

REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

July 14, 2005

The regular meeting of the Des Moines City Council was called to order at 7:35 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 Steenrod.

ROLL CALL - Present: Mayor Pro Tem Scott Thomasson, Councilmembers Richard Benjamin (arrived at 7:44 p.m.), Gary Petersen, Dan Sherman, Maggie Steenrod and Susan White. Absent: Mayor Bob Sheckler. Also present were City Manager Tony Piasecki, City Attorney Linda Marousek, Parks and Recreation Director Patrice Thorell, Assistant City Engineer Maiya Andrews, Police Commander Kevin Tucker, and City Clerk Denis Staab.

MOTION was made by Councilmember Sherman, seconded by Councilmember Steenrod and passed unanimously, to excuse Mayor Sheckler.

COMMENTS FROM THE PUBLIC

V. Staab, 21628 28th Avenue South

Ms. Staab informed Council of several complaints:

- Excessive parked cars on 219th between 28th/29th Avenues S
- Lack of street sweeping in the same area, tall grass right-of-way grass not mowed
- People behind 3 Bears Motel, drug dealings
- Need for fully staffed Police Dept.
- Pete's Towing Banner on City entrance sign, felt advertising is not appropriate
- Gang activity increasing, fears Des Moines will become like Los Angeles

City Attorney Marousek informed Ms. Staab that her 3 minutes were up.

Clark Snure, 27423 8th Avenue South (Representing Des Moines Rotary Club)

Mr. Snure noted Council will be addressing a resolution authorizing the 2nd Annual Rotary Wine Festival for 2006 on tonight's Agenda. He encouraged Council's support of the event.

Gene Achziger, 28708 Sound View Drive S

Mr. Achziger noted that the lack of revenue for services in the City will be greater next year. He applauded Council for already having made some unpopular revenue decisions and encouraged Council to approve "metered parking" at Redondo. He advised that the Police Department has determined the majority of vehicles parked at Redondo are not residents of Des Moines, however they are enjoying many City services. He felt that having paid parking in Des Moines would help raise revenue and would provide much needed traffic relief in Redondo.

ED NOTE: 7:44 p.m. Councilmember Benjamin arrived.

Allie Larkin, 21937 7th Avenue South

Ms. Larkin stated that while she understands the City need to raise revenue, she requested that Council not install paid parking at the Des Moines Beach Park. She noted that paid parking would create a hardship for a lot of the folks that use the Beach Park that live in apartments. She further felt that paid parking at the Beach Park would create problems of folks parking along

neighborhood streets where parking is already a problem for many of the citizens living in condos, and where guest parking is a premium.

BOARD & COMMITTEE REPORTS

Senior Services Advisory Committee

Councilmember White reported attending a Committee meeting this afternoon. She commended the members of the Committee for their hard work on behalf of senior citizens. She advised that the members have produced an "outreach" brochure which will be distributed throughout the community.

Waterland 5K Run and Walk

Councilmember White noted that there will be prizes for the oldest and fastest walker. She advised that the event is scheduled for Saturday, July 23rd at 9 a.m., starting at the Marina. Everyone can participate and the money raised will go towards youth, recreation scholarships.

AWC Conference

Councilmember White reported attending the conference along with 600 people from all over the State. She advised a lot of State and City issues, mainly budget impacts, were addressed and ways in which we can all help each other.

Public Safety & Transportation Committee

Mayor Pro Tem advised that the Committee met earlier this evening to discuss the proposed Police sub-station at Redondo. The Committee offered ideas for the Police Department to consider. He noted that this agenda item is scheduled to come back to full Council at the July 28th meeting.

COUNCILMEMBER COMMENTS

City Compliments

Councilmember Steenrod advised that with the nice summer weather, she is receiving a lot of compliments on how nice the City is looking. She noted with the completion of the Pacific Highway South Project, and all the talk of economic development, is beginning to pay off by folks taking more pride in how their property or businesses look.

She requested that everyone look out for kids, especially those darting across roads.

