PRELIMINARY
REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES October 30, 2003

The regular meeting of the Des Moines City Council was called to order at 6:06 p.m. by Mayor Steenrod in the Council Chambers, 21630 11th Avenue South, Suite B.

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

ROLL CALL - Present: Mayor Maggie Steenrod, Mayor Pro Tem Richard Benjamin, Councilmembers Gary Petersen, Dan Sherman, Bob Sheckler, Scott Thomasson, and Susan White. Also present were City Manager Tony Piasecki, Assistant City Manager Corbitt Loch, City Attorney Linda Marousek, Finance Director Paula Henderson, Finance Manager Peggy Watson, Community Development Director Judith Kilgore, Court Services Manager Jennefer Henson, Development Services Manager Robert Ruth, and Deputy City Clerk Angela Chaufty.

AGENDA REVISION

Mayor Steenrod announced that Council would address Old Business, Item No. 1 as the first order of business.

OLD BUSINESS

Preliminary 2004 Budget

Finance Director Henderson stated that a base budget, comparable to Year 2003, would be presented to Council. She noted that the computer and equipment replacement assessments had been restored in the proposed 2004 budget. Vehicles were also recommended for replacement out of the Vehicle Replacement Fund. Finance Director Henderson explained that 2004 budget variances common to all departments included salary and benefit increases and interfund charges. The unmet departmental needs would be discussed in detail during the budget policy issues discussion.

Assistant City Manager Loch reviewed the following proposed 2004 departmental budgets:

Legislative	$119,902
Executive	$645,465
Record Services	$ 83,102
Personnel Services	$141,325
Central Services	$ 80,970
Community Information	$ 59,550

In regard to the Central Services budget, Finance Director Henderson explained that the transfer of $10,000 per year for the replacement of the telephone system had been moved to a reserve fund.

Assistant City Manager Loch identified the following unmet needs:

Record Services

- Scanner and software for records preservation - $1,250

Personnel Services
- Citywide employee training on workplace issues - $1,500

Finance Director Henderson informed Council that funding for the Airport Defense Fund would be discussed as a policy issue. The fund's 2004 beginning balance was a result of funds received in 2002, utility taxes received, and $72,000 of the interfund loan that did not need to be forgiven. In addition, expenditures were not as high as anticipated. In response to Councilmember Sheckler's questioning, Finance Director Henderson confirmed that $145,784 of the utility tax would not have to be tapped for 2004.

Finance Director Henderson reviewed the following proposed budgets:

Financial Services	$652,324
Miscellaneous Memberships	$ 33,805
Fire and Pollution Control	$ 37,556

She identified the following unmet needs:

Finance
- Temporary assistance with implementation of GASB 34 - $10,000
- Business Continuity and Disaster Recovery Plan - $50,000

In regard to the Miscellaneous Membership budget, City Manager Piasecki informed Council that the City had received an invoice from the Chamber of Commerce for membership fees. He explained that the Chamber of Commerce was not currently listed on the city's membership list nor had the city ever participated as an entity in the organization. City Manager Piasecki asked for direction regarding the invoice.

Assistant City Attorney Marousek presented the following legal services budgets:

Legal	$345,085
Domestic Violence Advocate	$ 43,488

She identified the following unmet needs for the legal department:

Domestic Violence
- Restore Domestic Violence Advocate to full-time status - $57,600

Legal
- Restore 0.3 FTE File Clerk position - $8,800
- Improve office lighting

Councilmember Thomasson suggested that the office lighting project be funded through the Building Replacement Fund.

Court Services Manager Henson reviewed the following proposed judicial budgets:

Municipal Court	$416,815

Jail Services	$530,000

Councilmember Thomasson requested information regarding whether the reduction in the jail services budget was due to a decrease in the rate per night or due to a decline in inmate nights served.

Court Services Manager Henson identified the following unmet needs of the department:

Municipal Court
- Video Conferencing equipment - $20,000 (one-time)
- Increase in judge hours - $13,520

Mayor Steenrod noted that teleconferencing equipment could be used on a citywide basis. She recommended that the equipment needs be included in the analysis of the redesign of the Council Chambers.

City Manager Piasecki explained that the equipment would be a general fund expense.

