

PRELIMINARY
REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

September 4, 2003

At 7:40 p.m. City Manager Piasecki announced that the start of the meeting will be delayed to allow time to setup the video equipment.

The regular meeting of the Des Moines City Council was called to order by Mayor Steenrod at 7:53 p.m. in the Council Chambers, 21630 11th Avenue South, Suite B.

PLEDGE OF ALLEGIANCE to the Flag was led by Mayor Pro Tem Benjamin.

ROLL CALL - Present: Mayor Maggie Steenrod, Mayor Pro Tem Richard Benjamin, Councilmembers Bob Sheckler, Dan Sherman, Scott Thomasson and Susan White. Absent: Councilmember Gary Petersen (vacation). Also present were City Manager Tony Piasecki, Assistant City Manager Corbitt Loch, Community Development Director Judith Kilgore, Development Services Manager Robert Ruth, Police Commander Kevin Tucker and City Clerk Denis Staab.

MOTION was made by Mayor Pro Tem Benjamin, and seconded by Councilmember Thomasson and passed unanimously, to excuse Councilmember Petersen.

Agenda Revision

MOTION was made by Councilmember Sheckler, seconded by Councilmember Sherman, that due to the business in front of Council to table Board & Committee reports and the Presiding Officer's Report to the end of the meeting. Motion passed 4 to 2, with Mayor Steenrod and Mayor Pro Tem Benjamin opposed.

ADMINISTRATION REPORTS

Police Chief Search

City Manager Piasecki advised that the candidate list has been narrowed to six applicants. Interviews are schedule for September 17th and 18th.

Woodmont School Soccer Field

City Manager Piasecki invited everyone to the opening of the new soccer field scheduled for this Saturday at 9 a.m.

King County Solid Waste Interlocal Agreement - Request from Suburban Cities Association

City Manager Piasecki reminded Council that while King County cities are responsible for pick-up of solid waste, King County is responsible for disposal. He noted that the Cedar Hills site will be at capacity earlier than expected and will be closed early in 2012. He advised that the County has bought property for a transfer site for solid waste to be brought to, and then transported by train to an unknown site for disposal, without the affected cities consent. He stated that 17 cities have formally requested that the interlocal agreement be re-opened to negotiate various issues. He informed Council that Suburban Cities Association is requesting that Mayors of all cities that have interlocal agreements with the County come together and sign a formal letter to the County in support of re-negotiations. He noted that Deb Eddie, Executive

Director of Suburban Cities Association is present. A copy of the letter was distributed to Council

Ms. Eddie stressed the importance of unity among the cities and for joint plans and action for future solid waste transfer and disposal services that are in the best interest of the ratepayers. She requested Mayor Steenrod be authorized to sign the letter.

MOTION was made by Councilmember Thomasson, seconded by Councilmember Sheckler and passed unanimously, to authorize Mayor Steenrod to sign the letter on behalf of the City of Des Moines.

CONSENT CALENDAR was read by City Clerk Staab, who noted that since there are no bills or payroll to approve, Item #2 has been removed.

1. ~~Motion is to approve the minutes of August 14, 2003. [ED NOTE: Item removed by Mayor Pro Tem Benjamin.]~~

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

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

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

~~Payroll fund transfers in the total amount of \$~~

3. Motion is to enter into a joint trench construction agreement with Qwest for their participation in costs for the utility undergrounding improvements of the Pacific Highway South Redevelopment Project and to authorize the City Manager to sign the agreement substantially in the form as submitted.

4. Motion is to enter into a supplement agreement with the Washington State Department of Transportation for the construction of asphalt overlay on Pacific Highway South, reducing the total reimbursement amount by \$73,000 for a new revised total payment of \$762,853 and to authorize the City Manager to sign the supplement agreement substantially in the form as submitted.

5. Motion is to enter into the general maintenance agreement with WSDOT (GM 1385) for an annual estimated cost of \$69,506.88 for operation and maintenance of all traffic signals within the City limits and to authorize the City Manager to sign the agreement substantially in the form as submitted.

