

PRELIMINARY
REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

September 11, 2003

The regular meeting of the Des Moines City Council was called to order at 7:35 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 Boy Scout Troop #955.

MOMENT OF SILENCE

In memory of the 2nd anniversary of the 9-11 attacks, Mayor Steenrod called for a moment of silence.

ROLL CALL - Present: Mayor Maggie Steenrod, Mayor Pro Tem Richard Benjamin, Councilmembers Gary Petersen, Bob Sheckler, Dan Sherman, Scott Thomasson and Susan White. Also present were City Manager Tony Piasecki, Assistant City Manager Corbitt Loch, City Attorney Linda Marousek, Public Works Director Tim Heydon, Community Development Director Judith Kilgore, Development Services Manager Robert Ruth, and City Clerk Denis Staab.

COMMENTS FROM THE PUBLIC

Marc Gottshall, 22003 10th Avenue South

Mr. Gottshall spoke in opposition to a Declaration of Non-significance that has been issued for installation of a wireless transmitter to be installed at the Field House. He advised that two doctors from the University of Washington have issued statements on the harmful exposure to microwave radiation from these types of towers. He cited it to be especially harmful to children and seniors. He advised Council that this is not an item that has been addressed by the FCC. He noted that to file an appeal it appeared to be only on environmental issues, not health issues. He pleaded with Council to place the topic of microwave radiation exposure from these types of towers on an upcoming agenda which will allow him to present evidence of the health hazards.

Jack Kniskern, 22602 13th Avenue South

Mr. Kniskern announced that September 27th is "Mayor's Day of Concern for The Hungry". He noted that food items will be collected at local supermarkets for distribution to local food banks. He encouraged everyone to participate.

As International Chairman of Des Moines Rotary, Mr. Kniskern announced that Rotary will be exploring the idea of having an international Sister City. He noted that citizen input into the idea is being explored and he will bring back a full report for Council to look at around January, to possibly consider joining in on this effort.

Denny Burnham, 26826 15th Avenue South

Mr. Burnham questioned what the Council's position is on levity and general laughter during meetings. He stated that he has noted numerous times that Councilmembers laugh at one another, there is general bantering back and forth and laughing with the audience. He noted that at the last meeting he was verbally accosted by Councilmember Sheckler for a reason that he does not understand. He found it boorish and immature. He voiced concern that other citizens

who have something to say may receive the same treatment. He felt that if a Councilmember asked something, they should be prepared for an answer.

Jeanette Burrage, 905 South 209th Street

Ms. Burrage addressed Council on the harmful effects of cellular towers. She voiced concern for a proposed tower that will be installed so near Des Moines Elementary School and the unknown health problems this may pose for the children. She requested that Council research and gather information on the potential dangers. She voiced the opinion that health hazards are an item that can be addressed in filing an appeal on the City's Declaration of Non-significance regarding the proposed cell tower.

Mayor Pro Tem Benjamin commented that he has received comments from concerned citizens in the last couple of days concerning dangers of cell towers. He requested this issue be placed on the next Council agenda.

City Attorney Marousek advised that there is a Determination of Non-significance currently issued for the project and the appeal should be made to the Des Moines Hearing Examiner. She further noted that the project will require an Conditional Use Permit Hearing before the Hearing Examiner and that all the issues can be addressed during this process.

Councilmember Sherman stated that he would be interested in seeing a report on the issues of cell towers from a non-biased expert, perhaps from King County Health Department. He advised that staff has e-mailed to Councilmembers a web site concerning issues involved with cell base facilities

Assistant City Manager Loch advised that he has just begun to research the health issues connected to cell towers and noted that it is a very complicated scientific issue. He requested that Mr. Gottshall supply him with the University of Washington doctors reports that he referenced.

Councilmember Thomasson noted that any appeal of the Determination of Non-Significance lays with the Hearing Examiner. He advised that the City Council has already granted a lease to use City land for the cell tower and felt the Council should not get involved in the process at this point.

Mayor Pro Tem Benjamin requested Council direction to the Assistant City Manager to continue to research concerns of health risks to children, or anyone else.

City Manager Piasecki advised that Councilmember Sherman had already requested that staff research these health issues of concern and he assured Council that staff will continue studying the issue and provide Council with a full report.

Response to Mr. Burnham

Mayor Steenrod stated that under Council's Rules of Procedure, it is not appropriate for Council to respond to questions that are posed under comments from the public.

BOARD & COMMITTEE REPORTS

Sister City

Councilmember Sheckler stated that he likes the idea of having a sister city and would like to explore the idea with the City Manager.

City Manager Piasecki advised that Rotary will be doing a thorough study of the issue and will provide detailed information in the future for Council discussion.

Mt. Rainier Pool

Mayor Pro Tem Benjamin announced that negotiations between Highline School District and King County are going well on the agreement regarding transfer of the lease the County has with the School District for the land the Pool sits on. He also advised that the cities of Des Moines Normandy Park and SeaTac, along with the Northwest Center and King Aquatics are in the process of putting together draft agreements for everyone's consideration that would allow the pool to stay open. Written proposals for operating the pool from the Northwest Center and King Aquatics are expected next Tuesday, September 16th.