Community Development Director Kilgore presented the following proposed Community Development budgets:

Plan Development	$125,684
Development Services	$350,173
Building	$590,291

Community Development Director Kilgore identified the following unmet needs:

Building
- Add limited term Building Inspector - $37,800
- Upgrade Permit Specialist position to Permit Coordinator - $3,224
- Replace two cars with SUV's - $20,800
- Add Permit Technician position - $54,000
- Convert Sierra permitting system to Eden System - $157,000

Development Services
- Purchase police radio for Code Enforcement Officer - $2,500
- Add limited term Economic Development Coordinator - $98,400

Plan Development
- Hire a consultant to re-write the zoning code - $100,000
- Purchase new file cabinets - $10,000

Councilmember Sheckler said that he would need the scope of duties for the Economic Development Coordinator to be identified before he would give his support for the position.

Councilmember Thomasson suggested that staff research whether it might be more efficient for the City to consider an independent contractor rather than an employee for the Economic Development Coordinator position.

At 7:15 p.m., Mayor Steenrod announced a fifteen-minute break.

CORRESPONDENCE

Mount Rainier Pool

City Manager Piasecki informed Council that he had received a letter from Dennis Dynes, Finance Manager of King County Division of Parks and Recreation, requesting the payment of $42,405 for the operation of the Mount Rainier Pool. City Manager Piasecki said that he was working with the Parks Department, King County Councilmember Julia Patterson, and King County Executive Ron Simm's staff to determine the actual charge as the expenditures were less than the projected contract amount.

CORRESPONDENCE

Rob Back, 23840 16th Lane South

Mr. Back reported that he had been a victim of vandalism. The deed had been recorded on his video surveillance camera. Mr. Back said he would report the vandalism if it occurred again. In regard to the Council campaign, Mr. Back said that the City was in need of a fresh start regardless of the outcome of the election. As retaliation was a vicious cycle, he encouraged Council to start fresh. Mr. Back also said that threats were not good for the community. He stated that he had been threatened that his reputation would be smeared by the local paper if he did not withdraw from the campaign race. In closing, Mr. Back said that Don Wasson did not control him.

Debbie Workman, 23903 7th Avenue South

Ms. Workman expressed disappointment that citizens were denied access to their elected officials regarding specific neighborhood issues. She said that Council candidates were unable to respond to specific questions during the Chamber of Commerce candidate debate due to the quasi-judicial nature of the questions. As she thought that the quasi-judicial provisions applied only to the SEPA portion of the hearing, she asked for clarification on the matter.

Denny Burnham, 26826 15th Avenue South

Mr. Burnham asked Council to join him in showing support for the police department. He said that he had been treated with respect during his four encounters with police personnel. Mr. Burnham said that he was going to organize a rally to demonstrate support for the Des Moines Police Department.

Wayne Bader, 21938 Marine View Drive South

Mr. Bader requested an additional thirty seconds to speak. He said that he had been accused of misdeeds performed by the accusers. Mr. Bader reported that candidate challenger signs were missing while incumbent signs were still in place. He told Council that he had not removed any incumbent's signs, he had not been asked by any challenger to assist in their campaigns, and he had not defaced any signs. Mr. Bader said that the incumbents had given $150,000 to the Airport Communities Coalition (ACC) and they did not deserve to be re-elected. Mr. Bader informed Council of his work history. He said that he was being targeted as he was an outspoken critic of the incumbents.

Brenda Sechrist, 20731 7th Place South

In regard to her political ad, Ms. Sechrist explained that her comment regarding the Des Moines Police Department's lack of response was in reference to the citizens' frustrations regarding the officers' lack of ability to abate on-going problems. She said that the Police Department was composed of outstanding individuals. Ms. Sechrist stated that the police needed more direction and funding to address various programs. In closing, Ms. Sechrist encouraged Council to continue funding the traffic unit.

David Litowitz, 2715 64th Avenue NE, Tacoma

As a builder and developer in Des Moines, Mr. Litowitz asked Council to form a task force composed of local business owners, leaders, builders, and developers to study how to improve businesses and affordable housing opportunities in Des Moines. He believed that the City should make it easier for new businesses to come into the City.

