

REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

November 2, 2006

The regular study session of the Des Moines City Council was called to order by Mayor Pro Tem Thomasson at 7:32 p.m. in the Council Chambers, 21630 11th Avenue South, Suite B.

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

ROLL CALL - Present: Mayor Pro Tem Scott Thomasson, Councilmembers Dave Kaplan, Carmen Scott, Dan Sherman and Susan White. Absent: Mayor Bob Sheckler and Councilmember Ed Pina. Also in attendance were City Manager Tony Piasecki, City Attorney Linda Marousek, Development Services Manager Robert Ruth, Land Use Planner I Jason Sullivan, Assistant Engineer Loren Reinhold, Finance Director Paula Henderson, Harbormaster Joe Dusenbury and City Clerk Denis Staab.

MOTION was made by Councilmember Scott, seconded by Mayor Pro Tem Thomasson and passed unanimously, to excuse Mayor Sheckler and Councilmember Pina..

DISCUSSION ITEMS

Settlement Agreement

City Attorney Marousek advised Council that the Settlement Agreement of Koenig versus Des Moines, was a public disclosure case in which the City withheld records of a child victim of sexual assault. She noted that the decision was challenged in Superior Court where the City lost and was forced to disclose the records. The City then appealed to the Court of Appeals and some materials were withheld by the Court, and the City then appealed to the Supreme Court who ruled that they are public records. She noted that at each stage of the appeal the Council authorized the City Attorney's office to pursue this in an attempt to protect the privacy of the child victim. The court's ruled against the City, and Mr. Koenig and his attorney have agreed to accept the sum of \$83,500.00 as their penalties, reasonable attorney fees, costs and interests for the City withholding the records since 1996 to the present time. It is recommended that the City accept the settlement.

In response to questioning, City Attorney Marousek confirmed that this request is in compliance with the order of the Supreme Court and satisfies all claims. She noted that this dollar amount is not the maximum that could be imposed.

Councilmember Sherman advised that he supports protecting the privacy of juvenile victims of sexual assault and he believes the Supreme Court made the wrong decision, however acknowledged that Des Moines has to abide by that decision.

MOTION was made by Councilmember Sherman, seconded by Councilmember White and passed unanimously, to approve the Settlement Agreement and Release authorizing payment of \$83,500.00, as a final settlement of a public disclosure litigation in the case of *Koenig v. Des Moines*; to authorize the City Manager to sign the Agreement substantially in the form as submitted; and to authorize the City Attorney to sign all necessary court documents to obtain final dismissal of *Koenig v. Des Moines*.

Councilmember White echoed Councilmember Sherman's comments.

Councilmember Kaplan felt that the Supreme Court sometimes takes some things to the most ridiculous extremes of interpretation and believes they did so in this case.

Upon questioning by Mayor Pro Tem Thomasson, City Manager Piasecki stated he had not had time to check with Washington Cities Insurance Authority to see if they will cover all of it or even part of this penalty, but informed Council there are sufficient funds in the City's Self Insurance Fund to cover this.

VOTE ON MOTION: Motion passed unanimously.

CONTINUED PUBLIC HEARING: Draft Ord 06-162 Grading & Filling; Draft Ord. 06-215 Lot Line Adjustments; Draft Ord. 06-216 SEPA Exemptions; and Draft Ord. 06-217 Short Subdivisions - 1st Readings

Mayor Pro Tem Thomasson explained the process to date, that the Public Hearing has been opened, rules have been read, questions have been asked by Council of staff, and that is where we are tonight. He requested Administration make their presentation.

Development Services Manager Ruth began by noting revised motions have been distributed to Council and explained the reason as follows:

1. Any legislation that affects land use has to go through the State Department of Trade and Economic Development (CTED), this is the agency that deals with growth management compliance.
2. It takes 60 days for them to conduct their review and technically the ordinances cannot be enacted until CTED has ruled them as satisfactory.
3. Motions contain qualifiers that we will defer final action until the CTED review is complete.

Councilmember Kaplan noted that the ordinances are not a total rewrite of the comp plan, they do not change the land use and is not a comprehensive rewrite, therefore he questioned why the City has to submit them to CTED.

