

REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

September 13, 2001

The regular meeting of the Des Moines City Council was called to order at 7:35 p.m. by Mayor Thomasson in the Council Chambers, 21630 11th Avenue South, Suite B.

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

ROLL CALL - Present: Mayor Scott Thomasson, Mayor Pro Tem Bob Sheckler, Councilmembers Terry Brazil, Dave Kaplan, Dan Sherman, Gary Towe (arrived at 7:38 p.m.) and Don Wasson. Also present were City Manager Bob Olander, Assistant City Manager Tony Piasecki, City Attorney Gary McLean, Community Development Director Judith Kilgore, Public Works Director Tim Heydon, Senior Planner Robert Ruth, Land Use Planner Celeste Carlson, Harbormaster Joe Dusenbury and City Clerk Denis Staab.

CORRESPONDENCE

Statewide Day of Prayer and Remembrance, and Moment of Silence

Mayor Thomasson announced that Governor Locke has issued an invitation to all communities to hold their own gatherings and unite the State of Washington in tribute to America by simultaneously activating sirens at 12:29 p.m. for one-minute in honor of fallen emergency response personnel, followed at 12:30 p.m. by one-minute of silence and concluding at 12:31 p.m. with the ringing of bells on Friday, September 14, 2001.

Des Moines Community Gathering

It was also announced that a "National Day of Remembrance" City gathering will be held at Des Moines Beach Park on Friday, September 14th from 6:30-7:30 p.m.

COMMENTS FROM THE PUBLIC

Robert Pond, 23116 30th Avenue South

Mr. Pond thanked Council and staff for the removal of the junk vehicles that had been a problem in his neighborhood. However, he drew Council's attention to other continuing problems as follows:

- Overgrown shrubbery, bushes behind the vacant Midway Furniture Store: Vagrants living there, creating trash and crime
- Kings Arms Motel: Should be required to only allow photo ID patronage, feels they are adding to the problem of a criminal element in the area.
- Person living in vehicle in front of his house, running illegal cab service.

Mr. Pond also requested Council ban all fireworks in the City, stop illegal home occupations that he feels are being run out of an apartment complex near his home which include a moving company and vehicle repair. In conclusion, he presented some photographs for Council's review.

BOARD & COMMITTEE REPORTS

Recent National Events

Mayor Thomasson asked Council if they wished to make any comments concerning the recent events of terrorism in our Country.

Councilmember Kaplan commented that this is one of those things that people feel could never happen here. He felt the lesson to be learned is we need to be more vigilant and look out for each other and our neighbors.

Mayor Pro Tem Sheckler stated that after serving in Viet Nam he thought he had seen it all, but this is unimaginable. He further noted that this was an action of a handful of radical Muslims and cautioned everyone against blaming the group as a whole

Councilmember Brazil noted that all has been said on this terrible event, that can be said.

Councilmember Sherman remarked that this is truly frightening, but trusts that the government is working to take action.

Mayor Thomasson reiterated the day of prayer in Washington State and encouraged all to participate in special events that are planned.

ADMINISTRATION REPORTS

Washington State

City Manager Olander informed Council that the Governor's office advised that there were no threats in Washington State during the recent terrorist events.

Des Moines Emergency Response

City Manager Olander advised that the City's emergency response center stood ready, but was not activated.

Mr. Pond - Comments From the Public

City Manager Olander reported that the Police Department will continue to work with Mr. Pond and will investigate installing no-trespass signs around the wooded area behind the old Midway Furniture store. He also noted that Community Development is working on investigating any zoning code violations.

CONSENT CALENDAR was read by City Clerk Staab.