Scott McFarlane, 26906 10th Avenue South

Mr. McFarlane announced that he was the chair of the Friends of Des Moines Committee. He voiced his support for the Council challengers due to the ACC issue. Mr. McFarlane said that the ACC issue should be placed on the ballot for the voters to decide. He stated that he had filed two initiatives with the City requesting this action but both had been rejected by the City Attorney.

Alex White, 22030 7th Avenue South

Mr. White presented Council with a King County form that identified the preliminary plat review and approval process and timeline. He recommended that Des Moines develop a similar form in order to provide the applicant with accurate, predictable and important information. Mr. White said that he has enjoyed working in Des Moines.

At 8:07 p.m., Mayor Steenrod declared a ten-minute break.

BOARD AND COMMITTEE REPORTS

SR-509

Councilmember Petersen recommended that the Mayor sign the letter addressed to King County Councilmember Julia Patterson regarding SR-509 Project Funding.

Des Moines Police Department

Mayor Pro Tem Benjamin voiced his support for the Des Moines Police Department.

Mount Rainier High School Remodel

Councilmember Thomasson encouraged interested individuals to contact Mount Rainer High School to view the school's remodel plans.

Comments from the Public – Back and Bader

Councilmember Sheckler encouraged Mr. Back to report the vandalism to his property. He noted that over $1,200 worth of his campaign signs had been taken. Their loss had been reported to the police. In regard to Mr. Bader's comments, Councilmember Sheckler said that he had never changed his social security number, his military records were not sealed, and his wife did not provide him with free legal advice as she was not an attorney.

Des Moines Police Department

Councilmember Sherman voiced support for the Des Moines Police Department and for the officer who reported the potential abuse of authority.

Mayor Steenrod noted that she had received e-mails indicating support for the Police Department. She said that the issue in question was currently under investigation and should be left in the hands of the attorneys and investigators.

PRESIDING OFFICER'S REPORT

Municipal Facilities Committee

Mayor Steenrod informed Council that the committee was continuing their study of the dry stack storage and Marina Master Plan.

ADMINISTRATION REPORT

Des Moines Police Department

City Manager Piasecki reiterated that the police officers' actions were still under investigation. He encouraged the community to voice their support for the efforts of the City's police officers. On behalf of the Police Department, City Manager Piasecki thanked Council and the community for their support.

Activity Center Divider Wall

City Manager Piasecki announced that the divider wall had been installed in the Activity Center.

SR-509 Draft Letter

City Manager Piasecki encouraged Council to review the draft letter mentioned previously by Councilmember Petersen and to inform him of any desired changes.

Councilmembers Sheckler and Thomasson voiced their support for the letter.

Councilmember Sheckler said that he had found it interesting that the Port of Seattle would say that the South Access road was not presently necessary due to the reduction in trips into the airport since 9/11 yet a third runway was still needed.

City Manager Piasecki informed Council that, in response to a $35,000,000 project shortfall, the Port of Seattle had proposed that the SR-509 Steering Committee reconsider the time schedule for the construction of the freeway's south access road and use 28th/24th Avenue South as an interim South Access. He summarized the City's position that such an action would require additional study prior to the deletion of that section from the project.

Councilmember Thomasson noted that, through their proposal, the Port of Seattle was actually attempting to save their own money rather than benefit the State. He suggested that Item No. 2 on page 2 be revised to emphasis that point and to identify the proper dollar amount involved.

Mayor Steenrod questioned whether Item Nos. 3 and 4 were acceptable to the City.

City Manager Piasecki said that the Public Works Director did not believe Item Nos. 3 and 4 would cause a significant impact to Des Moines but any cut should have additional analysis prior to approval of the action.

Councilmember Sheckler felt it was important to stress the need for additional study prior to implementing any cuts.

Councilmember White recommended that a copy of the letter also be sent to the South County Area Transportation Board.

City Manager Piasecki confirmed that the identified changes would be incorporated into the letter.

Business Roundtable

City Manager Piasecki announced that a business roundtable would be conducted November 18, 2003.

Initiative 776

City Manager Piasecki reported that the Supreme Court had ruled Initiative 776 constitutional. As a result, approximately $225,000 of revenue would not be available for the Arterial Street Budget.

