduling, supervision or management. We have reviewed the costs reported by the City personnel however it did not include a pre-Festival projected cost of service forecast and a comparison thereof. With the added fencing in 2002 and the Police Department's report that no unusual activity occurred, we too question the validity of the scope of security provided. Perhaps a full review of this process should be discussed. We want to minimize any financial burden the Festival could pose on the City; it's citizens or the

Chamber. So the only possible solution is for all parties involved to meet and discuss the financial impact of the Festival and how we can reduce the operating costs.

In summary, we all know what is best...the Waterland Festival is good for our community. The only question is, "can we work together to make it a success?" The Chamber of Commerce and Waterland Committee believe we can! Open communication, community participation and teamwork are the key.

We respectfully request that you vote "yes" to the Waterland Festival on April 24th with a joint commitment that we will meet to address the financial impact and implementation of a plan for success.

Respectfully yours,

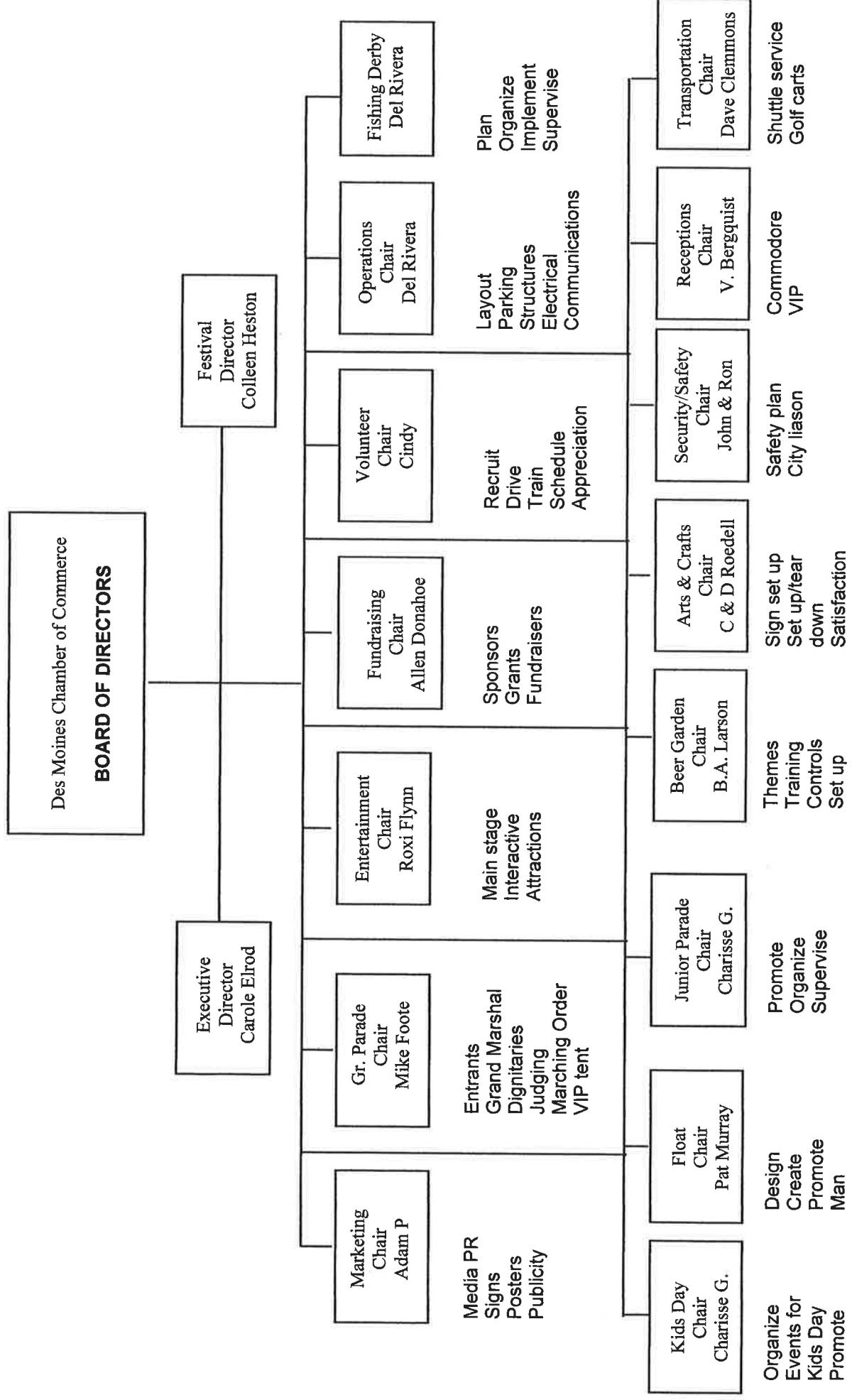
DES MOINES CHAMBER OF COMMERCE

A handwritten signature in cursive script that reads "Carole Elrod".

Carole Elrod
Executive Director

Enclosures

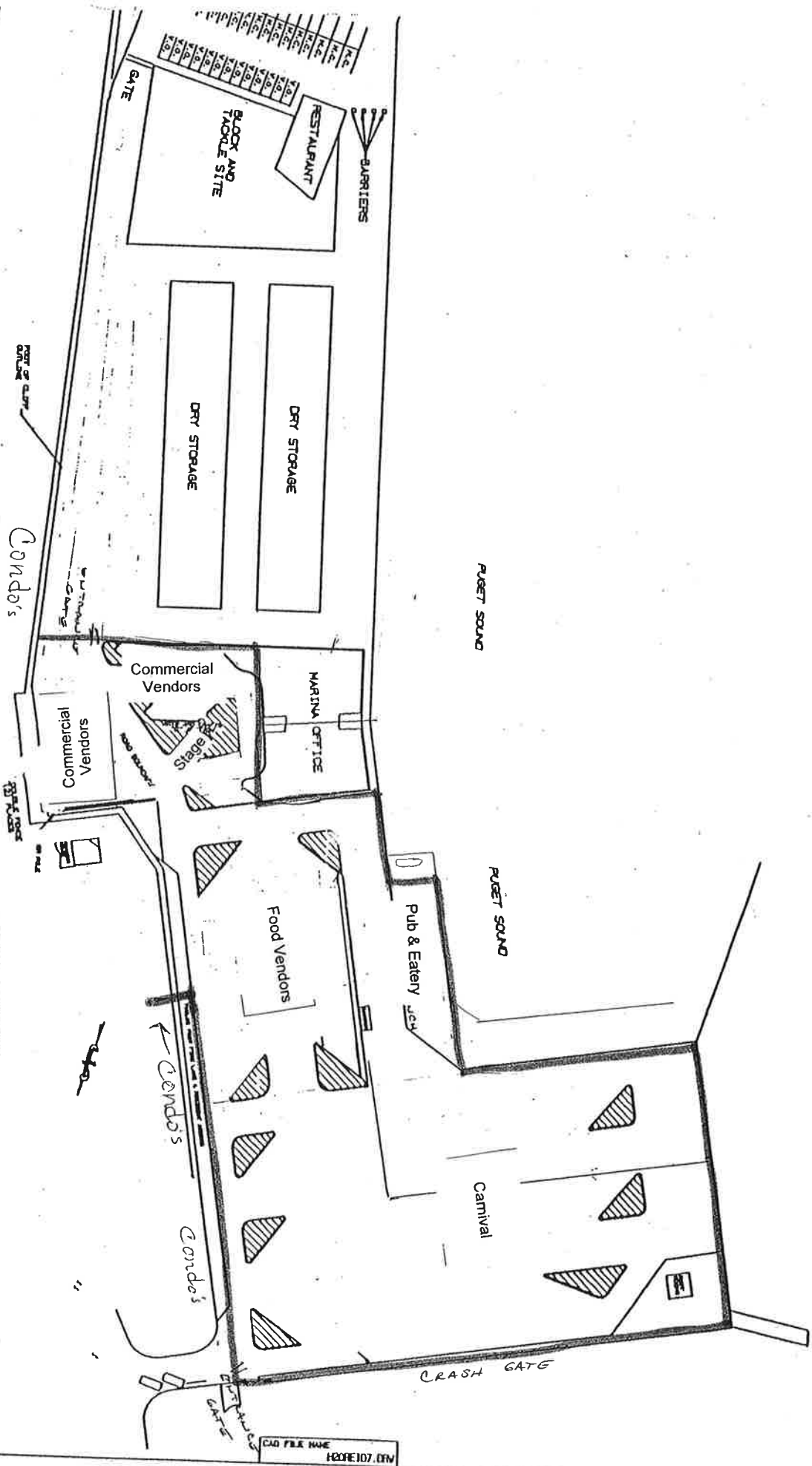
WATERLAND FESTIVAL COMMITTEE ORGANIZATION



WATERLAND LAYOUT-DESMOINES MARINA
1985 WATERLAND FESTIVAL

Condors

1" = 50'



COUNCIL - FYI

City of DesMoines
21630 11th aver so
DesMoines Washington 98198

April 14th 2003

Attn: City manager/City of DesMoines Council

Re: Waterland Festival yearly Notice of Application

To whom it may concern:

As the presiding officer of the DesMoines chamber of commerce representing the DesMoines business district for over 50 years and sponsors of the annual city of DesMoines Waterland festival I am formally requesting council approval for use of the DesMoines marina for the dates of July 23rd thru July 27th, marine view Dr on Sunday July 27th for the annual waterland grand parade and of the 2003 waterland festival and resolution 03-088 as offered to the chamber by the city attorney on 03/11/03 including resolution revisions as agreed.

The dates of July 23rd thru July 27th are actual festival operation dates with the normal time (approximately 2 to 3 days) pre festival and post festival for set up and takes down of festival carnival.

In lue of certain concerns expressed by the condominium owners located on and around the marina floor I have appointed a chamber/ condominium liaison (Ms. Arlene Knight, a condo owner) to represent the condominiums residents concerns and requested the representative to bring these concerns to a meeting on wed the 8th of April and discuss these potential concerns arising from any potential impacts to surrounding residents.

The meeting was held at the DesMoines police dept and attended by members of the chamber and the condominium appointee.

All parties involved approved the festival layout and agreed that the changes agreed to by the parties involved would be acceptable to the residents.

The chamber realizes the financial impacts that events such as the waterland festival, haunted house, Fourth of July fireworks, 5 k run, 3 on 3-basketball tournament, and other city of DesMoines events may have on its citizens and taxpayers. We respectfully submit that the investment by our taxpayers regarding community offered events regardless of the sponsoring group are looked upon favorably by the council and that our taxpayers surely would have no problem with the city assisting the chamber and the many waterland volunteers in the presentation of these events and other events in our community and the greater DesMoines area, as has been the practice of our city for the last several decades.

RECEIVED
03 APR 16 PM 1:35
CITY OF DES MOINES

Copy: Corbett
Joe
Linda
Patrice
John O.

Any of the above listed events and their sponsors will remind you of the importance of offering our voters, taxpayers and citizens including their family and friends in the surrounding communities a wide variety of events to enjoy throughout the year.

The loss of the annual waterland festival (a community event sponsored by the DesMoines chamber of commerce for over 30 years) would be a terrible loss to not only our community and our citizens but to the surrounding communities as well.

This annual" Seafair sponsored waterland festival" has attracted approximately 1.5 million people to our community and our business district over the last several decades and we respectfully submit that our taxpayers and citizens would be greatly disappointed in our elected officials and city staff if our community festival were discontinued.

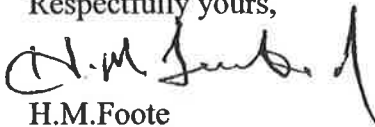
The chamber like the other event sponsors mentioned above are attempting to give something positive for our community to enjoy and I am sure that any of the above event sponsors would agree that the accountability question should be of concern to us all regardless of the event sponsor or other matters involving our taxpayers funds.

The chamber encourages an honest accounting of all events and financial impacts involving our taxpayer's dollars and would be interested in meeting with city staff to discuss any differences and concerns regarding taxpayer's money being expended to provide assistance to provide the annual waterland festival to our citizens.

I am confident that the chamber will be held to no more or no less of a standard than others and that the accountability question will be fairly administered to sponsors of all community events.

The chamber looks forward to working with the city staff and employees to again provide a successful Waterland event for all to enjoy.

Respectfully yours,



H.M.Foote

2003 President Greater DesMoines chamber of commerce

cc: Washington news council
Tacoma news tribune
South county journal
Seattle times
Seattle PI

Robinson newspaper
Komo television
King television
Channel 13 television

April 14, 2003

**TO: Mike Foote, President
Des Moines Chamber of Commerce**

**FM: Arlene Knight and Earline Byers
Condominium Resident Representatives**

RE: Pre-Waterland – 2003 Meeting, April 09, 2003

Attached are the transcribed notes of our Pre-Waterland meeting, April 9th, 2003, as taken by Jeannette Jones, who has served as secretary to South Shores Board of Directors for the last three years. It is our understanding you intend to furnish council with copies of our condominium resident's Agenda that was distributed and used for the purpose of this meeting. We think it is appropriate, that you attach a copy of these transcribed notes for council reference.

The meeting went well. We believe the agreed changes will benefit our community's Waterland Festival. We did forget to set an early August date for our Post-Waterland meeting reports therefore we propose a meeting at the same place August 19th, 2003 at 2:00pm.

WATERLAND 2003

A meeting was held between the Chamber of Commerce and Representatives Condominium Residents regarding Waterland 2003 on April 9, 2003 at 2:00p.m. at the Des Moines Police Meeting Room. Present were Mike Foote, President of the Des Moines Chamber of Commerce, Colleen Heston, Treasurer of the Chamber of Commerce and Waterland Director, Carole Elrod, Executive Director of the Chamber of Commerce, Earline Byers and Arlene Knight representing the condominium residents. Minutes were recorded by Jeanette Jones.

The following conditions for the Waterland Festival 2003 were discussed and agreed upon by all participants:

The purpose of the meeting was to voice concerns the condominium residents have regarding Waterland. An agenda that outlined those concerns was distributed to all participants. Mike Foote advised that he is glad that Arlene Knight would be a liaison between the Chamber and condominium residents. It was agreed that Earline Byers is the alternate contact in the event Arlene is unavailable. We will exchange telephone numbers for contact now and during the festival and likewise his office would advise our representatives of any significant deviation from agreed plans

One of the first concerns of the residents was the size, location and noise of Waterland and the carnival in particular last year. Mike informed us that he too wanted the layout of Waterland 2003 to impact everyone the least amount. Last year large carnival rides were abutted right up to the front of the condominiums, with a "Barker" having a continuous high noise level. After discussion, it was agreed by all that the entire Waterland layout would go back to the way it was set up two years ago. The carnival rides will occupy the north and northwest parking lot area of the marina. The beer garden would be set up against the embankment next to the "Quartermaster" property. Also, the condominium owners and Mike Foote voiced concern with accompanying sound from the stage coming right into their homes. It was suggested and agreed upon that the stage would face the northwest and as much west as possible to deflect sound intrusion. A drawing of the agreed layout of the festival will be provided to condominium representatives present at the meeting for approval prior to presentation to council.

It was agreed that due to the new layout last year, all of the vendors had to come in and out from Cliff Avenue, but returning to the former layout of two years ago, all vendors will come in and out of the South parking lot, which will reduce much of the congestion and noise to condominium residents within that area.

Last year, many of employees of the carnival used the "Quartermaster" property. This property was left with considerable debris day and night. It was felt that this property should be fenced and no one should be able to go in there. If it is used for carnival purposes, it should only be for carnival and vendor storage purposes and it should only be for trucks not needing refrigeration that would generate noise and disruption to neighboring residents. The Chamber will have volunteers clean up any debris on this property periodically during Waterland.

Arlene Knight advised that the residents of the Mariner and Cliff House condominiums are very concerned about access to their homes. They must have 24-hour access without waiting in line with others. With the exception of police, fire and official vehicles, The Cliff House, the Mariner condominiums and the Wasson resident should be the ONLY users of the north marina entrance via Chamber pass authority. It was agreed that two resident passes for each unit be given to the owners, to-wit: 28 passes for the Cliff House and 18 passes for the Mariner.

Last year's trial of later hours resulted in noise up until 2:00 a.m. at the Marina and then starting again at 5:00 a.m. for the street sweeper. This allowed only a 3-hour window (from 2:00 a.m. to 5:00 a.m.) for quiet time at condo resident homes. Instead of closing at midnight, it was suggested and agreed upon by the Chamber that the following hours would apply:

Opening Night – Wednesday (Fireworks) –	Close at Midnight
	Beer Garden – 11:30 p.m.
Thursday through Saturday -	Close at 11:00 P.M.
	Beer Garden – 10:30 p.m.
Sunday -	Close at 8:00 P.M.
	Beer Garden – 7:30 p.m.

Mike Foote advised that there would again be a public admission fee to the festival and related fencing of the festival grounds. In order to expedite crowd access, there will be two ticket booths at the North parking lot. One booth will be for exact change. There will also be a ticket booth and entrance at the South parking lot. This should aid in the congestion at the entrances of the festival. Admission charge will be \$1.00 for adults, \$.50 for seniors, and everyone under 12 years of age free.

The condominium owners brought to the Chamber's attention some other related general Waterland concerns for their consideration that are not related directly to residents' impact. It was suggested that these should be visited and addressed by the Harbor Master as it relates to the Marina and Chamber officials as it relates to the Festival:

1. Ticket booths not removed for five days.
2. Public boat launch closed for eleven days not the agreed 5 festival days.
3. Breakers Restaurant closed impacted by lack of customer parking.
4. Classic Yachts impacted by lack of customer parking and Parks Department 5K run.

In summary it was agreed this meeting produced positive results and provides the foundation to continue this line of communication that allows us to work together for the good of the community in future events and festivals. The post Waterland meeting will be held at the same location in early August.

Memo

To: City Council

Via: Tony Piasecki, City Manager

From: Police Department, Department of Parks and Recreation,
Marina, Public Works Department

Date: 04/15/2003

Re: Waterland Costs for 2002

Costs

The City Council directed the staff to track and report the costs incurred by the City for helping prepare for and stage the Waterland festival. Employees were instructed to record both regular and overtime hours spent on the Festival and report any equipment used. The Finance Department set up a system to capture and record the information and prepared the attached spreadsheet showing the total labor costs for the Festival. The labor figures are reported in two columns. The column titled "Total Regular Earnings and Benefits" reports the regularly scheduled work hours that employees spent facilitating the Festival. These costs are reported separately because the City would have paid for these hours anyway, but the employee would have been doing something else. The column titled "Overtime Earnings and Benefits" reports the overtime hours that employees spent working on the Festival. These are costs incurred directly as a result of the Festival. The staff also reported mileage for vehicles used to support Waterland and a small amount of materials used at the Festival like garbage bags and paint. The electricity used by the vendors was recorded by the Marina staff and billed directly to the Chamber of Commerce. The total costs are summarized In Table 1 below.

Table 1

Total Regular Earnings and Benefits	\$14,052.52 -
Total Overtime Earnings and Benefits	35,573.17
Vehicle Mileage -675 miles @ .365 cents/mile	246.38
Materials	<u>228.56</u>
Total	\$50,100.63

Operations

Marina

This year the north parking lot and the public hoists were closed from 8:00 p.m. on Saturday, July 20 to noon on Monday, July 29. Usually, the facilities are closed down on the Sunday night before Waterland, but this year the 3-on-3 Basketball Tournament was held on Sunday, July 21st, instead of earlier in June. Impacts on service revenues, (launching, fuel sales and guest moorage) were estimated by subtracting the service revenues during the Waterland week from an average of the revenues from the week before and the week after the Festival. The revenue impacts are shown in Table 2. The 3-on-3 Basketball Tournament sponsored by the Recreation Department was held in the North Lot on Sunday, July 20th so logically, part of the revenue loss must be allocated to that event. The staff estimates that amount to be one seventh of the total or about \$550.

Table 2

	<u>Week Before</u>	<u>Week After</u>	<u>Average</u>	<u>Week During</u>	<u>Gain/ Loss</u>
Fuel	\$16,881	\$16,694	\$16,787	\$19,573	\$2,786
Launch	\$4,435	\$3,525	\$3,980	\$0	(\$3,980)
Guest Moorage	\$6,196	\$6,491	\$6,344	\$4,450	<u>(\$1,894)</u>
Estimated Gain(Loss)					(\$3,088)

Police Department

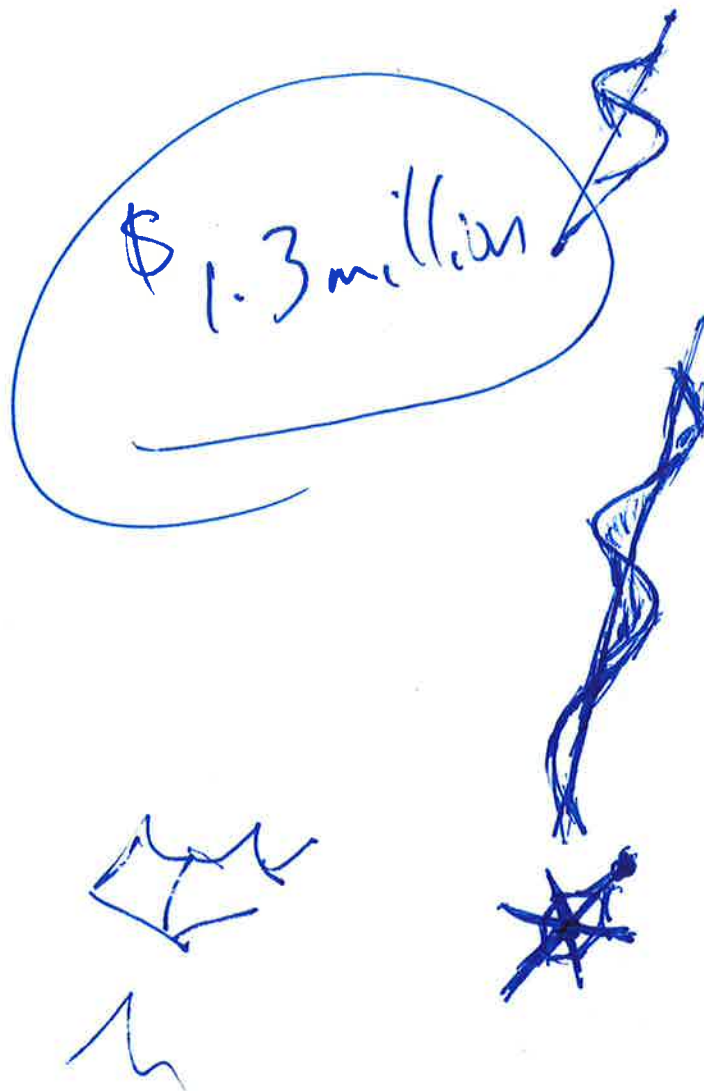
The payroll costs for full-time police officers and their supervisors are included in the totals in Table 1. Reserve officers from Des Moines, Fife, Normandy Park and Pacific worked 486.5 hours at a cost of \$15 per hour (\$7,798 total). These officers were paid directly by the Chamber of Commerce. The Chamber remitted a check to the City for \$2,202, which is the amount left of their \$10,000 security budget after paying the reserve officers.

Other Police-related Waterland Expenses:

Use of Vehicles: Numerous police vehicles were used to facilitate police operations during Waterland. Mileage usage was tracked and a total of 674.4 miles were logged to the various vehicles. (These costs are included in Table 1)

Other police assets were used during Waterland but no specific costs were attributed or charged. These include the use of the mobile police command precinct for a period of six days and the use of six police bikes. Some equipment was purchased such as portable radio batteries and minor bike repairs made, however, these purchases would have needed to be made anyway. The timing of these purchases is normally done just prior to Waterland. We do have a problem with having to borrow portable police radios. (This year we managed to borrow 15 from three different police departments.) Normally we would have to rent them at

\$10.00 per day per radio. Purchase of the radios would be approximately \$1,600 per unit. Obviously, we cannot count on always being able to borrow the radios.



Department	Last Name	First Name	Type of Earnings	Hrs	Earnings	P L1	P L2	P 1.32%	P 0.22%	P 2.86%	ICMA 401(A) 5.00%	ICMA 457 Non-Guild 1.52%	Let Amount	Un-employment 0.50%	Medicare 1.45%	Total Annual Benefits	Total Benefits & Regular Earnings	Total Benefits & O.T. Earnings
001160	Watson	Peggy A	Reg	1	\$ 27.63			\$ 0.36			\$ 1.38	\$ 0.42	\$ 0.05	\$ 0.14	\$ 0.40	\$ 2.75	\$ 30.38	
001160	Wright	Jennifer E.	Reg	5	\$ 94.24			\$ 1.24			\$ 4.71	\$ 1.43	\$ 0.25	\$ 0.47	\$ 1.37	\$ 9.47	\$ 103.71	
001340	O'Leary	John E.	Reg	26	\$ 1,083.71			\$ 30.99			\$ 70.66		\$ 2.75	\$ 5.42	\$ 15.71	\$ 125.53	\$ 1,209.24	
001340	Tucker	Kevin Raymond	Reg	0.5	\$ 20.84			\$ 0.60			\$ 1.36		\$ 0.05	\$ 0.10	\$ 0.30	\$ 2.41	\$ 23.25	
001350	Bohl	Robert A	Reg	4	\$ 124.08			\$ 3.55			\$ 8.09		\$ 0.42	\$ 0.62	\$ 1.80	\$ 14.48	\$ 138.56	
001350	Bohl	Robert A	O.T.	23	\$ 1,070.22			\$ 30.61			\$ 69.78		\$ 2.43	\$ 5.35	\$ 15.52	\$ 123.69	\$ 1,193.91	
001350	Collins Jr	Robert Hale	Reg	4	\$ 141.62			\$ 4.05			\$ 9.23		\$ 0.42	\$ 0.71	\$ 2.05	\$ 16.47	\$ 158.09	
001350	Collins Jr	Robert Hale	O.T.	20	\$ 1,062.14			\$ 30.38			\$ 69.25		\$ 2.11	\$ 5.31	\$ 15.40	\$ 122.45	\$ 1,184.59	
001350	Stuth	Ross Allen	Reg	4	\$ 124.08			\$ 3.55			\$ 8.09		\$ 0.42	\$ 0.62	\$ 1.80	\$ 14.48	\$ 138.56	
001350	Stuth	Ross Allen	O.T.	19	\$ 884.10			\$ 25.29			\$ 57.64		\$ 2.01	\$ 4.42	\$ 12.82	\$ 102.18	\$ 986.28	
001350	Thomas	Michael A	O.T.	34	\$ 1,605.21			\$ 45.91			\$ 104.66		\$ 3.59	\$ 8.03	\$ 23.28	\$ 185.46	\$ 1,790.67	
001360	Arico III	Dominic	O.T.	6.5	\$ 191.70			\$ 5.48			\$ 12.50		\$ 0.69	\$ 0.96	\$ 2.78	\$ 22.41	\$ 214.11	
001360	Baldwin	Barron T.	O.T.	25	\$ 774.06			\$ 22.14			\$ 50.47		\$ 2.64	\$ 3.87	\$ 11.22	\$ 90.34	\$ 864.40	
001360	Bell	David Carl	O.T.	22	\$ 1,168.35			\$ 33.41			\$ 76.18		\$ 2.33	\$ 5.84	\$ 16.94	\$ 134.70	\$ 1,303.05	
001360	Campbell	Craig C	O.T.	25	\$ 1,180.31			\$ 33.76			\$ 76.96		\$ 2.64	\$ 5.90	\$ 17.11	\$ 136.37	\$ 1,316.68	
001360	Celis	Victor M	O.T.	7	\$ 288.21			\$ 8.24			\$ 18.79		\$ 0.74	\$ 1.44	\$ 4.18	\$ 33.39	\$ 321.60	
001360	Chaney	Michael A	O.T.	24	\$ 1,274.57			\$ 2.80			\$ 83.10			\$ 6.37	\$ 18.48	\$ 110.76	\$ 1,385.33	
001360	Gallagher	Randall T	O.T.	26	\$ 1,070.51			\$ 30.62			\$ 69.80		\$ 2.75	\$ 5.35	\$ 15.52	\$ 124.04	\$ 1,194.55	
001360	Graddon	Michael R.	O.T.	23	\$ 712.13			\$ 20.37			\$ 46.43		\$ 2.43	\$ 3.56	\$ 10.33	\$ 83.12	\$ 795.25	
001360	Guest	Paul F	O.T.	10.5	\$ 476.66			\$ 13.63			\$ 31.08		\$ 1.11	\$ 2.38	\$ 6.91	\$ 55.12	\$ 531.78	
001360	Hamilton	David S.	O.T.	29	\$ 889.46			\$ 25.44			\$ 57.99		\$ 3.07	\$ 4.45	\$ 12.90	\$ 103.84	\$ 993.30	
001360	Henry	Matthew A	O.T.	23	\$ 1,044.12			\$ 29.86			\$ 68.08		\$ 2.43	\$ 5.22	\$ 15.14	\$ 120.73	\$ 1,164.85	
001360	Hollis	Robert K.	O.T.	27	\$ 796.26			\$ 22.77			\$ 51.92		\$ 2.85	\$ 3.98	\$ 11.55	\$ 93.07	\$ 889.33	
001360	Jacobowitz	George B	O.T.	6	\$ 272.39			\$ 7.79			\$ 17.76		\$ 0.85	\$ 1.36	\$ 3.95	\$ 31.50	\$ 303.89	
001360	Jenkins	Douglas Paul	O.T.	8	\$ 433.35			\$ 12.39			\$ 28.25		\$ 0.85	\$ 2.17	\$ 6.28	\$ 49.94	\$ 483.29	
001360	Meissner	William V.	O.T.	10	\$ 294.92			\$ 8.43			\$ 19.23		\$ 1.06	\$ 1.47	\$ 4.28	\$ 34.47	\$ 329.39	
001360	Montgomery	Kevin S.	O.T.	22	\$ 837.51			\$ 23.95			\$ 54.61		\$ 2.33	\$ 4.19	\$ 12.14	\$ 97.22	\$ 934.73	
001360	Ochwat	Edwin	O.T.	13	\$ 475.86			\$ 13.61			\$ 31.03		\$ 1.37	\$ 2.38	\$ 6.90	\$ 55.29	\$ 531.15	
001360	Penney	Kevin A.	O.T.	22.5	\$ 844.19			\$ 24.14			\$ 55.04		\$ 2.38	\$ 4.22	\$ 12.24	\$ 98.02	\$ 942.21	
001360	Seaberry	Tonya R	O.T.	35.5	\$ 1,131.72			\$ 32.37			\$ 73.79		\$ 3.75	\$ 5.66	\$ 16.41	\$ 131.98	\$ 1,263.70	
001360	Seaberry	Tonya R	Reg.	20	\$ 425.06			\$ 12.16			\$ 27.71		\$ 2.11	\$ 2.13	\$ 6.16	\$ 50.27	\$ 475.33	
001360	Shepard	William A.	O.T.	9	\$ 389.10			\$ 11.13			\$ 25.37		\$ 0.95	\$ 1.95	\$ 5.64	\$ 45.04	\$ 434.14	
001360	Shepard	William A.	Reg.	16	\$ 461.15			\$ 13.19			\$ 30.07		\$ 1.69	\$ 2.31	\$ 6.69	\$ 53.94	\$ 515.09	
001360	Tschida	Robert Kenneth	O.T.	29.5	\$ 1,339.19			\$ 38.30			\$ 87.32		\$ 3.12	\$ 6.70	\$ 19.42	\$ 154.85	\$ 1,494.04	
001360	Wieland	Steven C	O.T.	58	\$ 3,080.19			\$ 88.09			\$ 200.83		\$ 6.13	\$ 15.40	\$ 44.66	\$ 355.12	\$ 3,435.31	
001360	Wieland	Steven C	Reg	42	\$ 1,486.98			\$ 42.53			\$ 96.95		\$ 4.44	\$ 7.43	\$ 21.56	\$ 172.91	\$ 1,659.90	
001360	Williams	Victor J	O.T.	21	\$ 953.33			\$ 27.27			\$ 62.16		\$ 2.22	\$ 4.77	\$ 13.82	\$ 110.23	\$ 1,063.56	
001360	Young	Paul E	O.T.	10	\$ 472.13			\$ 13.50			\$ 30.78		\$ 1.06	\$ 2.36	\$ 6.85	\$ 54.55	\$ 526.68	
001370	Crane	Robert L	O.T.	34.75	\$ 1,430.78			\$ 40.92			\$ 93.29		\$ 3.67	\$ 7.15	\$ 20.75	\$ 165.78	\$ 1,596.56	
001370	Crane	Robert L	Reg.	20	\$ 548.98			\$ 15.70			\$ 35.79		\$ 2.11	\$ 2.74	\$ 7.96	\$ 64.31	\$ 613.29	
001370	Haglund	Gregory B	O.T.	34	\$ 1,543.47			\$ 44.14			\$ 100.63		\$ 3.59	\$ 7.72	\$ 22.38	\$ 178.47	\$ 1,721.94	
001370	Haglund	Gregory B	Reg.	20	\$ 605.28			\$ 17.31			\$ 39.46		\$ 2.11	\$ 3.03	\$ 8.78	\$ 70.69	\$ 675.98	
001500	Meyers	Robert L	Reg	1	\$ 28.16			\$ 0.37			\$ 1.41	\$ 0.43	\$ 0.12	\$ 0.14	\$ 0.41	\$ 2.88	\$ 31.04	
001500	Pickard	Lawrence W	Reg	1	\$ 32.95			\$ 0.43			\$ 1.65	\$ 0.50	\$ 0.12	\$ 0.16	\$ 0.48	\$ 3.35	\$ 36.30	
001540	Magnuson	Janice C	Reg	5	\$ 102.20			\$ 1.35			\$ 5.11	\$ 1.55	\$ 0.62	\$ 0.51	\$ 1.48	\$ 10.62	\$ 112.82	
001635	Grager	Philip D.	Reg	9.5	\$ 157.40			\$ 2.08			\$ 7.87	\$ 2.39	\$ 1.17	\$ 0.79	\$ 2.28	\$ 16.58	\$ 173.98	
001635	Klingele	Keith S	Reg	5.5	\$ 86.78			\$ 1.15			\$ 4.34	\$ 1.32	\$ 0.68	\$ 0.43	\$ 1.26	\$ 9.17	\$ 95.95	
001635	Muirhead	Scott Robert	Reg	5	\$ 97.84			\$ 1.29			\$ 4.89	\$ 1.49	\$ 0.62	\$ 0.49	\$ 1.42	\$ 10.19	\$ 108.04	