Land Use Planner I Sullivan advised that CTED was formed under the Growth Management Act, and RCW 36.70.106 requires that any of the City's development regulations that are changed or altered have to go to CTED for their 60 day review. Development regulations are defined by the Growth Management Act and are very wide and far reaching and include any regulations dealing with subdivisions, subdivision regulations, environmental regulations, therefore these ordinances need to be submitted to ensure we are consistent with State law. He noted the changes have been submitted as of October 5, 2006, so we have to wait 60 days from that point to provide sufficient review time before final adoption of the ordinances by Council.

Councilmember Sherman commented the purpose of these ordinances is to streamline the City's permitting, and he questioned whether Council can pass the ordinances and if they do not meet CTEDs approval, they simply will not become law, or it can be amended at that time.

City Manager Piasecki suggested Council suspend Council Rule 26(b) and adopt the ordinances to be effective on the date that we get approval from CTED.

Development Services Manager Ruth explained to Council that fundamentally the ordinances that are being reviewed, are enabling exactly what the State wants to occur in terms of providing for more growth in existing urban areas. He informed Council staff would not have brought these ordinances to Council if they had felt there would be any significant issue with CTED.

Councilmember White suggested Council discontinue discussion of these ordinances until CTED has concluded their review.

Councilmember Kaplan felt this is a Council policy discussion relative to what happens with CTED. He stated that they have no regulatory authority, they are only reviewing to see if we are in compliance with the Growth Management Act for the purposes of receiving State funds in the forms of grants or other funding. He advised that the City is under no obligation to adopt any changes that they recommend. He stated he is getting fed up with the concept that the State is going to micro-manage decisions that Council makes regarding land use, zoning and growth in Des Moines. He noted we are legally obligated to submit it, but not legally obligated to make changes they recommend.

Mayor Pro Tem Thomasson suggested Council listen to what staff has to present, see if there is any public testimony, see if Council has additional questions, and then see what Council's will might be.

Development Services Manager Ruth proceeded to review the draft ordinances as follows:

Draft Ord. No. 06-162- Grading & Filling Permits

- Page 1, last Whereas: New language, compliance with CTED
- Page 2, Sec.1.A.: Eliminates reference loop and refers to 14.60.150
- Page 3 (5): added words "a total of"
- Page 3 (6): added cap of 120 cubic yards
- Page 3 Sec. 1.B.: added language for consistency with Code
- Page 3, Sec. 3: Changed to 30 days effective date

Draft Ord. No. 06-215 - Lot Line Adjustments

- Page 2, 3rd Whereas: Compliance with CTED
- Page 2 Sec. 1: Added definition of what a lot line adjustment is
- Page 4, Sec. 4: Changed to 30 days effective date

Draft Ord. 06-216 - SEPA Categorical Exemptions

- Page 2, last Whereas: Compliance with CTED
- Page 3, Sec. 1(1): Added townhouses or multifamily development containing
- Page 4, Sec. 6: Changed to 30 days effective date

Draft Ord. 06-217 - Short Subdivision Thresholds

- Page 2, 4th Whereas: Compliance with CTED
- Page 3, Sec. 3, 17.12.010: Added General Provisions consistent with 9 lots
- Page 4, Sec. 4: Changed to 30 days effective date

Mayor Pro Tem Thomasson called for any speakers three times. As there was no response, he declared the Public Testimony portion CLOSED and asked for questions from Council.

Upon questioning regarding the 30 day effective date, City Attorney Marousek noted language will be added to reflect that the Ordinance is subject to referendum.

Council began review of each of the draft ordinances with comments and consensus changes as noted:

Draft Ord. No. 06-162 - Grading & Filling Permits

- Page 2, Sec. 1: After 14.60.190 strike the word 'Exemptions.' and use "Permit Not Required."
- Page 2, (3): Strike the word 'exemption' in the 5th line
- Page 3, (6): Insert the words "for single family residences" between 'foundation' and 'approved'
- Page 3, B.: Strike the beginning words 'Exemption from the permit requirements of'
- Page 1, last Whereas: RCW should be 36.70A.106
- Ordinance Title: Strike the word 'exemptions' and add an 's' to permit

Draft Ord. No. 06-215 - Lot Line Adjustments

- Page 2, 3rd Whereas: RCW should be 36.70A.106
- Page 2, Sec. 1(2): Fix spacing and strike the word "nor" between 'not' and 'create'

Draft Ord. No. 06-216 - SEPA Categorical Exemptions

- Page 2, last Whereas: RCW should be 36.70A.106
- Page 3, Sec. 1(1): Delete the word "townhouses" as it is a style of construction not a land use
- Page 3, Sec. 1.(2) & (3): Add words "up to" between 'for' and '35'

Draft Ord. No. 06-217 - Short Subdivision Thresholds

- Page 2, 4th Whereas: RCW should be 36.70A.106.