1. Motion is to approve the minutes of July 12, 2001 and August 9, 2001.
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 42.24.080, 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 check #77644 through #77880 in the total amount of \$789,721.13

Payroll fund transfers in the total amount of \$287,664.54

3. Motion is to approve surplusing of one 1995 Ford Crown Victoria, Vin #2FALP71W9SX159405 and one 1996 Ford Crown Victoria, Vin #2FALP71W2TX146593 and authorize disposing of by auction, sale or transfer to other departments or agencies.
4. Draft Resolution No. 01-124 **[ASSIGNED RESOLUTION NO. 913]** - Title: A Resolution of the City Council of the City of Des Moines, Washington, authorizing, ratifying and confirming an interfund loan from the General Fund to the Miscellaneous Grants Fund for Fiscal Year 2000.

MOTION is to approve Draft Resolution No. 01-124.

~~5. Draft Resolution No. 01-170 - Title: A Resolution of the City Council of the City of Des Moines, Washington, granting permission to the Greater Des Moines Chamber of Commerce to use marina property and the Des Moines Beach Park (near to the water) for pony rides, a petting zoo, arts & crafts sale, and sale of prepared food and non-alcoholic beverages.~~

~~MOTION is to approve Draft Resolution No. 01-170.~~ [ED NOTE: This item was removed at the request of Councilmember Sheckler.]

6. Motion is to purchase 3,862 square feet of land and improvements from Envirotech Systems Corporation in the amount of \$107,172 plus closing costs, and to authorize the City Manager to sign the purchase and sale agreement substantially in the form as submitted.

~~7. Motion is to award the contract for construction of the South 208th Street Traffic Calming Project to in the amount of \$ plus a 10% contingency and to authorize the City Manager to sign said contract substantially in the form as submitted.~~ [ED NOTE: This item was removed by staff as not needing Council approval.]

8. Draft Resolution No. 01-173 **[ASSIGNED RESOLUTION NO. 914]** - Title: A Resolution of the City Council of the City of Des Moines, Washington, declaring the City Council's support for planning and development of a Community Center, directing Administration to perform work necessary to accomplish such project, and authorizing the efforts of the Des Moines Legacy Foundation to engage in fund-raising efforts supporting development of a Community Center.

MOTION is to approve Draft Resolution No. 01-173.

MOTION was made by Councilmember Brazil, seconded by Councilmember Kaplan, to approve the Consent Calendar as read.

Mayor Pro Tem Sheckler requested that Consent Item #5 be removed.

VOTE ON MOTION: Motion passed unanimously.

Consent Item #5 - Draft Resolution 01-170 **[ASSIGNED RESOLUTION NO. 915]** Nibble of Des Moines

Mayor Pro Tem Sheckler stated that while in the past he has supported the Chamber's community events, he felt having this resolution before Council just two days before the planned Nibble Event, is too short of time. There are issues such as security and impacts on the Marina, among other items, and this is not enough notice to have questions answered.

MOTION was made by Mayor Pro Tem Sheckler, seconded by Mayor Thomasson, to deny the request for a lack of a timely presentation. [ED NOTE: Motion was withdrawn later in the discussion.]

Councilmember Brazil noted that he feels assured that there will be no real conflicts with normal Marina customer parking.

Harbormaster Dusenbury responded to Council's question on impacts, by stating that this event is expected to have a low impact on Marina operations. He noted that although fishing has been good, there is plenty of parking in the South-end lot.

Upon questioning by Council, City Manager Olander advised that the certificate of insurance has been received by the City and staff has confirmed with the Health Department that adequate measures will be in place for the planned petting zoo.

Councilmember Sherman remarked that he agrees the Council needs to have more timely notice, but since there will be no major impacts on the Marina, Council should give approval.

Councilmember Towe stated that he is a supporter and participant in Chamber events, but agrees with Mayor Pro Tem Sheckler that Council needs a more formal briefing on these types of events before permission should be granted.

Councilmember Brazil felt denying the right to hold the event is rather condemning. He felt what is really needed is a schedule for events to be held, including planning of Waterland, Nibble, etc. He noted a lot of planning has already gone into this event to arrange for various vendors.

Mayor Thomasson suggested in the future that these types of requests need to be in front of Council at least two months in advance.

