REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES April 27, 2006

The regular meeting of the Des Moines City Council was called to order at 7:33 p.m. by Mayor Pro Tem Thomasson in the City Council Chambers, 21630 11th Avenue South, #B.

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

ROLL CALL - Present: Mayor Pro Tem Scott Thomasson, Councilmembers Ed Pina, Carmen Scott, Dan Sherman and Susan White. Absent: Mayor Bob Sheckler and Councilmember Dave Kaplan. Also in attendance were City Manager Tony Piasecki, City Attorney Linda Marousek, Commander John O'Leary, Assistant City Attorney Richard Brown, Finance Director Paula Henderson, Traffic Technician Scott Romano, Harbormaster Joe Dusenbury, Planning, Building and Public Works Director Grant Fredericks, Land Use Planner I Jason Sullivan, Land Use Planner II Denise Lathrop, and Deputy City Clerk Angela Chaufty.

> **MOTION** was made by Councilmember White, seconded by Councilmember Scott and passed unanimously to excuse Mayor Sheckler and Councilmember Kaplan from attendance.

BOARD & COMMITTEE REPORTS

Port and Marina Meeting

> Councilmember Scott reported that she and the Harbormaster attended a meeting at which Paul Sorenson of BST Associates highlighted upcoming area port and marina improvements. Mr. Sorenson said that the added improvements would not meet the demand for services.

Police Services and Goals

> Councilmember Pina announced that he had met with the Chief of Police to discuss police services and goals.

Environment Committee

> Mayor Pro Tem Thomasson said that an Environment Committee meeting would be scheduled.

COUNCILMEMBER COMMENTS

Levy Lid Lift Ballot Measure

> Councilmember Scott stated that she hoped people recognized the need to pass the levy lid lift measure.

Physician List for Emergency Purposes

> In response to correspondence received from Wesley Homes, Councilmember Pina recommended that the City establish a list of physicians that may be able to provide services during emergency situations.

Crime Free Housing Fees

> Councilmember Pina suggested that the City establish a variable fee for the Crime Free Housing Program based upon the management of the rental facility.

Council Retreat

Councilmember White asked Councilmember Scott to bring the information regarding upcoming port and marina improvements to the Council retreat as Council would be discussing the Marina Master Plan.

South County Community Network

Councilmember White informed Council that the South County Community Network was trying to organize a community resource fair. She asked that Council discuss the City's potential participation in the event.

ADMINISTRATION REPORT

Council Retreat

City Manager Piasecki announced that the Council Retreat would be May 13, 2006.

Physician List for Emergency Purposes

City Manager Piasecki said that the letter from Wesley Homes would be forwarded to the Police Department. He noted that public disclosure laws would apply to any list established by the City.

Crime Free Housing Fees

City Manager Piasecki stated that he and the Chief of Police would like to work toward the establishment of a variable fee schedule.

Leadership Summit

City Manager Piasecki announced that a Leadership Summit Meeting would be conducted May 6, 2006. He asked Council to inform him of their intent to attend the meeting as soon as possible.

Puget Sound Regional Council (PSRC)

City Manager Piasecki distributed the April 27, 2006 PSRC meeting agenda. He announced that the Council had intended to pass a resolution declaring that the Port of Seattle had "substantially fulfilled" the Third Runway compliance requirements. Prior to the meeting, City Manager Piasecki contacted PSRC and asked them to only recognize that 21 of the 31 compliance requirements had been fulfilled. PSRC did so. City Manager Piasecki also distributed to Council a series of e-mails between himself and Chas Talbot of RCAA regarding the PSRC resolution. RCAA suggested that the airport cities increase their participation in addressing Third Runway mitigation factors. City Manager Piasecki confirmed that the State was responsible for identifying a supplemental airport site. He would contact Representative Karen Kaiser to check the status of the project.

CONSENT CALENDAR was read by Deputy City Clerk Chaufty.

1. Motion is to approve the regular minutes of April 6, 2006.
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 #103476 through #103925 & electronic fund transfers in the total amount of $1,317,598.52

Payroll fund transfers in the total amount of $730,872.26

3. Motion is that the City Council recognizes the Week of May 14th to May 20th as *Police Week* and May 15th as *Police Memorial Day* in Des Moines and call upon all citizens in the community to especially honor and show sincere appreciation for the Police Officers of Des Moines.

4. Motion is to accept easements from Wesley Homes, Inc. for the purpose of situating and maintaining traffic signal equipment for the Wesley Pedestrian Signal Project.

5. Motion is to approve the transfer of up to $18,250 from the Municipal Capital Improvement City Hall Parking Lot Project budget to the Municipal Capital Improvement Activity Center Street Frontage Improvement Project.

