REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES May 4, 2006

The regular meeting of the Des Moines City Council was called to order by Mayor Sheckler at 7:32 p.m. 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 Bob Sheckler, Mayor Pro Tem Scott Thomasson, Councilmembers Dave Kaplan, Ed Pina, Carmen Scott, Dan Sherman and Susan White (arrived at 8:02 p.m.). Also in attendance were City Manager Tony Piasecki, City Attorney Linda Marousek, Finance Director Paula Henderson, Parks and Recreation Director Patrice Thorell, Planning, Building and Public Works Director Grant Fredericks, Land Use Planner I Jason Sullivan, Land Use Planner II Denise Lathrop, and City Clerk Denis Staab.

CORRESPONDENCE

E-Mail From Comcast - TV Special

City Manager Piasecki noted that he gave Council a copy of a message from Terry Davis of Comcast, who is working with TV Channel 9 to put together a special under the Partnership for Drug Free America regarding methamphetamine use. He stated they have invited elected officials around Puget Sound to participate. He requested Councilmembers advise him if they wish to attend the event on May 9th at 7 p.m. at Comcast's facility in Puyallup so he can RSVP.

COMMENTS FROM THE PUBLIC

Florence McMullin, Huntington Park Resident

Ms. McMullin relinquished her speaking time to Wayne Corey.

Wayne Corey, 22218 5th Avenue South, Member of the *Enhanced Public Safety Committee* and a Member of *Citizens for a Safer Des Moines*

Mr. Corey distributed a large post card that has been mailed to residents expressing support for the Levy Lid Lift. He further advised that the following activities have been undertaken:

- Door-belling
- Phone calling
- Yard signs
- Window signs in businesses
- 15 or more speaking events at various groups
- On Monday, May 15th will conduct an "auto-call" to remind citizens to vote

He concluded by showing a video CD that has been prepared in support of the Levy Lid Lift and noted that copies are available by contacting him.

William Ford, 23656 30th Avenue South #25, Kent

Mr. Ford detailed to Council the problems he has encountered in finding suitable property to operate a woodworking shop with ample storage for working on large trailers or small mobile homes. He advised that he has found property located at 2020 South 216th owned by Ms. Stump, and informed Council that he has encountered some problems in obtaining the proper permitting.

He requested help from Council to obtain a variance for a business license to operate a woodworking shop at the property, which is currently abandoned

Elizabeth Stump, 17501 SE 292nd Place, Kent

Ms. Stump informed Council that she is the owner of the property that Mr. Ford described. She reported that she inherited the property which contained a large machine shop that had been operated by her son and has been paying property taxes on it for a number of years. She advised that the shop has been stripped of its former equipment and she has grave concerns over liability issues of the abandoned shop. She noted that she has been working with Nancy Uhrich of City staff, who has been very courteous and is trying to help. She requested any help Council may be able to offer to allow Mr. Ford to use the property.

BOARD & COMMITTEE REPORTS

Public Safety & Transportation Committee

Councilmember Kaplan reported the Committee met earlier this evening to discuss a number of issues. He advised the main focus was a presentation concerning updating the City's Emergency Management Plan for preparedness and response to a number of issues, including fuel spills, terrorists, flu epidemics, emergency housing, etc. He also noted the Committee will be studying transportation issues for updating the City's Comprehensive Transportation Plan in the next couple of years.

Levy Lid Lift

Councilmember Pina reported that he presented a briefing on the City's upcoming Levy Lid Lift Ballot issue to C.A.S.E. members at their recent meeting.

Public Safety & Transportation Committee

Councilmember Sherman stated that he was very pleased with the City's Consultant and Master Police Officer Hamilton report regarding updating the City's Emergency Management Plan and the progress they are making.

COUNCILMEMBER COMMENTS

Annual Sports Night Dinner & Auction

Councilmember Scott announced that the Annual Sports Night Dinner and Auction will be held on May 13th at the Des Moines Activity Center. She noted the event is sponsored by the Des Moines Legacy Foundation, the Des Moines Dollars for Scholars and the Des Moines Rotary Club. She advised tickets are available at the Field House and the Activity Center.