Pacific Ridge Lighting

City Manager Piasecki informed Council that Puget Sound Energy would install street lighting in the Pacific Ridge area within three to four weeks.

Flagpole Painting

City Manager Piasecki reported that the flagpole painting project would be completed by the end of the week.

10th Avenue Culvert

City Manager Piasecki noted that the 10th Avenue Culvert project would be essential done, with the exception of a small punchlist, next week.

Comments from the Public – Workman

City Attorney Marousek explained that all hearings related to the Zenith Viewpointe project were quasi-judicial per the Des Moines Municipal Code.

CONSENT CALENDAR was read by Deputy City Clerk Chaufty.

1. **Motion** is to approve the surplusing of a 1995 Ford Explorer, VIN No. 1FMDU34XOSVA27866 from the Police Department and authorize disposing of by auction, sale or transfer to other department or agencies.

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

CONTINUED PUBLIC HEARING

Mayor Steenrod confirmed that everyone present had been informed of the public hearing rules.

Councilmember Petersen confirmed that he had reviewed the previous public hearing record.

At 8:38 p.m., Councilmember White recused herself from the Chambers.

After reviewing the minutes from the previous hearing, Council concurred to accept testimony from new speakers or regarding new information.

Mayor Steenrod administered an oath to testify to the truth to all potential speakers.

OPPONENTS

Donald Gorlick, 23641 7th Avenue South
Mr. Gorlick stated that the Zenith Store had not operated since the 1980's. He told Council that the developer was being allowed to take the street and bend the lot size laws while other residents had never been offered the street area. Mr. Gorlick said that he was offended that his tax dollars were being given to someone to ruin his neighborhood. He informed Council that he had received a political campaign mailer.

In order to protect Council's record, City Attorney Marousek advised Council that it was not appropriate to discuss a political campaign issue.

Mayor Pro Tem Benjamin said that he wished to hear Mr. Gorlick's comments.

Mr. Gorlick said that he would submit his comments in the form of a hypothetical situation.

As the testimony could jeopardize Council's decision, Councilmembers Sheckler and Sherman spoke against allowing Mr. Gorlick to continue his comments.

In response to Mayor Steenrod's questioning, Council elected to allow Mr. Gorlick to continue speaking.

Mayor Steenrod cautioned Council that if the City Attorney said that Mr. Gorlick's testimony should be disregarded, Council must do so.

Mr. Gorlick encouraged Council to take action tonight so that he would know how to vote in the upcoming election.

M. Bogovich, 23635 Marine View Drive
Mr. Bogovich gave his three minutes to Mr. Pettibone.

Robert Benson, 23905 Marine View Drive
Mr. Benson gave his three minutes to Mr. Pettibone.

Peter Skelly, 23622 7th Avenue South
Mr. Skelly asked to speak after Mr. Pettibone.

Debbie Workman, 23903 7th Avenue South
Ms. Workman informed Council that the Zenith neighborhood was annexed to the City in 1982. At that time, condominium development was identified as a major concern of the residents and the City had promised to not allow their development. Ms. Workman asked Council to keep their promise.

Lloyd Lytle, 23911 Marine View Drive
Mr. Lytle gave his three minutes to Mr. Pettibone.

George Pettibone, 23653 Marine View Drive
Mr. Pettibone entered notes (Exhibit 19) and drawings (Exhibit 20) into the record. He addressed Council concerning the steep slope issue. Mr. Pettibone said that he had asked staff for copies of topography maps, a profession survey, and a soil report. None of these materials were available. Mr. Pettibone said that there was no indication that a soil report had even been performed on the property yet. Based upon his calculations, Mr. Pettibone told Council that the slope of the property was 24% in almost all areas. He questioned why the property was considered environmentally sensitive as it did not have any eagles, owls, or wetlands. Mr. Pettibone recognized that steep slopes could erode or collapse. He said that the developer had indicated on his environmental checklist that no dirt would be removed from the site. Mr. Pettibone said that the developer would need to go to 41% in order to grade the property. He estimated that 507 dump truck loads of dirt would need to be removed from the site in order to construct the project. Mr. Pettibone said that staff and the developer were deceiving Council if they were saying that the project did not create an environmental impact to the hillside.