6. Motion is to authorize King County to perform repair work for the Woodmont Drive South Outfall Replacement under the existing Interlocal Agreement, at an estimated amount of $78,586.00, and to authorize the City Manager or his designee to approve change orders up to 10% of the approved dollar amount.

~~7. Motion is to remand to City Council committees, the following items: To the Finance & Economic Development Committee; Study of the need for a Derelict Property Abatement Revolving Fund, an ordinance regulating garage sales and a residential property maintenance Code; To the Environment Committee; Study of the need for a City rodent/vector control ordinance.~~

MOTION was made by Councilmember Sherman and seconded by Councilmember Pina to approve the consent calendar.

Mayor Pro Tem Thomasson pulled Item No. 7.

Mayor Pro Tem Thomasson read the Proclamation for Police Week and Police Memorial Day.

Upon questioning, Commander O'Leary said that the Des Moines Honor Guard would be participating in the dedication of the Police Memorial in Olympia.

VOTE ON AMENDED MOTION: Motion passed unanimously.

REMOVED CONSENT CALENDAR ITEM

Items and Issues to be Remanded to City Council Committees

In order to assure that the committees were using their time efficiently and their efforts were focused, Mayor Pro Tem Thomasson asked staff to present a brief case, in writing, for sending items to the committees. After the issue was presented, Council could determine whether there was support for sending the item to committee.

City Manager Piasecki said that he would provide the requested information. The agenda item would be placed on a future agenda.

PUBLIC HEARING

Draft Ordinance No. 06-045 ***[Assigned Ord. No.1377]*** Final Assessment Roll for Local Improvement District #1-98-10

Mayor Pro Tem Thomasson opened the public hearing.

City Attorney Marousek read the rules of procedure and said that the matter was not a quasi-judicial issue.

Assistant City Attorney Brown reviewed the final LID assessment hearing procedures, the methods for forming LID's, a description of project, the final assessment figures, the hearing notification actions, and the protest procedures. He noted that protest letters had been received from Manny Lim (Exhibit 1), Kathryn McKnight (Exhibit 2), Mark Grothe (Exhibit 3), and Eli and Jodi Bunch (Exhibit 4). In response to the Grothe and Bunch letters, Assistant City Attorney Brown said that the purchasers have a remedy from their seller or title company. He noted that the statute of limitations for collection of a LID assessment is ten years from the date the assessment is due or from the due date of the last installment. Assistant City Attorney Brown reviewed Council's alternatives. He stated staff's recommendation to close the public hearing, suspend Rule 26(b) and adopt Draft Ordinance No. 06-045.

City Attorney Marousek said that some portions of the hearing were quasi-judicial.

No Councilmember noted any conflict with the appearance of fairness doctrine.

Mayor Pro Tem Thomasson called for speakers. He set a four minute time limit.

City Attorney Marousek administered the oath to Mr. Bunch.

SPEAKER

Eli Bunch, 23603 7th Avenue South
Mr. Bunch informed Council that he had purchased his property after the improvements were complete and no exception had been noted on the title. He felt that it was unreasonable to require him to pay again for something he had already purchased or to incur costs due to pursuing action against the title company. Mr. Bunch said that it was the fiduciary responsibility of the City to inform the purchaser of such matters.

Mayor Pro Tem Thomasson called for additional speakers three times.

None responded.

(Editor's Note: The Public Hearing Sign-Up Sheet was marked as Exhibit 5.)

Mayor Pro Tem Thomasson closed the public testimony portion of the hearing.

Upon questioning from Mayor Pro Tem Thomasson, Assistant City Attorney Brown confirmed that there were no corrections of misstatements.

City Attorney Marousek administered the oath to Assistant City Attorney Brown and City Manager Piasecki.

In response to Councilmember Sherman's question regarding the delay in presenting the final assessment to Council, City Manager Piasecki said that the item had been placed on the backburner and staff had not had time to address the issue until now.

City Attorney Marousek administered the oath to Finance Director Henderson.

Finance Director Henderson confirmed that no interest was being assessed.

As the City was not a party of the contract, City Attorney Marousek said that the City could not pursue action against the title company.

In response to Councilmember Scott's questioning, Assistant City Attorney Brown verified that the assessment had been listed since 1998.

City Attorney Marousek administered the oath to Traffic Technician Romano.

In regard to the subsequent subdivision of two parcels in the area, Traffic Technician Romano explained that one parcel had been divided into four lots and another parcel had been divided into two lots. He informed Council that the former Public Works Director and the initial parcel owners had agreed that responsibility for the assessments would remain the responsibility of the initial parcel owners. No protest letters regarding this matter had been received.

As a real estate agent, Councilmember Scott said that she has been showing one of the subdivided properties. She questioned whether that qualified as a conflict of interest.