Emergency Preparedness

Mayor Pro Tem Thomasson advised that at Church on Sunday, his Pastor noted he attended a meeting sponsored by the Des Moines Police Department and he commented on the seriousness of the issues involved. He questioned whether the Police Department could make the same presentation to the Council as a whole.

ADMINISTRATION REPORTS

Marine View Drive Bridge Project

City Manager Piasecki announced that the Bridge will be closed on May 10th from 8 p.m. until 5 a.m. to allow placement of steel to help support the road.

Response to Comment From the Public

City Manager Piasecki informed Mr. Ford that he will follow up with City staff tomorrow and will have staff get in touch with him to explain the process of requesting a Variance.

Association of Washington Cities (AWC) - Municipal Awards Program

City Manager Piasecki advised that every year AWC has a Municipal Awards Program and he has prepared an application for the Des Moines Leadership Summit to be considered under the "Special Category" award. He distributed a copy of the application for Council's review.

CONSENT CALENDAR was read by City Clerk Staab.

1. Motion is to approve the regular minutes of April 20, 2006.
2. Motion is to authorize the City Manager, acting as attorney-in-fact in accordance with the covenant agreement recorded under King County Recording Number 20050503000273, to sign the dedication statement on short plat number LUA05-010 dedicating 30 feet of private property adjacent to Lots 1-4 of King County Short Plat Number DMOSP 88-5. And, to accept the dedication of 30 feet of property adjacent to Lots 1-4 of DEMOSP 88-5 between Marine View Drive and 10th Avenue South for public right-of-way purposes, at no cost to the City.
3. Motion is to authorize the City Attorney to approve for entry the proposed Second Amended Stipulated Order and Judgment Quieting Title, in King County Superior Court Cause No. 04-2-25354-3KNT, concerning conditions under which a portion of an unopened 20th Avenue South, and an unopened alley running between blocks 10 and 29 of the Bay View Addition to the City of Des Moines, both as are more particularly described in the Order, may be vacated by judicial order in a quiet title action, when the street and alley are subject to street vacation by operation of law under the Laws of 1889.

MOTION was made by Mayor Pro Tem Thomasson, seconded by Councilmember Scott and passed unanimously, to approve the Consent Calendar as read.

PUBLIC HEARING

Draft Ordinance No. 06-088 [ASSIGNED ORDINANCE NO. 1378] Growth Management Act (GMA) Compliance - 1st Reading

Mayor Sheckler described the matter before Council and questioned whether anyone had signed up to speak on the matter. City Clerk Staab replied in the negative. Mayor Sheckler declared the hearing open.

Planning, Building and Public Works Director Fredericks acknowledged the outstanding efforts of Land Use Planner I Jason Sullivan and Land Use Planner II Denise Lathrop for working tirelessly over the past three weeks to have this item ready for Council action tonight. He reviewed the process to date as follows:

- Established Public Participation Process with SEPA comment period April 8 through April 24, 2006. Notice of Public Hearing issued on April 20, 2006.
- Review of relevant plans and development regulations at April 20, 2006 Council meeting.
- Analysis of need for revisions at Council meetings on April 27 and May 2, 2006.

He advised that if the City is not GMA compliant by May 7, 2006, we will be ineligible for grants and loans. He noted that currently the City has approximately $3.46 million in grant and loan applications which require GMA compliance. He proceeded to review the City's current status as follows:

- Comprehensive Plan Update adopted March 23, 2006.
- Development checklist sent to Community Trade & Economic Development (CTED) with a request for expedited review on April 19, 2006.
- Proposed ordinance sent to CTED on April 28, 2006
- CTED granted the expedited review May 3, 2006.
- Staff received state agencies' draft comments on May 3, 2006, and final comments on May 4, 2006.