Appearance of Fairness Challenge

Mayor Pro Tem Benjamin made the following statement for the record: "This evening we are having a continued Public Hearing on the Unclassified Use Permit and SEPA Appeal regards to the Zenith neighborhood and the project with Mr. Alex White and Company. I think it is important that I raise a challenge at this point. Last week I read about the "Stripper-Gate Scandal" in Seattle. It seems some City Councilmembers received campaign contributions from a strip club owner. This in itself is legal and within ethical guidelines. The problem arose when the same Councilmembers participated in and voted on a quasi-judicial matter before the City Council affecting the strip club's property. They violated the Appearance of Fairness Doctrine. Many of you may have read about them having to attend a special school on ethical government. It seems we had a similar, but not so colorful, event happening here in our City and it is happening right here before your very eyes tonight. Upon reading some PDC reports last evening, I discovered that several neighbors in the Zenith neighborhood, Mr. & Mrs. Smith and Mr. and Mrs. Pina who live in the Zenith neighborhood, have made campaign contributions to one of our City Councilmembers. That same Councilmember will be acting in a quasi-judicial capacity when we take action on this matter tonight. Whether or not that Councilmember believes in abiding by the Appearance of Fairness Doctrine or not, remains to be seen. In any event, I am hereby challenging Mr. Sheckler's qualifications to sit in a quasi-judicial capacity upon the Zenith Viewpoint development issue. He obviously has a conflict of interest. I request that the full text of this statement be included in the official minutes of the meeting."

Human Services Advisory Board

Councilmember White reported that the Board is reviewing applications to provide recommendations to the Council, for funding for human services for the 2004 budget process.

She noted that there are upcoming vacancies on the Board and directed interested citizens to contact Senior Services Supervisor Padden at the Activity Center

Senior Services Advisory Committee

Councilmember White noted that the divider wall at the Activity Center should be installed soon. She stated that the parking lot has been paved and the seniors are grateful. She advised that the Committee is currently working on an out-reach program.

She concluded by stating that this Committee is also accepting applications and to contact Senior Services Supervisor Padden for information and applications.

Legal Aspects of Challenge to Appearance of Fairness Issue

Councilmember Sherman requested that the City Attorney address the legal aspects of the issue raised by Mayor Pro Tem Benjamin.

City Attorney Marousek noted that she has researched this issue and can supply the material to Councilmembers if they wish. She noted that the Appearance of Fairness Statute specifically states that acceptance of campaign contributions is not a violation of the Appearance of Fairness.

Mayor Pro Tem Benjamin referenced Council's Rules of Procedure, page 7 which states: "Anyone seeking to disqualify a Councilmember from participating in a decision on the basis of the violation of Appearance of Fairness Doctrine, must raise the challenge as soon as the basis for disqualification is made know, or reasonably should have been made known prior to the issuance of the decision; upon failure to do so, the Doctrine may not be relied upon to invalidate the decision. The party seeking to disqualify the Councilmember shall state with specificity the basis for disqualification; for example: demonstrated bias or prejudice for or against a party to the proceedings, a monetary interest, let me repeat that, a monetary interest in outcome of the proceedings, prejudgment of the issue prior to hearing the facts on . . . shall direct the City Attorney to interview the Councilmember and render an opinion as to the likelihood that an Appearance of Fairness violation would be sustained in superior court. Should such challenge be made in the course of a quasi-judicial hearing, the Presiding Officer shall call a recess to permit the City Attorney to make such interview and render such opinion."

Mayor Steenrod stated that she would like to continue with the Board and Committee reports to allow the City Attorney to get her material together.

PRESIDING OFFICER'S REPORT

Economic Development

Mayor Steenrod advised that the first Thursday in October Study Session will be devoted to economic conditions for our area prior to engaging in budget discussions. She advised there will be a speaker from the Economic Development Council.

Sister City Status

Mayor Steenrod announced that she attended a meeting about 2 weeks ago, where an organization from Ireland called Enterprise Ireland, spoke. She advised that they provide seed funds for businesses. She noted that they do have sister city status with some of the cities in Ireland and they are very interested in establishing more.

Press Release - Secure Community Transition Facility

Mayor Steenrod noted that the Department of Social and Health Services has announced that it has selected the Spokane Street property for the secure community transition facility.

ADMINISTRATION REPORTS

Police Chief Interviews

City Manager Piasecki reported that there are six finalist candidates for the position of Chief of Police. The candidates will be interviewed on September 17th and 18th. He advised that a "Meet the Candidates Open House" will be held at the Activity Center from 5 to 6:30 p.m. on Wednesday, September 17th. He announced the names of the six candidates and the positions they currently hold. They are:

Roger Baker	Alex Perez
John O'Leary	Annette Spicuzza
Alan Pepin	Kevin Tucker

He noted that the interview process will be extensive, with four interview panels. He encouraged everyone to attend the Open House and if anyone has any comments on the candidates he will be glad to hear them.

