

AGENDA
REGULAR MEETING DES MOINES CITY COUNCIL
October 9, 2003 - 7:30 p.m.

CALL TO ORDER - Mayor Steenrod

PLEDGE OF ALLEGIANCE

ROLL CALL

CORRESPONDENCE

COMMENTS FROM THE PUBLIC: At this time you are invited to comment on items that you wish to bring to Council's attention. Please sign in prior to the meeting and limit your comments to three minutes or less.

BOARD & COMMITTEE REPORTS

PRESIDING OFFICER'S REPORT

ADMINISTRATION REPORTS

CONSENT CALENDAR*

1. Motion is to approve the minutes of September 25, 2003.
2. Findings: Vouchers audited and certified by the auditing officer as required by RCW 42.24.080, and those expense reimbursement claims certified as required by RCW 42.24.090, have been recorded on a listing which has been made available to the City Council.

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

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

Payroll fund transfers in the total amount of \$

3. Draft Resolution No. 03-001 - Title: A Resolution of the City Council of the City of Des Moines, Washington, fixing a time for a public hearing to consider vacation of a portion of public right-of-way in the City of Des Moines.

Motion is to approve Draft Resolution No. 03-001 setting a public hearing for November 13, 2003, to consider vacation of the southern half of public right-of-way known as 19th Avenue South (previously identified as 20th Street), between South 222nd Street and South 223rd Street, in the City of Des Moines.

4. Draft Resolution No. 03-270 - Title: A Resolution of the City Council of the City of Des Moines, Washington, regarding the Steven J. Underwood Memorial Park Field Lighting Project, and authorizing application for funding assistance for a Youth Athletic Facilities Program project to the Interagency Committee for Outdoor Recreation, as provided in chapter 79A.25 RCW.

Motion is to approve Draft Resolution No. 03-270 authorizing application to the Interagency Committee for Outdoor Recreation.

5. Motion is to increase the City Manager's authority to approve change orders for the floating breakwater anchoring system from 10 to 21%, and that additional Marina Depreciation and Improvement funds in the amount of \$17,800 be allocated to the Redondo Improvement Project.

*NOTE: Items on the Consent Calendar are either routine or have been previously discussed.
Any item may be removed by a Councilmember.

CONTINUED PUBLIC HEARING

SEPA Appeal & Unclassified Use Permit Zenith Viewpointe

SUMMARY: The purpose of this item is to provide additional information requested by the City Council at the September 11, 2003 meeting. Council will use this and other information entered into the record to direct administration to prepare findings of fact and a draft resolution supporting Council action on the SEPA appeal and review of the underlying applications at a later date.

PUBLIC HEARING

Dept. of Justice Grant Funds for Domestic Violence Program

SUMMARY: The City is eligible to receive funds from the Local Law Enforcement Block Grant. The funding is needed to continue the Domestic Violence Court Advocate position and would ensure the position through December 2004. Staff is seeking Council approval to accept the Grant for 2004 in the amount of \$19,183.

OLD BUSINESS

1. Draft Resolution No. 03-275 - Final Acceptance of Highline Water District 2002 Comprehensive Water System Plan

SUMMARY: As Highline Water District's 2002 Comprehensive Water System Plan has been officially accepted by the District's Commissioners, the Plan is now being present to Council for official Council action. The City Council previously reviewed the Draft Plan at the September 5, 2002 Council meeting.

NEW BUSINESS

1. Cingular Lease

SUMMARY: The purpose of this item is to allow Council discussion regarding the Cingular Communications Lease. This item was placed on the agenda at the request of Mayor Steenrod and Councilmembers Thomasson and White.

NEXT MEETING DATE - Regular Meeting October 23, 2003

ADJOURNMENT

PRELIMINARY
REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

September 25, 2003

The regular meeting of the Des Moines City Council was called to order at 7:38 p.m. by Mayor Steenrod in the City Council Chambers, 21630 11th Avenue South, Suite B.

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

ROLL CALL - Present: Mayor Maggie Steenrod, Councilmembers Gary Petersen, Bob Sheckler, Scott Thomasson and Susan White. Absent: Mayor Pro Tem Richard Benjamin and Councilmember Dan Sherman. Also present were Assistant City Manager Corbitt Loch, City Attorney Linda Marousek, Public Works Director Tim Heydon, Assistant City Engineer Loren Reinhold, Community Development Director Judith Kilgore, Park and Recreation Director Patrice Thorell, Recreation Manager Robert Houston, Assistant City Attorney Richard Brown, Development Services Manager Robert Ruth, Land Use Planner Celeste Carlson and Deputy City Clerk Angela Chaufy.

Mayor Steenrod announced that Councilmember Sherman was on vacation and Mayor Pro Tem Benjamin planned to arrive later in the meeting.

MOTION was made by Councilmember Thomasson, seconded by Councilmember White, and passed unanimously to excuse Councilmember Sherman.

[Editor's Note: Mayor Pro Tem Benjamin never arrived at the meeting. He was excused from attendance later in the meeting.]

BOARD & COMMITTEE REPORTS

Cingular Lease

Councilmember Thomasson requested that the Cingular Lease be placed on the October 9, 2003 agenda.

Mayor Steenrod and Councilmember White agreed.

Association of Washington Cities Regional Meeting

Councilmember White announced that she had attended the AWC Regional Meeting. Information regarding annexation reform, municipal courts, land use growth management issues, tort reform, and city transportation systems had been presented.

PRESIDING OFFICER'S REPORT

Municipal Facilities Committee

Mayor Steenrod reported that the Committee was expecting the results of the feasibility study for the dry stack storage project to be presented by staff at the end of October. The expanded guest moorage and bulkhead replacement project was on hold until additional information was available.

Economic Development

Mayor Steenrod announced that a small business conference would be conducted on October 3, 2003 at the SeaTac Hilton Hotel. Interested individuals should contact the Chamber of Commerce or the Hilton Hotel. Mayor Steenrod reported that the Economic Development Council would provide a briefing regarding the economic condition of the state at the October 2, 2003 Council meeting.

Pacific Ridge Redevelopment

Mayor Steenrod announced that citizens could call the Pacific Ridge Redevelopment Hotline at 206-870-1176 to receive current construction information or to leave messages regarding the project.

City Website

Mayor Steenrod announced that citizen action request forms and the City Manager's monthly report were available on the City's website.

Off-Leash Dog Park

Mayor Steenrod reported that the off-leash dog park would open October 4, 2003.

Volunteer Efforts

Mayor Steenrod thanked the volunteers who recently worked at Wooton Park.

Councilmember White acknowledged Starbucks' participation in several volunteer efforts around the City.

September 27, 2003 - Mayors Day of Concern for the Hungry in Des Moines

Mayor Steenrod encouraged citizens to contribute to the food bank on September 27, 2003, the Mayors Day of Concern for the Hungry in Des Moines.

CONSENT CALENDAR was read by Deputy City Clerk Chaufy.

1. Motion is to approve the minutes of September 4 and 11, 2003.
2. Findings: Vouchers audited and certified by the auditing officer as required by RCW 42.24.080, and those expense reimbursement claims certified as required by RCW 42.24.090, have been recorded on a listing which has been made available to the City Council.
Motion: As of this date the Des Moines City Council, by unanimous vote, does approve for payment those vouchers and payroll transfers included in the above list and further described as follows:
Claim checks #91031 through #91218 & electronic fund transfers in the total amount of \$970,273.31
Payroll fund transfers in the total amount of \$356,364.37
3. Motion is to recognize Saturday, September 27, 2003, as "Mayors' Day of Concern for the Hungry in Des Moines".
- 4.A Motion is to award the professional services contract for the Surface Water Management Utility Rate and Efficiency Study to Financial Consulting Solutions Group, Inc. in the amount of \$44,693.00 and further to authorize the City Manager to sign said contract substantially in the form as submitted, plus authorize the City Manager or his designee to approve change orders up to an amount of 10% of the contract amount.
- 4.B Motion is to remand the ~~efficiency study and~~ rate study to the Environmental Committee for review and recommendations to the full Council.

In regard to Item No. 4A, Councilmember White questioned whether it would be better to wait until the Department of Ecology (DOE) had completed the permit phase before conducting the utility rate and efficiency study.

Public Works Director Heydon said that although it was unclear when DOE would complete the permit process, staff had a relatively good idea of what the requirements would be. He noted that Council had requested the study as part of the budget process and the proposed contract amount was within the budget parameters established by Council. The rate study would be for 2005.

Mayor Steenrod suggested that Council delay taking action in order to give DOE time to complete their work. She stated her preference for the consultants to perform the efficiency study without any involvement from staff and Council so as to obtain unbiased information.

Councilmember Thomasson recommended that Council authorize the study now so that the information would be ready for next year's budget process.

Public Works Director Heydon said that the consultant would need some input from Council as there were many different methods and standards that could apply to the utility. He cited various levels of service as an example.

Mayor Steenrod suggested that the efficiency study be deleted from Item No. 4B.

MOTION was made by Councilmember Thomasson, seconded by Councilmember Petersen and passed unanimously to approve the consent calendar with a change to Item No. 4B remanding only the rate study to the Environment Committee.

PUBLIC HEARING

2004 Block Grant Allocations

Mayor Steenrod read the rules for conducting a public hearing.

Community Development Director Kilgore informed Council that the city had received an allocation of approximately \$252,533 of Community Development Block Grant funds. The actual amount would be identified in December or January. Ms. Kilgore briefly described the various applicants' projects. As Intercommunity Mercy Housing would provide a limited direct benefit to Des Moines' residents and no funds had yet been secured by the applicant, she recommended that Council not allocate any 2004 CDBG funds to the program but to invite them to apply for funds next year. This would provide the agency with a year to obtain additional funding. She suggested that any remaining CDBG funds be allocated to Housing Repair. Community Development Director Kilgore displayed a chart of the 2004 Estimate of CDBG Fund Distributions. Although King County automatically sets aside 15% of Housing Repair allocations for administration costs, she stated her belief that the benefits of the program outweighed the extra dip taken by King County. The Housing Repair program was advertised through the City Currents, the Activity Center, and various social service agencies. Recommended motions were distributed to Council. Community Development Director Kilgore voiced her recommendation for the passage of Motion No. 2.

Mayor Steenrod called for proponents three times.

None responded.

Mayor Steenrod called for opponents three times.

None responded.

Upon questioning, Community Development Director Kilgore verified that only Des Moines' residents were eligible to use the money allocated by Des Moines to Housing Repair. She noted that after two quarters, only \$5,000 remained of the city's 2003 Housing Repair allocation. Once the money was gone, residents would be turned away. Community Development Director Kilgore explained that the distribution of CDBG funds to the various cities was determined by a formula based upon capita, income, and other factors.

Mayor Steenrod reviewed the allowed uses for CDBG funds. She said that she did not like using the money to fund staff's salaries. Mayor Steenrod questioned where homeless people in the community went for social services.

Community Development Director Kilgore explained that set portions of the CDBG funds were specifically allocated to public service, administration, and capital projects. The allocation amounts were as follows:

- \$40,000 – Public Service
- \$31,000 – Planning and Administration
- \$171,000 – Capital Projects

In order to be eligible to receive CDBG funds, an agency must file an application. If a city did not allocate the money specifically set aside for planning and administration, that portion of the total CDBG allocation would need to be returned to King County. The money could not be allocated to a public service or capital project. Community Development Director Kilgore said that, in the past, the City had funded programs located in other cities when they have shown that a significant number of Des Moines' residents would benefit.

Mayor Steenrod stated that homelessness was a huge problem in Des Moines. She said that Des Moines' CDBG allocation to Intercommunity Mercy Housing might help them obtain other funding. Mayor Steenrod also voiced support for increasing the CDBG allocation to Housing Repair.

Assistant City Manager Loch reminded Council that the Human Services Advisory Committee would also forward human services funding recommendations to Council during the budget process.

Councilmember White noted that Intercommunity Mercy Housing's request was for funding to design and construct a new community center rather than to provide housing for the homeless. She said that the Intercommunity Mercy Housing project needed time to develop.

Upon request from Councilmember Sheckler, Community Development Director Kilgore explained that Intercommunity Mercy Housing had requested \$50,000 from Des Moines,

\$100,000 from Kent, and \$75,000 from Federal Way. She noted that agencies often serve clients from a large demographic area due to the need in the region.

Councilmember Sheckler stated that he preferred to support a program that was guaranteed rather than speculative. He said that he did not want to have Des Moines' residents turned away from the Housing Repair program due to a shortage of funds.

Mayor Steenrod said that a program addressing the needs of the homeless should be located in Des Moines. She asked Council to not lose sight of this need.

MOTION was made by Councilmember White and seconded by Councilmember Sheckler to approve the 2004 CDBG allocations as recommended by Administration except to increase the allocation for the Housing Repair program to \$43,548 and reduce the amount to Intercommunity Mercy Housing to \$0. Motion passed, 4 – 1, by roll call vote with Mayor Steenrod opposed.

At 8:47 p.m., Mayor Steenrod declared a ten-minute break.

NEW BUSINESS

Recreation Specialist Position

Park and Recreation Director Thorell asked Council to approve the creation of a new Recreation Specialist position within the Recreation Programs division of the Parks, Recreation, and Senior Services Department. Program revenues and the elimination of two temporary, part time positions were anticipated to fully cover the cost of the new position.

Using a Power Point presentation, Recreation Manager Houston described the current staffing level of the Recreation division. He projected the 2003 program revenues to be \$474,100. Recreation Manager Houston detailed the proposed funding for the Recreation Specialist position.

Councilmember White voiced support for the request as it would address the needs of the community.

Councilmember Sheckler said that he would support the proposal as the generated programs would finance the position.

MOTION was made by Councilmember White, seconded by Councilmember Sheckler, and passed unanimously to approve the creation of a new Recreation Specialist position within the Recreation Programs division of the Parks, Recreation and Senior Services Department.

Draft Ordinance No. 03-075 Right-of-way & Use Permits - 1st Reading

Assistant City Attorney Brown informed Council that Draft Ordinance No. 03-075 would establish policy, guidelines and approval procedures for City right-of-way and City park special use permits. He recommended that the matter be referred to a Council committee for further direction. Assistant City Attorney Brown noted that DMMC 12.04.060 currently gave the Public Works Director authority, under the supervision of the City Manager, to prepare and adopt procedures as needed to issue all right-of-way permits. Likewise, DMMC 19.08.020 gave the City Manager authority to set the conditions by which city parks and park facilities would be

opened, closed, or used by the public. Assistant City Attorney Brown identified the following questions before Council:

- How involved should the Council be in the policy making, management and permit approval process of city right-of-way, park and recreation area property?
- What is the most efficient legislative and/or policymaking process for the Council to establish policy and direct or supervise the rights-of-way, park and recreation area permit process?
- What specific events and/or uses of city rights-of-way, park and recreation area property should require involvement and/or approval of Council?

Assistant City Attorney Brown identified the following action alternatives before Council:

- Take no action.
- Establish a policy by resolution requiring certain events to receive Council approval.
- Amend DMMC 12.04 and 19.08 to establish those specific events and/or uses that would require Council approval and require a resolution establishing the terms and conditions of each permit approval.

Assistant City Attorney Brown briefly described various types of events that Council might want to approve. He recommended that the subject be referred to a Council committee for further study. Assistant City Attorney Brown explained that the term "recreation area" had been used in the proposed ordinance in order to include the Marina area.

Councilmember Thomasson suggested that the ordinance explicitly identify the Marina. He said that most of the events Council has struggled with have been at the Marina. He said that if Council did not retain the approval authority then they should at least provide policy direction to staff. Councilmember Thomasson questioned whether an ad hoc committee should be established to review the subject.

Mayor Steenrod suggested that the issue be remanded to the Municipal Facilities Committee as several events were held at the Marina. The committee could propose language for the ordinance to the full Council.

Councilmember Thomasson reminded Council that the issue had been brought up during the Waterland Festival process. He said that the City Manager was looking to Council to provide policy direction.

MOTION was made by Councilmember Sheckler, seconded by Councilmember White and passed unanimously to remand the issue to the Municipal Facilities Committee.

Review of Water District #54 Draft Comprehensive Plan

Public Works Director Heydon informed Council that the purpose of this agenda item was to provide information regarding Water District 54's Draft Small Water System Management Program, answer any Council questions related to the Plan, and provide input to the District for inclusion in the final plan. No specific action was required of Council at this time. Public Works Director Heydon explained that after the District Commissioners have officially accepted the plan, an ordinance would be brought before Council for approval of the document. He introduced Carl Mealy, President of Water District 54's Board of Commissioners.

At 9:25 p.m., Mayor Steenrod declared a three-minute break.

Mr. Mealy informed Council that the district hoped to have their final document ready in the fall. He introduced Water District 54 Commissioner John Redeck, District Engineer Dave Hedges, and District Manager Eric Clark. Mr. Mealy displayed a map of the water district's service area. He noted that 140 million gallons of water were used annually. In regard to quality, Mr. Mealy reported that the water had passed all tests. Citizen polls had revealed that the residents wished to keep their water unchlorinated. Mr. Mealy described the district's wellhead protection area and identified its infrastructure. In regard to maintenance, he said that main flushing had been increased to twice a year and a valve exercise program had been instituted. Cross-connection prevention and leak detection programs were ongoing. Mr. Mealy briefly described the district's financing policies and noted that their reserves exceeded minimum standards. He said that specialists, as needed, augmented their small staff. In regard to preparedness, Mr. Mealy said that the district was performing a vulnerability assessment, testing fire flow, identifying system redundancies, maintaining an emergency intertie, and entering interlocal agreements with other districts. An emergency plan and procedures had been developed. Mr. Mealy informed Council that the district was preparing a "Small Water System Plan". The system plan would identify trends, project system needs, update the Facility Plan, review financing capabilities, and aid coordination with other municipalities and agencies.

In response to Councilmember Sheckler's question regarding poor water pressure for the district's North Hill residents, Mr. Hedges said that a separate pressure zone could be created or individual pressure tanks could be installed in each home. Both options would involve costs to the ratepayer.

In response to Councilmember Petersen's questioning, Mr. Hedges confirmed that a pump system could be installed at South 222nd Street/11th Avenue South to increase water pressure.

Mr. Mealy informed Council that the district had installed an emergency chlorination system even though they were not required to do so.

Upon questioning from Councilmember Thomasson, Mr. Hedges stated that the district was not required to treat the water for manganese but the Department of Health had requested that they poll its citizens concerning the issue. A poll conducted several years ago had indicated that the citizens did not wish any change in their water.

Councilmember Thomasson said that the district might need to flush their system more than twice a year as businesses were previously forced to close due to the water quality resulting from the flushing.

Mr. Mealy said that the water quality problem was due to the District not flushing as often as they had been directed to conserve water. Also, an unauthorized person had flushed the system.

Councilmember Thomasson questioned whether the Department of Health had mentioned the issue of mixing Highline Water District's chlorinated water with Water District 54's unchlorinated water.

Mr. Hedges said that Highline Water District had mentioned the issue.

In addition to the issues identified by the Public Works Director in the agenda packet, Councilmember Thomasson asked the District to address the following questions:

- What were the Fire Marshall's expectations for the performance of the system?
- Has the system been measured against those expectations?
- How much of the program is managed by the building department versus the water district?
- How much of the water rights are certificated?
- How much growth can be accommodated?

Councilmember Thomasson agreed to work with the Public Works Director to insure these issues were addressed.

Mayor Steenrod noted that the subject would return to Council at a later meeting.

Draft Resolution No. 03-236 [Assigned Res No. 962] Final Plat, Pacific Place – 34 lot Townhomes at 268th and Pacific Highway South

Land Use Planner Carlson informed Council that the applicant was requesting final plat approval of a 34 Lot subdivision. She explained that the Planning Agency had approved the preliminary plat. Final plat approval would allow the applicant to build on and/or sell the individual lots. She said that Council must make the following findings in its review of the proposed final plat:

- The plat was consistent with the approved preliminary subdivision, except for minor deviations specified in DMMC 17.16.230.
- The plat was consistent with RCW 58.17.
- All required improvements were installed or securities to cover the cost of installation were submitted in accordance with DMMC 17.40.090.

Land Use Planner Carlson confirmed that the findings had been met. She voiced staff's recommendation to approve the plat.

Councilmember Thomasson said that he had met with staff prior to the meeting to discuss various technical concerns. He recommended that the subject be tabled to allow staff an opportunity to address the concerns.

MOTION was made by Councilmember White and seconded by Councilmember Petersen to adopt Draft Resolution No. 03-236 approving the final plat for Pacific Place, applicant Lancaster Associates, LLC.

Community Development Director Kilgore and Development Services Manager Ruth stated their belief that Councilmember Thomasson's concerns could successfully be addressed without requiring the subject to be moved to a separate meeting.

At 10:28 p.m., **MOTION** as made by Councilmember Sheckler, seconded by Councilmember White and passed unanimously to extend the meeting by ten-minutes.

Councilmember Thomasson identified the following concerns:

1. The drainage easement for Lots 8 and 9 incorporated on the face of the plat should identify the things one would do with a drainage easement, i.e. construct, maintain, operate, repair, and access.
2. Building setback lines should be identified for Lots 8 and 9.
3. Utility easement fronting 19th Avenue South should also be shown fronting South 268th Street on the back lots and side lots.
4. Sidewalk and utility easement from South 268th Street to 19th Avenue South – The purposes of Tract A should be broaden to include storm drainage, sidewalks, and utilities. Such an action would eliminate the need for a utility easement.
5. Easement provisions for Lot 21 should be obtained from Highline Water District and Midway Sewer District to incorporate on the face of the plat to insure that their issues are addressed. Insure the utility providers have been given an opportunity to review the document and have their provisions included.
6. Dedication to Kent should be acknowledged. Verify plat boundaries are correct and reflect the proper dedication if it has already occurred. The dedication should not be given to Kent since the dedication paragraph grants rights-of-way to the public rather than to a particular city.
7. Easement language should be changed from “dedicated and conveyed” to “granted and conveyed”.
8. Regarding Item Nos. 8 and 9 of the “Notes” on the face of the plat, the covenants and restrictions need to be disclosed to insure the lots meet the conditions.
9. The condition regarding the maintenance of joint driveways being the responsibility of the homeowners association should clarify that, if the homeowner association is disbanded, the responsibilities of the association revert back to the individual property owners rather than to the City.

Development Services Manager Ruth confirmed that the identified issues could be addressed by staff.

Land Use Planner Carlson confirmed that no separate park area would be developed in the plat but park in lieu fees would be collected. She noted that the Community Development Director and Public Works Director would sign the approved plat on behalf of the City.

City Attorney Marousek suggested that a **friendly amendment** be made to the original motion adopting the draft resolution substantially in the form as presented to Council subject to the changes identified on the record.

Councilmember White and Councilmember Petersen accepted the language as a **friendly amendment**.

VOTE ON MOTION: Motion passed, 4 – 1, with Councilmember Thomasson opposed.