Peter Skelly, 23622 7th Avenue South
As a registered professional engineer, Mr. Skelly said that he had reviewed Mr. Pettibone's calculations and agreed with his conclusions. Mr. Skelly told Council that if the displaced dirt was placed in the identified open space areas, it would result in a 135 foot pile. Mr. Skelly said that the environmental checklist was false.

Mayor Steenrod called for additional opponents three times.

None responded.

Attorney Nancy Rogers entered a letter regarding the zoning of the Zenith Store Property, a map, and a copy of Ordinance 550 into the record (Exhibit 21).

Mayor Steenrod called for any proponents' statements of rebuttal.

Alex White, 22030 7th Avenue South
Regarding the project's design, Mr. White noted that the application was not yet in the design stage. He stated that he was not trying to hide anything from the public. Regarding the size of the site, Mr. White said that he had hired a surveyor to survey the land. He displayed the survey map which indicated that the property was 50 feet wide. He said that the property owner to the north had encroached on his property. Mr. White felt that the calculation of the square footage of the site was key to the issue. Since staff had determined that the proposed building was too tall, Mr. White eliminated two of the condos from the development. The project now consisted of an 1,800 square foot office space, two 1,400 square foot condos, and four 1,900 square foot townhouses. The total square footage would be 12,200 square feet. He said that the lot was 9,735 square feet. The difference between what he was allowed to build under the N-C zone and what he was asking for was approximately 2,000 square feet. Mr. White said that the code referred to lot or site. He had asked staff to help him interpret the terms. He acknowledged that the City Attorney's legal opinion of 1979 might not agree with the decision of staff. He said that if the opinion was valid then it should be made public. As a solution, Mr. White recommended

that if Council believed it was unreasonable for him as the applicant, to take staff's advice and incorporate their advice into the proposal, he would agree to reduce his project to 9,735 square feet. He felt this would eliminate any gray areas. The 9,735 square feet would consist of a 1,200 square foot office space, two 1,268 square foot condos, and four 1,500 square foot townhouses. Mr. White stated that he had hoped to construct larger units to better coordinate with the existing neighborhood. He wished to deliver a product that would be in the same price range as the surrounding properties. Mr. White encouraged Council to get off the subject of interpretation and work toward a solution that allowed him to do what he was entitled to do. Mr. White submitted two pictures (Exhibits 22 and 23) of properties in the Zenith neighborhood. One was of a multi-family development and the other was of the Seashore Club, a PUD.

Upon questioning from the Deputy City Clerk, Mr. White confirmed that the survey map would not be presented as an exhibit in the hearing.

Mr. White informed Council that his property had mixed uses on three sides. He submitted a drawing of an office space (Exhibit 24) as another development option. Mr. White told Council that he was asking to develop six residential units. He noted that the use of the office space would determine the amount of traffic generated. Mr. White said that if Council directed him to not do the office portion of the project, he would comply and only construct the residential section. Mr. White asked Council to not kill the project based upon emotions. He said that no professional testimony had been submitted to demonstrate that the project would not work. Mr. White informed Council that he had spent much money to prove that it would work. Mr. White stated that he had done the best that he could and had dealt honestly with the residents and the City.

Howard Jensen, 1221 2nd Avenue, Suite 500, Seattle
Mr. Jensen offered to provide written testimony to Council if desired.

At 9:30 p.m., Mayor Steenrod declared a five-minute break.

Mayor Steenrod asked staff to address any misstatements of fact.

City Attorney Marousek entered the following exhibits into the record:

Exhibit 25 – E-mail exchange between the attorneys and herself regarding the project,
Exhibit 26 – E-mail exchange between the attorneys and herself regarding code interpretation, and
Exhibit 27 – 4/25/79 Legal Opinion regarding the use of the area of a street or access easement to compute lot size.

Community Development Director Kilgore confirmed that Council was aware of her memorandum dated October 22, 2003 regarding the zoning of the property.

Development Services Manager Ruth informed Council of the following points:

- Mixed Use – Mixed use is a conforming, authorized use of the N-C zone and the property in question already has a three unit mixed use building on it. This point was identified in Council's 8/14/03 agenda packet.

