

PRELIMINARY
REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

October 9, 2003

The regular meeting of the Des Moines City Council was called to order at 7:40 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 White.

ROLL CALL - Present: Mayor Maggie Steenrod, Mayor Pro Tem Richard Benjamin, Councilmembers Bob Sheckler, Dan Sherman, Scott Thomasson and Susan White. Absent: Councilmember Gary Petersen. Also present were City Manager Tony Piasecki, Assistant City Manager Corbitt Loch, City Attorney Linda Marousek, Domestic Violence Court Advocate Kristen Gabel, Harbormaster Joe Dusenbury, Public Works Director Tim Heydon, Community Development Director Judith Kilgore, Park and Recreation Director Patrice Thorell, Development Services Manager Robert Ruth, and Deputy City Clerk Angela Chaufy.

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

COMMENTS FROM THE PUBLIC

Bob Pond, 23116 30th Avenue South

Mr. Pond informed Council that semi-trucks have been parking on 30th Avenue South. He asked that a sign prohibiting their parking be placed at the north end of the street. Mr. Pond noted that the Midway Furniture sign was in need of repair. He asked for an early morning police sweep to remove individuals who were sleeping behind the store. Mr. Pond told Council that motorized scooters were accidents waiting to happen as they were often operated at night without any lights. He believed that the people of Kings Arm Motel should be held responsible for their actions. Mr. Pond said that he would like to see a record of the number of police calls related to the motel.

Nadine Hansen, 22033 10th Avenue South

Ms. Hansen requested a reconsideration of the City's lease with Cingular. She asked Council to conduct environmental impact and health studies. Ms. Hansen noted that a school, a park, and houses were located in the vicinity of the approved cell tower site.

Marc Gottshall, 22003 10th Avenue South

Mr. Gottshall asked Council to reconsider the lease option with Cingular. He distributed correspondence regarding biological studies of microwave radiation at low intensities. Mr. Gottshall said that, even if only ten of the studies were correct while the rest were in error, a serious issue was still to be considered. He informed Council that several of the appellants were out of town and unable to appear before Council.

Karen Bortner, 22021 10th Avenue South

Ms. Bortner informed Council that she had purchased her home in May 2003. If she had known about the pending cell tower, she would not have bought the house. She informed Council that her 13-year-old daughter had been diagnosed and treated for leukemia eight years ago. While

her daughter was doing well now, she still had an increased risk of heart disease and suffered from a calcium deficiency. Ms. Bortner reported that studies have indicated a connection between cell towers and heart problems, calcium concerns, short-term memory loss, and sleeplessness. She asked Council to find a better location for the cell tower.

Denny Burnham, 26826 15th Avenue South

Mr. Burnham asked to defer his comments.

John Burdine, 1413 South 237th Court

Mr. Burdine requested that Council reconsider the cell tower issue due to the unintended consequences associated with the towers. He asked Council to find a location for the tower that was not so close to children and sports fields.

Joe Hendricson, 22017 10th Avenue South

Mr. Hendricson asked Council to reconsider the Cingular lease. He questioned why the City was interested in having a lease for a cell tower as there appeared to be several associated health concerns. He likened it to hormone replacement for women. Mr. Hendricson reported that he had heard that the City had initiated the request for the cell tower. He believed that the long-term effects of cell towers could not be determined without long-term studies. He questioned why the City should be subjected to the possibility of health risks or the worry associated with their unknown health risks.

Catherine Carbone Rogers, 22516 10th Avenue South

Ms. Carbone Rogers urged Council to reconsider the Cingular lease. She voiced concern about the effects of microwave radiation potentially caused by cell towers. The microwave radiation effects were yet unknown as the technology was too new. Ms. Carbone Rogers said that it was a proven fact that children's brains and bodies were more vulnerable to health effects. If the City must have a cell tower, she asked that it be located at a site that would not expose children to the risks. In response to Councilmember Sherman's questioning, Ms. Carbone Rogers informed Council that she had received several questions of concern from Des Moines Elementary School parents although no parents had indicated that they would remove their children from school should the tower be constructed.

Mayor Pro Tem Benjamin said that parents had questioned him concerning the status of the cell tower.

Alex White, 22030 7th Avenue South

Mr. White distributed an article listing Des Moines as one of Washington's fastest shrinking cities. He asked Council to encourage business through the City's permitting process, identification of associated costs, and clarification of procedures and regulations. Mr. White said that business owners should receive consistent treatment and not be subjected to political decisions.