Councilmember Thomasson said that he had voted against the motion as he believed it was better process to have the project right before taking action but he was glad the matter had been addressed.

Mayor Pro Tem Benjamin's Attendance

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

NEXT MEETING DATE - Study Session October 2, 2003

ADJOURNMENT

At 10:35 p.m. **MOTION** was made by Councilmember White, seconded by Councilmember Petersen and passed unanimously, to adjourn.

Respectfully submitted,

Angela M. Chaufy
Deputy City Clerk

ACTION ITEM FROM 9/25/03 MEETING

- Place the Cingular Lease on the October 9, 2003 meeting agenda.

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Street Vacation – Robert Bonds

FOR AGENDA OF: October 9, 2003

DEPT. OF ORIGIN: Legal

ATTACHMENTS: Draft Resolution No. 03-001

DATE SUBMITTED: September 30, 2003

CLEARANCES:

☒ Legal

☒ Public Works

APPROVED BY CITY MANAGER

FOR SUBMITTAL:

PURPOSE AND RECOMMENDATION

The purpose of this agenda item is to set a public hearing to consider vacation of a portion of a public right-of-way in the City of Des Moines. The selected public hearing date is November 13, 2003.

MOTION: “To adopt Draft Resolution No. 03-001, fixing a public hearing for November 13, 2003, to consider vacation of the southern half of public right-of-way known as 19th Avenue South (previously identified as 20th Street), between South 222nd Street and South 223rd Street, in the City of Des Moines.”

BACKGROUND

The City has received an application from Robert Bonds for vacation of a portion of public right-of-way known as 19th Avenue South (previously identified as 20th Street), between South 222nd Street and South 223rd Street, in the City of Des Moines. Said petition has been determined by the Public Works Director to comply with the provisions of DMMC 12.12.040 and chapter 35.79 RCW. In accordance with RCW 35.79.010, the City Council may set a public hearing by resolution. Draft Resolution No. 03-001 fixes the public hearing to consider this street vacation and satisfies RCW 35.79.010.

FINANCIAL IMPACT

A \$1,500 application fee has been paid by the petitioners to defray the costs involved in examination of this petition in accordance with DMMC 12.12.050.

RECOMMENDATION

Staff recommends the passage of Draft Resolution No. 03-001, setting the public hearing to hear proponents and opponents of said street vacation petition from affected parties.

DRAFTORD:AG03-001

**CITY ATTORNEY'S FIRST DRAFT 09/30/03
DRAFT RESOLUTION NO. 03-001**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, fixing a time for a public hearing to consider vacation of a portion of public right-of-way in the City of Des Moines.

WHEREAS, the City Council is considering vacation of a portion of public right-of-way known as 19th Avenue South (previously identified as 20th Street), between South 222nd Street and South 223rd Street, in the City of Des Moines as shown on Exhibit "A", attached hereto and incorporated by reference, by the petition method, and

WHEREAS, the provisions of RCW 35.79.010 authorize the City Council to fix a time for a public hearing in order to receive public comment regarding this proposal; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES RESOLVES AS FOLLOWS:

The matter of the vacation of the following described portion of public right-of-way in the City of Des Moines is set for a public hearing before the City Council on Thursday, November 13, 2003, at 7:30 p.m., or as soon thereafter as the matter may be heard, in the City Council Chambers, 21630 11th Avenue So., Suite B, Des Moines, Washington:

That portion of 19th Avenue South (previously identified as 20th Street) more specifically, the area between Blocks 10 and 11 from Lots 9 through 16, inclusive, between South 222nd Street and South 223rd Street, situate in the City of Des Moines, as per the plat of Bay View Addition recorded in Volume 4 of plats, Page 97, records of King County, Washington.

ADOPTED BY the City Council of the City of Des Moines, Washington this ____ day of _____, 2003 and signed in authentication thereof this ____ day of _____, 2003.

M A Y O R

APPROVED AS TO FORM:

City Attorney

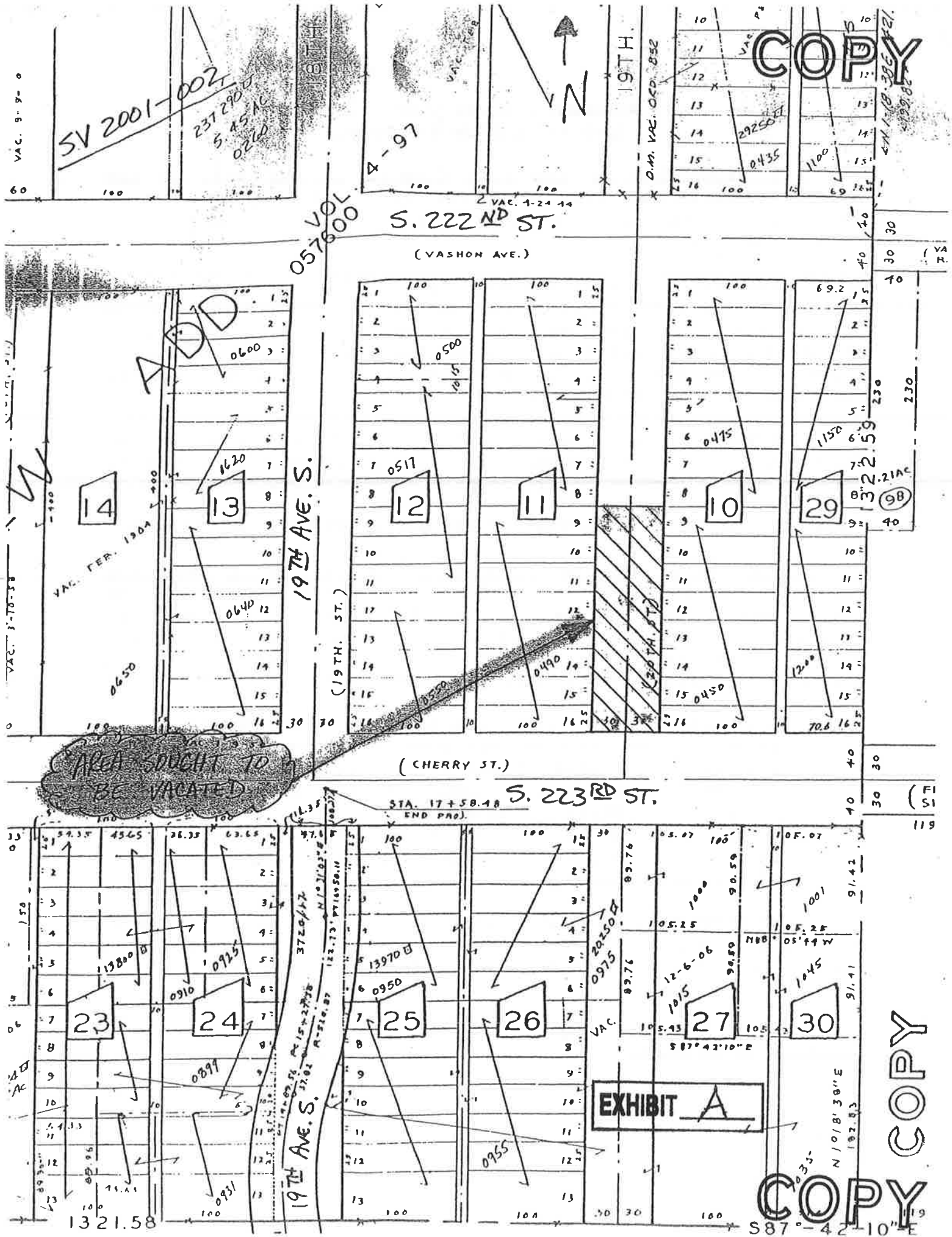
ATTEST:

City Clerk

COPY

YAPCO

COPY



AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Draft Resolution No. 03-270
authorizing application to Interagency
Committee for Outdoor Recreation

ATTACHMENTS:

A. Draft Resolution of the City Council
Authorizing a funding request to
Interagency Committee for Outdoor
Recreation for Steven J. Underwood
Memorial Park

FOR AGENDA OF: October 9, 2003

DEPT. OF ORIGIN: Parks, Recreation and
Senior Services

DATE SUBMITTED: October 3, 2003

CLEARANCES:

[x] Parks & Recreation Director
[x] City Attorney

APPROVED BY CITY MANAGER

FOR SUBMITTAL:

Purpose and Recommendation:

The attached draft resolution would authorize application to the Interagency Committee for Outdoor Recreation Youth Athletic Facilities Program for funding assistance in the amount of \$75,000 to match existing City funds for continued construction of Steven J. Underwood Memorial Park. This Youth Athletic Facility Grant (YAF) request for the Steven J. Underwood Memorial Park Ballfield Lighting Project will extend the hours of use on one of three sports fields (two fields were opened in July 2003 and the third field will open in spring 2004) constructed at the new 21-acre community park. Maximizing field use by adding lighting is a critical due to Des Moines' gross sports field deficiency.

Motion: "I move to approve Draft Resolution No. 03-270 authorizing application to Interagency Committee for Outdoor Recreation on the consent calendar of October 9, 2003."

Background:

In 2003 the Parks, Recreation and Senior Services Master Plan states that the completion of Steven J. Underwood Memorial Park is an urgent number one priority and identifies the need for restrooms, additional sports fields and sports field lighting to meet the community need. The current project phase underway at the park includes funding for a restroom in 2004. This grant application to IAC would provide \$75,000 funds to match City funds and a \$50,000 King County grant to add field lighting to one ballfield at the Park.

Through its planning process earlier this year, the twenty member 2003 Parks, Recreation and Senior Services Master Plan Ad hoc Citizens Committee urged Des Moines City Council to complete the park by providing restrooms, sports field lighting on existing fields and building

DRAFT RESOLUTION NO. 03-270

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, regarding the Steven J. Underwood Memorial Park Field Lighting Project, and authorizing application for funding assistance for a Youth Athletic Facilities Program (YAF) project to the Interagency Committee for Outdoor Recreation (IAC), as provided in chapter 79A.25 RCW.

WHEREAS, the City of Des Moines intends to construct field lighting for its Steven J. Underwood Memorial Park, and

WHEREAS, under the provisions of YAF, state funding assistance is requested to aid in financing the cost of facility development, and

WHEREAS, the City Council of the City of Des Moines finds that it is in the best public interest to complete field lighting for its Steven J. Underwood Memorial Park; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES RESOLVES AS FOLLOWS:

Sec. 1. The City Manager is authorized to make formal application to IAC for funding assistance to accomplish the Steven J. Underwood Memorial Park Field Lighting Project.

Sec. 2. Any fund assistance received shall be used for implementation of the project referenced above.

Sec. 3. The City of Des Moines certifies that the City's share of project funding is committed and will be derived from the City of Des Moines, King County, and South Highline National Little League.

Sec. 4. The City of Des Moines acknowledges that the City is responsible for supporting all non-cash commitments to the sponsor share should they not materialize.

Sec. 5. The City of Des Moines acknowledges that any facility developed with IAC financial aid must be placed in use as an outdoor recreation facility and be retained in such use for a minimum of twenty (20) years from final reimbursement

Resolution No. ____
Page 2 of ____

unless otherwise provided and agreed to by the City of Des Moines and IAC.

Sec. 6. This resolution shall become part of a formal application to IAC.

Sec. 7. This resolution is adopted in an open public meeting, following an opportunity for public comments on the subject addressed herein.

ADOPTED BY the City Council of the City of Des Moines, Washington this ____ day of ____, 2003 and signed in authentication thereof this ____ day of ____, 2003.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

DRAFTRES:03-270

10/3/03 9:16 AM

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Floating Breakwater at Redondo;
Helix Mooring Systems Change Order

ATTACHMENTS:

1. Resolution No. 960
2. Contract for Installation of Anchoring System
3. Revised Proposal from Helix Mooring Systems

FOR AGENDA OF: October 9, 2003

DATE SUBMITTED: October 2, 2003

CLEARANCES:

☒ Marina

☒ Legal

APPROVED BY CITY MANAGER

FOR SUBMITTAL:

A. Purpose & Recommendation

The purpose of this Agenda Item is to seek Council approval for an increase of \$17,800 in the authorized expenditure for the Seaflex anchor lines for the new floating breakwater at Redondo.

Motion: "For the floating breakwater anchoring system, I move the City Manager's authority to approve change orders be increased from 10 to 21 percent, and that additional Marina Depreciation and Improvement funds in the amount of \$17,800 be allocated to the Redondo Improvement Project."

B. Background

On July 17, 2003, the Council approved Resolution No. 960 which authorized the City Manager to negotiate an agreement with Helix Mooring Systems for the purchase and installation of 20 Helix mooring anchors and the purchase of 20 Seaflex anchor lines. The Helix anchors and the Seaflex anchor lines are the two major components of the anchoring system for the floating wave attenuator (breakwater) that will protect the boat ramp at Redondo. The existing contract with Helix is for \$86,300, plus Washington State Sales Tax.

Prior to the installation of the anchors, Helix Mooring Systems requested verification of the water depths where the anchors are to be located. When the Marina staff measured the water depths, they were found to be significantly greater than indicated on the plans prepared by Reid Middleton Engineers. Earlier, Helix had calculated the required length of the Seaflex connectors based on the information in the plans. They determined that 5 meter Seaflex would be needed for the inner anchor row and 6 meter Seaflex would be needed for the outer anchor row. Given the correct depths, the calculations show that an additional 11 feet of "stretch" will be needed on both rows, which will require 7 meter Seaflex anchor lines.

C. Discussion

To provide maximum protection for the launching ramp, the floating wave attenuator must stay as close to it's design position as possible. To keep the breakwater "on station", the anchor lines must be under tension at all stages of the tide. The 5 and 6 meter anchor lines that Helix has already shipped to the site are not long enough to provide the needed "stretch" that would keep the lines tensioned at all times. The least expensive solution is to return the lines that have been delivered and have Helix send the correct length. The subcontractor installed the anchors in three days, beginning on September 19, 2003. The installers did not have any problems installing the anchors in the correct locations.

Council's approval of the purchase of the anchoring system for \$86,300 included authorization for the City Manager to approve change orders up to \$8,630 (10 percent contingency). The \$17,800 needed to purchase the correct Seaflex system exceeds the 10-percent contingency authorized by Council. The suggested motion on Page 1 increases the allowed contingency from 10 to 21 percent.

Construction at Redondo has been underway for one month. Overall, work has progressed smoothly. However, staff is aware of a number of smaller change orders that will be needed for the construction contract. At this time, there is \$29,126 available in contingency funds. Rather than fund the breakwater change order that is the subject of this agenda item (\$17,800) out of the existing contingency, staff recommends the Council consider increasing the total project budget by \$17,800. This approach would apply \$17,800 of the interest earnings on the Marina bond proceeds to the Redondo project. The other project budgets would not be affected.

At the time the construction contract was awarded to Ohno Construction Company, the City Council realized and discussed the likelihood that additional project funds would be needed. Since the contract was awarded, staff has realized savings in various areas and the contingency reserve has grown from \$9,227 to \$29,126.

If the \$17,800 needed now for the breakwater is paid from the project contingency, then \$11,326 would remain and staff will certainly need to return to the Council in the future with a request for additional funds. The approach recommended by staff is to increase the project budget now and avoid the possibility of delaying construction if new problems arise. Any funds remaining at the conclusion of the project can return to the Marina Depreciation and Improvement Fund for allocation to the dry-stack storage building or the expanded guest moorage.

D. Alternatives

(1) One alternative would be to have Seaflex fabricate short lengths of anchor line to add to the lines we have on site. This alternative was the most expensive, costing an additional \$32,000.

(2) Another alternative would be to add additional rope to the Seaflex to accommodate the highest tides. This would be the least expensive alternative, (about \$2,500). In this alternative, the anchor lines would not be under tension at low tides and the wave attenuator would drift "off

station,” which would be undesirable because the ramp would be exposed to the waves during low tides when the wind was blowing from the Northwest. Since this is a very common weather pattern during the boating season, the ramp would be unsafe a significant amount of the time.

(3) The recommended alternative is to replace the anchor lines with lines that are the correct length. This alternative will cost \$17,800 including WSST. For this alternative, there are two “sub-alternatives”:

(3.a) Allocate an additional \$17,800 of Marina Depreciation and Improvement Funds to the Redondo Improvement Project, or

(3.b.) Fund the \$17,800 change order from contingency funds.

E. Financial Impact

The cost of the recommended alternative is \$17,800 (including sales tax and shipping). If accurate depth information had been originally provided, the project budget would have been approximately \$14,800 higher. In other words, the net cost of this oversight is \$3,000, which is the cost of sending the Seaflex anchor lines on site back to the factory in Sweden.

F. Recommendation

Staff recommends that the Council increase the allowed contingency from 10 to 21 percent, and allocate an additional \$17,800 in Marina Depreciation and Improvement funds to the Redondo Improvement Project.

RESOLUTION NO. 960

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, waiving the state competitive bidding requirements for the purchase and installation of twenty Helix Anchors and Seaflex Anchor Connectors from Helix Mooring Systems, Inc., for the Redondo Boat Ramp Project, pursuant to RCW 39.04.280; and authorizing the purchase of same.

WHEREAS, in *Smith v. Seattle*, Wn.2d 64, 72 P.2d 588 (1947), the Washington Supreme Court held that cities have the right to specify a particular brand of article for purchase by public contract, even where such article is held in a monopoly by a single supplier, and

WHEREAS, Helix Anchors and Seaflex Anchor Connectors have been recommended by project engineers for the Redondo Boat Ramp Project and the purchase is clearly and legitimately limited to a sole source supplier, and

WHEREAS, Seaflex Anchor Connectors are the only product on the market that can keep the proposed floating breakwater in the optimum location at all tide levels, and

WHEREAS, the Helix Anchoring System is manufactured by a unique process and will keep the Redondo floating breakwater in place, regardless of tidal or wave conditions, and

WHEREAS, the Helix Anchoring System and Seaflex Connectors are approved by state and federal environmental agencies, and

WHEREAS, the Des Moines Marina has requested that the City Council waive state competitive bidding requirements and authorize the purchase of the Helix Anchoring System and Seaflex Connectors from Helix Mooring Anchors in Belfast, Maine, for the Redondo Boat Ramp Improvement Project; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES RESOLVES AS FOLLOWS:

Sec. 1. Based upon the preceding legislative findings, the City Council hereby declares that the purchase of the Helix Anchoring System and Seaflex Connectors for the Redondo Boat Ramp Project is clearly and legitimately limited to a single source of supply and that the sole source of supply is Helix Mooring Anchors in Belfast, Maine.

Sec. 2. Based upon the preceding legislative findings, and pursuant to RCW 39.04.280, the competitive bidding requirements for the City of Des Moines are hereby waived and the City Manager is authorized to execute a contract for the purchase of the Helix Anchoring System and Seaflex Connectors from Helix Mooring Anchors, Belfast, Maine, for the Redondo Boat Ramp Project

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Sec. 3. This resolution shall take place immediately.

ADOPTED BY the City Council of the City of Des Moines,
Washington this 17 day of July, 2003. and signed in
authentication thereof this 17 day of July, 2003.

M. G. Steenrod
M A Y O R

APPROVED AS TO FORM:

Timothy Marouside
City Attorney

ATTEST:

Genis Staab
City Clerk

CONTRACT for
MOORING SYSTEM FOR
INSTALLATION OF WHISPRWAVE FLOATING WAVE ATTENUATOR
between
THE CITY OF DES MOINES and
HELIX MOORING SYSTEMS, INC.

THIS CONTRACT is made and entered into this 21st day of July, 2003, by and between the CITY OF DES MOINES, Washington, hereinafter called the "City", and HELIX MOORING SYSTEMS, INC., hereinafter called "Helix".

WHEREAS, the City has requested assistance in the installation of a mooring system for a Floating Wave Attenuator, hereinafter called the "Project"; and

WHEREAS, Helix has agreed to provide installation services and is qualified to provide and perform the services described in this Agreement;

THEREFORE, in consideration of the mutual promises and covenants herein contained, to be kept, performed, and fulfilled by the parties, and other good and valuable consideration, it is mutually agreed as follows:

1. **Scope of Service.** The Helix shall provide the services identified in the "Purchase and Sale Agreement" attached hereto and incorporated herein by this reference. All work is to be done in accordance with City of Des Moines, County and State laws, which are by this reference incorporated herein and made part hereof, and Helix shall perform any additions to the work provided under this Contract and every part thereof.
2. **Helix's Obligations.** All labor, materials, tools, software, equipment, utilities, services, and all other things necessary or required in the satisfactory performance of the work shall be furnished by the Helix and the Contract performed and completed under the supervision of and subject to the approval of the City or its authorized representatives.
3. **Performance Standards.** Helix's services, and all duties incidental or necessary thereto, shall be conducted and performed diligently and competently and in accordance with professional standards of conduct and performance.
4. **Prevailing Wage Requirement.** In the performance of its services, Helix agrees to pay prevailing wages to all of its employees and to require the payment of prevailing wages by all of its contractors and subcontractors.
5. **Record Keeping.** All records or papers of any sort relating to the City and the project will at all times be the property of the City and shall be surrendered to the City upon demand. All information concerning the City and said project, which is not otherwise a matter of public record or required by law to be made public, is confidential, and the Helix will not, in whole or in part, now or at any time, disclose that information without the express written consent of the City Attorney.

6. **Assignment.** This Contract may not be assigned or otherwise transferred by either party hereto.

7. **Modification.** No change, alteration, modification, or addition to this Contract will be effective unless it is in writing and properly signed by both parties.

8. **Independent Contractor.** The services provided by the Helix under this Contract are provided as an independent contractor. Nothing in this Contract shall be considered to create the relationship of employer and employee between the parties. Neither Helix nor any employee of Helix shall be entitled to any benefits accorded City employees by virtue of the services provided under this Contract. The City will not be responsible for withholding or otherwise deducting federal income tax or social security payments, or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to Helix.

9. **Indemnification.** Helix will indemnify and hold harmless the City, its agents, employees and volunteers, from and against any and all liability arising from injury or death to persons or damage to property resulting from negligent acts, errors or omissions of Helix, its agents, servants, officers, or employees. Helix, in addition to providing indemnification and holding the City harmless as set forth above, shall indemnify the City for all expenses incurred by the City in defending such claim or suit, including reasonable attorney fees; provided, however, that if any such damages and injuries to persons or property are caused by or result from the concurrent negligence of the City, its employees, agents, or representatives, the indemnification applies only to the extent of the negligence of the Helix, its employees, agents, or representatives.

10. **Liability Insurance.** Helix shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Helix, their agents, representatives, employees or subcontractors.

Helix shall provide a Certificate of Insurance evidencing:

- a) Automobile Liability insurance with limits no less than \$1,000,000 combined single limit per accident for bodily injury and property damage; and
- b) Commercial General Liability insurance written on an occurrence basis with limits no less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate for personal injury, bodily injury, and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations; broad form property damage; explosion; collapse and underground (XCU) if applicable; and employer's liability.
- c) Professional Liability insurance with limits no less than \$100,000 per claim and \$300,000 aggregate.