City Attorney McLean advised Council that the motion should be properly made in the affirmative.

MOTION WITHDRAWN by the maker and seconder.

MOTION was made by Mayor Pro Tem Sheckler, seconded by Councilmember Towe, to approve Draft Resolution No. 01-170.

Mayor Thomasson noted the title of the resolution was read into the record during the reading of the Consent Calendar by the City Clerk.

MOTION was made by Mayor Pro Tem Sheckler, seconded by Councilmember Kaplan, to amend the Draft Resolution to add a new Section 7 to read: The City Council respectfully requests that the Chamber submit written requests for necessary City authorizations to conduct future events such as the Nibble, within a reasonable time frame prior to such event. Absent extenuating circumstances, the City Council suggests that written requests for future authorizations should be submitted to the City Manager at least 90 days prior to the proposed event.

Councilmember Sherman remarked that although he agrees with the proposed amendment, he did not feel that it actually belongs in this resolution. He felt there may be other organizations besides the Chamber that this should apply to. He would rather see a separate resolution, or formal direction to Administration on this.

City Attorney McLean advised that if Council wishes he can prepare something to formally incorporate this into Administrative practices to bring back to Council at a later meeting.

Councilmember Towe stated he is comfortable with the amendment to clarify direction to the Chamber that in the future Council expects earlier notification of requests for these types of events. He would also be in favor of having this direction in a separate resolution that conveys this expectation in general.

VOTE ON AMENDMENT: Motion passed 5 to 2 with Councilmembers Sherman and Wasson voting NO.

VOTE ON MAIN MOTION: Motion passed 6 to 1 with Mayor Pro Tem Sheckler voting NO.

PUBLIC HEARING

Draft Ordinance No. 01-172 **[ASSIGNED ORDINANCE NO. 1288]** Adult Entertainment Uses Code Revisions - 1st Reading

Mayor Thomasson introduced the subject.

City Attorney McLean advised that Council imposed a moratorium on this issue as it was determined necessary to revise and update the City's regulations pertaining to zoning and licensing of adult businesses and entertainment activities, to bring them into line with current law and avoid litigation, and thus better serve the citizens of Des Moines and the public health, safety and welfare. He noted that the draft ordinance is crafted to consolidate previously dispersed code provisions related to adult entertainment uses; clarify terms to suit current court decisions and social considerations; respect the constitutional rights of patrons and persons wishing to operate, work for or visit adult oriented uses; and repeal obsolete or troublesome code provisions.

After distributing a 2nd draft of the proposed ordinance, City Attorney McLean reviewed the changes noting that Administration recommends that the Council consider a modified setback policy (from 1000 foot setback) in a particular area of the City where adult uses are already permitted under existing City codes - that is in the Pacific Ridge area, generally between Kent-Des Moines Road and South 216th. He noted Council carefully considered permitting such uses in this area in the many months of public meetings devoted to adopting the new zoning for redevelopment in the Pacific Ridge Area. He further advised the proposal would only permit adult uses along Pacific highway South, in buildings with exclusive access via the Highway, and no less than 500 feet from any other adult entertainment or adult retail use. He noted that under Section 1(1) "adult motion picture theater" should be added. He referenced the two maps included in Council's packets which denotes "Residential Uses with 1000' Buffer" and "Illustration of 500' Setback From Existing Adult Use". He advised that this ordinance will be codified as a new chapter 18.99.

In response to questioning by Councilmember Sherman as to why the licensing issues have been removed from the 2nd draft of the ordinance, City Attorney McLean noted that there are two items in our current Code that are problematic based on current case law throughout the Country as follows:

1. The chapter in DMMC that requires a Community Impact Statement. He noted this chapter has not been used for approximately eight years and prior Police Chief, City Manager and City Attorney had felt this Code was almost impossible to enforce and therefore were not using it. It was their opinions that this chapter should be repealed.