Mayor Pro Tem Benjamin requested Item #1, approval of the August 14, 2003 minutes.

MOTION was made by Councilmember Thomasson, seconded by Councilmember Sherman and passed unanimously, to approve the Consent Calendar as amended.

Removed Consent Item #1 - Approval of Minutes of August 14, 2003

Mayor Pro Tem Benjamin noted that on page 3, under "Des Moines Activity Center parking Lot Paving Project Contract", that the first statement attributed to him was incorrect. He requested the paragraph be changed to reflect the following: "Mayor Pro Tem Benjamin expressed concern with the proposed 15% contingency for the project, as a few weeks earlier it had been

proposed at 10%. He stated that he feels that it is unreasonable for every contract to contain a contingency, and that for this contract a 5% contingency would be more reasonable.”

Also on page 8, 2nd to the last paragraph: The date of September 9, 2003, should read “September 11, 2003.

It was Council’s consensus that the corrected minutes will be placed on the Consent Calendar on the meeting of September 11, 2003, for approval.

AGENDA REVISION

Mayor Steenrod announced that the City Manager had informed her that the majority of Councilmembers will table all issues to get to particular items, so she will take New Business prior to the Continued Public Hearing.

Councilmember Sheckler stated his purpose in tabling the Board & Committee and Presiding Officer’s Reports was to expedite the process to get to the Continued Public Hearing due to the large number of interested citizens in the audience, not to take business items out of order.

NEW BUSINESS

Towing Services RFP

MOTION was made by Councilmember Thomasson, seconded by Councilmember White, to direct staff to issue an RFP for towing/impound services with the same requirements and time frames as contained in RFP 02-001.

FRIENDLY AMENDMENT was made by Councilmember Sherman, and accepted, to amend page 2 of the Specifications for Vehicle Towing under *Class “C” Tow Trucks* to add the words “or Sub Contractor” and page 3 under *Storage Lot* to change three miles to “four miles”.

Mayor Pro Tem Benjamin felt that this issue only came about after Councilmember Petersen’s election to Council concerning an alleged conflict of interest. He stated that there has been no ruling in a Court of law to date that has stated that there is one. He felt that by issuing this RFP it will create a conflict of interest. He stated the City has not had a contract for these services in over 40 years and there has been no problems until the last year when the City quit using Mr. Petersen’s towing company. He stated that as Chairman of the Public Safety and Transportation Committee, he is disappointed in this action by Council and will not support the issue. He feels it does not offer the best service or the interest of the community.

Councilmember Sherman stated that Councilmember Petersen has been found in violation of a conflict of interest regarding his towing company.

Councilmember Thomasson remarked that this item was introduced to Council a year ago. Part of the need is for liability protection to the City and to be able to clearly identify the services being provided. This is still the motive for requiring this type of contract.

Mayor Steenrod noted that although a contract can provide some protection, citizens are tied to one vendor. She stated that the City has not had a need to have such a contract in the past and felt this will force a Councilmember to resign or give up his business.

Councilmember Sherman remarked that having such a contract should lower rates of towing for Des Moines citizens.

VOTE ON MOTION: Motion passed 4 to 2 with Mayor Steenrod and Mayor Pro Tem Benjamin opposed.

RCAA 2002 Invoices

MOTION was made by Councilmember Sherman, seconded by Councilmember White, to authorize payment of \$24,589.78 to the Regional Commission on Airport Affairs as full and final payment for services provided in 2002 out of the General Fund fund balance for the 2003 Budget.

Councilmember Sherman advised that the City had a contract with RCAA which the City terminated. As a part of the contract, the City owed money, which now includes interest. He felt that it is good business to pay your bills.

MOTION was made by Councilmember Sheckler, seconded by Councilmember Sherman, to amend the motion to change the dollar amount to \$22,065.22.