Truck Accident

City Manager Piasecki advised that last Tuesday, Kent-Des Moines Road was closed most of the day due to an accident. He stated that a fully loaded unattended dump truck parked on the east side of the road starting rolling on its own, crossed the road from north to south, and went down a 30 foot ravine taking out a power pole. Power was restored and the road was re-opened, and no one was injured.

Activity Center

City Manager Piasecki reported that the parking lot at the Activity Center has been paved and will be stripped next week.

He noted that wall is on order and hopefully will be installed within the next two weeks.

Steven J. Underwood Memorial Park

City Manager Piasecki reported that the parking lot at the Park has been paved and is fully stripped.

7-Eleven Store Shooting

Upon inquiry by Councilmember Petersen regarding a shooting at the Store, City Manager Piasecki acknowledged that there was a shooting early Sunday morning at the Store on Kent-Des Moines Road between 24th Avenue South and Pacific Highway South. He advised that the investigation is still on going and therefore it is not appropriate for him to comment on the incident.

CONSENT CALENDAR was read by City Clerk Staab.

1. 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 #90674 through #91030 & electronic fund transfers in the total amount of \$858,176.47

Payroll fund transfers in the total amount of \$698,147.56

2. Motion is that the City Manager be authorized to sign the revised Interlocal Agreement with King County and the Cities of Normandy Park, SeaTac, and Burien for the Des Moines Memorial Drive Advisory Committee. The revised Interlocal Agreement shall be substantially in the form as submitted.
3. Motion is that the City Manager's authority to approve change orders on the construction contract for the Field House Site Improvement Project be increased from 10% to 30%.
4. Motion is to approve the minutes of August 14, 2003.

Councilmember Sherman announced, in the interest of full disclosure, that he is on the Board of Directors of the Des Moines Historical Society. He noted that consent item #2 will allow the Historical Society to have a member serve on the Advisory Committee, which is a non-paying position, and he noted that he receives no compensation for serving on the Board of Directors of the Historical Society. He stated that he has consulted with the City Attorney and may participate in this decision, and will do so.

MOTION was made by Councilmember White, seconded by Councilmember Sheckler and passed unanimously, to approve the Consent Calendar as read.

At 8:25 p.m. Mayor Steenrod called for a 5 minute break.

CONTINUED PUBLIC HEARING

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

Mayor Steenrod introduced the subject and read the rules for conducting the public hearing from Council's Rules of Procedure.

Recuse - Councilmember Sherman announced that he is recusing himself from participation on this issue and left the Council Chambers.

Public Works Director Heydon advised that the vacation is for a portion of South 208th Street between 11th and 12th Avenues South and showed the location on a view foil. He noted that due to the steep terrain as the land falls off to the east from Des Moines Memorial Drive down to 12th Avenue South, it is not expected that this right-of-way will ever be used for City transportation purposes. Also there is no indication that this has ever been used for transportation. However, he pointed out that this subject property is an important utility corridor for Highline Water District with three existing water mains of 10", 12" and 20", and it is critical to keep these utility easements. He noted that Qwest may also need a utility easement. In conclusion, he recommends that the vacation be granted, while retaining the necessary utility easements.

PUBLIC SPEAKERS

Eric Stahlfeld, 145 SW 155th, #101, Burien, Attorney Representing the Applicant, Scott Sanborn
Mr. Stahlfeld felt that the issue is how to deal with Qwest. He advised that his client has tried for several weeks to get them to tell him where their utility line is. He noted that Mr. Sanborn is quite familiar with the property and feels that Qwest does not have any utility lines there. He stated that Mr. Sanborn is very willing to allow utility easements, the problem is Qwest has not responded appropriately for requests to locate the easement. He noted that the draft ordinance states that the City will give an easement to the utilities, but he felt it would be more appropriate for Mr. Sanborn to grant the easements. He distributed a draft ordinance that he prepared that has language that within 90 days, Mr. Sanborn must give easements to the Water District and to

Qwest that are mutually agreeable. He noted that Section 3, paragraph 4 contains language that if the Water District and Qwest locate the facilities, and Mr. Sanborn fails to satisfy conditions as set forth above, then the ordinance is of no effect. Mr. Stahlfeld noted that this will accomplish two things; one Mr. Sanborn gets the vacation and two, if Qwest identifies where its lines are, then Mr. Sanborn will give an easement to Qwest.

Mr. Stahlfeld noted that a question was raised about the legal description. He noted that if it is a question of what area is to be vacated, he noted that there are two property owners, but he only represents Mr. Sanborn, the property owner on the north. That was what the original request was for, only the north half. He noted that his client has been at this process for close to 9 months and does not feel it would be fair to ask his client to wait any significant additional time to determine a new legal description if the south half is to be vacated also.

As there were no additional speakers, Mayor Steenrod inquired if there any statements that need rebuttal.

City Attorney Marousek informed Council that State Statue specially gives the City the right to retain the power to grant easements. Her advice to Council is that the City retain the power and the hammer to grant the easements to the utilities, rather than Mr. Stahlfeld and his client.