He continued with review of the following:

Development Regulations Still Needed:

- Environmental Protection
- Zoning Code
- Impact Fees
- Sitting Essential Public Facilities

Environmental Protection:

- Propose new definitions & terms (DMMC 18.04 & 18.86)
- Noting application of Best Available Science Review (Public Record)
- Referring to Functions & Values of Critical Areas (DMMC 18.86)
- Updating the way to delineate Ecology's Wetland Delineation Manual (DMMC 18.04)
- Tying-in our regulations to the FEMA requirements for Frequently Flooded Areas (DMMC 14.44)

Environmental Protection Goals, Policies & Strategies:

- Established to guide the protection of critical areas in the City
- Goals 4-1-01 through 4-1-08
- Policies 4-3-01 through 4-3-26
- Strategies 4-401 through 4-4-04

Definitions & Terminology:

- Policy 4-3-02 provides the policy criteria established by Council regarding the "protection of the ecological functions & values of critical areas from cumulative adverse environmental impacts".
- Staff recommends: DMMC 18.04 Definitions - adding definition for "qualified professional". And DMMC 18.86 Environmentally Sensitive Areas - changing title of chapter to "Environmentally Critical Areas", changing "sensitive" to "critical" throughout, and adding term "geologically hazardous areas" as appropriate.

Best Available Science Review (Public Record):

- Policy 4-3-03 and Strategies 4-4-01(10) through (16) provide guidance to ensure the review, development or update to policies and development regulations are grounded in "Best Available Science" (BAS).

- BAS review was completed in July 2005.
- Staff recommends documenting the GAS review and schedule for phased updates to CAO in the public record

Functions & Values of Critical Areas (DMMC 18.86)

- Policy 4-3-02 & Strategy 4-4-02(12) provides the policy direction regarding the "protection of the ecological functions and values of critical areas from cumulative adverse environmental impacts.
- Staff recommends adding: "Protection of functions & values of critical areas" to DMMC 18.86.020 Purpose. "Best management practices" language to DMMC 18.86.093 to further protect functions and values of critical areas.

Ecology's Wetland Delineation Manual (DMMC 18.04)

- Are wetlands delineated using Ecology's Wetland Delineation Manual (RCW 36.70A.175)?
- Staff recommends translating the City's classification system to Ecology's 2004 system as described in DMMC 18.04.663
- No change in buffers or mitigation ratios

Provisions for Fish & Wildlife Conservation Areas:

- Policies 4-3-03, 43-21 through 4-03-26 and Strategies 4-4-01(1) through (14), 4-02-02(3) 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.
- Staff proposed additional provisions to DMMC 18.86.085 relating to critical area studies.

FEMA Requirements for Frequently Flooded Areas (DMMC 14.44)

- Policy 4-3-17 and Strategies 4-4-01(8), 4-4-04(1) and 4-4-04(6) provide guidance to reduce the risk of flood loss and minimize the impact of floods.
- Staff recommends: Adding language to clarify the basis and standards for establishing areas of special flood hazard to DMMC 14.44.080, 14.44.160, 14.44.170 and 14.44.180.

In conclusion, Planning, Building and Public Works Director Fredericks noted Agency comments to consider, Zoning Code Accessory Living Quarters Regulations such as minimum lot size, parking, owner-occupied units, size of unit, density and height. He noted other future activities for this year will include Critical Areas ordinance update, Zoning Code Update, Downtown Element of Comp Plan and a process for Sitting Essential Public Facilities.

Mayor Sheckler called for any public comments three times with no response. He asked Council whether they had any questions of staff at this time, as there were none, he declared the Hearing closed.

MOTION was made by Councilmember Kaplan, seconded by Councilmember White, to suspend Council Rule 26(b) in order to enact the draft ordinance on first reading. Motion passed unanimously.

MOTION was made by Councilmember Kaplan, seconded by Councilmember Scott to adopt Draft Ordinance No. 06-088, 4th Draft dated May 4, 2006.

Mayor Pro Tem Thomasson questioned Page 13 (e), since Council raised the based elevation of a foot, did the notice about insurance need to adjusted. He asked if staff is content that the wording is right.

Land Use Planner II Lathrop stated that the wording is correct and because the statement deals with nonresidential structures it is consistent with the National Flood Insurance Guidelines. She noted the definition that follows in the reference section 2(e).

Councilmember Sherman noted that since (2) ends with the word shall: that subsections (d) and (e) are not grammatically correct. (It was determined that staff will re-work the wording during a break.)