Brenda Siegrist, 20731 7th Place South

Ms. Siegrist thanked the Public Works Department for their fair treatment and thorough efforts concerning the removal of illegally placed political signs. She said that, three weeks ago, her political signs began to disappear within a few hours of placement. She read RCW 29.85.275 regarding the unauthorized removal or defacement of signs. Ms. Siegrist said that she had filed a police report regarding her missing signs and she planned to proceed with prosecution.

Denny Burnham, 26826 15th Avenue South

Mr. Burnham informed Council that was working with Ms. Siegrist to place political signs. He said that he was confident Councilmember Thomasson was not responsible for the removal of the signs but that over-zealous people were removing them. Mr. Burnham asked the incumbents to tell their supporters to stop removing the challengers' signs. Mr. Burnham questioned why, during a Public Works' sweep of the City, political signs had been removed from his and Mr. Bogovich's yards.

BOARD AND COMMITTEE REPORTS

Political Sign Removal

Councilmember Sheckler noted that the issue of the illegal removal of political signs came up every campaign season. If anyone was doing such a thing, he should stop.

Port of Seattle Meeting

Councilmember Sheckler reported that he had attended a meeting with the Port of Seattle. The purpose of the meeting was to discuss subjects of concern to the airport's surrounding cities and the Highline School District, excluding the Third Runway issue. Councilmember Sheckler identified the following concerns of Des Moines:

- To discontinue referring to the buyout area on South 216th Street as a burrow pit. The Port has agreed to identify the area as the buyout area.
- To maintain and enhance the Des Moines Marina area as an attraction.
- To provide economic vitality and avoid any drop in property values.

Councilmember Sheckler said that he was encouraged by the good dialog at the meeting. He reported that the City would provide the Port of Seattle with its vision and the specific details pertaining to the achievement of that vision.

Economic Development

Councilmember White announced that she would miss the remaining October 2003 meetings due to her daughter's surgery in California. She emphasized her interest in economic development and said that she would e-mail correspondence to the Council regarding that subject.

ADMINISTRATION REPORTS

Comments from the Public – Bob Pond

City Manager Piasecki said that he would follow-up on Mr. Pond's comments immediately.

Comments from the Public – Alex White

City Manager Piasecki noted that the figures used in the study identifying Des Moines as one of the state's fastest shrinking cities was based on Office of Financial Management (OFM) information. The OFM calculates population projections based upon a number of factors including a snap-shot of the number of apartment vacancies at any certain time. He noted that each time a physical census has been performed, Des Moines' population has increased.

Comments from the Public – Hendricsen

City Manager Piasecki announced that Cingular had approached the City about the cell tower. Per the terms of the agreement, Cingular would pay \$1,200 per month to the City. The agreement also contained an annual escalator clause based on inflation. After five years, the lease amount would be reevaluated against the current market.

Comments from the Public – Denny Burnham

City Manager Piasecki asked Mr. Burnham and Mr. Bogovich to provide their addresses to him so that he could research the reason for the removal of political signs from their yards.

Status of Chief of Police Position

City Manager Piasecki informed Council that an initial offer had been proposed to one of the two finalists for the Chief of Police position. He hoped to soon announce the name of the new Chief of Police.

Air Monitoring System Grant

City Manager Piasecki noted that he had distributed a draft letter addressed to Mary Berg, Program Manager of the Air Program for the Department of Ecology to Council. The purpose of the letter was to encourage the Department of Ecology to submit a grant application to the U.S. EPA for a \$200,000 grant to place an air toxics monitoring station near SeaTac Airport. If Council concurred, he recommended that the Mayor sign the letter.

Council agreed that the Mayor should sign the letter.

CONSENT CALENDAR was read by Deputy City Clerk Chaufy.

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 #91219 through #91368 & electronic fund transfers in the total amount of \$510,396.88

Payroll fund transfers in the total amount of \$351,958.45

3. Draft Resolution No. 03-001 [Assigned Res. No. 963] - 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.

In regard to Item No. 5, Harbormaster Dusenbury informed Council that actual water depths were significantly greater than indicated on the project's plans. As the bid price had been based upon the incorrect depth calculations, additional money was needed to purchase the correct Seaflex anchor lines. Staff would address the impact of the miscalculation with the project consultant.

Mayor Pro Tem Benjamin removed Item No. 4.

In regard to Item No. 2, Councilmember Thomasson questioned whether the street should be identified as 19th Place South.

