

REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

November 17, 2005

The regular meeting of the Des Moines City Council was called to order by Mayor Sheckler at 7:30 p.m. in the City Council Chambers, 21630 11th Avenue South, Suite B.

PLEDGE OF ALLEDGIANCE to the Flag was led by Mayor Pro Tem Thomasson.

ROLL CALL - Present: Mayor Bob Sheckler, Mayor Pro Tem Scott Thomasson, Councilmembers Gary Petersen, Dan Sherman and Maggie Steenrod. Absent: Councilmembers Richard Benjamin and Susan White. Also in attendance were City Manager Tony Piasecki, City Attorney Linda Marousek, Finance Director Paula Henderson and City Clerk Denis Staab.

MOTION was made by Councilmember Steenrod, seconded by Councilmember Sherman and passed unanimously, to excuse Councilmembers Benjamin and White.

BOARD & COMMITTEE REPORTS

South County Area Transportation Board

Councilmember Sherman reported attending a Committee meeting last Tuesday. Major topic centered around the fact that Initiative 912 failed, and that the County will be looking at reviving the RTID Project idea and deciding whether to combine it with Sound Transit second phase project. If it is combined, they will have to change the boundaries. If this goes forward there may be ballot issues concerning increasing taxes or new taxes for transportation, both roads and Sound Transit, and whether they should be separate or together.

City Manager's Performance Review Committee

Mayor Pro Tem Thomasson advised that the Committee met a week or so ago and materials for Council's consideration will be forth coming.

PRESIDING OFFICER'S REPORT

Police Department Citizens Academy

Mayor Sheckler reported a group of citizens are attending graduation exercises this evening at the Police Department. He noted the group has attended the Academy for the past 10 weeks to learn what it is like to work as a Des Moines' Police Officer and attended educational classes which covered topics such as patrol procedures, laws of arrest and seizure, vice and internet crime, how to work a crime scene, along with presentations regarding the Department of Corrections, sex offenders, and aggressive dogs. Also numerous field trips were utilized. He congratulated the participants and encouraged other interested citizens to contact the Police Department to learn when the next academy is planned.

Presentation - Don Johnson, President of Yesterday's Cheval and El Camino Car Club

Mr. Johnson noted that the Car Club held the first car show in Des Moines last August, stating they plan to be back next year. He advised that \$1,000 was raised and presented to the Des Moines Legacy Fund. In a show of appreciation for support from the City, he presented a framed art work poster, that depicts the art work used on the Club's t-shirts.

COUNCILMEMBER COMMENTS

Future Agenda Items

Councilmember Sherman questioned when Council will review a draft ordinance regarding use of City newsletters, cable channel, etc., as it keeps moving, but now is set for December 1st.

City Manager Piasecki advised that this agenda item has again been moved further into the Future.

Councilmember Sherman also noted he would like Council to address rules for the use of all public property, including rights-of-way.

ADMINISTRATION REPORTS

Police Department Response to Public Comments/Question from Kevin Parkhurst

City Manager Piasecki distributed copies to Council for their review, of a Police Department memorandum to items raised by Mr. Parkhurst under public comments at the meetings of October 13 and 27, 2005.

CONSENT CALENDAR was read by City Clerk Staab.

~~1. **Motion is to extend the contract for Professional Services with Judith Kilgore and authorize the City Manager to sign the agreement substantially in the form as submitted.**~~

[ED NOTE: Item removed at request of Mayor Pro Tem Thomasson.]

~~2. **Draft Ordinance No. 05-228 Title: An Ordinance of the City of Des Moines, Washington relating to surface water management, amending DMMC 11.12.020 and DMMC 11.12.030, to adjust surface water drainage service charges, to amend participation charges for development permits, and to apply an inflation adjustment.**~~

~~**MOTION is to approve Draft Ordinance No. 05-228 on second reading.**~~ [ED NOTE: Item removed at request of Councilmember Steenrod.]