- Site Dimensions - Staff has reviewed City and County records and has confirmed that the property has fifty feet of width and at least 31.5 feet of right-of-way next to it.
- Total Building Area Square Footage – Testimony had been received stating that the project would be 16,000 square feet but the proposal before Council was closer to 12,200 square feet. The development included six living units and one commercial space.
- Density versus Maximum Permissible Floor Area – Density is defined by the DMMC as the number of dwelling units per acre. It is not a regulation found in the N-C zone. Eight other commercial zones in the City also do not use density as a factor for determining the extent of development. Instead, maximum permissible floor area is used to determine the extent of development.
- Maximum Permissible Floor to Area Ratio (FTAR) – The FTAR for the N-C zone is 1:1 which means that there should be a ratio of one square foot of building area to one square foot of land area. The proposal before Council represents a ratio of 1.25 to 1. The development proposal set forth by the applicant during the rebuttal portion of the hearing however, would result in a 1 to 1 ratio and would comply with the code. The computations provided did not include any rights-of-way.

Community Development Director Kilgore stated the following points:

- The property has been zoned commercial since at least 1999.
- The 10/29/02 code interpretation was a mute point as Mr. White had stated that he would stay within the lot size.
- Staff had not been aware of the 1979 legal opinion at the time of the code evaluation. They will reevaluate the interpretation.
- The Comprehensive Plan and DMMC does not address density in commercial zone.
- The project has not been designed nor have any plans been submitted.
- The existing building on the property has been a conforming use since 1999.
- The subarea has many instances of non-conforming use, including 42 single-family residences that do not meet RS-15,000 lot size requirements.
- The Zenith neighborhood encompasses a much larger area than just the subarea. It has parks, multi-family communities, commercial units, and retirement facilities. The area should be considered as a whole.

Mayor Steenrod asked for Council's questions.

Councilmember Thomasson felt that use and design must be considered together as a residential "box" was different from a "commercial" box. He identified the following concerns and questions:

- Site Plan – The site plan depicted a 35 foot building height parallel to the ground. This was not compliant with the City's building height regulations.
- Setbacks – As the code requires a ten foot setback on the north, west, and south side of the property, only twenty feet would be left for development.
- Parking – Parking spaces in this zone cannot back onto a right-of-way. Therefore, the garage doors cannot point towards the street but must point internally to a parking area.

Councilmember Thomasson said that in order for him to consider approving the plan, the conceptual site plan must be compliant with the City's code. He questioned when the written plan would be presented. In regard to the steep slope issue, Councilmember Thomasson said that no compelling evidence had been offered to prove that the hillside had been significantly altered. Therefore, there was no compelling evidence for him to approve the steep slope exception. Councilmember Thomasson asked the applicant to submit documentation that speaks to the disturbance of the hillside's structure rather than just its vegetation. Since the right-of-way had now been separated from the lot, a different steep slope formula applied to the street than from the lot. As he had not heard any compelling evidence showing that the street must be at 14% slope, he was not willing to approve disturbance of the right-of-way. Councilmember Thomasson said that SEPA did not document the amount of dirt that would be disturbed. At this point, he did not have enough evidence to approve a steep slope exception for the right-of-way or the lot. In his opinion, the bulk and scale of the project were unreasonably incompatible with the neighborhood. He said that a quasi-judicial hearing was not a good process to reach a compromise. Councilmember Thomasson felt that the intensity of the development was questionable. In closing, Councilmember Thomasson said that he wished the professionals had studied the code more in order to give the project a better chance to succeed.

In response to Councilmember Sheckler's questioning, Development Services Manager Ruth informed Council that detailed grading and clearing plans had not yet been submitted as the project was still being dealt with on a conceptual level. He said that he could not definitely say that no dirt would be removed from the site.

At 10:00 p.m., Mayor Steenrod announced a pause in the meeting to change video tapes.

Councilmember Sherman asked staff to define the purpose and function of the N-C zone. He questioned how a use that was primarily multifamily would meet the intent of the zone.

Councilmember Petersen voiced concern that the office space would be create traffic noise at odd hours. He questioned how this might be reconciled.

As the applicant had indicated a willingness to reduce the scale of the project, Mayor Steenrod and Councilmember Sherman questioned how the revised proposal affected the current process.