Any payment of deductible or self-insured retention shall be the sole responsibility of Helix. The City shall be named as an additional insured on the Commercial General Liability insurance policy, as respects work performed by or on the behalf of Helix and a copy of the endorsement naming the City as additional insured shall be attached to the Certificate of Insurance. The City reserves the right to request a certified copy of the insurance policies. Helix's commercial general liability insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability. Helix's insurance shall be primary insurance as respect the City and the City shall be given thirty (30) days prior written notice of any cancellation, suspension, or material change in coverage.

11. *Dispute Resolution Procedures.*

a) ***Mediation/Arbitration Clause.*** If a dispute arises from or relates to this Contract or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under the American Arbitration Association's Rules before resorting to arbitration. The mediator may be selected by agreement of the parties or through the American Arbitration Association. Following mediation, any unresolved controversy or claim arising from or relating to this Contract or breach thereof shall be settled through arbitration which shall be conducted under the American Arbitration Association's Arbitration Rules. The arbitrator may be selected by agreement of the parties or through the American Arbitration Association. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

b) ***Venue, Applicable Law and Personal Jurisdiction.*** All questions related to this Contract shall be resolved under the laws of the State of Washington. In the event that either party deems it necessary to institute legal action arising from this Contract, such action shall be instituted in the King County Superior Court. The parties each consent to the personal jurisdiction of such court. Except as otherwise provided by law, it is expressly understood that neither party can institute any legal action against the other based on this Contract until the parties have exhausted the mediation and arbitration procedures required by the previous paragraph.

12. *Severability.* If any term, provision, covenant, or condition of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated as a result of such decision.

13. *Waiver.* The waiver by either party of any breach of any term, condition, or provision of the Contract shall not be deemed a waiver of such term, condition, or provision or any subsequent breach of the same or any condition or provision of this Contract.

14. **Captions.** The captions used herein are for convenience only and are not a part of this Contract and do not in any way limit or amplify the terms and provisions hereof.

15. **Time of Essence.** Time is of the essence for each and all of the terms, covenants, and conditions of this Contract.

16. **Concurrent Originals.** This Contract may be signed in counterpart originals.

17. **Ratification and Confirmation.** Any acts consistent with the authority and prior to the effective date of this Contract are hereby ratified and confirmed.

IN WITNESS THEREOF, three (3) identical counterparts of this Contract, each of which shall be deemed an original thereof, have been duly executed by the parties herein named, on the day and year first above written.

CITY OF DES MOINES

By [Signature]
Its City Manager

1000 South 220th Street

Des Moines, WA 98198

Dated 7/23/03

HELIX MOORING SYSTEMS, INC.

By [Signature]
Its Pres

P.O. Box 723

Belfast, ME 04915

Dated 7-22-03

APPROVED AS TO FORM:

[Signature]
City Attorney

Purchase and Sales Agreement

For the upcoming installation of a Whispr Wave floating wave attenuator, Helix Mooring Systems Inc (HMS) and the City of Des Moines, Washington (City) agree to the following terms:

1. HMS will provide (20) SS5 Series Helix anchors for securing the wave attenuator. Each anchor is expected to be 10' tall, but the actual length may vary as required by the soils at the site. A 1" shackle will be included as part of the anchor, and this shackle is intended to attach the anchor to the Seaflex elastic rode.
2. HMS will provide (20) Seaflex elastic rodes with end fittings. (10) rodes will be model #05-050 and (10) rodes will be model #05-060.
3. HMS will provide 2,000 linear feet of 24 mm plaited polyester rope.
4. HMS will install the (20) Helix anchors and attach either a temporary marker rope or the Seaflex with plaited rope. Choice of this attachment material will be the City's. All handling and preparation of this attachment material will be provided by the City. This attachment service will be provided at no additional cost so long as such items are immediately ready and available to the anchor install crew at the time of the anchor installation so no extra dive time, waiting time, or down time is required.
5. HMS will provide and deliver a Helix/Seaflex technician to the site to oversee the anchor installation. This technician will also be available to train and explain any Seaflex and plaited rope issues as well as possible methods for tensioning the Seaflex. This technician will provide a pretensioning chart to the City personnel who will be responsible for tensioning the Seaflex. Up to five days of on-site technician time will be part of this agreement.

The above material and services will be provided for a total of \$86,300.00.

At the City's discretion, HMS can also provide services to locate and mark all anchor positions prior to installation. Anchor position is important to the effective operation of the Seaflex elastic rode. If the City decides that HMS should provide this additional service, there will be an additional charge of \$2,000. There will be the requirement that the City either have the Whispr Wave in position for anchor position measurements or the City provide accurate Whispr Wave positioning information to use as the basis for determining the anchor positions.

If the City decides to provide the anchor marking positions itself, HMS will provide a horizontal distance chart in advance. This chart will be based upon assumed Extreme Low Water depths. Such anchor marking will be done so that the anchor install crew has no down time or waiting time related to the anchor position marking process.

Possible additional extras:

- A. 5' tall anchor extensions will be available as needed at \$70.00 per extension. These extensions will only be used if necessary to deliver minimum holding. The use of extensions will be determined by the Helix technician and the install crew.
 - B. Additional technician time can be available with advance notice at a price of \$500 per day. The City will make determinations on the need for available technician time. HMS does not anticipate the need of any additional time.
 - C. Delays and down time during the anchor installation that result principally from actions or inactions by City personnel, will be charged at a rate \$100.00 per hour.
- 6. The City will provide all marker buoys, buoy lines, and related materials.
 - 7. The City will provide all tensioning equipment for tensioning the Seaflex as well as the tensioning crew to attach the mooring system to the Whispr Wave.
 - 8. The City will provide all on-site storage, protection, and handling of the mooring system materials. This includes off-loading of materials shipped by HMS.

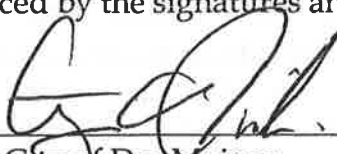
The mooring materials will be shipped to a City-designated address in Des Moines, Washington, and said shipping will occur no later than 45 days after this Purchase/Sale agreement is signed.

Payment terms will be:

- A. \$40,000 upon notification from HMS to City of the shipping of the anchors and shackles;
- B. \$40,000 upon notification from HMS to City of the shipping of the Seaflex and rope; and;
- C. The balance of \$6,300 plus any additional charges as outlined in the agreement will be paid 30 days after the City is notified of the completion of the installation of the anchors.

The actual anchor installation work tentatively scheduled for September, 2003 in Des Moines, Washington with the final dates to be agreed by the City and HMS according to existing work schedules and commitments as well as actual shipping schedules.

This agreement is accepted by Helix Mooring Systems and the City of Des Moines as evidenced by the signatures and dates below.


for the City of Des Moines

7/23/03
Date


for Helix Mooring Systems

7-22-03
Date

Joe Dusenbury

From: Helix Mooring Systems [helixms@earthlink.net]
Sent: Tuesday, September 16, 2003 8:07 AM
To: joe dusenbury
Subject: Fw: Revised proposal

----- Original Message -----

From: Helix Mooring Systems
To: joe dusenbury
Sent: Monday, September 15, 2003 5:46 PM
Subject: Revised proposal

Dear Joe,

Here is a revised proposal with pricing- The only caveat is that I have not yet been able to contact NWDM to see if this route causes them complications during the anchoring.

HMS will provide:

1. (20) SS5 Series Helix anchors,
2. (20) Seaflex rodes all 5 strand by 7 meters,
3. 2,400 linear feet of 24 mm plaited polyester rope,
4. Installation of the Helix anchors and attachment of customer-provided temporary marker rope/buoy, with the understanding this attachment service will not cause extra dive time, down time, waiting time.

At a later date, HMS will also provide a Seaflex technician to support the City crew when attaching the Seaflex/polyester rope to the anchors and to the Whispr Wave. Technician will also guide the tensioning process.

The revised price for these materials and services will be \$102,520.00.

In addition the City will be responsible for the return of the original Seaflex to Sweden in unopened containers and in the same condition as when originally shipped from Sweden. This return shipment is expected to cost about \$3,000.

The total price for this revision, including the return shipment, will be \$105,520.00.

I shall need to cancel my airfare, auto rental, and hotel reservations in advance in order not to incur cancellation charges so I am hopeful we can confirm the new arrangement quickly.

thanks and best,
Royce

09/29/2003

Revised Proposal From Helix Mooring Systems

Revised Proposal	\$102,520.00
WSST	\$9,020.00
Freight - Returning Seaflex	\$3,000.00
	\$114,540.00

Original Purchase Agreement	\$88,300.00
WSST	\$7,770.00
Miscellaneous	\$670.00
	\$96,740.00

Difference	\$17,800.00
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A G E N D A I T E M

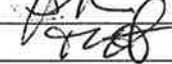
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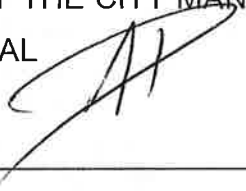
"Zenith Viewpointe"- Proposed Mixed Use Development.
City File No. LUA 2001-015

ATTACHMENTS:

1. Draft Minutes -9-11-2003
2. Application-Correspondence
3. Soils Information
4. Code Interpretation- Dev. Site

AGENDA OF: October 9, 2003DEPT OF ORIGIN: Comm. Dev.DATE SUBMITTED: Sept. 24, 2003**CLEARANCES:**

☒ COMM DEV 
☒ PUBLIC WORKS 
☒ LEGAL 

APPROVED BY THE CITY MANAGER
 FOR SUBMITTAL 

PURPOSE AND RECOMMENDATION:

The purpose of this item is to provide additional information requested by Council at the September 11, 2003 City Council meeting. The City Council will use this and other information entered into the record to direct administration to prepare findings of fact and a draft resolution supporting Council action on the SEPA appeal and review of the underlying applications at a later date.

Administration recommends the City Council

1. Take action upholding the City SEPA Official's determination thereby denying the petition for appeal on the SEPA appeal, and
2. Direct staff to prepare findings of fact and a draft resolution supporting denial of the SEPA appeal decision, and
3. Commence review of the requested underlying land use applications by asking for testimony related to the sensitive area development exception and the unclassified use permit .

Passage of the following motions would allow administration to move forward with this recommendation.

Motion 1: "I move to deny an appeal of the City SEPA Official's determination and direct administration to prepare findings of fact supporting and a draft resolution denying the appeal."

Motion 2: "I move to direct administration to prepare for further Council review at the regular _____, 2003 meeting findings of fact and a draft resolution approving an environmentally sensitive area development exception subject to all staff recommended mitigation measures and conditions of approval specified in the August 14, 2003 administration report on file with the Des Moines Community Development Department; File No. LUA 2001-015, Applicant: Alex White and Co."

Motion 3: "I move to direct administration to prepare for further Council review at the regular _____, 2003 meeting findings of fact and a draft resolution approving a request for an unclassified use permit subject to all staff recommended mitigation measures and conditions of approval specified in the August 14, 2003 administration report on file with the Des Moines Community Development Department; File No. LUA 2001-015, Applicant: Alex White and Co."

BACKGROUND:

The Zenith Viewpointe proposal was first presented to the City Council on August 14, 2003. The City Council was informed of the need to process the SEPA appeal prior to the underlying land use applications for an environmentally sensitive area development exception and an unclassified use permit, but that it must be done in a consolidated hearing format. At this meeting, the City Council received a briefing on all applications that were submitted by city staff and some appellant testimony. The hearing was continued to subsequent meetings on September 4, 2003 and September 11, 2003 in order to receive more appellant testimony, testimony from the applicant, and comments from city staff regarding facts of the SEPA appeal and the testimony on the record. At the September 11, 2003 meeting, the Council requested additional information and continued the hearing to October 9, 2003 to allow Council questions to be submitted to staff and to allow staff time to research different issues.

City Council Questions Inquiries and questions by the City Council at the September 11, 2003 hearing are shown below in the order that they were asked during the course of the hearing. Administration responses follow each question in italicized font.

1. Can city staff provide notes to Council of their remarks made during misstatements of fact?

Yes. The draft minutes included as Attachment 1 to this agenda item includes misstatement comments made by both Community Director Kilgore and Development Services Manager Ruth.

2. Does city staff have information from the applicant indicating that the initial application for a 5 unit development has been modified to the current proposal.

Yes. Attachment 2 to this report contains the original 5-unit plan and correspondence from Alex White and Company dated March 25, 2002, May 10, 2002, and February 25, 2003 which amends his initial application.

3. Is soils information available for this property? Do we know if the site is located in a zone prone to failure due to earthquakes or other soil hazard related zones? What difficulties would the site soils present for construction?

Yes. Attachment 3 to this report contains maps showing landslide hazard areas, flood hazard areas, seismic hazard areas, and erosion hazard areas. The subject site is not within any of these zones. Additionally, soil survey information prepared by the U.S Soil Conservation Service along with maps prepared by the U.S. Geologic Survey show the soils for the site are Alderwood Gravelly Sandy Loam. These soils are the most dominant type of soil type found throughout King County. Approximately 45% of all soils in King County are the Alderwood Gravelly Sandy Loam series. Most of the housing in Des Moines is constructed on this soil type. This soil type is deemed by the Soil Conservation service as appropriate for urban development

4. Why is an alley cross section used to serve this site instead of street cross section? (Note: The following paragraph in response to this question was provided by the Public Works Director)

"The Public Works Department specified the alley section improvements for the proposed Zenith Viewpointe project during SEPA review. The proposed development fronts on two existing streets, Marine View Drive to the east, and 7th Avenue South to the west. Thus, the property has acceptable street access for emergency response, deliveries, and other services. Also, this portion of South 239th Street is not, and will not be a through street due to the grade differences. As a result, this segment of South 239th will operate more like an alley which will serve as access to parking areas. There is also sufficient space to

maintain the existing pedestrian corridor between 7th and Marine View Drive under the specified alley section."

The Community Development Department concurs with the above assessment made by the Public Works Director. However, in addition to these comments, the Community Development Department believes that the specified alley section just plain makes sense for this area and the properties it serves. First, the portion of the South 239th right-of-way that adjoins the site is limited, approximately 31 feet wide. This existing right-of-way width more closely matches the width for an alley section than a full street. A limited right-of-way size can only accommodate a street that fits within the width of that right-of-way. Next, most, if not all streets, serving this portion of the Zenith neighborhood are narrow due to constraints in developing a road system in an area that is challenging due to a rolling hillside terrain. Road improvements for South 240th Street, 7th Avenue South, South 236th Street, and South 239th street west of 7th Avenue South are all narrow and currently do not meet a full city street cross section. These streets all accommodate significantly higher trip volumes than the proposed access to the subject site. Construction of a larger street instead of an alley to serve this development cannot be done under existing conditions and would not be consistent with the design, character, and size of other streets in this area. Finally, the alley section would minimize grading impacts. A larger street section would most likely result in increased construction and grading impacts, increased retaining wall height, and increased difficulty in making grade transitions for access purposes to adjoining properties.

5. Why is curb and gutter only specified on one side of South 239th Street?

It was administration's intent to provide integral curb and gutter for South 239th on both sides of the street. Admittedly, this section of the mitigation agreement could have been described more clearly. The reference made in the mitigation agreement to c-curbing was intended to contain landscape pockets and areas behind the street curb, not to replace the city design standard for street curbing.

6. Why is 14% specified for the maximum street gradient rather than following the natural land contour? What are the impact of doing one way versus another?

The 14% gradient is generally the maximum gradient the city has historically used to restrict grades for streets. This maximum slope percentage is cited in the city's parking code for access requirements and has also been a value that Fire District #26 has indicated would be a maximum for fire truck accessibility. Coincidentally, the last 4-5 months the Community Development and Public Works Departments have been discussing and studying the application of the maximum gradient issue in its general application city-wide. Our preliminary findings are that the 14% factor is a less critical factor for everyday access issues than abrupt grade transitions in a road, road angle alignment, good sight distance or vehicular landings at intersections of streets. In

situations where fire truck access may not be an issue because a site can be served by side streets (such as the case of the subject site), it may make more sense to more closely match the natural land contours than to excavate too much below the existing grade. The grading impacts and hard structure requirements for retaining walls would be far less.

7. Is retention or detention required for this project or will there be direct conveyance to Puget Sound? If there is detention or retention, will improvements be in a separate tract outside of the right-of-way? If it is direct conveyance, has there been a downstream analysis to determine if there are any restrictions on direct conveyance?

This project is located in the lower reaches of the drainage basin. Given the site's proximity to Puget Sound, it qualifies under the King County Surface Water Manual for direct conveyance and discharge. Therefore no drainage detention/retention will be placed in private tracts or public rights-of-way. The city has not required a downstream analysis for this specific project because existing environmental documents exist. Surface water runoff and downstream conditions were one of many items studied as part of the EIS for the much larger Masonic Home Redevelopment project. Both the Masonic Home and Zenith Viewpointe are within the same subbasin and will utilize the same downstream conveyance systems. Coordination of improvements to the existing drainage system and fair apportionment of costs for the two projects are expected to be issues that city staff will have determine once civil engineering designs are prepared and the sizing of improvements are based on actual construction data.

8. Are the stairs and pedestrian improvements mentioned in items 8 and 11 of the environmental mitigation agreement required to be ADA compliant? Will that involve ramps?

The Americans with Disabilities Act (ADA) requires accessibility improvements be provided in certain circumstances to accommodate people with disabilities. The proposed pedestrian improvements located along the south side of the property are replacing an existing wooden stairwell and gravel walkway that is not currently accessible to people with disabilities. The city building official has reviewed the plans and determined that the upper commons area must have an accessible route of travel from the eastern most structure and also that the stairs must also be ADA compliant. This will require the existing facilities to be upgraded with such things as ADA compliant handrails, landings, differentiated and non slip surfaces. Preliminary research from the Public Works and Building Departments indicate that the rules for ADA along street rights-of-way have not been finalized. As a result there is no clear Federal requirement on this issue. However, due to the fact that the stairway is replacing an existing stairway, the pedestrian route is not a major regional pedestrian corridor as called out in the comprehensive transportation plan, and there are two ways around the stairs (South 240th and 236th Streets), staff feels that a stairway is acceptable at this point in

time. Staff will continue to monitor Federal requirements they relate to stairways in rights-of-way so that proper rules are followed at the time of construction.

9. Since item 11 involves improvements to public right-of-way, should the Public Works Director be included in this review?

Community Development is the Department responsible for coordinating permit reviews and approvals not only for departments within the city but also for special purpose districts and agencies at the County, State, and Federal level. Development of the subject right-of-way will involve extensive review of plans and details of design not only by the Public Works Department, but also by special purpose districts, the Parks and Recreation, and Community Development Departments. The Public Works Department will be heavily involved in determining design requirements for improvements that it oversees. Park, landscaping and building structure requirements for this aspect of the project are contained in city codes not overseen by the Public Works Department. Those components will be the principal responsibility of the Parks Department and the Building and Development Services Divisions within the Community Development Department. The Community Development Director (SEPA Official) will confer with all affected agencies and departments prior to issuing a determination of compliance with item 11 of the SEPA mitigation agreement.

10. Why are building protrusions even discussed in the mitigation agreement (item 14) if the project is required to have landscape area surrounding the building?

There are two reasons for this protrusion allowance. First, administration wanted to keep the option open of considering a better solution for screening the existing sewer pump station facility directly west of the site if Council and the applicant thought that that this could be incorporated into the project design and be a public and project benefit. Secondly, the required landscaping areas do impact the design of the building at the ground level, but the project designer may be able to incorporate attractive design features such as bay windows, lanais, roof overhangs or building cantilevers at the second and third levels which would help modulate building walls and break up continuous building mass.

11. Why is the SEPA checklist indicating 12,000 square feet of building area, when the lot is 9,700 square feet and the code only allows one square foot of building area per square foot of property?

The issue of building area to land area ratio was raised over a year ago in administration's review of the Zenith Viewpointe application and concept plans. DMMC 18.20.040 states that the maximum permitted floor area to be contained in all buildings on a lot or site in a NC zone shall not exceed the square foot area of the lot or site upon

which the building or buildings are located. Staff found that before that this requirement could be administered, the definition of what constituted a site in this context needed to be fully understood. Included in Council's previous packet is an interpretation of what constitutes a development site in the context of building to land area ratio. This interpretation is included again for Council convenience in this agenda item as Attachment 4. In summary, accessways developed to wholly serve commercial scale and multi-family projects have not been historically excluded or otherwise used to limit the amount of building area on those developments. Likewise, the segment of South 239th street adjacent to the Zenith Viewpointe property would be wholly developed by the applicant and the site is the only site that uses this street for its sole and primary access. Under these limited circumstances, the area used to provide access to the site, undeveloped South 239th Street, was not excluded from the site area.

ALTERNATIVES:

The City Council may:

1. Direct administration to prepare findings of fact and a draft resolution that support denying the SEPA appeal, and approving the requested unclassified use permit and development exception with limiting conditions and mitigation as recommended by administration.
2. Direct administration to prepare findings of fact and a draft resolution that support denying the SEPA appeal, and approving the requested unclassified use permit and development exception with amended limiting conditions and mitigation.
3. Direct administration to prepare findings of fact and a draft resolution that supports upholding the SEPA appeal. (Under this scenario, no action on the unclassified use permit or development exception can be taken.)
4. Direct administration to prepare findings of fact and a draft resolution which support denying the SEPA appeal and denying (either or both) the requested unclassified use permit and development exception.

FINANCIAL IMPACT:

There is no direct financial impact related to the review and approval of this application. No expenditure of city funds is proposed or required.

RECOMMENDATION/CONCLUSION:

Administration recommends the City Council act consistent with alternative 1 stated above subject to the following conditions of approval:

Conditions of Approval

1. All terms of the June 10, 2002 environmental mitigation agreement shall be met, and
2. A minimum setback along the north property line of 10 feet shall be required for all building walls on the subject site; except that this setback

shall be increased to 13 feet for that portion of a primary building wall above the second story of all buildings, and

3. The total number of residential units shall not exceed six (6), and
4. Total gross commercial/office floor space shall not be less than 1200 square feet or greater than 2000 square feet, and
5. The applicant shall submit plans for administrative design review that comply with all minimum requirements of the NC zone, including but not limited to building height, and other applicable zoning requirements prior to issuance of a building permit.

Administration believes that the applicant's request for a development exception is warranted and a conditional use permit allowing mixed-use development will be reasonably compatible with adjoining uses provided the aforementioned conditions of approval are met.

CONCURRENCE:

Planning Agency The Des Moines Planning Agency reviewed the proposed mixed-use development at public meetings conducted on May 12, 2003 and June 2, 2003. The requested development exception and the SEPA appeal were not reviewed by the Agency as they are outside of its purview. Minutes of the Agency's meetings provide some degree of detail of its discussion of the requested unclassified use permit. Minutes are included as Attachment 16.