July 4th

Councilmember Sherman requested that Administration provide a report regarding the 4th of July, including the house fire on North Hill.

Welcome to New Employee

Councilmember White welcomed the new Planning, Building and Public Works Director Grant Fredricks and noted she looks forward to working with him.

ADMINISTRATION REPORTS

Introduction of Grant Fredricks

City Manager Piasecki formally introduced Grant Fredricks as the new Planning, Building and Public Works Director. He advised that Grant came from the State of Washington where he served in a variety of capacities at the Dept. of Natural Resources and with the Dept. of General Services. Previous to the State, he noted Grant was the Army Corps of Engineers where he retired as a Lieutenant Colonel. He further noted that Grant is a graduate of West Point, the University of Nebraska and Stanford, with degrees in engineering and public administration.

4th of July

Police Commander Tucker informed Council that he was impressed with the public display of fireworks at the Marina and how the event was handled.

He informed Council that since June 1st, the Police Department received 127 firework complaints and the Fire Department responded to several fires, including a house fire ignited by fireworks that had an estimated \$150,000 to \$200,000 in damage.

He reported that the Police Department is planning an intensive educational program, beginning early next year, on the fireworks ban which will be in effect next year.

He concluded by advising that no citations were issued during the public display of Fireworks at the Marina.

City Manager Piasecki stated that he felt the City installed signage really helped.

Public Fireworks Display

Councilmember Steenrod questioned the cost of the "Fireworks Over Des Moines", and thanked Des Moines Rotary for stepping in at the last minute to sponsor the event and provide the needed insurance.

Clark Snure of Des Moines Rotary and the Legacy Foundation, advised that around \$25,000 was raised for the event, however not all the bills are in yet. Hopefully there may be a balance left that can be used as a start for next years event.

Councilmember Benjamin offered a special thanks to all the volunteers, and the individuals and companies that contributed funds to make the fireworks display possible.

CONSENT CALENDAR

Prior to the Consent Calendar being read since it is quite lengthy, Mayor Pro Tem Thomasson questioned whether there was any item a Councilmember wished removed.

Councilmember Sherman requested that items number 9 and 10 be removed.

The remaining Consent Calendar items were read by City Clerk Staab.

1. Motion is to approve the special and regular minutes of June 2, and the regular minutes of June 9, 2005.

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 #99606 through #100068 & electronic fund transfers in the total amount of \$2,448,683.11

Payroll fund transfers in the total amount of \$725,253.75

3. Motion is to approve payment of registration and travel expenses in the approximate amount of \$705.00 for Councilmember White's attendance at the National Preservation Conference in Portland, Oregon, in September 2005.

4. Motion is to approve the "Agreed Order" regarding Clayt's Tavern, in King County Superior Court Cause No. 04-2-32636-2 KNT, and to authorize the City Attorney to approve and present to the court, for approval and entry, the "Agreed Order" substantially in the form as submitted.

5. Motion is to confirm Mayor Sheckler's appointment of Tajinder Chahal to the City's Lodging Tax Advisory Committee.

6. Motion is to award the construction contract for the South 216th/24th Avenue South Signalization Project to Totem Electric Inc. in the amount of \$309,616.50 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 contract amount.

7. Motion is to approve the professional services contract supplements No. 9 and No. 10 with INCA Engineers, Inc. for the Marine View Drive Bridge Project, in the amounts of \$24,154.11 and \$31,765.46, respectively, and to authorize the City Manager to sign said supplements substantially in the form as submitted.

8. Motion is to appoint Grant Fredricks, Planning, Building and Public Works Director, as the City of Des Moines' alternate representative for the South King county Area Transportation Board.

~~9. Motion is to accept the deed of land for 30' of land adjacent to public right-of-way along South 220th Street at no cost to the City.~~ [ED Note: Item removed by Councilmember Sherman.]

~~10. Motion is to approve the settlement with Central Oregon Pavers for faulty paving work done for the City between September 8 and September 15, 2003, and authorize the City Manager to sign the Release substantially in the form as submitted and to deposit the settlement check in the amount of \$35,496.00 into the appropriate City fund.~~ [ED Note: Item removed by Councilmember Sherman.]