City Attorney Marousek stated that it appeared that Mr. White had withdrawn his argument to include the street in the calculation of his property size.

Mr. White's attorney, Howard Jensen, said that Mr. White was willing to address the concerns voiced by the residents. He suggested that Council continue the public hearing and allow Mr. White to submit a reduced site plan with a new environmental checklist.

City Attorney Marousek clarified that Mr. Jensen had indicated that he was willing to remand the project back to staff for more work.

Opponents' attorney Nancy Rogers said that the proper procedure would be for Council to remand the project back to staff for completion of a new SEPA review or, if the changes were insignificant, to deny the application. She stated the neighborhood's preference for denial of the application.

Councilmember Thomasson felt that it was important to have a clear record of what Council was being asked to approve.

Ms. Rogers said that she could submit written comments asking Council to enter a decision to deny the application or a post-hearing brief.

Mr. Jensen asked Council to identify which issues they wished to be briefed on. Despite his position that the project was still defensible and should be approved, he had heard the concerns and was willing to offer a briefing.

MOTION was made by Councilmember Thomasson and seconded by Councilmember Sheckler to continue the hearing to November 20, 2003 and to have the attorneys prepare written briefs stating their recommended action and why.

SUBSTITUTE MOTION was made by Mayor Pro Tem Benjamin to direct staff to prepare the necessary resolution to deny the SEPA appeal, unconditional use permit, and steep slope exception and to identify findings of facts.

In response to Mayor Steenrod's questioning, City Attorney Marousek explained that if Councilmember Thomasson's motion passed, the attorneys would present well-organized summaries of their arguments. It would allow Council an opportunity to make a defensible decision.

At 10:17 p.m., **motion** was made by Councilmember Thomasson and seconded by Councilmember Sherman to extend the meeting to 10:50 p.m. **VOTE ON MOTION**: Motion passed, 5 – 1, with Mayor Steenrod opposed.

Councilmember Sherman stated that if the project was denied, it was important to establish an appropriate use of the property and to provide direction to the applicant.

Councilmember Petersen **seconded the substitute motion**.

Councilmember Thomasson clarified that Council must vote to accept the substitute motion.

VOTE ON ACCEPTING THE SUBSTITUTE MOTION: Motion failed, 3 – 3, with Councilmembers Sherman, Sheckler, and Thomasson opposed.

The original motion was back on the table.

Councilmember Thomasson said that he had opposed the substitute motion as he felt it was important to give the attorneys an opportunity to provide information to Council for the sake of process.

Ms. Rogers said that if the applicant submitted an alternate application, she would need time to review the plan and formulate her comments.

City Attorney Marousek recommended that the attorneys' simultaneously submit their briefs to staff on November 13, 2003 and allow Council an opportunity to address them at the November 20, 2003 meeting.

Mayor Steenrod announced that the hearing remained open.

VOTE ON MOTION: Motion passed, 4 – 2, with Mayor Pro Tem Benjamin and Councilmember Peterson opposed.

OLD BUSINESS

Towing/Impound Services

MOTION was made by Councilmember Thomasson and seconded by Councilmember Sheckler for the City Council to award the towing and impound contract to RoadOne (Dick's Highline Towing), and to authorize the City Manager to finalize and sign the agreement.

At 10:38 p.m., Councilmember Petersen recused himself from the meeting.

Mayor Steenrod said that she believed the motion was an attempt to take action under the election deadline. She said that she would not support the motion.

VOTE ON MOTION: Motion passed, 3 – 2, with Mayor Steenrod and Mayor Pro Tem Benjamin opposed. *[Editor's Note: Councilmember White was not present for the vote.]*

At 10:39 p.m., Councilmember Petersen returned to the chambers.

NEXT MEETING DATE – Study Session, November 6, 2003

ADJOURNMENT

At 10:39 p.m., **motion** was made by Councilmember Sheckler, seconded by Councilmember Petersen and passed unanimously to adjourn the meeting.

Respectfully submitted,

Angela M. Chaufty
Deputy City Clerk

ACTION ITEM FROM 10/30/03 COUNCIL MEETING

- Incorporate Council's direction into the letter to King County Councilmember Patterson regarding SR-509.