001636	Benson	Eric J.	Reg	16	\$	162.72	\$	2.15	\$	8.14	\$	2.47	\$	1.97	\$	0.81	\$	2.36	\$	17.90	\$	180.62
001636	Frederick	Jon A.	Reg	19.5	\$	178.32	\$	2.62	\$	9.92	\$	3.01	\$	2.40	\$	0.99	\$	2.88	\$	21.82	\$	220.13
001636	Kelly	Kristoffer K.	Reg	17	\$	192.89	\$	2.28	\$	8.64	\$	2.63	\$	2.09	\$	0.86	\$	2.51	\$	19.02	\$	191.91
001636	Parker	Sean S.	Reg	6.5	\$	66.11	\$	0.87	\$	3.31	\$	1.00	\$	0.80	\$	0.33	\$	0.96	\$	7.27	\$	73.38
001636	Sechrist	William M.	Reg	8	\$	81.36	\$	1.07	\$	4.07	\$	1.24	\$	0.98	\$	0.41	\$	1.18	\$	8.95	\$	90.31
001636	Severson	Michael G.	Reg	9	\$	91.53	\$	1.21	\$	4.58	\$	1.39	\$	1.11	\$	0.46	\$	1.33	\$	10.07	\$	101.60
101920	Bates	John	Reg	14	\$	302.07	\$	3.99	\$	15.10	\$	4.59	\$	1.72	\$	1.51	\$	4.38	\$	31.30	\$	333.37
101920	Bates	John	O.T.	12	\$	388.37	\$	5.13	\$	19.42	\$	5.90	\$	1.48	\$	1.94	\$	5.63	\$	39.50	\$	427.87
101920	Carlos	Christopher S	Reg	21.5	\$	236.50	\$	3.12	\$	11.83	\$	3.59	\$	2.65	\$	1.18	\$	3.43	\$	25.80	\$	262.30
101920	Cozart	John W	Reg	28	\$	604.13	\$	7.97	\$	30.21	\$	9.18	\$	3.45	\$	3.02	\$	8.76	\$	62.59	\$	666.72
101920	Cozart	John W	O.T.	9	\$	291.27	\$	3.84	\$	14.56	\$	4.43	\$	1.11	\$	1.46	\$	4.22	\$	29.62	\$	320.89
101920	Eyler	James H	Reg	7	\$	115.98	\$	1.53	\$	5.80	\$	1.76	\$	0.86	\$	0.58	\$	1.68	\$	12.22	\$	128.20
101920	Kissler	Tim G	O.T.	9	\$	258.96	\$	3.42	\$	12.95	\$	3.94	\$	1.11	\$	1.29	\$	3.75	\$	26.46	\$	285.42
101920	Nettles	Jerry E	O.T.	9	\$	258.96	\$	3.42	\$	12.95	\$	3.94	\$	1.11	\$	1.29	\$	3.75	\$	26.46	\$	285.42
101920	Riggs	Daylen B.	Reg	15.5	\$	170.50	\$	2.25	\$	8.53	\$	2.59	\$	1.91	\$	0.85	\$	2.47	\$	18.60	\$	189.10
101920	Riggs	Daylen B.	O.T.	6	\$	99.00	\$	1.31	\$	4.95	\$	1.50	\$	0.74	\$	0.50	\$	1.44	\$	10.43	\$	109.43
101920	Russell	Norman R	Reg	16	\$	306.91	\$	4.05	\$	15.35	\$	4.67	\$	1.97	\$	1.53	\$	4.45	\$	32.02	\$	338.93
101920	Russell	Norman R	O.T.	9	\$	258.96	\$	3.42	\$	12.95	\$	3.94	\$	1.11	\$	1.29	\$	3.75	\$	26.46	\$	285.42
150020	Sellers	Barry W	O.T.	17.5	\$	826.22	\$	23.63	\$	53.87	\$	-	\$	1.85	\$	4.13	\$	11.98	\$	95.46	\$	921.68
401100	Dusenbury	Joe H	Reg	12	\$	444.65	\$	5.87	\$	22.23	\$	6.76	\$	1.48	\$	2.22	\$	6.45	\$	45.01	\$	489.66
401100	Holmboe	Bonita J	Reg	3	\$	58.22	\$	0.77	\$	2.91	\$	0.88	\$	0.15	\$	0.29	\$	0.84	\$	5.85	\$	64.07
401101	Blacksher	Jeanie F.	Reg	2	\$	31.92	\$	0.42	\$	1.60	\$	0.49	\$	0.10	\$	0.16	\$	0.46	\$	3.22	\$	35.14
401200	Elfstrom	Jonathan	Reg	30	\$	455.18	\$	6.01	\$	22.76	\$	6.92	\$	3.69	\$	2.28	\$	6.60	\$	48.26	\$	503.44
401200	Elfstrom	Jonathan	O.T.	12	\$	273.11	\$	3.61	\$	13.66	\$	4.15	\$	1.48	\$	1.37	\$	3.96	\$	28.21	\$	301.32
401200	Jewell	Joseph B	Reg	32	\$	712.40	\$	9.40	\$	35.62	\$	10.83	\$	3.94	\$	3.56	\$	10.33	\$	73.68	\$	786.09
401201	Brown	Scott J	Reg	35	\$	355.95	\$	4.70	\$	17.80	\$	5.41	\$	4.31	\$	1.78	\$	5.16	\$	39.16	\$	395.11
401201	Byrne	Derek M.	Reg	23	\$	233.91	\$	3.09	\$	11.70	\$	3.56	\$	2.83	\$	1.17	\$	3.39	\$	25.73	\$	259.64
401201	Gerlach	Jason W.	Reg	19	\$	193.23	\$	2.55	\$	9.66	\$	2.94	\$	2.34	\$	0.97	\$	2.80	\$	21.26	\$	214.49
401300	Ellingsen	Jerry B	Reg	40	\$	1,083.42	\$	14.30	\$	54.17	\$	16.47	\$	4.92	\$	5.42	\$	15.71	\$	110.99	\$	1,194.41
401300	Wilkins	Scott W	Reg	24	\$	534.30	\$	7.05	\$	26.72	\$	8.12	\$	2.95	\$	2.67	\$	7.75	\$	55.26	\$	589.56
401300	Wilkins	Scott W	O.T.	13	\$	434.12	\$	5.73	\$	21.71	\$	6.60	\$	1.60	\$	2.17	\$	6.29	\$	44.10	\$	478.22
450001	McGinnis	David J	Reg	13	\$	249.37	\$	3.29	\$	12.47	\$	3.79	\$	1.60	\$	1.25	\$	3.62	\$	26.01	\$	275.38
450001	McGinnis	David J	O.T.	5.5	\$	158.25	\$	2.09	\$	7.91	\$	2.41	\$	0.68	\$	0.79	\$	2.29	\$	16.17	\$	174.42
450001	McCiche	John J	O.T.	13	\$	374.05	\$	4.94	\$	18.70	\$	5.69	\$	1.60	\$	1.87	\$	5.42	\$	38.22	\$	412.27
450001	Rogers	Bradley A	Reg	8	\$	153.46	\$	2.03	\$	7.67	\$	2.33	\$	0.98	\$	0.77	\$	2.23	\$	16.01	\$	169.47
450001	Rogers	Bradley A	O.T.	12	\$	345.27	\$	4.56	\$	17.26	\$	5.25	\$	1.48	\$	1.73	\$	5.01	\$	35.28	\$	380.55

Totals: \$ 14,052.52 \$ 35,573.17

Grand Totals: \$ 49,625.70

PRELIMINARY
REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

April 3, 2003

The regular study session of the Des Moines City Council was called to order at 7:34 p.m. by Mayor Steenrod in the City Council Chambers, 21630 11th Avenue South, #B.

PLEDGE OF ALLGIANCE to the Flag was lead by Mayor Steenrod.

INVOCATION was led by Pastor John O'Neal of Grace Lutheran Church.

ROLL CALL - Present: Mayor Maggie Steenrod, Mayor Pro Tem Richard Benjamin, Councilmembers Gary Petersen, Bob Sheckler, Scott Thomasson and Susan White. Also in attendance were City Manager Tony Piasecki, Assistant City Manager Corbitt Loch, City Attorney Linda Marousek, Community Development Director Judith Kilgore, Public Works Director Tim Heydon, Assistant City Engineer Maiya Andrews, Harbormaster Joe Dusenbury and City Clerk Denis Staab.

Statement of Apology

Mayor Pro Tem Benjamin read the following statement: "I want to apologize to Susan White for my actions at the last City Council meeting on March 27th. I should not have allowed myself to become upset with her actions. I hope she can forgive me for reacting to her unnecessary attack upon my close friend former Mayor, Don Wasson. Her attempt to further belittle a former Mayor who has been the only Councilmember in the last 12 years willing to stand up alone to protect the rights of every citizen in Des Moines. He has accepted responsibility for his actions. Your attempts to bring further attention to his problems is in very poor taste. Mrs. White's attempt to discredit former Mayor Wasson was totally uncalled for. She knew full well that her friend, Ralph Nichols, would take on the challenge of vilifying our former Mayor. It wasn't that she was educating the populace by her actions, she was simply slinging more mud, but I guess that is her style, at least it has been her style as long as she has been in politics. I would like to take this opportunity to invite Mrs. White to try to control her unruly husband who had to be forcibly removed from these Council chambers because of being out of order and refusing to remain orderly. His habitual practice of remaining just out of view of the video camera while he makes juvenile one finger gestures and mouths obscene words to members of this Council while in session. It is hard to concentrate while the person, who a couple of weeks ago explained to us how he had such a vast education and was so much better educated than anyone on the Council. I guess that just goes to prove the theory that education bears no relationship on intelligence. But, be that as it may Susan, don't be dismayed, we all have our crosses to bear. Oh yes, I want to apologize to Mr. Sheckler too for whatever it was that I said to him that caused him to make the statement to me, 'your dead'. I took that very seriously and I did not realize that my actions could possibly lead to his losing control, and to making such a serious threat of grave bodily harm to another person. I know he thought better of what he had said as he later corrected himself by saying 'your dead, politically'. His latest performance reminds me of the time we witnessed Mr. Sheckler using his position on this Council to rant and ramble uncontrollably, while trying to admonish Mr. Getty, telling him 'I always win and you always lose'. In the future, Mr. Sheckler, please try to control yourself. It is difficult to concentrate on the serious issues facing our citizens when we find it necessary to be concerned about our own physical safety. Thank you for your attention."

Tonight's Agenda

Councilmember Sheckler expressed concern regarding how intense the Agenda is for this meeting. He noted there is a lot of decision making and action items on it. He read part of Council Rules of Procedure, Rule 10 "The purpose of Study Session discussions is to allow Councilmembers to be made aware of impending business and allow informal discussion of issues that might be acted on at a future meeting." He suggested that in the future, if there are so many action items, the meeting should be declared a regular meeting instead of a study session.

Mayor Steenrod expressed concurrence with Councilmember Sheckler, and had hoped that items that were not discussed at the last meeting would be moved to the April 10th meeting. She requested the City Attorney and City Manager review the rules governing study sessions.

City Attorney Marousek advised that she could give a verbal response now.

Mayor Steenrod requested that the City Attorney prepare her response in writing so Council can determine if the Rules of Procedure need to be amended. She noted that she does not feel that Council should be taking final action at a study session.

Conduct of Meetings

Mayor Steenrod announced that due to outbursts at several recent Council meetings, that from now on meetings will be conducted more formally. She referenced Rule 13, noting that Councilmembers shall be addressed by their formal titles and that no member may speak or make a motion without being formally recognized by the Presiding Officer. She further advised that no demonstrations will be allowed by Council or the public. Councilmembers will be ruled out of order and disorderly public will be advised to leave the Chambers. She cautioned Councilmembers to stick to issues and avoid any personality conflicts.

DISCUSSION ITEMS

New City Internet Website

Assistant City Manager Loch reminded Council that the City's existing website was established in 1995 by Richard Kennedy, who has provided Webmaster service since that time. He advised that City staff appreciates the significant contributions made over the years by Mr. Kennedy, but staff would now like to assume full control over the appearance, layout, and function of the City website. He noted that CPF Marketing Communications were retained to develop a website that can be managed and maintained by City employees. He introduced Vera Randal, of CPF who is in attendance to help answer any questions Council may have. Mr. Loch also acknowledged the help of the City's Information Coordinator, Dale Southwick. He proceed to review the proposed website showing the proposed layout, various departments, information available and ease of navigation. He advised that one of the main goals is to help staff communicate with citizens in a positive manner.

Upon questioning by Council, it was noted that Park and Recreation classes do have on-line registration. City Manager Piasecki noted that hopefully, business license and various permits, including building permits, may also be available to submit on line in the near future. He also noted that Council packets are planned to be made available to the public on-line.

Assistant City Manager Loch announced that staff hopes to have the web site up and running around the 1st of May. He requested Councilmembers review the draft web site and submit any comments or changes to him within the next week or so.

Pacific Highway South Project - Overview and Status Report

Assistant City Engineer Andrews proceeded to review the following:

- *PROJECT ELEMENTS*
- *PROJECT SCHEDULE*
- *PROJECT FUNDING*
- *PROJECT BUDGET*
- *MINIMIZING CONSTRUCTION IMPACTS*
 - Driveways
 - Lane Closures
 - Coordination with Businesses

She concluded by noting that the City's website and City newsletter will be used to help keep citizens abreast of the construction, traffic revisions and the like.

Upon questioning by Council, Assistant City Engineer Andrews stated that the project starting point will depend upon the contractor's staging, but most likely will be undergrounding on the east side of Pacific Highway, beginning at Kent-Des Moines Road, going north.

Public Works Director Heydon advised that all of the funding is in place and he is working with the Finance Director regarding the City loan through the Public Works Trust Fund. He reminded Council that the project bids will be brought to Council and it will be up to Councilmembers to accept or not.

Upon questioning by Council, Assistant City Engineer Andrews advised that the contingency is at 15% because of the unknown underground soil conditions and utilities.

City Manager Piasecki advised that staff will monitor the project costs very closely, and can suggest cutting back on some items or adding more funding if necessary, but this would be a decision to be made by Council.

Public Works Director Heydon reminded Council that his department has an extremely good record of staying within, or even under, project budgets. He advised Council that the City has retained a good consultant and the project plans are very well done.

In regards to funding, Public Works Director Heydon informed Council that staff has applied for multi applications over many years.

City Manager Piasecki reminded Council that last fall Council authorized up to \$5,000,000.00 for a low interest Public Works Trust Fund loan.

Mayor Steenrod thanked staff for the comprehensive update on this project.

8:40 p.m. Mayor Steenrod called for a 10 minute break.

Agenda Revision

Mayor Steenrod announced that she is removing the following items from the agenda:

Discussion Item #3 - ACC Funding

Discussion Item #4 - Draft Ord. No. 03-075 Right-of-way & Park Use Permits

Discussion Item #9 - Utility Tax

Discussion Item #10 - Draft Res. 03-098 Requiring Full Council Participation In Final Appointment to Vacant Council Position

Mayor Steenrod advised that these items will appear on the April 10th Agenda for Council to determine if they should be placed on a future agenda for Council deliberation.

In regards to Discussion Item #2 - Draft Ord. 02-264 Traffic Impact Fees, Mayor Steenrod stated that she had requested that Council be presented with 3 case studies to sufficiently analyze traffic impact fees. She noted that she prefers to have the actual Draft Ordinance continued to next week for final adoption which would allow any citizen comments prior to final action.

MOTION was made by Councilmember White, seconded by Mayor Pro Tem Benjamin, to place Draft Ordinance No. 02-264 on the Agenda of April 10, 2003, for final action. Motion passed unanimously.

Councilmember Thomasson questioned why Item #10 was removed, since Council did not get to it during discussion last week because time expired. He felt this item is a gesture of good will. He expressed concern that Council may not get to this item until after Council interviews. He stated that this item would only take 5 minutes to act on this evening.

Mayor Steenrod stated that final action on this item can be taken at the meeting of April 24, 2003, which would be prior to Council interviews. She noted that she is exercising her authority to remove this item from tonight's agenda.

Traffic Impact Fees - Case Studies & Impact Fee Comparisons

Public Works Director Heydon proceeded to note traffic impact fee comparisons of other cities that was distributed to Council. He noted that each city has slightly different methods of figuring out their impact fees. He noted that a lot of the cities have separate zones for different parts of the cities and some cities use other funds to help augment their impact fees. He advised that two more cities that have recently adopted impact fees are Maple Valley at \$3,559 per trip, and Bonney Lake is at \$3,100 per trip. He noted that both of those fees are higher than what Des Moines is planning for. He advised that Burien is expecting to implement impact fees next year and Federal Way is contemplating impact fees for this year.

Public Works Director Heydon reviewed three hypothetical examples of how traffic impact fees would be applied. He explained detailed examples as follows: Example 1: A hotel in the Pacific Ridge area with 200 rooms, replacing a 40 room motel versus if built on a vacant lot. Example 2: A bank replacing Rose's Restaurant versus new bank installed on a vacant lot on Pacific Highway South, and Example 3: Fast food restaurant replaces Brown Bear Carwash versus fast food restaurant installed on a vacant lot on Marine View Drive.

Upon questioning by Council, Public Works Director Heydon explained the theory of impacts fees are that growth pays for itself.

Various other examples were discussed by Council and staff in some detail.

Upon questioning by Council, Public Works Director Heydon advised that should a developer dispute staff's amount of impact fees imposed, an appeal can be filed with the City's Hearing Examiner.

Public Works Director Heydon advised that Council does have options in regards to future transportation improvements. They are:

- New growth pays through transportation impact fees
- Citizens pay for (taxes)

Public Works Director Heydon stated that if some financing mechanism is not found to pay for growth, the city's transportation system will be degraded. He further advised that without some funding staff will not be able to come up with matches to apply for State or Federal Grants.

Councilmember White stated that the City does not want to discourage developers from coming to Des Moines and while phasing the fees in is a good idea, she questioned whether the City should just delay instituting for 6 months. This would allow developers a window to vest prior to impact fees being imposed.

Public Works Director Heydon stated that delaying, or even instituting the impact fees, is a decision that City Council must make.

Mayor Steenrod noted that the impact fees vary greatly city to city, but questioned why Des Moines should have one when the Cities of Kent and Federal Way do not. City Manager Piasecki replied that businesses look at more than just transportation impact fees. He noted for instance that Federal Way has a school impact fees. He advised that other fees are looked at including building permit fees. He stated that a lot of businesses need to know there is a good transportation system in place and one that will be maintained and upgraded as necessary.

Community Development Director Kilgore addressed the Pacific Ridge mitigation fee, and noted that this fee will only be used for needed improvements that have been identified in the Pacific Ridge area. She noted that this fee will be determined on a case by case basis and the type of business that will be built.

Mayor Pro Tem Benjamin advised that he favors the graduated fee structure. He stated that the imposition of the transportation impact fee is a big step but for the long term it is necessary and is beneficial for businesses to know they can depend upon the transportation system.

Mayor Steenrod noted she would rather the impact fee be reduced to less than \$2,000.

Councilmember Sheckler noted that the City needs to charge what the market will bear and raise the funds needed to fund Des Moines' transportation needs.

Public Works Director Heydon advised that the impact fees cannot be used for maintenance, but these funds would free up money that otherwise would have to be taken from the maintenance fund in order to pay for improvements.

City Manager Piasecki reminded Council that the anticipated need is for \$34,000,000 in the next 20 years. He noted that other cities have ways to raise funds that Des Moines does not have. For instance the City of SeaTac receives funding from parking fees at SeaTac Airport.

Councilmember Thomasson pointed out that the seller may actually have to sell land for less than anticipated as developers are very aware of the cost of developing and the need to pay for sidewalks, street improvements, etc. Therefore, the impact fees may not be impacting attracting new development in Des Moines as some Councilmembers may think. He also noted that Council has been discussing this item for nearly a year with the development and adoption of the Comprehensive Transportation Plan, which has given plenty of opportunity for new developers to have vested by now.

Councilmember Petersen stated that he prefers the traffic impact fee as used in the City of Lacey, where single-family dwellings are exempt and commercial developments are assessed at 50% of the new PM peak hour trips that will be generated.

After further discussion the following were suggested for staff to develop draft language changes for Council's consideration in adoption of the draft ordinance at the meeting of April 10th:

- Traffic mitigation fee structured similar to the City of Lacey
- January 1st effective date for imposition of fees
- Phase in fee at 50%

Planning Agency Duties - History and Background

MOTION was made by Mayor Pro Tem Benjamin, seconded by Councilmember Petersen and passed unanimously, to forward this agenda item to the April 24, 2003 meeting.

Draft Ordinance No. 02-177 Mobile Home Park Regulations - 2nd Reading

MOTION was made by Councilmember White, seconded by Councilmember Thomasson and passed unanimously, to forward this agenda item to the April 10, 2003 meeting.

Ad Hoc Marina Rate Committee

Mayor Steenrod requested that the Harbormaster inform Council why the Municipal Facilities Committee is recommending establishing an Ad Hoc Marina Rate Committee prior to the next Marina rate increase.

Harbormaster Dusenbury reminded Council that there was discussion regarding revisiting the rate structure, to study it and to arrive at a formula that generates rates in an equitable manner. He noted that through the years by just adding percentage increases to the rates, in some cases, they no longer make sense. He noted that if you analyze rates charged by the square foot, there are cases where we charge as much for some of the smaller slips, on a per square foot basis, as is charged for some of the larger slips. He felt that from a market point of view, that sometimes does not make sense. Staff's recommendation since 1999, has been to revisit the Marina rate structure to come up with a formula that generates rates that make sense from both the market and equity points of view.

Councilmember Thomasson felt that it is clearly appropriate to study the Marina rates, but he will not support an ad hoc committee. He feels this is the responsibility of the Council as a whole.

Mayor Steenrod felt that the purpose of the ad hoc committee would be to help come up with all the pieces of a formula that the Council could apply henceforth. Also if Marina users were involved it could help make future rate increase more palatable.

Councilmember Thomasson pointed out that this would take a large amount of staff time to provide such a committee with all the information needed to even begin such a process. It also noted it is important to remember to separate revenue requirements from the question of how to apportion the dollars to the Marina users. He advised that Council sets the budget, must decide what the costs and expenses are. He felt there is no magic formula that is correct when it comes to setting rates, it is strictly a judgment call. He advised that he would prefer to have staff do the research and bring information directly to Council to make rate decisions at the appropriate time.

Councilmember Sheckler announced that he will not support any motion that will establish a Marina ad hoc rate committee.

Councilmember White expressed agreement with Councilmembers Thomasson and Sheckler.

Harbormaster Dusenbury also noted a purpose of establishing an ad hoc committee, would be to get "buy in" from the various competing interest groups that use the Marina. This final proposed new rate structure would be brought back to Council for approval.

Mayor Pro Tem Benjamin noted that ultimately the final establishment of a new rate structure would rest with Council. He advised that he likes the idea of getting the citizens involved who have historically had grievances over the rates.

Harbormaster Dusenbury advised that there never has really been an analysis of why the Marina charges a particular rate. Historically there has just been a cost of living increase, until 1999 when the dual rate structure was created.

ADJOURNMENT

10:30 p.m. City Attorney Marousek announced that under Council Rules of Procedure, Rule 20, the Council meeting has expired.

Respectfully submitted,

Denis Staab
City Clerk

ACTION ITEMS FROM 4/3/03 COUNCIL MEETING

Council Rules of Procedure - Rule 10 Study Sessions

- City Attorney to provide written response regarding study sessions and whether action items may be placed on a Study Session Agenda.

Draft Ord. No. 02-264 Traffic Impact Fees

- Staff to prepare draft language changes for Council's consideration at the April 10th meeting.

PRELIMINARY
SPECIAL MEETING DES MOINES CITY COUNCIL

MINUTES

April 10, 2003

The special meeting was called to order at 7:05 p.m. by Mayor Steenrod in the City Hall Conference Room, 21630 11th Avenue South, Suite A.

ROLL CALL - Present: Mayor Maggie Steenrod, Councilmembers Gary Petersen, Bob Sheckler, Scott Thomasson and Susan White. Absent: Mayor Pro Tem Richard Benjamin. Also present were City Manager Tony Piasecki, City Attorney Linda Marousek, and Assistant City Attorney Richard Brown.

Mayor Steenrod announced that the Council would hold an Executive Session for approximately thirty minutes to discuss with legal counsel representing the City litigation or potential litigation to which the City was or was likely to become a party and about which public knowledge regarding the discussion was likely to result in an adverse legal or financial consequence to the City.

No formal action was taken.

ADJOURNMENT

The special meeting adjourned at 7:28 p.m.

Respectfully submitted,

Linda A. Marousek
City Attorney

PRELIMINARY
REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

April 10, 2003

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

PLEDGE OF ALLEGIANCE was led by Councilmember Sheckler.

INVOCATION was led by Reverend Ed Starr of Des Moines United Methodist Church.

ROLL CALL - Present: Mayor Maggie Steenrod, Councilmembers Gary Petersen, Bob Sheckler, Scott Thomasson and Susan White. Absent: Mayor Pro Tem Richard Benjamin. Also present were City Manager Tony Piasecki, City Attorney Linda Marousek, Parks and Recreation Director Patrice Thorell and City Clerk Denis Staab.

MOTION was made by Councilmember Petersen, seconded by Councilmember Thomasson and passed unanimously, to excuse Mayor Pro Tem Benjamin.

COMMENTS FROM THE PUBLIC

Shawn Robb, 19904 Des Moines Memorial Drive

Mr. Robb advised that he is also speaking on behalf of, and in support of, Rick Edwards, regarding installation of a gate in the Redondo area. He questioned why they are not being allowed to install a gate on a private drive of residents, when other residents are allowed to do so. He informed Council that they have not received a satisfactory reason as to why they are not allowed to install such a gating system.

Lala Klinman, 24804 9th Place South

Ms. Klinman expressed concerned over the Mayor's lack of response for a reason of why an item was removed from the Agenda at the last Council meeting. It is her opinion that the public has a right to know, and so do the other Councilmembers, as to such reasoning. She felt that by the Mayor refusing to give a reason shows a sign of arrogance and makes the Mayor an autocrat. She reminded Council that a few years ago there was a ballot measure to change the form of government in Des Moines to a strong Mayor and eliminate the City Manager. She stated that measure was voted down very strongly by citizens, therefore she felt the current system is a City Manager with a weak Mayor. She suggested that it is the citizens right to know the reasoning behind making such decisions as removing items from the agenda.

Steve Zielinski, Sound Vista Mobile Home Park, Des Moines, WA

Mr. Zielinski strongly encouraged Council to take a vote on the mobile home park issue tonight. He stated that he has empty spaces that need to be filled with manufactured homes. He advised that he has been upgrading the property and his expenses are going up.

Rick Edwards, 909 South 278th Place

Mr. Edwards stated that he has had several conversations with the City Manager and the City Attorney regarding an agreement that had been made between the former owner of his property and the City of Des Moines. He noted he has been denied a permit to put in a gate on the private

road. He pointed out that several residents in the area, living on private roads, have installed electric gates, or are in the process of installing gates. He advised that he is appealing the City's denial, and noted that the agreement over which he is appealing, provides that future owners could appeal. He stated the real problem is there are no existing City codes or policies governing such gates. Therefore, he feels that the Engineering Department has no basis to deny him the right to install a gate.

City Manager Piasecki advised that he will have the City Attorney address this under Administration Reports.

David Litowitz, 2715 64th Avenue NE, Landmark Homes

Mr. Litowitz addressed Council informing them he has been building houses in the City for over 15 years and he wishes to speak against the draft ordinance imposing traffic impact fees. He presented Council with written material to review that supports his opposition. He advised that he builds affordable single family homes. He stated that the increase fees will tend to drive out first time home buyers by additional increased costs that will prohibit students as well as retired citizens from being able to purchase homes. He also stated that King County only charges \$200 per single family lot which is considerably less than what Des Moines is proposing. He requested Council to keep affordable housing in Des Moines and to vote against the draft ordinance.

Ed Pina, 24219 7th Avenue South

Mr. Pina recommended that Council adopt a policy that would require all existing Councilmembers to be present when a vote is taken on filling the vacant Council position. He urged passage of Draft Resolution No. 03-098.

Larry King 2715 64th Avenue NE, Tacoma, Landmark Homes

Mr. King stated he has been developing land in Des Moines for 15 years and has enjoyed a good working relationship with City staff. He advised that he is currently working on developing property at 268th and Pacific Highway South into 34 affordable single family homes. He requested Councilmembers review the material distributed to them regarding traffic impact fees. He felt the traffic impact fees are unnecessary and discriminatory, as they target new home buyers, and that increasing the price of new homes is unfair. He felt that traffic and transportation problems should be shared by all residents through a general tax increase. He requested Council study the issue further before making a final decision.

Alex White, 22030 7th Avenue South, #204

Mr. White noted that he is involved in a real estate managing company for single family residential houses and residential developments. He stated that developers have been able to overcome aircraft noise problems because homes in Des Moines are more affordable. He advised that by adding additional costs, such as traffic impact fees, will make it difficult to continue doing business in Des Moines.

Gary Ohrt, Owner of Property 1855 South 216th

Mr. Ohrt informed Council that he hopes to develop this property for business use. He stated that he has done some study on his own in regards to traffic impact fees. He briefed Council on impact fees in the cities of Federal Way, Tukwila, Kent, Auburn and Renton. In conclusion, he requested that Council consider the long term effect the passage of the draft ordinance with the

proposed fees could have on Des Moines and send it back to the committee for further review to come up with a fair and more justified impact fee.

BOARD & COMMITTEE REPORTS

Human Services Advisory Committee - New Senior Activity Center

Councilmember White advised that the Committee met last week at the new Senior Activity Center. She commended staff and volunteers for what they have accomplished with the Activity Center on an extremely tight budget. However, she noted there are some items that Council may wish to examine for funding such as asphalt the whole driveway, outdoor lighting, burglar alarm among other safety items.

Senior Activity Center Opening

At the request of Mayor Steenrod, Parks and Recreation Director Thorell announced that on Thursday, April 17th, an opening ceremony will be held at the Activity Center beginning at 11:30 a.m., lunch will be served at noon, with tours of the building at 12:30 and everyone is welcome. Mayor Steenrod will be presiding at the ceremony.

Finance and Economic Development Committee

Mayor Steenrod reported that the Committee is focusing on how to improve economic development. The Committee will be reviewing potential code changes to help. She advised that the Community Development Director will be before the Council in the near future to talk about some of the plans to elicit citizen participation in helping to determine what are the most critical issues.

PRESIDING OFFICER'S REPORT

Mayor Authority to Remove Agenda Items

Mayor Steenrod noted that some of Council Rules are difficult to interpret, but one item that is clear is that the Presiding Officer has the option of removing items from the Agenda. She advised that one of things that is not clear is how to determine whether Council can get through all the items on the Agenda in 3 hours. She stated that it is a judgment call to decide which items to remove and which items should be acted on, along with allowing ample time for public comments.

ADMINISTRATION REPORTS

Senior Activity Center

City Manager Piasecki advised that he has been discussing with the Parks & Recreation Director and the Finance Director to see if we can find a way to fund some of the items that Councilmember White noted still needs to be done at the Activity Center. He noted that one potential source of funding is the Real Estate Excise Tax for 2002 as they actually came in over budget. In regards to the parking lot paving, he noted that the problem with asphaltting the very large parking lot is that it would kick-in some of the City's surface water management regulations which could be very, very costly. He stated that Engineering is reviewing some harder, yet porous surfaces that might be used, that would give more stability to the area while not causing the surface water management regulations to kick-in. He felt that staff may be able to report back to Council in a month or so on potential solutions.

Neighborhood Meeting

City Manager Piasecki reported that the first neighborhood meeting of the year is scheduled for Tuesday, April 15th in the parking lot of the Saltwater Unitarian Church at 25701 14th Place South in Woodmont.