The Planning Agency voted unanimously to recommend that the City Council approve the requested unclassified use permit and concurred with most of administration's recommended conditions of approval. However, the agency believed that a requirement should be added that limits the number of buildings on the site to two buildings instead of three. The Agency believed that this would provide more open space; this was believed would improve compatibility with other uses in the area. Staff has spent considerable time evaluating this issue and concludes that whatever increased open space is gained by merging the buildings would be offset negatively by increasing the mass of the structures beyond what is required in the SEPA agreement (55 feet). In another issue, the Agency also believed that the upper limit in the amount of commercial space should be increased from what staff recommended (1600 square feet, originally) to 2000 square feet to provide for more flexibility in the redesign of the eastern building because of building height complications. Staff agrees with the Agency's assessment and has revised its recommendation to include the 2000 square foot area. Other aspects of the proposal that the Agency seemed to strongly endorse was a definite decrease in density from the 8 units proposed to 6 units and to restrict use of the commercial space as suggested by staff to ameliorate traffic and parking concerns.

Other Agencies The agencies listed below were contacted as part of the review process of this application. Their concerns, if any, were addressed in the terms of the environmental mitigation agreement that the applicant endorsed and which has become part of this application.

Des Moines Engineering (Surface Water Management Division)
Des Moines Engineering (Transportation Division)
Des Moines Community Development (Building Division)
Des Moines Community Development (Development Services)
King County Fire District #26
Midway Sewer District
Highline Water District
Puget Sound Energy
Qwest
AT&T (now Comcast Cable)
METRO
Highline School District
Washington State Department of Ecology

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.

Mistatements 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 based 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 office 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.
 - c) Due process rights are being violated by the structure of the meeting.
 - d) The neighborhood had no involvement or influence on the proposal.
- FACTS:
- 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 an 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.

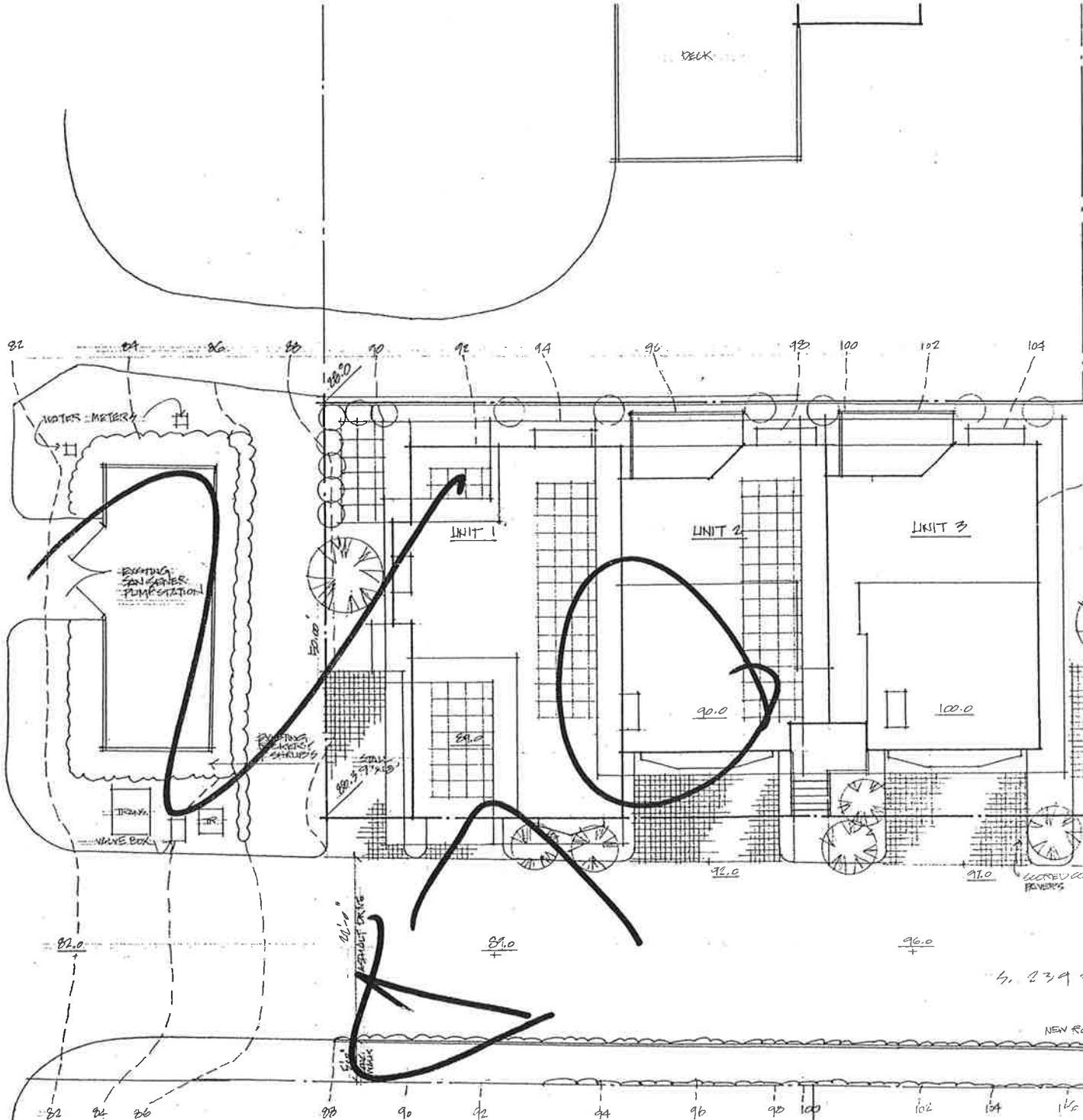
ADJOURNMENT

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

7th AVENUE S.



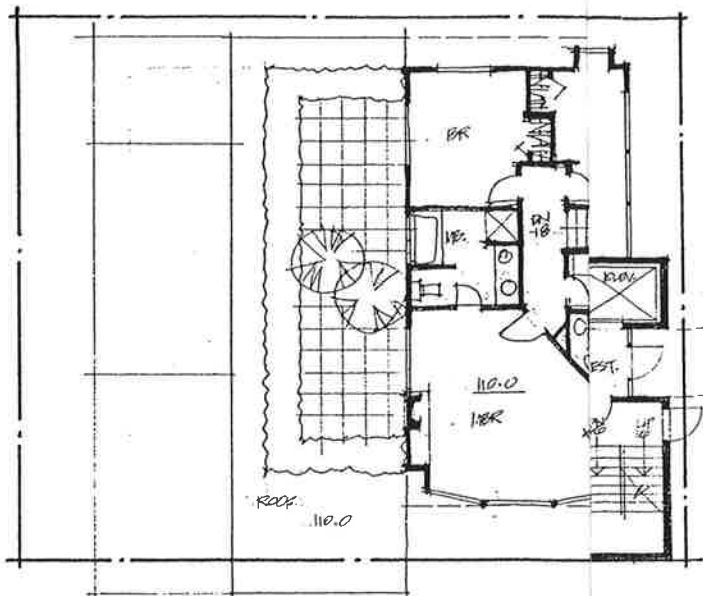
SITE PLAN

SCALE: 1/8" = 1'-0"

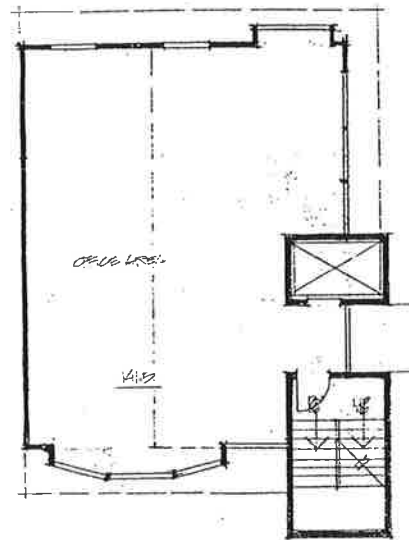


PROJECT DATA

ZONING	NC (NEIGHBORHOOD CORP)
LOT AREA	9,737.5 SF
PROPOSED DEVELOPMENT	
UNIT 1	1,850 SF
UNIT 2	1,874 SF
UNIT 3	1,874 SF
UNIT 4	1,850 SF
UNIT 5	1,874 SF
OFFICE	8,427 SF
TOTAL AREA	4,500 SF
PARKING REQUIRED	
5 UNITS x 2	10
OFFICE 1/200	6
PARKING PROVIDED ON SITE	16
MARINE VIEW PK	14
	4
	18



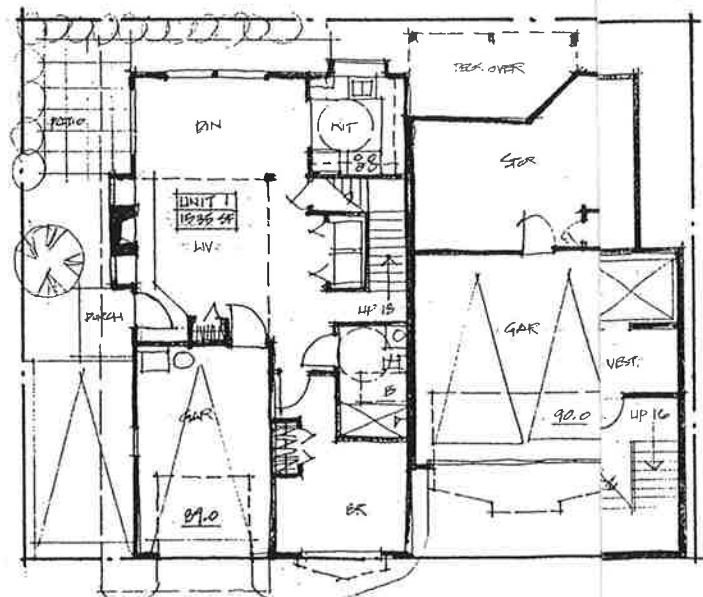
LEVEL THREE



LEVEL SIX



LEVEL TWO



LEVEL ONE

WEST BUILDING

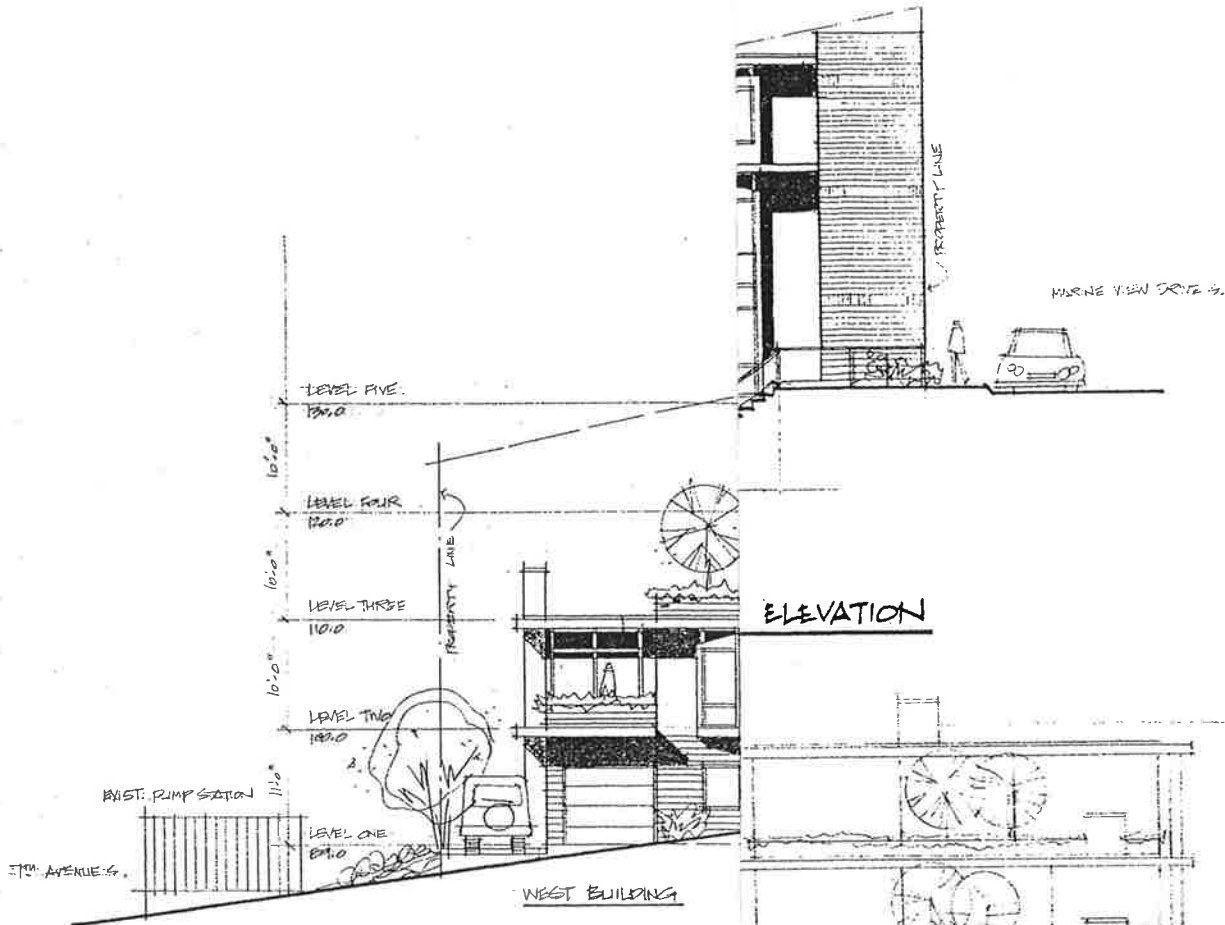
6 JUNE 2001

ZENITH VIEW POINTE

ALEX WHITE & CO.

23659 MARINE VIEW DRIVE S., DUNSMOY, WA

A2



ELEVATION



WEST ELEVATION

NORTH ELEVATION

6 JUNE 2001

ZENITH VIEW POINTE

ALEX WHITE & CO.

23 MARINE VIEW DRIVE S., DES MOINES, WA

A3

PACIFIC RIM
ARCHITECTURE LTD
1100 Northrup Way Ste 300
Bellevue WA 98005
Telephone (206) 878-2111
Fax (206) 872-1111

Alex White & Company

Real Estate Holding Company

INC.

27013 Pacific Hwy. So.
Suite 428
Des Moines, WA 98198
Office 253-850-0200
Fax 206-824-1800
www.leaseok.com

March 25, 2002

City of Des Moines
Community Development
21630 – 11th Avenue South, Suite D
Des Moines, WA 98198-6398

Attn: Judith S. Kilgore
Community Development Director

Re: Zenith Viewpointe

Dear Ms. Kilgore:

Please find this letter as a follow up to our meeting held on March 22, 2002 with you, Robert Ruth and myself. I do appreciate your input and your time spent on this project. In this letter I would like to summarize on where we are at and what is our future schedule.

Voluntary neighborhood meeting was held on March 13, 2002. On 3/22/02 you had suggested for a possible consideration of a clubhouse for the neighborhood, to be constructed as part of our project. After giving it serious consideration, this is not the direction we would be interested to pursue. Your interpretation of the neighborhood commercial zone #18.20.040 Permissible Floor Area

The maximum permissible floor area to be contained in all buildings on a lot or site in a N-C zone shall not exceed the square foot area of the lot or site upon which the building or buildings are located

had given us the opportunity to utilize City right-of-way for the total permitted floor area to be constructed on the site, and is the result of a final design that is currently being reviewed by your staff. The submittal of original application was made in June 2001, and through continuous mutual efforts between your staff and my architect; numerous changes were made since then, in light of receiving support from your staff.

On March 22, Robert Ruth gave the following schedule. Approximately three weeks for your department to complete SEPA review and approximately 2 ½ months from now we will have a hearing date provided there are no appeals from the neighbors.

Both you and I expect that this project will be challenged by the neighborhood; however, it is my position to proceed forward with the submitted plan and follow the zoning and city requirements for the subject property.

The question I had raised whether we can build an office building without going through a hearing process was not the intent to create an ultimatum to the neighborhood or to your staff, but simply to clarify what our rights are under the current zoning.

The final decision that will be made by us in conjunction with the subject property will strictly be based upon the economical basis. I think we are all in agreement that residential development would be more suitable and fit in naturally for the existing neighborhood. However, we may have to reconsider our position if at the time of the hearing or prior to it, we will receive a great deal of opposition.

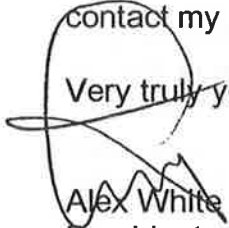
At this time we have applied for a mixed-use permit in order to build a combination between residential and commercial space. However, as stated above, if no hearing approval is necessary for an office building then in lieu of the unknown, and to eliminate the frustration by dealing both with the neighbors and the City, we may reconsider the change of course. I have a great deal of hope that if neighbors clearly realize that we have ability to construct identical square footage for a office building instead of a mixed use building (and again there is no need for a public hearing for an office building), then neighbors can weigh their options.

I will continue on the same course and that is to have a good and clear communication with your department and continue trying to keep a balanced line between what we can afford to do financially and at the same time satisfy the needs of the neighbors and not to compromise the design of the project.

We are optimistic, as always, and very thankful for all of your help and direction.

Should you have any questions or further comments, please do not hesitate to contact my office. Thank you.

Very truly yours,



Alex White
President

AW/lss

cc: Dianne Conway, Attorney for
Gordon, Thomas & Honeywell
Bob Hall, Architect

27013 Pacific Highway South #428
Des Moines, Washington 98198
Office (253) 850-0200
Fax (253) 850-3083

Alex White & CO., Inc.
Real Estate Holdings Company

www.leaseOK.com

FAX

To: <i>Robert Ruth @ City of Des Moines</i>	From: <i>Alex White / Linda Strong</i>
Fax: <i>(206) 870-6544</i>	Pages Including Cover Page: <i>4</i>
Phone: <i>(206) 870-6555</i>	Date: <i>May 10, 2002</i>
Re: <i>23659 Marine View Dr. S.</i>	Cc:

CONFIDENTIAL

NOTE: THE INFORMATION CONTAINED IN THIS FACSIMILE IS PRIVILEGED AND CONFIDENTIAL. IT IS INTENDED FOR THE USE OF THE INDIVIDUAL(S) NAMED ABOVE. ANY DISSEMINATION, DISTRIBUTION OR COPYING, EXCEPT BY THE PERSON ABOVE NAMED, IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS FAX IN ERROR, PLEASE NOTIFY US BY TELEPHONE AND RETURN THE ORIGINAL VIA U.S. POSTAL SERVICE. THANK YOU.

Alex White & Company

Real Estate Holding Company

INC.

27013 Pacific Hwy. So.
Suite 428
Des Moines, WA 98198
Office 253-850-0200
Fax 206-824-1800
www.leaseok.com

May 10, 2002

Sent via facsimile and
U.S. Mail

Mr. Robert Ruth, Senior Planner
Community Development Department
City of Des Moines
21630 – 11th Avenue S., Suite D
Des Moines, Washington 98198

Re: Proposed Condominium Development
23659 Marine View Drive S., Des Moines, WA

Dear Robert:

Thank you for taking your time and providing us with direction towards the next step. Following are the results of our meeting in which we have addressed all items that are part of the Environmental Mitigation Agreement. We believe that all of the issues were resolved and addressed, and now we can proceed forward towards scheduling a council meeting for approval.

A decision was reached to reduce the number of residential units to the total of eight (8), with the result of that, now we can meet the Common Recreational Area requirement totaling 1600 square feet. We will provide an 800 square foot play area (25 feet x 40 feet) between the Condo Building and Duplex Building "A" and initial 800 square foot plaza / wing platform located at Marine View Drive. **Additionally, we deserve an open space credit for enhancing the existing stairs and walkway along the South edge of the 239th Street R.O.W.**

\$90,000.00 cash payment in lieu of recreation fee now should be eliminated.

At the time of our meeting you had suggested that you will check with the engineering department to see if they are willing to accept a 20 feet asphalt drive, taken in consideration limited access to the proposed street, (and whether this access should ever be considered as the normal street). All of the other criteria has been met, and if we are allowed to have a 20 foot asphalt drive, in return that will represent more space for additional landscaping.

A minimal hammerhead with NO PARKING sign will be provided off the access drive between the Condo Building and Duplex Building "A".

The parking will be provided as follows:

4 Townhomes	@ 2.2	=	8.8
4 Condominiums	@ 2.1	=	8.2
2 Office Suites (1800 sq. ft. total or 800 sq. ft. each)		=	2.2

Total Parking Required	19.25
Total Parking provided on site	20

Two additional guest parking stalls will be provided at the East end of the access drive which will bring parking ratio for the subject property up to 2.5 per unit. In addition, we have not calculated, but should be taken into consideration, parking located off the Marine View Drive that subject property in title for use.

New stairs will be constructed which will connect the East end of the sidewalk to the plaza / viewing platform on Marine View Drive.

Where we previously had shown a five (5)-unit townhouse, Building "B" on the western portion of the site, we have omitted the middle townhouse, (Townhouse #3), creating a total of two Duplex buildings (Building "A" and Building "B"). There is twenty-five (25) foot landscaping play area between the condo building and duplex "A" and a 12 foot landscaped area between Duplex "A" and Duplex "B". All four townhouses will be over 1600 square feet in size.

For clarification, we request that square footage for the condominiums shall be identified separately from the townhouses. To stay consistent, we suggest minimum size for the condominium 800 square feet.

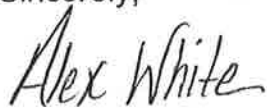
We appreciate your positive attitude towards working with us to design and build subject property with 3 feet overhand at the property line for the roofs and bay windows. Please help to make adjustment to item # 16, and to allow proceeding forward with suggested roof lines and bay windows as part of this project.

We also need to clarify item # 17:

Developer shall demolish and remove all existing buildings on the subject property within one (1) year of the effective date of City Council auction on the proposed UUP, and Developer shall have up to five (5) years to start new construction from the effective date of City Council approval on the proposed UUP.

In summary, we had to give up a lot to get to this point, and we hope you will agree that our healthy attitude, close communication, and consistent wish to cooperate by taking your suggestion's and making them part of this project, will allow us to proceed forward following the approval at the time of a council meeting.

Sincerely,

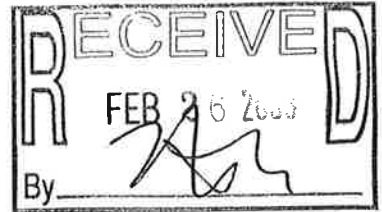
A handwritten signature in cursive script that reads "Alex White".