Upon questioning, Land Use Planner I Sullivan noted there are 5 options from Council to choose from in connection with item (14) on page 21, of the draft ordinance.

MOTION was made by Councilmember Pina, seconded by Councilmember White, to adopt Option 1a. [ED NOTE: Motion was later withdrawn.]

Mayor Pro Tem Thomasson stated that none of the options meets his concerns. He noted that State law says we shall not preclude essential public facilities, and by our out-right Zoning Code, we don't. He felt there is going to come a time when someone wants to do something in town that a future Council may detest and will say they don't want it to happen. Currently the way the code is written it takes an Unclassified Use Permit that Council can either approve, condition or deny. Using Sound Transit as an example as wanting to put their facility on Highway 99, and if Council follows its adopted policies we would deny that, as we have a policy statement that it should be next to the Freeway. He felt the City must retain the right to say no to a specific proposal in a specific place. He felt adding a statement that it will be in accordance with State law removes Council's ability to deny. He stated that his opinion is the Code is fine the way it is, if we adopt one of the proposed options and we deny a particular sitting we will find ourselves in Court. He advised his preference is to strike the underlined language in section (14).

Upon questioning, Land Use Planner I Sullivan felt that if we remove language from the draft Ordinance that had already been approved by the State it would have a negative impact on their approval of our existing code and any proposed changes.

Upon questioning by City Manager Piasecki, Land Use Planner I Sullivan noted that DSHS is primarily concerned over group homes for children and adults with disabilities. City Manager Piasecki pointed out that there is nothing in our current Code that forbids either one.

Councilmember Kaplan noted that he agrees with Mayor Pro Tem Thomasson as we currently have language that does allow for essential facilities. He advised that it would be a mistake to add language that would make it easier for the State to site a essential public facility wherever they want, rather than where we want it. He felt the City needs to have a say in where they should be allowed. Therefore he will oppose the motion.

Councilmember Sherman agreed with Mayor Pro Tem Thomasson that Des Moines' Code does follow State law, however he believes that Option 1b actually says that. He will support 1b but not the motion for 1a.

MOTION WITHDRAWN by Maker and Seconder.

MOTION was made by Councilmember White, seconded by Councilmember Pina, to insert Option 1b.

Councilmember Kaplan advised that would rather see this narrowed down and not add any additional language, so he will not support the motion.

Mayor Pro Tem Thomasson stated that he prefers to see Item (14) have the underlined language deleted. He will not support the motion.

VOTE ON MOTION: Motion passed 4 to 3, with Councilmembers Kaplan and Scott, and Mayor Pro Tem Thomasson opposed.

MOTION was made by Mayor Pro Tem Thomasson, seconded by Councilmember Sherman, to change the language on Page 27, Section 15 to read: The title of this chapter is hereby changed to "Environmentally Critical Areas" and text throughout the chapter shall be changed from "environmentally sensitive areas" to "critical areas." Motion passed unanimously.

Mayor Pro Tem Thomasson questioned whether all the Findings of Fact are up to date. The reply was in the affirmative.

City Manager Piasecki referenced Page 13 and noted staff offers the proposed changes to fix the grammar errors: section (d) strike the beginning of the sentence which reads: "Nonresidential structures that are elevated, but not flood proofed," and start with the word 'Meet" . . . Then take section (e) and change that to "(3)" and change section (3) to section "(4)".

MOTION was made by Mayor Pro Tem Thomasson, seconded by Kaplan, to accept the changes as proposed by staff to page 13 of the draft ordinance. Motion passed unanimously.

Councilmember Kaplan commented that there are various functions that the City is required to perform by the State. He noted this particular item is a year and a half behind when it should have been adopted. He expressed the hope that this will be one of the last times the City will be behind, in terms of being adopted. He noted the City needs to do a lot of things in order to bring in the businesses we need to put the City on a sound financial footing into the future and to make sure development is going to meet Council's vision and comply with State law. He expressed gratitude for the great effort staff put into getting this item done, however he felt we need to make sure in the future that these things get done on a more regular and comprehensive basis.