City Attorney Marousek noted that the quasi-judicial rule deals with the appearance of fairness. It would be appropriate for Councilmember Scott to state whether the business deal would affect her judgment in the issue.

Councilmember Scott stated that she believed that the subdivided parcels should not have been counted as part of Mr. Apter's assessment.

As the matter had not been protested, City Attorney Marousek suggested that Councilmember Scott's comment be ruled out of order.

Mayor Pro Tem Thomasson said that the comment had been made and they would see how the issue played out. Mayor Pro Tem Thomasson closed the public hearing.

MOTION was made by Councilmember Sherman and seconded by Councilmember White to suspend Council Rule 26(b) to consider Draft Ordinance No. 06-045 on the first reading.

Councilmember Scott recused herself.

VOTE ON MOTION: Motion passed, 3 – 1, with Councilmember Pina opposed.

MOTION was made by Councilmember Sherman and seconded by Councilmember White to adopt Draft Ordinance No. 06-045.

Mayor Pro Tem Thomasson read the title into the record.

VOTE ON MOTION: Motion passed unanimously.

City Attorney Marousek noted that a clerical change would be made to the last “Whereas” as four rather than one protest letters had been received.

City Manager Piasecki said that staff would provide a copy of the original ordinance and this ordinance to Mr. Bunch.

EXECUTIVE SESSION

At 9:00 p.m., Mayor Thomasson announced a ten-minute break to be followed by a fifteen-minute executive session.

City Attorney Marousek announced that the purpose of the executive session was 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 pursuant to RCW 42.30.110(1)(j).

Present: Mayor Pro Tem Thomasson and Councilmembers Pina, Scott, Sherman, and White. Also present were City Manager Piasecki and City Attorney Marousek.

No formal action was taken.

At 9:23 p.m., the executive session concluded.

At 9:25 p.m., Council reconvene in open session.

AGENDA REVISION

Mayor Pro Tem Thomasson announced that items under New Business would be discussed.

NEW BUSINESS

Des Moines Classic Car and Wooden Boat Show

Harbormaster Dusenbury introduced the subject. He asked Council to approve the use of the Marina’s guest moorage area and north parking lot for a Classic Car and Wooden Boat Show on July 8 – 9, 2006. He displayed a map of the area and described the proposed location for the event. Harbormaster Dusenbury reviewed the operation plans and financial impacts. There would be a $2 admission charge for the event. The money collected from the admissions would be donated to the Legacy Foundation in exchange for providing volunteers to assist with the operation of the event.

MOTION was made by Councilmember White and seconded by Councilmember Scott to approve the use of the Marina for a classic car and boat show on July 8th and 9th of this year, providing that the City Manager approves the operations and site plan for the event.

Councilmember Sherman voiced concern that the unpredictability of the availability of the launch due to this type of activity discouraged use of the launch.

Harbormaster Dusenbury confirmed that provisions allowing for the use of the fishing pier during the event would be developed.

Councilmember Sherman stated that the City should cover its own costs before money was given to the Legacy Foundation.

Mayor Pro Tem Thomasson said that a fee for services contract would address any concerns regarding a gift of public funds. He agreed with Councilmember Sherman's comments regarding the boat launch.

Councilmember Pina recommended that the admission fee be increased in order to assure City costs were covered.

Councilmember Scott voiced support for the event.

Councilmember Sherman said that he would only support the motion if the admission fee was increased to more assuredly cover City costs, with the understanding that the Legacy Foundation would not receive all the collected money.

City Manager Piasecki did not anticipate any problem with charging a $4 admission fee and splitting the collected money with the Legacy Foundation.

Councilmember Pina suggested that the motion on the floor be amended to include a $4 admission charge.

The maker and seconder of the main motion accepted the suggestion as a **friendly amendment**.

VOTE ON AMENDED MOTION: Motion passed unanimously.

Draft Ordinance No. 05-187 Amending City's False Alarm Ordinance

MOTION was made by Mayor Pro Tem Thomasson and seconded by Councilmember White to continue Draft Ordinance No. 05-187 to a date to be set by the Mayor. **VOTE ON MOTION**: Motion passed, 4 – 1, with Councilmember Sherman opposed.

OLD BUSINESS

Growth Management Act Compliance Issues - Continued Discussion

Planning, Building, and Public Works Director Fredricks introduced the subject. The proposed ordinance would be presented to Council for adoption on May 4, 2006.

City Attorney Marousek stated that an emergency clause would need to be included in the draft ordinance.

Land Use Planner II Lathrop reviewed the following development regulations and proposed revisions:

- General Provisions – No change proposed.
- Environmental Protection – Revisions proposed.
    1. Revise definitions and terminology.
    2. Provide guidance to ensure the review, development or update to policies and development regulations are grounded in "Best Available Science".