Zenith View Point - Unclassified Use Permit

City Manager Piasecki informed Council that Mr. White, who spoke during comments from the public, has a project called "Zenith View Point" that is set for a Public Hearing in front of the Planning Agency on May 12th. The item will come before Council on June 26th. He reminded Council that this is a Quasi-Judicial matter therefore ex-parte communications should be avoided.

ACORN Group - Midway Park - Pacific Ridge Neighborhood

City Manager Piasecki reported that that lights on one of the sides of Midway Park have been installed by Puget Sound Energy. He advised that he has been in contact with the Government Affairs Director with PSE about the possibility of some other methods of funding street lights along 28th and 29th Avenues South.

Mr. Mike Dannels - Request to Remove Gate Across Driveway

City Manager Piasecki informed Council that the City's engineering analysis is not yet completed.

Legislative "Fill" Bill - Sponsored by Port of Seattle

City Manager Piasecki advised that the bill has passed the Senate and has been sent to the House, and passed out of the Natural Resources Sub-Committee last week. It is now scheduled for floor debate and a vote early next week. The bill was amended by the House Committee so it could potentially affect a great deal more projects, and the fill that the Port would use, than just the 3rd runway. This may mean more people will take a hard look at the Bill and possibly vote against it.

Request to Install Gate on Private Road by Rick Edwards

City Attorney Marousek informed Council that she has been working with the City's Community Development and Building Departments, and has talked to Dr. Edwards several times about the issue. She advised Council that Dr. Edwards applied for a building permit to install structural supports for a gate across a private street. Upon investigation through a title search, it was found that the Williams owned 3 of the 4 parcels located on the private street. It was learned that there was a legal binding settlement agreement dated July of 2000, signed by the Williams in which there was an agreement not to put a gate across that private street. After review of that agreement with the Building Official, a letter was sent to Dr. Edwards rejecting the application for his building permit. She advised that Dr. Edwards has been advised that he has the right to appeal to the Hearing Examiner. If the Hearing Examiner rules against Dr. Edwards he has the right to appeal that decision to the Superior Court. She advised Councilmembers and staff that this a matter that is under litigation and would be appropriate for further discussion only under Executive Session. She noted that Council is free to discuss the general question of gates on streets as a policy or code matter, but this particular case is in litigation.

KIRO TV Ad

Mayor Steenrod stated that several citizens had called her stating that KIRO was running an ad about crime running rampant with a banner that said Des Moines running in the background.

She reported that she called KIRO requesting that the banner of Des Moines be removed. KIRO called her back this morning and reported that they would have this message removed by Monday.

Council Rules Regarding the Term "Full" Council

Mayor Steenrod noted that Council Rule 9, references "when the full Council shall vote . . ." She requested the City Attorney define what is a "full Council".

City Attorney Marousek defined her interpretation of the term used in this context as "It means the full Council is not the 7 out of 7, it is a quorum of the Council acting as a Council as opposed to the Council meeting as a committee. The phrase full Council is a term used in contrast to a committee of the Council. Therefore, she advised that even though one Councilmember is absent tonight, the fact that there is a quorum of the Council and we are in a regular open public meeting, does authorize this Council to act under Council Rule 9 to place items on a future agenda.

Mayor Steenrod requested that the term be better defined in the Council Rules in the future.

CONSENT CALENDAR was read by City Clerk Staab.

1. Motion is to approve the regular and special minutes of March 27, 2003.
2. Findings: Vouchers audited and certified by the auditing officer as required by RCW 42.24.080, and those expense reimbursement claims certified as required by RCW 42.24.090, have been recorded on a listing which has been made available to the City Council.

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

Claim checks #84688 through #84858 & electronic fund transfers in the total amount of \$542,929.94

Payroll fund transfers in the total amount of \$342,356.07

3. Motion is to approve the surplus and disposal of a 1992 Chevrolet Corvette, VIN #1G1YY23P6N5119187 and authorize disposing of by auction or sale.

4. TWO MOTIONS regarding the 10th Avenue South Culvert Project:

Motion is to award the construction contract for the 10th Avenue Culvert Replacement and Intersection Improvement Project to Interwest Development, Inc. in the amount of \$515,092.51 and further to authorize the City Manager to sign the contract substantially in the form as submitted, plus authorize the City Manager or his designee to approve change orders up to an amount of 10% of the contract amount.

Motion is to award the professional services contract for construction management services to Reid Middleton, Inc. in the amount of \$101,133.85 and to authorize the City Manager to sign said contract substantially in the form as submitted, plus authorize the City Manager or his designee to approve change orders up to an amount of 10% of the contract amount.

Consent Item #3

At the request of Mayor Steenrod, City Manager Piasecki explained that the Corvette was seized during a narcotics arrest and eventually the car was forfeited to the City. It was decided to use the car as the City's D.A.R.E. program vehicle so it was listed as a City asset and was under the City's insurance. Therefore, as a City asset, it can only be disposed of with Council permission. He reported that the funds derived from the sale will be deposited into the Police Department's Drug Asset Seizure Fund.

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

OLD BUSINESS

Draft Ordinance No. 02-177 Mobile Home Park Regulations - 2nd Reading

City Manager Piasecki introduced the topic and noted that the changes as requested by Council have been included in the revised draft ordinance.

Councilmember Thomasson expressed reservations regarding the draft ordinance. He noted the City's current regulations goal was to allow mobile home parks as an interim use of the land within the Pacific Ridge area. He felt that the sooner that use stops, the sooner the land will develop in accordance with the Pacific Ridge plan.

Councilmember Thomasson noted that this issue feels like a quasi judicial proceeding and questioned whether there may be a Appearance of Fairness issue as Councilmember Petersen owns the property directly across the street from a mobile home park and that he may have a beneficial conflict of interest.

Upon questioning by City Attorney Marousek, Councilmember Petersen announced that his grandmother had lived in the mobile home park until she passed away. He also stated that he knows Mr. Gray who owns the Pine Terrace Mobile Home Park. He noted that in the last 5 years he has moved one of the mobile homes, through his business, Pete's Towing. He stated that he has not had any financial dealings since he has been on the City Council and has no monetary beneficial interest.

Councilmember Petersen spoke in support of the draft ordinance noting that these mobile home parks are in business and are paying their property taxes.

MOTION was made by Councilmember Petersen, seconded by Mayor Steenrod, to approve Draft Ordinance No. 02-177. Motion failed 2 to 3 with the following votes: YES - Councilmember Petersen and Mayor Steenrod. NO - Councilmembers Sheckler, Thomasson and White.

8:35 p.m. Mayor Steenrod called for a 10 minute break.

Mayor's Statement - Agenda Revision

Mayor Steenrod noted that she had been questioned earlier as to why she might pull an item from the Agenda. She stated that what just happened is a classic example of why someone with a little more experience as a Mayor, might have pulled that item from the Agenda. She noted that a citizen who had requested the draft ordinance has been attending meetings for months. She stated that she had been under the impression that with certain adjustments, it would be approved. She noted that the ordinance was voted down 3 to 2 with no real explanation as to why. She asserted that the draft ordinance was voted down because Councilmembers are being held hostage because of an ACC funding issue.

Mayor Steenrod announced for those reasons just mentioned, she is removing Draft Ordinance No. 02-264 Traffic Impact Fees from the Agenda because if she does not pull it off, it will pass

without any concern of the impacts. This item will be voted on at the next meeting to decide which Agenda it will be placed on. She suggested that any citizens would want to give feed back to Councilmembers who are arbitrarily castings votes to bind this Council hands should do so.

Councilmember Sheckler noted he is personally appalled at some of the actions that four of the Councilmembers have taken over the last year and a quarter. However, being angry is no reason to pull things off the Agenda. He noted that the accusation that the last vote was because of the ACC funding is wrong. Councilmembers voting on this issue look at every single item for what it is and on its own merits. He stated that it was very wrong for the Mayor to make such a statement concerning the ACC issues.

Mayor Steenrod stated that if Council was going to not pass the draft ordinance on mobile home parks, then it should have been turned down several months ago.

Councilmember White stated that she felt it is wrong to remove the draft ordinance regarding traffic impact fees as this issue has been going on too long. She requested the Mayor reinstate the item.

Mayor Steenrod advised that she has not heard any citizen comments in favor of traffic impact fees. She noted that while there is a need for revenue in the City, it should not be on the back of City businesses and tax payers.

Councilmember Sheckler noted that the draft ordinance came out of the Council Committee with a recommendation for approval.

Mayor Steenrod advised that the Committee had recommended the impact fee ordinance should be passed, but had not been informed of the amount of fee that would be charged. She feels there needs to be more Council discussion on this item and she would prefer that all six members be present for further discussion and voting.

NEW BUSINESS

Park & Recreation Master Plan

Parks and Recreation Director Thorell informed Council that the purpose of this item is for the City Council and the Ad Hoc Parks, Recreation and Sr. Services Master Plan Citizens Committee to continue their discussions of the Draft Master Plan policies, projects, funding options and implementation strategies. She noted that this will allow the City Council the opportunity to provide comments and direction for changes, additions or deletions to the Plan so that it can be finalized and brought back to the Council for adoption. She acknowledged the Committee members seated in the audience and introduced Shelly Parker.

Ms. Parker outlined three priorities of the Committee as follows:

1. Maintenance of existing parks and facilities.
2. Complete projects currently underway.
3. Provide for City-wide distribution of recreational resources into the future.

She questioned whether Council supports the priorities as established or if there are any projects that may have been over looked, or sectors of the community where the Committee may have fallen short on.

Ms. Parker addressed the Master Plan funding options, noting the Committee hopes to accomplish things both in maintenance and future development. She requested feedback from the Council on whether they can support any of the funding options listed in the packet material. In particular she noted the real estate excise tax and that a portion of that had been previously dedicated to parks and has been rededicated elsewhere. She requested that amount be put back into parks and questioned whether Council will support this. Secondly, she noted the Levy Lid Lift and Bond issues, which are community voted measures, as ways of funding additional projects in the Woodmont area and in Pacific Ridge. She advised that if Council does not support those funding options then the Committee needs to go back and redo the Plan. She called Council's attention to the individual projects and asked if there were any questions.

Councilmember Thomasson stated that he felt there should have been much more interaction between the Council and the Committee. He noted that the plan is being presented as a complete package and he would rather take it apart to see how the Committee arrived at its conclusions or see what alternative ideas might have been chosen. He questioned what policy decisions should be made first as there are a lot of budgetary issues involved.

Parks and Recreation Director Thorell noted that a lot of the planning process was in two parts 1. what is the vision that we want for the community and, 2. how do we fund that. She advised that the vision does not go away just because the funds are not there. She noted that the last Master Plan did not include funding.

Councilmember Thomasson expressed the opinion that it was easier to adopt the last Master Plan because it did not have the funding issue.

Parks and Recreation Director Thorell noted that while the costs of the projects is noted in the draft Plan, the funding issues of a Levy Lid Lift or a bond issue to achieve a lot of the projects, would have to be determined by Council.

Councilmember Thomasson questioned how does this document dove-tail with the City's Comprehensive Plan. He felt there are issues that are policy questions that need to be formulated in such a way that Council can address questions and arrive at an answer. He stated that he is not sure how to deal with the document presented, without dealing with all the questions that the Committee has dealt with over the months of their work.

City Manager Piasecki noted that in regards to the issue as to whether schools count or not, no objection was raised by the Council, therefore his direction to the Parks & Recreation Director was to put schools in and count them. He advised that if Council wishes to pull parts of the draft Plan out for more detailed discussion, this can be done. He further advised that staff will be bringing the Comprehensive Plan amendments before Council and he suggested that if the draft Park and Recreation Master Plan is adopted, then have the Parks Director work with the Community Development Director work out what parts of the Comp Plan may need to be amended to make it consistent. In regards to funding, he noted that this was not included in the last Master Plan. The last Master Plan was a "wish list" and he noted that a lot of it has been accomplished. Staff was directed that as we got to the projects, they needed to be worked into the CIP, find grants for them, and if we need to, suggest other ways to fund them. He cited the Community Center as a good example of being one that needed a voter approved bond, we did that, and that failed. He stated that what the Committee has put together is a very aggressive plan. Council could give direction to proceed as we did with the last plan and not address

funding in the Plan. As we go through the budgeting process, this fall, we would try to find ways to fit as much of the top priorities as possible into the CIP, charge the Parks and Recreation Director to go find as many grant dollars as she can, and hopefully the City will be able to fund a great deal of the Plan.

Councilmember Sheckler agreed that this is an aggressive Plan, but it excites him. He felt that the Committee has done a stellar job in looking at the community as to what to do for the long term, rather than the short term. He felt needs of all age groups have been addressed. However, he noted, that because it is aggressive it will take a few years. He congratulated the Committee for their work.

Councilmember White commended the Committee for their vision and hard work. She felt this is an important element to help draw people to the Des Moines area.

Ms. Parker asked for Council direction on the issues of using a Levy Lid Lift or a Bond issue. She also questioned whether there were needs that the Committee had not addressed.

Councilmember Sheckler remarked that he felt Council had cautioned the Committee on entertaining the idea of a Levy Lid Lift as being very difficult at this time. He questioned whether this was something that the Committee wants to continue to pursue.

Ms. Parker advised that if they wanted to try to accomplish all the facets of the Plan, a Levy Lid Lift would be an integral part of that. She noted, as Councilmember Thomasson said, it could not all be accomplished without that piece. She advised that if Council is against a Levy Lid Lift, then the Committee needs to pull out all of the projects the Committee thought could be funded in that manner, and reshuffle them.

Councilmember Thomasson stated that there are policy questions that need to be addressed such as the Activity Center. Is it interim or long term? The Steven J. Underwood Park plan calls for a soccer field to be located there. In regards to the Beach Park, he noted there are policy questions on whether the buildings should be salvaged or removed. However, he stated that he feels there is clear direction that a community center will not be located at the Beach Park.

Parks and Recreation Director noted that the Beach Park study would have to be conducted to have engineers evaluate the structures.

Councilmember Thomasson noted that he would prefer the plans for different parks be grouped by location or neighborhood, instead of being listed alphabetically.

Mayor Steenrod remarked in reference to Grandview Park that she would have a problem removing existing soccer fields to make way for a dog park.

Committee member Joan Allen advised that this plan is through the year 2014 with a vision to work towards. She requested that as part of the implementation of this Plan, Council consider appointing a Parks, Recreation and Senior Programs and Services Commission for the purpose of advising the City Council on long range planning, policy and budgetary subjects related to the Plan. She noted that Draft Ordinance No. 03-108 is contained within Council's packet that would create such a Commission.

Councilmember Sheckler announced that he needs more time to absorb the scope of the Plan. He would prefer individual meetings with the Parks and Recreation Director and a couple of the Committee members to have some questions answered.

City Manager Piasecki advised that he will work with the Parks and Recreation Director to bring portions of the plan back to Council on future agendas. In the meantime, he noted that individual Councilmembers can arrange a meeting with the Parks and Recreation Director and a few Committee members to review specific items in more detail.

Councilmember Thomasson stated that he would have to think long and hard about a long term Parks Commission. He suggested that research be done to check with other cities to see what difficulties may have been encountered. He expressed concern that such a commission could start driving the agenda of the city as opposed to other business. He noted that once the Plan is adopted, then it is up to Administration to figure out how to fund and balance the issues. He cautioned that should Council adopt the draft ordinance, it is important to be careful as to what the commission's mission would be to avoid any misunderstanding.

9:54 p.m. Mayor called for a 5 minute break.

ACC Funding

MOTION was made by Councilmember Sheckler, seconded by Councilmember White, to place this item on the Agenda of April 24, 2003.

Councilmember Thomasson clarified that the Agenda Item would be to approve a membership agreement with ACC and include funding for the year. He requested Administration be sure to have a draft agreement available with the dollar amount blank. He noted that the amount to be considered will most likely be between \$150,000 to \$200,000. This was accepted as a FRIENDLY AMENDMENT.

VOTE ON MOTION: Motion passed unanimously.

Draft Ordinance No. 03-075 Right-of-way and Park Use Permits

Councilmember Thomasson felt this item should be delayed until a full (7 member) Council is seated. However, he noted that staff needs direction on a Waterland Resolution that may be coming before Council soon.

City Manager Piasecki advised that a request was made by Council to the Chamber of Commerce to review their resolution for the Festival 90 days in advance of the event. He noted the 90 days would be approximately April 24th. He informed Council that he has received a letter from the Chamber talking about the Festival, but they did not request that a resolution be placed in front of Council for consideration to use City property.

Councilmember Thomasson noted that he is not clear whether the draft ordinance would even deal with the Marina or whether it should be dealt with through the Marina Rules.

City Manager Piasecki advised that the bottom line is that the Marina is City property and the Council controls how City property is used. He noted that specifically dealing with Waterland can be handled independently of this draft ordinance.

City Manager Piasecki informed Council that he will formally request, by letter tomorrow, that the Chamber submit a formal request to hold the Waterland Festival for the April 24th Agenda.

MOTION was made by Councilmember Thomasson, seconded by Councilmember Sheckler and passed unanimously, to place Draft Ordinance 03-075 on the Agenda of May 22, 2003.

Utility Tax Rate

Mayor Steenrod requested this item be placed out in the future after a full Council (7 members) is seated, preferably June 12th.

Upon questioning by Councilmember Thomasson, Mayor Steenrod explained that the issue is whether to continue using a utility tax to fund ACC. She acknowledged that this may be moot for this year if Council decides to renew an agreement with ACC.

Councilmember Thomasson noted that this is pure revenue to the City unrelated to ACC. He advised that with a \$1.8 million dollar shortfall in this years budget, he cannot contemplate getting rid of any revenue source under those circumstances. He stated that this has nothing to do with funding ACC, but funding City services, and having a conversation about reducing revenues would make no sense at this time.

Mayor Steenrod noted with taxpayers suffering and some out of work, there is a point that Council should give them some relief.

Council's consensus was to address this as a policy issue during fall budget discussions.

Draft Resolution No. 03-098 Requiring Full Council Participation In Final Appointment to Vacant Council Position

City Attorney Marousek advised Council that the intent of the language contained in the resolution was to permit all 6 members of the Council to participate. She noted that the actual language contained in the resolutions states: "all Councilmembers eligible to participate".

MOTION was made by Councilmember Sheckler, seconded by Councilmember Thomasson and passed unanimously, to place Draft Resolution No. 03-098 on the Agenda of April 24th.

NEXT MEETING DATE - Regular Meeting April 24, 2003

ADJOURNMENT

At 10:23 p.m. **MOTION** was made by Councilmember Thomasson, seconded by Councilmember Sheckler and passed unanimously, to adjourn.

Respectfully submitted,

Denis Staab
City Clerk

ACTION ACTIONS FROM 4/10/03 COUNCIL MEETING

Council Rules of Procedure

- Legal staff to develop better definition of term “full Council”.

Draft Ordinance No. 03-108 Parks, Recreation and Senior Programs and Services Commission

- Staff to research with other cities to see what difficulties may have been encountered in establishing such a commission - i.e. driving Council agendas, budget issues

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Increase in Contract with Global Diving and Salvage, Inc. for "Repairs to the Des Moines Marina Fishing Pier" Project.

ATTACHMENTS:

Change Order No. 4

FOR AGENDA OF: April 24, 2003

DEPT. OF ORIGIN: Marina

DATE SUBMITTED: April 7, 2003

CLEARANCES:

[X] Marina

[X] Legal

APPROVED BY CITY MANAGER

FOR SUBMITTAL:

A. Purpose & Recommendation

The Marina staff is seeking Council approval to increase the authorized contract amount with Global Diving and Salvage, Inc. by \$450.

Suggested Motion: "I move that the Council approve the increase in the authorized contact amount with Global Diving and Salvage, Inc. by \$450, plus Washington State Sales Tax, (a total increase of \$). The Change Order shall be in a form approved by the City Attorney."

B. Background

The staff is closing out the Repairs to the Public Fishing Pier Project. When the contractor's invoices were reconciled, a \$450 error was discovered. The error occurred when Change Order No. 3 was prepared. The total authorized unit quantity of spall repairs was transferred from Change Order No. 2 as 164 square feet instead of 163 square feet. The additional square footage of spall repairs on Change Order No. 3 should have been 56 square feet instead of 55 square feet.

C. Discussion

N/A

D. Alternatives

Approving the increase in the contract amount.

No Action – Direct the staff to pay the additional \$450 outside the contract.

E. Financial Impact

The contract amount would be increased by \$450, making the contract amount \$128,240, plus WSST, (for a total contract amount of \$139,525.12). The damage to the Fishing Pier is covered by the City's insurance carrier. The deductible amount is approximately \$25,000. At this point, the staff expects the insurance carrier to reimburse the City for all of the repairs except the steel pile jackets that were added to 6 of the damaged piling. The Marina's share of the cost could be about \$26,000 depending on the outcome of the insurance claim. This would be paid out of the Repair and Replacement fund.

F. Recommendation

The staff recommends that the Council authorize the increase to the contact amount.

G. Concurrence

The legal and the Finance Departments concur with the staff recommendation.

CHANGE ORDER

No. 4

PROJECT Repairs to the Public Fishing Pier at the Des Moines Marina

DATE OF ISSUANCE

EFFECTIVE DATE

OWNER City of Des Moines Marina

OWNER'S Contract No.

CONTRACTOR Global Diving & Salvage

ENGINEER REID MIDDLETON, INC.

You are directed to make the following changes in the Contract Documents:

Description: Increase the total contract amount by \$450.00 to \$128,240.

Reason for Change Order: Marina staff made a \$450 error when transferring the total authorized unit quantities of spill repair from Change Order No. 2 to Change Order No. 3. Total authorized unit quantity of spill repair was transferred as 164 square feet instead of 163 square feet.

Attachments: Copies of Change Order No. 2 and Change Order No. 3

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIMES:
Original Contract Price	Original Contract Times 60 days from 6/20/02
\$ 18,500.00	Substantial Completion: 8/19/02
	Ready for final payment: 8/19/02
	day or dates
Net changes from previous Change Orders No. 0 to No. <u>3</u>	Net change from previous Change Orders No. <u>1</u> to No. <u>3</u>
\$ 109,290	153
	days
Contract Price prior to this Change Order	Contract Times prior to this Change Order
\$ 127,790	Substantial Completion: 2/17/03
	Ready for final payment: 2/17/03
	days or dates
Net increase (decrease) of this Change Order	Net Increase (decrease) of this Change Order
\$ 450	42
	days
Contract Price with all approved Change Orders	Contract Times with all approved Change Orders
\$ 128,240 plus WSST	Substantial Completion: 3/31/03
	Ready for final payment: 4/08/03
	days or dates

RECOMMENDED:

APPROVED:

ACCEPTED:

By

By:

By:

Engineer (Authorized Signature)

Owner (Authorized Signature)

Contractor (Authorized Signature)

Date:

Date:

Date:

PROJECT

DATE OF ISSUANCE '23/02EFFECTIVE DATE 2/23/02OWNER City of Des Moines Marina

OWNER'S Contract No. _____

CONTRACTOR Global Diving & SalvageENGINEER REID MIDDLETON, INC.

You are directed to make the following changes in the Contract Documents.
Description:

Reason for Change Order: Changes in quantities (Attachment #1)
Addition of six steel piling jackets (Attachment #2)

Attachments: _____

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIMES:
Original Contract Price	Original Contract Times
\$ <u>18,300</u>	Substantial Completion: <u>8/19/02</u>
	Ready for final payment: <u>8/19/02</u>
	_____ day or dates
Net changes from previous Change Orders No. 0 to No. <u> </u>	Net change from previous Change Orders No. <u>1</u> to No. <u>2</u>
\$ XX <u>68,720</u>	<u>0</u> <u>61</u>
	_____ days
Contract Price prior to this Change Order	Contract Times prior to this Change Order
\$ <u>87,220</u> + WSSI	Substantial Completion: <u>11/18/02</u>
	Ready for final payment: <u>11/18/02</u>
	_____ days or dates
Net increase (decrease) of this Change Order	Net Increase (decrease) of this Change Order
\$ <u>40,570</u> + WSSI	<u>0</u> <u>92</u>
	_____ days
Contract Price with all approved Change Orders	Contract Times with all approved Change Orders
\$ <u>127,790</u> + WSSI	Substantial Completion: <u>2/17/03</u>
	Ready for final payment: <u>2/17/03</u>
	_____ days or dates

RECOMMENDED:

By: _____

Engineer (Authorized Signature)

Date: _____

APPROVED:

By: _____

Owner (Authorized Signature)

Date: 12/23/02

ACCEPTED:

By: _____

Contractor (Authorized Signature)

Date: 1-3-03

approved as to form
Frank A. Maronick
City of Des Moines

<u>Change Order</u>	<u>Change in Quantity</u>	<u>Change in Price</u>
Increase spall repair from 164 sq.ft. to 219 sq. ft.	Plus 55 sq ft	\$24,750.00
Decrease crack repair from 128 lin. Ft. to 61 lin. Ft.	minus 67 lin. Ft.	-\$6,030.00
Add six steel pile jackets as specified in attachment		\$23,450.00
Decrease for duplicate work, (forming & pouring piling)		-\$1,600.00
		\$40,570.00
	Plus WSST	\$3,408.00
		\$43,978.00

CHANGE ORDER

No. 2

PROJECT Repairs to the Public Fishing Pier at the Des Moines Marina

DATE OF ISSUANCE 10/14/02

EFFECTIVE DATE 10/14/02

OWNER City of Des Moines Marina

OWNER'S Contract No.

CONTRACTOR Global Diving and Salvage

ENGINEER REID MIDDLETON, INC.

You are directed to make the following changes in the Contract Documents.

Description: Increase the unit quantities of Spall & Delamination repair from 39 sq. feet to 163 sq. feet and increase the unit quantities of crack repair from 40 lineal feet to 128 lineal feet.

Reason for Change Order: The damage in some areas that we intended to repair with the epoxy crack injection method was worse than the original inspection revealed. The damaged concrete has to be completely removed and repoured.

Attachments:

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIMES:
Original Contract Price	Original Contract Times
\$ <u>18,500</u>	Substantial Completion: <u>8/19/02</u>
	Ready for final payment: <u>8/19/02</u>
	day or dates
Net changes from previous Change Orders No. 0 to No. <u>1</u>	Net change from previous Change Orders No. 0 to No. <u>1</u>
\$ <u>5000</u>	<u>30</u>
	days
Contract Price prior to this Change Order	Contract Times prior to this Change Order
\$ <u>23,500</u>	Substantial Completion: <u>9/18/02</u>
	Ready for final payment: <u>9/18/02</u>
	days or dates
Net increase (decrease) of this Change Order	Net Increase (decrease) of this Change Order
\$ <u>63,720</u>	<u>61</u>
	days
Contract Price with all approved Change Orders	Contract Times with all approved Change Orders
\$ <u>87,220 plus WSST</u>	Substantial Completion: <u>11/18/02</u>
	Ready for final payment: <u>11/18/02</u>
	days or dates

RECOMMENDED:

By

Engineer (Authorized Signature)

Date:

APPROVED:

By:

Owner (Authorized Signature)

Date:

ACCEPTED:

By:

Contractor (Authorized Signature)

Date:

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Agreement with Reid Middleton
Engineers for engineering and design work on the
"Repairs to the Public Fishing Pier Project" -
Request for increase in fee.

ATTACHMENTS:

Letter from Reid Middleton requesting
additional fee.

FOR AGENDA OF: April 24, 2003
DEPT. OF ORIGIN: Marina

DATE SUBMITTED: April 7, 2003

CLEARANCES:

[X] Marina

[X] Legal

APPROVED BY CITY MANAGER

FOR SUBMITTAL:

A. Purpose & Recommendation

The Marina staff is seeking Council approval to increase the amount paid to Reid Middleton, Inc. for consulting and construction management services on the "Repairs to the Public Fishing Pier Project". Reid Middleton is requesting a fee increase of \$5500.

Suggested Motion: "I move that the Council approve the fee increase requested by Reid Middleton, Engineers for consulting and construction management services on the "Repairs to the Public Fishing Pier Project", and to authorize the City Manager to sign an addendum to the City's agreement with Reid Middleton that would increase the contract amount by \$5,500, for a total contract amount of \$21,000. The addendum shall be in a form approved by the City Attorney."

B. Background

When the contractor began repairing the earthquake damage to the Public Fishing Pier, it became apparent that the damage was more extensive than the original estimates. As the Contractor progressed with the repairs, the Marina staff and City Building Official became concerned with the amount of material being removed from some of the support piling near the end of the Pier. The staff brought the Project Engineers, Reid Middleton, Inc. back for further inspections, and as a result of those inspections, closed the outer end of the pier for public safety. Reid Middleton did the initial calculations and recommended that the scope of the repairs be expanded to include installing steel jackets around six of the support piling. At that time, Reid Middleton also prepared the preliminary design for the steel pile jackets. This recommendation was discussed with the City Council during a Council briefing on the project in early November. At that time the Council concurred with the City Manager's suggestion that the staff seek another opinion on the repair methods. The staff retained EISI Engineers to inspect the Pier and review the plans for

the repairs. EISI agreed with the methods being used to repair the pile caps and the support piling, including the addition of steel pile jackets on the six piling that lost a significant amount of cross-section due to the earthquake damage.

C. Discussion

After the Council approved the addition of the steel pile jackets to the scope of the project. Reid Middleton completed the engineering and design for the jackets and submitted the design to the City Building Official for approval. After the repairs to the piling were underway, the staff and Reid Middleton negotiated an increase in fee for the extra work. The additional fee was for

- Discussions with City Staff and a letter to the City's insurance carrier regarding the need for the extra repairs.
- Site visit and inspection of damaged piling. Internal meetings and research and recommendations regarding pile jacket repair.
- Detail design of pile jacket repair.
- Inspection and letter to the City Building Official re: the pile cap in Bent No. 9.
- Design brief including calculations for City Building Official.

D. Alternatives

Approving the increase in fee for the extra services provided by the consultant.

No Action – Direct the staff to continue negotiating the fee increase with the consultant.

E. Financial Impact

The damage to the Fishing Pier is covered by the City's insurance carrier. The insurance company has been briefed on several occasions about the project and the estimated total cost of the repairs, including the engineering and design work. The extra fee requested by Reid Middleton was including in the total cost estimates given to the insurance company. At this point, the staff expects the insurance carrier to reimburse the City for the concrete repair, but the insurance carrier may consider the addition of the steel jackets an upgrade and they might not want to pay for all (or part) of the cost of installing them, (\$23,773 including WSST). The estimated reimbursement from the insurance company is itemized below.

Total Project Cost	163,490
Less Pile Jackets	<u>(23,773)</u>
Sub-total	\$139,717
Less Deductible	<u>(25,000)</u>
Total Reimbursement	\$114,717

The balance of \$48,773 would be partially offset by the FEMA award on this project, which was approximately \$21,000. The final remaining balance of about \$27,800 would be paid out of the Repair & Replacement fund, which has a balance of about \$300,000.

F. Recommendation

The staff recommends that the Council authorize the increase in fee for Reid Middleton for the work done on the steel pile jackets.

G. Concurrence

N/A

January 8, 2003
File No. 24-02-001-004-01

Mr. Joe Dusenbury, Harbormaster
City of Des Moines
22307 Dock Ave. S.
Des Moines, WA 98198-4627

*Engineers
Planners
Surveyors*

Subject: Des Moines Fishing Pier Repair
Proposed Fee Increase

Dear Mr. Dusenbury,

We are writing to request an increase to our authorized fee for engineering services related to the above noted project. As you are aware, the Fishing Pier repair has become increasingly complicated and expensive due to unforeseen conditions discovered during demolition. Based on the most recent change order, we understand the current construction cost has increased from \$18,500 to \$127,790. Over the past several months, the City has requested additional engineering effort from Reid Middleton in the form of correspondence, a site visit, and structural design and detailing, in response to these unforeseen changes in the project. We are writing to request that our fee be increased by Five Thousand Five Hundred Dollars (\$5,500) from Fifteen Thousand Five Hundred Dollars (\$15,500) to Twenty-One Thousand Dollars (\$21,000) to cover the following additional tasks:

1. September 24-26, 2002 - Discussion with City, draft and final letter to insurance company regarding additional repair costs.
2. October 28-31, 2002 - Site visit (Brian Moon, Barry Constant), internal meeting, research and recommendations regarding pile jacket repair.
3. November 5-14, 2002 - Design and detailing of pile jacket repair, and follow-up discussions with City and Contractor.
4. November 18-19, 2002 - Discussions with City & follow-up letter detailing repair to Bent 9.
5. November 21-22, 2002 – Design brief for pile jacket repair as requested by City.

Washington
Oregon
Alaska

Reid Middleton, Inc.
728 134th Street SW
Suite 200
Everett, WA 98204

Ph: 425 741-3800
Fax: 425 741-3900

Mr. Joe Dusenbury, Harbormaster
City of Des Moines
January 8, 2003
File No. 24-02-001-004-01
Page 2

The proposed increase will allow us to complete our construction services, barring further unforeseen circumstances. Please advise if the proposed \$5,500 fee increase is acceptable. We look forward to assisting you to bring this project to completion in the near future.

Sincerely,

Reid Middleton, Inc.