~~3. **Two Ordinances:**~~

~~**Draft Ordinance No. 05-227A Title: An Ordinance of the City of Des Moines, Washington determining and fixing the amount of taxes levied, and certifying the estimated amounts of funds to be raise by taxes on the assessed valuation of property within the City for the year 2006, for general City budget expenditures and for the 1995 general obligation bonds for police facility construction.**~~

~~**MOTION is to approve Draft Ordinance No. 05-227A on second reading**~~
~~**Draft Ordinance No. 05-227B Title: An Ordinance of the City of Des Moines, Washington authorizing an increase in the regular property tax levy for the year 2006 for general City expenditures.**~~

~~**TWO MOTIONS: First motion is to suspend Council Rule 26(b). Second motion is to approve Draft Ordinance No. 05-227B.**~~ [ED NOTE: Item removed at request of Councilmember Steenrod.]

Mayor Sheckler requested the City Manager briefly explain the need for two ordinances for Consent Item 3.

City Manager Piasecki advised that there are two provisions in State law concerning property taxes that the City is required to comply with. He noted that for many, many years the City has complied with both requirements through a single ordinance. Very recently staff has been

informed by King County, that we must have two separate ordinances. The first ordinance certifies that this is the amount of money that we are going to raise from property taxes and the budgetary need that we have to raise property taxes and notes any special levies. The second ordinance fills a requirement of specifically stating what the increase in our property tax levy is going to be from this year to next year, both in dollar terms and in percentage terms. He pointed out that in the 2nd ordinance the percentage amount has been adjusted from 1% to .8%. This is based on the actual collections for 2005 versus the legal amount for 2006. He noted that in 2005 the City received some additional funds from King County from tax payers who are paying late property tax bills from previous years, and this cannot be counted as 2005 property taxes collected.

Mayor Sheckler questioned Council if there were any items they wished removed from the Consent Calendar.

Mayor Pro Tem Thomasson removed Item 1.

Councilmember Steenrod removed Items 2 and 3.

REMOVED CONSENT ITEMS

Consent Item #1 - Extend Contract for Professional Services

City Attorney requested this item be discussed in Executive Session.

7:49 p.m. - Executive Session

Mayor Sheckler announced that the Council will go into an Executive Session for approximately 10 minutes. City Attorney Marousek announced that the purpose of the executive session is pursuant to the terms of RCW 42.30.110(g).

In attendance of the Executive Session were Mayor Bob Sheckler, Mayor Pro Tem Scott Thomasson, Councilmembers Gary Petersen, Dan Sherman and Maggie Steenrod. Also in attendance were City Manager Tony Piasecki and City Attorney Linda Marousek.

8:01 p.m. City Manager Piasecki announced that the Executive Session will last approximately another 10 minutes.

No formal action was taken and the executive session adjourned at 8:06 p.m.

Consent Item #1 - Extend Contract for Professional Services

MOTION was made by Councilmember Steenrod, seconded by Councilmember Petersen to extend the contract for Professional Services with Judith Kilgore and authorize the City Manager to sign the agreement substantially in the form as submitted.

MOTION was made by Councilmember Sherman, seconded by Mayor Pro Tem Thomasson, to modify the contract to eliminate item b, under Scope of Service: "Review and revision of the City's Zoning Code and transition of this work to an employee of the City - approximately 60 hours."

Councilmember Sherman noted that he believes the City will be hiring someone that will be able to handle this particular issue. He felt this item may not be as important as the other items, especially given the costs of 60 hours at \$115.00 per hour, plus costs.

City Manager Piasecki felt this would delay the zoning code review project if this change is adopted. A new individual may or may not have a great deal of expertise in specific parts of zoning codes, it may take them some time to get up to speed especially since we are changing the structure of the Code, in addition to looking at some changes to the Code.

Councilmember Steenrod advised that she would not be in favor of any delays to updating the Zoning Code as both she and Councilmember White feel this is one of the most critical areas for economic development. She noted this is also one of the areas where the City receives the most complaints.