11. Motion is to award the construction contract for the South 216th Street Pedestrian Signal Modification Project to Totem Electric, Inc. in the amount of \$69,770 and 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 was made by Councilmember White, seconded by Councilmember Sherman, to approve the Consent Calendar as read. Motion passed unanimously.

REMOVED CONSENT ITEMS

Consent Item #9 - Acceptance of 30' of Public Right-of-way - S 200th between 8th Ave S/Des Moines Memorial Drive

Upon questioning by Councilmember Sherman, City Attorney Marousek advised that the City's Transportation Plan designates this to be a street, instead of the gravel path that currently exists. She stated that the property owner was not required to, but agreed to deed the property to the City, with the understanding that the City would waive setback requirements so they did not have to move their home or septic tank.

Assistant City Engineer Andrews advised that the property owner had already prepared design plans to build a home and septic tank system.

City Attorney Marousek stated that at some point, if it is determined to fully construct a street, the City will either have to seek dedications, condemn property or purchase right-of-way from other property owners.

Assistant City Engineer Andrews noted that this future street is quite a ways out in the Transportation Plan, however the property owner wants to build now, so it was felt now is the time to accept the right-of-way.

City Manager Piasecki advised that the waiver of setback requirements is allowed per the City's Code. He pointed out that in the future, should the house be destroyed and a sewer system is available, the home could be rebuilt with a greater set-back than what is now being allowed.

MOTION was made by Mayor Pro Tem Thomasson, seconded by Councilmember Steenrod and passed unanimously, to accept the deed of land adjacent to public right-of-way along South 200th Street at no cost to the City.

Consent Item #10 - Settlement Agreement and Release With Central Oregon Pavers

Councilmember Sherman noted that this deals with the substandard chip seal paving that was done in 2003 as part of the Arterial Maintenance Program. He questioned what is the City going to do for some of the streets that have a failed surface.

Assistant City Engineer Andrews noted that complaints, when compared to a typical overlay, were not that much more. She noted most of the complaints came in the summer of 2004 when the surface became gooey, however over the summer the surface began to heal. She advised that several pavement experts have checked the roads and for the most part they are fine. Woodmont was considered a total lost, was removed by the contractor at his cost. She noted there has been complaints about this street, mainly because it is so steep, and it is scheduled to be completely redone next year.

City Attorney Marousek informed Council that part of the reason for recommending this settlement is that these streets actually did get some benefit by extending their life, even if it was not quite as advertised.

Upon questioning by Councilmember Steenrod regarding liability, Assistant City Engineer Andrews stated that it is her opinion that the streets are not going to get worse. She advised that she has calculated this dollar amount based on her professional opinion. She noted that the contractor admitted their fault and if negotiations continued, the City would encounter more legal costs with additional meditations.

Councilmember Benjamin suggested that any settlement should wait until the end of this summer to determine if there is going to be more damage.

Assistant City Engineer Andrews stressed that she is comfortable with this offer, any delays will increase legal costs and staff time to negotiate with the contractor, and could reduce the settlement offer.

MOTION was made by Mayor Pro Tem Thomasson, seconded by Councilmember Petersen, to approve the settlement with Central Oregon Pavers for faulty paving work done for the City between September 8 and 15, 2003, and authorize the City Manager to sign the Release substantially in the form as submitted and deposit the settlement check in the amount of \$35,496.00 into the appropriate City fund. Motion passed 5 to 1 with Councilmember Benjamin opposed.

Agenda Revision

Mayor Pro Tem Thomasson advised that he will take New Business Item #1 ahead of Old Business.