Shaun McFarlane, P.E.
Senior Waterfront Engineer

Accepted by City of Des Moines/Date

sgm\h:doc\24\02\002 Des Moines Fishing Pier\Proposal\Ltr_010803_RFE.doc\sgm

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Property Acquisition for Pacific
Highway South Project
(Sim Property/Blockhouse Restaurant)

ATTACHMENTS: Consent Judgment &
Decree of Appropriation

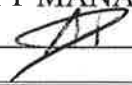
FOR AGENDA OF: April 24, 2003

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: April 9, 2003

CLEARANCES:

☒ Legal

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

PURPOSE AND RECOMMENDATION

This report is to seek City Council approval for the acquisition of right-of-way property and a temporary construction easement for the Pacific Highway South Improvement Project.

It is recommended that the council:

1. Approve the "Consent Judgment & Decree of Appropriation" in King County Superior Court Cause No. 02-2-19401-0 KNT, which provides for acquisition by the City, for \$30,482.00, of right-of-way property and a temporary construction easement, both of which are necessary for the Pacific Highway South Improvement Project; and
2. Authorize the City Attorney to approve and present to the court, for approval and entry, the "Consent Judgment & Decree of Appropriation" substantially in the form as submitted.

SUGGESTED MOTION: "I move to approve the "Consent Judgment & Decree of Appropriation" in King County Superior Court Cause No. 02-2-19401-0 KNT and to authorize the City Attorney to approve said Judgment and Decree and present it to the court, for approval and entry, substantially in the form as submitted.

BACKGROUND

On April 11, 2002, the City Council, through the exercise of its powers of eminent domain, enacted Ordinance No. 1302 for the acquisition of right-of-way property for the Pacific Highway South Improvement Project and directed the City Attorney to initiate court proceedings to carry out such acquisition. This court action is pursuant to such direction and the proposed "Consent Judgment & Decree of Appropriation" is a product of settlement negotiations with the property owners and their attorney.

DISCUSSION

This "Consent Judgment & Decree of Appropriation" provides for the acquisition in fee of a strip of right-of-way, (approx. 1,397 square feet) and a temporary construction easement (approx. 2, 986 square feet), both of which are necessary for the development and construction of the Pacific Highway South Improvement Project, for a total of \$30,482.00 including attorney and appraisal fees.

ALTERNATIVES

There are no viable alternatives. This agreed settlement is for the fair market value of the property as determined by the City's appraisers as of September 20, 2001 (\$27,982.00) plus an additional \$2,500.00 for:

- Increased property values at the date of possession (2/13/03);
- Temporary Construction Easement (not included in the 9/20/01 appraisal); and
- Professional fees (attorney & appraiser).

FINANCIAL IMPACT

This is the most efficient and least expensive way for the City to acquire this property and easement.

RECOMMENDATION

The City Attorney recommends the approval of this "Consent Judgment and Decree of Appropriation" as the most efficient and cost effective method of acquiring the subject property and easements.

**SUPERIOR COURT OF WASHINGTON
COUNTY OF KING**

**City of Des Moines, a Municipal
Corporation,**

Petitioner,

vs.

**KUNSOP SIM and CHONG OK SIM,
Husband & Wife, and BLOCKHOUSE
RESTAURANT, INC., a Washington
Corporation,**

Respondent

Case No: 02-2-19401-0 KNT

**Consent Judgment and
Decree of Appropriation**

**SUMMARY OF JUDGMENT
(RCW 4.64.030)**

Judgment Creditor	Kunsop Sim and Chong Ok Sim, Husband & Wife, and Blockhouse Restaurant, Inc., a Washington Corporation
Attorney for Judgment Creditor	Charles E. Watts, WSBA # 2331
Judgment Debtor	City of Des Moines, a Washington Municipal Corporation
Principal Judgment Amount	\$30,482.00
Pre-judgment Interest	None
Post-judgment Interest	None, the Petitioner/City has deposited the amount of the judgment into the registry of the court on or before the date of this judgment
Attorney Fees	None, included in Principal Judgment Amount
Expert Fees	None, included in Principal Judgment Amount
Total Judgment Amount	\$30,482.00
Real Property Awarded	Fee simple to the east 7.0 feet & an easement over the west 15.0 feet of the east 22.0 feet of property described in instrument recorded under King County # 9302161762
Assessor's Tax Parcel Number	2500600090 and 2500600092

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0

1. A determination of just compensation to be paid in money to the owners and all other persons interested in the subject property for the taking and appropriation of the subject property;
2. A judgment and decree of the Court providing for payment of the just compensation so determined; and
3. A decree of appropriation vesting title to the subject property in the petitioner and adjudging that the City of Des Moines is entitled to possession thereof.

The parties, through their attorneys, have stipulated and approved this Consent Judgment and Decree of Appropriation. The petitioner was represented by the City Attorney for the City of Des Moines. The respondents were represented by their attorney, Charles E. Watts.

NOW, THEREFORE, in accordance with the parties' stipulation and agreement, it is hereby ORDERED, ADJUDGED and DECREED as follows:

- The east 7.0 feet, **containing 1397 square feet**, more or less, of that property described in instrument recorded under Number 9302161762, records of King County, Washington.

- ## Consent Judgment & Decree of Appropriation - 2

Office of the Des Moines City Attorney
21630 11th Ave. South, Suite 1
Des Moines WA 9819
Tel: 206-870-655
Fax: 206-870-438

1 The west 15.0 feet of the east 22.0 feet, **containing 2,986 square feet**,
2 more or less, of that property described in instrument recorded under
3 Number 9302161762, records of King County, Washington.

4 5. The terms of the temporary construction easement are as follows:

- 5 a. The easement shall allow the City, its contractors, employees, agents,
6 successors and assigns, the right of ingress and egress to enter upon the land
7 subject to the temporary easement as required to complete the construction
8 work, to place personnel and equipment, and to reconstruct roadway access;
9
10 b. The City shall, to the extent possible, leave the property in as good condition
11 as existed on the day construction commences, including the timely removal
12 of debris, rubbish or combustible material resulting from construction;
13
14 c. The easement shall remain in force during construction and until such time as
15 the street improvements have been accepted for operation and maintenance by
16 the City, but not later than January 1, 2005;
17
18 d. The City, its agents and assigns, will notify the respondent of its construction
19 schedule, and will, to the full extent possible, schedule the construction
20 activity so as to minimize any inconvenience to the property;
21
22 e. The City shall indemnify and hold the respondent harmless against all liability
23 for losses, damages and expenses on account of damage to property or injury
24 to persons resulting from or arising out of the easement rights.

25 6. All other claims, counterclaims and causes of action alleged herein shall be and are
26 hereby dismissed with prejudice.

27 DONE IN OPEN COURT this ____ day of _____, 2003

28 _____
29 Judge/Court Commissioner

30 Presented by:

Richard S. Brown (WSBA # 1985)
Assistant City Attorney
City of Des Moines

Stipulated for Entry, Agreed to as to form and content; and
Notice of Presentation Waived by:

Charles E. Watts, (WSBA # 2331)
Attorney for Respondents
Consent Judgment &
Decree of Appropriation - 3

Office of the Des Moines City Attorney
21630 11th Ave. South, Suite 1
Des Moines WA 9819
Tel: 206-870-655
Fax: 206-870-438

A G E N D A I T E M

SUBJECT:

Financial match for EDA grant
RE: The Southwest King County Economic
Development Initiative (SWKCEDI)

ATTACHMENTS:

AGENDA OF: April 24, 2003

DEPT. OF ORIGIN: Community Dev. 

DATE SUBMITTED: April 14, 2003

CLEARANCES:

[] LEGAL _____

APPROVED BY THE CITY MANAGER
FOR SUBMITTAL 

Purpose and Recommendation:

The purpose of this agenda item is to request Council's approval of \$3,750. These funds will be used as a match for a \$50,000 Economic Development Administration grant.

Suggested Motion:

"I approve the expenditure of \$3,750 to be used as the City of Des Moines' match to the Economic Development Administration's Trade promotion grant and authorize the City Manager to transfer these funds to King County based on the approved scope of work from EDA".

Background:

The recession has hit King County particularly hard. Over the past two years the County has lost 91,000 jobs, which constitutes 90% of the statewide job loss. Southwest King County is particularly sensitive to economic trends because its population has historically lagged behind King County in terms of household income and employment.

In an attempt to deal with the particular economic development issues of this area, three years ago the cities of Burien, Des Moines, Tukwila, Normandy Park, SeaTac, unincorporated Highline, the Port of Seattle and King County joined to create the Southwest King County Economic Development Initiative (SEKCEDI). In 2002 Highline Community College joined this coalition.

During its existence, the Initiative has had several successes including the new Southwest King County Small Business Development Center located at Highline Community College.

Now the coalition is proposing to establish the Southwest King County Trade Promotion Program.

Discussion:

The Southwest King County Trade Promotion program will encourage small to medium-sized companies to export by educating them to the advantages of expanding markets overseas and by identifying the range of export support resources available in the Region. In addition, complementary activities will include studying the feasibility of establishing a foreign trade zone in Southwest King County and working with the US Customs Service to make international trade easier for small and medium-sized firms.

Alternatives:

1. Approve the request of \$3,750 for the export promotion program
2. Do not approve the request of \$3,750 for the export promotion program

Financial Impact:

If approved, there will be a \$3,750 impact to the General Fund. Permit fees will offset this expenditure. Each city in the SWKCEDI plus the Port of Seattle has agreed to participate in this program. Highline Community College is providing office space and administrative support for this program. This program will be funded for \$100,000: \$50,000 in EDA funds and \$50,000 from the SEKCEDI (\$30,000 cash, \$20,000 in-kind). King County will serve as fiscal agent.

Recommendation/Conclusion:

Approval of the request is recommended.

Concurrence:

None

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Property Acquisition for Pacific
Highway South Project
(Kasowski Property/
Pacific Professional Building)

ATTACHMENTS: Consent Judgment &
Decree of Appropriation

FOR AGENDA OF: April 24, 2003

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: April 17, 2003

CLEARANCES:

[X] Legal

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

PURPOSE AND RECOMMENDATION

This report is to seek City Council approval for the acquisition of right-of-way property and a temporary construction easement for the Pacific Highway South Improvement Project.

It is recommended that the council:

1. Approve the "Consent Judgment & Decree of Appropriation" in King County Superior Court Cause No. 02-2-33610-8 KNT, which provides for acquisition by the City, for \$27,695.17, of right-of-way property and a temporary construction easement, both of which are necessary for the Pacific Highway South Improvement Project; and
2. Authorize the City Attorney to approve and present to the court, for approval and entry, the "Consent Judgment & Decree of Appropriation" substantially in the form as submitted.

SUGGESTED MOTION: "I move to approve the "Consent Judgment & Decree of Appropriation" in King County Superior Court Cause No. 02-2-33610-8 KNT and to authorize the City Attorney to approve said Judgment and Decree and present it to the court, for approval and entry, substantially in the form as submitted.

BACKGROUND

On September 26, 2002, the City Council, through the exercise of its powers of eminent domain enacted Ordinance No. 1309 for the acquisition of right-of-way property for the Pacific Highway South Improvement Project and directed the City Attorney to initiate court proceedings to carry out such acquisition. This court action is pursuant to such direction and the proposed "Consent Judgment & Decree of Appropriation" is a product of settlement negotiations with the property owners and their attorney.

DISCUSSION

This "Consent Judgment & Decree of Appropriation" provides for the acquisition in fee of a strip of right-of-way, (approx. 417 square feet) and a temporary construction easement (approx. 2,056 square feet), both of which are necessary for the development and construction of the Pacific Highway South Improvement Project, for a total of \$27,695.17 including attorney and appraisal fees.

ALTERNATIVES

There are no reasonable alternatives because proceeding with litigation would be more expensive. This agreed settlement is for the fair market value of the property as determined by the City's appraisers as of August 24, 2001 (\$12,488.00) plus an additional \$15,207.17 for:

- Cost to cure damages (electrical, landscaping, sign, Fire Dep't relocation, re-striping, plus sales tax & misc. associated costs, all of which were based upon actual contractor estimates verified by staff);
- Increased property values at the date of possession (12/5/02);
- Temporary Construction Easement (not included in the 8/24/01 appraisal); and
- Professional fees (attorney & appraiser).

FINANCIAL IMPACT

This is the most efficient and least expensive way for the City to acquire this property and easement.

RECOMMENDATION

The City Attorney recommends the approval of this "Consent Judgment and Decree of Appropriation" as the most efficient and cost effective method of acquiring the subject property and easements.

**SUPERIOR COURT OF WASHINGTON
COUNTY OF KING**

City of Des Moines, a Municipal Corporation,
Petitioner,

vs.

Phillip J. Kasowski, et ux, et al,
Respondents

Case No: 02-2-33610-8 KNT

**Consent Judgment and
Decree of Appropriation**

SUMMARY OF JUDGMENT
(RCW 4.64.030)

Judgment Creditor	Phillip J. Kasowski and Ruth Kasowski, Husband & Wife; and Gary Kasowski and Sydney Kasowski, Husband & Wife
Attorney for Judgment Creditor	Daryl A. Deutsch (WSBA # 11003)
Judgment Debtor	City of Des Moines, a Washington Municipal Corporation
Principal Judgment Amount	\$26,945.17
Pre-judgment Interest	None
Post-judgment Interest	None, the Petitioner/City deposited \$12,488.00 into the court registry on 12/10/2002 and will deposit the balance (\$15,207.17) on or before the date this judgment is entered.
Attorney Fees	None, included in Principal Judgment Amount
Expert Fees	\$750.00
Total Judgment Amount	\$27,695.17
Real Property Awarded	Ptn. Lot 10, Block 2, Federal Hwy Add. to King County, Vol. 30, p. 1;
Assessor's Tax Parcel Number	2500600050, 2500600051

STIPULATED JUDGMENT & DECREE

This matter came before this court by stipulation of the parties upon the petition of the petitioner, City of Des Moines, seeking:

1. A determination of just compensation to be paid in money to the owners and all other persons interested in the subject property for the taking and appropriation of the subject property;

Consent Judgment &
Decree of Appropriation - 1

Office of the Des Moines City Attorney
21630 11th Ave. South, Suite C
Des Moines WA 98198
Tel: 206-870-6553
Fax: 206-870-4387

2. A judgment and decree of the Court providing for payment of the just compensation so determined; and
3. A decree of appropriation vesting title to the subject property in the petitioner and adjudging that the City of Des Moines is entitled to possession thereof.

The court has previously entered an adjudication of public use and necessity declaring that the use for which the subject property is sought is a public use and declaring that there is a necessity for such appropriation.

The parties, through their attorneys, have stipulated and approved this Consent Judgment and Decree of Appropriation. The petitioner was represented by the City Attorney for the City of Des Moines. The respondents were represented by their attorney, Daryl A. Deutsch.

The petitioner has, on or before the date of this judgment, deposited the full amount of the consent judgment, including attorney and expert witness fees, into the registry of the court.

NOW, THEREFORE, in accordance with the parties' stipulation and agreement, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. The sum of Twenty Seven Thousand Six Hundred Ninety Five and 17/100 (\$27,695.17) Dollars, an amount which includes a statutory evaluation fee of \$750.00, represents the just compensation for the subject property;
2. The petitioner, City of Des Moines, is granted the right to appropriate, use and take the following described property (the subject property):

A portion of Lot 10, Block 1, Federal Highway Addition, according to the plat thereof recorded in Volume 30 of Plats, page 1, in King County, Washington, being described as follows:

Beginning at the northeast corner of the above said parcel, being 50.00 feet west of the center line of Pacific Hwy South SR(99); thence parallel with and 50.00 feet west of said center line along the east line of said parcel South 18°00'38" East a distance of 99.90 feet to the south line of said parcel; thence along said south line South 71°59'22" West a distance of 15.50 feet to a point 65.50 feet west of said center line; thence North 8°32'54" West a distance of 51.70 feet to a point 57.00 feet west of said centerline; thence parallel with and 57.00 feet west of said center line North 18°00'38" West a distance of 48.90 feet to the north line of said parcel; thence along said north line North 71°59'22" East a distance of 7.00 feet to the Point of Beginning, **containing 916 square feet**, more or less.

- 1 3. All of the right, title and interest in and to the property described above shall be and is
2 hereby vested in the petitioner, City of Des Moines, in fee simple absolute.
3 4. The petitioner, City of Des Moines, is also awarded and granted a temporary construction
4 easement over the following described property (the easement property):

5 A portion of Lot 10, Block 1, Federal Highway Addition, according to the
6 plat thereof recorded in Volume 30 of Plats, page 1, in King County,
Washington, being described as follows:

7 Commencing at the northeast corner of the above said parcel, being 50.00 feet
8 west of the center line of Pacific Hwy South SR(99); thence along the north
9 line of said parcel South 71° 59' 22" West a distance of 7.00 feet to the Point
10 of Beginning and 57.00 feet west of said center line; thence parallel with and
11 57.00 feet west of said center line South 18° 00' 38" East a distance of 48.90
12 feet; thence South 8° 32' 54" East a distance of 51.70 feet to the south line of
13 said parcel; thence along said south line South 71° 59' 22" West a distance of
14 10.14 feet to a point 75.64 feet west of said center line; thence North 8° 32'
15 54" West a distance of 52.54 feet to a point 67.00 feet west of said center line;
16 thence parallel with and 67.00 feet west of said center line North 18° 00' 38"
17 West a distance of 18.07 feet; thence South 71° 59' 22" West a distance of
18 35.00 feet to a point 102.00 feet west of said center line; thence parallel with
19 and 102.00 feet west of said center line North 18° 00' 38" West a distance of
20 30.00 feet to the north line of said parcel; thence along said north line North
21 71° 59' 22" East a distance of 45.00 feet to the Point of Beginning,
22 **containing 2,056 square feet, more or less.**

- 23 5. The terms of the temporary construction easement are as follows:
24 a. The easement shall allow the City, its contractors, employees, agents, successors
25 and assigns, the right of ingress and egress to enter upon the land subject to the
26 temporary easement as required to complete the construction work, to place
27 personnel and equipment, and to reconstruct roadway access;
28 b. The City shall, to the extent possible, leave the property in as good condition as
29 existed on the day construction commences. This shall include the timely
30 removal of any and all debris, rubbish or combustible material resulting from
construction activities;
c. The easement shall remain in force during construction and until such time as the
street improvements have been accepted for operation and maintenance by the
City, but not later than January 1, 2005;
d. The City, its agents and assigns, will notify the respondent of its construction
schedule, and will, to the full extent possible, schedule the construction activity
so as to minimize any inconvenience to the property;

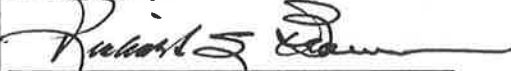
1 e. The City shall indemnify and hold respondent harmless from all liability for
2 losses, damages and expenses on account of damage to property or injury to
3 persons resulting from or arising out of the easement rights.

4 6. All other claims, counterclaims and causes of action alleged herein shall be and are
5 hereby dismissed with prejudice.

6 DONE IN OPEN COURT this ____ day of _____, 2003

7
8 Judge Harry J. McCarthy

9 Presented by:

10 

11 Richard S. Brown (WSBA # 1985)

12 Assistant City Attorney

13 City of Des Moines

14 Stipulated for Entry,
15 Agreed as to form and content; and
16 Notice of Presentation Waived by:

17 

18 Daryl A. Deutsch, (WSBA # 11003)

19 Attorney for Respondents

AGENDA ITEM

SUBJECT: Agreements with Troy & Banks and HELP-U-SAVE to perform utility and fuel audits on behalf of the City of Des Moines.

ATTACHMENTS:

- (1) Troy & Banks Agreement
- (2) Help-U-Save Letter of Agreement

AGENDA OF: April 24, 2003

DEPT. OF ORIGIN: Finance

DATE SUBMITTED: April 17, 2003

CLEARANCES:

☐ Finance *pl*

☐ _____

☐ Legal *(LAM)*

APPROVED BY CITY MANAGER
FOR SUBMITTAL: *AT*

Purpose and Recommendation:

The purpose of this action is to enter into agreements with utility and telecommunication consultant Troy & Banks, and fuel bill auditor Help-U-Save to perform utility and fuel audits on behalf of the City of Des Moines.

Suggested Motion:

The following motion will appear on the Consent Agenda:

"I move to enter into the attached agreements with Troy & Banks and Help-U-Save and further authorize the City Manager, or his designee, to sign said agreements substantially in the form as submitted."

Background:

Between 1999 and 2002 a local company by the name of Microflex audited utilities that pay a Utility Tax to the City. Microflex recovered \$536,905 and the City paid an agreed upon percentage on the amount recovered. This audit was done on the revenue side. The advantage of this type of agreement is the City incurs costs only in the event there is a recovery.

The City has now been contacted by two companies; Troy & Banks, a utility and telecommunications consultant; and HELP-U-SAVE, an auditor of fuel bills. Both companies audit on the expenditure side, meaning they audit for the purpose of securing refunds, credits and cost reductions resulting from discovery of charges or costs in excess of those permitted or allowed by applicable contracts, tariffs, statutes, rules and regulations and/or from overcharges or billing errors. If the City of Des Moines does not receive refunds, credits, or reductions in future billings, there will be no fee for services. The following fee percentages will be paid to each vendor based upon their recoveries:

Troy & Banks - 40%; Help-U-Save – 50%

Discussion:

In the event that payment under these contracts exceeds \$20,000, staff is requesting Council approval of these contracts prior to execution, with the understanding that payments to the vendors will be dependent upon recovery of overcharges or billing errors.

Alternatives:

Do not enter into the agreements.

Financial Impact:

There is no way to predict if there will be a recovery, however, if a recovery does occur, the vendors will be reimbursed based on the agreed upon percentage of the recovery.

Recommendation/Conclusion:

Staff recommends Council approval allowing the City Manager or his designee to execute agreements with telecommunication consultant Troy & Banks, and fuel bill auditor HELP-U-SAVE.

Concurrence:

N/A

Agreement

Corporate Offices:
BUFFALO - NEW YORK
Snyder Professional Ctr.
Suite 102
4536 Main Street
Buffalo, NY 14226
(800) 499-8599
(716) 839-4402
Telefax (716) 839-4452

This Agreement is entered into as of _____ between Troy & Banks, Inc. ("TB") and _____ with an address at _____ (the "Client").

Branch Offices:
CALIFORNIA
1143 M Street
Fresno, CA 93654

FLORIDA
34912 Teeview Lane
Tampa, FL 33541

GEORGIA
P.O. Box 923474
Norcross, GA 30010

NEW YORK
62 Mallock Road
Rochester, NY 14428

4764 Summerhurst Drive
Liverpool, NY 13088

TENNESSEE
904 Lake Haven Road
Knoxville, TN 37922

e-mail:
save@troybanks.com

Internet address:
www.troybanks.com

In consideration of the mutual agreements hereafter set forth, TB and Client agree as follows:

1. The Client engages TB to conduct an audit or survey of Client's gas, electric, telecommunications and water/sewer utility ("Utility") service accounts for the purpose of securing refunds, credits and cost reductions resulting from discovery of charges or costs in excess of those permitted or allowed by applicable contracts, tariffs, statutes, rules and regulations and/or from overcharges or billing errors. TB agrees to conduct such audit.
2. Overcharges – For any refunds, credits or rebates obtained by TB for prior overcharges, billing errors or costs in excess of those permitted by applicable contracts, tariffs, statutes, rules or regulations, TB shall be paid 40% of all monies refunded or credited to the Client.
3. Future Cost Reductions - For any reductions in future costs for electric, gas, telecommunication and water services resulting from TB analysis, the fee is 40% of the amount saved each month for 12 months. TB will document actual monthly savings obtained by analysis of tariff cost applications.
4. TB has made and makes no guarantee or assurance of any credit or refund amount or cost saving results.
5. **If Client does not receive refunds, credits, or reductions in future billings, there will be no fee for TB services.**
6. This Agreement sets forth the entire understanding and agreement between the parties.

Troy & Banks
Indemnification/Hold Harmless. ~~City of Des Moines~~ shall defend, indemnify and hold the City, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the City of Des Moines in performance of this agreement, except for injuries and damages caused by the negligence of the City.

[Client Name] _____

Troy & Banks, Inc.

By: _____

By: _____

Thomas T. Ranallo, President

Name: _____

Title: _____

Telephone: _____

Telefax: _____



March 03, 2003

Mike Bailey
City of Des Moines
21630 11th Ave. South
Des Moines, WA 98198

Dear Mr. Bailey:

Per your request - indemnification / hold harmless statement.

Help -U- Save shall defend, indemnify and hold the City, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of Help -U- Save in performance of this agreement, except for injuries and damages caused by the negligence of the City.

Sincerely,



Monte Langley

OWNER

HELP -U- SAVE

P.O. Box 12153
Mill Creek, WA 98082-1053

Phone (360)668-8886

Fax (360)668-9888

A G E N D A I T E M

SUBJECT: Purchase of a John Deere
2653A Professional Recycling Utility Mower
for Steven J. Underwood Memorial Park

ATTACHMENTS:

1) Mower Specifications

AGENDA OF: April 24, 2003

DEPT. OF ORIGIN: Parks, Recreation and
Senior Services

DATE SUBMITTED: April 17, 2003

CLEARANCES:

☒ Park & Recreation Director
☒ Finance Director

APPROVED BY THE CITY MANAGER
FOR SUBMITTAL

Purpose and Recommendation:

It is recommended that the John Deere 2653A 84" Professional Recycling Utility Mower be acquired by the city of Des Moines to supplement the existing mulching mower equipment currently used to cut park system lawns.

Recommended Motion:

"I move to approve the purchase of a John Deere 2653A 84 Professional Recycling Utility Mulching Mower for the amount of \$22,702.21 of which the King County Waste Reduction and Recycling Grant Program will reimburse the City \$18,874.20 and with matching funds of \$3,828.01 contributed by General Fund Park Operations Fund Balance.

Background:

In 2001, the King County Waste Reduction and Recycling Grant Program awarded the City of Des Moines a two-year Grant (2002-2003) to assist the city in facilitating a reduction of the amount of recyclable residential household materials finding their way to the local landfill, as well as establishing an environmental waste reduction program in city parks, by acquiring the capital equipment necessary to reduce environmental yard waste created by city parks by 80%. In 2001 the Des Moines Parks Maintenance Department, using grant funds purchased a 60-inch, recycling riding mower for maintenance within city Parks

In 2002 the grant approved the purchase of TY-CROP MH-400 material handler topdressing equipment. This equipment provides a means to broadcast nutrients to the turf by distributing a light coating of mulch which helps to keep water located within the root layer of the turf. Top dressing nutrients consisted of a mixture of sand and organic compost eliminating the need for much of the fertilizer use in many of the city's parks, thus reducing park maintenance costs.

In 2003 the grant approved the purchase of recycling mulching mowing equipment. The addition of this equipment will significantly reduce environmental (green waste) and the use of water and

fertilizer which is important especially at sites that eventually feed into the city's storm and stream systems. This recycling mulching mower will be used primarily at Steven J. Underwood Memorial Park.

Financial Impact:

As part of the 2003 budget process the Park Maintenance Department requested funds of approximately \$30,000.00 to match an existing Waste Reduction and Recycling Grant approved for the purchase a John Deere 128" Wide Area Recycling Mower. The budget request was denied due to lack of city resources.

The Park Maintenance Department re-evaluated the needs of the new Steven J. Underwood Memorial Park and determined that the 2653A 84 Professional Recycling Utility Mower would serve the needs of the Park. All but \$3,828.01 of the \$22,702.21 funds needed to purchase the John Deere 2653A 84 Professional Recycling Utility Mulching Mower will be paid by grant funds. The King County Waste Reduction and Recycling Grant Program will reimburse the City \$18,874.20 for the cost of the mower and city matching funds of \$3,828.01 will be contributed by General Fund Park Operations Fund Balance.

Discussion:

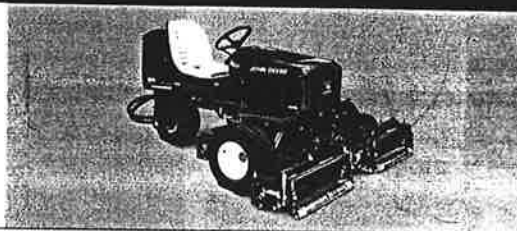
The Steven J. Underwood Memorial Park is a twenty acre site and the John Deere 2653A Professional Recycling Utility Mower will increase maintenance efficiency by using grass clippings at the park as mulch to increase nitrogen in the soil, help reduce evaporation, watering and fertilizing requirements, resulting in decreased labor time and overall park maintenance costs.

Recommendation:

It is recommended that the John Deere 2653A Professional Recycling Utility Mower be approved for purchase to cut park system lawns. It is the goal of the parks department to reduce environmental yard waste collected at city parks by 80%-90%, reduce watering to four days per week during summer months and maintain fertilizer applications at three per year. Purchasing this equipment would help the park crew accomplish these goals.

SPECIFICATIONS

CASCADE TURF
1818 BICKFORD AVE.
SNOHOMISH, WA. 98290
NICK BECKER-GOLF & TURF
877-460-0022 206-510-4951[C]



Attachment 1

2653A PROFESSIONAL UTILITY MOWER

Engine:

Type	John Deere Series 220, 3-cylinder diesel
Fuel	Diesel
Engine Power	20 hp (19.9 kW)
Air Cleaner (Ejector™)	4 in. (102 mm), radial-seal, dual-stage, restriction indicator
Cooling	Liquid
Oil Filter	Full-flow filter
Engine Oil Capacity	3.1 U.S. qt. (3.0 L)
Pressurized Lubrication System	Standard
Number of Cylinders	3
Displacement	47.8 in. (784 cm³)

Vehicle:

Wheels and Tires:

Front	20x10-10
Steer	20x10-8
Brakes	2-wheel disk brakes
Type	Dual 8 in. (20.3 cm)
Mowing Speed	0-5 mph (0-8 km/h)
Transport Speed	0-8.5 mph (0-13.7 km/h)
Reverse Speed	0-4 mph (0-6.4 km/h)
Ground Clearance	5.5 in. (14 cm)
Fuel Tank Capacity	7.4 U.S. gal. (28 L)
Hydraulic Reservoir Capacity	5.5 U.S. gal. (20.8 L)

Wheel Motor and Reel Drive:

Drive Wheels	Front, with standard third (rear) wheel drive
Traction Drive	Hydrostatic, 2-pedal
Reel Drive	Hydraulic
Pump	Gear
Reel Control Valves	Electrohydraulic
Filtration	10 micron
Cutting Unit Lift	Hydraulic cylinder for front two units and hydraulic cylinder for center unit

Mower:

Number	3
Size	26 in. (66 cm³) or 30 in. (76 cm³), floating
Backlapping	Standard equipment, variable adjustment
Clip Frequency	5-blade cutting units, 0.201/mph 8-blade cutting units, 0.126/mph
Front Rollers	Smooth, standard; grooved or spiral optional
Reel Diameter	7 in. (17.8 cm)
Bedknife Adjustment	Reel to bedknife
Height of Cut	¾-3 in. (9.5 mm-76 mm)
Number of Blades	5 or 8

Operator Controls:

Steering	Hydraulic power steering
Reel Drive and Reel Lift	Hand lever
Throttle	Hand
Park Brake	Hand
Hydrostatic Speed:	
Foot pedal	Forward
Foot pedal	Reverse
Ignition	Glow plug via rocker switch

Instrumentation:

Engine Oil Pressure	Warning light
Alternator	Warning light
Hydraulic Oil Temperature	Warning light
Engine Coolant Temperature	Warning light
Hourmeter	Gauge
Safety Interlocks	Neutral start switch, operator presence switch (in seat), mow/transport switch, park-brake-set switch

Weight and Dimensions:

Wheelbase	55 in. (140 cm)
Tread Width	52 in. (132 cm)
Mowing Position Width	72 in. (183 cm), or 84 in. (213 cm)
Turning Radius, Uncut Circle	20 in. (50.8 cm)
Vehicle Weight (full fluids, no operator, 26-in. units raised)	1,725 lb. (784 kg)
Certificate	ANSI B71.4-1999 and CE

THE ONE LEASE THAT CAN TURN YOUR COURSE COMPLETELY GREEN.

Ask your dealer about the MasterLease™ from John Deere Credit (U.S.) or John Deere Credit, Inc. (Canada)

1-800-537-8233 • www.JohnDeere.com

Official
Golf Course
Equipment
Supplier



This literature has been compiled for worldwide circulation. While general information, pictures and descriptions are provided, some illustrations and text may include finance, credit, insurance, product options and accessories NOT AVAILABLE in all regions. PLEASE CONTACT YOUR LOCAL DEALER FOR DETAILS. John Deere reserves the right to change specifications, design and price of products described in this literature without notice.



JOHN DEERE

A G E N D A I T E M

PUBLIC HEARING

SUBJECT:

Draft Ordinance 03-065, Second Reading
Duties of the Planning Agency

AGENDA OF: April 24, 2003

DEPT. OF ORIGIN: Community Dev. *JK*

DATE SUBMITTED: April 16 2003

CLEARANCES:

[X] LEGAL

Law

ATTACHMENTS:

1. Draft Ordinance 03-065
2. February 6, Council Minutes
3. March 13, Council Minutes

Died for lack of motion

APPROVED BY THE CITY MANAGER
FOR SUBMITTAL *AS*

Suggested Motion: I

"I move to pass draft Ordinance 03-065 regarding duties of the Planning Agency on second reading."