Councilmember Sheckler advised that this would reflect the amount due, less the interest. He replied to questioning, that RCAA had expressed a positive response in regards to waiving the interest.

Mayor Pro Tem Benjamin spoke in opposition to paying any amount to RCAA. It is his opinion that they provided no value to the City and had used funds to influence political campaign outcomes, including Des Moines City Council race.

Councilmember Sheckler advised that the contract also included four other cities and Highline School District and feels that RCAA provided an information service which was their sole purpose.

Mayor Steenrod announced that she will not support the motion. She noted that an RCAA newsletter that was mailed at the same time as absentee ballots in 2000, stated that she supported the 3rd runway. She advised that no one from RCAA had contacted her regarding this. She noted that she requested that RCAA re-cant their statement and to date she has not received any response. She stated that she does support the fight against the 3rd runway and has personally financially contributed to that effort. She expressed concern that taxpayer funds are being used for political purposes. While she totally supports honoring of contracts, she does not feel this money was an appropriate use of City funds.

VOTE ON AMENDING MOTION: Motion passed 4 to 2 with Mayor Steenrod and Mayor Pro Tem Benjamin opposed.

VOTE ON MAIN MOTION: Motion passed 4 to 2 with Mayor Steenrod and Mayor Pro Tem Benjamin opposed.

CONTINUED PUBLIC HEARING

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

Mayor Steenrod announced that the hearing is continued from the August 14, 2003 meeting and requested the City Attorney to summarize the requirements for the consolidated hearing.

City Attorney Marousek advised that the rules read into the record at the August 14th meeting are still in effect. She reiterated that the Council has three separate decisions to make; a SEPA Appeal, an Environmentally Sensitive Areas Development Exception and an Unclassified Use Permit, in a combined hearing process. She emphasized that a Council decision on the SEPA appeal must be made before action is taken on the other two issues. She advised that the hearing should begin by offering additional time for testimony related to the SEPA Appeal to the four appellants (Mr. & Mrs. Workman, Ms. Harn, Ms Benson and Ms. Robertson) whom have already spoken before offering testimony to other opponents.

Mayor Steenrod inquired whether the four appellants are present and if they wished to provide additional testimony. Response was in the positive.

City Attorney Marousek requested all individuals in the audience who wished to offer testimony raise their hands and she then administered an oath to tell the truth.

Councilmember White announced that she will recuse herself from participation and left the Council Chambers.

APPELLANTS to SEPA Appeal

Mr. & Mrs. Workman, 23903 7th Avenue South

Mr. & Mrs. Workman reiterated their objection citing the following:

- Increased traffic in the neighborhood
- Not enough parking provided
- Surface water run-off not adequately addressed

Ms. Workman noted that another sub-division in the neighborhood was required to widen the street at their expense and felt that this will be used for parking by the new development. She felt it is unfair that a private property owner had to pay to widen a public street and said she cannot see where the developer of the project is being required to do anything.

Ms. Benson, 702 South 236th

Ms. Benson expressed concern regarding South 236th in that it will be terribly impacted by traffic. She noted it is a small windy road. She requested Council consider the impacts that this type of development will have on the existing residential neighborhood.

Ms. Robinson, 23660 7th Avenue South

Ms. Robinson referenced a letter to Council from Peter Skelly, and offered the following excerpts from that letter:

- DMCP Policy 2-03-04 "Preserve the integrity of existing single family neighborhoods."
- DMCP Policy 2-03-06(1) "Future multifamily development should be limited to areas where the pattern of existing multifamily development and zoning is predominant."
- DMCP Policy 2-03-06(3) "The proposed development lot size is 0.223 acres". What the developer has proposed has more dwellings that what would be allowed on this property.
- DMCP Policy 7-03-06 "Protect existing and planned residential areas from unmitigated adverse impacts that may be generated by nearby incompatible land uses . . ."