NEW BUSINESS

Draft Resolution No. 05-106 [ASSIGNED RESOLUTION NO. 995] Authorizing the Des Moines Rotary Club's 2006 Poverty Bay Wine Festival

Parks and Recreation Director Thorell informed Council that the Wine Festival is scheduled for March 10, 11 and 12, 2006. She reminded Council that the 2005 Festival held in the Beach Park Auditorium, with parking at the Marina, was very successful. She noted last year's event was held on Saturday and Sunday and drew about 1,500 participants, with the Rotary Club covering all the costs associated with the event, including policing. She advised that Rotary is asking for expanded hours of Saturday from 10 a.m. to 8 p.m., Sunday from Noon to 6 p.m. and a pre-event on Friday between the hours 5 p.m. to 11 p.m. Other aspects of the event will remain the same.

Mayor Pro Tem Thomasson noted the dates are incorrectly listed in the Draft Resolution and the attached agreement.

Upon questioning by Councilmember Benjamin on how the Festival is conducted, Rotarian Clark Snure noted that different wineries throughout the State of Washington are invited to participate. Last year 20 wineries participated and Rotary hopes to have more in 2006. He stated they also hope to have more food booths to supply snacks, such as cheese and bread. He informed Council that there was a lot of support from local restaurants, as many of the event attendees requested transportation to these restaurants. He stated that in 2006 there are plans for more vehicles to take people to the restaurants and to make sure they have a way to get back to their cars. He noted that radio station advertising and signs, helped ensure attendance.

Mr. Snure informed Council that the License from the Liquor Control Board, provides for sales of wine by the case or bottle for off premise consumption. He informed Council that the Rotary Club netted about \$20,000 for the 2005 event. He concluded by advising there were no complaints from residents in the area from the event.

MOTION was made by Councilmember Sherman, seconded by Councilmember Petersen, to adopt Draft Resolution No. 05-106 authorizing the second annual Des Moines Rotary Club Poverty Bay Wine Festival event from March 10-12, 2006, at the Des Moines Beach Park and Marina and to direct the City Manager to provide support services and amenities for the event as identified therein.

Councilmember Sherman commented that this event is an example of everything that can be done right for putting on a large event in the City. It is well organized, sponsors are not asking for anything they are not paying for, helps advertise local business, and gives back to the community through Rotary contributions.

VOTE ON MOTION: Motion passed unanimously.

9:55 p.m. Mayor Pro Tem Thomasson announced that Council will take a 10 minute break, and at 9:05 will go into an Executive Session for approximately 10 minutes for the purpose of planning or adopting strategies or positions as part of an ongoing collective bargaining process as provided in RCW 42.30.140(4)(b).

9:06 p.m. Executive Session

Present: Mayor Pro Tem Scott Thomasson, Councilmembers Richard Benjamin, Gary Petersen, Dan Sherman, Maggie Steenrod and Susan White. Absent: Mayor Bob Sheckler. Also present was City Manager Tony Piasecki.

No formal action was taken.

Adjournment: 9:20 p.m.

OLD BUSINESS

Re-Subdivision of Pre 1937 and Pre 1969 Plats

City Attorney Marousek noted the purpose of the presentation is to question Council if they wish to direct staff to bring back an ordinance or ordinances changing the way the City handles ancient plats in the City for new development applications. She noted much of Des Moines was laid out years and years ago in 1897-1902, under Washington laws. She advised that little squares of land were drawn up regardless of topography. It was realized later that mapping statute left local governments, like Des Moines, with little control over how the property actually developed, including where to put streets, how to control traffic, and size of the neighborhoods. So in 1937 the State Legislature passed a new platting statute which is more similar to modern laws, that gave local governments some control over streets, traffic, sewers, etc. In 1969, in response to local governments that wanted control over development for provisions for parks, sidewalks, streets, water, power, sewer, etc., the Legislature passed the current subdivision statute which gives each legislative body of local governments the power to impose reasonable requirements whenever someone wants to develop a piece of property. She advised that the Growth Management Act was passed in 1995, and there is very little opportunity for people who are developing property to develop outside of city limits. She noted what is left in Des Moines is not a lot of developable land, but much of it is "train track" lots. She advised that the State Attorney General's Office has determined that local governments can impose modern subdivision requirements on developments, and require that the developer actually pay for the costs of the impacts of the development on the city's streets, sidewalks, etc.