Public Works Director Heydon explained that he had researched the original plat and found that the street was an unopened right-of-way with multiple names. A more detailed map of the area would be presented to Council at the hearing.

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

REMOVED CONSENT CALENDER ITEM

Draft Resolution No. 03-270 [Assigned Res. No. 964] – Authorizing Application to Interagency Committee for Outdoor Recreation

In response to Mayor Pro Tem Benjamin's questioning, Park and Recreation Director Thorell verified that the youth football players in Des Moines would have a place to play football.

MOTION was made by Councilmember Thomasson, seconded by Councilmember Sherman and passed unanimously approve Draft Resolution No. 03-270 authorizing application to the Interagency Committee for Outdoor Recreation.

AGENDA REVISION

Mayor Steenrod announced that the public hearing for the Department of Justice Grant Funds for the City's Domestic Violence Program would be conducted as the first order of business.

PUBLIC HEARING

Department of Justice Grant Funds for Domestic Violence Program

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

City Attorney Marousek informed Council that the City was eligible to receive funds from the Local Law Enforcement Block Grant. The funding was needed to continue the City's Domestic Violence Court Advocate position through December 2004.

As the majority of victims do not want to participate in the prosecution of their cases, Domestic Violence Court Advocate Gabel said that she often tries to resolve the issues before going to trial.

Mayor Steenrod called for proponents. She placed the speaker under oath.

PROPONENT

Denny Burnham, 26826 15th Avenue South

Mr. Burnham voiced support for the continued funding of the Domestic Violence Court Advocate position. He said that it was an opportunity for the city to spend money on a program that helped people.

OPPONENTS – None.

Mayor Steenrod closed the public hearing.

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

At 8:38 p.m., Mayor Steenrod declared a ten-minute break.

CONTINUED PUBLIC HEARING

SEPA Appeal & Unclassified Use Permit Zenith Viewpointe

Mayor Steenrod reopened the SEPA Appeal and Unclassified Use Permit hearing for Zenith Viewpointe.

Councilmember White recused herself from participation.

Mayor Steenrod announced that the purpose of the item was to provide additional information requested by Council at the September 11, 2003 City Council meeting. The Council would 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.

In response to Councilmember Sheckler's question, Community Development Director Kilgore informed Council that SEPA rules allowed for a "phase review" of the project.

MOTION was made by Councilmember Thomasson and seconded by Mayor Pro Tem Benjamin to accept testimony regarding the Unclassified Use Permit (UUP) and the development exception while reserving the right to ask additional questions regarding SEPA issues.

Councilmember Thomasson noted that Council could not take action on the UUP and development exception until SEPA direction had been provided.

Councilmember Sheckler voiced support for the motion. He mentioned that Councilmember Petersen wanted to be present when SEPA action was taken.

VOTE ON MOTION: Motion passed unanimously.

City Attorney Marousek distributed a handout clarifying the SEPA appeal standard of review. Per case law, the SEPA decision standard of review was adequate if it contained a reasonably thorough discussion and mitigation of probable significant adverse environmental impacts of the proposed actions.

At 9:08 p.m., Mayor Pro Tem Benjamin left the Council Chambers.

Development Services Manager Ruth informed Council that DMMC 18.32.010 defined an unclassified use as a use that possessed characteristics of such unique and special form as to make impractical their being included automatically in any classes of use as set forth in the various zones. The purpose of an unclassified use review was to determine that the characteristics of any such use was not unreasonably incompatible with the type of uses permitted in surrounding areas. According to DMMC 18.86.092(b), the applicant must demonstrate that

- a) The environmentally sensitive area was lawfully altered at the time the alteration occurred;
- b) The alteration had significantly disrupted the natural functions of the environmentally sensitive area;
- c) The proposal utilized to the maximum extent possible the best available construction, design, and development techniques which would result in the least adverse impact on the environmentally sensitive area;
- d) The proposal incorporated the development standards of DMMC 18.86.070 through 18.86.087 and the surface water design manual to the maximum extent possible; and
- e) The proposal was consistent with the purpose and intent of DMMC 18.

In response to Councilmember Sherman's questioning regarding "natural functions", Development Services Manager said that the criteria was subject to interpretation.

At 9:15 p.m., Mayor Pro Tem Benjamin returned to the Council Chambers.

Proponents

Howard Jensen, Seattle, WA

As attorney for the applicant, Mr. Jensen offered the following information to Council:

Development Exception

Had the area been altered before?

