

continued 8/11/03
PRELIMINARY
REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

August 14, 2003

The regular meeting of the Des Moines City Council was called to order at 7:41 p.m. by Mayor Steenrod in the City Council Chambers, 21630 11th Avenue South, Suite B.

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

ROLL CALL - Present: Mayor Maggie Steenrod, Mayor Pro Tem Richard Benjamin, Councilmembers Gary Petersen, Bob Sheckler, Dan Sherman, Scott Thomasson and Susan White (left at 10:03 p.m.). Also present were City Manager Tony Piasecki, Assistant City Manager Corbitt Loch, City Attorney Linda Marousek, Assistant City Attorney Richard Brown, Public Works Director Tim Heydon, Assistant City Engineer Maiya Andrews, Park and Recreation Director Patrice Thorell, Finance Director Paula Henderson, Community Development Director Judith Kilgore, Development Services Manager Robert Ruth, and Deputy City Clerk Angela Chaufy.

COMMENTS FROM THE PUBLIC

City Attorney Marousek explained that any comments concerning any of the scheduled public hearings should be made during the hearing process rather than at this time.

Based upon this information, the following individuals elected to provide their comments to Council during the public hearings:

Corinna Harn	Jan Bergman
Denny Burnham	Danny Bergman
Jerry Bergman	Don Wasson

BOARD & COMMITTEE REPORTS

Public Safety and Transportation Committee

Mayor Pro Tem Benjamin informed Council that, due to savings realized from the asphalt chip sealing program, approximately \$18,000 was available to install lighting in the Pacific Ridge area.

Public Works Director Heydon distributed the committee's recommendation to install lighting in Pacific Ridge.

MOTION was made by Mayor Pro Tem Benjamin and seconded by Councilmember Thomasson to instruct the City Manager to allocate funds to install lighting in the Pacific Ridge area.

Public Works Director Heydon explained that the lights would be placed south of South 216th Street on 28th Avenue South, 29th Avenue South, and 30th Avenue South.

City Manager Piasecki noted that six lights would be installed immediately and two additional lights, if necessary, would be budgeted for next year.

Mayor Pro Tem Benjamin noted that the project could be approved administratively as it's cost was under \$20,000 but the PS&T Committee felt that it was an opportunity for Council to show their support for the community.

Councilmember Sherman said that he believed it was a good project but that he protested the procedure as the item had just been distributed to Council.

Councilmember Sheckler said he would support the motion but that he was also concerned with the process.

Councilmember Petersen voiced support for the motion. He felt Council should deal with the issue immediately as winter was coming. He hoped the lighting would alleviate crime in the area.

City Manager Piasecki confirmed that the motion was for Option B (Poles, luminaries and circuitry - \$15,520.67; Trenching - \$2,619.91; Monthly charge - \$46.90).

VOTE ON MOTION: Motion passed unanimously.

ADMINISTRATION REPORTS

10th Avenue Culvert Project

City Manager Piasecki informed Council that the 10th Avenue Culvert Project was ahead of schedule and should be completed in October.

Redondo Boat Ramp

City Manager Piasecki announced that the Redondo boat ramp and parking lot would close September 2, 2003 for construction.

Pacific Highway South Project

City Manager Piasecki noted that the Pacific Highway South project would begin August 18, 2003.

Neighborhood Business Meeting

City Manager Piasecki informed Council that a Neighborhood Business Meeting would be held August 26, 2003 at the South Marina Park.

Chief of Police Selection Process

City Manager Piasecki informed Council that 53 applications for the Chief of Police position had been received. He expected the position to be filled by the end of September or early October.

CONSENT CALENDAR was read by Deputy City Clerk Chaufy.

1. Motion is to approve the regular meeting minutes of June 26, July 7 and July 31, 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 #90274 through #90673 & electronic fund transfers in the total amount of \$1,472,243.27