As there were no further comments or changes to the draft ordinances, Mayor Pro Tem Thomasson declared the Public Hearing CLOSED. He requested Council take action on the ordinances in the same order as they were presented.

Draft Ord. No. 06-162 [ASSIGNED ORDINANCE NO. 1386]

Mayor Pro Tem Thomasson read the ordinance by title into the record.

MOTION was made by Councilmember Sherman, and seconded, to suspend Council Rule 26(b) in order to enact on first reading. Motion passed 3 to 2 with Councilmember Scott and White opposed.

MOTION was made by Councilmember Sherman, seconded by Councilmember Kaplan, to approve Draft Ordinance No. 06-162, ~~with final adoption after review by the State Department of Trade and Economic Development~~ as amended. (ED NOTE: Friendly Amendment.)

Mayor Pro Tem Thomasson questioned when the 30 day referendum period would be calculated. City Attorney Marousek advised it would be upon Council action to adopt. She further recommended that Council adopt tonight and should the State have negative comments, staff will bring the ordinance back to Council.

A Friendly Amendment was accepted by the maker and seconder to strike the words "with final adoption after review by the State Department of Trade and Economic Development" and add the words "as amended". [ED NOTE: Amendments agreed to and noted during earlier discussion.]

VOTE ON MAIN MOTION: Motion passed unanimously, 5 to 0.

Draft Ordinance No. 06-215 **[ASSIGNED ORDINANCE NO. 1387]**

MOTION was made by Councilmember Kaplan, seconded by Councilmember Sherman and passed unanimously, to suspend Council Rule 26(b) in order to enact the draft ordinance on first reading.

Mayor Pro Tem Thomasson read the draft ordinance by title into the record.

MOTION was made by Councilmember Kaplan, seconded by Councilmember Sherman and passed unanimously, to adopt Draft Ordinance No. 06-215 as amended.

Draft Ordinance No. 06-216

MOTION was made by Councilmember Kaplan, seconded by Councilmember Sherman to suspend Council Rule 26(b) in order to enact Draft Ordinance No. 06-216 on first reading. Motion passed unanimously.

Mayor Pro Tem Thomasson read the draft ordinance by title into the record.

MOTION was made by Councilmember Kaplan, seconded by Councilmember White to approve Draft Ordinance No. 06-216.

Councilmember Sherman noted while he approved the first two ordinances, he stated he is opposed to this draft as he is not willing to reduce environmental protections.

Councilmember Kaplan expressed approval of this ordinance as we already have environmental standards and requirements in terms of construction, particularly for smaller projects. He also felt that the types of things that would fall under these new provisions are actually pretty minimal in terms of the impacts on Des Moines.

Mayor Pro Tem Thomasson spoke against the ordinance as he feels it is important for staff to be able to review environmental check lists. Also he felt this would take away area neighbors chance to speak up regarding any concerns they may have over a project.

Councilmember Sherman stated if this passes it will make it easier for developers, but he questioned Council's responsibility to the citizens.

A FRIENDLY AMENDMENT was accepted by the maker and seconded on the motion, to add the words "up to" to page 3 section 1(1) before the words '15 dwelling units'.

VOTE ON MOTION: Councilmembers Kaplan, Scott and White voted YES. Councilmember Sherman and Mayor Pro Tem Thomasson were OPPOSED. Motion FAILED as a majority of 4, per Council Rules, is required.

Draft Ordinance No. 06-217

Mayor Pro Tem Thomasson read the draft ordinance by title into the record.

MOTION was made by Councilmember Kaplan, seconded by Councilmember White, to suspend Council Rule 26(b) in order to enact on first reading. Motion passed unanimously.