- The area had been fully developed and the vegetation had regrown.
- Testimony stating that the hillside was presently not adequately controlling surface water runoff had been received.
- The proposal would improve the existing surface water management situation as the project was required to comply with surface water management regulations.

Would the best available construction, design, and development techniques be utilized?

- The project had been designed to follow the contour of the land with minimal excavation. Rockeries and retaining walls would allow the project to conform to the natural slope as much as possible.
- Council could dictate specific conditions to ensure this requirement was met.
- The intent of the applicant was to provide the best possible project.

Mr. Jensen reviewed the permitted uses for the property. He encouraged Council to evaluate the proposal against the identified permitted uses as they established the standard for review. He believed that the proposed project would create less impact to the neighborhood than the property's permitted uses. Mr. Jensen stated that the use of the surrounding properties, single-family residential housing and the Masonic Temple, must also be considered. He said that staff had done a good job evaluating the unclassified use permit, SEPA issue, and development exception. He informed Council that staff had placed additional conditions on the project to mitigate impacts of incompatibility with the surrounding properties. With one exception, Mr. Jensen said that the applicant agreed with the conditions imposed by staff. The exception dealt with staff's proposed condition requiring the setback to be modulated with the height of the building. This would result in a thirteen-foot setback for the top level of the development. Mr. Jensen recommended that Council approve a ten-foot setback for the building's vertical span. He informed Council that the Planning Agency had concurred with staff's conditions plus added an addition provision which would reduce the development from three buildings to two. Mr. Jensen told Council that staff was not in agreement with this additional condition. He distributed a diagram comparing a two building design to a three building design (Exhibit 11). Mr. Jensen said that the two building layout resulted in a bulkier design, while the three building arrangement provided a view corridor and was more aesthetically pleasing. Mr. Jensen recommended that Council adopt staff's conditions with the exception of the additional setback requirement. In closing, he encouraged Council to keep in mind the types of uses that were permissible on the property without their approval. He distributed a legal brief summarizing his position concerning the SEPA Appeal (Exhibit 12).

Alex White, Applicant

Regarding the Planning Agency's proposed condition to limit the development to two buildings, Mr. White stated that staff's objective was to separate the commercial building from the residential area. He felt that the three building layout would be more compatible with the surrounding single-family homes.

Upon questioning from Mayor Steenrod, Development Services Manager Ruth explained that the Planning Agency believed that the additional ten feet gained by combining two of the buildings would add value to the project's open space. Staff, however, felt that the additional open space was not significant, would create a building with more mass and would reduce the amount of light and airspace between the two buildings. Development Services Manager Ruth stated staff's recommendation to allow up to six dwelling units and to increase the setback of the upper level to thirteen feet. He informed Council that the criteria for approval had been satisfied.

Councilmember Sheckler asked for clarification on the proposed distance between the buildings for the two building layout versus the three building layout.

OPPONENTS

Nancy Rogers, 524 2nd Avenue, Suite 520, Seattle

Attorney Nancy Rogers entered “Zenith Community – Response to Misstatements of Law Regarding SEPA Standards” (Exhibit 13) into the record. She then distributed and reviewed the “Zenith Community – Summary of Primary Concerns” (Exhibit 14). She identified the community’s primary concerns as:

- The standard by which a UUP decision was made should be whether the proposal was reasonably compatible with the types of uses permitted in surrounding areas rather than to what intensity the use should be allowed.
- The staff report incorrectly assumes that, as mitigated, the project would not be unreasonably incompatible with types of uses permitted in surrounding areas.
- No evidence that the office and condo development would serve the everyday needs of the neighborhood had been presented.
- The scale of the project and gross over-counting of lot area to obtain a higher floor area does not ensure a limited intensity land use in keeping with the intended purpose of the N-C zone.
- The N-C zoning appeared to be the result of an error made in 1985 when the City Attorney sent a memorandum to the City Clerk calling for an administrative correction to the City’s zoning map, changing the Zenith Store property from RS-15,000 to B-N.
- In violation of DMMC 18.20.040, the applicant was incorrectly allowed to include all of the public street right-of-way in his lot dimensions.