Based on current case law, City Attorney McLean advised Council that he agrees that this chapter should be repealed.

2. Council needs to make a policy issue on the licensing requirements that the City currently has in place related to Adult Entertain Facilities. Our current Code imposes upon adult entertainers and the managers of adult entertainment facilities, certain requirements that could be problematic based on a number of recent court cases.

City Attorney McLean advised Council that they can take one of two directions. Have legal staff bring back a draft ordinance that repeals the licensing scheme for adult entertainers, or two, rewrite the chapter so that there is a temporary license that can be issued once an appropriate application form is submitted, subject to revocation if the follow-up investigation shows that the person is criminal or committed fraud in their application, etc. He requested direction from Council on this item.

City Attorney McLean read the rules for conducting the Public Hearing.

Mayor Thomasson declared the Public Hearing open and called for any speakers three times. As there were no comments from the public, Mayor Thomasson declared the Public Hearing closed.

Councilmember Brazil noted that the current moratorium was established a year ago because so many cities were losing Court cases of adult use zoning, and this allowed staff to conduct an in-depth study of the issues. He felt satisfied that the draft ordinance covers the issues appropriately.

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

MOTION was made by Councilmember Brazil, seconded by Mayor Pro Tem Sheckler, to approve Draft Ordinance No. 01-172.

Mayor Thomasson read the title of the draft ordinance into the record.

Councilmember Sherman voiced support for the draft ordinance as it avoids clumping of these types of businesses and believes it to be legally defensible.

Councilmember Kaplan commented that perhaps these types of uses would be better suited south of Kent-Des Moines Road. He had some concern that these business may not be suitable to the positive economic development Council envisions for the Pacific Ridge Area.

Staff advised that there really is no land area available south of Kent-Des Moines Road for these types of business activities.

Mayor Pro Tem Sheckler felt the only other area where there might be land would be along Marine View Drive and he strongly felt this use is much more appropriate in the Pacific Ridge Area, fronting on Pacific Highway South.

Councilmember Towe voiced support for the draft ordinance noting that he feels it reflects more current practices and that staff has carefully reviewed and studied case law in the preparation of this legislation.

City Attorney McLean thanked the majority of Councilmembers who studied the over 500 pages of legislative record, history and materials he accumulated for preparation of this legislation.

VOTE ON MOTION: Motion passed unanimously.

Temporary Licensing Procedures

Council directed Administration to draft legislation to institute a temporary licensing procedure for adult uses.

9:16 p.m. Mayor Thomasson declared a 10 minute break.

PUBLIC HEARING

Preliminary Plat - "Mediterranean Heights" - Single Family, 13 Lots

Mayor Thomasson introduced the subject.

Land Use Planner Carlson advised Council that the applicant John Ayar is requesting approval of a preliminary subdivision allowing a 3.56 acre property to be divided into 12 single-family residential lots. With the use of a view foil she noted the location which is currently addressed as 1211 South 272nd Street, and reviewed the surrounding zoning. She called Council's attention to a significant wetland to the east side of the property. She noted that one single family residence is currently on the site, which will be removed.

Land Use Planner Carlson informed Council that the proposed subdivision meets all of the City's Street Standards. The applicant plans a cul-de-sac as a 50' right-of-way to serve lots within the subdivision. In addition to constructing internal street improvements there will be half street improvements along S. 272nd Street and Marine View Drive which will include approximately 18 feet of pavement, curb, gutter, sidewalk and a planting strip. She further noted that it has been determined that a 5' widened shoulder for bicycle travel would not significantly effect the hillside, and is consistent with the Council Public Safety and Transportation Committee's recommendation for a bicycle route in this area. She continued to summarize the proposal noting that it also includes a storm water detention tract, a wetland buffer tract and a passive park.

In conclusion, Land Planner Carlson reported that the Planning Agency met on this matter and recommends the following conditions of approval:

- Developer be required to plant vegetation along the internal street (Developer Agreed)
- Establishment of a Homeowner's Association to be responsible for maintenance of the landscaping, driving surface of the detention tract, and maintenance, repair and replacement of the retaining wall.