VOTE ON AMENDMENT: Motion failed two to three, with Councilmember Sherman and Mayor Pro Tem Thomasson voting YES.

VOTE ON MAIN MOTION: Motion passed three to two with Councilmember Sherman and Mayor Pro Tem Thomasson opposed.

Consent Item #2 - Draft Ordinance No. 05-228 [ASSIGNED ORDINANCE NO. 1368] Surface Water Management Rates - 2nd Reading

MOTION was made by Mayor Pro Tem Thomasson, seconded by Councilmember Sherman to approve Draft Ordinance No. 05-228 as read on the Consent Calendar. Motion passed three to two with Councilmembers Petersen and Steenrod opposed.

Consent Item #3 - Draft Ordinance No. 05-227A [ASSIGNED ORDINANCE NO. 1369] 2006 Property Taxes - 2nd Reading and Draft Ordinance No. 05-227B [ASSIGNED ORDINANCE NO. 1370] Authorizing Increase in 2006 Property Tax Levy - 1st Reading

MOTION was made by Mayor Sheckler to approve both draft ordinances No. 05-227A and No. 05-227B, as read on the Consent Calendar. Motion passed three to two with Councilmembers Petersen and Steenrod opposed.

CONTINUED PUBLIC HEARING

Mitchell - Comprehensive Plan Amendment & Rezone Request

Mayor Sheckler introduced the subject and reminded the audience that no further public comments will be taken this evening. He noted that Council is at the point where they may continue asking questions of staff and individuals who testified at the October 13th meeting.

Upon questioning by Mayor Pro Tem Thomasson, Consultant Kilgore advised that the wrong Environmental Checklist Application Form had been distributed in Council's packet. She distributed copies of the correct Checklist signed and dated by her on December 16, 2004. She informed Council that if you deduct for the wetland and the buffer, it still leaves about 33,000 sq. ft. of area that can be developed into commercial space, which is a reasonable for about 3 or 4 shops.

Upon questioning by Councilmember Sherman as to whether a site specific project will come before Council, Consultant Kilgore noted that if both requests are approved only then can the

applicant begin the land use development of the project. The next steps would be Design Review, SEPA review, presentation to the Planning Agency and a Public Hearing before the City Council and Council action.

In regards to the northern 4 to 5 acres being developed individually, it was noted that the owners are willing to sign documentation that they will not develop lots individually. City Attorney Marousek and Consultant Kilgore advised that this can be a condition of approval, included with the findings of fact. It was also noted that there will be no egress/ingress to 20th Avenue to the west, only an emergency access, for emergency vehicles.

City Attorney Marousek advised Council that no written comments, concerns or questions have been received regarding the request.

Councilmember Sherman requested any citizen who had voiced concerns at the October 13th hearing to tell Council if their concerns had been addressed.

Henry Stahl, 1640 South 261st Place

Mr. Stahl informed Council that he believes Council has adequately addressed neighbors concerns regarding traffic issues and separation or co-development of the other parcels.

Mayor Pro Tem Thomasson advised that he still has some concerns over the right balance of commercial versus residential and doing something for short term expediency that may not be in the City's best long term interests in terms of generating revenues. He felt there has been no factual basis included in Council's packet to evaluate that particular policy question. He also questioned where a dividing line should be in regard to noise from the Highway. He noted there is a lot of interest in economic development, and here Council is being asked to convert commercial land to residential land and no analysis has been provided.

Consultant Kilgore commented that the 10 acres on this site is too big for a small development and too small for a large development. She advised the size would not support a lot of retail development such as a grocery store. She reminded Council this property has been actively on the market for the past 20 years and nothing has happened. She noted this property is comparable to "Brentwood" at 268th and Pacific Highway South, where the front portion is commercial and 47 townhomes are located at the back portion of the property. She informed Council that the residential parcels were sold out before it was constructed. This type of housing serves a purpose for first time home buyers and families who are trying to get into the market.