She noted that to date, Des Moines has just allowed development and absorbed the costs. She stated it gets more complicated with fewer remaining developable parcels of land that do have impacts on public services since the City's current ordinances do not allow the recovery of any street improvements, water improvements, surface water improvements, from the developer who is impacting the City's systems. She advised that the question to Council is, shall we continue allow development under an old a mapping statute, or shall staff develop an ordinance to impose modern subdivision requirements on development of older parcels? She concluded by noting the City's Economic Development Consultant felt that imposing the modern requirements, along with a Zoning Code update, will give the City attractive streets, functional water systems and a community that is more attractive to development.

Upon questioning by Councilmember Sherman, City Attorney Marousek advised that she is not talking about a single lot development, but where the subdivision code requirements kick-in which is generally 5 or more lots. Currently staff has to spend a great deal of time with lot line adjustments, but if Council would impose certain standards for subdividing such as street frontage, sidewalks, curbs, drainage, etc., then there will be no room for either side to argue and the standards would be clear to the developer.

Substantial Council discussion ensued, with comments as noted.

Mayor Pro Tem Thomasson felt there needs to be clear guidelines that say under certain circumstances you have a legal lot, and under other circumstances, essentially what looks like a bunch of lots on paper, is really one large parcel which will need a subdivision.

City Attorney Marousek pointed out that regardless of lot size, the question is who pays for the costs of the development, the City or the developer. She ensured Councilmember Benjamin that staff is not asking to impact a private one single family house development.

Councilmember Petersen questioned that if Council went forward with imposing new subdivision requirements, whether Council would be going against a Supreme Court (Island County v. Dillingham) ruling cited in the agenda item background material supplied in Council's packet, and therefore be subject to litigation.

City Attorney noted that in that particular case, the local government had not adopted new subdivision requirements, so like Des Moines, were forced to rely on laws already in place concerning 25 foot lots. She also pointed out that other jurisdictions have already adopted ordinances and administrative procedures exercising increased local development control over old plats. She advised that Port Townsend's ordinance was enacted in 1997 had not been challenged which tells her that the litigation potential is non-existent. She also noted the City of Covington and King County have adopted similar ordinances.

Mayor Pro Tem Thomasson advised that staff has seen a number of cases where an application of the City's existing Code has allowed new buildings to go in without improvements such as streets, storm drainage, sidewalks, etc., which at some point in time the City will have to deal with, using public funds. The question is do we want tax payers to pay for these improvements, or should the developers who are making a profit from the development be required to pay.

Councilmember Steenrod questioned what is the impetus to bring this to Council.

City Attorney Marousek explained that she brought the information to the engineering and development staff when she discovered the Attorney General opinions and learned that other communities were actually getting some public infrastructure requirements out of development of old lots. She stated it has been difficult to negotiate with developers, since the City does not have clear standards, making them very time consuming projects, frustrating for the developer and difficult for City staff. She advised most developers just want to be told what the rules are, rather than a lot of negotiating.

Councilmember Steenrod felt that there is an assumption that developers all have big bucks to build in the infrastructure the City wants, and gets the money back when the homes are sold. She stated that she has received a lot of complaints from individuals on how the City's rules are applied and she is not sure any good will come from new rules for citizens. Her main concern is how this would hit the "little guy". She further noted the City is in the process of making major decisions regarding economic development and changes to the City's Zoning Code. She felt these new requirements should wait until after these changes are complete, as she sees no pressing need for additional laws and rules.

City Attorney Marousek noted there is nothing to approve at this time. Staff is asking if Council wants staff to develop an ordinance or process, or both, to bring back to Council.

City Manager Piasecki felt it would be helpful if staff could give some real examples of applications, with maps. He advised the problems occur when someone comes in with an old plat, showing six lots, and it needs appropriate facilities built into it, staff has no mechanism to require the developer to do everything that should be there. At this point staff is just requesting direction from Council, and he anticipates this will take several months to get through.