She informed Council that at the time she purchased her home she was told that the 50' vacant strip next to her could not be developed. She understands that the City Planning Department is going to allow the developer to use the square footage of S. 239th Street to satisfy the square footage that is needed for his development and noted that she is concerned about this.

Mel Bogovich, 23635 Marine View Drive

Mr. Bogovich questioned Development Services Manager Ruth as to what is the City Council's interpretation of congestion and density. He noted his property abuts the proposed development and contains 46,000 square ft. He stated that he had been turned down to divide his property for 3 additional structures and was told there is a minimum of 15,000 square ft. required per dwelling unit. He expressed the opinion that the proposed change in density from this development will cause traffic congestion. He was informed by planning staff that emergency vehicle access to 7th Avenue would be drastically impaired. He further noted that 239th is very steep and was blocked off because of potential for cars to slide down onto 7th Avenue and into houses during inclement weather.

Alice McCabe, 23902 7th Avenue South

Ms. McCabe expressed opposition due to the increased traffic to 7th Avenue South as it can hardly contain the present traffic. She cited the transportation element policy 3-03-07 that provides for facilities to accommodate safe pedestrian and bicycle movement. She felt that with 8 living units and 2 office spaces there will be a lot more than 9 vehicles in and out of the development. As to South 239th, it was closed off because it was too steep for cars and now it can be used for development, she questioned whether this would not be disturbing the site. She felt that the City is vacating the street (239th) to Mr. White for his exclusive use and allowing him to use this to calculate lot coverage. She noted that she has filed a law suit for half of this 30 foot road that abuts her property. She further challenged that digging down 2 stories under the present building would be disturbing the soil. She noted that staff cited a variety of land use in the neighborhood by pointing out Judson Park and the Masonic Home. However, she noted that access to these developments are not to 7th Avenue South or 239th. She concluded by stating there are too many adverse impacts for the proposed development.

Ms. Harn, 23910 7th Avenue South

Ms. Harn reminded Council that Des Moines Municipal Code, in a number of different places, makes it clear that lot size cannot be calculated by using the right-of-way. She stated that this has been allowed in this case and that violates the law. She noted that when they do the grading to lower the steep slope on this property, they will be removing a significant amount of dirt and she questioned where they will put it. If it is hauled away it is not covered under the Environmental Checklist. She noted that if they dig down, it will limit the access to the two properties on the south side of the subject property, as there will be a retaining wall. She advised that there is a pending lawsuit against the City filed by herself and Ms. McCabe regarding South 239th Street. She is of the opinion that this property was zoned single family under King County and a rezone was not properly done to change this property to NC zoning. She noted that when the citizens of the Zenith area sued the City to get beach access, one of the parts of the settlement agreement includes language that none of the parking in that area will be by non-residents. She noted that under the Environmental Checklist, page 11, it states that there will 19 stalls on site. She also noted that the Checklist only speaks to 5 units, when she has seen as many as 8 or 9 units contained in the proposed plans. She reminded Council that the streets in this area are in some places one way, with blind curves. She noted her calculations would indicate more

vehicle trips, as many as 72 trips, and that is assuming everybody just comes and goes once. She questioned whether a proposed variance and the building permit will need to be addressed separately.

9:05 p.m. Mayor Steenrod called for a 5 minute break.

Nancy Rogers, Attorney Representing the Zenith Community Residents

For the record, Ms. Rogers entered an objection to the process for melding these hearings as a process violation. She cited the following as the due process violations she objects to:

- Limitation of SEPA appeal testimony to simply the named appellants. No other witnesses or experts can be called. Only narrative testimony is allowed with no opportunity to actually question people to ensure all pertinent facts are on the table.
- Lack of opportunity to cross examine City staff or the applicant to ensure that all of key facts are fully vetted.
- No opportunity to question our own witnesses to ensure all their points are covered.
- My full opportunity for rebuttal on factual issues will be simply to use one of the named appellants to give narrative testimony.