Mayor Steenrod requested whether Administration wishes to introduce any further material as to the subjects raised by the speaker.

City Manager Piasecki replied that staff has provided all the information to Council and recommends that Council adopt the ordinance as the City Attorney drafted it.

Mayor Steenrod inquired whether Council had questions of the speaker or Administration.

Councilmember Thomasson expressed concern that the City be very explicit about what it is vacating so that title companies and land owners really know what the Council did. He noticed that the information in Council's packets is between 11th and 12th, and on Qwest maps they refer to a 12th Street South, which is what the applicant referred to as 11th. The Assessor's map talks about 12th Avenue South, which is the alley, and the Qwest maps refer to a 12th Place South. Should Council approve this vacation, he wants a very explicit legal description based on the original plat and the original plat names, perhaps using the common name usage. He questioned whether what is identified in Council's packets as 11th, really is 11th.

Public Works Director Heydon agreed that the original plat names are different. He advised that he had hoped that the attorney for the requestor of this vacation would provide that information, but he has not.

Councilmember Thomasson noted that the request is for just the north half of South 208th, which creates a very confusing right-of-way situation. He noted that the map that Qwest provided, show that conduits come to the north/south street and then turn south. So if the vacation was actually to the east line of the north/south right-of-way, Qwest would not be involved, only Highline Water District.

Public Works Director Heydon concurred with Councilmember Thomasson's interpretation of the Qwest map.

Upon questioning by Councilmember Thomasson, Public Works Director Heydon stated that he has not gotten any indication from Highline Water District exactly where their 3 pipes are located.

Upon questioning by Councilmember Thomasson as to what is the applicant's intention is if the 30 foot vacation is granted and added on to the 25 foot lot that Mr. Sanborn already owns, Mr. Stahlfeld stated that he plans to build, but is not sure that he has any specific plans at this time.

Councilmember Thomasson noted that the requested Street Vacation is within the City of Des Moines, but it will attach to property that is in the City of SeaTac. He questioned, if the applicant builds on the property, how would the two cities interact.

Community Development Director Kilgore advised it would depend upon the address. This would depend upon where the front yard is located.

City Attorney Marousek advised that this issue has been discussed. She informed Council that, if the land is developed, it would be a decision of the municipalities. She noted that the practice of the cities is to consult, but the decision would be of the municipality with the appropriate jurisdiction.

Upon questioning by Councilmember Thomasson, Community Development Director noted that for SeaTac to annex the area in question, it would have to go through a formal annexation process.

Councilmember Thomasson stated that cities can exchange right-of-way without going through the BRB. He felt it might be better to do this before the right-of-way is vacated and then let SeaTac do the vacation.

As there were no further questions, Mayor Steenrod closed the public hearing.

MOTION was made by Councilmember White, seconded by Councilmember Sheckler, to suspend Council Rule 26(b) in order to enact Draft Ordinance No. 03-172 on first reading.

Councilmember Thomasson proposed that the draft ordinance be passed on to a second reading so the easement issues, the legal description and other things of that nature, can be resolved.

MOTION WITHDRAWN: The maker and the seconder of the motion withdrew the motion.

MOTION was made by Councilmember Thomasson, seconded by Mayor Pro Tem Benjamin, to pass Draft Ordinance No. 03-172 on to a second reading on a date to be selected by staff based on getting the information on water main and telecommunication locations. Motion passed unanimously.

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

CONTINUED PUBLIC HEARING

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

Mayor Steenrod advised that Councilmember White is recusing herself. She introduced the subject and noted the public hearing is at the point where staff will address any misstatements of fact. She requested that City Attorney Marousek render an opinion on the potential Appearance of Fairness violation issue raised earlier in the meeting, prior to staff's presentation.

City Attorney Marousek advised that she talked with Councilmember Sheckler during the first recess. She noted that there are three sources of law on whether campaign contributions disqualify a Councilmember from participating in a quasi-judicial hearing that is subject to the Appearance of Fairness. They are:

- RCW 42.36.050 - Campaign Contributions: A candidate for public office who complies with all provisions of applicable public disclosure and ethic laws shall not be limited from accepting campaign contributions to finance a campaign, including outstanding debts. Nor shall it be a violation of the Appearance of Fairness Doctrine to accept such campaign contributions.

She noted that the statute is embodied in the Des Moines Municipal Code, Council Rule 15(d)(2), which says exactly the thing.

- A candidate for the City Council who complies with all provisions of applicable public disclosure and ethics laws shall not be limited under the Appearance of Fairness Doctrine from accepting campaign contributions to finance the campaign, including outstanding debts.

City Attorney Marousek stated that she asked councilmember Sheckler whether he is in compliance with his Public Disclosure Commission obligations with campaign finance reporting, and since Mayor Pro Tem Benjamin has announced that these contributions were listed on the PDC web site, it would appear that he is, and Mr. Sheckler's answer to her was that, yes, he is in compliance with his reporting requirements. She advised that her legal opinion is that a Superior Court challenge, based on the Appearance of Fairness in this situation, would not be sustained.