Ms. Rogers stated that the inclusion of the street right-of-way in Mr. White’s calculation was prima facie evidence of the unreasonable incompatibility of the project. The calculation created a substantially larger project for the property than the maximum project size anticipated under N-C zoning. Ms. Rogers said that the development exception should not be approved as the past site alterations had not significantly disrupted the natural functions of the slope. In addition, the amount of excavation required by the proposed project would greatly exceed the best available construction, design, and development techniques that would result in the least adverse impact to the sensitive area. Ms. Rogers urged Council to deny approval of the project. In response to Mr. Jensen’s comments regarding surface water runoff, Ms. Rogers stated that the runoff was caused by the roadway rather than from the property.

AGENDA REVISION

Mayor Steenrod announced that Draft Resolution No. 03-275, Final Acceptance of Highline Water District 2002 Comprehensive Water System Plan, and the Cingular Lease would not be discussed at this meeting. The subjects would be placed on the October 23, 2003 agenda.

City Manager Piasecki announced that Highline Water District had submitted their Comprehensive Water System Plan to the City on September 30, 2003. Council had ninety days from that date to take action on the Plan.

PUBLIC HEARING, CONTINUED

SEPA Appeal & Unclassified Use Permit Zenith Viewpointe, Continued

Mayor Steenrod placed all speakers under oath to testify to the truth to the best of their knowledge.

Mel Bogovich, 23635 Marine View Drive

Mr. Bogovich stated that the Des Moines Comprehensive Plan required the preservation and integrity of existing single-family neighborhoods. He said that the Zenith neighborhood was the least dense area in Des Moines. The proposed development would insert an incompatible high density land use into a unique area that was entitled to protection. Mr. Bogovich felt the proposed development was not consistent with prior land use decisions for the neighborhood. He informed Council that he had tried to develop three additional family housing units on his property and had been denied. He said that he had a letter from Mr. Ruth defining congestion and density. Mr. Bogovich questioned how moving one lot to the south would solve the congestion and density problem. In closing, Mr. Bogovich said that zoning would not solve density and congestion in a neighborhood.

Robert Benson, 23905 Marine View Drive

Mr. Benson informed Council that his home had been constructed in 1938 as a store, was transformed into a post office, and then remodeled into a five-unit apartment complex. Mr. Benson purchased the property in 1974 and voluntarily reduced the complex to three units. He said that the proposed development would cause increased parking on Marine View Drive and interfere with his tenants' parking. Mr. Benson reported that he had been told by the City planners that there would be no change in the grade of South 239th Street but he had seen evidence that there might be as the driveway would be too steep. The grading of the street would cause him and his neighbor to no longer have access to their yards from South 239th Street. He said that the project was unacceptable and incompatible with the surrounding neighborhood.

Lloyd Lytle, 23911 Marine View Drive

Mr. Lytle displayed a picture of cars parked on Marine View Drive (Exhibit 16). He said that he opposed the proposed project on the grounds that the large multi-family buildings would be incompatible with the character of the surrounding residential neighborhood. Traffic density, parking needs, and noise would be increased. Mr. Lytle informed Council that the proposed site was only fifty feet wide. He noted that normal single-family homes in the area required 15,000 feet while the proposed project called for six to eight living units plus two office units being located on 9,600 square feet. Mr. Lytle said that recent King County records showed the property as RS-15,000. He believed the property had been incorrectly zoned N-C. Mr. Lytle said that the city was apparently going to give the developer the adjacent portion of South 239th for his driveway and parking requirements. If the City wanted to give property away, Mr. Lytle stated that it should be for the benefit of the community and not for the enrichment of a particular investor. He said that, in the past, others such as Mr. Bogovich had not been allowed to build single-family homes on a larger piece of property due to density issues. Mr. Lytle stated that the proposed development would degrade surrounding property values. The view of the proposed development would be facing south rather than west. Mr. Lytle said that the Planning Department and developer had compared the proposed development to the Masonic Home. He told Council that the Masonic Home was situated on 30 acres and did not abut any property lines. Mr. Lytle stated that parking for the project would migrate on to Marine View Drive creating a dangerous traffic situation.

Alice McCabe, 23902 7th Avenue South

Ms. McCabe said that the proposed project would bring many risks and additional traffic to the neighborhood. She believed that South 239th Street had been deemed too steep for vehicle traffic previously and yet was now okay for office parking and eight living units. Ms. McCabe said that the project was incompatible with the present neighborhood. According to her measurements, the distance between the utility boxes on the north and south side of South 239th Street was 21 feet rather than 31.5 feet, as measured by the developer. Ms. McCabe questioned how a road, sidewalk, and setbacks could share 21 feet. She said that she and Mr. Benson accessed their property from South 239th Street. Ms. McCabe demanded that the project be denied as the traffic, the size of the buildings, the density of the project, the grading of the road, and the shared use of South 239th Street did not make sense for the neighborhood.