She noted that at the very least she would like the opportunity to cross examine the witnesses to the extent necessary and to question her witnesses in rebuttal.

City Attorney Marousek advised that City Council Rules 20 and 21 have been in effect for many years. This is the procedure that the Council has used for many years, for these types of hearings and they are well settled. The procedure is a quasi-judicial hearing before a legislative body, and to her knowledge, this procedure has not been challenged before, and there has not been a due process violation found. The Council is required to consider these matters as a body, and it is accustomed to sitting as a legislative body and she believes, is doing that appropriately. She expects that the Council will demonstrate its abilities in that respect when it gets a chance to ask questions and debate the issue later.

APPLICANT PRESENTATION

Alex White, Owner of Subject Property, 2030 7th Avenue South #204

Mr. White informed Council that he bought the Zenith Grocery store property for its beautiful view and the historic Masonic buildings nearby and the fact that the zoning was neighborhood commercial. He noted that he wants to redevelop the property to its best possible use. He stated that he has focused on mixed use, which is required by the zoning, and has worked on the project for two and half years, and has enjoyed working with City staff. He advised that he has met with the neighbors and has been above board with them on his plans.

CITY STAFF RESPONSE

Community Development Director Kilgore noted that there has been a lot of comments and statements made that are not really germane to the SEPA appeal. She reminded Council that the intent and purpose of SEPA is to assess and mitigate significant adverse environmental impacts. Not assess and mitigate any and all impacts, but significant and adverse. That is the standard by which Council must work. She also reminded Council that upholding the Appellants request will not stop the project, it will only require the production of an EIS. She noted that the Appellants have had a consistent theme in testimony and in documents which mainly include traffic, surface water and parking. She stated that there already exists a traffic study, using established transportation monitoring procedures, stating that there will be 9 pm peak trips, which is

approximately one every seven minutes. She advised that at this point the project has been essentially cut in half, from 11 units to 6, and that would equate to 1 car every ten minutes. She noted that RCW states that if a county, city or town's comprehensive plans, sub-area plans and development regulations adequately address the projects probable specific adverse environmental impacts, the city or town shall not impose additional mitigation, under this Chapter, during review. She stated that Des Moines has adopted the King County Surface Water Manual, and through the existing mitigation agreement, have required that the sub-standard systems adjacent to this site also be upgraded. She noted in addition, the City has a process in place to address the steep slope issue, one that will be conducted by Council as part of the review of this project. In regards to the parking issue, she noted that this is addressed by the City's development regulations. Currently the concept plans as drawn, meet Code. Moreover, she advised should the units be reduced from 8 to 6, that would provide an additional four parking spaces for the project. She also advised that height, bulk, etc. are all addressed in the Design Review Process, which has not started because we are still determining the use of property, not the design of the project. She stated that the City has plans, rules, standards and regulations in place that adequately address 95% of the issues. She noted the size of the Masonic Retirement Home project which only required about an 8 page EIS. She felt to require an EIS on a project of this size, that the project would have to have some very unique environmental issues and she stated that it does not. She noted that should the Council require an EIS to be done, then they will be required as judges to tell staff in detail what issues staff 1) failed to study, and 2) failed to reasonably mitigate. In conclusion, she stated that staff has adequately studied, and have reasonably mitigated impacts such as traffic, parking and surface water. She noted that the City has processes in place in rules and regulations to address the appellant's other issues. As SEPA Official, Ms. Kilgore stated that she believes the Appellant's have not adequately made their case, as their claims lack sufficient detail for challenge, and in no case show that the size and scope of the project will create probable significant adverse environmental impacts which would require an EIS. It is her opinion as SEPA Official that this project has been adequately reviewed under the State's Environmental Policy Act and requested that her procedural determination be given substantial weight as afforded in DMMC 16.04, and that the appeal be denied.