Mayor Steenrod stated, based on the City Attorney's opinion, that she does not see an Appearance of Fairness issue.

Upon questioning, Councilmember Sheckler reported that it is not uncommon during an election year to send out notices requesting monetary contributions, or contributions in kind. He stated that he sent notices out in July long before this issue came before Council. He reported that the total contributions from these individuals amounted to \$125.00. He commented that under no circumstances can people influence his vote through any amount of financial contributions. He concluded by stating that his ability to act as a prudent Councilmember in judging this particular issue has not been influenced in any way, shape, or form by a contribution from people in the Zenith area.

Mayor Steenrod reminded everyone that Council is still dealing with the SEPA Appeal, and those individuals who have signed up to speak regarding the Unclassified Use Permit, will eventually have an opportunity to do so. She asked staff to address any misstatements of fact.

Misstatements of Fact

Community Development Director Kilgore proceeded to review the following statements made by individuals and the appropriate facts regarding each statement:

Statement: The neighborhood did not know in a timely manner that this subject was going before the City Council

FACT: On December 9, 2002 the City Attorney sent certified letters to both councils informing them of the process. To date, the appellants never made any requests to any city office on the procedures to introduce additional studies or provide additional information.

Statement: SEPA allows you to go beyond your codes when there is a potential probable adverse environmental impact.

FACT: Since the adoption of the Growth Management Act and the Local Project Review Act, that statement is not only wrong, it is dangerous. The State Environmental Policy Act Handbook dated September 1998 states on pg 89 the following:

"If the project is found to be consistent with the type of land use, the density of residential development in urban growth areas, and the availability and adequacy of public facilities, the GMA county or city cannot reexamine alternatives to or hear appeals on these decisions....Once these planning decisions have been made, they cannot be reconsidered during project review. They can only be reconsidered in an amendment to the comprehensive plan and/or development regulations."

Statement: Comments on how this project will cause a probable adverse environmental impact to the community.

FACT: Although these statements have been made, there has been no proof presented to support any of these statements.

Statement: Introduction of issues not related to SEPA such as, beach access, existing claims against the city, decisions made in the past on other projects in this area, etc. And questions and comments on the site specific project.

FACT: This is a SEPA hearing on an Unclassified Use Permit, not a site specific project.

FACT: We are here to ascertain whether a mixed use project at this location will cause a probable significant adverse environmental impact.

FACT: All the environmental documents before you are based on that, not the site specific project.

FACT: The drawings are simply a volumetric study of space, not a design proposal.

BUBBLE AND A BOX. The bubble is the use, the analysis of the impact at it's most intense, it's highest macro level. The site specifics and the conditions associated with the use....the box. We are still at the bubble stage. Once the Council makes it's decision on the UUP- then a site specific proposal can be developed. If the Council has concerns on these DESIGN issues such as #of units, setbacks, grading, parking, etc. they can detail these conditions in the UUP process. If the Council is concerned with whether there may be additional environmental impacts not addressed in the existing checklist, the Council may deny the current SEPA appeal contingent upon preparation of a SEPA checklist at the time of project submittal.

Statement: This project should require an EIS.

FACT: First, if an EIS is required the resulting document would STILL just be on the USE, not the details of the project. We have shown at it's most intense, this project will not have a probable, adverse, environmental impact. Second, you have three independent, decisions to make: SEPA appeal, development exception and the UUP. Each of these decisions have different criteria. SEPA is the most narrow. To reach the level of substantive authority under SEPA is tough. Page 89 of the SEPA guidebook states it well:

"The primary role of SEPA in GMA project review is to focus on those environmental impacts that have not been addressed by the GMA's, county's or city's development regulations and/or comprehensive plan, or other local, state and federal laws and regulations. SEPA substantive authority should only be used when a project's environmental impacts cannot be adequately addressed by existing laws."

In conclusion, Community Development Director Kilgore reminded everyone that you do not use the SEPA process to make decisions or to require conditions that are better addressed in the development exception and UUP process.

City Attorney Marousek questioned Councilmember Petersen as to whether he has reviewed the video tape of the September 4, 2003 meeting on this matter, and whether he has reviewed the packet material. Councilmember Petersen replied that yes he has and that he is adequately prepared to sit as a member of the body deciding this matter. It was noted that Mr. Petersen was in attendance at the first hearing, August 14, 2003.

City Attorney Marousek addressed a challenge made to the process used by the City of Des Moines on hearing this SEPA Appeal. She stated that the public hearing process for a quasi-judicial matter in the City of Des Moines is covered by Council Rule 21. This process has been followed step by step. She noted that case law specifically does not require a judicial type model for this type of hearing. She cited a case where the court specially replied upon the local rules and said "We do not decide here whether cross examination is required under SEPA". She noted that the courts have not required a judicial model of a hearing and we can use our local rules under case law.