Payroll fund transfers in the total amount of \$766,547.62

3. Motion is to authorize the City Manager to approve all vouchers for payment of the following claims during the period of August 15, 2003 through September 4, 2003:
 - a. All vouchers for payment of payroll checks, including Marina payroll, and
 - b. All vouchers for payment of claims and Marina checks, provided that all vouchers and checks approved by the City Manager in accordance with this motion shall be presented at the September 11, 2003 Council Meeting.
4. Motion is to authorize an extension of two (2) years to the City's Photocopying Agreement with IKON Office Solutions in the amount of minimum monthly payments of \$1,764.00 and authorize the City Manager to sign the extension agreement substantially in the form as submitted.
5. Motion is to authorize the City Manager to sign the Interlocal Agreement with King County for commute trip reduction services through June 30, 2005.
6. ~~Motion is to approve the Contract for the Activity Center Paving Project with Northwest Asphalt, Inc. in the amount of up to \$17,675.64 plus tax and authorize the City Manager to sign the contract, substantially in the form as submitted. And to authorize City Manager to approve change orders not to exceed 15% of the total contract amount.~~
7. Motion is to enter into agreements with Puget Sound Energy to cover the costs of the materials, installation, energy and maintenance of the street and sidewalk lighting associated with the Pacific Highway South Redevelopment Project and to authorize the City Manager to sign the agreements substantially in the form as submitted.
8. Motion is to enter into an agreement with Puget Sound Energy for the Construction work associated with undergrounding the power distribution system on Pacific Highway South and to authorize the City Manager to sign the agreement substantially in the form as submitted.
9. Motion is to confirm the Mayor's appointment of Diane Kennish as the City's Citizen Representative to the Des Moines Memorial Drive Advisory Committee.
10. Motion is approve an increase in the contract with SKM Construction Inc. in the amount of \$7,515, plus sales tax, for the installation of a bi-fold divider wall system for Des Moines Activity Center and authorize the City Manager to sign the contract, substantially in the form as submitted.

Mayor Pro Tem Benjamin removed Item No. 6.

In regard to Item Nos. 7 and 8, Assistant City Engineer Andrews explained that the cost of undergrounding utilities was governed by tariffs set by the Washington Utilities and Transportation Commission. The undergrounding of the utilities would cost the City just over \$500,000. The city's up-front cost for the lighting installations would be just under \$700,000 while the monthly utility bill was estimated to be \$2,620.

MOTION was made by Councilmember White, seconded by Councilmember Petersen and passed unanimously to approve the consent calendar as amended.

REMOVED CONSENT CALENDAR ITEM

Des Moines Activity Center Parking Lot Paving Project Contract

Mayor Pro Tem Benjamin expressed concern with the proposed 15% contingency for the project. He felt that a 5% contingency was reasonable.

MOTION was made by Mayor Pro Tem Benjamin to approve the contract for the Des Moines Activity Center Paving Project with Northwest Asphalt, Inc. in the amount of up to \$17,675.64 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 not to exceed 5% of the total contract amount.

Park and Recreation Director Thorell explained that during the bid process, the seniors had requested that the number of proposed parking stalls be increased. Due to the low bid amount, the proposed contingency amount had been increased. She noted that \$45,000 had been allocated for the project and the engineer's estimate was \$35,000.

Mayor Pro Tem Benjamin's **motion died** for lack of a second.

MOTION was made by Mayor Steenrod and seconded by Councilmember Sheckler to approve the contract for the Des Moines Activity Center Paving Project with Northwest Asphalt, Inc. in the amount of up to \$17,675.64 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 not to exceed 10% of the total contract amount.

Upon questioning from Councilmember Thomasson, Park and Recreation Director Thorell confirmed that the City had obtained all the necessary project permits.

VOTE ON MOTION: Motion passed, 6 – 1, with Mayor Pro Tem Benjamin opposed.

PUBLIC HEARING CONTINUED

Draft Ordinance No. 03-125 [Assigned Ord. No. 1328] Final Assessment Roll for LID No. 1-97-9 4th Place South Right-of-way - 1st Reading

City Manager Piasecki announced that the public hearing remained open.

Assistant City Attorney Brown reviewed the purpose of a Local Improvement District (LID) and the methods for forming one. He noted that nine of the twelve property owners had signed a petition requesting the formation of LID No. 1-97-9. The estimated cost for the project was \$22,538. Construction was completed in November 1998 at a final cost of \$21,693.30. Assistant City Attorney Brown displayed a picture of the neighborhood and its improvements. He noted that three protest letters to the final assessment had been received. In regard to the protests involving lack of notice, Assistant City Attorney Brown explained that there was no obligation on the part of the city to provide further notice to purchasers of affected properties. He said that the purchasers could seek remedy through the seller or their title company. In regard to the protest letter concerning lack of equal benefit, Assistant City Attorney Brown stated that the property in question had the same approximate length of frontage to the improvements. He explained the procedure for protesting equal benefit. Assistant City Attorney Brown noted that the City had received \$1,807.78 from a title company on behalf of one of the protestors. He explained that Council could close the public hearing, waive rule 26(b) and adopt the LID assessment roll ordinance on the first reading, close the public hearing and adopt the final assessment roll ordinance at a subsequent second reading of the proposed ordinance, or direct staff to revise the assessment roll and set another public hearing date for the revised assessments.