APPELLANT REBUTALL

Ms. Harn stated that this project concept does not meet the Des Moines Municipal Code under any circumstances. In particular is the fact that the applicant is including the street right-of-way in determining the lot size, which effects numerous aspects of the project. She also pointed out that the Masonic Retirement Home has no significant slope, and no access to the Home has any public street with less than 2 lanes, so she did not feel it is fair to compare the 2 projects impacts. She concluded by stating that the appellant's have not had an opportunity to provide the Council with expert testimony, or questioning or cross examination, to provide the Council with sufficient detail to support their arguments. She stated that they have received very little notice that this hearing would take place and it has been made clear that their ability to present information to the Council is limited.

APPELLANT'S ATTORNEY

Nancy Rogers, Cairncross & Hemplemann, Attorney for Zenith Neighborhood

Ms. Rogers spoke on behalf of the Zenith Community. She requested that Council grant the appeal and require that an EIS be prepared, or at the very least, impose additional mitigating conditions. She reminded Council that the purpose of the SEPA is to review detailed information regarding the impacts of the project. She feels this is a difficult project on which to conduct detailed SEPA review because all that is before Council is a very general unclassified

use permit. There is no binding site plan, no determination of where the storm water ponds are going to be, no engineering has been done, therefore, there is no way for the City or the Appellants to know at this time, that the Codes that will be relied on are actually going to be sufficient to reduce the impacts of the project to a non-significant level. She noted that the Appellants are asking that additional review be conducted in an EIS on a more detailed level, and that is what SEPA requires. She stated that to date, that detail is simply not available. She noted that this does not serve the citizens of Des Moines, especially the Zenith Community, well to have a SEPA process which simply relies on "don't worry about it, we will get to that later, you will be taken care of, our Codes are good" attitude. She cited some of the following issues of concern:

- Application is for 8 units & staff is recommending 6 units, with about 1,600 to 2,000 square feet of office space.
- Even with 6 units, projects height, width and scale impose significant impacts
- Area is surrounded by RS 15,000 zoning.
- The area west of Marine View Drive is cut-off from the area, such as the Masonic Home, due to the location of Marine View Drive and steep slopes in the area. It is a unique portion of the neighborhood and it should not be compared to the area east of Marine View Drive.
- The height, bulk and scale of the project, especially abutting Marine View Drive, should be further mitigated if a more detailed review is not going to be done, which should have been done with an EIS.

She suggested the following for mitigation conditions:

- Increasing the set-backs along the northern property line.
- Condition the project to allow citizen review and input during the Administrative Design Review and future construction document review.
- Lowering the dimension of the buildings across the site, beyond what is currently required in the mitigation agreement.
- Impose additional parking at least 3 per living unit, and 1 per every 250' of office space.
- Soil excavation has not been studied enough, impact to neighborhood on dump trucks hauling dirt away.
- Storm water needs a more detailed review.

In conclusion, Ms. Rogers stated that there is insufficient information in front of the City staff in order to issue a SEPA determination. She felt staff should have required a more detailed review, and detailed plans, in order to determine what the true impacts of this project will be. She asked that Council grant the SEPA appeal and require additional SEPA review, or impose additional conditions as noted earlier.

APPLICANT'S ATTORNEY

Howard Jensen, Attorney for Applicant, of Hillis, Clark, Martin & Petersen

Mr. Jensen stated that there is a fundamental misunderstanding of both SEPA and the project, which seems to be driving a lot of the comments and testimony. He advised that preparing detailed building type project and engineering plans, is not the way SEPA works. SEPA works on an Environmental Check List and you prepare and submit information about your project. Staff will ask questions on what the project involves and makes determinations on what the significant impacts of the project are going to be based on that preliminary review. At that point mitigation can be imposed for impacts that are significant. An EIS would be required only if you have not mitigated the adverse impacts. He felt that City staff has done a tremendous job of