Development Services Manager Ruth continued with public statements by subject matter and facts regarding those statements as follows:

PARKING

- Statements:*
- a) Only 1 car garages are provided, not 2 per unit.
 - b) There is not enough parking.
 - c) 3 parking spaces per dwelling unit and 1 space for every 250 square feet of office space is/should be required for this project.
- FACTS:*
- a) The applicant has provided and the code requires 2 parking stalls per dwelling unit.
 - b) The applicant has provided and the code requires 1 parking space for each 800 square foot office space that does generate customer trips.
 - c) City parking code is restrictive by comparison to surrounding cities. Many cities require 1.5 parking spaces per unit. The cities PR zone parking requirement has been updated to reflect a lower parking ratio in certain applications.
 - d) The 8 unit proposal by the applicant provides 20 parking stalls.

- e) 2 parking spaces are provided within South 239th Street
- f) 2-4 extra parking spaces are existing and available for public use immediately adjacent to the site on Marine View Drive.
- g) As recommended by staff, the proposal would have 6 units and require a total of 14 parking stalls.
- h) Council could require retaining some of the 4 parking stalls that would be eliminated with the 2 units that are eliminated from the project which would give the project even more parking for guests etc.
- i) The commercial and residential components of mixed use do not have overlapping peak parking use. City code allows a 20% reduction for joint parking if there is no overlap in peak parking use. The applicant has not requested and staff has not allowed this to be factored into the parking calculations for this proposal. The reality, however, is that residential uses would have at least 2 additional parking spaces to use in the evening and on weekends.

FACT SUMMARY: Proposed Parking Exceeds City Code Requirements

DRAINAGE

- Statements:*
- a) There is an existing drainage problem at Mr. and Mrs. Workman's property and they are concerned about it getting worse.
 - b) Sheets of water run down Ms. Robertson's driveway.
 - c) Sheets of water come off the site now and there is concern that development will make that worse.
 - d) City codes and standards related to drainage may not be adequate to mitigate project impacts and drainage problems.

- FACTS:
- a) The drainage problems that currently exist are not created by the proposed project which has not yet been built.
 - b) The site as it currently is developed (1950's era) has unmanaged runoff issues. The store is not tight lined and any existing impervious gravel roads and buildings simply runoff in an uncontrolled manner downhill to neighboring properties.
 - c) City codes for drainage control are based on best available science for this region. These codes are an extensive series of requirements formed by some of the most respected drainage engineers and scientists in the area.
 - d) Compliance with city drainage standards will not only fix the substandard state of the existing site by replacing it with a well managed drainage system that is design and sized properly, it should also substantially reduce impacts that are already experienced by neighbors by intercepting existing drainage before it sheet flows onto the neighbors yards.

FACT SUMMARY: Proposed Drainage Exceeds City Code Requirements

TRAFFIC

- Statements:*
- a) Traffic is a major concern
 - b) The neighborhood can't handle "that much traffic".
 - c) That mathematically based on earlier designs and other information submitted by the applicant, peak hour traffic projections would be closer to or above 50 trips, not 9.

d) The traffic study is deficient because it lacks common sense because the project “just has to create more traffic” than what the traffic study says.

FACTS:

- a) A traffic analysis was performed by Transportation Planning and Engineering, Inc—an independent consultant experienced in preparing traffic studies.
- b) The analysis was base on a worst case 11 unit mixed use build-out scenario.
- c) The analysis revealed only 9 pm peak hour trips would be generated using the Institute of Traffic Engineers methodology for trip generation for that worst case scenario (a scenario that is roughly twice the size of what is proposed and recommended by staff).
- d) Projections of 50 trips or greater were based on data submitted by the applicant which had no restrictions or mitigation on the offices space use. The applicant has since agreed not to use this space for high trip generating retail type uses.
- e) Staff has recommended a reduction in project density to 6 units; this would further reduce the 9 trips identified in the study.

FACT SUMMARY: Less than 9 pm peak hour trips is not a significant impact created by the proposal.

SOUTH 239TH STREET

- Statements:*
- a) The road is too steep to use
 - b) You can’t get to the road because of the sewer pump station.
 - c) The road will block access to 2 neighboring properties to the south .
 - d) Grading impacts will be enormous to build the road.

FACTS:

- a) The road grade will meet city standards of 14% or less.
- b) The existing sewer pump station is located in the ROW for 7th Ave. South and does not encumber use of South 239th Street.
- c) The 2 properties on the south side of South 239th Street are currently served by a gravel road. The proposal will be required to provide these same properties with a paved access to their properties, not eliminate their access.
- d) The amount of grading needed to build the new road has been distorted. While the average site grade from Marine View Drive to 7th Avenue South is 22%, the road is not required nor will it be connected to Marine View Drive. There is a severe drop off on the west side of Marine View Drive that carries into the site (approximately a 15-20 foot drop). The new road is proposed to be set at that lower level. This means that the new road will not be graded down from 22% to 14%. Rather, it will be graded down slightly (1-3% estimated) from the lower grade elevation level.

FACT SUMMARY: The applicant proposes to improve access to all properties abutting S. 239th Street and meet city standards.

APPEAL PROCESS

- Statements:*
- a) There was very little notice for this proposal.
 - b) The neighborhood was surprised or taken off guard by the Council meeting.