Mayor Steenrod read the rules for conducting a public hearing. She said that the Appearance of Fairness Doctrine applied to the hearing and questioned whether any Councilmember was ineligible to participate.

None responded.

Mayor Steenrod called for speakers. She administered an oath to the speaker to provide truthful information to Council.

SPEAKER

Jack Brenner, 20209 4th Place South

Mr. Brenner questioned whether there was a statute of limitations concerning when the LID proceedings could take place.

City Attorney Marousek explained that as long as the LID was not finalized, there was no time limit attached.

Mayor Steenrod called for additional speakers three times.

None responded.

Mayor Steenrod closed the public hearing.

MOTION was made by Councilmember Thomasson and seconded by Councilmember White to suspend Council Rule 26(b) to consider Draft Ordinance No. 03-125 on the first reading.

City Attorney Marousek distributed a revised draft of the proposed ordinance.

Finance Director Henderson informed Council that the City had initially considered rolling the LID costs into the bond issue with the Marina. Later, they decided to self-finance the project.

Councilmember Sherman confirmed that no interest had been charged for the previous four years. He asked staff to check whether the protester of lack of equal benefit had testified at the July 10, 1997 public hearing regarding the preliminary assessment.

At 8:42 p.m., Mayor Steenrod declared a fifteen-minute break.

City Manager Piasecki informed Council that there had been no speakers at the July 10, 1997 public hearing establishing the preliminary assessment. He reiterated Finance Director Henderson's explanation regarding the delay in setting the final assessment roll. He recommended that Council adopt the proposed ordinance on the first reading.

VOTE ON MOTION: Motion passed unanimously.

MOTION was made by Councilmember Thomasson, seconded by Councilmember Sheckler and passed unanimously to adopt Draft Ordinance 03-125.

City Manager Piasecki clarified that the revised version of the ordinance had been adopted.

PUBLIC HEARING

Unclassified Use Permit - Zenith Viewpointe, Alex White & Co., 23659 Marine View Drive South

Mayor Steenrod opened the public hearing and read the rules for conducting a public hearing.

City Attorney Marousek stated that the hearing was a quasi-judicial matter and inquired whether any Councilmember should be disqualified from participation.

Councilmember Thomasson stated that he had read an e-mail from the City Attorney directing Council to not read another e-mail. He said that he had followed the City Attorney's direction.

Mayor Pro Tem Benjamin said that he had attended a meeting with area neighbors and the developer. He also stated that he had read the letter from Peter and Helaine Skelly but had had no ex parte contact with them. Mayor Pro Tem Benjamin said that he did not believe that he had pre-judged or developed a bias in the matter.

Councilmember Sheckler said that he had not read the correspondence from the Skelly's.

Councilmember Petersen said that he had attended a meeting in late 2002 regarding the issue. He believed that he had not been influenced by the meeting.

Councilmember White said that she had not read the previously mentioned e-mail.

Councilmember Sherman said that he had only read the information contained in the packet materials.

Mayor Steenrod said that she had not read the previously mentioned e-mail.

City Attorney Marousek stated that she found no violation of the Appearance of Fairness Doctrine.

Audience participant Corrairie Harns questioned whether the inquiry included information about Planning Agency proceedings.

Councilmember Thomasson said that the minutes of the Planning Agency meeting had been provided in the packet materials.

City Attorney Marousek asked if there were any challenges to any Councilmember's participation in the hearing.

Jerry Bergman, 620 South 239th

Mr. Bergman challenged Councilmember Thomasson's participation in the matter due to a pre-judgement on the issue. He said that Councilmember Thomasson had attended a gathering in a neighbor's home and had made statements supporting development.

City Attorney Marousek reread the Appearance of Fairness criteria and questioned Councilmember Thomasson.