explaining what the impacts of this project are. He noted that the land use step has not been addressed yet, and a lot of the comments made tonight need to be reserved for later. Concerns about proper interpretation of City codes is not a SEPA issue and are not proper for consideration. He noted that the focus should be on what are the impacts, have they been looked at, and to the extent you have an impact, has it been mitigated. He noted that the staff's SEPA review was based on a project that had nine units. The traffic study that was prepared by the applicant was actually based on a plan with 11 units. The traffic engineer determined that the traffic generated by this bigger size plan, would not have an impact on the neighborhood based on the number of trips that would be generated. He noted that the SEPA review was based on 9 units, and now staff is recommending no more than 6 units. He noted that traffic will be negligible compared to what would have already been determined by a licensed and experienced traffic engineer to not present a problem. He advised that a SEPA review is not an opportunity to create a wish list of project changes or conditions. Conditions imposed through SEPA have to relate to an impact that has not been evaluated or already mitigated, or that will be mitigated by an existing Code provision. He stated that Council must rely on the City codes, those codes cannot be changed through the SEPA process. At this point, Mr. Jensen distributed a copy of the Traffic Report that was prepared for the project to be entered into the record.

Mr. Jensen noted that the Appellants have raised some due process concerns about the opportunity to present information or experts. He advised that their appeal was filed over a year ago and during that time no expert reports such as a traffic, engineering or surface water studies have been submitted. He felt the Appellants had ample time to file supplemental information with the City.

Mr. Jensen advised that should the project proceed surface water management will be vastly improved over the existing conditions on the site. He noted that all of this is regulated by City Code. He noted that the project site has been partially developed, that it is not a native environmental area or wild life habitat that needs to be protected. In respect to height, bulk and scale he advised that the City's Code addresses these issues in many ways. He noted that the height limit is 35 feet which is only 5 feet higher than is allowed in the residential zones. In respect to bulk and scale, there are greater setbacks that will be required, which includes a 10 foot landscaped setback area.

Mr. Jensen stated that SEPA impacts, must be impacts that are probable and significant. He felt that a lot of what the Appellants have brought up is based on conjecture, not evidence and SEPA states that you cannot consider that. He noted that this zone actually allows out-right certain uses that could be way worse for the neighborhood than what is being proposed, such as a Church which would really create traffic problems. He concluded by noting that his client has tried to balance the needs of the neighborhood by trying to bring a residential component to this site, when current zoning would allow a more commercial development. He also noted that there is a mitigation point with respect to the business component, which will not allow a retail type business and his client has agreed that the business will be office oriented. He requested Council keep an open mind and remember City standards that will govern Council's decision.

City Attorney Marousek noted that the Traffic Study offered by Mr. Jensen is officially entered into the record.

APPELLANT'S ATTORNEY REBUTTAL

Ms. Rogers stated it is her opinion, that the SEPA process does allow the City to go beyond its Code. She noted that common sense evidence is not speculation. She stated that it is common sense that if there was an 11 unit project, plus office use, that you will generate more than 9 p.m. trips. In regards to Mr. Jensen's assertion that the Appellants have had over a year to submit expert reports, she noted that for most of that year they had no idea who was going to hear the SEPA appeal, as it was entirely unclear over who to give any reports or studies to. It also appeared that the City wanted everything to occur during the SEPA appeal hearing. She stated there never was any invitation or opportunity to provide supplemental information to the City staff.

In regards to the steep slope issue, she felt this should be discussed during the development exception portion of the hearing. She noted that while the existing site is partially disturbed, it is not entirely disturbed. She felt that the level of excavation that is necessary for this project is substantial.

In regards to the height issue, she agreed with the 35' limit on the project and 30' height on surrounding homes. However, she pointed that most of the neighbors do not have homes that tall, therefore the project will have an impact with its height.

Ms. Rogers commented that even with a 2,000 square foot business that is not customer service oriented business, there still will be visitors from time to time and there will be traffic generated by this use.