FACTS:

- c) Due process rights are being violated by the structure of the meeting.
- d) The neighborhood had no involvement or influence on the proposal.
- a) This application was submitted on June 14, 2001.
- b) The application and submittal materials were revised before being deemed complete on February 27, 2002.
- c) The applicant notified neighbors and held an open house on March 13, 2002.
- d) The SEPA decision was mailed to the immediate Zenith community on June 20, 2002.
- e) The City Attorney on December 9, 2002 mailed a letter to Ms. Rogers (appellant counsel) explaining the city process for this application.
- f) Ms. Rogers confirmed receipt of this letter in a December 11, 2002 letter to the City Attorney.
- g) There were 2 public meetings before the Planning Agency on May 12, 2003 and June 2, 2003 in which the Zenith community participated.
- h) This Council meeting is the 3rd meeting on this matter. The Zenith community was provided notice of public hearing on July 30, 2003.
- i) The City Council has graciously afforded the Zenith neighborhood to speak freely without limitation to topics confined to the appeal of record. This amount of latitude given to the appellants would normally be narrowed considerably by a Hearing Examiner. .

FACT SUMMARY: The process is predictable, fair and consistent with requirements for a consolidated hearing and the Des Moines City Council Rules.

At this point, Mayor Steenrod inquired of Councilmembers as to whether they had questions of any of the speakers that have been heard in the last three meetings.

Councilmember Thomasson requested that staff prepare written documentation of the presentation they just made regarding statements and facts to be distributed to Councilmembers.

Councilmember Thomasson questioned when the original application had been applied for. Development Services Manager Ruth replied that the original application was received June 14, 2001, but the Determination of Completeness was not made until February 27, 2002.

Councilmember Thomasson noted that the original application calls for five residential units. Development Services Manager Ruth replied that the original application did have a five unit design, however, there have been a number of alterations that have been submitted since that time. Upon further questioning, Development Services Manager Ruth advised that the original master application has not been amended, but the plans and supporting documentation have.

Councilmember Thomasson requested a copy of any letter that would have been submitted by the applicant to support the revisions.

Councilmember Sherman commented on the 25% slope on the property. He noted that there does not appear to be a report on soils or whether the property is in a earthquake prone area, or zone. Community Development Director Kilgore advised that staff has that information available. Councilmember Sherman stated he would like that information and what difficulties that might present in terms of construction.

Development Services Manager Ruth displayed a view foil showing 7th Avenue South, noting that two private homes property lines do spill over into the right-of-way. Upon further questioning by Council, City Attorney Marousek advised that this area is subject to a pending claim and stated it would not be appropriate to address this issue.

In response to questioning by Councilmember Sherman, Development Services Manager Ruth noted that the assumptions in the traffic study are that the roads that are in place are assessable and usable.

Councilmember Sherman commented that the current structure takes up approximately 1/3 of the proposed site. He noted that the project will essentially cover the whole site and he expressed concern about paving an entire steep slope and felt this is a significant change in the environmental use of the property.

Councilmember Petersen, commenting on parking, noted that he has concerns over the business aspect as he feels any office will generate some kind of visitors that will require additional parking. He noted that there are only 4 parallel parking spaces on Marine View Drive. Development Services Manager Ruth advised that the parking that will be serving the commercial portion of the building is in an underground parking garage beneath the building. He noted that vehicles will access the underground parking by using 7th Avenue South, to S. 239th street and there enter the parking area.

Councilmember Sheckler noted that the Applicant's Attorney, Nancy Rogers, brought up the issue of dump trucks and questioned whether these impacts are addressed in SEPA. Development Services Manager Ruth responded that there has not been a grading plan for the project and that will be handled in an engineering level of detail.

Councilmember Sheckler stated that he is use to having detailed plans to review. He advised that he understands that this is a SEPA issue, but it is difficult to address the issues not knowing exactly what the project will be.

Councilmember Thomasson questioned whether the SEPA checklist and the Mitigation Agreement are just dealing with the issues of the Unclassified Use Permit and/or the sensitive slope exemptions, and/or the building permit. Community Development Director Kilgore noted that the Environmental Checklist at this point is dealing with the use permit. If there are additional conditions that Council places on the UUP that in Council's opinion requires the creation of a new checklist, based on whatever the conditions and decisions that are made later on, then that can be included.

Upon questioning by Council, Community Development Director Kilgore advised that if Council approves the UUP, the next step will be the building permit. She stated that she would look again at the existing SEPA document and if she felt as SEPA Official that all the items were addressed adequately, it would move forward. However, if there were significant changes that goes beyond what are currently in the Environmental Checklist, then she would require a new checklist. She further noted that any decision that she makes can always be appealed.

Councilmember Thomasson commented that if he has to sit as a judge on the SEPA for a building, he feels he needs a lot more data relative to the building permit, which Council does not have. He stated he feels troubled having to make judgment on an application that has not yet

been made to the City. Community Development Director Kilgore stated that until staff knows what are the issues and the conditions of the UUP, no building permit can be applied for.