MOTION was made by Councilmember Kaplan, seconded by Councilmember Scott, to approve Draft Ordinance No. 06-217 as amended.

Councilmember Sherman spoke in opposition as it would not allow for public comment unless they went over 9 homes. Currently it requires public input if over 4.

City Manager Piasecki received verification from Land Use Planner I Sullivan that all short plats require the large white sign, requires notification of neighbors which allows for a 15 day public comment period. Any appeals can be made to the Hearing Examiner.

Mayor Pro Tem Thomasson noted he is not convinced that increasing the number of short plats that will not come before Council is in the best interests of the neighbors to those types of developments. He felt that Des Moines' does not have all of its ordinances and regulations in tip top shape to where Council has not been asked to deal with issues raised by the neighborhood by these types of developments. He felt it might be better to increase from 4 to 6, instead of 9.

Councilmember White expressed support of the ordinance as this is part of what we need to do to streamline the City's Code.

Councilmember Kaplan stated that residents have requested changes to the permitting process so they do not have to jump through so many hoops, or have Council 'nit pick'. He advised that he is a strong proponent of environmental protection and he feels that foundation is already in place. He noted citizens and builders want guidelines that are consistent, understandable and easily available to access, and he felt this ordinance does that.

VOTE ON MOTION: Motion failed 3 to 2 with Councilmembers Scott and Sherman, and Mayor Pro Tem OPPOSED.

9:12 p.m. Mayor Pro Tem Thomasson called for a 10 minute break.

Failed Draft Ordinance No. 06-216 SEPA Categorical Exemptions

MOTION was made by Councilmember Kaplan, seconded by Councilmember White, to reconsider Draft Ordinance No. 06-216 as amended at the next Council meeting as required by Council's Rules. Motion passed 3 to 2 with Councilmember Sherman and Mayor Pro Tem Thomasson OPPOSED.

2007-2012 Capital Improvement Plan

Assistant City Engineer Reinhold began by reviewing the Surface Water Management Capital Fund as follows:

- Marine View Drive Bridge
2007 - \$128,000
- Des Moines Creek Basin Projects
2007 - \$65,000

- 2008 - \$110,000
- 2009 - \$135,000
- Marine View Drive Landslide Repair
 - 2007 - \$74,200
- Barnes Creek Detention Facility/Culvert
 - 2007 - \$126,400
 - 2008 - \$1,293,450
- Decant Facility
 - 2007 - \$50,000
 - 2008 - \$107,400
- McSorley Creek Basin Plan
 - 2008 - \$132,000
- Barnes Creek/KDM Road Culvert Replacement
 - 2008 - \$89,000
 - 2009 - \$631,200
- Lower Massey Creek Channel
 - 2009 - \$88,258
 - 2010 - \$622,513
- North Hill NE 197th Street Trunk Line Project
 - 2011 - \$68,000
 - 2012 - \$412,300
- 199th North Hill Trunk Line
 - 2011- \$367,800

Preliminary 2007 Budget - Enterprise Funds

Finance Director Henderson began with a review of the Marina Revenue Fund revenues and expenditures by division, including transfers out.

Marina - Administration Changes:

- Other Services - Decrease primarily because rate study is expected to be done in 2006.
- Interfund Charges - Decrease mainly due to \$150,000 decrease in transfer to the General Fund.

Mayor Pro Tem Thomasson noted years ago Council determined what the Interfund Charges should be with calculations to support that amount. He felt this is a policy question that should be addressed by Council and questioned what was the basis of decreasing this amount. He stated Council's intent was to help balance the General Fund.

Finance Director Henderson noted her calculations did not support the \$600,000 that was previously being charged. Part of the decrease was due to the availability of tax-exempt debt and State grants. She noted if this was a private Marina it could not use tax-exempt market for bonds and it would not be eligible for grants. She further noted that the City's rate consultant is also recommending that the General Fund transfer is on the high end compared to other public marinas.

Councilmember Kaplan felt it was less than Council's policy to have the Interfund Charge at \$600,000 than just the fact it was through the budget discussions and subsequent adoption of a budget. He remembered it was done for the 2000 budget because we had to and again in 2002.

Mayor Pro Tem Thomasson stated that Council clearly said "it shall be this amount" and that was to deal with budget short-fall, and at that time there was a rationale to support, and we still have a gap in the general fund. He felt the reasons that Council set the amount so high are still in place.