Purpose and Recommendation:

The purpose of this draft ordinance is to rescind the expanded duties of the Planning Agency based on Council direction to administration.

Background:

In 2001 the duties of the Planning Agency were expanded to include approval of preliminary subdivisions, preliminary modified subdivisions, preliminary alterations or vacation of subdivisions, preliminary alterations or vacations of short subdivisions with public dedication, preliminary alteration or vacation of binding site plans with public dedication, preliminary alteration or vacation of binding site plan with more than four lots and not involving public dedication, preliminary binding site plan with more than four lots, and preliminary townhouse development with more than four lots.

Based on the February 6 meeting Council directed staff to prepare legislation returning these duties to the Council. At the March 13 meeting Council passed this ordinance on for second reading.

Alternatives:

1. Adopt draft ordinance 03-065 as written
2. Adopt draft ordinance 03-065 with Council modifications
3. Do not adopt draft ordinance 03-065 which would leave the Planning Agency duties unchanged.

Financial Impact:

None

Recommendation/Conclusion:

As was stated at the March 13 meeting, over the past two years staff has been impressed with the seriousness and thoughtfulness the Planning Agency has displayed concerning project review. They have spent a great deal of time training and preparing for their expanded duties. Moreover, they have displayed a clear understanding of land use issues during their review. However, simply because of the lack of large parcels in the City these types of review will be rare. Over the next two years the largest work program item for the Planning Agency will be review and recommendations on the Comprehensive Plan amendments.

Concurrence:

COMMUNITY DEVELOPMENT'S FIRST DRAFT 03/06/03
COMMUNITY DEVELOPMENT'S SECOND DRAFT 04/16/03

DRAFT ORDINANCE NO. 03-065

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, relating to the membership and duties of the Des Moines Planning Agency; amending DMMC 17.16.080, DMMC 17.16.100, DMMC 17.16.110, DMMC 17.16.120, DMMC 17.16.130, DMMC 17.16.140, DMMC 17.16.150, DMMC 17.16.190, DMMC 17.20.020, DMMC 17.20.030, MMC 17.40.080, DMMC 18.56.020, DMMC 18.56.060, DMMC 18.56.100, DMMC 18.56.180, DMMC 18.56.220, and DMMC 18.56.270; and repealing DMMC 18.56.085 and DMMC 18.56.205.

WHEREAS, the Des Moines Planning Agency was established in 1984 to provide recommendations to the City Council regarding certain land use matters, and

WHEREAS, since creation of the Planning Agency, numerous citizens have dutifully and admirably served the Des Moines community as Planning Agency members, and

WHEREAS, the adoption of the Greater Des Moines Comprehensive Plan in 1995 constituted the completion of a thorough, multi-year land use planning effort, and

WHEREAS, changes to permitting procedures enacted in 1996 in response to the Washington State Regulatory Reform Act reduced the scope of duties of the Planning Agency, and

WHEREAS, due to a lack of business items during in recent years, the Planning Agency had met infrequently, and

WHEREAS, during the October 19, 2000 and February 1, 2001 meetings, the City Council discussed potential changes to the scope of Planning Agency duties, and subsequently directed administration to prepare draft legislation to expand the duties of the Planning Agency, and

WHEREAS, after expansion of these duties the Planning Agency still met infrequently, and

WHEREAS, after consideration and discussion, the City Council at the February 6, 2003 meeting decided that the expanded duties given to the Planning Agency in 2001 should be Council duties and directed administration to prepare draft legislation rescinding these duties of the Planning Agency, and

WHEREAS, notice of the public hearing before the City Council was given to the public in accordance with law and a

ATTACHMENT 1

public hearing was held on the 13th day of March, 2003 and all persons wishing to be heard were heard, and

WHEREAS, the SEPA responsible official has concluded that this ordinance constitutes a procedural action and is categorically exempt from SEPA threshold determination and EIS requirements as allowed by 197-11-800(20); now therefore;

THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:

Sec. 1. DMMC 18.56.020 and section 2 of Ordinance No. 1174 are each amended to read as follows:

18.56.020 Framework for decision.

(1) The scope of a land use action covered by this chapter shall be limited as specified by RCW 36.70B.030 as presently constituted or as may be subsequently amended.

(2) Except when a land use action is categorically exempt from SEPA, environmental review shall be conducted concurrently with review of other proposed land use actions requested by an applicant. Integrated and consolidated review shall be provided as required by RCW 36.70B.120 and 36.70B.140 as presently constituted or as may be subsequently amended.

(3) As allowed by RCW 36.70B.140(1) as presently constituted or as may be subsequently amended, the following land use actions are not subject to the provisions of RCW 36.70B.070, 36.70B.080, 36.70B.090, 36.70B.110, 36.70B.120, and 36.70B.130 because the City Council has determined that these projects present special circumstances that warrant a review process different from the process specified by this chapter:

- (a) Business park master plans;
- (b) Street vacations and other actions relating to use of public areas or facilities;
- (c) Type VI land use actions; and
- (d) Abatement of nonconforming uses.

(4) As authorized by RCW 36.70B.140(2) as presently constituted or as may be subsequently amended, the following Type I land use actions shall not be subject to the provisions of RCW 36.70B.060, 36.70B.110, 36.70B.120, and 36.70B.130 as presently constituted or as may be subsequently amended:

(a) Lot line adjustments.

(b) Construction permits required under Title 14 DMMC that are categorically exempt from environmental review under chapter 16.04 DMMC (SEPA Rules), or for which environmental review has been completed in conjunction with other project permits.

(5) Land use actions are classified into ~~((seven))~~ six types, based upon the entity responsible for the decision, the amount of discretion exercised by the decisionmaker, the degree of impact associated with the decision, the amount and type of public input sought, and the type of appeal available. The ~~((seven))~~ six categories of land use actions are as follows:

(a) Type I: Administrative decision made without legal requirement for public comment.

(b) Type II: Administrative decision made after legally required opportunity for public comment.

(c) Type III: Quasi-judicial and other decisions by hearing examiner made after legally required opportunity for public comment.

(d) Type IV: Quasi-judicial and other nonlegislative decisions by City Council made after legally required opportunity for public comment.

(e) Type V: Quasi-judicial and other nonlegislative decisions by City Council made without legal requirement for public comment.

(f) Type VI: Legislative decision by City Council made after legally required opportunity for public comment.

~~((g) Type VII: Quasi judicial and other nonlegislative decisions by planning agency made after legally required opportunity for public comment.))~~

(6) The land use review procedures specified by Title 17 DMMC (Subdivisions) for a land use action explicitly covered by that title shall control over the procedures specified by this chapter.

Sec. 2. DMMC 18.56.060 and section 6 of Ordinance No.1174 as amended by section 36 of Ordinance No. 1197 as amended by section 2 of Ordinance No. 1287 are each amended to read as follows:

18.56.060 Type IV land use action - General.

A Type IV land use action includes quasi-judicial land use decisions and other nonlegislative land use decisions made by the City Council. Public notice of application is required for a Type IV land use action. The following actions are designated as Type IV land use actions:

- (1) Zoning map amendment (rezone).
- (2) Unclassified use permit.
- (3) Preliminary planned unit development.
- (4) Business park master plan.
- (5) Final binding site plan for a business park master plan.
- (6) Subdivision - preliminary plat.
- (7) Preliminary modified subdivision.
- (8) Preliminary alteration or vacation of subdivision.
- (9) Preliminary alteration or vacation of short subdivision with public dedication.

(10) Preliminary alteration or vacation of binding site plan with public dedication.

(11) Preliminary alteration or vacation of binding site plan with more than four lots and not involving public dedication.

(12) Preliminary binding site plan with more than four lots.

(13) Preliminary townhouse development with more than four lots.

(14) ((6)) Shoreline substantial development with an environmental impact statement.

(15) ((7)) Shoreline conditional use.

(16) ((8)) Shoreline variance.

(17) ((9)) City Council approval, conditional approval, or denial of a project based upon chapter 16.04 DMMC (SEPA Rules).

(18) ((10)) Actions not specifically listed in this or any other section of this chapter and that are quasi-judicial land use actions made by the City Council following a legally required opportunity for public comment.

Sec. 3. DMMC 18.56.100 and section 10 of Ordinance No. 1174 as amended by section 4 of Ordinance No. 1287 are each amended to read as follows:

18.56.100 Pre-application meetings.

(1) Informal Pre-Application Meetings. Applicants for a land use action may participate in an informal meeting prior to submittal of the application for land use action or the formal pre-application meeting. The purpose of the meeting is to discuss, in general terms, the proposed land use action, alternatives, required approvals, and the land use action process.

(2) Formal Pre-Application Meetings. Unless waived by the community development director, potential applicants or their designees are required to attend a formal pre-application

meeting for all Type III, Type IV, and Type VI (~~and Type VII~~) land use actions. The purpose of the meeting is to discuss the nature of the proposed development, application and approval requirements, fees, review process and schedule, and applicable policies and regulations. As appropriate, the community development director shall invite representatives of affected agencies, such as other City departments and special purpose districts, to attend any formal pre-application meeting. This meeting requirement should be deemed waived in the event the community development director or the community development director's designee is unavailable to meet within 10 days of a request for such meeting.

Sec. 4. DMMC 18.56.220 and section 22 of Ordinance No. 1174 as amended by section 6 of Ordinance No. 1193 as amended by section 6 of Ordinance No. 1287 are each amended to read as follows:

18.56.220 Procedures for open record public hearings.

(1) Open record public hearings shall be conducted as required by chapter 4.12 DMMC (City Council - Rules of Procedure), chapter 18.94 DMMC (Hearing Examiner), RCW 36.70B.020, 36.70B.060, 36.70B.110, 36.70B.120, 43.21C.075, and other applicable law as presently constituted or as may be subsequently amended. (~~Open record public hearings conducted by the planning agency shall adhere to the City Council Rules of Procedure as well as other applicable provisions.~~)

(2) Written information received from the public or other agencies shall be admitted to the record during the time between the publication of the applicable public notice, and the closing of the open record public hearing by the presiding officer of the City Council hearing.

(3) Oral testimony from the public or other agencies shall be admitted to the record during the time between the opening and closing of the open record public hearing by the presiding officer of the City Council hearing.

(4) Upon the closing of the open record public hearing by the presiding officer of the City Council hearing, no additional written information or oral testimony from the public or other agencies will be accepted or considered.

Sec. 5. DMMC 18.56.270 and section 27 of Ordinance No. 1174 as amended by section 8 of Ordinance No. 1287 are each amended to read as follows:

18.56.270 Appeals.

(1) Appeals shall conform to the requirements specified by RCW 36.70B.030, 36.70B.060, 43.21C.075, 90.58.180, chapter 36.70C RCW, and other applicable law as presently constituted or as may be subsequently amended.

(2) Appeal of an administrative land use action shall be filed as specified by DMMC 14.04.130 (Appeals), 16.04.210 (Agency SEPA appeals), 17.12.170 (Appeals), chapter 18.60 DMMC (Amendments, unclassified use permits, planned unit developments, and appeals), DMMC 18.86.150 (Appeals), and chapter 18.94 DMMC (Hearing examiner). Appeal of an administrative decision relating to a proposed Type III, Type IV, or Type VI land use action shall be resolved during the required open record public hearing.

(3) Except for appeal of shoreline substantial development and other shoreline decisions, appeal of a hearing examiner land use decision shall be filed as specified by chapter 18.94 DMMC (Hearing examiner). Appeal of shoreline substantial development and other shoreline decisions shall be filed with the shoreline hearings board as specified by chapter 90.58 RCW as presently constituted or as may be subsequently amended.

(4) Except for appeal of shoreline substantial development and other shoreline decisions, appeal of a (~~planning agency or~~) City Council decision and other land use actions for which available remedies have been exhausted shall require the filing of a land use petition in Superior Court of Washington for King County as

specified by DMMC 18.94.300 and chapter 36.70C RCW as presently constituted or as may be subsequently amended. Appeal of shoreline substantial development and other shoreline decisions shall be filed with the shoreline hearings board as specified by chapter 90.58 RCW, as presently constituted or as may be subsequently amended.

Sec. 6. DMMC 17.16.100 and section 24 of Ordinance No. 931 as amended by section 11 of Ordinance No. 1287 are each amended to read as follows:

17.16.100 ~~Planning Agency or~~ City Council review.

(1) General. As specified by chapter 18.56 DMMC, the ~~planning agency or~~ City Council shall hold a public hearing on each proposed Type IV (~~or VII~~) Land Use Action. No later than the first regular public meeting after receiving the recommendation of the Planning Agency on the preliminary subdivision, the City Council shall set by motion the date of the hearing.

(2) Notice. The planning official shall prepare and distribute public notice of the hearing as set forth in DMMC 17.40.070.

(3) Electronic Sound Recording. The ~~planning agency or~~ City Council shall make a complete electronic sound recording of each public meeting involving the review of a ~~preliminary subdivision application~~ Type IV Land Use Action.

Sec. 7. DMMC 17.16.110 and section 25 of Ordinance No. 931 as amended by section 42 of Ordinance No. 1174 as amended by section 12 of Ordinance No. 1287 are each amended to read as follows:

17.16.110 Public testimony and participation at public hearings.

Any person may participate in the public hearing in either or both of the following ways:

(1) By submitting written testimony either by delivering this testimony to the community development department prior to the

hearing or by giving it directly to the ((~~planning agency or~~))City Council at the hearing.

(2) By appearing in person, or through a representative, at the hearing and making oral testimony directly to the ((~~planning agency or~~))City Council. The presiding officer may reasonably limit the extent of oral testimony to facilitate the orderly and timely conduct of the hearing.

Sec. 8. DMMC 17.16.120 and section 26 of Ordinance No. 931 as amended by section 43 of Ordinance No. 1174 as amended by section 13 of Ordinance No. 1287 are each amended to read as follows:

17.16.120 Continuation of hearing.

The ((~~planning agency or~~))City Council may continue the hearing if, for any reason:

(1) It is unable to hear all of the public testimony on the matter;

(2) It determines that it needs more information on the matter; or

(3) It directs that the proposed preliminary subdivision be modified.

If, during the hearing, the ((~~planning agency or~~))City Council announces the time and place of the next hearing on the matter, no further notice of that hearing need be given.

Sec. 9. DMMC 17.16.130 and section 27 of Ordinance No. 931 as amended by section 44 of Ordinance No. 1174 as amended by section 14 of Ordinance No. 1287 are each amended to read as follows:

17.16.130 ((~~Planning Agency or~~)) City Council's decision.

(1) General. Following its consideration of the matter, the ((~~planning agency or~~))City Council shall by motion direct administration to return the proposed preliminary subdivision to the applicant for modification or draft a resolution to either:

(a) Approve the preliminary subdivision; or

(b) Approve the preliminary subdivision subject to certain conditions; or

(c) Disapprove the preliminary subdivision.

(2) Decisional Criteria. The ~~((planning agency or))~~ City Council may approve the proposed preliminary subdivision only if it finds that:

(a) It is consistent with the applicable provisions of the comprehensive plan, zoning code, shoreline master program, and other City policies and regulations; and

(b) It is consistent with the applicable provisions of chapter 17.36 DMMC (Layout and design of subdivisions); and

(c) There are adequate provisions for open spaces, drainage ways, rights-of-way, sidewalks, and other planning features that assure safe walking conditions for pedestrians, including students who walk to and from school, easements, water supplies, sanitary waste, fire protection, power service, parks, playgrounds, and schools; and

(d) It will serve the public use and interest and is consistent with the public health, safety, and welfare. The City Council shall be guided by the policy and standards and may exercise the powers and authority set forth in chapter 58.17 RCW, as presently constituted or as may be subsequently amended;

(e) The proposed preliminary subdivision provides for coordinated development with adjoining properties or future development of adjoining properties including but not limited to provisions for improved or shared access where appropriate.

(3) Conditions, Restrictions, and Modifications. The ~~((planning agency or))~~ City Council shall include in its decision any conditions, restrictions, and modifications that are determined as necessary to eliminate or

minimize any undesirable effects or impacts that would result from approving the proposed subdivision. Any conditions, restrictions, and modifications that are imposed shall become part of the decision.

(4) Dedication. The ~~((planning agency or~~)) City Council may require dedication of tracts, easements, or rights-of-way for utility or other public purposes. Such dedications shall be clearly shown and described on all documents required by this chapter.

(5) Contents of Decision. The ~~((planning agency or~~)) City Council shall adopt by ~~((regular motion))~~ resolution:

(a) A statement approving, approving with conditions, or denying the preliminary subdivision; and

(b) Any conditions, restrictions, and modifications that are imposed; and

(c) Findings of fact that support the decision, including any conditions, restrictions, and modifications that are imposed; and

(d) A statement of the criteria used in making the decision; and

(e) A summary of the rights, as established in this chapter, of the applicant and others to request reconsideration of the decision of the City Council.

(6) Distribution of Decision. Within five days following the ~~((planning agency or~~)) City Council ~~(('s'))~~ decision, the planning official shall distribute the resolution as follows:

(a) To the applicant; and

(b) To each person who submitted timely written or oral testimony to the ~~((planning agency or~~)) City Council for inclusion in the record.

(7) Failure to Resubmit. Preliminary subdivision applications returned to the applicant for modification that are not resubmitted to the planning official within 45 days of the date of the (~~planning agency or~~) City Council public hearing will be, for the purposes of this chapter, considered withdrawn; except that the community development director may extend the period to resubmit the application for an additional 45 days upon written request by the applicant submitted within the initial 45-day resubmittal period. Time spent by the applicant to make modifications as directed by the (~~planning agency or~~) City Council shall not be counted toward application time limits specified in DMMC 17.16.170 (Processing preliminary subdivisions - Time limits).

Sec. 10. DMMC 17.16.140 and section 28 of Ordinance No. 931 as amended by section 45 of Ordinance No. 1174 as amended by section 15 of Ordinance No. 1287 are each amended to read as follows:

17.16.140 Reconsideration period - Final decision unless reconsidered.

The applicant shall not engage in any activity based on the decision approving the preliminary subdivision until the time to request reconsideration has expired. If the request for reconsideration is granted, the applicant shall not engage in any activity based on the decision approving the application until the City issues a final decision on the matter. If the decision of the (~~planning agency or~~) City Council is not timely reconsidered, that decision shall be the final decision of the City. Distribution of the decision in resolution form under DMMC 17.16.130(6) (~~((Planning agency or City Council))~~) decision) and as required by chapter 18.56 DMMC (Development review procedures) shall constitute notice of final decision.

Sec. 11. DMMC 17.16.150 and section 29 of Ordinance No. 931 as amended by section 46 of Ordinance No. 1174 as amended by section 16 of Ordinance No. 1287 are each amended to read as follows:

17.16.150 Reconsideration.

(1) Who May Request Reconsideration. A request to reconsider the decision or action of the ((~~planning agency or~~)) City Council connected with the subdivision application, other than a motion to reconsider brought under City Council rules of procedure, may be made by:

(a) The applicant; or

(b) Any person who submitted timely written or oral testimony to the ((~~planning agency or~~)) City Council for inclusion in the record.

(2) How to Request Reconsideration. The request for reconsideration, in the form of a letter, shall be delivered to the community development department within 10 days following the day of the ((~~planning agency or~~)) City Council's ((~~resolution~~)) decision. The request shall contain:

(a) A clear reference to the preliminary subdivision to be reconsidered; and

(b) A statement of the specific factual findings or conclusions of the ((~~planning agency or~~)) City Council disputed by the person filing the request for reconsideration.

(3) Criteria. The ((~~planning agency or~~)) City Council shall reconsider a decision if it is determined that:

(a) An error of fact, law, or procedure that is more likely than not to affect the outcome of the decision has been made; or

(b) The person requesting reconsideration is seeking to enter previously unavailable information that is more likely than not to affect the outcome of the decision.

(4) Rules. Except as provided in this chapter, requests for reconsideration shall otherwise be processed in conformance with chapter 4.12 DMMC (City Council - Rules of procedure).

(5) Notice of Decision. If the (~~planning agency or~~) City Council, under the rules of reconsideration specified in this section, reconsiders an application for a preliminary subdivision and (~~passes a motion~~) adopts a resolution which results in a change in the original City Council decision specified in DMMC 17.16.130 (~~((Planning agency or))~~City Council's decision), the planning official shall within five days of the decision prepare a notice of decision and distribute it to:

(a) The applicant;

(b) Each person who submitted timely written or oral testimony for inclusion in the record.

Sec. 12. DMMC 17.16.180 and section 32 of Ordinance No. 931 as amended by section 48 of Ordinance No. 1174 as amended by section 17 of Ordinance No. 1287 are each amended to read as follows:

17.16.180 Judicial review - Preliminary subdivision.

General. The action of the (~~planning agency or~~)City Council in approving, approving with conditions, disapproving, or returning to the applicant for modifications a preliminary subdivision may be reviewed for unlawful, arbitrary, or capricious action by filing a land use petition with the Superior Court of Washington for King County as specified by chapter 36.70C RCW, as presently constituted or as may be subsequently amended.

Sec. 13. DMMC 17.16.190 and section 33 of Ordinance No. 931 as amended by section 18 of Ordinance No. 1297 are each amended to read as follows:

17.16.190 Effect of preliminary subdivision approval.

(1) General. The approval of a preliminary subdivision by the City constitutes approval of the general concept and layout of the plat as approved. Preliminary subdivision approval does not signify acceptance of all engineering

details of the plat. These engineering details remain subject to approval by the public works director.

(2) Construction of Certain Improvements. The applicant shall submit detailed design documents for all required right-of-way, easement, utility, or other improvements to the community development department. These documents shall be reviewed and approved by the public works director and planning official. Following such approval, the City may issue the necessary permits to construct the improvements.

(3) Deviations from the Preliminary Plat. The City shall not authorize improvements to be constructed, unless the improvements are consistent with the plat concept and layout of the preliminary subdivision approved by the ((~~planning agency or~~)) City Council. In making such a determination, the public works director and planning official shall utilize the criteria for minor deviations set forth in DMMC 17.16.230(2). If consistency with the criteria is not clear, the public works director or planning official shall request a determination from the ((~~planning agency or~~)) City Council.

Sec. 14. DMMC 17.20.020 and section 41(B) of Ordinance No. 931 as amended by section 53 of Ordinance No. 1174 as amended by section 19 of Ordinance No. 1287 are each amended to read as follows:

17.20.020 Procedure.

Requests for modified subdivisions and short subdivisions shall be processed and decided upon as specified in chapters 17.16 and 17.12 (Subdivisions and Short subdivisions), respectively; except that the following additional requirements shall apply:

(1) Public notice shall be expanded to include a description of which aspects of the proposed modified subdivision/short subdivision are requested to deviate from City standards.

(2) The applicant shall submit as part of the required application materials a written narrative entitled "Modified Subdivision/Short Subdivision Design Justification" which states why

proposed deviations from City standards are necessary and what unique design features, not ordinarily provided in traditional subdivisions/short subdivision, are incorporated into the proposal to offset the need for such standards.

(3) Within 21 days of the date of the decision to approve, approve with conditions, or disapprove a short subdivision, the planning official shall provide notice of the decision, written findings, and other relevant materials to the City Council ~~((planning agency))~~ at a regularly scheduled public meeting. The City Council ~~((planning agency))~~ shall by motion decide whether to concur with the community development director's decision or review the matter further at a future meeting. The decision to approve, approve with conditions, or disapprove an application for modified short subdivision shall not be considered final until City Council ~~((planning agency))~~ action on the matter is complete.

Sec. 15. DMMC 17.20.030 and section 41(C) of Ordinance No. 931 as amended by section 1 of Ordinance No. 1081 as amended by section 20 of Ordinance No. 1287 are each amended to read as follows:

17.20.030 Approval criteria.

The City may approve a proposed modified subdivision or short subdivision under this chapter only if it finds that all of the following criteria are met:

(1) It is consistent with the intent of the comprehensive plan, zoning code, and shoreline master program; and

(2) All lots within a subdivision meet the lot area and lot width requirements for the zone classification assigned to the property proposed to be subdivided; and

(3) Except for those requirements specifically requested by the applicant to be modified, it is consistent with the applicable provisions of chapter 17.36 DMMC; and

(4) There are adequate provisions for open spaces, drainage ways, rights-of-way, sidewalks, and other planning features that assure safe walking conditions for pedestrians, including students who walk to and from school, easements, water supplies, sanitary waste, fire protection, power service, parks, playgrounds, and schools; and

(5) It serves the public use and interest and is consistent with the public health, safety, and welfare. The City Council (~~(planning agency)~~) shall be guided by the policy and standards and may exercise the powers and authority set forth in chapter 58.17 RCW, as presently constituted or as may be subsequently amended; and

(6) The proposed modified subdivision short subdivision provides for coordinated development with adjoining properties or future development of adjoining properties including but not limited to provisions for improved or shared access where appropriate; and

(7) The applicant has demonstrated that the proposal includes design features or improvements which are beneficial to the public, typically not found in traditional subdivision proposals, and equivalent in scale or value to the improvements or requirements from which the proposal deviates; and

(8) In subdivisions containing tracts for wetlands, streams, or required buffers, as required by DMMC 17.36.160, the minimum lot size established by Title 18 DMMC for the zone classification assigned to the property proposed to be subdivided may be reduced, provided:

(a) The number of lots within the subdivision shall be no more than allowed by Title 18 DMMC under the provisions for limited density transfer for environmentally sensitive areas; and

(b) Adequate recreation area shall be provided on each lot or by establishing a separate recreation tract in addition to that required by DMMC 17.36.150.

Sec. 16. DMMC 17.40.080 and section 79 of Ordinance No. 931 as amended by section 58 of Ordinance No. 1174 as amended by section 21 of Ordinance No. 1287 are each amended to read as follows:

17.40.080 Official file.

(1) Contents. The planning official shall compile an official file for each application containing the following:

(a) All application materials submitted by the applicant;

(b) Any staff report(s) prepared for the proposal;

(c) All written comments received about the proposal;

(d) All documents prepared or submitted pursuant to State Environmental Policy Act compliance;

(e) If available, the electronic recording of any public meeting on the matter;

(f) The decision or recommendation of the community development director, planning agency, and City Council, as applicable;

(g) If the decision of the community development director on a short subdivision is appealed, or the decision of the ((~~planning agency~~ or)) City Council on a preliminary subdivision plat alteration or plat vacation is reconsidered, the following shall be added to the file:

(i) The letter of reconsideration or appeal;

(ii) All written comments submitted regarding the reconsideration or appeal;

(iii) The staff report on the appeal;

(iv) The electronic sound recording and minutes of the hearing on the appeal;

(v) The decision of the ~~((planning agency or))~~ City Council on the reconsideration;

(vi) The decision of the hearing examiner on the appeal;

(h) Any other relevant information.

(2) Availability. The official file shall be available for inspection and copying during regular City business hours.

NEW SECTION. **Sec. 17.** **Repealer.** DMMC 18.56.085 and section 3 of Ordinance No. 1287 are repealed.

NEW SECTION. **Sec. 18.** **Repealer.** DMMC 18.56.205 and section 5 of Ordinance No. 1287 are repealed.

NEW SECTION. **Sec. 19. Severability - Construction.**

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

(2) If the provisions of this ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this ordinance is deemed to control.

NEW SECTION. **Sec. 20.** **Effective Date.** This ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

PASSED BY the City Council of the City of Des Moines this ____ day of _____, 2003 and signed in authentication thereof this ____ day of _____, 2003.

M A Y O R

APPROVED AS TO FORM:

City Attorney

Ordinance No. _____

Page 20 of _____

ATTEST:

City Clerk

Published: _____

DRAFTORD/03-065

EXCERPT

DES MOINES CITY COUNCIL MINUTES

February 6, 2003

Planning Agency Duties

Mayor Steenrod introduced the subject.

Community Development Director Kilgore reviewed the history of the issue. She noted that in 2001, Council had given full authority for preliminary subdivisions and other land use actions to the Planning Agency.

At 10:05 p.m., Councilmember Petersen left the meeting.

Community Development Director Kilgore informed Council that there were few large parcels available for subdivision and townhouse development still in existence in the City. She noted that the seven member Planning Agency currently had four vacancies. Three of the prior agency members were willing to serve a second term while one prior member was not eligible for reappointment. As the current Agency did not have a quorum, they were unable to conduct business. Community Development Director Kilgore voiced the City Attorney's recommendation to appoint at least one additional member to the Planning Agency to form a quorum in order to complete the vested projects. She noted that three projects plus the Comprehensive Plan Updates were currently vested.

Mayor Pro Tem Benjamin suggested that Council appoint a full Planning Agency and then determine their duties.

Councilmember Thomasson noted that he and Councilmember Wasson had previously voted against the Ordinance which expanded the authority of the Planning Agency.

Councilmember Wasson proposed that Council remove the Planning Agency's authority after the vested projects were completed.

Councilmember Thomasson explained that Council would need to change the duties in order to prevent the vesting of any new projects.

MOTION was made by Councilmember Wasson and seconded by Mayor Steenrod to direct staff to prepare an ordinance and schedule a public hearing to address the issue with the intention of removing the authority given to the Planning Agency in 2001 and reassigning it to the Council.

Councilmember Thomasson noted that if the three individuals whose Planning Agency terms expired December 31, 2002 were re-appointed, they would not require any additional training.

Mayor Steenrod and Councilmember Thomasson recommended that Council hear staff's prior presentation regarding the Planning Agency duties.

VOTE ON MOTION: Motion passed, 4 – 2 with Councilmembers Sheckler and White opposed.

**CITY OF DES MOINES
NOTICE OF PUBLIC HEARING**

Notice is hereby given that the City of Des Moines City Council will conduct a public hearing on March 13, 2003 at 7:30 p.m. in the Council Chambers, 21630 11th Avenue South, Suite B, Des Moines WA 98198, as follows:

FILE # : LUA 03-008

PROPOSAL:: Amendment of permit review procedures for certain land use actions from the Planning Agency to the City Council.

APPLICANT: The City of Des Moines

LOCATION: This is a citywide, non-project action

The public is invited to attend the hearing and comment on the proposal, or submit written comments to the Community Development Department at 21630 11th Avenue South, Suite D, Des Moines, Washington 9818, prior to the hearing.

The City of Des Moines provides special accommodations such as hearing devices, wheelchair space, and large print material for City meetings. Anyone needing special assistance, please contact the City Clerk at (206)878-4595.

The City of Des Moines Community Development Department has concluded that this proposal is a procedural action and exempt from SEPA threshold determination and EIS requirements.

For further information contact Judith Kilgore at 206-870-7576 during regular office hours.

Date of notice: February 24, 2003
Published: February 26, 2003
Posted: City Hall
Marina
Library
Redondo Market

EXCERPT DES MOINES CITY COUNCIL MINUTES March 13, 2003

PUBLIC HEARING

Draft Ordinance No. 03-065 Planning Agency Duties - 1st Reading

Mayor Steenrod introduced the item.

City Attorney Marousek explained the rules for conducting the public hearing.

Community Development Director Kilgore advised that the draft ordinance was prepared at Council's direction to rescind expanded duties of the Planning Agency and return the duties to the City Council. She read the duties involved: approval of preliminary subdivisions, preliminary modified subdivisions, preliminary alterations or vacation of subdivisions, preliminary alterations or vacations of short subdivisions with public dedication, preliminary alteration or vacation of binding site plans with public dedication, preliminary alteration or vacation of binding site plan with more than four lots and not involving public dedication, preliminary binding site plan with more than four lots, and preliminary townhouse development with more than four lots.

Mayor Steenrod declared the hearing open and called for public comments.

PUBLIC COMMENTS

Dave Kaplan, 2614 South 226th

Mr. Kaplan, as a former Des Moines Councilmember, explained that the expanded duties were given to the Planning Agency after Council deliberation concerning the role of the Planning Agency and that they had not been given enough substantial projects to warrant their existence. He further advised that the Agency members were given proper training to make the proper decisions. He suggested that Council maintain the Agency duties as they currently exist which allows for citizens to get an independent review and judgment. He encouraged Council not to pass the draft ordinance and urged Council to appoint citizens to the vacancies that currently exist on the Planning Agency.

As there were no further comments from the public, Mayor Steenrod declared the hearing closed.

Councilmember Thomasson expressed disappointment that staff had not prepared a full presentation regarding the Planning Agency duties as he had requested at the February 6th Council meeting.

Upon questioning by Council, Community Development Director Kilgore stated that the Agency has conducted 3 hearings since their duties have expanded and there is one Unclassified Use Permit pending that needs to be heard as soon as the Planning Agency has a quorum. She advised that their next work will be on the Comprehensive Plan which will still be true even if the draft ordinance passes.

ATTACHMENT 3

Councilmember White voice the opinion that the Agency duties should remain as they are. She felt that Council does not have the time and energy that these trained Agency members can devote to these types of issues.

Mayor Steenrod expressed concern that an applicant's only appeal from these Agency decisions is to Superior Court. She would rather see this come to the City Council.

Community Development Director Kilgore advised that in her 10 years with Des Moines there has been no appeals to Superior Court. She informed Council that staff works closely with applicants to determine any fatal flaws in a project and works to solve any issues that arise.

Mayor Pro Tem Benjamin questioned whether there was a member of the Planning Agency in attendance that would come forward and address Council.