Community Development Director Kilgore reminded Council that because they are sitting as judge they can place whatever conditions on SEPA that may be required. She noted Council can deny the appeal contingent upon whatever the Council so directs.

10:23 p.m. **MOTION** was made by Mayor Pro Tem Benjamin, seconded by Councilmember Thomasson and passed unanimously, to extend the meeting until 10:45 p.m.

Community Development Director Kilgore advised that SEPA standards say that if the City has other laws, regulations, standards, etc. then Council cannot submit them under the project review.

Upon questioning by Council, Community Development Director Kilgore advised that there are strict limits on the office use and that the developer shall record a covenant that restricts and limits the use of any designated commercial space on the subject property to office use only. Also the office shall be limited to those uses that do not provide direct person to person services to customers on site.

Mayor Steenrod expressed a problem with ruling on the SEPA appeal without knowing what the actual building plans are. She questioned whether Council could review both at the same time as they are interrelated.

City Attorney Marousek replied that Council must finish the SEPA review before you can decide on the building of the project.

Mayor Steenrod commented that the environmental impacts on the site totally depends upon the configuration of the project. Community Development Director Kilgore replied that these issues can be handled during the UUP process. However, she reminded Council that they cannot get to the UUP until the SEPA appeal issue is settled.

Community Development Director Kilgore informed Council that she would like to have some time to talk about this issue with Municipal Research and the City Attorney in more detail to see if there is a way that we can bridge dilemma in such a way that gives Council the comfort needed to address the SEPA and yet gives her, as the SEPA Official, enough guidance to implement effective SEPA.

Councilmember Sherman noted that it seems to him that Council must assume that the most intense use of the property that is compatible with the zoning in determining SEPA, and then has to place restrictions. He questioned whether the opponents have an opportunity to speak to any new information Council may receive from staff. Community Development Kilgore reminded Council that they have the right to ask questions of any of the Appellants that have spoken.

Councilmember Thomasson noted that he has several questions regarding the Mitigation Agreement.

Community Development Director Kilgore requested that Councilmembers submit written questions to staff. The questions and responses will then be submitted to the Council as a whole to be entered into the record at the next meeting regarding this SEPA Appeal.

In regards to Mitigation #3 dealing with S 239th Street Construction, Councilmember Thomasson advised that he will need to hear from the Public Works Director on why an alley cross section is being used instead of a street cross section; why there is only curb and gutter only on one side. He stated he needs to know more about the issue of 14% as a mitigation as opposed to building a street that follows the natural grade and what are the impacts of doing it one way or another. He also said he needs to know whether retention/detention is proposed for the project, or whether it will be direct conveyance to Puget Sound. Also, whether the detention/retention, if there is any, is separate for the private property versus public right-of-way. He requested to know whether a down stream conveyance plan was done to see if there is any down stream conveyance issues. Regarding the stairs from Marine View Drive to S 239th, he questioned whether the stairs in items 8 and 11 will be ADA or are they ramps, which need to meet wheel chair codes. He questioned whether the Public Works Director wants to be included on condition 11 seeing that all of these improvements are in the right-of-way. He questioned why number 14 is there and what proposed protrusions would be allowed in the right-of-way if they have to meet 10 foot landscaping buffer on all three sides. He questioned why the SEPA Checklist is for 12,000 square feet of building when the lot is 9,700 square feet and the Code only allows one foot per square foot of property.

Mayor Pro Tem Benjamin stated this a frustrating issue as Council is only getting half the picture. He noted that the neighborhood is a very desirable place to live, however he has a problem in that as good as the project looks on paper, it just does not fit in aesthetically. He questioned where is the common sense in this issue to protect the neighborhood.

City Attorney Marousek noted that while Mayor Pro Tem Benjamin's issues are legitimate, they are appropriate for the Unclassified Use Permit process and fit the criteria that Council will need to apply when they get to that part of the process.

Councilmember Sheckler noted that the only issue before Council right now is the SEPA. There are 2 other issues after that which is a Development Exception Appeal and the UUP. Issues such as incompatibility should be addressed under the second two issues. He advised that there are a lot of questions that keep popping up that are not addressed in SEPA, but will be addressed later and agreed that the SEPA Appeal is a very difficult issue. He noted that denying the SEPA Appeal does not give a green light for the project and that granting the SEPA Appeal does not kill the project.

Councilmembers were urged to submit written questions for staff to respond to.

MOTION was made by Councilmember Sherman, seconded by Councilmember Thomasson and passed unanimously, to continue the Public Hearing at the October 9, 2003, Council meeting.

NEW BUSINESS

Mayor Steenrod noted that the 2 items of new business that Council did not get to will automatically be placed on the September 25th Agenda.

NEXT MEETING DATE

Mayor Steenrod announced that the next regular meeting will be September 25, 2003.

ADJOURNMENT

At 10:44 p.m. **MOTION** was made by Councilmember Thomasson, seconded by Councilmember Sherman and passed unanimously, to adjourn.

Respectfully submitted,

Denis Staab
City Clerk