Councilmember Thomasson said that he had attended a party for his church's youth director but that he did not speak of the issue. Councilmember Thomasson said that he was very knowledgeable of the Appearance of Fairness Doctrine. He questioned who had made the allegations.

City Attorney Marousek read Council Rule 15.2 and 15.3. She asked the Mayor for a brief recess in order to allow her an opportunity to interview Mr. Bergman.

At 9:24 p.m., Mayor Steenrod declared a five minute break.

City Attorney Marousek announced that she had spoken to the person identified by Mr. Bergman as the source of the information. The source could not remember any such comments. Therefore, Councilmember Thomasson was not disqualified from the proceedings.

Mayor Steenrod called for any further challenges.

Don Wasson, 22047 Cliff Avenue South

Mr. Wasson read a statement (Exhibit 1) asking for the disqualification of Councilmember White from the proceedings on the basis of a violation of the Appearance of Fairness Doctrine demonstrated by her prejudgment of the issue prior to hearing the facts on the record and ex parte contact with her husband. He alleged that her husband, a member of the Planning Agency, had instructed her how to vote on the matter.

City Attorney Marousek asked Councilmember White if she had consulted Mr. White regarding the Planning Agency's recommendation or his feelings on the issue.

Councilmember White said that she had not consulted Mr. White but had read the Planning Agency's minutes contained in the packet. She said that she was aware the Planning Agency had concurred on their decision as she had asked him.

At 9:40 p.m., Mayor Steenrod declared a five minute break.

City Attorney Marousek informed Council that during the previous year she had researched whether Councilmember White was eligible to participate in an appeal of a Planning Agency decision to Council. At that time, due to the role of the Planning Agency, it was her opinion that Councilmember White should recuse herself from the appeal. Now, the Planning Agency provided only an advisory opinion to Council. She then researched the provisions of RCW 42.36.070 and found no reason for Councilmember White to be disqualified from the hearing.

Councilmember White said, however, that for appearance reasons only, she would recuse herself from the proceedings.

At 10:03 p.m., Councilmember White left the meeting.

Mayor Steenrod called for any additional challenges.

No one responded.

City Attorney Marousek explained that the hearing would address two issues, the SEPA Appeal and the Unclassified Use Permit (UUP). Council must resolve the SEPA matter prior to addressing the UUP issue.

Development Services Manager Ruth entered staff's written report into the record (Exhibit 2) and displayed an excerpt of DMMC 18.32 explaining the purpose of the UUP process and Council's criteria for making a determination. He noted that the City's code allowed mixed use in the Neighborhood-Commercial (N-C) zone but required a UUP. Development Services Manager Ruth noted that the UUP process gave much discretion to Council. He explained that the concept plan contained in the packet was not binding and should only be viewed as a potential development. The applicants would provide additional information regarding the project later in the hearing. Development Services Manager Ruth displayed an aerial view of the site and described the surrounding properties. He said that the plan included the following elements:

- Demolition of the grocery store located on the property,
- Construction of eight dwellings and 1,800 square feet of office space,
- Development of open space,
- Complete construction of South 239th Street, and
- Reconstruction of the stairs with a tie in to the vista viewpoint.

Development Services Manager Ruth reviewed the permitted uses for N-C zones as identified in DMMC 18.20.020. In staff's opinion, the developer's plan was the best option for the property as it had a residential component and had less traffic and activity associated with it. Mr. Ruth explained the steep slope development process as identified in DMMC 18.86.092. He said that most of the natural vegetation on the property had been removed.

At 10:27 p.m., **MOTION** was made by Councilmember Sherman and seconded by Councilmember Sheckler to extend the meeting to 11:00 p.m.

In response to Mayor Steenrod's questioning, City Manager Piasecki suggested that the hearing be continued to September 4, 2003 or September 11, 2003.

VOTE ON MOTION: Motion passed, 5 – 1, with Mayor Pro Tem Benjamin opposed.

MOTION was made by Councilmember Sheckler and seconded by Councilmember Sherman to continue the hearing to August 28, 2003.

Mayor Steenrod and Mayor Pro Tem Benjamin said that they would be available for a meeting on that date.

Councilmember Petersen said that he would miss the September 4, 2003 and September 9, 2003 meetings.

Councilmember Sherman **withdrew his second of the motion. Motion failed for lack of a second.**

MOTION was made by Councilmember Thomasson and seconded by Councilmember Sheckler to continue the hearing to September 4, 2003. **VOTE ON MOTION:** Motion passed, 4 – 2, with Mayor Pro Tem Benjamin and Councilmember Petersen opposed.