Planning, Building and Public Works Director Fredericks drew Council's attention to the State agency comments and that they have requested we consider for two changes to the draft ordinance as follows:

1. DMMC 14.44.163 (3)(a), Utilities: insert "avoid" before "minimize" on page 10 (3) (a).

2. DMMC 18.86.020, Purpose: Identify sources for attaining maps to determine where critical fish and wildlife habitats occur and species present (consisting of 8 agency state maps, any local city or King County maps available) on page 30 to add a new (12).

MOTION was made by Councilmember Sherman, seconded by Councilmember White and passed unanimously, to accept change number one as noted by staff.

MOTION was made by Councilmember Kaplan, seconded by Councilmember White and passed unanimously, to accept change number two as noted by staff.

Councilmember Sherman noted that the issues contained in this document are extremely important, and he expressed hope that in the future Council will not to be put in the situation of having to act so rapidly.

Mayor Pro Tem Thomasson acknowledged that Council has done a lot of hard work in the past few weeks to put a package together that hopefully meets the State's needs and allows the City to be eligible for grants and loans from the State. However, he advised that he cannot support the draft ordinance as he does not agree with the concept of the one sentence that did not get changed. [ED NOTE: In an earlier statement he advised his preference is to strike the underlined language in section (14).]

Councilmember White expressed agreement with other Councilmembers that she does not want to be put in this position again to be under such a tight time line, while trying to move the City economically forward.

VOTE ON MAIN MOTION: Motion passed 6 to 1 with Mayor Pro Tem Thomasson opposed.

City Manager Piasecki read the ordinance by title into the record.

Planning, Building and Public Works Director Fredericks expressed appreciation for Council's hard work and patience for completing this legislation in such a short amount of time. He committed to Council that he would not put Council in this "box" again.

9:03 p.m. Mayor Sheckler called for a 10 minute break.

OLD BUSINESS

Beach Park Auditorium Rehabilitation Project & Sun Home Lodge Drainage Project

Mayor Sheckler introduced the subject.

MOTION was made by Mayor Pro Tem Thomasson, seconded by Councilmember Kaplan, to direct the City Manager to transfer $150,000 from the Municipal Capital Improvement Fund ending fund balance to the appropriate expenditure items for the Auditorium Rehabilitation and for the Sun Home Lodge Drainage Project to provide funding for design, engineering and construction of the revisions and to include this transfer in the next Capital Improvement Plan update presented to City Council for approval. Motion passed unanimously.

Parks and Recreation Director Thorell reminded Council that staff was directed to prepare conceptual design option #2 for the Auditorium Rehabilitation and the Sun Home Lodge

Drainage Project, at the April 6th Council meeting, including associated costs such as architect design fees, enhancements to existing stage area, colored glass, front entrance overhang and changing exterior doors from roll-up doors to French doors, and drainage improvements. She noted the total estimate for those revisions is $100,000. She proceeded to show images and photos of the proposed options.

Councilmember Sherman questioned whether the drainage improvements will be installed in such a manner as to not preclude a connecting covered walkway between the Auditorium and the Lodge. Reply was the drainage will not impact any connecting walkways, although it is not budgeted for at this point.

Councilmember Scott commented she would like to see if more frontal access could be designed for proposed storage areas for easier access. She further noted that there are 3 ugly concrete posts protecting a telephone/power standard which create a vehicle access problem. She questioned whether a simpler turn might be created to facilitate better traffic circulation.

Parks and Recreation Director Thorell responded that the whole parking lot at the Park needs to be looked at for potential reconfiguration.

(9:29 p.m. Mayor Sheckler left the meeting room to facilitate signing of the GMA compliance ordinance to allow staff to hand deliver it tomorrow. Mayor Pro Tem Thomasson took over as presiding officer.)

Upon questioning, Parks and Recreation Director Thorell advised that the purpose of the French doors was to open up the whole 12' side of the auditorium to allow for free-flowing movement from indoor to outdoor and to mimic the historic intent of the building. If there are two French doors then there must be a post or wall, which will take away from the openness.