Alex White
President

by lss

AW/lss

MEMO



To: Robert Ruth

From: Alex White Fax 206-824-1800 Ph. 206-824-1100

Re: Zenith View Point Unclassified use Permit File # LUA 2001-015

Date: February 25, 2003

Dear Robert,

Enclosed you will find Development Exception Application together with the site analysis and a payment.

Please don't hesitate do contact our office should you have any questions.

Alex

CITY OF DES MOINES
COMMUNITY DEVELOPMENT DEPARTMENT

DEVELOPMENT EXCEPTION APPLICATION
AS PERMITTED BY THE ENVIRONMENTALLY SENSITIVE AREAS REGULATIONS

ESA
DEVELOPMENT
EXCEPTION ESA

Application Date: 2-25-03

Permit No.: _____

PROJECT INFORMATION

King County Assessor number: 511940-0055

Project Address: 23659 MARINE VIEW DR DES MOINES WA 98198

Property Owner: ALEX WHITE & G Owner's Phone Number: 206 824 1100

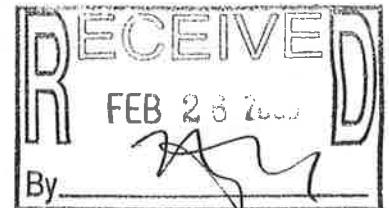
Owner's Address: 22030 7TH AVE S. Suite #204

City: DES MOINES State: WA Zip: 98198

Contact Person: ALEX WHITE Contact number: 206 949 9850

Type of Exception to be determined by Planning Official

- ☐ Development other than one single family dwelling within the buffer area of a wetland or stream [DMMC 18.86.094(3)].
- ☒ Development of a previously altered ESA [DMMC 18.86.094(6)].
- ☐ Limited waiver of hillside disturbance limitations [DMMC 18.86.094(4)].
- ☐ Emergencies [DMMC 18.86.096].
- ☐ Drainage facilities [DMMC 18.86.098].
- ☐ Trails and trail-related facilities [DMMC 18.86.100].
- ☐ Utilities and roadway construction [DMMC 18.86.101].
- ☐ Stream crossings [DMMC 18.86.102].
- ☐ Stream relocation and dredging [DMMC 18.86.103].
- ☐ Stream channel, stream bank, bluff or shore stabilization [DMMC 18.86.104].
- ☐ One single family dwelling within the buffer area of a wetland or stream [DMMC 18.86.094(2)].
- ☐ Yard reductions for one single-family dwelling [DMMC 18.86.094(1)(a)].
- ☐ Modification of existing structures [DMMC 18.86.094(5)].



FEE SCHEDULE

DESCRIPTION	FEES
Hearing examiner review	\$1,500.00 + \$10.00/1,000 sq. ft. of lot area over 1 acre
Administrative Project Review	\$500.00 (single family) \$1,500.00 (other)
Automation Fee	\$7.50 (single family) \$ 25.00 (commercial)

COMPLIANCE WITH DEVELOPMENT EXCEPTION CRITERIA

Alex White & Co. ("White") is applying for a development exception (the "Development Exception") because the topography of the development site and the surrounding area has been previously altered. White seeks a Development Exception from the application of DMMC 18.86.077(1), which prescribes the maximum amount of slope disturbance allowed on a development site. White qualifies for the Development Exception because it can demonstrate that it meets all of the decision criteria set forth in DMMC 18.86.094(6). The decision criteria, and the corresponding analysis, follow a brief description of the proposed project.

Project Description

The development site contains 16,160 square feet, 9,735 of which are within tax lot 511940-0055, and 6,425 of which are within unimproved portions of adjacent South 239th Street. The topography of the development site slopes downward from Marine View Drive on the East toward 7th Avenue on the West. Although the percentage of the slope varies across the development site, the percentage never exceeds 25% and is generally more than 15%. Accordingly, under DMMC 18.86.077(1), White is allowed to "disturb" up to 60% of the development site without a Development Exception.

White is proposing to construct new townhouses and offices on the development site. The new buildings will cover 6,820 square feet of the development site, which constitutes 42% of the development site. White is also proposing to regrade and pave South 239th Street, which constitutes 40% of the development site. In the remaining portions of the development site, White is proposing to create open space and yards.

- (i) *The environmentally sensitive area was lawfully altered in accordance with the provisions of this code and any state and federal laws at the time the alteration occurred;*

The development site is located on a hillside that rises from Puget Sound to Marine View Drive. The entire hillside between South 236th Street on the North and South 240th Street on the South (the "Hillside") has been previously cleared, graded, altered, and disturbed to create new single-family homes and multi-family and commercial uses. Development of the Hillside has occurred on a piecemeal basis over the past 60 years. White understands that this development occurred in accordance with all applicable laws and under valid building permits. There is no evidence that any of the development occurred in violation of any applicable laws.

With respect to the development site, it has also been previously developed. There is an existing building located on the eastern half of the development site and South 239th Street occupies the southern portion of the development site. The slopes on the development site were disturbed and altered to accommodate the existing building,

Marine View Drive, and South 239th Street. In addition, all native trees and vegetation were previously cleared from the development site, probably to accommodate the building and roads. All of these changes to the development site occurred under valid permits and in accordance with all applicable laws and regulations.

- (ii) *The alteration has significantly disrupted the natural functions of the environmentally sensitive area;*

Historical alterations to the Hillside and the development site have significantly disrupted the natural functions of the hillsides in and around the development site. The Hillside has been denuded of much of its native vegetation, which deprives the soil of the stabilizing function of roots and the moderating effects of wind and water erosion of leaves and branches, and which decreases percolation of precipitation into the soil, thereby reducing the amount of groundwater recharge and adding water to runoff that would ordinarily be transpired by the vegetation. See DMMC 18.86.010(3)(a) and (b). Development of the Hillside has also altered the natural drainage patterns, which can result in increased runoff and erosion. See DMMC 18.86.010(3)(b). Construction of houses and roads on the Hillside has decreased the amount of groundwater percolation and increased the amount of runoff. See DMMC 18.86.010(3)(b). Prior development has changed the natural character and distinctive features of the Hillside by, among other things, stripping away native vegetation, reducing the amount of open space, and affecting historical viewpoints. See DMMC 18.86.010(3)(c).

- (iii) *The proposal utilizes to the maximum extent possible the best available construction, design, and development techniques which results in the least adverse impact on the environmentally sensitive area;*

Where a hillside is already developed and has been previously altered, as in the present case, the natural functions of the hillside have already been lost and the applicant may seek a Development Exception to exceed the maximum disturbance limitation of DMMC 18.86.077(1). In cases like these, review of the proposed project shifts from limiting the amount of hillside disturbance to ensuring that the proposed project utilizes the best available construction, design, and development techniques and incorporates certain specific development standards. DMMC 18.86.096(6)(iii) and (iv).

The proposed project utilizes, to the maximum extent possible, the best available construction, design, and development techniques. These are described in detail below.

- (iv) *The proposal incorporates the development standards of DMMC 18.86.070 through 18.86.087 and the surface water design manual to the maximum extent possible; and*

The City has adopted specific development standards for projects proposed on hillsides. These standards are set forth in DMMC 18.86.077. White has incorporated these development standards into its proposed project. These development standards are divided into four categories: (1) development location; (2) development design; (3) construction techniques; and (4) landscaping.

Development Location

The proposed location of the new buildings, driveways, and yards satisfies the requirements of DMMC 18.86.077(2). The three buildings are clustered together to retain as much open space as possible and their location conforms to the natural contour of the slope. The buildings will have stepped foundations that correspond to the existing topography. The location of South 239th Street will not change, and its final grade will continue to slope from east to west.

Development Design

The proposed design of the new buildings, driveways, and yards satisfies the requirements of DMMC 18.86.077(3). White is proposing three buildings instead of one to maximize the amount of open space on the site. White has also minimized the footprint of the proposed buildings by reducing the number of residential units from nine to eight. The proposed project does not require the use of any standard prepared building pads. South 239th Street will serve as a common access drive for the offices and all residential units. The improvements to South 239th Street and the proposed driveways and parking stalls have all been designed to parallel the natural contours of the hillside. Locating 20 of the 23 proposed parking stalls under the new buildings has minimized the amount of impervious surface. To the extent possible, White proposes to retain the existing topography by constructing retaining walls along the north and south property lines and replacing the existing retaining wall along the eastern property line, which supports Marine View Drive.

Construction Techniques

The proposed project will employ the construction techniques suggested by DMMC 18.86.077(4). White will use foundation walls as retaining walls rather than constructing new rockeries outside the footprint of the buildings. The new structures will be tiered to conform to the existing topography and to minimize topographic modification. The proposal does not involve fill-based construction techniques.

Landscaping

The proposed project will incorporate, to the maximum extent possible, the landscaping standards set forth in DMMC 18.86.077(5). The proposed landscaping

plan includes a landscaped pedestrian walkway connecting 7th Avenue South with Marine View Drive. The walkway will include a new stairway constructed of durable materials. An 800 square foot landscaped garden area, featuring species native to the Puget Sound region, will be located part way up this new stairway. In addition, an open, landscaped area will be created between Townhomes 2 and 3 and a landscaped play area will be provided between Townhome 4 and the Condominium Building.

The proposed project will also incorporate, to the maximum extent possible, the standards of the City's surface water design manual. These standards will be fully addressed by White's civil engineer during the permitting phase of this project.

(v) *The proposal is consistent with the purpose and intent of this chapter.*

Based on all of the above, the proposed project is consistent with the purpose and intent of Chapter 18.86 DMMC.

SOIL SURVEY

King County Area Washington



UNITED STATES DEPARTMENT OF AGRICULTURE
Soil Conservation Service
in cooperation with
WASHINGTON AGRICULTURAL EXPERIMENT STATION
Issued November 1973

Permeability is moderately rapid in the surface layer and subsoil and very slow in the substratum. Roots penetrate easily to the consolidated substratum where they tend to mat on the surface. Some roots enter the substratum through cracks. Water moves on top of the substratum in winter. Available water capacity is low. Runoff is slow to medium, and the hazard of erosion is moderate.

This soil is used for timber, pasture, berries, and row crops, and for urban development. Capability unit IVE-2; woodland group 3d1.

Alderwood gravelly sandy loam, 0 to 6 percent slopes (AgB).--This soil is nearly level and undulating. It is similar to Alderwood gravelly sandy loam, 6 to 15 percent slopes, but in places its surface layer is 2 to 3 inches thicker. Areas are irregular in shape and range from 10 acres to slightly more than 600 acres in size.

Some areas are as much as 15 percent included Norma, Bellingham, Tukwila, and Shalcar soils, all of which are poorly drained; and some areas in the vicinity of Enumclaw are as much as 10 percent Buckley soils.

Runoff is slow, and the erosion hazard is slight.

This Alderwood soil is used for timber, pasture, berries, and row crops, and for urban development. Capability unit IVE-2; woodland group 3d2.

Alderwood gravelly sandy loam, 15 to 30 percent slopes (AgD).--Depth to the substratum in this soil varies within short distances, but is commonly about 40 inches. Areas are elongated and range from 7 to about 250 acres in size.

Soils included with this soil in mapping make up no more than 30 percent of the total acreage. Some areas are up to 25 percent Everett soils that have slopes of 15 to 30 percent, and some areas are up to 2 percent Bellingham, Norma, and Seattle soils, which are in depressions. Some areas, especially on Squak Mountain, in Newcastle Hills, and north of Tiger Mountain, are 25 percent Beausite and Ovall soils. Beausite soils are underlain by sandstone, and Ovall soils by andesite.

Runoff is medium, and the erosion hazard is severe. The slippage potential is moderate.

This Alderwood soil is used mostly for timber. Some areas on the lower parts of slopes are used for pasture. Capability unit VIe-2; woodland group 3d1.

Alderwood and Kitsap soils, very steep (AkF).--This mapping unit is about 50 percent Alderwood gravelly sandy loam and 25 percent Kitsap silt loam. Slopes are 25 to 70 percent. Distribution of the soils varies greatly within short distances.

About 15 percent of some mapped areas is an included, unnamed, very deep, moderately coarse textured soil; and about 10 percent of some areas is a very deep, coarse-textured Indianola soil.

Drainage and permeability vary. Runoff is rapid to very rapid, and the erosion hazard is severe to very severe. The slippage potential is severe.

These soils are used for timber. Capability unit VIIe-1; woodland group 2d1.

Arents, Alderwood material consists of Alderwood soils that have been so disturbed through urbanization that they no longer can be classified with the Alderwood series. These soils, however, have many similar features. The upper part of the soil, to a depth of 20 to 40 inches, is brown to dark brown gravelly sandy loam. Below this is a grayish-brown, consolidated and impervious substratum. Slopes generally range from 0 to 15 percent.

These soils are used for urban development.

Arents, Alderwood material, 0 to 6 percent slopes (AmB).--In many areas this soil is level, as a result of shaping during construction for urban facilities. Areas are rectangular in shape and range from 5 acres to about 400 acres in size.

Representative profile of Arents, Alderwood material, 0 to 6 percent slopes, in an urban area, 1,300 feet west and 350 feet south of the northeast corner of sec. 23, T. 25 N., R. 1 E.:

0 to 26 inches, dark brown (10YR 4/3) gravelly sandy loam, pale brown (10YR 6/3) dry; massive; slightly hard, very friable, non-sticky, nonplastic; many roots; medium acid; abrupt, smooth boundary. 23 to 29 inches thick.

26 to 60 inches, grayish-brown (2.5Y 5/2) weakly consolidated to strongly consolidated glacial till, light brownish gray (2.5Y 6/2) dry; common, medium, prominent mottles of yellowish brown (10YR 5/6) moist; massive; no roots; medium acid. Many feet thick.

The upper, very friable part of the soil extends to a depth of 20 to 40 inches and ranges from dark grayish brown to dark yellowish brown.

Some areas are up to 30 percent included soils that are similar to this soil material, but either shallower or deeper over the compact substratum; and some areas are 5 to 10 percent very gravelly Everett soils and sandy Indianola soils.

This Arents, Alderwood soil is moderately well drained. Permeability in the upper, disturbed soil material is moderately rapid to moderately slow, depending on its compaction during construction. The substratum is very slowly permeable. Roots penetrate to and tend to mat on the surface of the consolidated substratum. Some roots enter the substratum through cracks. Water moves on top of the substratum in winter. Available water capacity is low. Runoff is slow, and the erosion hazard is slight.

This soil is used for urban development. Capability unit IVE-2; woodland group 3d2.

Arents, Alderwood material, 6 to 15 percent slopes (AmC).--This soil has convex slopes. Areas are rectangular in shape and range from 10 acres to about 450 acres in size.

This section describes the soil series and mapping units in the King County Area. Each soil series is described and then each mapping unit in that series. Unless it is specifically mentioned otherwise, it is to be assumed that what is stated about the soil series holds true for the mapping units in that series. Thus, to get full information about any one mapping unit, it is necessary to read both the description of the mapping unit and the description of the soil series to which it belongs.

An important part of the description of each soil series is the soil profile, that is, the sequence of layers from the surface downward to rock or other underlying material. Each series contains two descriptions of this profile. The first is brief and in terms familiar to the layman. The second, detailed and in technical terms, is for scientists, engineers, and others who need to make thorough and precise studies of soils. Unless it is otherwise stated, the colors given in the descriptions are those of a moist soil.

As mentioned in the section "How This Survey Was Made," not all mapping units are members of a soil series. Urban land, for example, does not belong to a soil series, but nevertheless, is listed in alphabetic order along with the soil series.

Following the name of each mapping unit is a symbol in parentheses. This symbol identifies the mapping unit on the detailed soil map. Listed at the end of each description of a mapping unit is the capability unit and woodland group in which the mapping unit has been placed. The woodland designation and the page for the description of each capability unit can be found by referring to the "Guide to Mapping Units" at the back of this survey.

The acreage and proportionate extent of each mapping unit are shown in table 1. Many of the terms used in describing soils can be found in the Glossary at the end of this survey, and more detailed information about the terminology and methods of soil mapping can be obtained from the Soil Survey Manual (19).

Alderwood Series

The Alderwood series is made up of moderately well drained soils that have a weakly consolidated to strongly consolidated substratum at a depth of 24 to 40 inches. These soils are on uplands. They formed under conifers, in glacial deposits. Slopes are 0 to 70 percent. The annual precipitation is 35 to 60 inches, most of which is rainfall, between October and May. The mean annual air temperature is about 50° F. The frost-free season is 150 to 200 days. Elevation ranges from 100 to 800 feet.

In a representative profile, the surface layer and subsoil are very dark brown, dark-brown, and grayish-brown gravelly sandy loam about 27 inches thick. The substratum is grayish-brown, weakly consolidated to strongly consolidated glacial till that extends to a depth of 60 inches and more.

Alderwood soils are used for timber, pasture, berries, row crops, and urban development. They are the most extensive soils in the survey area.

Alderwood gravelly sandy loam, 6 to 15 percent slopes (AgC).--This soil is rolling. Areas are irregular in shape and range from 10 to about 600 acres in size.

Representative profile of Alderwood gravelly sandy loam, 6 to 15 percent slopes, in woodland, 450 feet east and 1,300 feet south of the north quarter corner of sec. 15, T. 24 N., R. 6 E.:

- A1--0 to 2 inches, very dark brown (10YR 2/2) gravelly sandy loam, dark grayish brown (10YR 4/2) dry; weak, fine, granular structure; slightly hard, friable, nonsticky, nonplastic; many roots; strongly acid; abrupt, wavy boundary. 1 to 3 inches thick.
- B2--2 to 12 inches, dark-brown (10YR 4/3) gravelly sandy loam, brown (10YR 5/3) dry; moderate, medium, subangular blocky structure; slightly hard, friable, nonsticky, nonplastic; many roots; strongly acid; clear, wavy boundary. 9 to 14 inches thick.
- B3--12 to 27 inches, grayish-brown (2.5Y 5/2) gravelly sandy loam, light gray (2.5Y 7/2) dry; many, medium, distinct mottles of light olive brown (2.5Y 5/6); hard, friable, nonsticky, nonplastic; many roots; medium acid; abrupt, wavy boundary. 12 to 23 inches thick.
- IIC--27 to 60 inches, grayish-brown (2.5Y 5/2), weakly to strongly consolidated till, light gray (2.5Y 7/2) dry; common, medium, distinct mottles of light olive brown and yellowish brown (2.5Y 5/6 and 10YR 5/6); massive; no roots; medium acid. Many feet thick.

The A horizon ranges from very dark brown to dark brown. The B horizon is dark brown, grayish brown, and dark yellowish brown. The consolidated C horizon, at a depth of 24 to 40 inches, is mostly grayish brown mottled with yellowish brown. Some layers in the C horizon slake in water. In a few areas, there is a thin, gray or grayish-brown A2 horizon. In most areas, this horizon has been destroyed through logging operations.

Soils included with this soil in mapping make up no more than 30 percent of the total acreage. Some areas are up to 3 percent the poorly drained Norma, Bellingham, Seattle, Tukwila, and Shalcar soils; some are up to 5 percent the very gravelly Everett and Neilton soils; and some are up to 15 percent Alderwood soils that have slopes more gentle or steeper than 6 to 15 percent. Some areas in New-castle Hills are 25 percent Beausite soils, some northeast of Duvall are as much as 25 percent Ovall soils, and some in the vicinity of Dash Point are 10 percent Indianola and Kitsap soils. Also included are small areas of Alderwood soils that have a gravelly loam surface layer and subsoil.

TABLE 1.--APPROXIMATE ACREAGE AND PROPORTIONATE EXTENT OF THE SOILS

Soil	Area	Extent	Soil	Area	Extent
	Acres	Percent		Acres	Percent
Alderwood gravelly sandy loam, 0 to 6 percent slopes-----	22,000	4.9	Klaus gravelly loamy sand, 6 to 15 percent slopes-----	420	.1
Alderwood gravelly sandy loam, 6 to 15 percent slopes-----	165,170	37.1	Mixed alluvial land-----	1,500	.3
Alderwood gravelly sandy loam, 15 to 30 percent slopes-----	14,280	3.2	Neilton very gravelly loamy sand, 2 to 15 percent slopes-----	4,660	1.0
Alderwood and Kitsap soils, very steep-----	39,000	8.8	Newberg silt loam-----	3,660	.8
Arents, Alderwood material, 0 to 6 percent slopes-----	3,500	.8	Nooksack silt loam-----	3,100	.7
Arents, Alderwood material, 6 to 15 percent slopes-----	6,000	1.3	Norma sandy loam-----	4,230	1.0
Arents, Everett material-----	700	.2	Orcas peat-----	730	.2
Beausite gravelly sandy loam, 6 to 15 percent slopes-----	7,600	1.7	Oridia silt loam-----	6,630	1.5
Beausite gravelly sandy loam, 15 to 30 percent slopes-----	2,700	.6	Ovall gravelly loam, 0 to 15 percent slopes-----	1,780	.4
Beausite gravelly sandy loam, 40 to 75 percent slopes-----	890	.2	Ovall gravelly loam, 15 to 25 percent slopes-----	3,840	.9
Bellingham silt loam-----	2,610	.6	Ovall gravelly loam, 40 to 75 percent slopes-----	1,250	.3
Briscot silt loam-----	5,430	1.2	Pilchuck loamy fine sand-----	1,630	.4
Buckley silt loam-----	12,130	2.7	Pilchuck fine sandy loam-----	640	.1
Coastal beaches-----	1,105	.2	Puget silty clay loam-----	8,130	1.8
Earlmont silt loam-----	1,140	.3	Puyallup fine sandy loam-----	4,840	1.1
Edgewick fine sandy loam-----	2,340	.5	Ragnar fine sandy loam, 6 to 15 percent slopes-----	1,540	.3
Everett gravelly sandy loam, 0 to 5 percent slopes-----	5,500	1.2	Ragnar fine sandy loam, 15 to 25 percent slopes-----	500	.1
Everett gravelly sandy loam, 5 to 15 percent slopes-----	15,700	3.5	Ragnar-Indianola association, sloping-----	8,110	1.8
Everett gravelly sandy loam, 15 to 30 percent slopes-----	6,300	1.4	Ragnar-Indianola association, moderately steep-----	1,150	.3
Everett-Alderwood gravelly sandy loams, 6 to 15 percent slopes---	8,405	1.9	Renton silt loam-----	5,040	1.1
Indianola loamy fine sand, 0 to 4 percent slopes-----	2,670	.6	Riverwash-----	3,700	.8
Indianola loamy fine sand, 4 to 15 percent slopes-----	2,600	.6	Salal silt loam-----	560	.1
Indianola loamy fine sand, 15 to 30 percent slopes-----	500	.1	Sammamish silt loam-----	790	.2
Kitsap silt loam, 2 to 8 percent slopes-----	5,000	1.2	Seattle muck-----	8,650	1.9
Kitsap silt loam, 8 to 15 percent slopes-----	6,550	1.5	Shalcar muck-----	1,220	.3
Kitsap silt loam, 15 to 30 percent slopes-----	4,270	1.0	Si silt loam-----	1,750	.4
			Snohomish silt loam-----	2,100	.5
			Snohomish silt loam, thick surface variant-----	500	.1
			Sultan silt loam-----	3,580	.8
			Tukwila muck-----	1,730	.4
			Urban land-----	10,650	2.4
			Woodinville silt loam-----	2,800	.6
			Total-----	445,500	100.0

Greater Des Moines Comprehensive Plan



LANDSLIDE HAZARD AREAS

LEGEND



Landslide Hazard Area

SOURCE

King County, WA 1987 Sensitive
Areas Map Folio



PUGET
SOUND

Des Moines
Community Development

Figure 4-7

0 500 2000
FEET

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Greater Des Moines Comprehensive Plan



FLOOD HAZARD AREAS

LEGEND



Zone A



Zone VE

SOURCE

Federal Emergency Management Agency
1988 Flood Insurance Rate Map
Panels 317, 319, 325



PUGET
SOUND

Des Moines
Community Development

Figure 4-9

0 500 2000
FEET

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Greater Des Moines Comprehensive Plan



SEISMIC HAZARD AREAS

LEGEND



Seismic Hazard Area

SOURCE

King County, WA 1987 Sensitive
Areas Map Folio



PUGET
SOUND

Des Moines
Community Development

Figure 4-6

0 500 2000
FEET

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Greater Des Moines Comprehensive Plan



EROSION HAZARD AREAS

LEGEND



Erosion Hazard Areas

SOURCE

U.S. Soil Conservation Service 1973
Soil Survey King County Area Washington
Sheet No.10 and No.15



PUGET
SOUND

Des Moines
Community Development

Figure 4-8

0 500 2000
FEET

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City of Des Moines
Community Development Department

CODE INTERPRETATION

October 29, 2002

To: Interested Parties

From: Judith S. Kilgore, Community Development Director 

Re: Density calculation for the Neighborhood Commercial Zone

Question Presented: Can the square footage of unimproved rights of way in the N-C zone be included as part of the floor area ratio calculations when improvements are made at the developers expense and will primarily serve the proposed project?