Gene White, Planning Agency member for two years, addressed the Council. He advised that the Agency meets when there is an appropriate item to address. He informed Council of the good comprehensive training that was provided to Agency members. He felt that the Agency members provide a professional contribution with no political interest. Upon questioning by Council, he noted that the Agency has met 6 times since he has been a member with no denial of projects. He acknowledged that the Agency would still review some projects to make recommendations to Council, but feels the Agency members intense training would be wasted. He further advised that before the expanded duties, the Agency really did not have anything very useful to do and no real input to make any decisions.

Councilmember Thomasson informed Council that the former role of the Planning Agency did not have enough "meat" to keep members on the Agency. Council at that time discussed dissolving the Agency even though there were a few statutory requirements that they filled.

Councilmember Sheckler further informed Council that members of the Planning Agency felt they did not have significant authority and therefore there was no need for their services. The Agency members at that time requested that their duties be put on a par with other cities agencies and that the City provide training for them to function properly.

Community Development Director acknowledged that there was a lack of work for the Agency before the duties were changed, but more important the Agency members felt Council was discounting their recommendations and preliminary decisions.

9:04 p.m. Mayor Steenrod called for a 10 minute break.

Mayor Pro Tem Benjamin noted that Mr. White had indicated that the current situation with the Planning Agency was superior over Council handling such matters without a political venue. He stated that Mr. White is involved politically in a major way and feels there is a conflict of interest since his wife Susan White is a City Councilmember. He noted that he has serious concerns regarding this as there are other members on the Agency that are very politically involved, and he feels it is important that the Citizens understand that there may be conflicts of interest and that the Agency members may not be looking out for the best interests of the City. He stated this is not the type of business he wants to see continue. He is willing to put in more time, get more involved and remove these duties from the Planning Agency.

Upon questioning by Councilmember Sheckler, Mr. White stated that he was appointed to the Planning Agency a year before his wife was elected as a Councilmember.

Councilmember Sheckler questioned what qualifications are looked at for appointment to the Agency. Mr. White stated that he worked for the Portland City Planning Commission on two separate occasions, worked as an advisor to the Mayor of Portland, working on land use, annexation, zoning. In addition, Mr. White stated that he is a Landscape Architect with a lot of land use background. He suggested that Council appointment citizens who are willing to dedicate their time and take advantage of citizens with qualified backgrounds.

Community Development Director Kilgore confirmed that the land use actions that would be returned to Council would still go to the Planning Agency for recommendations, but the Council would now have the ultimate decision making role.

Upon questioning by Council, Community Development Director Kilgore explained the process for selecting an Agency member. She noted that they must submit a City application, which is reviewed by the City Manager and herself, who then make recommendations to the Mayor, and the Mayor either accepts the recommendation or not. She prefers that the members have some background in planning, land use, urban design, architecture, or landscape architecture. Being able to read a plan is very important. Ultimately appointments are made by the Mayor and confirmed by the City Council.

Community Development Director Kilgore advised Council that a recent applicant who had been before the Planning Agency told her he felt going through the Agency was much more efficient due to City Council work loads, which could delay projects by months.

MOTION was made by Councilmember Wasson, seconded by Mayor Pro Tem Benjamin, to suspend Council Rule 26(b) in order to enact the draft ordinance on first reading.

Councilmember White advised that she is recusing herself from voting on this subject.

Councilmember Thomasson voiced the opinion that he feels Council needs more education to understand the issues involved. He explained that these types of land use hearings are quasi judicial in nature and are there are strict guidelines for findings of fact and conclusions needed to back up any decisions. He advised that there is not a lot of discretion allowed as all projects must meet City code.

VOTE ON MOTION: Motion failed 3 to 3 with Councilmembers Petersen, Sheckler and Thomasson voting NO.

MOTION was made by Councilmember Wasson, seconded by Mayor Pro Tem Benjamin, to pass Draft Ordinance No. 03-065 to a second reading.

Upon questioning by City Manager Piasecki, it was noted that the date would be determined by the Mayor and City Manager.

Councilmember Wasson advised that he has not argued about the duties of the Planning Agency, but has argued about the responsibilities of the City Council. He noted that Councilmembers are

elected by the citizens and therefore should not give the decision making authority to citizens who have no accountability to the rest of the citizens of the City.

VOTE ON MOTION: Motion passed 4 to 2 with Councilmembers Sheckler and Thomasson voting NO.

AGENDA ITEM

SUBJECT: Draft Ordinance No. 02-264
Traffic Impact Fees - 2nd Reading

ATTACHMENTS:
None

AGENDA OF: April 24, 2003

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: April 16, 2003

CLEARANCES:

[] _____
[] _____
[] _____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation:

The purpose of this Agenda Item is to provide the City Council an opportunity to decide whether or not to place the Draft Ordinance on future meeting agenda for action.

Suggested Motion:

"To place Draft Ordinance No. 02-264 on the agenda of the _____ meeting."

Background:

Rule 9 of the City Council Rules of Procedure allows the Presiding Officer the "option of deleting any item from the agenda until the next regular Council meeting when the full Council shall vote on whether to introduce the item on the agenda of a subsequent meeting". At the April 10, 2003 meeting, the Presiding Officer pulled Draft Ordinance No. 02-264 from the agenda.

Discussion:

There currently are Council meetings scheduled for May 8, and 22, and June 5, 12 and 26 that would be available for this item to be discussed. The May 1st Study Session is being devoted to conducting Council Candidate Interviews.

Alternatives:

Council may choose to place this item on a future meeting agenda or choose not to take any action on this item by not placing it on any future agenda.

Recommendation/Conclusion:

It is recommended that the City Council place the Draft Traffic Impact Fee Ordinance on the May 8, or May 22, 2003, Agenda.

AGENDA ITEM

SUBJECT: Planning Agency -
History/Background

AGENDA OF: April 24, 2003

DEPT. OF ORIGIN: Legislative

DATE SUBMITTED: March 28, 2003

ATTACHMENTS:

1. Council Packet 2/1/01
2. Council Packet 7/12/01
3. Council Packet 8/9/01
4. Council Minutes of 8/9/01

CLEARANCES:

[] _____
[] _____
[] _____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation:

The purpose of this agenda item is to present Councilmembers with a background history of discussions and actions leading to the changing of Planning Agency duties.

Suggested Motion:

None.

Background:

Background information is contained in the City Council packets provided with this packet. Excerpts of Minutes are contained within each Council Agenda item. Note that the minutes contained in the packet dated February 1, 2001, contain the minutes of the October 9, 2000 Council meeting. No agenda item packet is available for that meeting.

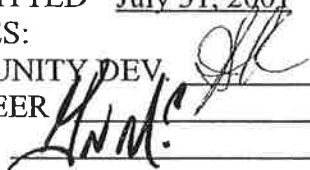
A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL CITY OF DES MOINES, WA

SUBJECT: Duties of the Planning Agency

 FOR AGENDA OF: August 9, 2001
 DEPT. OF ORIGIN Community Dev.
 DATE SUBMITTED July 31, 2001

CLEARANCES:

☒ COMMUNITY DEV. ☐ ENGINEER☒ LEGAL 

ATTACHMENTS:

1. Draft Ordinance No. 01-119.
2. Meeting minutes.

 APPROVED BY THE CITY MANAGER
 FOR SUBMITTAL 

RECOMMENDED ACTION

Alternatives:

1. Adopt Draft Ordinance No. 01-119 as written.
2. Adopt Draft Ordinance No. 01-119 as revised by the City Council.
3. Do not adopt Draft Ordinance No. 01-119.

Staff Recommendation:

Receive comments from the public during a public hearing and continue Council deliberation.

SUMMARY STATEMENT

This agenda item provides a public hearing regarding the duties of the Planning Agency. This matter was last discussed on February 1, 2001, and forwarded to a second reading during the July 12, 2001 meeting (meeting minutes provided as Attachment 2). On February 1, 2001, Council directed staff to prepare an ordinance that would transfer decision-making authority for a variety of land use actions from the City Council to the Planning Agency. That draft ordinance is provided as Attachment 1. The draft ordinance has been revised to delete Section 22. Administration recommends this change as legal research indicates that addition of City Councilmembers to the Planning Agency would violate the doctrine of incompatible offices.

Public notice of this public hearing was published in the Seattle Times on July 21, 2001.

Agenda Item—Pacific Ridge Improvement Plan
December 8, 1999
Page 2

u:\users\corbitt\planning agency\pa080901.doc

COMMUNITY DEVELOPMENT'S FIRST DRAFT 06/21/01
DRAFT ORDINANCE NO. 01-119

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, relating to the membership and duties of the Des Moines Planning Agency, adding a new section to chapter 18.56 DMMC, amending DMMC 4.28.025, DMMC 4.28.040, DMMC 17.16.080, DMMC 17.16.100, DMMC 17.16.110, DMMC 17.16.120, DMMC 17.16.130, DMMC 17.16.140, DMMC 17.16.150, DMMC 17.16.180, DMMC 17.16.190, DMMC 17.20.020, DMMC 17.20.030, DMMC 17.40.080, DMMC 18.56.020, DMMC 18.56.060, DMMC 18.56.100, DMMC 18.56.180, DMMC 18.56.220, DMMC 18.56.240, and DMMC 18.56.270, and repealing DMMC 4.28.060 and DMMC 17.16.090.

WHEREAS, the Des Moines Planning Agency was established in 1984 to provide recommendations to the City Council regarding certain land use matters, and

WHEREAS, since creation of the Planning Agency, numerous citizens have dutifully and admirably served the Des Moines community as Planning Agency members, and

WHEREAS, the adoption of the Greater Des Moines Comprehensive Plan in 1995 constituted the completion of a thorough, multi-year land use planning effort, and

WHEREAS, changes to permitting procedures enacted in 1996 in response to the Washington State Regulatory Reform Act reduced the scope of duties of the Planning Agency, and

WHEREAS, due to a lack of business items during in recent years, the Planning Agency has met infrequently, and

WHEREAS, during the October 19, 2000 and February 1, 2001 meetings, the City Council discussed potential changes to the scope of Planning Agency duties, and subsequently directed administration to prepare draft legislation to expand the duties of the Planning Agency, and

WHEREAS, the SEPA responsible official has concluded that this ordinance constitutes a procedural action and is categorically exempt from SEPA threshold determination and EIS requirements as allowed by 197-11-800(20), and

THE CITY COUNCIL OF THE CITY OF DES MOINES DOES ORDAIN AS FOLLOWS:

Sec. 1. DMMC 18.56.020 and section 2 of Ordinance 1174 are each amended to read as follows:

18.56.020 Framework for decision.

(1) The scope of a land use action covered by this chapter shall be limited as specified by RCW 36.70B.030 as presently constituted or as may be subsequently amended.

(2) Except when a land use action is categorically exempt from SEPA, environmental review shall be conducted concurrently with review of other proposed land use actions requested by an applicant. Integrated and consolidated review shall be provided as required by RCW 36.70B.120 and 36.70B.140 as presently constituted or as may be subsequently amended.

(3) As allowed by RCW 36.70B.140(1) as presently constituted or as may be subsequently amended, the following land use actions are not subject to the provisions of RCW 36.70B.070, 36.70B.080, 36.70B.090, 36.70B.110, 36.70B.120, and 36.70B.130 because the city council has determined that these projects present special circumstances that warrant a review process different from the process specified by this chapter:

- (a) Business park master plans;
- (b) Street vacations and other actions relating to use of public areas or facilities;
- (c) Type VI land use actions; and
- (d) Abatement of nonconforming uses.

(4) As authorized by RCW 36.70B.140(2) as presently constituted or as may be subsequently amended, the following Type I land use actions shall not be subject to the provisions of RCW 36.70B.060, 36.70B.110, 36.70B.120, and 36.70B.130 as presently constituted or as may be subsequently amended:

(a) Lot line adjustments.

(b) Construction permits required under Title 14 DMMC that are categorically exempt from environmental review under chapter 16.04 DMMC (SEPA Rules), or for which environmental review has been completed in conjunction with other project permits.

(5) Land use actions are classified into ~~((six))~~ seven types, based upon the entity responsible for the decision, the amount of discretion exercised by the decisionmaker, the degree of impact associated with the decision, the amount and type of public input sought, and the type of appeal available. The ~~((six))~~ seven categories of land use actions are as follows:

(a) Type I: Administrative decision made without legal requirement for public comment.

(b) Type II: Administrative decision made after legally required opportunity for public comment.

(c) Type III: Quasi-judicial and other decisions by hearing examiner made after legally required opportunity for public comment.

(d) Type IV: Quasi-judicial and other nonlegislative decisions by city council made after legally required opportunity for public comment.

(e) Type V: Quasi-judicial and other nonlegislative decisions by city council made without legal requirement for public comment.

(f) Type VI: Legislative decision by city council made after legally required opportunity for public comment.

(g) Type VII: Quasi-judicial and other nonlegislative decisions by planning agency made after legally required opportunity for public comment.

(6) The land use review procedures specified by Title 17 DMMC (Subdivisions) for a land use action explicitly covered by that title shall control over the procedures specified by this chapter.

Sec. 2. DMMC 18.56.060 and section 6 of Ordinance 1174 as amended by section 36 of Ordinance 1197 are each amended to read as follows:

18.56.060 Type IV land use action - General.

A Type IV land use action includes quasi-judicial land use decisions and other nonlegislative land use decisions made by the city council. Public notice of application is required for a Type IV land use action. The following actions are designated as Type IV land use actions:

- (1) Zoning map amendment (rezone).
- (2) Unclassified use permit.
- (3) Preliminary planned unit development.
- (4) Business park master plan.
- (5) Final binding site plan for a business park master plan.
- ~~((6) Subdivision preliminary plat.~~
- ~~(7) Preliminary modified subdivision.~~
- ~~(8) Preliminary alteration or vacation of subdivision.))~~
- ~~(9) Preliminary alteration or vacation of short subdivision with public dedication.~~
- ~~(10) Preliminary alteration or vacation of binding site plan with public dedication.~~
- ~~(11) Preliminary alteration or vacation of binding site plan with more than four lots and not involving public dedication.~~

~~(12) Preliminary binding site plan with more than four lots.~~

~~(13) Preliminary townhouse development with more than four lots.~~

~~(14))~~ (6) Shoreline substantial development with an environmental impact statement.

~~((15))~~ (7) Shoreline conditional use.

~~((16))~~ (8) Shoreline variance.

~~((17))~~ (9) City council approval, conditional approval, or denial of a project based upon chapter 16.04 DMMC (SEPA Rules).

~~((18))~~ (10) Actions not specifically listed in this or any other section of this chapter and that are quasi-judicial land use actions made by the city council following a legally required opportunity for public comment.

NEW SECTION. **Sec. 3.** A new section is added to chapter 18.56 DMMC to read as follows:

Type VII land use action - General.

A Type VII land use action includes quasi-judicial land use decisions and other nonlegislative land use decisions made by the planning agency. Public notice of application is required for a Type VII land use action. The following actions are designated as Type VII land use actions:

(1) Subdivision - preliminary plat.

(2) Preliminary modified subdivision.

(3) Preliminary alteration or vacation of subdivision.

(4) Preliminary alteration or vacation of short subdivision with public dedication.

(5) Preliminary alteration or vacation of binding site plan with public dedication.

(6) Preliminary alteration or vacation of binding site plan with more than four lots and not involving public dedication.

(7) Preliminary binding site plan with more than four lots.

(8) Preliminary townhouse development with more than four lots.

(9) Planning agency approval, conditional approval, or denial of a project based upon chapter 16.04 DMMC (SEPA Rules).

(10) Actions not specifically listed in this or any other section of this chapter and that are quasi-judicial land use actions made by the planning agency following a legally required opportunity for public comment.

Sec. 4. DMMC 18.56.100 and section 10 of Ordinance No. 1174 are each amended to read as follows:

18.56.100 Pre-application meetings.

(1) Informal Pre-Application Meetings. Applicants for a land use action may participate in an informal meeting prior to submittal of the application for land use action or the formal pre-application meeting. The purpose of the meeting is to discuss, in general terms, the proposed land use action, alternatives, required approvals, and the land use action process.

(2) Formal Pre-Application Meetings. Unless waived by the community development director, potential applicants or their designees are required to attend a formal pre-application meeting for all Type III, Type IV, ~~((and))~~ Type VI, and Type VII land use actions. The purpose of the meeting is to discuss the nature of the proposed development, application and approval requirements, fees, review process and schedule, and applicable policies and regulations. As appropriate, the community development director shall invite representatives of affected agencies, such as other city departments and special purpose districts, to attend any formal pre-application meeting. This meeting requirement should be deemed waived in the

event the community development director or the community development director's designee is unavailable to meet within 10 days of a request for such meeting.

NEW SECTION. **Sec. 5.** A new section is added to chapter 18.56 DMMC to read as follows:

18.56.180 Review process for Type VII land use action.

(1) Upon conclusion of the 15-day comment period and any applicable SEPA appeal period, the planning agency may approve, approve with conditions, or deny a Type VII land use action upon compliance with the procedural requirements of chapter 18.94 DMMC (Hearing examiner code).

(3) The planning agency's decision regarding a Type VII land use action is appealable to the Superior Court of Washington for King County as specified by DMMC 18.94.300 (Appeal from decision of the city council).

Sec. 6. DMMC 18.56.220 and section 22 of Ordinance 1174 as amended by section 6 of Ordinance 1193 are each amended to read as follows:

18.56.220 Procedures for open record public hearings.

(1) Open record public hearings shall be conducted as required by chapter 4.12 DMMC (City Council - Rules of Procedure), chapter 18.94 DMMC (Hearing Examiner), RCW 36.70B.020, 36.70B.060, 36.70B.110, 36.70B.120, 43.21C.075, and other applicable law as presently constituted or as may be subsequently amended. Open record public hearings conducted by the planning agency shall adhere to the City Council Rules of Procedure as well as other applicable provisions.

(2) Written information received from the public or other agencies shall be admitted to the record during the time between the publication of the applicable public notice, and the closing of the open record public hearing by the presiding officer of the (~~city council~~) hearing.

(3) Oral testimony from the public or other agencies shall be admitted to the record during the time between the opening and closing of the open record public hearing by the presiding officer of the ((~~city council~~)) hearing.

(4) Upon the closing of the open record public hearing by the presiding officer of the ((~~city council~~)) hearing, no additional written information or oral testimony from the public or other agencies will be accepted or considered.

Sec. 7. DMMC 18.56.240 and section 24 of Ordinance 1174 are each amended to read as follows:

18.56.240 Reconsideration.

A party to a public hearing or closed record appeal ((~~conducted by the hearing examiner or city council~~)) may seek reconsideration of a final decision. Requests for reconsideration shall be submitted and considered as specified by DMMC 18.94.250 (Decision - Reconsideration).

Sec. 8. DMMC 18.56.270 and section 27 of Ordinance 1174 are each amended to read as follows:

18.56.270 Appeals.

(1) Appeals shall conform to the requirements specified by RCW 36.70B.030, 36.70B.060, 43.21C.075, 90.58.180, chapter 36.70C RCW, and other applicable law as presently constituted or as may be subsequently amended.

(2) Appeal of an administrative land use action shall be filed as specified by DMMC 14.04.130 (Appeals), 16.04.210 (Agency SEPA appeals), 17.12.170 (Appeals), chapter 18.60 DMMC (Amendments, unclassified use permits, planned unit developments, and appeals), DMMC 18.86.150 (Appeals), and chapter 18.94 DMMC (Hearing examiner). Appeal of an administrative decision relating to a proposed Type III, Type IV, or Type VI land use action shall be resolved during the required open record public hearing.

(3) Except for appeal of shoreline substantial development and other shoreline decisions, appeal of a hearing examiner land use decision shall be filed as specified by chapter 18.94 DMMC (Hearing examiner). Appeal of shoreline substantial development and other shoreline decisions shall be filed with the shoreline hearings board as specified by chapter 90.58 RCW as presently constituted or as may be subsequently amended.

(4) Except for appeal of shoreline substantial development and other shoreline decisions, appeal of a planning agency or city council decision and other land use actions for which available remedies have been exhausted shall require the filing of a land use petition in Superior Court of Washington for King County as specified by DMMC 18.94.300 and chapter 36.70C RCW as presently constituted or as may be subsequently amended. Appeal of shoreline substantial development and other shoreline decisions shall be filed with the shoreline hearings board as specified by chapter 90.58 RCW, as presently constituted or as may be subsequently amended.

Sec. 9. DMMC 17.16.080 and section 22 of Ordinance 931 as amended by section 40 of Ordinance 1174 are each amended to read as follows:

17.16.080 Planning agency review.

(1) General. At a public meeting as defined in RCW 36.70B.020(5), the planning agency shall review ~~((each preliminary subdivision application))~~ Type IV land use actions processed in accordance with this chapter after the planning official issues a notice of complete application.

(2) Electronic Sound Recording. The planning agency shall make a complete electronic sound recording of each meeting. ~~((involving the review of a preliminary subdivision.))~~

(3) Recommendation. Upon consideration of the information presented at the public meeting, the planning agency shall, by a majority vote of a

quorum of its membership, make a recommendation to the city council.

(4) Recommendation Criteria. The planning agency may recommend approval of the proposed preliminary subdivision only if it finds that it meets the applicable decisional criteria.

(5) Transmittal of Recommendation. The planning official shall inform the city council of the planning agency's recommendation not later than 15 days following the adoption of the planning agency recommendation.

Sec. 10. DMMC 17.16.090 and section 23 of Ordinance 931 as amended by section 41 of Ordinance 1174 are each repealed.

Sec. 11. DMMC 17.16.100 and section 24 of Ordinance 931 are each amended to read as follows:

17.16.100 Planning Agency or City council review.

(1) General. As specified by chapter 18.56 DMMC, the ((The)) planning agency or city council shall hold a public hearing on each proposed ((preliminary subdivision)) Type IV or VII Land Use Action. No later than the first regular public meeting after receiving the recommendation of the planning agency on the preliminary subdivision, the city council shall set by motion the date of the hearing.

(2) Notice. The planning official shall prepare and distribute public notice of the hearing as set forth in DMMC 17.40.070.

(3) Electronic Sound Recording. The planning agency or city council shall make a complete electronic sound recording of each public meeting involving the review of a preliminary subdivision application.

Sec. 12. DMMC 17.16.110 and section 25 of Ordinance 931 as amended by section 42 of Ordinance 1174 are each amended to read as follows:

17.16.110 Public testimony and participation at public hearings.

Any person may participate in the ((city council)) public hearing in either or both of the following ways:

(1) By submitting written testimony either by delivering this testimony to the community development department prior to the hearing or by giving it directly to the planning agency or city council at the hearing.

(2) By appearing in person, or through a representative, at the hearing and making oral testimony directly to the planning agency or city council. The presiding officer may reasonably limit the extent of oral testimony to facilitate the orderly and timely conduct of the hearing.

Sec. 13. DMMC 17.16.120 and section 26 of Ordinance 931 as amended by section 43 of Ordinance 1174 are each amended to read as follows:

17.16.120 Continuation of hearing.

The planning agency or city council may continue the hearing if, for any reason:

(1) It is unable to hear all of the public testimony on the matter;

(2) It determines that it needs more information on the matter; or

(3) It directs that the proposed preliminary subdivision be modified.

If, during the hearing, the planning agency or city council announces the time and place of the next hearing on the matter, no further notice of that hearing need be given.

Sec. 14. DMMC 17.16.130 and section 27 of Ordinance 931 as amended by section 44 of Ordinance 1174 are each amended to read as follows:

17.16.130 Planning Agency or City council's decision.

(1) General. Following its consideration of the matter, the planning agency or city council shall by motion direct administration to return the proposed preliminary subdivision to the applicant for modification or draft a resolution to either:

(a) Approve the preliminary subdivision; or

(b) Approve the preliminary subdivision subject to certain conditions; or

(c) Disapprove the preliminary subdivision.

(2) Decisional Criteria. The planning agency or city council may approve the proposed preliminary subdivision only if it finds that:

(a) It is consistent with the applicable provisions of the comprehensive plan, zoning code, shoreline master program, and other city policies and regulations; and

(b) It is consistent with the applicable provisions of chapter 17.36 DMMC (Layout and design of subdivisions); and

(c) There are adequate provisions for open spaces, drainage ways, rights-of-way, sidewalks, and other planning features that assure safe walking conditions for pedestrians, including students who walk to and from school, easements, water supplies, sanitary waste, fire protection, power service, parks, playgrounds, and schools; and

(d) It will serve the public use and interest and is consistent with the public health, safety, and welfare. The city council shall be guided by the policy and standards and may exercise

the powers and authority set forth in chapter 58.17 RCW, as presently constituted or as may be subsequently amended;

(e) The proposed preliminary subdivision provides for coordinated development with adjoining properties or future development of adjoining properties including but not limited to provisions for improved or shared access where appropriate.

(3) Conditions, Restrictions, and Modifications. The planning agency or city council shall include in its decision any conditions, restrictions, and modifications that are determined as necessary to eliminate or minimize any undesirable effects or impacts that would result from approving the proposed subdivision. Any conditions, restrictions, and modifications that are imposed shall become part of the decision.

(4) Dedication. The planning agency or city council may require dedication of tracts, easements, or rights-of-way for utility or other public purposes. Such dedications shall be clearly shown and described on all documents required by this chapter.

(5) Contents of Decision. The planning agency or city council shall adopt by ~~((resolution))~~ regular motion:

(a) A statement approving, approving with conditions, or denying the preliminary subdivision; and

(b) Any conditions, restrictions, and modifications that are imposed; and

(c) Findings of fact that support the decision, including any conditions, restrictions, and modifications that are imposed; and

(d) A statement of the criteria used in making the decision; and

(e) A summary of the rights, as established in this chapter, of the applicant and others to request reconsideration of the decision of the city council.

(6) Distribution of ~~((Resolution))~~ Decision. Within five days following ~~((adoption of))~~ the planning agency or city council's ~~((resolution))~~ decision, the planning official shall distribute the resolution as follows:

(a) To the applicant; and

(b) To each person who submitted timely written or oral testimony to the planning agency or city council for inclusion in the record.

(7) Failure to Resubmit. Preliminary subdivision applications returned to the applicant for modification that are not resubmitted to the planning official within 45 days of the date of the planning agency or city council public hearing will be, for the purposes of this chapter, considered withdrawn; except that the community development director may extend the period to resubmit the application for an additional 45 days upon written request by the applicant submitted within the initial 45-day resubmittal period. Time spent by the applicant to make modifications as directed by the planning agency or city council shall not be counted toward application time limits specified in DMMC 17.16.170 (Processing preliminary subdivisions - Time limits).

Sec. 15. DMMC 17.16.140 and section 28 of Ordinance 931 as amended by section 45 of Ordinance 1174 are each amended to read as follows:

17.16.140 Reconsideration period - Final decision unless reconsidered.

The applicant shall not engage in any activity based on the decision approving the preliminary subdivision until the time to request reconsideration has expired. If the request for reconsideration is granted, the applicant shall not engage in any activity based on the decision

approving the application until the city issues a final decision on the matter. If the decision of the planning agency or city council is not timely reconsidered, that decision shall be the final decision of the city. Distribution of the decision in resolution form under DMMC 17.16.130(6) (Planning agency or ((E))city council's decision) and as required by chapter 18.56 DMMC (Development review procedures) shall constitute notice of final decision.

Sec. 16. DMMC 17.16.150 and section 29 of Ordinance 931 as amended by section 46 of Ordinance 1174 are each amended to read as follows:

17.16.150 Reconsideration.

(1) Who May Request Reconsideration. A request to reconsider the decision or action of the planning agency or city council connected with the subdivision application, other than a motion to reconsider brought under city council rules of procedure, may be made by:

(a) The applicant; or

(b) Any person who submitted timely written or oral testimony to the planning agency or city council for inclusion in the record.

(2) How to Request Reconsideration. The request for reconsideration, in the form of a letter, shall be delivered to the community development department within 10 days following the day of ((~~adoption of~~)) the planning agency or city council's ((~~resolution~~)) decision. The request shall contain:

(a) A clear reference to the preliminary subdivision to be reconsidered; and

(b) A statement of the specific factual findings or conclusions of the planning agency or city council disputed by the person filing the request for reconsideration.

(3) Criteria. The planning agency or city council shall reconsider a decision if ~~((the council finds))~~ it is determined that:

(a) An error of fact, law, or procedure that is more likely than not to affect the outcome of the decision has been made; or

(b) The person requesting reconsideration is seeking to enter previously unavailable information that is more likely than not to affect the outcome of the decision.

(4) Rules. Except as provided in this chapter, requests for reconsideration shall otherwise be processed in conformance with chapter 4.12 DMMC (City council - Rules of procedure).

(5) Notice of Decision. If the planning agency or city council, under the rules of reconsideration specified in this section, reconsiders an application for a preliminary subdivision and ~~((adopts a resolution))~~ passes a motion which results in a change in the original ~~((city council))~~ decision specified in DMMC 17.16.130 (Planning agency or ~~((C))~~ city council's decision), the planning official shall within five days of the ~~((adoption date of the city council resolution))~~ decision prepare a notice of decision and distribute it to:

(a) The applicant;

(b) Each person who submitted timely written or oral testimony for inclusion in the record.

Sec. 17. DMMC 17.16.180 and section 32 of Ordinance 931 as amended by section 48 of Ordinance 1174 are each amended to read as follows:

17.16.180 Judicial review - Preliminary subdivision.

General. The action of the planning agency or city council in approving, approving with conditions, disapproving, or returning to the

applicant for modifications a preliminary subdivision may be reviewed for unlawful, arbitrary, or capricious action by filing a land use petition with the Superior Court of Washington for King County as specified by chapter 36.70C RCW, as presently constituted or as may be subsequently amended.

Sec. 18. DMMC 17.16.190 and section 33 of Ordinance 931 are each amended to read as follows:

17.16.190 Effect of preliminary subdivision approval.

(1) General. The approval of a preliminary subdivision by the city constitutes approval of the general concept and layout of the plat as approved. Preliminary subdivision approval does not signify acceptance of all engineering details of the plat. These engineering details remain subject to approval by the public works director.

(2) Construction of Certain Improvements. The applicant shall submit detailed design documents for all required right-of-way, easement, utility, or other improvements to the community development department. These documents shall be reviewed and approved by the public works director and planning official. Following such approval, the city may issue the necessary permits to construct the improvements.

(3) Deviations from the Preliminary Plat. The city shall not authorize improvements to be constructed, unless the improvements are consistent with the plat concept and layout of the preliminary subdivision approved by the planning agency or city council. In making such a determination, the public works director and planning official shall utilize the criteria for minor deviations set forth in DMMC 17.16.230(2). If consistency with the criteria is not clear, the public works director or planning official shall request a determination from the planning agency or city council.

Sec. 19. DMMC 17.20.020 and section 41(B) of Ordinance 931 as amended by section 53 of Ordinance 1174 are each amended to read as follows:

17.20.020 Procedure.

Requests for modified subdivisions and short subdivisions shall be processed and decided upon as specified in chapters 17.16 and 17.12 (Subdivisions and Short subdivisions), respectively; except that the following additional requirements shall apply:

(1) Public notice shall be expanded to include a description of which aspects of the proposed modified subdivision/short subdivision are requested to deviate from city standards.

(2) The applicant shall submit as part of the required application materials a written narrative entitled "Modified Subdivision/Short Subdivision Design Justification" which states why proposed deviations from city standards are necessary and what unique design features, not ordinarily provided in traditional subdivisions/short subdivision, are incorporated into the proposal to offset the need for such standards.

(3) Within 21 days of the date of the decision to approve, approve with conditions, or disapprove a short subdivision, the planning official shall provide notice of the decision, written findings, and other relevant materials to the ((city council)) planning agency at a regularly scheduled public meeting. The ((city council)) planning agency shall by motion decide whether to concur with the community development director's decision or review the matter further at a future meeting. The decision to approve, approve with conditions, or disapprove an application for modified short subdivision shall not be considered final until ((city council)) planning agency action on the matter is complete.

Sec. 20. DMMC 17.20.030 and section 41(C) of Ordinance 931 as amended by section 1 of Ordinance 1081 are each amended to read as follows:

17.20.030 Approval criteria.

The city may approve a proposed modified subdivision or short subdivision under this chapter only if it finds that all of the following criteria are met:

(1) It is consistent with the intent of the comprehensive plan, zoning code, and shoreline master program; and

(2) All lots within a subdivision meet the lot area and lot width requirements for the zone classification assigned to the property proposed to be subdivided; and

(3) Except for those requirements specifically requested by the applicant to be modified, it is consistent with the applicable provisions of chapter 17.36 DMMC; and

(4) There are adequate provisions for open spaces, drainage ways, rights-of-way, sidewalks, and other planning features that assure safe walking conditions for pedestrians, including students who walk to and from school, easements, water supplies, sanitary waste, fire protection, power service, parks, playgrounds, and schools; and

(5) It serves the public use and interest and is consistent with the public health, safety, and welfare. The ~~((city council))~~ planning agency shall be guided by the policy and standards and may exercise the powers and authority set forth in chapter 58.17 RCW, as presently constituted or as may be subsequently amended; and

(6) The proposed modified subdivision short subdivision provides for coordinated development with adjoining properties or future development of adjoining properties including but not limited to provisions for improved or shared access where appropriate; and

(7) The applicant has demonstrated that the proposal includes design features or improvements which are beneficial to the public, typically not found in traditional subdivision proposals, and equivalent in scale or value to the improvements or requirements from which the proposal deviates; and

(8) In subdivisions containing tracts for wetlands, streams, or required buffers, as required by DMMC 17.36.160, the minimum lot size established by Title 18 DMMC for the zone classification assigned to the property proposed to be subdivided may be reduced, provided:

(a) The number of lots within the subdivision shall be no more than allowed by Title 18 DMMC under the provisions for limited density transfer for environmentally sensitive areas; and

(b) Adequate recreation area shall be provided on each lot or by establishing a separate recreation tract in addition to that required by DMMC 17.36.150.