MOTION was made by Councilmember Sherman, seconded by Councilmember White, to approve the Amendment to Contract for Architectural and Engineering Services between the City of Des Moines and BOLA Corporation for Auditorium Rehabilitation and Sun Home Lodge Drainage project revisions and authorize the City Manager to sign the Agreement substantially in the form as submitted.

Mayor Pro Tem Thomasson expressed displeasure in having a consultant contract brought to him for approval when part of the work has already been done. He did not feel this is a good practice and does not go with the contract authority that Council has.

VOTE ON MOTION: Motion passed unanimously.

City Manager Piasecki informed Council that staff will put together the construction documents and get the project out for bid. Council will next be asked to approve a contract for the actual construction.

NEW BUSINESS

Year-end 2005 Financial Report

Finance Director Henderson proceeded to detail with graphics, the 2005 year end financial report summarized as follows:

- General Governmental Funds - Expenditures for Legislative, Executive, Judicial, Finance, Legal, Law Enforcement, Planning/Bldg/PW, Parks/Recreation/Sr. Services and Operating Transfer-out:
  - 2005 Budget Total: $ 15,058,079
  - 2005 Actual Total: $ 14,778,352
  - % of Budget: 98.1%

- General Governmental Funds - Expenditures for Salaries and Wages, Personnel Benefits, Supplies, Other Services, Intergovernmental, Capital Outlay, Interfund Payments and Operating Transfer-Out:
  - 2005 Budget Total: $ 15,058,079
  - 2005 Actual Total: $ 14,778,352
  - % of Budget: 98.1%

- General Governmental Funds - Revenues from Property Tax, Sales/Use Tax, Criminal Justice, B&O Tax, Franchise Fees, Utility Taxes and Other Taxes:
  - 2005 Budget Total: $ 9,465,000
  - 2005 Actual Total: $ 9,079,989
  - % of Budget: 95.9%

- General Government Funds - Revenues from Licenses/Permits, Intergovernmental, Charges for Services, Fines/Forfeits, Interest Earnings, Interfund Revenues, Misc. Revenue and Operating Transfer-in:
  - 2005 Budget Total: $ 18,286.789
  - 2005 Actual Total: $ 15,675,236
  - % of Budget: 85.7%

- Revenues - Sales/Use Taxes:
  - Total 2005: $1,768,679
  - Change from 2004: +1.5%

- Revenues - Utility Taxes
  - 2005 Budget Total: $2,432,000
  - 2005 Actual Total: $2,520,677
  - Change from 2004: +5.2%

- Revenues - Building Permits/Plan Review Fees
  - 2005 Budget Total: $3,991,820
  - 2005 Actual Total: $1,827,101
  - Change from 2004: +2.3%

Planning, Building and Public Works Director Fredericks informed Council that the decrease in the actual totals for 2005 was due to optimism that some very large projects would be done, however most were delayed until 2006.

Finance Director Henderson continued the 2005 year end financial report by reviewing cash flows by each month denoting annualized revenues at $15.7 million and annualized expenditures at $14.8 million, ending fund balances by month, and Marina and SWM total budgets. She concluded the report by reviewing REET collections, Internal Service Funds and City wide interest income and, cash and investments.

Upon questioning, Planning, Building and Public Works Director Fredericks advised Council that his goal is to try to eliminate the disincentives to do business in Des Moines, and create incentives to encourage other businesses from the south county area to want to come here and develop. This will require predictability in terms of how long it takes to get a project permitted and out the door, in order to create conditions to attract developers and contractors.

Councilmember Kaplan requested that in the future, the Finance Department prepare a list of outstanding debts and when they are due, any Councilmanic bonds and their dates, including G.O. and any Marina Bonds as well.

Councilmember Sherman remarked that in the past Council was provided with an accounting of the City's total debt, and presented in the context of our actual debt limit allotments. This gave Council a perspective on what is allowed and what has been utilized.

NEXT MEETING DATE

Mayor Pro Tem Thomasson announced that the next regular meeting will be May 11, 2006.

ADJOURNMENT

At 10:13 p.m. **MOTION** was made by Councilmember Kaplan, seconded by Councilmember Pina and passed unanimously, to adjourn.

Respectfully submitted,

Denis Staab
City Clerk