Bob Pond, 23116 30th Avenue South

Mr. Pond said that the City should not sell out single-family homes because they are so desperate for tax revenue. He stated that the single-family home was the basis for the American system. Mr. Pond suggested that the developer move his project to the Pacific Ridge area as much land was available for improvement. He questioned why a residential area that did not want this type of development should be attacked. If the project was approved, Mr. Pond said that Des Moines would become a multi-family, high density, commercial land that would take all-comers because it was desperate.

At 10:25 p.m., **MOTION** was made by Councilmember Thomasson, seconded by Councilmember Sherman, and passed unanimously to extend the meeting to 11:00 p.m.

Ed Pina, 24215 7th Avenue South

When the Zenith area was in the process of being annexed to Des Moines, Mr. Pina said that he had expressed his concern that the City would allow the development of condominiums in the area to the Zenith Land Use Council. The City Attorney had told him that condominium development in the area would not be possible as the community corporation would control it. Mr. Pina informed Council that he had served two terms on the Planning Agency when the Comprehensive Plan was being developed. Again, he was advised that the area's zoning would not allow condominium development. Mr. Pina asked Council to not let a small tax increase affect a neighborhood that has existed for a long time.

Peter Skelly, 23622 7th Avenue South

Mr. Skelly objected to staff's allowance of the over-counting of property area to the benefit of the developer so that the number of units and floor area of the project's buildings could be significantly increased. Mr. Skelly stated that the Municipal Code clearly defined building site and lot size and staff's October 2002 code interpretation was bogus. He referred Council to DMMC 12.04 for a clear separation between private development sites and public rights-of-way. Mr. Skelly said that the Des Moines Comprehensive Plan indicated that there should be no more than eighteen dwellings per acre. This would allow for four units on the site rather than the six units recommended by staff. Mr. Skelly said that the project was incompatible with the existing single family neighborhood. He believed that the Comprehensive Plan established the protection of single-family neighborhoods as a high priority for the City. Mr. Skelly said that residents were concerned that City staff was neither protecting them nor following the policies set forth by

the Comprehensive Plan and zoning code. If approved, Mr. Skelly said that Council would not be serving the residents but special interests. He urged Council to reject the requested UUP.

Jerry Bergman, 620 South 239th

Mr. Bergman said that the zoning history of the property was cloudy. He stated that the purpose of N-C zoning was to provide a service that served the everyday needs of the surrounding residents. If N-C zoning was not in affect nor guaranteed then the N-C zoning should be removed. Mr. Bergman said that he had provided information regarding a hearing examiner's decision concerning a similar issue in Medina in a letter to Council dated August 9, 2003. Mr. Bergman noted that the density and intensity of Judson Park and Masonic Retirement Centers were different than the property situated on the west side of the road. He said that the Zenith neighborhood had a legally binding agreement with the City as a result of the beach access lawsuit in the 1980's. At that time, the neighborhood was designated "parking restricted to residents only". The boundaries were established by an L.I.D. created by Ordinance No. 895 and confirmed by Ordinance No. 984. A variance request (File No. HV94-010) to reduce front and back setbacks on a property south of the Zenith store site had been denied on May 16, 1984. The Bogovichs' request to subdivide a single-family residential lot had been denied due to congestion and density concerns. Mr. Bergman said that none of these proposed actions compared to the Zenith Viewpointe development. He said that the development would significantly alter the existing density and intensity and it would destroy the unique character and aesthetics of the neighborhood. Mr. Bergman noted that the Zenith Viewpointe development could be 35 feet high while the setback requirements were reduced. He stated said that past Councils had recognized the unique character of the Zenith neighborhood and had helped the residents improve it. Mr. Bergman questioned whether Council wanted to be responsible for allowing a multi-family development and for ruining the neighborhood.

Jan Bergman, 620 South 239th

Ms. Bergman said that she would like to donate her three-minutes to George Pettibone.