Sec. 21. DMMC 17.40.080 and section 79 of Ordinance 931 as amended by section 58 of Ordinance 1174 are each amended to read as follows:

17.40.080 Official file.

(1) Contents. The planning official shall compile an official file for each application containing the following:

(a) All application materials submitted by the applicant;

(b) Any staff report(s) prepared for the proposal;

(c) All written comments received about the proposal;

(d) All documents prepared or submitted pursuant to State Environmental Policy Act compliance;

(e) If available, the electronic recording of any public meeting on the matter;

(f) The decision or recommendation of the community development director, planning agency, and city council, as applicable;

(g) If the decision of the community development director on a short subdivision is appealed, or the decision of the planning agency or city council on a preliminary subdivision plat alteration or plat vacation is reconsidered, the following shall be added to the file:

(i) The letter of reconsideration or appeal;

(ii) All written comments submitted regarding the reconsideration or appeal;

(iii) The staff report on the appeal;

(iv) The electronic sound recording and minutes of the hearing on the appeal;

(v) The decision of the planning agency or city council on the reconsideration;

(vi) The decision of the hearing examiner on the appeal;

(h) Any other relevant information.

(2) Availability. The official file shall be available for inspection and copying during regular city business hours.

~~Sec. 22. DMMC 4.28.025 and section 1 of Ordinance 930 as amended by section 19 of Ordinance 983 as amended by section 1 of Ordinance 1168 are each amended to read as follows:~~

~~4.28.025 Interim eighth and ninth positions.~~

~~There ((is)) are created ((an)) interim eighth and ninth positions on the planning agency((as an ex officio nonvoting)). Two members of the city council shall be appointed by the mayor and confirmed by the city council to serve in the interim eighth and ninth positions. The mayor is eligible for appointment to one of the interim positions. Persons appointed to the interim eighth and ninth positions shall serve as voting members for a term effective upon appointment through December 31, ((1996)) 2003, at which time the eighth and ninth positions shall lapse.~~

Sec. 23. DMMC 4.28.040 and section 4 of Ordinance 611 as amended by section 1 of Ordinance 689 are each amended to read as follows:

4.28.040 Powers - Duties - Parks. In addition to the powers and duties specified in DMMC 4.28.030, the planning agency ((shall)) may provide comprehensive planning recommendations to the city council for the acquisition of sites or lands for use as park and recreational facilities, consistent with long-range comprehensive planning of the city. Detailed development planning of each specific park or recreation site shall be according to procedures specifically directed by the city council as deemed appropriate for the particular project. Prior to approval of any detailed development park plan, such plan ((shall)) may be presented to the planning agency for its comments as to the consistency of the development plan with the long-range comprehensive park and recreation plan of the city.

Sec. 24. Repealer. DMMC 4.28.060 and section 6 of Ordinance 611 are each repealed.

Sec. 25. Severability - Construction.

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

(2) If the provisions of this ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this ordinance is deemed to control.

Sec. 26. Effective Date. This ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

PASSED BY the city council of the city of Des Moines this ____ day of _____, 2001 and signed in authentication thereof this ____ day of _____, 2001.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

EXCERPT
DES MOINES CITY COUNCIL MINUTES
July 12, 2001

Draft Ordinance No. 01-119 Duties of the Planning Agency - 1st Reading

City Manager Olander informed Council that he had received a call from Mayor Pro Tem Sheckler requesting that Council postpone final action on this issue until he was present.

Community Development Director Kilgore explained that the proposed ordinance would transfer decision making authority for a variety of land use actions from the City Council to the Planning Agency and would expand the agency from seven to nine members. The two additional members would be Councilmembers. Community Development Director Kilgore noted that the draft ordinance had been prepared in response to Council's direction. She detailed the following options before Council:

1. Discuss and/or revise the proposed Ordinance. Direct staff to schedule a public hearing for August 9, 2001 regarding the issue.
2. Direct staff to revise the draft ordinance and return the amended draft to Council for review.
3. Delay discussion of the issue until full Council was present.

Community Development Director Kilgore noted that the word "shall" had been changed to "may" in Section 23 of the proposed ordinance. This change was recommended as it was consistent with current practice. She also said that the draft ordinance directed the Planning Agency to use Council's Rules of Procedure while conducting a public hearing.

Councilmember Sherman confirmed that under the proposed ordinance subdivisions would go before the Planning Agency rather than to Council. Councilmember Sherman cited the comments received from the Zenith residents previously in the meeting as an example of his belief that such decisions should be made by elected officials.

Mayor Thomasson opposed giving Council's legislative duties to the Planning Agency. He felt that the elected Councilmembers and appointed Planning Agency members had different responsibilities. He believed that Council had time to continue reviewing land use issues.

Councilmember Kaplan noted that the Council currently accepted recommendations from other various advisory boards. He felt that the public would petition the decision makers on certain matters whether they were elected or appointed officials. Councilmember Kaplan said that he trusted the appointed members to make sound decisions.

Mayor Thomasson noted that changes to a final plat were limited by the preliminary plat decisions.

Community Development Director Kilgore confirmed that developers would begin improvements after preliminary plat approval was received.

Councilmember Towe concurred with Councilmember Kaplan's comments. He felt that the proposed ordinance would allow Council to serve in a policy role rather than participate in specific plan reviews.

Councilmember Wasson agreed with Councilmember Sherman's statements. He said that the Planning Agency was appointed by Council but had no accountability to the citizens. He noted that the citizens had no opportunity to change the membership of the Planning Agency.

MOTION was made by Councilmember Kaplan and seconded by Councilmember Towe to direct staff to schedule a public hearing on August 9, 2001 to allow public comment on Draft Ordinance No. 01-119 as amended.

City Attorney McLean clarified that an approved motion would move the proposed ordinance on to a second reading.

VOTE ON MOTION: Motion passed, 4 – 2, with Councilmembers Sherman and Wasson opposed.

EXCERPT DES MOINES CITY COUNCIL MINUTES February 1, 2001

DUTIES OF THE PLANNING AGENCY

Community Development Director Kilgore noted that, at Council's request, she has prepared alternatives to the status quo that would enlarge the Planning Agency's responsibilities for Council's consideration. She requested Council's direction on the following proposed changes:

Quasi-judicial Land Use Decisions	Current Decisionmaker	Alternative Decisionmaker
Unclassified use permit	City Council	Planning Agency ¹
Preliminary planned unit development	City Council	Planning Agency ¹
Preliminary plat	City Council	Planning Agency
Preliminary modified subdivision	City Council	Planning Agency
Preliminary binding site plan	City Council	Planning Agency
Preliminary townhouse development	City Council	Planning Agency
Business park Master Plan	City Council	No Change
Right-of-way dedication and vacation	City Council	No Change
Final Plat, planned unit development, etc.	City Council ²	No Change

¹ This change would not be enacted until the Zoning Code is amended to clarify decision criteria.

² Decision on final plat, plan, etc. would be based upon the record of information created during the Planning Agency's public hearing on the preliminary plat, plan, etc.

Legislative Actions	Current Decisionmaker	Alternative Decisionmaker
Textual code amendments	City Council. When appropriate, draft amendments are first forwarded to the Planning Agency for review and comment.	No change
Comprehensive Plan Amendments	City Council. The Planning Agency conducts a public hearing and forwards its recommendations to the City Council.	No change

Other provisions and provisos include:

- For the next 3-5 years, Planning Agency membership would be expanded from seven to nine members. The two additional seats would be filled by Councilmembers, who would serve as voting members. This is intended to promote continuity between goals and values of the City Council and the Planning Agency.
- Two times per year, a joint meeting of the City Council and the Planning Agency would be held to foster direct communication between the two boards.

Council noted that two members of the Planning Agency were in attendance and requested their comments on the proposal.

Planning Agency Member Mark Proulx spoke in support of the proposed changes stating that they strike a balance between duties and a partnership with City Councilmembers.

Mayor Thomasson questioned whether a conflict would exist if Councilmembers voted on matters that would have an appeal of Agency decisions directly to the Council.

City Attorney McLean responded that he would have to research which matters are appealable to the Council. It was noted that Code changes could be instituted to make certain items appealable to the Hearing Examiner or Superior Court, rather than the City Council.

Dave Peterson, Chairman of the Planning Agency, informed Council that he supports the proposed changes and if it is legally permitted, would prefer that the two Councilmembers have the right to vote on issues before the Agency.

Upon questioning by Council, Community Development Director Kilgore reminded Council that in regards to Unclassified Use Permits and Preliminary Planned Unit Developments, the Des Moines Municipal Zoning Code would first have to be amended to clarify decision criteria. Until that process is complete the decisions on these matters would remain with City Council.

MOTION was made by Councilmember Towe, seconded by Mayor Pro Tem Sheckler, to direct staff to prepare a draft ordinance for Council consideration at a future meeting, to change the duties of the Planning Agency as outlined by staff, with two Councilmembers to serve as non-voting members.

Councilmember Sherman spoke in opposition to the motion. He stated that he personally wants to be directly responsible to citizens and that as small city feels the elected officials should make the tough decisions. He noted that he does appreciate the input from the Agency members on issues, but felt there may be other ways to make the Planning Agency a more effective group, without giving up Council's authority.

Mayor Pro Tem Sheckler stated there are two options - do away with the Agency, or not. He felt strongly that if the Planning Agency is to remain then they need to have proper authority to make decisions under guidelines established by the Council. He felt they have much to offer as an individual body, especially with two Councilmembers as members. He noted if this does not work, it can always be changed.

Councilmember Kaplan remarked that the Planning Agency is made up of City residents that obviously want the best for the City and community. He noted members of the Agency represent a good balance of interests and felt with two Councilmembers on the Agency, the group would better serve the Council as a whole and the citizens of the City. He did express concern over any conflicts regarding appeals to Council.

Councilmember Wasson questioned whether the Agency had seen this proposal.

Community Development Director Kilgore informed Council that the City Clerk had mailed Council's study packet to all of the Agency members and that the Agency had an informal discussion regarding the changes at a meeting on Monday, January 29, 2001.

Planning Agency Member Proulx felt that with Councilmembers having a voting status, that it would promote a more active partnership. Upon questioning, he assured Councilmembers that the Agency would not be intimidated by the Councilmembers participation on the Agency.

Councilmember Towe voiced the opinion that delegating more authority to the Agency is not necessarily a bad idea and it would free up Council to work on other issues. He noted there are several large policy issues Council needs to address. Some examples would be how to help promote development of the Pacific Ridge Area, the Marina Master Plan, budget and financial impacts of I-695. He concluded by stating, in his opinion, the proposed changes would strengthen the link between the Council and the Planning Agency.

Councilmember Brazil stated he supports the motion, but would prefer the Councilmembers have a voting status.

Mayor Thomasson voiced agreement with Councilmember Brazil, but stated first the various appeal processes will need to be defined to avoid any conflict.

City Manager Olander stated staff will check all avenues for appeal process that are available. he noted that there are a number of items that Council has not had the time to work on such as updating the City's Zoning Code. He further advised there are major items that will be coming before Council that will require a lot of work, such as updating the Shoreline Master Plan and detailed environmental issues.

Councilmember Sherman advised that the City's codes are not a "cook-book" and that there is a lot of discretion left. He further felt that delegating Council authority in this manner would cut Council off from direct community interaction.

MOTION was made by Mayor Thomasson, seconded by Councilmember Wasson, to amend the original motion to make the Councilmembers voting members.

Councilmember Sherman stated that it would be a mistaken notion to feel that two members of the Council could possibly represent the views of the Council as a whole.

VOTE ON AMENDMENT TO MAIN MOTION: Motion passed 5 to 2 with Councilmembers Kaplan and Sherman voting NO.

VOTE ON MAIN MOTION: Motion passed 6 to 1 with Councilmember Sherman voting NO.

EXCERPT
DES MOINES CITY COUNCIL MINUTES
October 19, 2000

Planning Agency

Community Development Director Kilgore informed Council that the role of the Planning Agency had decreased in the last few years due to regulatory reform, the completion of the Comprehensive Plan and the lack of subdivisions submitted to the City. In light of these changes, Ms. Kilgore said that the Planning Agency felt that their role required discussion. She outlined the following options for Council to discuss:

1. Dissolve the Planning Agency.
2. Expand the duties of the Planning Agency.
3. Suspend Planning Agency activities for six months to develop a work program for the agency.
4. Do nothing.

Community Development Director Kilgore said that several subdivisions were expected to be reviewed in 2001. She also noted that the Planning Agency had indicated that they felt their recommendation carried little weight with the Council. If Council chooses to continue the agency, Community Development Director Kilgore recommended that Council communicate the Planning Agency's expected roles and duties.

At 7:42 p.m., Councilmember Wasson arrived.

Community Development Director Kilgore explained that the Planning Agency was not receiving as much public input now as Council was conducting all of the public hearings.

Councilmember Sherman said that the Council and the Planning Agency had conducted joint public meetings in the past to solicit public comment. The Planning Agency then discussed the issue and formed a recommendation after the public meeting.

Councilmember Towe spoke in support of Option #2. He said that he preferred to strengthen the dialog with the Planning Agency regarding land use public policy issues. He felt that the role of the Planning Agency could also be expanded for development proposals.

Councilmember Brazil also spoke in favor of Option #2. He said that he favored allowing the Planning Agency to conduct the public hearing for development proposals.

Councilmember Sheckler said that Council had established proper guidelines for the Planning Agency. Therefore, he supported Option #2.

Mayor Thomasson voiced support for either Option #1 or #4. He said that council committees were currently studying several issues such as the Marina Master Plan and the Transportation Plan that could have been delegated to the Planning Agency. He felt that Council held the final responsibility for City issues, as they were the elected officials. If Council no longer wished to review preliminary plats, Mayor Thomasson suggested that a Hearing Examiner be delegated this task rather than the Planning Agency.

City Attorney McLean clarified that the Planning Agency had access to legal counsel.

Councilmember Wasson voiced support for Option #1 as it would eliminate a layer of bureaucracy and would be easier for the customers.

As liaison to the Planning Agency, Councilmember Kaplan informed Council that he had discussed the issue with five of the seven Planning Agency members. He said the lack of regard for Planning Agency recommendations and the lack of communication between Council and themselves frustrated them. Councilmember Kaplan said he personally supported Option #2 as it allowed more individuals to study the issue and provide input. He felt that Council could still retain their authority.

Council asked if any members of the Planning Agency wished to address them.

As Chairman of the Planning Agency, David Peterson said that the agency often feels left out. He stated his preference for Option #2. He noted that, at times, the Planning Agency has needed more time to form their recommendations. He felt that the Planning Agency had enough experience to conduct the public hearings.

Planning Agency member Steve Swank spoke in support of Option #2. He felt that the Planning Agency could be a valuable asset to the City. He suggested that Council and Planning Agency members meet to discuss specific guidelines for the agency.

As a two-year member of the Planning Agency, Mark Proulx voiced support for Option #2. He felt that the Planning Agency could relieve some of the workload of Council and provide additional review of difficult issues. As a citizen, he wished to contribute to the community in this capacity.

Planning Agency member Bruce Young stated his belief that improved communication between the Planning Agency and Council was needed. He voiced support for Option #2.

Noting that Council had been very deliberate in reviewing regulatory reform issues, Mayor Thomasson questioned the process that would be used to expand the duties of the Planning Agency.

Community Development Director Kilgore explained that Council would need to determine which tasks were relinquished to the Planning Agency. She said that if the Planning Agency were given authority to approve preliminary plats then the Planning Agency would also conduct the public hearing associated with the development.

Councilmember Sherman said that he wished to increase public participation but did not want to give up Council's authority. He suggested that joint meetings be conducted between the two boards.

Councilmember Towe felt that Option #2 could include land use and zoning planning and public involvement and outreach.

City Manager Olander confirmed that there was a general consensus to proceed with Option #2. He said that staff would present a list of possible issues to be given to the Planning Agency for Council and Planning Agency review and discussion.

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL CITY OF DES MOINES, WA

SUBJECT: Duties of the Planning Agency

ATTACHMENTS:

1. Draft Ordinance No. 01-119.
2. Meeting minutes.

FOR AGENDA OF: July 12, 2001
DEPT. OF ORIGIN Community Dev.
DATE SUBMITTED June 22, 2001

CLEARANCES:

☒ COMMUNITY DEV. JK

☐ ENGINEER _____

☐ LEGAL _____

APPROVED BY THE CITY MANAGER
FOR SUBMITTAL [Signature]

RECOMMENDED ACTION

Administration is seeking direction from the City Council regarding Draft Ordinance No. 01-119.

SUMMARY STATEMENT

This agenda item provides for continued discussion regarding the duties of the Planning Agency. This matter was last discussed on February 1, 2001 (meeting minutes provided as Attachment 2). At that time, Council directed staff to prepare an ordinance that would transfer decision-making authority for a variety of land use actions from the City Council to the Planning Agency. The draft ordinance prepared in response to Council's direction is provided as Attachment 1.

If the Council chooses to proceed with the draft ordinance as substantially written, a public hearing can be scheduled for August 9, 2001.

COMMUNITY DEVELOPMENT'S FIRST DRAFT 06/21/01
DRAFT ORDINANCE NO. 01-119

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, relating to the membership and duties of the Des Moines Planning Agency, adding a new section to chapter 18.56 DMMC, amending DMMC 4.28.025, DMMC 4.28.040, DMMC 17.16.080, DMMC 17.16.100, DMMC 17.16.110, DMMC 17.16.120, DMMC 17.16.130, DMMC 17.16.140, DMMC 17.16.150, DMMC 17.16.180, DMMC 17.16.190, DMMC 17.20.020, DMMC 17.20.030, DMMC 17.40.080, DMMC 18.56.020, DMMC 18.56.060, DMMC 18.56.100, DMMC 18.56.180, DMMC 18.56.220, DMMC 18.56.240, and DMMC 18.56.270, and repealing DMMC 4.28.060 and DMMC 17.16.090.

WHEREAS, the Des Moines Planning Agency was established in 1984 to provide recommendations to the City Council regarding certain land use matters, and

WHEREAS, since creation of the Planning Agency, numerous citizens have dutifully and admirably served the Des Moines community as Planning Agency members, and

WHEREAS, the adoption of the Greater Des Moines Comprehensive Plan in 1995 constituted the completion of a thorough, multi-year land use planning effort, and

WHEREAS, changes to permitting procedures enacted in 1996 in response to the Washington State Regulatory Reform Act reduced the scope of duties of the Planning Agency, and

WHEREAS, due to a lack of business items during in recent years, the Planning Agency has met infrequently, and

WHEREAS, during the October 19, 2000 and February 1, 2001 meetings, the City Council discussed potential changes to the scope of Planning Agency duties, and subsequently directed administration to prepare draft legislation to expand the duties of the Planning Agency, and

WHEREAS, the SEPA responsible official has concluded that this ordinance constitutes a procedural action and is categorically exempt from SEPA threshold determination and EIS requirements as allowed by 197-11-800(20), and

THE CITY COUNCIL OF THE CITY OF DES MOINES DOES ORDAIN AS FOLLOWS:

Sec. 1. DMMC 18.56.020 and section 2 of Ordinance 1174 are each amended to read as follows:

18.56.020 Framework for decision.

(1) The scope of a land use action covered by this chapter shall be limited as specified by RCW 36.70B.030 as presently constituted or as may be subsequently amended.

(2) Except when a land use action is categorically exempt from SEPA, environmental review shall be conducted concurrently with review of other proposed land use actions requested by an applicant. Integrated and consolidated review shall be provided as required by RCW 36.70B.120 and 36.70B.140 as presently constituted or as may be subsequently amended.

(3) As allowed by RCW 36.70B.140(1) as presently constituted or as may be subsequently amended, the following land use actions are not subject to the provisions of RCW 36.70B.070, 36.70B.080, 36.70B.090, 36.70B.110, 36.70B.120, and 36.70B.130 because the city council has determined that these projects present special circumstances that warrant a review process different from the process specified by this chapter:

- (a) Business park master plans;
- (b) Street vacations and other actions relating to use of public areas or facilities;
- (c) Type VI land use actions; and
- (d) Abatement of nonconforming uses.

(4) As authorized by RCW 36.70B.140(2) as presently constituted or as may be subsequently amended, the following Type I land use actions shall not be subject to the provisions of RCW 36.70B.060, 36.70B.110, 36.70B.120, and 36.70B.130 as presently constituted or as may be subsequently amended:

(a) Lot line adjustments.

(b) Construction permits required under Title 14 DMMC that are categorically exempt from environmental review under chapter 16.04 DMMC (SEPA Rules), or for which environmental review has been completed in conjunction with other project permits.

(5) Land use actions are classified into ~~((six))~~ seven types, based upon the entity responsible for the decision, the amount of discretion exercised by the decisionmaker, the degree of impact associated with the decision, the amount and type of public input sought, and the type of appeal available. The ~~((six))~~ seven categories of land use actions are as follows:

(a) Type I: Administrative decision made without legal requirement for public comment.

(b) Type II: Administrative decision made after legally required opportunity for public comment.

(c) Type III: Quasi-judicial and other decisions by hearing examiner made after legally required opportunity for public comment.

(d) Type IV: Quasi-judicial and other nonlegislative decisions by city council made after legally required opportunity for public comment.

(e) Type V: Quasi-judicial and other nonlegislative decisions by city council made without legal requirement for public comment.

(f) Type VI: Legislative decision by city council made after legally required opportunity for public comment.

(g) Type VII: Quasi-judicial and other nonlegislative decisions by planning agency made after legally required opportunity for public comment.

(6) The land use review procedures specified by Title 17 DMMC (Subdivisions) for a land use action explicitly covered by that title shall control over the procedures specified by this chapter.

Sec. 2. DMMC 18.56.060 and section 6 of Ordinance 1174 as amended by section 36 of Ordinance 1197 are each amended to read as follows:

18.56.060 Type IV land use action - General.

A Type IV land use action includes quasi-judicial land use decisions and other nonlegislative land use decisions made by the city council. Public notice of application is required for a Type IV land use action. The following actions are designated as Type IV land use actions:

- (1) Zoning map amendment (rezone).
- (2) Unclassified use permit.
- (3) Preliminary planned unit development.
- (4) Business park master plan.
- (5) Final binding site plan for a business park master plan.
- ~~((6) Subdivision preliminary plat.~~
- ~~(7) Preliminary modified subdivision.~~
- ~~(8) Preliminary alteration or vacation of subdivision.))~~
- ~~(9) Preliminary alteration or vacation of short subdivision with public dedication.~~
- ~~(10) Preliminary alteration or vacation of binding site plan with public dedication.~~
- ~~(11) Preliminary alteration or vacation of binding site plan with more than four lots and not involving public dedication.~~

~~(12) Preliminary binding site plan with more than four lots.~~

~~(13) Preliminary townhouse development with more than four lots.~~

~~(14))~~ (6) Shoreline substantial development with an environmental impact statement.

~~((15))~~ (7) Shoreline conditional use.

~~((16))~~ (8) Shoreline variance.

~~((17))~~ (9) City council approval, conditional approval, or denial of a project based upon chapter 16.04 DMMC (SEPA Rules).

~~((18))~~ (10) Actions not specifically listed in this or any other section of this chapter and that are quasi-judicial land use actions made by the city council following a legally required opportunity for public comment.

NEW SECTION. Sec. 3. A new section is added to chapter 18.56 DMMC to read as follows:

Type VII land use action - General.

A Type VII land use action includes quasi-judicial land use decisions and other nonlegislative land use decisions made by the planning agency. Public notice of application is required for a Type VII land use action. The following actions are designated as Type VII land use actions:

- (1) Subdivision - preliminary plat.
- (2) Preliminary modified subdivision.
- (3) Preliminary alteration or vacation of subdivision.
- (4) Preliminary alteration or vacation of short subdivision with public dedication.
- (5) Preliminary alteration or vacation of binding site plan with public dedication.

(6) Preliminary alteration or vacation of binding site plan with more than four lots and not involving public dedication.

(7) Preliminary binding site plan with more than four lots.

(8) Preliminary townhouse development with more than four lots.

(9) Planning agency approval, conditional approval, or denial of a project based upon chapter 16.04 DMMC (SEPA Rules).

(10) Actions not specifically listed in this or any other section of this chapter and that are quasi-judicial land use actions made by the planning agency following a legally required opportunity for public comment.

Sec. 4. DMMC 18.56.100 and section 10 of Ordinance No. 1174 are each amended to read as follows:

18.56.100 Pre-application meetings.

(1) Informal Pre-Application Meetings. Applicants for a land use action may participate in an informal meeting prior to submittal of the application for land use action or the formal pre-application meeting. The purpose of the meeting is to discuss, in general terms, the proposed land use action, alternatives, required approvals, and the land use action process.

(2) Formal Pre-Application Meetings. Unless waived by the community development director, potential applicants or their designees are required to attend a formal pre-application meeting for all Type III, Type IV, ~~((and))~~ Type VI, and Type VII land use actions. The purpose of the meeting is to discuss the nature of the proposed development, application and approval requirements, fees, review process and schedule, and applicable policies and regulations. As appropriate, the community development director shall invite representatives of affected agencies, such as other city departments and special purpose districts, to attend any formal pre-application meeting. This meeting requirement should be deemed waived in the

event the community development director or the community development director's designee is unavailable to meet within 10 days of a request for such meeting.

NEW SECTION. **Sec. 5.** A new section is added to chapter 18.56 DMMC to read as follows:

18.56.180 Review process for Type VII land use action.

(1) Upon conclusion of the 15-day comment period and any applicable SEPA appeal period, the planning agency may approve, approve with conditions, or deny a Type VII land use action upon compliance with the procedural requirements of chapter 18.94 DMMC (Hearing examiner code).

(3) The planning agency's decision regarding a Type VII land use action is appealable to the Superior Court of Washington for King County as specified by DMMC 18.94.300 (Appeal from decision of the city council).

Sec. 6. DMMC 18.56.220 and section 22 of Ordinance 1174 as amended by section 6 of Ordinance 1193 are each amended to read as follows:

18.56.220 Procedures for open record public hearings.

(1) Open record public hearings shall be conducted as required by chapter 4.12 DMMC (City Council - Rules of Procedure), chapter 18.94 DMMC (Hearing Examiner), RCW 36.70B.020, 36.70B.060, 36.70B.110, 36.70B.120, 43.21C.075, and other applicable law as presently constituted or as may be subsequently amended. Open record public hearings conducted by the planning agency shall adhere to the City Council Rules of Procedure as well as other applicable provisions.

(2) Written information received from the public or other agencies shall be admitted to the record during the time between the publication of the applicable public notice, and the closing of the open record public hearing by the presiding officer of the (~~city council~~) hearing.

(3) Oral testimony from the public or other agencies shall be admitted to the record during the time between the opening and closing of the open record public hearing by the presiding officer of the ((~~city council~~)) hearing.

(4) Upon the closing of the open record public hearing by the presiding officer of the ((~~city council~~)) hearing, no additional written information or oral testimony from the public or other agencies will be accepted or considered.

Sec. 7. DMMC 18.56.240 and section 24 of Ordinance 1174 are each amended to read as follows:

18.56.240 Reconsideration.

A party to a public hearing or closed record appeal ((~~conducted by the hearing examiner or city council~~)) may seek reconsideration of a final decision. Requests for reconsideration shall be submitted and considered as specified by DMMC 18.94.250 (Decision - Reconsideration).

Sec. 8. DMMC 18.56.270 and section 27 of Ordinance 1174 are each amended to read as follows:

18.56.270 Appeals.

(1) Appeals shall conform to the requirements specified by RCW 36.70B.030, 36.70B.060, 43.21C.075, 90.58.180, chapter 36.70C RCW, and other applicable law as presently constituted or as may be subsequently amended.

(2) Appeal of an administrative land use action shall be filed as specified by DMMC 14.04.130 (Appeals), 16.04.210 (Agency SEPA appeals), 17.12.170 (Appeals), chapter 18.60 DMMC (Amendments, unclassified use permits, planned unit developments, and appeals), DMMC 18.86.150 (Appeals), and chapter 18.94 DMMC (Hearing examiner). Appeal of an administrative decision relating to a proposed Type III, Type IV, or Type VI land use action shall be resolved during the required open record public hearing.

(3) Except for appeal of shoreline substantial development and other shoreline decisions, appeal of a hearing examiner land use decision shall be filed as specified by chapter 18.94 DMMC (Hearing examiner). Appeal of shoreline substantial development and other shoreline decisions shall be filed with the shoreline hearings board as specified by chapter 90.58 RCW as presently constituted or as may be subsequently amended.

(4) Except for appeal of shoreline substantial development and other shoreline decisions, appeal of a planning agency or city council decision and other land use actions for which available remedies have been exhausted shall require the filing of a land use petition in Superior Court of Washington for King County as specified by DMMC 18.94.300 and chapter 36.70C RCW as presently constituted or as may be subsequently amended. Appeal of shoreline substantial development and other shoreline decisions shall be filed with the shoreline hearings board as specified by chapter 90.58 RCW, as presently constituted or as may be subsequently amended.

Sec. 9. DMMC 17.16.080 and section 22 of Ordinance 931 as amended by section 40 of Ordinance 1174 are each amended to read as follows:

17.16.080 Planning agency review.

(1) General. At a public meeting as defined in RCW 36.70B.020(5), the planning agency shall review ~~((each preliminary subdivision application))~~ Type IV land use actions processed in accordance with this chapter after the planning official issues a notice of complete application.

(2) Electronic Sound Recording. The planning agency shall make a complete electronic sound recording of each meeting. ~~((involving the review of a preliminary subdivision.))~~

(3) Recommendation. Upon consideration of the information presented at the public meeting, the planning agency shall, by a majority vote of a

quorum of its membership, make a recommendation to the city council.

(4) Recommendation Criteria. The planning agency may recommend approval of the proposed preliminary subdivision only if it finds that it meets the applicable decisional criteria.

(5) Transmittal of Recommendation. The planning official shall inform the city council of the planning agency's recommendation not later than 15 days following the adoption of the planning agency recommendation.

Sec. 10. DMMC 17.16.090 and section 23 of Ordinance 931 as amended by section 41 of Ordinance 1174 are each repealed.

Sec. 11. DMMC 17.16.100 and section 24 of Ordinance 931 are each amended to read as follows:

17.16.100 Planning Agency or City council review.

(1) General. As specified by chapter 18.56 DMMC, the ((The)) planning agency or city council shall hold a public hearing on each proposed ((preliminary subdivision)) Type IV or VII Land Use Action. No later than the first regular public meeting after receiving the recommendation of the planning agency on the preliminary subdivision, the city council shall set by motion the date of the hearing.

(2) Notice. The planning official shall prepare and distribute public notice of the hearing as set forth in DMMC 17.40.070.

(3) Electronic Sound Recording. The planning agency or city council shall make a complete electronic sound recording of each public meeting involving the review of a preliminary subdivision application.

Sec. 12. DMMC 17.16.110 and section 25 of Ordinance 931 as amended by section 42 of Ordinance 1174 are each amended to read as follows:

17.16.110 Public testimony and participation at public hearings.

Any person may participate in the ((city council)) public hearing in either or both of the following ways:

(1) By submitting written testimony either by delivering this testimony to the community development department prior to the hearing or by giving it directly to the planning agency or city council at the hearing.

(2) By appearing in person, or through a representative, at the hearing and making oral testimony directly to the planning agency or city council. The presiding officer may reasonably limit the extent of oral testimony to facilitate the orderly and timely conduct of the hearing.

Sec. 13. DMMC 17.16.120 and section 26 of Ordinance 931 as amended by section 43 of Ordinance 1174 are each amended to read as follows:

17.16.120 Continuation of hearing.

The planning agency or city council may continue the hearing if, for any reason:

(1) It is unable to hear all of the public testimony on the matter;

(2) It determines that it needs more information on the matter; or

(3) It directs that the proposed preliminary subdivision be modified.

If, during the hearing, the planning agency or city council announces the time and place of the next hearing on the matter, no further notice of that hearing need be given.

Sec. 14. DMMC 17.16.130 and section 27 of Ordinance 931 as amended by section 44 of Ordinance 1174 are each amended to read as follows:

17.16.130 Planning Agency or City council's decision.

(1) General. Following its consideration of the matter, the planning agency or city council shall by motion direct administration to return the proposed preliminary subdivision to the applicant for modification or draft a resolution to either:

(a) Approve the preliminary subdivision; or

(b) Approve the preliminary subdivision subject to certain conditions; or

(c) Disapprove the preliminary subdivision.