City Manager Piasecki advised that the concept at play here is that one fund in the City cannot benefit at the expense of another fund. He stated that the \$150,000 can be used by saying there is a benefit that the Marina Fund is getting by being part of the City, such as tax exempt bonds and grants, but any amount higher than that most likely, if challenged, would not hold up. Plus, when you look at the Marina finances and what we will be undertaking in the next three to five years and the debt we will need to float, his feeling is every dollar of revenue we can keep in the fund will be a good thing for the Marina.

Councilmember Sherman expressed the opinion that we really need to be investing in the Marina as expenses are constantly raising, such as sea wall replacement, along with other needed projects. He noted by investing in the development of the Marina we may be increasing the potential for increasing revenue by bringing people into the City and having them spend their money here. He noted due to the funds needed for redevelopment of the Marina, he felt it is good policy to lower the amount of Marina funds to the City's General Fund at this time.

Councilmember White expressed agreement with Councilmember Sherman.

Councilmember Kaplan stated he felt decreasing the transfer from the Marina is a good public policy especially given the amount of bonding that may be needed to take care of the larger structural issues that will be coming up. He noted the Marina has been made a priority and therefore the funds should be kept within the Marina as much as possible as we move forward with improvement plans.

Councilmember Scott pointed out that we need to keep in mind that the Marina is aging and she could not justify taking more money for the general fund when it is truly needed for the Marina. She felt good logic was used in reducing the transfer of funds from the Marina.

Finance Director Henderson continued by noting the following new requests from the Harbormaster:

- Increase work hours of part-time Marina Clerk
- Work Barge/Float
- Portable Stage (Split costs with Parks and Senior Division)

Marina Service Division

- Supplies - Increase primarily due to fuel costs
- Other Services - Added Special Events Line Item
- Interfund Charges - Decrease due to insurance assessment based on L&I hours

In regards to the Special Events Line Item, Harbormaster Dusenbury reminded Council that last year there were three special events held in the Marina. He advised that next year the Marina Day Event will be split to two events: Safety On The Sound and Opening Day. Also there will be the 4th of July Fireworks, a car show and hope to have another event on the Labor Day weekend for an Italian Sports Car show. He noted since the Marina has taken on more events that used to be under Waterland, he felt it necessary to have a place to track expenditures and a

revenue line to help off-set the expenditures. He noted that in this last year revenues were a little bit more than the expenses and he anticipates that will continue in the future.

Marina Maintenance

- Other Services - Increase mainly due to increase in Utilities

Marina Repair & Replacement Fund

- \$20,000 place holder in case of any major maintenance
- Accumulating Interest Revenue
- Bond Requirements

Surface Water Management Fund

- Schedule shows rates and phase in, along with Capital Contribution targets of 30%
- Rate Increase for 2007 is 13.09%
- Regular Rate Increase is 2.60%
- Phase In Amount is 10.49%

Upon questioning, Finance Director Henderson advised that she does not make any transfer to the CIP until the revenues from King County arrive in April of each year.

Surface Water Management - Engineering

- Salaries - Slight Increase for Engineering Aide Replacement
- Services - Decrease primarily due to 34% decrease in GIS Support Services and in dues, schools & conferences
- Intergov't Charges - Increase in B&O taxes due to SWM rate increase

Surface Water Management - Maintenance

- Salaries - Increase due to full year salary of new worker
- Supplies - Increase primarily in diesel fuel
- Other Services - Decrease mainly due to \$10,000 decrease in West Nile Virus Mosquito Control
- Interfund Charges - Increase mainly because of \$13,314 increase in Equipment Rental Replacement assessment due to purchase of new utility truck

10:28 p.m. MOTION was made by Councilmember Kaplan to extend the meeting to 10:40 p.m. Motion DIED for lack of a second.

NEXT MEETING DATE

Mayor Pro Tem Thomasson noted the next regular meeting is November 9, 2006.

ADJOURNMENT

At 10:29 p.m. MOTION was made by Councilmember White, seconded by Mayor Pro Tem Thomasson to adjourn. Motion passed 4 to 1 with Councilmember Kaplan opposed.

Respectfully submitted,

Denis Staab, City Clerk