Short answer: Yes. The square footage of the unimproved right-of-way may be included in the calculation of the floor area ratio when the area in question is totally contiguous to or within the site that will be wholly improved at the developer's expense and will primarily serve the proposed project.

Background:

DMMC 18.20.040 states that "The maximum permitted floor area to be contained in all buildings on a lot or site in a N-C zone shall not exceed the square foot area of the lot or site upon which the building or buildings are located."

Although there is a clear definition for the term "lot" (DMMC 18.04.390) currently there is no clear definition of the term "site". Therefore developing a formula for calculating floor area ratios is difficult when considering a building site. The Greater Des Moines Comprehensive Plan regulates the maximum dwelling units per acre, but does not specify if that is inclusive or exclusive of streets, parks, drainage tracts or rights-of-way. In subdivisions all of these items are included in computation of density, i.e. they are part of the "site".

Discussion:

In many projects developers are required, as a condition of approval, to improve public areas such as plated, but unimproved, rights of way to current street standards. In addition, many times the developer is required to maintain these now improved rights-of-way. Frequently, these improved and maintained public rights of way primarily serves the developers proposed project.

In this situation it seems reasonable to permit the developer to include the square footage of the improved right- of-way as part of the project "site". In addition, it appears that Comprehensive Plan is silent on excluding rights-of-way and other dedications from computation of density requirements

Conclusion:

Since staff review on any project includes analysis of all the areas to be developed, including those under public ownership, it is not possible to restrict the term "site" to just the land owned by the applicant. Therefore it is my interpretation that when improvements of rights-of-way are required to be developed in the N-C zone as a condition of project approval and these improvements serve primarily the proposed project, it is reasonable to include these areas in the definition of "site" and to use the square footage number as part of the calculation of floor area.

Authority:

This interpretation is made under the authority of DMMC 18.76.010 and shall be considered a Type I land use action.

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Domestic Violence Grant

FOR AGENDA OF: 10-9-03

DEPT. OF ORIGIN: legal

ATTACHMENTS: Application for the
Local Law Enforcement Block
Grant for Domestic Violence
Advocate Program and
Revenue from DV costs

DATE SUBMITTED: 9-22-03

CLEARANCES:
[X] Legal

APPROVED BY CITY MANAGER

FOR SUBMITTAL: AT

PURPOSE AND RECOMMENDATION

The purpose of this report is to conduct a public hearing and to seek City Council approval to accept the Local Law Enforcement Block Grant for 2004. It is recommended that the council discuss accepting the Local Law Enforcement Block Grant to continue the Domestic Violence Advocate Program and to authorize the City Manager or his designate to execute the papers to exercise said grant.

MOTION: "To accept the Local Law Enforcement Block Grant in the amount of \$19,183, funding the City's Domestic Violence Advocate Program, and to authorize the City Manager to execute the necessary papers to implement such program."

BACKGROUND

The City of Des Moines is eligible to receive funds from the Local Law Enforcement Block Grant. This funding is needed to continue the position of Domestic Violence Court Advocate. The position has received funding from this source for the past two years however funding needs to be renewed annually in order to secure this position financially. Funding from this grant would ensure the Domestic Violence Advocate position through December 2004. The Local law Enforcement Block Grant Program requires each jurisdiction to hold at least one public hearing regarding the proposed use of the funds prior to the receipt and obligation of the funds. The hearing can be part of a city council or commission meeting. Notice of this hearing was posted at Des Moines City Hall, Redondo Store/Post Office, the Marina and the Des Moines and Redondo Libraries.

DISCUSSION

The Domestic Violence Advocate works about 32 hours per week carrying a caseload of about 280 cases. Domestic Violence cases make up 38% of all criminal misdemeanor cases in the City of Des Moines. The advocate works under the supervision of the City Attorney or Criminal Prosecuting Attorney, assisting in the prosecution of persons charged with domestic violence-related crimes and functioning as a liaison between victims and the criminal justice system. The advocate provides support and assistance to victims of these violent crimes. The advocate educates victims to the court procedures and the dynamics of domestic violence. The advocate provides counseling, crisis intervention and referrals to social service agencies with high priority given to the safety of victims. Direct work with the Prosecuting Attorney consists of preparing and developing domestic violence cases; gathering evidence such as certified court documents and 911 tapes. The advocate maintains contact with victims and witnesses and makes arrangements for their attendance at court hearings. The advocate also assists police officers to locate offenders on warrant status.

ALTERNATIVES

None

Taking no action would eventually lead to the elimination of the Domestic Violence Program

FINANCIAL IMPACT

Accepting this funding would not impact the city financially. The 10 percent matching requirement can be pulled from the domestic violence probation costs collected from each case, as it is resolved.

RECOMMENDATION (OR CONCLUSION)

It is recommended that the City Council accept funding from the Local Law Enforcement Block Grant.

CONCLUSION

The Domestic Violence Advocate position is an important and necessary service to the victims in the City of Des Moines and to the Prosecuting Attorney. We are respectfully requesting that City Council accept these funds so that the City of Des Moines can continue to provide services to victims and to hold offenders accountable for their criminal actions.

 U.S. DEPARTMENT OF JUSTICE OFFICE OF JUSTICE PROGRAMS ☐ OJP ☒ BJA ☐ OJDP ☐ BJS ☐ NIJ ☐ OVC CHECK APPROPRIATE BOX		AWARD ☒ GRANT ☐ COOPERATIVE AGREEMENT		PAGE 1 OF 7															
1. GRANTEE NAME AND ADDRESS (Including Zip Code) Des Moines City 21630 11th Avenue South Des Moines, WA 98198-6398			4. AWARD NUMBER: 2003-LB-BX-0155 5. PROJECT PERIOD: FROM 10/01/2002 TO 09/30/2004 BUDGET PERIOD: FROM 10/01/2002 TO 09/30/2004																
1A. GRANTEE IRS/VENDOR NO. 916016497 2. SUBGRANTEE NAME AND ADDRESS (Including Zip Code)		6. AWARD DATE 08/19/2003 8. SUPPLEMENT NUMBER		7. ACTION ☒ Initial ☐ Supplemental															
2A. SUBGRANTEE IRS/VENDOR NO. 3. PROJECT TITLE FY 2003 Local Law Enforcement Block Grants		9. PREVIOUS AWARD AMOUNT \$0.00 10. AMOUNT OF THIS AWARD \$19,183 11. TOTAL AWARD \$19,183																	
12. SPECIAL CONDITIONS (Check, if applicable) ☒ THE ABOVE GRANT PROJECT IS APPROVED SUBJECT TO SUCH CONDITIONS OR LIMITATIONS AS ARE SET FORTH ON THE ATTACHED 6 PAGES																			
13. STATUTORY AUTHORITY FOR GRANT ☐ TITLE 1 OF THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968. 42 U.S.C. 3701, ET. SEQ., AS AMENDED ☐ TITLE 2 OF THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974 42 U.S.C. 5601, ET. SEQ., AS AMENDED ☐ VICTIMS OF CRIME ACT OF 1984, 42 U.S.C. 10601, ET. SEQ., PUBLIC LAW 98-473, AS AMENDED ☒ OTHER (Specify): Fiscal Year 2002, Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act (Pub. L. No. 107-77)																			
14. FUTURE FISCAL YEAR(S) SUPPORT: SECOND YEAR'S BUDGET PERIOD: N/A AMOUNT OF FUNDS: N/A TYPE OF FUNDS: _____ THIRD YEAR'S BUDGET PERIOD: N/A AMOUNT OF FUNDS: N/A TYPE OF FUNDS: _____																			
15. METHOD OF PAYMENT THE GRANTEE WILL RECEIVE CASH VIA A LETTER OF CREDIT ☐ YES ☒ NO																			
AGENCY APPROVAL			GRANTEE ACCEPTANCE																
16. TYPED NAME AND TITLE OF APPROVING OJP OFFICIAL C. Camille Cain Acting Director Bureau of Justice Assistance			18. TYPED NAME AND TITLE OF AUTHORIZED GRANTEE OFFICIAL Tony Piasecki City Manager																
17. SIGNATURE OF APPROVING OJP OFFICIAL 			19. SIGNATURE OF AUTHORIZED GRANTEE		19A. DATE														
AGENCY USE ONLY																			
20. ACCOUNTING CLASSIFICATION CODES <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>FISCAL YEAR</th> <th>FUND CODE</th> <th>BUD. ACT.</th> <th>OFC.</th> <th>DIV. REG.</th> <th>SUB.</th> <th>POMS</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">X</td> <td style="text-align: center;">B</td> <td style="text-align: center;">LI</td> <td style="text-align: center;">80</td> <td style="text-align: center;">00</td> <td style="text-align: center;">00</td> <td></td> </tr> </tbody> </table>				FISCAL YEAR	FUND CODE	BUD. ACT.	OFC.	DIV. REG.	SUB.	POMS	X	B	LI	80	00	00		21. L18M14 L102U00155	
FISCAL YEAR	FUND CODE	BUD. ACT.	OFC.	DIV. REG.	SUB.	POMS													
X	B	LI	80	00	00														

Total revenue for DV Costs Bar Code 357.30.00

1999		2000		2001	
Sep-99	\$ 471.80	Jan-00	\$ 310.11	Jan-01	\$ 268.50
Oct-99	\$ 233.00	Feb-00	\$ 407.69	Feb-01	\$ 402.23
Nov-99	\$ 268.00	Mar-00	\$ 16.43	Mar-01	\$ 506.46
Dec-99	\$ 249.59	Apr-00	\$ 417.29	Apr-01	\$ 1,555.44
Total	<u>\$ 1,222.39</u>	May-00	\$ 103.25	May-01	\$ 894.08
		Jun-00	\$ 179.95	Jun-01	\$ 711.37
		Jul-00	\$ 120.86	Jul-01	\$ 1,140.28
		Aug-00	\$ 200.00	Aug-01	\$ 1,346.68
		Sep-00	\$ 40.46	Sep-01	\$ 811.77
		Oct-00	\$ 241.67	Oct-01	\$ 811.11
		Nov-00	\$ 295.00	Nov-01	\$ 1,120.93
		Dec-00	\$ 442.86	Dec-01	\$ 520.21
		Total	<u>\$ 2,775.57</u>	Total	<u>\$ 10,089.06</u>

2002		2003	
Jan-02	\$ 553.58	Jan-03	\$ 996.80
Feb-02	\$ 433.30	Feb-03	\$ 1,290.48
Mar-02	\$ 765.85	Mar-03	\$ 764.25
Apr-02	\$ 457.29	Apr-03	\$ 533.60
May-02	\$ 706.22	May-03	\$ 224.37
Jun-02	\$ 348.87	Jun-03	\$ 998.96
Jul-02	\$ 431.35	Jul-03	\$ 930.91
Aug-02	\$ 922.63	Aug-03	\$ 556.45
Sep-02	\$ 144.48	Sep-03	
Oct-02	\$ 590.98	Oct-03	
Nov-02	\$ 806.64	Nov-03	
Dec-02	\$ 1,147.87	Dec-03	
Total	<u>\$ 7,309.06</u>		<u>\$ 6,295.82</u>

Grand Total : \$ 27,691.90

AGENDA ITEM

SUBJECT: Draft Resolution Accepting
Highline Water District 2002
Comprehensive Water System
Plan

AGENDA OF: October 9, 2003

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: October 1, 2003

ATTACHMENTS:

1. Draft Resolution 03-275 approving the Highline Water District 2002 Comprehensive Water System Plan
2. September 30, 2003, Letter of Transmittal from Thomas D. Keown, P.E., of the Highline Water District.
3. Highline Water District Resolution 02-11-GC Adopting the Plan and King County Ordinance #14499 Approving the Plan
4. Minutes from the September 5, 2002, Council Meeting.

CLEARANCES:

[] Finance

[X] Public Works

[X] Legal

APPROVED BY CITY MANAGER
FOR SUBMITTAL:

Purpose and Recommendation:

The purpose of this agenda item is for the Council to approve the Highline Water District 2002 Comprehensive Water System Plan. The plan has been finalized by the Water District and approved by their Commissioners.

Recommended Motion

"I move to approve Draft Resolution No. 03-275 approving the Highline Water District 2002 Comprehensive Water System Plan."

Background:

Water Districts within the State of Washington are required to have Comprehensive System Plans which are updated on a regular basis. This Plan is an update of the Highline Water District's 1996 Plan. Because of the critical importance of water for the health and safety of the citizens, cities are included in the review and approval process of Water District Comprehensive Plans. Since the District Commissioners have officially accepted the plan, a Draft Resolution will be brought before the City of Des Moines for official Council action on the Plan. The action can be anything from acceptance, to acceptance with conditions, to rejection. The Des Moines City Council has previously reviewed the Draft Plan at the September 5, 2002, meeting.

Discussion:

Highline Water District has had a history of having well written Comprehensive Plans which cover the important elements of future water system planning in sufficient detail so that it is clear what needs the District requires in order to serve their existing and expected future customers. This document is an extremely important instrument that provides the foundation on which the whole Water District is built.

Items in the plan include not only new facilities to serve future growth and system deficits, but also replacement of components that are past their useful life. All of these needs, along with the normal District day-to-day operating expenses, are used as input in the financial plan. The financial plan provides the basis for the District's monthly water rates and hookup charges.

The Highline Water District has done an excellent job of following their past Comprehensive Plans. The result is that the District system is stronger and more reliable than it was in 1996 when the last plan was approved. Thus, they are in a better position to provide a good level of service to their customers.

The Council and City staff only had minor questions and comments regarding the Draft of this Plan, which was reviewed at the September 5, 2002, Council meeting.

Alternatives:

The Council could choose to not approve the Comprehensive Plan Update. Lack of any action on the part of the City would result in plan approval for the District. Given the importance of domestic water to the existing and future citizens of the City, and the economic vitality of the community, it seems advisable that Council review and approve this important document.

Financial Impact:

While the Highline Water District Comprehensive Plan will not have a significant financial impact on City government in Des Moines, (given that most City buildings are served by Water District No. 54 water), it does affect the water rates and hookup fees for a majority of the citizens in the City.

Recommendation/Conclusion:

It is recommended that Council approve the Highline Water District 2002 Comprehensive Water System Plan. If one wishes to review the document, copies are available at the Highline Water District office, at the City Manager Secretary's office, and at the Public Works Director's office. Representatives from the District will attend the Council meeting in order to answer any questions Council may have.

Concurrence:

The Highline Water District is officially requesting City concurrence now that the District Commissioners have given their final approval to the 2002 Comprehensive Water System Plan.

DRAFT RESOLUTION NO. 03-275

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, approving the Highline Water District's 2002 Comprehensive Water System Plan.

WHEREAS, Highline Water District provides water services for a large portion of the City of Des Moines, and

WHEREAS, on April 18, 2002, the City of Des Moines received a copy of Highline Water District's 2002 Water System Plan, and

WHEREAS, at an open public meeting held on September 5, 2002, the Des Moines City Council heard from Highline Water District representatives who presented the City Council with the Highline Water District's 2002 Comprehensive Water System Plan, and

WHEREAS, the Highline Water District adopted its 2002 Comprehensive Water System Plan by Resolution No. 02-11-6C on November 6, 2002, and

WHEREAS, the adopted Highline Water District 2002 Comprehensive Water System Plan was transmitted to the City of Des Moines for approval on September 30, 2003, and

WHEREAS, RCW 57.16.010 (6) provides that the Des Moines City Council has ninety (90) days from the date that Highline Water District adopted its 2002 Comprehensive Water System Plan to review such plan and approve, conditionally approve, or reject such plan, and since all the City Council concerns were addressed at that time, and

WHEREAS, it is in the public interest to approve the Highline Water District's 2002 Comprehensive Water System Plan; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES RESOLVES AS
FOLLOWS:

The Des Moines City Council hereby approves the
Highline Water District's 2002 Comprehensive Water System
Plan, attached as Exhibit "A" and incorporated herein by
reference.

ADOPTED BY the City Council of the City of Des Moines,
Washington this _____ day of _____, 2003 and
signed in authentication thereof this _____ day of ____
_____, 2003

MAYOR

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

p:\users\linda\doc\agenda\Draft Resolution No. 03-275

HIGHLINE WATER DISTRICT

23828 30th Ave. S., Kent, WA 98032 - P.O. Box 3867, Kent, WA 98032
Office: (206) 824-0375 / Fax: (206) 824-0806

LETTER OF
TRANSMITTAL

ATTENTION:	MR. TIMOTHY C. HEYDON, P.E.
COMPANY:	CITY OF DES MOINES
	DEPARTMENT OF PUBLIC WORKS
ADDRESS:	21650 11 TH AVENUE SOUTH DES MOINES, WA 98198-6317

DATE:	SEPTEMBER 30, 2003
RE	
DES MOINES CITY COUNCIL MEETING (10/9/03)	
APPROVAL OF HWD COMPREHENSIVE PLAN	

WE ARE SENDING YOU: ☒ **ATTACHED** ☐ **UNDER SEPARATE COVER VIA** _____ **THE FOLLOWING ITEMS:**

☐ **SHOP DRAWINGS** ☐ **PRINTS** ☐ **PLANS** ☐ **SAMPLES** ☐ **SPECIFICATIONS**
☐ **COPY OF LETTER** ☐ **CHANGE ORDER** ☐ _____

COPIES	DATE	NO.	DESCRIPTION
2			HWD 2002 COMPREHENSIVE WATER SYSTEM PLAN
2			HWD RESOLUTION #02-11-6C ADOPTING PLAN / KING COUNTY ORDINANCE #14499 APPROVING HWD PLAN

DEFINITE
SEP 30 2003
By *1 to City Hall Due*
1 to Tim

THESE ARE TRANSMITTED AS CHECKED BELOW:

☐ FOR APPROVAL	☐ APPROVED AS SUBMITTED	☐ RESUBMIT	COPIES FOR APPROVAL
☒ FOR YOUR FILES	☐ APPROVED AS NOTED	☐ SUBMIT	COPIES FOR DISTRIBUTION
☒ AS REQUESTED	☐ RETURNED FOR CORRECTIONS	☐ RETURN	CORRECTED PRINTS
☐ FOR REVIEW AND COMMENT	☐ TRACINGS	☐ SIGNATURE	
☐ LEGAL DESCRIPTION	☐ QUOTATION	☐ PAYMENT	
☐ APPROVED BILLS	☐	☐	
☐ FOR BIDS DUE _____ 19 ____	☐ PRINTS RETURNED AFTER LOAN TO US		

REMARKS	TIM, PER OUR TELEPHONE CONVERSATION REGARDING APPROVAL OF THE DISTRICT'S COMPREHENSIVE PLAN BY THE DES MOINES CITY COUNCIL AT THE OCTOBER 9, 2003 MEETING, I HAVE ENCLOSED TWO COPIES OF THE DISTRICT'S COMPREHENSIVE PLAN ALONG WITH TWO COPIES OF THE HWD RESOLUTION AND KING COUNTY ORDINANCE FOR YOUR USE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL ME AT (206) 824-0375, EXT. 102. TOM
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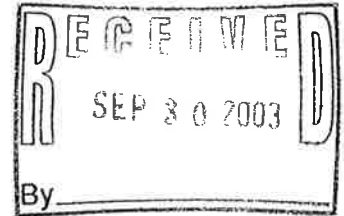
COPY TO:		SIGNED:	<i>W. D. Keown</i>
		NAME:	THOMAS D. KEOWN, P.E.
		TITLE:	CONSTRUCTION/OPERATIONS MANAGER

IF ENCLOSURES ARE NOT AS NOTED, PLEASE NOTIFY US AT ONCE.

ATTACHMENT 2



**HIGHLINE WATER DISTRICT
King County, Washington**



RESOLUTION 02-11-6C

**RESOLUTION ADOPTING THE HIGHLINE WATER DISTRICT 2002 COMPREHENSIVE
WATER SYSTEM PLAN**

Background

Whereas, by passage of Resolution 00-8-25A, the Board of Commissioners authorized Penhallegon Associates Consulting Engineers update the District's Comprehensive Water System Plan in accordance with all applicable rules and regulations, as well as the District's policies and procedures; and

Whereas the Plan is in compliance with Chapter 246-290 of the Washington Administrative Code (WAC) and the requirements of King County and all other jurisdictions within which the District operates; and

Whereas the Plan was developed in accordance with the South King County Coordinated Water System Plan (SKC CWSP), which establishes the framework for water system planning in the southern portion of King County; and

Whereas on October 14, 2002 the Council of King County approved without conditions the Highline Water District 2002 Comprehensive Water System Plan by Ordinance No. 2002-0447

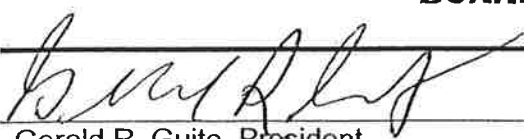
Action

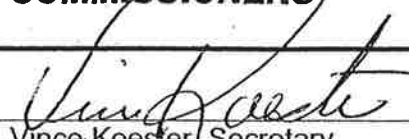
NOW THEREFORE, BE IT RESOLVED:

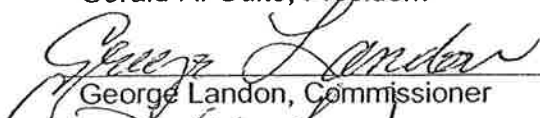
1. The Board of Commissioners hereby adopts the Highline Water District's 2002 Comprehensive Water System Plan.