(2) Decisional Criteria. The planning agency or city council may approve the proposed preliminary subdivision only if it finds that:

(a) It is consistent with the applicable provisions of the comprehensive plan, zoning code, shoreline master program, and other city policies and regulations; and

(b) It is consistent with the applicable provisions of chapter 17.36 DMMC (Layout and design of subdivisions); and

(c) There are adequate provisions for open spaces, drainage ways, rights-of-way, sidewalks, and other planning features that assure safe walking conditions for pedestrians, including students who walk to and from school, easements, water supplies, sanitary waste, fire protection, power service, parks, playgrounds, and schools; and

(d) It will serve the public use and interest and is consistent with the public health, safety, and welfare. The city council shall be guided by the policy and standards and may exercise

the powers and authority set forth in chapter 58.17 RCW, as presently constituted or as may be subsequently amended;

(e) The proposed preliminary subdivision provides for coordinated development with adjoining properties or future development of adjoining properties including but not limited to provisions for improved or shared access where appropriate.

(3) Conditions, Restrictions, and Modifications. The planning agency or city council shall include in its decision any conditions, restrictions, and modifications that are determined as necessary to eliminate or minimize any undesirable effects or impacts that would result from approving the proposed subdivision. Any conditions, restrictions, and modifications that are imposed shall become part of the decision.

(4) Dedication. The planning agency or city council may require dedication of tracts, easements, or rights-of-way for utility or other public purposes. Such dedications shall be clearly shown and described on all documents required by this chapter.

(5) Contents of Decision. The planning agency or city council shall adopt by ~~((resolution))~~ regular motion:

(a) A statement approving, approving with conditions, or denying the preliminary subdivision; and

(b) Any conditions, restrictions, and modifications that are imposed; and

(c) Findings of fact that support the decision, including any conditions, restrictions, and modifications that are imposed; and

(d) A statement of the criteria used in making the decision; and

(e) A summary of the rights, as established in this chapter, of the applicant and others to request reconsideration of the decision of the city council.

(6) Distribution of ~~((Resolution))~~ Decision. Within five days following ~~((adoption of))~~ the planning agency or city council's ~~((resolution))~~ decision, the planning official shall distribute the resolution as follows:

(a) To the applicant; and

(b) To each person who submitted timely written or oral testimony to the planning agency or city council for inclusion in the record.

(7) Failure to Resubmit. Preliminary subdivision applications returned to the applicant for modification that are not resubmitted to the planning official within 45 days of the date of the planning agency or city council public hearing will be, for the purposes of this chapter, considered withdrawn; except that the community development director may extend the period to resubmit the application for an additional 45 days upon written request by the applicant submitted within the initial 45-day resubmittal period. Time spent by the applicant to make modifications as directed by the planning agency or city council shall not be counted toward application time limits specified in DMMC 17.16.170 (Processing preliminary subdivisions - Time limits).

Sec. 15. DMMC 17.16.140 and section 28 of Ordinance 931 as amended by section 45 of Ordinance 1174 are each amended to read as follows:

17.16.140 Reconsideration period - Final decision unless reconsidered.

The applicant shall not engage in any activity based on the decision approving the preliminary subdivision until the time to request reconsideration has expired. If the request for reconsideration is granted, the applicant shall not engage in any activity based on the decision

approving the application until the city issues a final decision on the matter. If the decision of the planning agency or city council is not timely reconsidered, that decision shall be the final decision of the city. Distribution of the decision in resolution form under DMMC 17.16.130(6) (Planning agency or ((E))city council's decision) and as required by chapter 18.56 DMMC (Development review procedures) shall constitute notice of final decision.

Sec. 16. DMMC 17.16.150 and section 29 of Ordinance 931 as amended by section 46 of Ordinance 1174 are each amended to read as follows:

17.16.150 Reconsideration.

(1) Who May Request Reconsideration. A request to reconsider the decision or action of the planning agency or city council connected with the subdivision application, other than a motion to reconsider brought under city council rules of procedure, may be made by:

(a) The applicant; or

(b) Any person who submitted timely written or oral testimony to the planning agency or city council for inclusion in the record.

(2) How to Request Reconsideration. The request for reconsideration, in the form of a letter, shall be delivered to the community development department within 10 days following the day of ((~~adoption of~~)) the planning agency or city council's ((~~resolution~~)) decision. The request shall contain:

(a) A clear reference to the preliminary subdivision to be reconsidered; and

(b) A statement of the specific factual findings or conclusions of the planning agency or city council disputed by the person filing the request for reconsideration.

(3) Criteria. The planning agency or city council shall reconsider a decision if ~~((the council finds))~~ it is determined that:

(a) An error of fact, law, or procedure that is more likely than not to affect the outcome of the decision has been made; or

(b) The person requesting reconsideration is seeking to enter previously unavailable information that is more likely than not to affect the outcome of the decision.

(4) Rules. Except as provided in this chapter, requests for reconsideration shall otherwise be processed in conformance with chapter 4.12 DMMC (City council - Rules of procedure).

(5) Notice of Decision. If the planning agency or city council, under the rules of reconsideration specified in this section, reconsiders an application for a preliminary subdivision and ~~((adopts a resolution))~~ passes a motion which results in a change in the original ~~((city council))~~ decision specified in DMMC 17.16.130 (Planning agency or ~~((C))~~ city council's decision), the planning official shall within five days of the ~~((adoption date of the city council resolution))~~ decision prepare a notice of decision and distribute it to:

(a) The applicant;

(b) Each person who submitted timely written or oral testimony for inclusion in the record.

Sec. 17. DMMC 17.16.180 and section 32 of Ordinance 931 as amended by section 48 of Ordinance 1174 are each amended to read as follows:

17.16.180 Judicial review - Preliminary subdivision.

General. The action of the planning agency or city council in approving, approving with conditions, disapproving, or returning to the

applicant for modifications a preliminary subdivision may be reviewed for unlawful, arbitrary, or capricious action by filing a land use petition with the Superior Court of Washington for King County as specified by chapter 36.70C RCW, as presently constituted or as may be subsequently amended.

Sec. 18. DMMC 17.16.190 and section 33 of Ordinance 931 are each amended to read as follows:

17.16.190 Effect of preliminary subdivision approval.

(1) General. The approval of a preliminary subdivision by the city constitutes approval of the general concept and layout of the plat as approved. Preliminary subdivision approval does not signify acceptance of all engineering details of the plat. These engineering details remain subject to approval by the public works director.

(2) Construction of Certain Improvements. The applicant shall submit detailed design documents for all required right-of-way, easement, utility, or other improvements to the community development department. These documents shall be reviewed and approved by the public works director and planning official. Following such approval, the city may issue the necessary permits to construct the improvements.

(3) Deviations from the Preliminary Plat. The city shall not authorize improvements to be constructed, unless the improvements are consistent with the plat concept and layout of the preliminary subdivision approved by the planning agency or city council. In making such a determination, the public works director and planning official shall utilize the criteria for minor deviations set forth in DMMC 17.16.230(2). If consistency with the criteria is not clear, the public works director or planning official shall request a determination from the planning agency or city council.

Sec. 19. DMMC 17.20.020 and section 41(B) of Ordinance 931 as amended by section 53 of Ordinance 1174 are each amended to read as follows:

17.20.020 Procedure.

Requests for modified subdivisions and short subdivisions shall be processed and decided upon as specified in chapters 17.16 and 17.12 (Subdivisions and Short subdivisions), respectively; except that the following additional requirements shall apply:

(1) Public notice shall be expanded to include a description of which aspects of the proposed modified subdivision/short subdivision are requested to deviate from city standards.

(2) The applicant shall submit as part of the required application materials a written narrative entitled "Modified Subdivision/Short Subdivision Design Justification" which states why proposed deviations from city standards are necessary and what unique design features, not ordinarily provided in traditional subdivisions/short subdivision, are incorporated into the proposal to offset the need for such standards.

(3) Within 21 days of the date of the decision to approve, approve with conditions, or disapprove a short subdivision, the planning official shall provide notice of the decision, written findings, and other relevant materials to the ((~~city council~~)) planning agency at a regularly scheduled public meeting. The ((~~city council~~)) planning agency shall by motion decide whether to concur with the community development director's decision or review the matter further at a future meeting. The decision to approve, approve with conditions, or disapprove an application for modified short subdivision shall not be considered final until ((~~city council~~)) planning agency action on the matter is complete.

Sec. 20. DMMC 17.20.030 and section 41(C) of Ordinance 931 as amended by section 1 of Ordinance 1081 are each amended to read as follows:

17.20.030 Approval criteria.

The city may approve a proposed modified subdivision or short subdivision under this chapter only if it finds that all of the following criteria are met:

(1) It is consistent with the intent of the comprehensive plan, zoning code, and shoreline master program; and

(2) All lots within a subdivision meet the lot area and lot width requirements for the zone classification assigned to the property proposed to be subdivided; and

(3) Except for those requirements specifically requested by the applicant to be modified, it is consistent with the applicable provisions of chapter 17.36 DMMC; and

(4) There are adequate provisions for open spaces, drainage ways, rights-of-way, sidewalks, and other planning features that assure safe walking conditions for pedestrians, including students who walk to and from school, easements, water supplies, sanitary waste, fire protection, power service, parks, playgrounds, and schools; and

(5) It serves the public use and interest and is consistent with the public health, safety, and welfare. The ((~~city council~~)) planning agency shall be guided by the policy and standards and may exercise the powers and authority set forth in chapter 58.17 RCW, as presently constituted or as may be subsequently amended; and

(6) The proposed modified subdivision short subdivision provides for coordinated development with adjoining properties or future development of adjoining properties including but not limited to provisions for improved or shared access where appropriate; and

(7) The applicant has demonstrated that the proposal includes design features or improvements which are beneficial to the public, typically not found in traditional subdivision proposals, and equivalent in scale or value to the improvements or requirements from which the proposal deviates; and

(8) In subdivisions containing tracts for wetlands, streams, or required buffers, as required by DMMC 17.36.160, the minimum lot size established by Title 18 DMMC for the zone classification assigned to the property proposed to be subdivided may be reduced, provided:

(a) The number of lots within the subdivision shall be no more than allowed by Title 18 DMMC under the provisions for limited density transfer for environmentally sensitive areas; and

(b) Adequate recreation area shall be provided on each lot or by establishing a separate recreation tract in addition to that required by DMMC 17.36.150.

Sec. 21. DMMC 17.40.080 and section 79 of Ordinance 931 as amended by section 58 of Ordinance 1174 are each amended to read as follows:

17.40.080 Official file.

(1) Contents. The planning official shall compile an official file for each application containing the following:

(a) All application materials submitted by the applicant;

(b) Any staff report(s) prepared for the proposal;

(c) All written comments received about the proposal;

(d) All documents prepared or submitted pursuant to State Environmental Policy Act compliance;

(e) If available, the electronic recording of any public meeting on the matter;

(f) The decision or recommendation of the community development director, planning agency, and city council, as applicable;

(g) If the decision of the community development director on a short subdivision is appealed, or the decision of the planning agency or city council on a preliminary subdivision plat alteration or plat vacation is reconsidered, the following shall be added to the file:

(i) The letter of reconsideration or appeal;

(ii) All written comments submitted regarding the reconsideration or appeal;

(iii) The staff report on the appeal;

(iv) The electronic sound recording and minutes of the hearing on the appeal;

(v) The decision of the planning agency or city council on the reconsideration;

(vi) The decision of the hearing examiner on the appeal;

(h) Any other relevant information.

(2) Availability. The official file shall be available for inspection and copying during regular city business hours.

Sec. 22. DMMC 4.28.025 and section 1 of Ordinance 930 as amended by section 19 of Ordinance 983 as amended by section 1 of Ordinance 1168 are each amended to read as follows:

4.28.025 Interim eighth and ninth positions.

There ~~((is))~~ are created ~~((an))~~ interim eighth and ninth positions on the planning agency ~~((as an ex officio nonvoting))~~. Two members of the city council shall be appointed by the mayor and confirmed by the city council to serve in the interim eighth and ninth positions. The mayor is eligible for appointment to one of the interim positions. Persons appointed to the interim eighth and ninth positions shall serve as voting members for a term effective upon appointment through December 31, ((1996)) 2003, at which time the eighth and ninth positions shall lapse.

Sec. 23. DMMC 4.28.040 and section 4 of Ordinance 611 as amended by section 1 of Ordinance 689 are each amended to read as follows:

4.28.040 Powers - Duties - Parks. In addition to the powers and duties specified in DMMC 4.28.030, the planning agency ~~((shall))~~ may provide comprehensive planning recommendations to the city council for the acquisition of sites or lands for use as park and recreational facilities, consistent with long-range comprehensive planning of the city. Detailed development planning of each specific park or recreation site shall be according to procedures specifically directed by the city council as deemed appropriate for the particular project. Prior to approval of any detailed development park plan, such plan ~~((shall))~~ may be presented to the planning agency for its comments as to the consistency of the development plan with the long-range comprehensive park and recreation plan of the city.

Sec. 24. Repealer. DMMC 4.28.060 and section 6 of Ordinance 611 are each repealed.

Sec. 25. Severability - Construction.

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

(2) If the provisions of this ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this ordinance is deemed to control.

Sec. 26. Effective Date. This ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

PASSED BY the city council of the city of Des Moines this ____ day of _____, 2001 and signed in authentication thereof this ____ day of _____, 2001.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

EXCERPT DES MOINES CITY COUNCIL MINUTES February 1, 2001

DUTIES OF THE PLANNING AGENCY

Community Development Director Kilgore noted that, at Council's request, she has prepared alternatives to the status quo that would enlarge the Planning Agency's responsibilities for Council's consideration. She requested Council's direction on the following proposed changes:

Quasi-judicial Land Use Decisions	Current Decisionmaker	Alternative Decisionmaker
Unclassified use permit	City Council	Planning Agency ¹
Preliminary planned unit development	City Council	Planning Agency ¹
Preliminary plat	City Council	Planning Agency
Preliminary modified subdivision	City Council	Planning Agency
Preliminary binding site plan	City Council	Planning Agency
Preliminary townhouse development	City Council	Planning Agency
Business park Master Plan	City Council	No Change
Right-of-way dedication and vacation	City Council	No Change
Final Plat, planned unit development, etc.	City Council ²	No Change

¹ This change would not be enacted until the Zoning Code is amended to clarify decision criteria.

² Decision on final plat, plan, etc. would be based upon the record of information created during the Planning Agency's public hearing on the preliminary plat, plan, etc.

Legislative Actions	Current Decisionmaker	Alternative Decisionmaker
Textual code amendments	City Council. When appropriate, draft amendments are first forwarded to the Planning Agency for review and comment.	No change
Comprehensive Plan Amendments	City Council. The Planning Agency conducts a public hearing and forwards its recommendations to the City Council.	No change

Other provisions and provisos include:

- For the next 3-5 years, Planning Agency membership would be expanded from seven to nine members. The two additional seats would be filled by Councilmembers, who would serve as voting members. This is intended to promote continuity between goals and values of the City Council and the Planning Agency.
- Two times per year, a joint meeting of the City Council and the Planning Agency would be held to foster direct communication between the two boards.

Council noted that two members of the Planning Agency were in attendance and requested their comments on the proposal.

Planning Agency Member Mark Proulx spoke in support of the proposed changes stating that they strike a balance between duties and a partnership with City Councilmembers.

Mayor Thomasson questioned whether a conflict would exist if Councilmembers voted on matters that would have an appeal of Agency decisions directly to the Council.

City Attorney McLean responded that he would have to research which matters are appealable to the Council. It was noted that Code changes could be instituted to make certain items appealable to the Hearing Examiner or Superior Court, rather than the City Council.

Dave Peterson, Chairman of the Planning Agency, informed Council that he supports the proposed changes and if it is legally permitted, would prefer that the two Councilmembers have the right to vote on issues before the Agency.

Upon questioning by Council, Community Development Director Kilgore reminded Council that in regards to Unclassified Use Permits and Preliminary Planned Unit Developments, the Des Moines Municipal Zoning Code would first have to be amended to clarify decision criteria. Until that process is complete the decisions on these matters would remain with City Council.

MOTION was made by Councilmember Towe, seconded by Mayor Pro Tem Sheckler, to direct staff to prepare a draft ordinance for Council consideration at a future meeting, to change the duties of the Planning Agency as outlined by staff, with two Councilmembers to serve as non-voting members.

Councilmember Sherman spoke in opposition to the motion. He stated that he personally wants to be directly responsible to citizens and that as small city feels the elected officials should make the tough decisions. He noted that he does appreciate the input from the Agency members on issues, but felt there may be other ways to make the Planning Agency a more effective group, without giving up Council's authority.

Mayor Pro Tem Sheckler stated there are two options - do away with the Agency, or not. He felt strongly that if the Planning Agency is to remain then they need to have proper authority to make decisions under guidelines established by the Council. He felt they have much to offer as a individual body, especially with two Councilmembers as members. He noted if this does not work, it can always be changed.

Councilmember Kaplan remarked that the Planning Agency is made up of City residents that obviously want the best for the City and community. He noted members of the Agency represent a good balance of interests and felt with two Councilmembers on the Agency, the group would better serve the Council as a whole and the citizens of the City. He did express concern over any conflicts regarding appeals to Council.

Councilmember Wasson questioned whether the Agency had seen this proposal.

Community Development Director Kilgore informed Council that the City Clerk had mailed Council's study packet to all of the Agency members and that the Agency had an informal discussion regarding the changes at a meeting on Monday, January 29, 2001.

Planning Agency Member Proulx felt that with Councilmembers having a voting status, that it would promote a more active partnership. Upon questioning, he assured Councilmembers that the Agency would not be intimidated by the Councilmembers participation on the Agency.

Councilmember Towe voiced the opinion that delegating more authority to the Agency is not necessarily a bad idea and it would free up Council to work on other issues. He noted there are several large policy issues Council needs to address. Some examples would be how to help promote development of the Pacific Ridge Area, the Marina Master Plan, budget and financial impacts of I-695. He concluded by stating, in his opinion, the proposed changes would strengthen the link between the Council and the Planning Agency.

Councilmember Brazil stated he supports the motion, but would prefer the Councilmembers have a voting status.

Mayor Thomasson voiced agreement with Councilmember Brazil, but stated first the various appeal processes will need to be defined to avoid any conflict.

City Manager Olander stated staff will check all avenues for appeal process that are available. he noted that there are a number of items that Council has not had the time to work on such as updating the City's Zoning Code. He further advised there are major items that will be coming before Council that will require a lot of work, such as updating the Shoreline Master Plan and detailed environmental issues.

Councilmember Sherman advised that the City's codes are not a "cook-book" and that there is a lot of discretion left. He further felt that delegating Council authority in this manner would cut Council off from direct community interaction.

MOTION was made by Mayor Thomasson, seconded by Councilmember Wasson, to amend the original motion to make the Councilmembers voting members.

Councilmember Sherman stated that it would be a mistaken notion to feel that two members of the Council could possibly represent the views of the Council as a whole.

VOTE ON AMENDMENT TO MAIN MOTION: Motion passed 5 to 2 with Councilmembers Kaplan and Sherman voting NO.

VOTE ON MAIN MOTION: Motion passed 6 to 1 with Councilmember Sherman voting NO.

EXCERPT
DES MOINES CITY COUNCIL MINUTES
October 19, 2000

Planning Agency

Community Development Director Kilgore informed Council that the role of the Planning Agency had decreased in the last few years due to regulatory reform, the completion of the Comprehensive Plan and the lack of subdivisions submitted to the City. In light of these changes, Ms. Kilgore said that the Planning Agency felt that their role required discussion. She outlined the following options for Council to discuss:

1. Dissolve the Planning Agency.
2. Expand the duties of the Planning Agency.
3. Suspend Planning Agency activities for six months to develop a work program for the agency.
4. Do nothing.

Community Development Director Kilgore said that several subdivisions were expected to be reviewed in 2001. She also noted that the Planning Agency had indicated that they felt their recommendation carried little weight with the Council. If Council chooses to continue the agency, Community Development Director Kilgore recommended that Council communicate the Planning Agency's expected roles and duties.

At 7:42 p.m., Councilmember Wasson arrived.

Community Development Director Kilgore explained that the Planning Agency was not receiving as much public input now as Council was conducting all of the public hearings.

Councilmember Sherman said that the Council and the Planning Agency had conducted joint public meetings in the past to solicit public comment. The Planning Agency then discussed the issue and formed a recommendation after the public meeting.

Councilmember Towe spoke in support of Option #2. He said that he preferred to strengthen the dialog with the Planning Agency regarding land use public policy issues. He felt that the role of the Planning Agency could also be expanded for development proposals.

Councilmember Brazil also spoke in favor of Option #2. He said that he favored allowing the Planning Agency to conduct the public hearing for development proposals.

Councilmember Sheckler said that Council had established proper guidelines for the Planning Agency. Therefore, he supported Option #2.

Mayor Thomasson voiced support for either Option #1 or #4. He said that council committees were currently studying several issues such as the Marina Master Plan and the Transportation Plan that could have been delegated to the Planning Agency. He felt that Council held the final responsibility for City issues, as they were the elected officials. If Council no longer wished to review preliminary plats, Mayor Thomasson suggested that a Hearing Examiner be delegated this task rather than the Planning Agency.

City Attorney McLean clarified that the Planning Agency had access to legal counsel.

Councilmember Wasson voiced support for Option #1 as it would eliminate a layer of bureaucracy and would be easier for the customers.

As liaison to the Planning Agency, Councilmember Kaplan informed Council that he had discussed the issue with five of the seven Planning Agency members. He said the lack of regard for Planning Agency recommendations and the lack of communication between Council and themselves frustrated them. Councilmember Kaplan said he personally supported Option #2 as it allowed more individuals to study the issue and provide input. He felt that Council could still retain their authority.

Council asked if any members of the Planning Agency wished to address them.

As Chairman of the Planning Agency, David Peterson said that the agency often feels left out. He stated his preference for Option #2. He noted that, at times, the Planning Agency has needed more time to form their recommendations. He felt that the Planning Agency had enough experience to conduct the public hearings.

Planning Agency member Steve Swank spoke in support of Option #2. He felt that the Planning Agency could be a valuable asset to the City. He suggested that Council and Planning Agency members meet to discuss specific guidelines for the agency.

As a two-year member of the Planning Agency, Mark Proulx voiced support for Option #2. He felt that the Planning Agency could relieve some of the workload of Council and provide additional review of difficult issues. As a citizen, he wished to contribute to the community in this capacity.

Planning Agency member Bruce Young stated his belief that improved communication between the Planning Agency and Council was needed. He voiced support for Option #2.

Noting that Council had been very deliberate in reviewing regulatory reform issues, Mayor Thomasson questioned the process that would be used to expand the duties of the Planning Agency.

Community Development Director Kilgore explained that Council would need to determine which tasks were relinquished to the Planning Agency. She said that if the Planning Agency were given authority to approve preliminary plats then the Planning Agency would also conduct the public hearing associated with the development.

Councilmember Sherman said that he wished to increase public participation but did not want to give up Council's authority. He suggested that joint meetings be conducted between the two boards.

Councilmember Towe felt that Option #2 could include land use and zoning planning and public involvement and outreach.

City Manager Olander confirmed that there was a general consensus to proceed with Option #2. He said that staff would present a list of possible issues to be given to the Planning Agency for Council and Planning Agency review and discussion.

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL CITY OF DES MOINES, WA

SUBJECT: Duties of the Planning Agency

ATTACHMENTS:

1. Alternative for Planning Agency duties.
2. Meeting minutes.

FOR AGENDA OF: February 1, 2001
DEPT. OF ORIGIN Community Dev.
DATE SUBMITTED January 24, 2001

CLEARANCES:

[X] COMMUNITY DEV. JK
[] ENGINEER _____
[] LEGAL _____

APPROVED BY THE CITY MANAGER
FOR SUBMITTAL [Signature]

RECOMMENDED ACTION

Alternatives:

1. Change the duties of the Planning Agency as outlined by Attachment 1.
2. Change the duties of the Planning Agency as determined by the City Council.

SUMMARY STATEMENT

This agenda item provides for continued discussion regarding the duties of the Planning Agency. This matter was last discussed on October 19, 2000 (meeting minutes provided as Attachment 2) and a majority of the Councilmembers favored expanding the number and type of land use decisions made the Planning Agency. Staff was directed to prepare an alternative to the status quo that would enlarge the Planning Agency's responsibilities. That proposal is provided as Attachment 1.

If the Council chooses to expand the types of land use decisions made by the Planning Agency, staff will prepare the appropriate ordinances for the Council's consideration at a future meeting.

Planning Agency Duties - Alternative to Status Quo

For Discussion Only – 1/24/01

Quasi-judicial Land Use Decisions	Current Decisionmaker	Alternative Decisionmaker
Unclassified use permit	City Council	Planning Agency ¹
Preliminary planned unit development	City Council	Planning Agency ¹
Preliminary plat	City Council	Planning Agency
Preliminary modified subdivision	City Council	Planning Agency
Preliminary binding site plan	City Council	Planning Agency
Preliminary townhouse development	City Council	Planning Agency
Business Park Master Plan	City Council	No change
Right-of-way dedication and vacation	City Council	No change
Final plat, planned unit development, etc.	City Council ²	No change

¹ This change would not be enacted until the Zoning Code is amended to clarify decision criteria.

² Decision on final plat, plan, etc. would be based upon the record of information created during the Planning Agency's public hearing on the preliminary plat, plan, etc.

Legislative Actions	Current Decisionmaker	Alternative Decisionmaker
Textual code amendments	City Council. When appropriate, draft amendments are first forwarded to the Planning Agency for review and comment.	No change.
Comprehensive Plan amendments	City Council. The Planning Agency conducts a public hearing and forwards its recommendations to the City Council.	No change.

Other provisions and provisos include:

- ❖ For the next 3-5 years, Planning Agency membership would be expanded from seven to nine members. The two additional seats would be filled by Councilmembers, who would serve as voting members. This is intended to promote continuity between goals and values of the City Council and the Planning Agency.
- ❖ Two times per year, a joint meeting of the City Council and the Planning Agency would be held to foster direct communication between the two boards.

■ ■ ■ ■ ■

**EXCERPT
DES MOINES CITY COUNCIL MINUTES
October 19, 2000**

Planning Agency

Community Development Director Kilgore informed Council that the role of the Planning Agency had decreased in the last few years due to regulatory reform, the completion of the Comprehensive Plan and the lack of subdivisions submitted to the City. In light of these changes, Ms. Kilgore said that the Planning Agency felt that their role required discussion. She outlined the following options for Council to discuss:

1. Dissolve the Planning Agency.
2. Expand the duties of the Planning Agency.
3. Suspend Planning Agency activities for six months to develop a work program for the agency.
4. Do nothing.

Community Development Director Kilgore said that several subdivisions were expected to be reviewed in 2001. She also noted that the Planning Agency had indicated that they felt their recommendation carried little weight with the Council. If Council chooses to continue the agency, Community Development Director Kilgore recommended that Council communicate the Planning Agency's expected roles and duties.

At 7:42 p.m., Councilmember Wasson arrived.

Community Development Director Kilgore explained that the Planning Agency was not receiving as much public input now as Council was conducting all of the public hearings.

Councilmember Sherman said that the Council and the Planning Agency had conducted joint public meetings in the past to solicit public comment. The Planning Agency then discussed the issue and formed a recommendation after the public meeting.

Councilmember Towe spoke in support of Option #2. He said that he preferred to strengthen the dialog with the Planning Agency regarding land use public policy issues. He felt that the role of the Planning Agency could also be expanded for development proposals.

Councilmember Brazil also spoke in favor of Option #2. He said that he favored allowing the Planning Agency to conduct the public hearing for development proposals.

Councilmember Sheckler said that Council had established proper guidelines for the Planning Agency. Therefore, he supported Option #2.

Mayor Thomasson voiced support for either Option #1 or #4. He said that council committees were currently studying several issues such as the Marina Master Plan and the Transportation Plan that could have been delegated to the Planning Agency. He felt that Council held the final responsibility for City issues, as they were the elected officials. If Council no longer wished to review preliminary plats, Mayor Thomasson suggested that a Hearing Examiner be delegated this task rather than the Planning Agency.

City Attorney McLean clarified that the Planning Agency had access to legal counsel.

Councilmember Wasson voiced support for Option #1 as it would eliminate a layer of bureaucracy and would be easier for the customers.

As liaison to the Planning Agency, Councilmember Kaplan informed Council that he had discussed the issue with five of the seven Planning Agency members. He said the lack of regard for Planning Agency recommendations and the lack of communication between Council and themselves frustrated them. Councilmember Kaplan said he personally supported Option #2 as it allowed more individuals to study the issue and provide input. He felt that Council could still retain their authority.

Council asked if any members of the Planning Agency wished to address them.

As Chairman of the Planning Agency, David Peterson said that the agency often feels left out. He stated his preference for Option #2. He noted that, at times, the Planning Agency has needed more time to form their recommendations. He felt that the Planning Agency had enough experience to conduct the public hearings.

Planning Agency member Steve Swank spoke in support of Option #2. He felt that the Planning Agency could be a valuable asset to the City. He suggested that Council and Planning Agency members meet to discuss specific guidelines for the agency.

As a two-year member of the Planning Agency, Mark Proulx voiced support for Option #2. He felt that the Planning Agency could relieve some of the workload of Council and provide additional review of difficult issues. As a citizen, he wished to contribute to the community in this capacity.

Planning Agency member Bruce Young stated his belief that improved communication between the Planning Agency and Council was needed. He voiced support for Option #2.

Noting that Council had been very deliberate in reviewing regulatory reform issues, Mayor Thomasson questioned the process that would be used to expand the duties of the Planning Agency.

Community Development Director Kilgore explained that Council would need to determine which tasks were relinquished to the Planning Agency. She said that if the Planning Agency were given authority to approve preliminary plats then the Planning Agency would also conduct the public hearing associated with the development.

Councilmember Sherman said that he wished to increase public participation but did not want to give up Council's authority. He suggested that joint meetings be conducted between the two boards.

Councilmember Towe felt that Option #2 could include land use and zoning planning and public involvement and outreach.

City Manager Olander confirmed that there was a general consensus to proceed with Option #2. He said that staff would present a list of possible issues to be given to the Planning Agency for Council and Planning Agency review and discussion.

EXCERPT

DES MOINES CITY COUNCIL MINUTES

August 9, 2001

PUBLIC HEARING

Draft Ordinance No. 01-119 [ASSIGNED ORDINANCE NO. 1287] Planning Agency Duties - 2nd Reading

Mayor Thomasson introduced the subject.

Community Development Director Kilgore noted that on February 1, 2001, Council directed staff to prepare an ordinance that would transfer decision-making authority for a variety of land use actions from the City Council to the Planning Agency. She further noted that the draft ordinance was reviewed by Council at the July 12th Council meeting, at which time Council requested this matter be set for a Public Hearing. She called Council's attention to page 22 of the draft ordinance stating that for Councilmembers to sit on the Agency would be incompatible per State doctrine so this section has been stricken.

City Attorney McLean announced the rules for conducting both public hearings schedule for this meeting.

PUBLIC COMMENTS

Sven Kalve, 27024 8th Avenue South, Planning Agency Member

Mr. Kalve spoke in support of the draft ordinance. He felt this was a right step in enhancing and expanding more formal communications between City Council and the Planning Agency. He stated he personally finds being a member of the Agency as satisfying and rewarding. He stated having the Agency's role expanded provides more opportunity for citizens to have their cases reviewed quickly and fairly.

David Peterson, 20928 4th Place South, Agency Member

Mr. Peterson voiced support of the draft ordinance.

Mark Proulx, 26202 14th Avenue South, Agency Member

Mr. Proulx noted that he is in full support of the draft ordinance and would appreciate having 2 Councilmembers on the Agency.

As there were no further public comments, Mayor Thomasson closed the public hearing.

MOTION was made by Mayor Pro Tem Sheckler, seconded by Councilmember Towe, to approve Draft Ordinance No. 01-119 on second reading.

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

Mayor Pro Tem Sheckler noted he supports the ordinance as he is in favor of strengthening the Agency's authority and felt the ordinance also provides the proper tools to do the job. He reminded Agency members that Councilmembers will not be part of the Agency.

Councilmember Towe stated that he has confidence in the Agency members. He noted that he does not feel it is necessary to have Councilmembers in attendance. He noted that the Mayor and Council have delegated the authority to make the proper recommendations to Council

Councilmember Brazil commented that he supports the draft ordinance and feels it clearly sets the rules for Agency guidance and it is not necessary for the Council to review or sit on the Agency.

Councilmember Sherman spoke in opposition to the ordinance. He feels that the ultimate decision making authority lays with Council. He is not in favor of yielding certain decision making authority. He stated that he believes the City is small enough to not have to delegate these kinds of decisions.

Councilmember Kaplan spoke in favor of the ordinance. He noted that he has a strong belief that these citizens on the Agency, who have a strong interest in their community, can and will do a good job.

VOTE ON MOTION: Motion passed 4 to 3 with Councilmembers Sherman and Wasson, and Mayor Thomasson voting NO.

City Manager Olander commented that it is important that communications remain open between the Council and Agency to convey any problems or concerns.

Councilmember Brazil encouraged citizens to review the adopted ordinance to become familiar with options that are available to them for review of various issues.