Debbie Workman

Ms. Workman reviewed the purpose of N-C zoning as described in DMMC 18.20. She said that it did not appear that the proposed development would provide services to the residents. Ms. Workman informed Council that the store was originally a single-family home. Since it was no longer a store, she believed that the property should revert back to RS-15,000. Ms. Workman presented an unofficial record from Transnation Title Insurance Company dated March 2002 which identified the property as RS-15,000 (Exhibit 15). She said that residents were very concerned with the office space/condominium development as they were promised, in 1982, that condos would not be constructed on Marine View Drive in the Zenith area. She believed approval of the proposed development would set a precedent.

Howard Jensen

As attorney for the applicant, Mr. Jensen said that Exhibit 15 could be entered into the record but the value of the document should be considered.

Alex White, 22030 7th Avenue South, #204

Mr. White said that he would like to provide the City Attorney with a copy of the lot's official property profile which indicated that the property was zoned N-C.

Keith Workman, 23903 7th Avenue South

Mr. Workman said that he would like to donate his three-minutes to George Pettibone.

Roger Gallington, 23913 6th Avenue South

Mr. Gallington said that other speakers had adequately covered most of his concerns. As business customers were restricted from the commercial venture on the property, he questioned how Council would enforce this restriction.

Scott Wayne, Des Moines

Mr. Wayne voiced agreement with Mr. White's comments calling for support of business in the Des Moines' community and asking for a fair and objective ruling, not one based upon political reasons. Mr. Wayne reviewed the purpose of the N-C zone as listed in DMMC 18.20.010. He said that the code identified an objective of the zone as to maintain a limited intensity of land use compatible with serving the neighborhood residential area, rather than the community. Mr. Wayne said his concerns regarding the square footage of the lot had been covered by two other speakers. He reported that the September 11, 2003 City Council meeting minutes indicated that Councilmember Thomasson had questioned the square footage issue while Mayor Pro Tem Benjamin had said that the project looked good on paper but did not fit aesthetically. Mr. Wayne said that the action of questioning the approval of the UUP against the established land use codes was in direct support of Mr. White's request for an objective and reasonable rulings. Mr. Wayne stated that Mr. White's proposed project was unreasonably incompatible with the neighborhood and did not comply with the City's code.

Shirley Robertson, 23660 7th Avenue South

Ms. Robertson said that if Council looked at the property in question and studied the proposed project, they would determine that the plan was not compatible with the existing Zenith neighborhood. She felt that the project would not in any way preserve the integrity or character of the area. Ms. Robertson said that the residents would like to have their neighborhood maintained as a single-family neighborhood.

Linda Darimont, 23910 6th Avenue South

Ms. Darimont expressed her concern about the safety of the neighborhood children as they walked to and from their assigned school bus stops. She noted that elementary aged children currently used the undeveloped South 239th Street to access the bus stop in front of the old Zenith Store from 7th Avenue South. Their only other option was to walk to South 236th Street or South 240th Street and then to Marine View Drive. They would then need to walk on Marine View Drive to the bus stop. As there are no sidewalks on the west side of Marine View Drive, Ms. Darimont felt it was dangerous to expect young children to walk that route. If the Zenith Viewpointe project was approved, Ms. Darimont felt it would be difficult for the children to safely get through South 239th Street during construction. She noted that the proposed plans showed a narrow public walk. She questioned whether the hill would be negotiable due to its steepness and its slickness during winter rains. Ms. Darimont also questioned who would be responsible for maintaining the walkway. She said that middle and high school students would also be put at risk while walking to their bus stop. Ms. Darimont told Council that the Zenith Viewpointe project was out of place in the neighborhood and the extra traffic and residents would compromise the safety of the families currently residing in the neighborhood.

At 10:55 p.m., **motion** was made by Councilmember Sheckler, seconded by Mayor Pro Tem Benjamin and passed unanimously to extend the meeting by fifteen minutes.

George Pettibone, 23653 Marine View Drive

Mr. Pettibone presented Council with the history of the subject property. He said that the grocery store had been built twenty to thirty years prior to 1944. The original store was attached to a house which was constructed in 1908. Mr. Pettibone maintained that the single-family property had been non-conforming for approximately one century. He said that, in 1958, King County Ordinance No. 18801 adopted a new zoning map (Exhibit 17), zoning codebook, and Comprehensive Plan book. According to 1958 through 2002 King County records, the property was zoned RS-15,000. In 1982, the property was annexed to Des Moines through the adoption of Ordinance No. 550. Ordinance No. 550 clarified that Des Moines would maintain King County zoning in the annexed area. Mr. Pettibone informed Council that, in 1985, the City Attorney directed the City Clerk to amend the zoning map, changing the RS-15,000 zoning to B-N. This action was unlawful as it had no public notice, no Zenith Land Use Council review, and no Council action. Mr. Pettibone contested that the property owned by Bob Benson, rather than the Zenith Store property, should have been zoned B-N. Mr. Pettibone said that he had filed ten public record requests and staff had stalled the last five requests. He informed Council that he had spoken to the King County's Chief Commercial Property Assessor Bob Rosenburger, former Mayor Richard Kennedy, and former City Attorney Jim Gorham regarding the issue. All of them had confirmed that the Zenith Grocery store site was non-conforming property on a single-family residential lot.