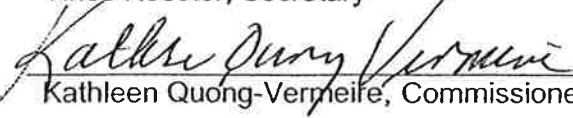
Adopted by the Board of Commissioners of Highline Water District, King County, Washington, at a Regular Open Public Meeting held this 6th day of November 2002.

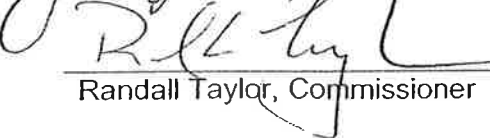
BOARD OF COMMISSIONERS


Gerald R. Guite, President


Vince Koester, Secretary


George Landon, Commissioner


Kathleen Quong-Verniere, Commissioner


Randall Taylor, Commissioner



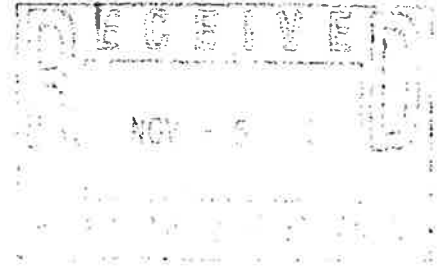
KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

October 15, 2002

Ordinance 14499



Proposed No. 2002-0447.1

Sponsors Patterson

1 AN ORDINANCE approving the Highline Water District
2 2002 Comprehensive Water System Plan.

3
4
5 **PREAMBLE:**

6 K.C.C. 13.24 requires approval of comprehensive plans for water utilities as a
7 prerequisite for granting right-of-way franchises and approval of right-of-way
8 construction permits.

9 The Highline Water District currently provides water service to approximately
10 65,000 people living in parts of the cities of Burien, Des Moines, Federal Way, Kent,
11 Normandy Park, SeaTac, and Tukwila, and urban unincorporated King County. The
12 population served in 20 years is projected to increase by about 35 percent due to growth
13 within the service area.

14 The city's water sources include water purchases from the City of Seattle and a
15 number of wells. Approximately 90 percent of the district's water is purchased from
16 Seattle; 10 percent is obtained from the Angle Lake and Des Moines wells. The district's

34 Plan, Attachment A to this ordinance, is hereby approved without conditions.

35

Ordinance 14499 was introduced on 9/16/2002 and passed by the Metropolitan King County Council on 10/14/2002, by the following vote:

Yes: 12 - Ms. Sullivan, Ms. Edmonds, Mr. von Reichbauer, Ms. Lambert, Mr. Phillips, Mr. Pelz, Mr. McKenna, Mr. Constantine, Mr. Pullen, Mr. Gossett, Ms. Hague and Ms. Patterson

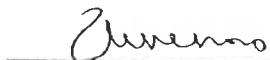
No: 0

Excused: 1 - Mr. Irons

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Cynthia Sullivan, Chair

ATTEST:


Anne Noris, Clerk of the Council

APPROVED this 23 day of October, 2002.


Ron Sims, County Executive

RECEIVED
2002 OCT 23 AM 10:44
CLERK
KING COUNTY COUNCIL

Attachments A Highline Water District 2002 Comprehensive Water System Plan

EXCERPT
DES MOINES CITY COUNCIL MINUTES
September 5, 2002

DISCUSSION ITEMS

Highline Water District 2002 Comprehensive Water System Plan Update

Public Works Director Heydon advised Council that the purpose this evening is to brief Council on the Draft Comprehensive Water System Plan Update of the Highline Water District and to solicit any comments Council may have on the work completed to date. He noted that the Plan was last updated in 1996. He further noted that because of the critical importance of water for the health and safety of citizens, cities are included in the review and approval process of Water District Comprehensive Plans. No formal action is required of Council this evening, but after the District Commissioners have officially accepted the plan, an ordinance will be brought before the Council for official action on the Plan. He introduced Tom Keowin, Highline Water District Engineer and Susan Boyd of Penhallegon Associates Consulting Engineers, Inc. for Highline Water District.

Ms. Boyd proceeded to review the following:

Project Goals

- Establish a plan for orderly development of the system
- Comply with regulatory requirements
- Identify land use and population trends and projections
- Document historical use trends/develop projections
- Identify existing & projected system needs
- Develop a detailed Capital Facilities Plan (CFP)
- Review financial capabilities to implement CFP

Service Area

- Approximately 18 square miles
- Provides service to 65,000 people, 20,000 employees, 17,000 connections & 32,000 ERU's
- Services to 8 jurisdictions including the City of Des Moines

Land Use

- 70.19% Single-Family, 8.87% Multi-Family, 5.19% Commercial, 1.69% Business Park, 2.81% Industrial, 0.13% Agricultural, 3.68% Airport, 2.51% Parks, 1.47% Water and 3.16% Major Roads

Ms. Boyd also reviewed current and projected:

- Population and Employment
- Sales by Customer Class

- Historical/Project Demands

She then reviewed:

Capital Facilities Plan, a total of nearly \$28 Million

- Distribution System Investment - \$18 Million
- Storage Facilities Improvements - \$3,500,000
- Source Improvements - \$6 Million

Financial Analysis Recommendations

- Apply for Funding Assistance: Public Works Trust, FEMA & Others
- Rate Study Underway to Determine Impact of New Wholesale Contract: Include cost of service analysis and review General Facilities charges

In conclusion, Ms. Boyd made the following points:

- Highline Water District's water system is sound and without significant deficiencies
- Project recommendations are primarily prioritized renewal and replacements
- Significant growth is expected in certain areas while SR-509 realignment displaces customers in other areas
- continued coordination with City of Des Moines and other jurisdictions is key

Upon questioning by Council regarding rate increase to users from the new water supply agreement with the City of Seattle, Ms. Boyd replied under the new agreement rate increase is exempt until the year 2012. She also noted that a rate study is underway since rates have not gone up since the year 2000.

Public Works Director Heydon concluded by noting that overall this is a well written Comprehensive Plan which covers the important elements of future water system planning in sufficient detail so that it is clear what needs the District requires in order to serve their existing and expected future customers. He noted that the final plan will probably come back to Council sometime in November.

AGENDA ITEM

SUBJECT: Cingular Communications Lease

AGENDA OF: October 9, 2003

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: October 2, 2003

ATTACHMENTS:

1. Cingular lease

CLEARANCES:

[] Park & Rec. _____

[X] Legal _____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: _____

Purpose:

The purpose of this agenda item is to allow Council discussion regarding the Cingular Communications Lease. This item was placed on the agenda at the request of three members of the City Council.

COMMUNICATIONS SITE LEASE AGREEMENT

THIS COMMUNICATIONS SITE LEASE AGREEMENT ("Lease") dated as of 29 Aug, 2003, is between Pacific Bell Wireless Northwest, LLC, a Delaware limited liability company, d/b/a Cingular Wireless ("Lessee"), whose address is 2445 - 140th Avenue, NE, Suite 202, Bellevue, WA 98005, and City of Des Moines, a municipal corporation ("Lessor"), whose address is 21630 11th Avenue South, Des Moines WA 98198.

The parties hereto agree as follows:

1. Premises. Lessor represents that Lessor owns the real property legally described in Exhibit "A" commonly known as 1000 S. 220th Street, Des Moines WA 98198 (Assessor's Parcel Number 082204903403). Subject to the following terms and conditions, Lessor leases to Lessee that portion of Lessor's property ("Lessor's Property") approximately TBD square feet of space as depicted in Exhibit "B", including any applicable easements for access and utilities (the "Premises"). 405



2. Use. The Premises may be used by Lessee for any lawful activity in connection with the provision of mobile/wireless communications services, including without limitation, the transmission and the reception of radio communication signals on various frequencies and the construction, maintenance and operation of related communications facilities. Lessor agrees, at no expense to Lessor, to cooperate with Lessee in making application for and obtaining all licenses, permits and any and all other necessary approvals that may be required for Lessee's intended use of the Premises.

3. Condition Precedent. This Lease is conditioned upon Lessee, or Lessee's assigns, obtaining, at Lessee's sole cost and expense, all governmental licenses, permits and approvals enabling Lessee, or its assigns, to construct and operate mobile/wireless communications facilities on the Premises.

4. Term. The term of this Lease ("Term") shall be five (5) years commencing with the date Lessee commences construction of its mobile/wireless communications facilities on the Premises, excluding preliminary testing, survey and utilities work (the "Commencement Date"). Lessee shall have the right to extend the Term of this Lease for two (2) additional Terms ("Renewal Term") of five (5) years each. Each Renewal Term shall be on the same terms and conditions as set forth herein. This Lease shall automatically be extended for each successive five (5) year Renewal Term unless Lessee notifies Lessor in writing of Lessee's intention not to extend this Lease at least thirty (30) days prior to the expiration of the first five year Term or any Renewal Term.

5. Rent.

(a) Upon the Commencement Date, Lessee shall pay Lessor, as rent, the sum of Twelve Hundred Dollars (\$1,200.00) ("Rent") per month. Rent shall be payable on the 1st day of each month, in advance, to Lessor at Lessor's address specified at the beginning of this Lease. Rent shall be adjusted annually as of the anniversary of the Commencement Date to the extent of any percentage change which occurred in the Consumer Price Index (All Items, Base 1982-84 = 100) as published by the United States Department of Labor, Bureau of Labor Statistics for All Consumers for the Seattle Metropolitan area (hereinafter "CPI"). The rental adjustment shall be calculated by multiplying the Rent then in effect by a fraction, the denominator of which is the CPI in effect as of the calendar month fourteen full months prior to the anniversary date, and the numerator of which is the CPI in effect two full months prior to the anniversary date. Notwithstanding the foregoing, in no event shall Rent be increased by more than 3% of the Rent paid during the previous year.

(b) Market Rent. If Lessor feels that Rent is not equal to market rent for similar sites in similar geographic areas ("Market Rent"), then at the beginning of each five-year term, Lessor can require that Rent be increased to the then-current market rent for similar sites in similar geographic areas. If Lessor and Lessee cannot agree upon Market Rent within thirty (30) days after Lessor presents its proposal for Market Rent, then the matter shall be settled by binding arbitration by a single arbitrator who has experience in real estate leasing matters. The arbitration will be administered by the American Arbitration Association in accordance with its Commercial Arbitration rules if the parties have not otherwise agreed to use a different arbitrator or arbitration process. At least ten (10) days in advance of the hearing, each party will submit to the arbitrator and to each other their best offers of

Market Rent. The arbitrator shall be limited to choosing one of the two proposed Market Rent figures, and the arbitrator shall award the Market Rent figure that is closest to the true Market Rent. The costs of the arbitration, expert witnesses and attorney's fees shall be borne by the party whose Market Rent figure was not selected by the arbitrator.

(c) If the Commencement Date is other than the first day of a calendar month, Lessee may pay on the first day of the Term the prorated Rent for the remainder of the calendar month in which the Term commences, and thereafter, Lessee shall pay a full month's Rent on the first day of each calendar month, except that payment shall be prorated for the final fractional month of this Lease, or if this Lease is terminated before the expiration of any month.

6. Improvements; Access.

(a) Lessee shall have the right (but not the obligation) at any time following the full execution of this Lease and prior to the Commencement Date, to enter the Premises for the purpose of making necessary inspections and engineering surveys (and soil tests where applicable) and other reasonably necessary tests (collectively "Tests") to determine the suitability of the Premises for Lessee's Facilities (as defined herein) and for the purpose of preparing for the construction of Lessee's Facilities. During any Tests or pre-construction work, Lessee will have insurance as set forth in Section 14, Insurance. Lessee will notify Lessor of any proposed Tests or pre-construction work and will coordinate the scheduling of same with Lessor. If Lessee determines that the Premises are unsuitable for Lessee's contemplated use, then Lessee will notify Lessor and this Lease will terminate.

(b) Lessee has the right to construct, maintain, install, repair and operate on the Premises radio communications facilities, including but not limited to, radio frequency transmitting and receiving equipment, batteries, utility lines, transmission lines, radio frequency transmitting and receiving antennae and supporting structures and improvements ("Lessee's Facilities"). In connection therewith, Lessee has the right to do all work necessary to prepare, add, maintain and alter the Premises for Lessee's communications operations and to install utility lines and transmission lines connecting antennas to transmitters and receivers. All of Lessee's construction and installation work shall be performed at Lessee's sole cost and expense and in a good and workmanlike manner. Title to Lessee's Facilities and any equipment placed on the Premises by Lessee shall be held by Lessee or its equipment lessors or assigns. Lessee's Facilities shall not be considered fixtures. Lessee has the right to remove any or all of Lessee's Facilities at its sole expense on or before the expiration or termination of this Lease. Lessee will make the improvements and follow the procedures set forth in Exhibit B1 to this Agreement.

(c) Lessor shall provide Lessee, Lessee's employees, agents, contractors, subcontractors and assigns with access to the Premises twenty-four (24) hours a day, seven (7) days a week, at no charge to Lessee. Lessor represents and warrants that it has full rights of ingress to and egress from the Premises, and hereby grants such rights to Lessee to the extent required to construct, maintain, install and operate Lessee's Facilities on the Premises, and to remove them therefrom. Lessee's exercise of such rights shall not cause undue inconvenience to Lessor.

(d) Lessor shall maintain all access roadways from the nearest public roadway to the Premises in a manner sufficient to allow reasonable access. Lessor shall be responsible for maintaining and repairing such roadways, at its sole expense, except for any damage caused by Lessee's use of such roadways. If Lessee causes any such damage, it shall promptly repair same.

(e) Lessee shall have the right to install utilities, at Lessee's expense, and to improve the present utilities on or near the Premises (including, but not limited to the installation of emergency back-up power). Subject to Lessor's approval of the location, which approval shall not be unreasonably withheld, Lessee shall have the right to place utilities on (or to bring utilities across) Lessor's Property in order to service the Premises and Lessee's Facilities. Upon Lessee's request, Lessor shall execute recordable easement(s) evidencing this right.

(f) Lessee shall fully and promptly pay for all utilities furnished to the Premises for the use, operation and maintenance of Lessee's Facilities.

(g) Upon the expiration, cancellation or termination of this Lease, Lessee shall surrender the Premises to Lessor in good condition, less ordinary wear and tear.

7. Interference with Communications.

(a) Lessor acknowledges and agrees that it will not permit the installation of any additional antennas or equipment on the property, if such installation or relocation would adversely affect Lessee's space on the property or Lessee's operation, use or enjoyment of its Lessee Facilities, taking into account customary and commercially reasonable practices for multi-tenant wireless communication sites and towers thereon

(b) Lessor shall not, and shall not permit any licensee, tenant, subtenant or other user of the property for wireless communications purposes (collectively, other than Tenant, "Other Tenants") to, (i) install or change, alter or improve the frequency, power, or type of any communications equipment that interferes with the operation of Lessee's Facilities or is not authorized by, or violates, applicable Laws or is not made or installed in accordance with good engineering practices, or (ii) implement a configuration which interferes with the operation of Lessee's Facilities.

(c) In the event of any interference occurring at the property as a result of any actions of Lessor or any Other Tenants described in Section 7(b) above, Lessor shall be responsible for coordinating and resolving any such interference problems caused by Lessor or such Other Tenants, including, without limitation, using its best efforts to correct and eliminate the interference within forty-eight (48) hours of receipt of notification from Lessee and, if appropriate, performing an interference study in accordance with industry-standard procedures and practices. If the interference cannot be corrected or eliminated within such 48-hour period, Lessor shall cause, at Lessor's option, any of Lessor's or its Other Tenants' communications equipment that interferes with the operation of Lessee's Facilities or Lessee's authorized frequency spectrum or signal strength, to be immediately powered down or turned off, with the right to turn such interfering equipment back up or on only during off-peak hours specified by Lessee in order to determine whether such interference continues or has been eliminated; provided, however, that if any interference continues at the time the interfering equipment is powered down, the communications equipment that interferes with the operation of Lessee's Facilities shall be turned off. If Lessor or any such Other Tenant cannot correct or eliminate, to the satisfaction of Lessee, such interference within twenty (20) days of receipt of written notice from Lessee, Lessor shall or shall cause such Other Tenant to cease the operations of the objectionable communications equipment and to stop providing services from the property until the interference problems are resolved. In no event will Lessor be liable for any consequential damages (including, without limitation, lost profits) arising from any such interference.

(d) Lessee shall not (i) install or change, alter or improve the frequency, power, or type of any communications equipment that interferes with the operation of Lessor's or any Other Tenant's communications equipment installed at the property or in the vicinity, or is not authorized by, or violates, applicable Laws or is not made or installed in accordance with good engineering practices, or (ii) implement a configuration which interferes with the operation of Lessor's or any Other Tenant's communications equipment installed at the property or in the vicinity.

(e) In the event of any interference occurring at the property or in the vicinity as a result of any actions of Lessee described in Section 7(d) above, including but not limited to interference with radio, television, telephone or public safety communications, Lessee shall be responsible for coordinating and resolving any such interference problems caused by Lessee, including, without limitation, using its best efforts to correct and eliminate the interference within forty-eight (48) hours of receipt of notification from Lessor. If the interference cannot be corrected or eliminated within such 48-hour period, Lessee shall cause any of Lessee's communications equipment that interferes with the operation of Lessor's or any Other Tenant's communications equipment or their authorized frequency spectrum or signal strength, to be immediately powered down or turned off, with the right to turn such interfering equipment back up or on only during off-peak hours specified by Lessor in order to determine whether such interference continues or has been eliminated; provided, however, that if any interference continues at the time the interfering equipment is powered down, the communications equipment that interferes with the operation of Lessor's or any Other Tenant's communications equipment shall be turned off. If Lessee cannot correct or eliminate, to the satisfaction of Lessor, such interference within twenty (20) days of receipt of written notice from Lessor, Lessee shall cease the operations of the objectionable communications equipment and stop providing services from its Facilities until the interference problems are resolved. In no event will Lessee be liable for any consequential damages (including, without limitation, lost profits) arising from any such interference.

8. Taxes.

(a) Lessee shall pay all personal property taxes assessed against Lessee's Facilities and shall pay, if applicable, the leasehold tax levied by Chapter 82.29A RCW.

(b) Lessor shall pay all real property taxes and all other taxes, fees and assessments attributable to the Premises or this Lease.

9. Termination.

(a) This Lease, in addition to any other remedies which may be pursued in law or in equity, may be terminated by either party upon a material default of any covenant, condition, or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default. This Lease may be terminated by Lessee without further liability for any reason or for no reason, provided Lessee delivers written notice of termination to Lessor prior to the Commencement Date.

(b) This Lease may also be terminated by Lessee without further liability on thirty (30) days prior written notice (i) if Lessee is unable to reasonably obtain or maintain any certificate, license, permit, authority or approval from any governmental authority, thus, restricting Lessee from installing, removing, replacing, maintaining or operating Lessee's Facilities or using the Premises in the manner described in Paragraph 2 above; or (ii) if Lessee determines that the Premises are not appropriate for its operations for environmental reasons.

(c) This Lease may be terminated by Lessee upon thirty (30) days written notice for economic or technological reasons, including without limitation, signal strength, coverage or interference, so long as Lessee pays Lessor a termination fee equal to six (6) months Rent, at the then current rate.

10. Redevelopment. Subject to the other provisions of this Lease, in the event Lessor desires to redevelop, modify, remodel or in any way alter its property and any improvements thereon ("Redevelopment"), Lessor shall in good faith use its best effort to fully accommodate Lessee's continuing use of the Premises. Should any proposed Redevelopment necessitate the relocation of the Premises or Lessee's Facilities, and/or any alterations to Lessee's Facilities (subject to Lessee's prior written consent, which consent may be withheld in Lessee's discretion), Lessee shall relocate or make the necessary alterations, at Lessor's sole cost, expense and risk; provided however, that Lessor has provided Lessee with no less than one year prior written notice of Lessor's proposed Redevelopment. Upon demand from Lessee, Lessor shall reimburse Lessee for any costs or expenses arising out of, or associated with, such relocation or alteration. Lessor shall only be entitled to relocate Lessee's Facilities as set forth above following the expiration of the second (2nd) renewal term. Lessor shall not be entitled to relocate Lessee more than one (1) time during the term of this Lease.

11. Destruction of Premises. If the Premises or Lessor's Property is destroyed or damaged so as in Lessee's judgment, to hinder its effective use of Lessor's Property, Lessee may elect to terminate this Lease as of the date of the damage or destruction by so notifying Lessor no more than 30 days following the date of damage or destruction.

12. Condemnation. If a condemning authority takes all or a portion of Lessor's Property, which in Lessee's opinion is sufficient to render the Premises unsuitable for Lessee's use, then Lessee may terminate this Lease as of the date when possession is delivered to the condemning authority. In any condemnation proceeding each party shall be entitled to make a claim against the condemning authority for just compensation (which for Lessee shall include, the value of Lessee's Facilities, moving expenses, prepaid rent, business dislocation expenses, bonus value of the lease and any other amounts recoverable under condemnation law). Sale of all or part of the Premises to a purchaser with the power of eminent domain in the face of the exercise of its power of eminent domain, shall be treated as a taking by a condemning authority.

13. Indemnification.

(a) Lessee agrees to indemnify, defend and hold Lessor harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly out of the installation, use, maintenance, repair or removal of the Communication Facility or Lessee's breach of any provision of this Agreement, except to the extent

attributable to the negligent or intentional act or omission of Lessor, its employees, agents or independent contractors.

(b) Lessor agrees to indemnify, defend and hold Lessee harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly out of the actions or failure to act of Lessor or its employees or agents, or Lessor's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Lessee, its employees, agents or independent contractors

14. Insurance. Lessee shall maintain the following insurance: (1) Commercial General Liability with limits of \$5,000,000.00 per occurrence, covering Lessee's use, occupancy and operations on the Premises; (2) Automobile Liability with a combined single limit of \$1,000,000.00 per accident; (3) Workers Compensation as required by law; and (4) Employer's Liability with limits of \$1,000,000.00 per occurrence. Each party to this Lease shall each maintain standard form property insurance ("All Risk" coverage) equal to at least 90% of the replacement cost covering their respective property. Each party waives any rights of recovery against the other for damages or loss due to hazards covered by their property insurance and each party shall require such insurance policies to contain a waiver of recovery against the other. Lessee shall name Lessor as an additional insured with respect to the above Commercial General Liability insurance. Lessee shall have the right to self-insure with respect to any of the above insurance.