City Attorney McLean read the rules for conducting the public hearing.

Mayor Thomasson declared the Public Hearing open and called for opponents and proponents who wished to address Council on this matter three times each. As there were no opponents or proponents, Mayor Thomasson declared the Public Hearing closed.

Upon questioning by Council, Senior Planner Ruth reported that similar requirements for a home owners organization have been used in the past.

City Attorney McLean advised that if Council chooses to make a home owners association part of the approval for the final project, then legally it is binding, such as a covenant that runs with the land.

Upon questioning by Mayor Thomasson as to why all property must maintain the retaining wall, versus the properties that actually have the wall bordering their property, Senior Planner Ruth advised that staff believes the wall is an improvement that provides for the overall development of the property. Senior Planner Ruth did note that those lots will have a daylight basement effect and are the prime view sites, and will maximum their square footage, while minimizing the actual height of the wall.

Councilmember Sherman expressed concern regarding the egress of the cul-de-sac being so offset from 13th Avenue South. He felt there is some sight line issues and uncertainty as to who would actually yield. He requested staff research this safety issue further.

Mayor Thomasson requested further information as follows:

- Clarify which aspects are intended to be common responsibilities versus individual responsibilities.
- Half street improvements on Marine View Drive and South 272nd - Concern over awkward corner. Proposal calls for curb, gutter and sidewalk almost on the same location as the existing street. May need to widen turn and requested design requirements contained in the Highway Safety Manual be reviewed and this may require granting of property out of proposed lots 8 and 9.
- South 272nd has a lot of frontage along the property, and he sees no catch basin or storm drainage pipe in that area as near as he can determine.
- Tract D appears to be encroaching into the wetland area. Why not require that the utility access be located such that the driveway on the adjacent property does not have to go into the wetland.
- Would like some discussion about how big Tract E really needs to be in order to build and maintain the detention tank.
- Would like discussion on how tall the wall really needs to be along Marine View Drive and how far back it should be set from the right-of-way line.

Upon questioning by Councilmember Sherman, Public Works Director Heydon responded that the bicycle lane will be five feet wide and striped.

Mayor Thomasson announced that further discussion on this item will be continued to the September 27th Council meeting.

PUBLIC HEARING

Preliminary Plat - "Cedar Brook" - PUD Town Homes, 30 Units
Mayor Thomasson introduced the subject.

Senior Planner Ruth informed Council that the Applicant proposes to subdivide 4.27 acres into 30 lots for subsequent attached townhouse, duplex or single family residential development. A planned unit development overlay zone is also proposed under this application. With the use of a view foil he showed the location of the property at the northwest corner of the intersection of 20th Avenue South and South 240th, and briefed Council on the surrounding zoning.

Senior Planner Ruth proceeded to review the packet material prepared for Council noting the following:

- A significant wetland of 3.9 acres is located on the site.
- In regard to park space, application has chose to pay an in lieu fee and staff recommends this be made a condition of approval.
- Applicant proposes to create an internal access alley system with a 20' right-of-way containing an 18' wide paved surface to serve units within the development.
- No direct access to individual units will be allowed from South 240th or 20th Avenue South. However, services such as fire, postal and garbage can be arranged that they are obtained from the main surface streets.
- A storm drainage system will be constructed that flows into an on-site detention vault.

In conclusion, Senior Planner Ruth noted that the Planning Agency has reviewed the proposal and recommends approval subject to the following comments:

- Concern regarding traffic safety and street alignment on South 240th Street and 20th Avenue South. It was noted that the road section in front of Highline College changes and is different than what is illustrated on the proposed plat and requested staff make appropriate recommendations to Council.
- Recommended that the number of lots to be allowed to be reduced should be by 20% (6 lots) without the need for re-approval of the plat.