In conclusion, Ms. Rogers remarked that the point of SEPA is to reduce or eliminate significant environmental impacts, and that it is important to actually conduct a detailed review. She felt that this project has not had that review and that the Environmental Checklist is very sketchy. She advised that she has not seen any information on storm water. She stated that the SEPA review is wholly inadequate under the law and asked Council grant the appeal and require additional SEPA review.

MOTION was made by Councilmember Thomasson, seconded by Councilmember Sheckler, to continue the Hearing until September 11, 2003.

Mayor Pro Tem Benjamin noted that Councilmember Petersen who is not present, has announced that he wishes to be part of these proceedings. He felt it is important to have all Councilmembers present and he would prefer the hearing be moved to a later date.

Councilmember Thomasson noted that he can foresee that deliberations on this will take several more meetings and that Councilmember Petersen can review the video tapes to get up to speed and still be able to participate.

VOTE ON MOTION: Motion passed 4 to 1 with Mayor Pro Tem Benjamin opposed.

Mayor Steenrod reminded those in the audience who spoke this evening, that Council will have the opportunity next week to ask questions. She encouraged everyone to be at the September 11th meeting.

It was noted that Development Services Manager Ruth will provide a written response, next week, to Mr. Bogovich's question as to what is the City Council's interpretation of congestion and density.

OLD BUSINESS

Draft Resolution No. 03-109 [ASSIGNED RESOLUTION NO. 961] Amend Council Rules 5, 9, 10 & 20 - 2nd Reading

MOTION was made by Councilmember Thomasson, seconded by Councilmember Sheckler, to adopt Draft Resolution No. 03-109, amending the Des Moines City Council Rules of Procedure by amending Council Rule 5 to limit the power of the Mayor Pro Tempore when acting as Mayor in preparing a meeting agenda or presiding over a meeting; amending Council Rule 9 to change the way a regular meeting agenda is prepared and used at a Council meeting; amending Council Rule 10 to permit a meeting to be designated as a study session only when there are no more than four items of business; and amending Council Rule 20 relating to control of the order of business.

Mayor Steenrod pointed out that shortly after becoming a Councilmember, she took issue with the way that some of Council rules seemed very arbitrary and capricious and simply not designed to effect the rapid flow or smooth transition of business. She noted that several Councilmembers pointed out that the rules were structured to protect the minority. Those members urged not to change the rules. She questioned why, now that there is a new majority, the rules must be changed.

Councilmember Sheckler spoke in favor of the rule changes because the Rules were set up so that everyone would be protected. However, he noted that last year and this year, on many occasions the Rules were abused to such an extent that the minority pretty much had no say in what was going on. He feels that if a privilege is being abused, then it should be taken away and that is what this Rule change will do.

Mayor Pro Tem Benjamin stated that the Councilmembers are privileged to serve the citizens of the community and the City of Des Moines. He noted that he follows the rules and continues to support the Rules as they have been laid out for many years. He felt that the Rules have served the community well. He felt the changes are a control mechanism by the new majority.

Councilmember Thomasson noted that the debate held last year was about whether any Rule should be suspendable at any time. This issue is to fine tune the Rules to make sure items don't disappear from the Agenda. He called for the question.

VOTE ON QUESTION: Motion passed 4 to 2 with Mayor Steenrod and Mayor Pro Tem Benjamin opposed.

VOTE ON MAIN MOTION: Motion passed 4 to 2 with Mayor Steenrod and Mayor Pro Tem Benjamin opposed.

NEXT MEETING DATE

Next regular meeting is September 11, 2003.

ADJOURNMENT

At 10:25 p.m. **MOTION** was made by Mayor Steenrod, seconded by Councilmember Sheckler to adjourn. Motion passed 5 to 1 with Mayor Pro Tem Benjamin opposed.

Respectfully submitted,

Denis Staab
City Clerk

ACTION ITEMS FROM 9/4/03 MEETING

- Development Services Manager Ruth to provide a written response, next week, to Mr. Bogovich's question as to what is the City Council's interpretation of congestion and density.