Mayor Pro Tem Thomasson noted this is a very complex issue and staff can put together better examples.

Councilmember Sherman felt that there could be some immediate need to proceed, since Mayor Pro Tem Thomasson pointed out there is large portion of undeveloped land just south of Highline College. He questioned whether someone could build on an old single 25' wide lot.

City Attorney Marousek stated that if a single 25' lot is under single ownership, and was separated properly into a separate ownership, yes it could be built on. However, with new regulations the City could halt development, or sales, of 25' individual lots and require more planning in such circumstances.

Councilmember Benjamin advised that he would need to hear from developers for their point of view. He would be in favor of new regulations if they would simplify everything and allow developers to do their job more easily.

City Attorney Marousek stated that proposed regulations would simplify the process, and eliminate having to negotiate. She further advised that this would require a public hearing which would enable Council to hear from developers.

Mayor Pro Tem Thomasson questioned whether this subject should be assigned to a Council Committee to help staff develop a frame work. He suggested either the Environment Committee or the Public Safety & Transportation Committee.

Councilmember Benjamin, a member of the Environment Committee, volunteered to head this up to bring developers to the table. He felt this would help would economic development develop faster.

Councilmember Sherman stated he does not want this subject to get lost in a committee.

MOTION was made by Councilmember Sherman, seconded by Mayor Pro Tem Thomasson, to direct staff to prepare an ordinance requiring re-subdivision of pre 1937 and pre 1969 plats.

Councilmember Benjamin noted this is just business as usual.

Councilmember White requested staff also bring back clearer examples of how this works. She also expressed concern over staff's already heavy work load.

City Attorney Marousek advised that she will be able to use other jurisdictions existing ordinances and tailor one to meet Des Moines' needs.

Councilmember Steenrod was concerned that Council has only heard staff's side of the issues. She would like to see members of the community and developers invited to a Council Committee meeting to offer their side of the issues in order to determine if there is merit in pursuing this idea. She expressed concern over developers complaints about being told they are submitting incomplete applications. She felt that Council needs to look at the City's entire process for submitting building applications. She noted it was just last week that a developer complained he had submitted an application three months ago and was just told that it was incomplete. She felt this new idea being submitted tonight will just make the situation worse. She would like to see the new Planning, Building and Public Works Director take a hard look at the departments and work on problem areas to see that economic development efforts bear some fruit and only then, tackle something like these subdivision revisions.

Councilmember Sherman noted that what staff is proposing is a separate issue from the problems Councilmember Steenrod is speaking about. He felt legal staff has advised that this is a reasonably simple matter to deal with, and he would like to see a draft ordinance prepared so he can read it and understand it, and then have full Council discussion, not hide it in a Council Committee.

Councilmember Benjamin suggested the best way is to work collaboratively, by working with developers, and not impose regulations that may or may not be relevant to helping them with their projects.

Mayor Pro Tem Thomasson stated that the issue at hand that staff would like addressed is not a process related issue, but are mitigation driven issues. He felt the policy question Council needs to address is; do we want new homes being built on old lots without a street, with or without drainage that is required by State ecology. He advised that if the developer does not mitigate these construction issues then the taxpayers will have to pay. He noted there are some other process issues and he his hoping that the new Director can solve those process related issues, but

staff's request deals with what is required to be built, and clarifying those issues concerning streets, sidewalks, drainage, etc., and who will pay for them. He felt that this should occur as one of the items that needs to be addressed during the Code rewrite to deal with some of the short comings of the existing Code. He would like to see staff prepare material that can be dovetailed into the Code re-write.

Councilmember Sherman summed up the options as: do nothing which would increase the costs to all taxpayers, or have the costs born by the developers.

City Attorney Marousek advised that once a complete draft has been prepared, with the City Manager's approval, the draft could be sent to all developers that the City is doing business with for comment.

ADJOURNMENT

10:30 p.m. meeting adjourned by virtue of time expiring.

Respectfully submitted,

Denis Staab
City Clerk