Mayor Thomasson declared the public hearing open and called for proponents. There were no proponents wishing to speak.

OPPONENTS

Rob Back, 23840 16th Lane South

Mr. Back spoke in opposition to the proposal. He noted that his neighborhood, west of the site, is one of the few suburban zones left and that live stock and horses are allowed. He stated that a rezone request failed in 1983 and a lesser zone was approved in 1988. He noted that there are underground springs on the site and he expressed concern that the development would disrupt the aqua fur. He concluded by stating the proposal would dramatically change the appearance of the neighborhood and requested Council deny the request.

REBUTTAL

Unidentified Speaker

He noted that the zoning on this property has been in place for a number of years. He also noted that there is several hundred feet of separation, at the narrowest point, due to wetland constraints of 3.9 acres of wetland and wetland buffers. He advised that the southwest portion of this site is substantially blocked off from the Suburban zone by the existing day care facility. He felt the proposal is a good transition from the College, high density uses to the north, and to the single family uses to the far west and to the south.

Richard Schroeder, P. O. Box 1324, Issaquah, Owner

Mr. Schroeder informed Council that he has worked with staff for approximately four years in developing this proposal and this is the first time he has had any neighbor come forward in opposition to the proposal. He noted that he does own the property and has not asked for any change in zoning. He presented some architectural drawings of what the buildings would look like, including elevations and left them with the City Clerk for future distribution.

City Attorney requested all citizens who had previously spoken on this issue take an oath to affirm, under penalty of perjury, that the testimony provided this evening was the truth. All speakers so affirmed.

Mayor Thomasson closed the public hearing.

City Attorney McLean announced that this hearing and the previous hearing, are quasi judicial proceedings and the Appearance of Fairness Rules applies. He questioned whether any Councilmember felt this applied. There was none.

Mayor Thomasson inquired as to whether staff had any corrections or additional staff information.

Community Development Director Kilgore informed Council that this property was down-zoned in 1998 from multi-family to RA 3600 when Council updated the City's Comprehensive Plan. She noted that she has been with the City over 8 years and this property has never been zoned Suburban Estates during that time.

Senior Planner Ruth further noted that in June of 1987 a contract rezone for this property was approved for development of a series of duplexes and triplexes. That zone was RM 2400 with limiting conditions, sunsetting after five years if no substantial development had begun. There was no development, although the developer did participate in some off-street improvements in a LID with Highline Community College. He advised that he does not believe this property was ever zoned Suburban Estates.

Senior Planner Ruth noted there are some springs and water that leach out from the property, but this is only in the lower two-thirds of the property and that is why the 100' buffer zone is important, and staff feels, is adequate to address any concerns over the wetland area. He further advised that staff has reviewed about 10 different proposals for the development of this property and this is the best proposal staff has seen.

10:27 p.m. - **MOTION** was made by Councilmember Kaplan and seconded, to continue the meeting until 10:40 p.m. Motion passed 5 to 2 with Councilmember Towe and Mayor Pro Tem Sheckler voting NO.

Council requested staff research the following issues and concerns:

- Ensure that there is adequate water pressure to service this property and the proposed development.
- What exactly is Council being asked to approve, especially within the PUD.
- Need to know argument for accepting alley as City, versus public street.
- Why City should take over storm water vault versus private responsibility.

- 20th Avenue South does not line up at South 240th, review why and how this might be corrected.
- Concern over the sewer and the impact on the wetland. What alternatives might be available. There are no comments from staff regarding mitigating any impacts that might be created.
- Sewer easement width - Code requires 20' easement and this proposal shows a 10 foot easement.

Mayor Thomasson noted Council can submit any further questions to staff for review.

Mayor Thomasson announced that discussion on this issue will continue at the Council meeting of October 4, 2001.

NEXT MEETING DATE

Regular meeting September 27, 2001

ADJOURNMENT

The meeting was adjourned at 10:38 p.m.

Respectfully submitted,

Denis Staab
City Clerk