Development Services Manager Ruth stated staff's opinion that the applicant had mitigated the impacts of the proposal. He voiced the following recommendation of staff:

- Limit the number of buildings to six,
- Increase the setbacks by ten feet for the first and second levels and by 13 feet on the third level,
- Limit the square footage of the residential units to 1,600 – 2,000 square feet, and
- Impose all items of the mitigation agreement.

Development Services Manager Ruth informed Council that the Planning Agency had deliberated on the matter for two meetings. They concurred with staff's recommendation except they recommended limiting the number of buildings to two in order to increase open space. Staff, however, believed that limiting the number of buildings to two would impact the character of the development as a whole.

Mayor Steenrod called for appellants. Each speaker was put under oath.

Debbie Workman, 23903 7th Avenue South

Ms. Workman said that she strongly protested the proposed development. She was primarily concerned with traffic, parking, and surface water runoff impacts and aesthetics. Ms. Workman stated that residents would access the development off 7th Avenue South causing traffic to drive through the neighborhood. She said that there were many elderly and family pedestrians in the neighborhood. In regard to the parking issue, Ms. Workman said that she understood each unit would be given a one-car garage. She believed that each condo owner would have more than one vehicle causing the overflow cars to be parked on the narrow street or private property. Ms. Workman also voiced concern that the project did not have adequate green space. She said that the project's buildings and pavement would create a considerable amount of surface water runoff.

Keith Workman, 23903 7th Avenue South

Mr. Workman said that he did not feel it was necessary for Alex White to construct such a large building on the property. He voiced support for Ms. Workman's surface water runoff concerns.

Corinna Harn, 23910 7th Avenue South

Ms. Harn said that the proceedings were violating her due process rights as she believed a Hearing Examiner rather than Council should hear the issue. She felt that that the increased number of vehicles and people in the area would compound existing parking difficulties. Referring to a map of the area, Ms. Harn said that any legal access to the development would need to go through South 236th Street as 7th Avenue South did not extend to the property. She also said that the property did not have any frontage on 7th Avenue South due to the placement of a pumping station utility on the street. Ms. Harn said that the property was totally undisturbed and natural. She encouraged Council to study Mr. Skully's letter analyzing the legal issues.

Mayor Steenrod asked the City Attorney to address Ms. Harn's allegation regarding a violation of due process rights.

City Attorney Marousek stated that the Washington Administrative Code and SEPA procedures clearly indicated that this was the correct forum for the action. She confirmed that the e-mail from Peter and Helaine Skelly was now a part of the record.

Mary Beth Benson, 702 South 236th

Ms. Benson said that she had installed a french drain on the west side of her property when she built her house. She voiced concern with the traffic on the quiet, windy road. Ms. Benson felt that the proposed development infringed upon her rights. She stated her opposition to the project.

At 10:59 p.m., **MOTION** was made by Councilmember Sherman, seconded by Mayor Pro Tem Benjamin and passed unanimously to extend the meeting by an additional ten minutes.

Shirley Robinson, 23660 7th Avenue South

Ms. Robinson stated that water currently runs down her driveway. She expressed concern with traffic generated by the project and felt the development was not reasonably compatible with the neighborhood.

City Attorney Marousek informed Council that, upon further discussion with the project's developer and architect, she determined that they have standing and should be given an opportunity to address Council. They would be allotted time at the continued hearing.

MOTION was made by Mayor Pro Tem Benjamin, seconded by Councilmember Sherman, and passed unanimously to continue the hearing to September 4, 2003.

PUBLIC HEARING

Draft Ordinance No. 03-172 Sanborn Street Vacation - 1st Reading

Mayor Steenrod opened the public hearing.

MOTION was made by Councilmember Thomasson, seconded by Councilmember Sheckler, and passed unanimously to continue the hearing to the September 11, 2003 meeting.

NEXT MEETING DATE – Regular Meeting, September 4, 2003

ADJOURNMENT

At 11:04 p.m., **MOTION** was made by Mayor Pro Tem Benjamin, seconded by Councilmember Thomasson and passed unanimously to adjourn the meeting.

Respectfully submitted,

Angela M. Chaufy
Deputy City Clerk

Action Items from 8/14/03 Council Meeting - None