Mayor Steenrod asked that Mr. Pettibone provide the City Manager with copies of his requests for public information.

City Attorney Marousek assured Council that the City had complied in every way with the public disclosure laws and Mr. Pettibone had been afforded every opportunity legally and professionally to review the documents. She could provide records documenting compliance.

Mr. Pettibone said that he had a letter from the City stating that staff had not finished his last five requests. Mr. Pettibone informed Council that he had purchased his house in 1992. When questioning the real estate agent regarding the Zenith Store property, Mr. Pettibone said that he had been told not to worry as two houses could not be built on a single-family lot. He also had his attorney research the property. The attorney reported that the Zenith Store had been grandfathered into the City. When the store closed, the property would be zoned RS-15,000. Mr. Pettibone said that the store might have been illegally subleased for the period of 1997 through 1999. In closing, Mr. Pettibone said that the property had reverted back to RS-15,000. The City owed Mr. White an apology and he should be permitted to only construct a single-family house on the property.

Councilmember Thomasson asked that a copy of the Comprehensive Plan adopted under Planning Director Eric Shields be made available to all parties.

City Attorney Marousek told Council that the testimony regarding zoning could be ruled out-of-order and not relevant to the issues before Council as this was not a zoning hearing but a UUP hearing.

At 11:10 p.m., **motion** was made by Councilmember Thomasson, seconded by Councilmember Sherman and passed unanimously to extend the meeting by five minutes.

Corinna Harn, 23910 6th Avenue South

Ms. Harn disagreed with the City Attorney's statement as everything Council considered was based up the assumed zoning of the property. She asked Council to reconsider that particular issue. Ms. Harn stated that everything Mr. White and his attorney had presented had been based upon their view of the property's zoning. Ms. Harn informed Council that she had reviewed Mr. Pettibone's documents. She agreed that the zoning was a result of the former City Attorney's mistake which resulted in an erroneous and illegal attempt to rezone the property. Ms. Harn voiced agreement with Mr. White's comments concerning ensuring that the rules are followed. She asked that the City Attorney to review the information presented by Mr. Pettibone to determine whether the property was truly zoned RS-15,000 rather than N-C. Ms. Harn stated her belief that the zoning should be RS-15,000. She said that compliance with rules also referred to compliance with the site size of the property. She stated that the rules indicate that the right-of-way cannot be included in the lot size calculation. She presented a section of the Greater Des Moines Comprehensive Plan map which states that the maximum density of single-family and multi-family areas was indicated by the number of dwellings per residential acre excluding the right-of-way (Exhibit 18). Ms. Harn believed that the property would need to be substantially regraded in order to achieve appropriate access to the development. She asked Council to review a survey of the property and determine the width of the property and of the right-of-way. Ms. Harn asked Council to follow the rules regarding access to the property. She said that, at this point, the City only had legal access from the north. In closing, Ms. Harn said that, if the property was grandfathered in as a business, it should now revert back to RS-15,000.

MOTION was made by Councilmember Thomasson, seconded by Mayor Steenrod, and passed unanimously to continue the hearing to October 30, 2003.

Ms. Rogers said that Mr. Pettibone had additional exhibits regarding excavation. She asked that he be allowed to present that information to Council as his time had been interrupted.

City Attorney Marousek noted that the record for acceptance of evidence had not been closed. Council could ask questions of speakers. If any speakers wish to be available for Council's questions, they should be available at the next meeting.

NEXT MEETING DATE - Regular Meeting October 23, 2003

ADJOURNMENT

The meeting expired at 11:15 p.m.

Respectfully submitted,

Angela M. Chaufty
Deputy City Clerk

ACTION ITEM FROM 10/09/03 MEETING

- Respond to Mr. Pond's issues regarding his neighborhood.
- Research why political signs had been removed from the vicinity of Mr. Burnham and Mr. Bogovich's yards.