3. Provide policy direction regarding the protection of the ecological functions and values of critical areas from cumulative adverse environmental impacts.
4. Translate the City's classification system to Ecology's 1995 system as described in DMMC 18.04.663. Once the inventory was complete, the wetland maps would be modified if necessary.
5. Provide guidance related to the designation and protection of fish and wildlife habitat conservation areas, including anadromous fisheries and references to federal and state priority habitat and species programs.
6. Provide guidance to reduce the risk of flood loss and to minimize the impacts of floods.

Regarding fish and wildlife conservation areas, Mayor Pro Tem Thomasson asked staff to confirm that the proposed figures related to construction near bald eagle habitats were the state-mandated figures. In regard to the FEMA requirements for frequently flooded areas, Mayor Pro Tem Thomasson questioned whether any streams in Des Moines were affected. If not, he questioned whether the "Channel Migration Zone" definition should be included. Mayor Pro Tem Thomasson asked that a FEMA map be provided.

Land Use Planner I Sullivan led Council in a discussion regarding accessory dwelling units (ADU).

At 10:24 p.m., **MOTION** was made by Mayor Pro Tem Thomasson and seconded by Councilmember White to extend the meeting to 11:00 p.m. **VOTE ON MOTION**: Motion passed, 4 – 1, with Councilmember Sherman opposed.

Council discussed the following topics related to ADU's:

- Minimum lot size
- Parking
- Owner-occupied units
- Size of unit
- Density
- Height

Councilmember Sherman questioned how the owner-occupied unit requirement would be enforced.

City Attorney Marousek advised that it was not good to adopt a law that the City did not have the resources to enforce.

Councilmember Scott stated that the existing lot coverage requirements were out of date with other cities' codes. She said that several attractive properties fell outside of the proposed restrictions.

Land Use Planner I Sullivan noted that Council could chose to increase the allowable square footage percentage of an ADU converted from an existing interior space.

In regard to an ADU's height, Councilmember Sherman said that he preferred garages and separate structures to be less than 30 feet in height. He recommended that if the ADU was part of a garage, the height be set at 25 feet.

Councilmember White spoke in favor of increasing building heights.

Land Use Planner I Sullivan confirmed that the section entitled “Housekeeping Unit” on Page 16 of the agenda materials should be deleted.

Mayor Pro Tem Thomasson recommended that the proposed language for DMMC 18.08.020 Section 2(v), Permitted Uses, should be placed in a different section of the Code.

Councilmembers Sherman and Pina spoke in favor of the owner occupied requirement.

Councilmember White disagreed and questioned how the regulation would be enforced.

Councilmember Scott suggested that as long as the owner’s possessions were in the house, the other unit could be used as an ADU. She felt the owner occupied requirement would be too restrictive of other’s personal lives.

City Attorney Marousek advised that a owner-occupied provision was not consistent with the intent of the GMA.

Councilmember Pina said that he could support requiring just the owner’s possessions to be in the home.

Mayor Pro Tem Thomasson asked that the language proposed for DMMC 18.08.020, Section 2(ii) be revised to clarify the intent.

Land Use Planner I Sullivan informed Council that no changes were proposed for the Shoreline Master Program and the Subdivision Code. Staff recommended the following two changes to the existing traffic impact fee program:

1. Add language to allow the applicant to pay the impact fee under protest in order to obtain a permit as required by RCW 82.02.070(4).
2. Add language to exempt applicants that have already paid impact fees for the same system improvement as part of a mitigation agreement under SEPA as required by RCW 82.02.100.

Mayor Pro Tem Thomasson recommended that language be added to Item No. 1, defining the period of time the applicant has to file an appeal in support of the protest. He also asked that Item No. 2 be rewritten in clearer terms.

Land Use Planner I Sullivan informed Council that no changes were proposed for the Concurrency and Transportation Demand Management section.

Mayor Pro Tem Thomasson questioned whether Highway 99 was exempt from the concurrency provisions.

To ensure that essential public facilities were not precluded, Land Use Planner I Sullivan recommended that language be added to DMMC 18.32.020(14) stating that the affect of all facilities would be processed in accordance with RCW 36.70A.200(5).

Mayor Pro Tem Thomasson commented that the proposed language did not provide any direction to staff or to the applicant.

Planning, Building, and Public Works Director Fredricks asked that Council provide staff with comments regarding any other concerns.

NEXT MEETING DATE - Regular Meeting, May 4, 2006

ADJOURNMENT

At 11:00 p.m., the meeting adjourned as time expired.

Respectfully submitted,

Angela M. Chaufty
Deputy City Clerk