15. Assignment/Sublease/Additional Users.

(a) Lessee may assign or sublet this Lease at any time to any of Lessee's partners or affiliates. Any other assignment or sublease requires Lessor's prior written approval.

(b) Approval by Lessor of an assignment or sublease shall not be unreasonably withheld, however it shall not be deemed unreasonable for Lessor to refuse to consent to an assignment or sublease without reasonable additional compensation to Lessor for additional users of the premises and/or facilities.

(c) Lessee shall, to the extent technology and space permit and to the extent that it does not interfere with Lessee's operations or other rights herein, make the facility available to maximize joint use by existing or future users of the property, including Lessor or other lessees of Lessor. Lessee shall be permitted to charge reasonable value to any joint user, other than Lessor, for use of Lessee's facilities or structures

16. Title and Quiet Enjoyment.

(a) Lessor represents and warrants that it has full right, power, and authority to execute this Lease. Lessor further warrants that Lessee shall have quiet enjoyment of the Premises during the Term of this Lease or any Renewal Term. Lessor hereby represents and warrants that it has obtained all necessary approvals and consents, and has taken all necessary action to enable Lessor to enter into this Lease and allow Lessee to install and operate Lessee's Facilities on the Premises, including without limitation, approvals and consents as may be necessary from other tenants, licensees and occupants of Lessor's Property.

(b) Lessee has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice. If, in the opinion of Lessee, such title report shows any defects of title or any liens or encumbrances which may adversely affect Lessee's use of the Premises, Lessee shall have the right to terminate this Lease immediately upon written notice to Lessor.

17. Repairs/Removal/Restoration.

(a) All portions of the Communication Facility brought onto the property by Lessee will be and remain Lessee's personal property and Lessee shall properly maintain and repair all of its property in a timely and workmanlike manner, however, the light standard structure will become property of Lessor upon completion of construction of the Communication Facility, Lessee shall be responsible for maintenance of the light standard structure. Lessor's lighting equipment and associated wiring and cables shall be maintained by Lessor.

(b) Lessee shall not be required to make any repairs to the Premises except for damages to the Premises caused by Lessee, its employees, agents, contractors or subcontractors

(c) Within sixty (60) days of the termination of this Agreement, Lessee will remove all Lessee improvements, with the exception of the light standard structure, and will restore the property to its original conditions, less ordinary wear and tear.

18. Environmental. Lessor represents that the Premises have not been used for the generation, storage, treatment or disposal of hazardous materials, hazardous substances or hazardous wastes. In addition, Lessor represents that no hazardous materials, hazardous substances, hazardous wastes, pollutants, asbestos, polychlorinated biphenyls (PCBs), petroleum or other fuels (including crude oil or any fraction or derivative thereof) or underground storage tanks are located on or near the Premises. Notwithstanding any other provision of this Lease, Lessee relies upon the representations stated herein as a material inducement for entering into this Lease.

19. Mediation/Arbitration.

(a) If a dispute, other than a disagreement regarding "market rent," arises from or relates to this Agreement or the breach thereof, and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under the American Arbitration Association's Rules before resorting to arbitration. The mediator may be selected by agreement of the parties or through the American Arbitration Association. Following mediation, any unresolved controversy or claim arising from or relating to this Contract or breach thereof shall be settled through arbitration which shall be conducted under the American Arbitration Association's Arbitration Rules. The arbitrator may be selected by agreement of the parties or through the American Arbitration Association. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

(b) Any dispute regarding "market rent" for the premises shall be resolved in accordance with Section 5 (b), above.

20. Miscellaneous.

(a) Notices shall be in writing and shall be delivered to:

<u>Lessee:</u>	<u>with a copy to:</u>	<u>and with a copy to:</u>
Cingular Wireless Lease Administration	Counsel - West Region	Cingular Wireless
6100 Atlantic Boulevard	Cingular Wireless	2445 - 140 th Avenue NE
1 st Floor	3345 Michelson Drive	Suite 202
Mail Code: GAN02	Suite 100	Bellevue, WA 98005
Norcross, GA 30071	Irvine, CA 92612	Attn: Property Manager

and to Lessor, Attn: City Manager, to the address given at the beginning of this Lease, or to the address specified in the most recent written notice of any change in address. Delivery of notices shall be made by hand, U.S. mail return receipt requested or reliable overnight courier.

(b) If Lessee is to pay Rent to a payee other than the Lessor, Lessor shall notify Lessee in advance in writing of the payee's name and address.

(c) The substantially prevailing party in any legal claim arising hereunder shall be entitled to its reasonable attorney's fees and court costs, including appeals, if any.

(d) Subordination. Lessor shall obtain for the benefit of LESSEE a commercially reasonable subordination, non-disturbance and attornment agreement (a "Non-Disturbance Agreement") from each holder of a mortgage, deed of trust, deed to secure debt or other similar instrument now or hereafter encumbering the Leased Property (a "Mortgage"), confirming that Lessee's right to quiet possession of the Leased Property during the term of this Agreement (including any extensions thereof) shall not be disturbed as long as LESSEE is not in default hereunder. No such subordination shall be effective unless the holder of such Mortgage shall, either in the Mortgage itself or in a separate agreement with LESSEE, agree that in the event of a foreclosure, or conveyance in lieu of foreclosure, of Lessor's interest in the Leased Property, such holder shall recognize and confirm the validity and existence of this Agreement and the rights of Lessee hereunder, and this Agreement shall continue in full force and effect and Lessee shall have the right to continue its use and occupancy of the Leased Property in accordance with

the provisions of this Agreement as long as Lessee is not in default of this Agreement beyond applicable notice and cure periods. Lessee shall execute in a timely manner whatever instruments may reasonably be required to evidence the provisions of this paragraph. In the event the Leased Property is encumbered by one or more Mortgages on the Commencement Date, Lessor, no later than thirty (30) days after the Commencement Date, shall obtain and furnish to Lessee a Non-Disturbance Agreement in recordable form from the holder of each such Mortgage.

(e) If any provision of the Lease is invalid or unenforceable with respect to any party, the remainder of this Lease or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

(f) Terms and conditions of this Lease, which by their sense and context survive the termination, cancellation or expiration of this Lease, will so survive.

(g) This Lease shall be governed under Washington law, and be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

(h) Upon request, either party may require that a Memorandum of Lease attached as Exhibit C be recorded confirming the (i) Lease commencement, (ii) expiration date of the Term, and (iii) the duration of any Renewal Terms.

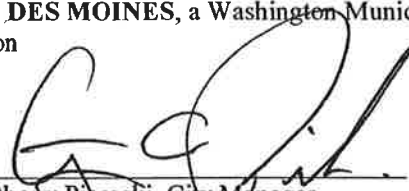
(i) This Lease constitutes the entire Lease between the parties, and supersedes all understandings, offers, negotiations and other leases concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth herein. Any amendments, modifications or waivers of any of the terms and conditions of this Lease must be in writing and executed by both parties.

IN WITNESS WHEREOF, the parties have entered into this Lease effective as of the date first above written.

LESSOR:

CITY OF DES MOINES, a Washington Municipal Corporation

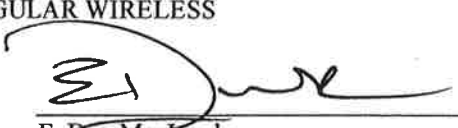
By:


Anthony Piasecki, City Manager
City of Des Moines

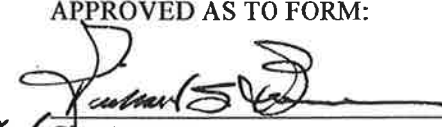
LESSEE:

PACIFIC BELL WIRELESS NORTHWEST, LLC,
a Delaware limited liability company, d/b/a
CINGULAR WIRELESS

By:


E. Bon MacLeod
Seattle Network Director

APPROVED AS TO FORM:

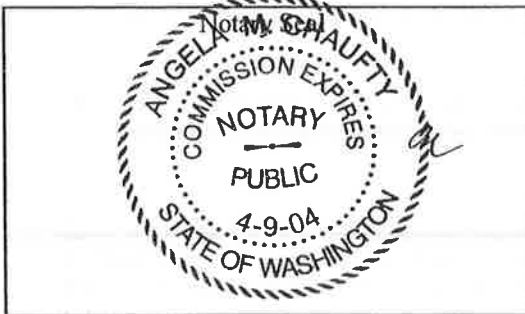

City Attorney

LESSOR'S ACKNOWLEDGMENT:

STATE OF WASHINGTON)
) SS.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that **Anthony Piasecki** is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the City Manager of the **City of Des Moines**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 8/11/03



Angela M. Chaufy
(Signature of Notary)
Angela M. Chaufy
(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of Washington
My appointment expires: 4/9/04

CINGULAR'S ACKNOWLEDGMENT:

STATE OF WASHINGTON)
) SS.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that **E. Don MacLeod** is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the Seattle Network Director of **Cingular Wireless**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 29 August 2003

Notary Seal

Alma N. Newgard
(Signature of Notary)
ALMA N. NEWGARD
(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of Washington
My appointment expires: March 22, 2005

EXHIBIT A

LEGAL DESCRIPTION OF LESSOR'S PROPERTY

Lessor's Property, situated in the County of King, State of Washington, of which the Premises are a part, is legally described as follows:

Legal Description:

(Type or copy the full legal description from the title report, or check here ☒ and attach survey as Exhibit A, Page 2.)

EXHIBIT B**DESCRIPTION OF PREMISES**

The Premises consist of those areas described/shown below and where Lessee's communications antennae, equipment, cables and utilities occupy Lessor's Property. The Premises and the associated utility connections and access, including easements, ingress, egress, dimensions, and locations as described/shown below, are approximate only and may be adjusted or changed by Lessee at the time of construction to reasonably accommodate sound engineering criteria and the physical features of Lessor's Property.

(Insert drawing of Site below, or check here ☒ and attach drawing as Exhibit B, Page 2.)

A final drawing, Site Plan, or copy of a property survey substantially depicting the above will replace this Exhibit "B" when initialed by Lessor.

Notes

1. This Exhibit may be replaced by a land survey or Site Plan of the Premises once it is received by Lessee.
2. Setback of the Premises from the Lessor's boundaries shall be the distance required by the applicable governmental authorities.
3. Width of access road shall be the width required by the applicable governmental authorities, including police and fire departments.
4. The type, number and mounting positions and locations of antennas and transmission lines are illustrative only. Actual types, numbers, mounting positions may vary from what is shown above.
5. Exhibit B1, SCOPE OF WORK, attached and incorporated herein by this reference, is a part of this agreement, however the list of responsibilities included on Exhibit B1 are not exclusive of other responsibilities of the parties hereto as set forth in the Lease Agreement.

[illegible]

a-2	 WFI WIRELESS FACILITIES, INC. 575 ANDOVER PARK WEST SUITE 201 TUKWILA, WA 98188	 2445 140th NE #202 BELLEVUE, WA 98005	 14000 Skyway Rd. Wood Creek Business Park 12810 NE 78th Street Woodinville, WA 98072 ph: (425) 415-0746 fax: (425) 415-0799	DATE: 02-24-03 DRAWN BY: JBR CHECKED BY: ERM	REVISIONS DATE DESCRIPTION MFR	1-4-03 PRELIM CD'S JBR 2-24-03 FINAL CD'S JBR 3-24-03 REV. FINAL CD'S JBR 2-24-03 FINAL CD'S JBR	SITE NUMBER WA-455-01 D.T. DES MONES 1000 S. 220TH ST. DES MONES, WA 98198
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2445 140th NE #202
 BELLEVUE, WA 98005

575 ANDOVER PARK WEST
 SUITE 201
 TUKWILA, WA 98188

EXHIBIT B1**SCOPE OF WORK****Cingular Wireless Construction at Des Moines Field House Park****General**

- A. Per § 3 of the Lease, Tenant is preparing, executing, filing, and complying with all required Governmental Approvals and Regulations.
- B. Tenant to clean site daily during construction. At end of each day, site must be left safe and secured.
- C. Tenant understands that this is a public facility, and that it must be in service during most, if not all, hours of construction required by this Contract. Tenant to ensure that construction will not interfere with the Americans with Disabilities Act (ADA) accessible entrance.

Scope of Work

- A. Tenant to remove existing left field light pole, which will be retained by Landlord to be used at another ball field. Tenant to replace with new left field light pole to new area agreed upon by Tenant and Landlord as depicted in approved Construction Drawings. Tenant to reinstall MUSCO field lighting fixtures on the new left field light pole per MUSCO and Landlord field lighting standards.
- B. Daily removal and disposal of all materials, debris and trash generated by this project.
- C. One-year guarantee on all work performed by Tenant.
- D. Verify location of all underground utilities before commencement of Work. Remove no utilities, unless depicted on approved Construction Drawings. All utilities to run underground. If unexpected conditions arise, stop work and immediately notify Landlord. In all phases of the work, the Tenant, at no additional cost, shall repair all damage caused by the Tenant to any existing utilities.

Landlord Responsibilities

- A. Locate all above-ground utilities
- B. On-site Landlord observation and construction supervision.

**RECORDING REQUESTED BY, AND
WHEN RECORDED, RETURN TO:**

CINGULAR WIRELESS LLC
2445 – 140th Ave. NE, Suite 202
Bellevue, WA 98005

MEMORANDUM OF AGREEMENT

Grantor: CITY OF DES MOINES, a Washington Municipal Corporation
Grantee: PACIFIC BELL WIRELESS NORTHWEST, LLC, a Delaware limited liability company, d/b/a Cingular Wireless
Legal Description: NW 1/4 SE 1/4 S8T22N R4E (abbreviated legal)
Official legal description attached as Exhibit A
Assessor's Tax Parcel ID No.: 082204 - 9034-03
Site Number & Name: WA455-01 DT DES MOINES

This Memorandum of Agreement is made by and between CINGULAR WIRELESS LLC, a Delaware limited liability company, on behalf of Pacific Bell Wireless Northwest, LLC, a Delaware limited liability company, d/b/a Cingular Wireless, whose address is 2445 – 140th Avenue, Ave. NE, Suite 202, Bellevue, WA 98005 (hereinafter referred to as "Lessee"), and CITY OF DES MOINES, a Washington Municipal Corporation, whose address is 21630 – 11th Ave S., Des Moines WA 98198 (hereinafter referred to as "Lessor").

RECITALS

WHEREAS, Lessor and Lessee have executed that certain Communication Site Lease Agreement ("Agreement") dated as of 29 August, 2003, covering certain premises ("Premises") situated on certain real property located in the County of King, State of Washington, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference; and

WHEREAS, Lessor and Lessee desire to record notice of the Agreement in the county's official records;

NOW, THEREFORE, in consideration of the foregoing, Lessor and Lessee hereby declare as follows:

1. **Demise**. Lessor has leased Premises to Lessee (together with access rights), and Lessee has hired the Premises from Lessor, subject to the terms, covenants and conditions contained in the Agreement for the purpose of installing, operating and maintaining a radio communications facility and other improvements. All of the foregoing are set forth in the Agreement.

2. **Expiration Date**. The term of the Agreement is scheduled to commence with the issuance of a local building permit and shall expire five (5) years thereafter, subject to Lessee's option to extend the term for two (2) additional terms of five (5) successive years each.

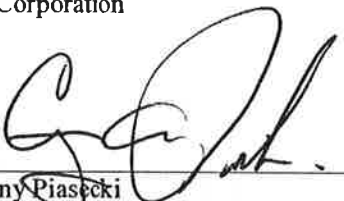
3. **Agreement Controlling.** This Memorandum is solely for the purpose of giving constructive notice of the Agreement. In the event of conflict between the terms of the Agreement and this Memorandum, the terms of the Agreement shall control.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement as of the day and year first above written.

LESSOR:

CITY OF DES MOINES, a Washington
Municipal Corporation

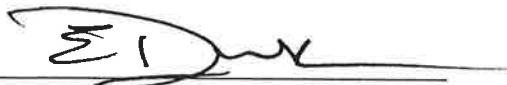
By:


Anthony Piasecki
City Manager

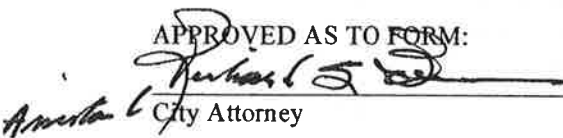
LESSEE:

PACIFIC BELL WIRELESS NORTHWEST, LLC,
a Delaware limited liability company, d/b/a
CINGULAR WIRELESS

By:


E. Don MacLeod
Seattle Network Director

APPROVED AS TO FORM:

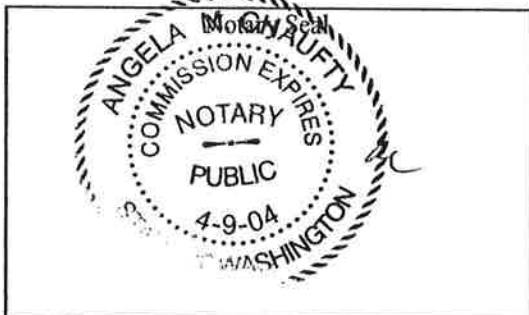

City Attorney

LESSOR'S ACKNOWLEDGMENT:

STATE OF WASHINGTON)
) ss.
COUNTY OF King)

I certify that I know or have satisfactory evidence that **Anthony Piasecki** is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the City Manager of the **City of Des Moines** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 8/11/03



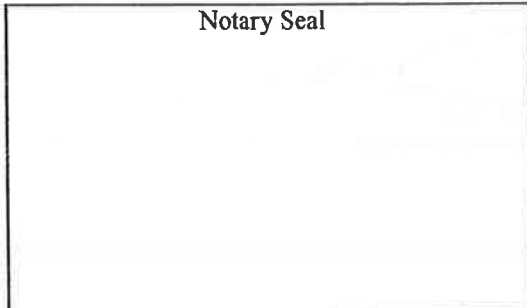
Angela M. Chauffy
(Signature of Notary)
Angela M. Chauffy
(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of Washington
My appointment expires: 4/9/04

CINGULAR'S ACKNOWLEDGMENT:

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that **E. Don MacLeod** is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the Seattle Network Director of **Cingular Wireless**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 29 August 2003



Alma N. Newgard
(Signature of Notary)
ALMA N. NEWGARD
(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of Washington
My appointment expires: March 22, 2005

**EXHIBIT A
LEGAL DESCRIPTION**

Site Number: DT DES MOINES

Site Name: WA455-01

Lessor's Property, situated in the County of KING, State of Washington, of which the Premises are a part, is legally described as follows:

Legal Description:

(Type or copy the full legal description from the title report, or check here ☒ and attach survey as Exhibit A, Page 2.)

LEGAL DESCRIPTION:

PARCEL A:

The West 120 feet of the North 75 feet of the East 607 feet of the South 368 feet of the Northwest quarter of the Southeast quarter of Section 8, Township 22 North, Range 4 East W.M.;

EXCEPT the North 10 feet thereof conveyed to King County by deed recorded under Recording No. 4801585, records of King County, Washington.

Situate in the County of King, State of Washington.

PARCEL B:

Beginning 932 feet West of the Southeast corner of the Northwest quarter of the Southeast quarter of Section 8, Township 22 North, Range 4 East W.M.;

THENCE North along the East line of Hanes' Addition to Des Moines a distance of 369.7 feet;

THENCE East 200 feet;

THENCE South 369.7 feet to the North line of New Addition to Des Moines;

THENCE West to place of beginning;

ALSO, all of fractional Block 52, The New Addition to the Town of Des Moines, according to the Plat thereof recorded in Volume 4 of Plats, Page 84, records of King County, Washington;

EXCEPT the South 10 feet of the North 30 feet of that portion of the East 932 feet of the Northwest quarter of the Southeast 1/4 of said Section 8, and the West 15 feet of the East 30 feet of the East 932 feet of the Northwest quarter of the Southeast quarter of section lying Southerly of S. 219th Street and Westerly of 11th Ave. S. as now established by King County.

Situate in the County of King, State of Washington.

PARCEL C:

The North 80 feet of the South 180 feet of the West 100 feet of the East 531.9 feet of the Southeast quarter of the Northwest quarter of the Southeast quarter of Section 8, Township 22 North, Range 4 East W.M., records of King County, Washington.

Situate in the County of King, State of Washington.

Fidelity National Title Company of Washington
ALTA Commitment, Page 3
Order No. N211336

SCHEDULE A (continued):

LEGAL DESCRIPTION (continued):

PARCEL D:

Lots 15 and 16, Block 54, NEW ADDITION TO THE TOWN OF DES MOINES,
according to the Plat thereof recorded in Volume 4 of Plats, Page 84,
records of King County, Washington.

Situate in the County of King, State of Washington.

PARCEL E:

Lots 15 and 16, Block 53, NEW ADDITION TO THE TOWN OF DES MOINES,
according to the Plat thereof recorded in Volume 4 of Plats, Page 84,
records of King County, Washington.

Situate in the County of King, State of Washington.

PARCEL F:

The South 368 feet of the West 100 feet of the East 632 feet of the
Northwest quarter of the Southeast quarter of Section 8, Township 22
North, Range 4 East W.M.;
EXCEPT the East 75 feet of the North 120 feet thereof;

ALSO, the South 367.7 feet of the West 100 feet of the East 732 feet of
the Northwest quarter of the Southeast quarter of said Section 8.

Situate in the County of King, State of Washington.

SCHEDULE A (continued):

LEGAL DESCRIPTION (continued):

PARCEL G:

Beginning 345 feet West of the Southeast corner of the Northwest quarter of the Southeast 1/4 of Section 8, Township 22 North, Range 4 East W.M.;
THENCE North 367.6 feet to the South line of the Ethel O. Peck Road;
THENCE West along said South line of said road 195.1 feet;
THENCE South to the North line of the New Addition to the Town of Des Moines;
THENCE East 186.9 feet to the point of beginning;
LESS the South 100 feet of the West 100 feet of the above described property deeded by W.R. Case and Louise Case, husband and wife, to the above named Grantor (Des Moines Civic Betterment Committee) under date of June 22, 1938 and recorded under Recording No. 3001205;
AND LESS the North 80 feet of the South 180 feet of the West 100 feet of the above described property deeded by W.R. Case & Louise Case, husband and wife, to Des Moines Civic Betterment Committee under the date of October 20, 1938 and recorded under Recording No. 3020598;

ALSO, fractional Blocks 55 and 56, New Addition to the Town of Des Moines, as recorded in Volume 4 of Plats, Page 84, records of King County, Washington, together with all rights accruing to the same by reason of the vacation of street and alley adjoining.

Situate in the County of King, State of Washington.

NOTE FOR INFORMATIONAL PURPOSES ONLY:

The following may be used as an abbreviated legal description on the documents to be recorded, per amended RCW 65.04. Said abbreviated legal description is not a substitute for a complete legal description within the body of the document.

Ptn S8-T22N-R4E