Mayor Pro Tem Thomasson stated that this part of Pacific Highway South tends to be underdeveloped, parcels could be combined therefore he questioned what opportunities may the City be forgoing in the long term, to build a few more houses. He felt that part of the City's problems is in trying to balance between residential and commercial, this proposal essentially builds more residential tipping the balance even more.

Consultant Kilgore pointed out that if there was no residential in the back, then there would be no buffer between commercial and existing residential. She noted that townhouse development was intended for the purpose of being a transition between commercial and single family residential.

Mayor Pro Tem Thomasson questioned whether the residential is being placed too close to the Highway because of noise issues.

Hans Korve, Engineer for Applicant

Mr. Korve noted that noise issues are difficult to address as the project has as of yet to be developed. He advised that there is a wetland that will provide distance and a vegetated buffer as part of an enhancement program. He also noted because of the airport, homes will have special insulated windows and walls. He felt this is a technical issue that will be best addressed during the Planned Unit Development process and building permit phase.

Mayor Sheckler CLOSED the Public Hearing.

MOTION was made by Councilmember Steenrod, seconded by Councilmember Petersen, that 1) the Mitchell/Chamlian Comprehensive Plan request to redesignate a portion of parcels 282204-9209 and 282204-9067 from Commercial to T12 be included as part of the City of Des Moines 2004/2005 Comprehensive Plan Amendments, and 2) that the Mitchell/Chamlian Comprehensive Plan request to redesignate Parcel #382204-9233 from SF6 to T12 be included as part of the City of Des Moines 2004/2005 Comprehensive Plan Amendments, and 3) that the City Council direct staff to prepare an ordinance, including findings of fact and conditions of approval regarding the rezone of a portion of parcels #282204-9204 and #282204-9067 from Community Commercial to RA3600 (Townhouse), and 4) that the City Council directs staff to prepare an ordinance, including findings of fact and conditions of approval regarding the rezone of parcel #282204-9233 from RS7200 to RA3600 (Townhouse).

At the suggestion of Mayor Sheckler, the maker and seconder of the motion agreed that the motion, under conditions of approval, will include concerns about traffic to the west and that the northern most property must be developed at the same time as the other properties.

ROLL CALL VOTE: Motion passed 4 to 1 with Mayor Pro Tem Thomasson opposed.

8:55 p.m. Mayor Sheckler called for a 10 minute break.

AGENDA REVISION

Mayor Sheckler announced that that he will take the Public Hearing on the Draft Ordinance No. 05-226 adopting the 2006 budget prior to the Continued Public Hearing on the Comprehensive Plan amendments.

PUBLIC HEARING

Draft Ordinance No. 05-226 Adopting the 2006 Budget - 1st Reading

Mayor Sheckler introduced the subject and declared the Public Hearing open.

Mayor Sheckler called for public speakers three times. There was no response.

MOTION was made by Mayor Pro Tem Thomasson, seconded by Councilmember Petersen and passed unanimously, to continue the Public Hearing to December 1, 2005.

CONTINUED PUBLIC HEARING

Draft Ordinance No. 05-216 2004/2005 Comprehensive Plan Amendments - 1st Reading

City Manager Piasecki noted there are several items that Council needs to review and confirm that staff took the action as directed by Council over the last several months. He noted Council does have an amended Comp Plan and one of the large items has to do with the approximately 90 properties that the Committee suggested Council review their designations. The four or so properties where it was felt there should be a change, have been notified. He felt, after careful study and consultation with Councilmembers and staff, a procedural step needs to be dealt with, in particular 18.84.070(c) which requires that any land use amendment on the map requires us to have a legal description. He advised that since we do not have those legal descriptions, except for the Mitchell property, he recommends that this part of the Comp Plan amendment not be attempted this year, but make it a part of the work plan for next year. However, he pointed out that the issue concerning densities on the land use maps should be continued, and he recommends that these density designations should be removed. He stated that he was requested to obtain another legal opinion on this and has asked Michael Walter, who in his opinion, is one of best land use attorneys in the State, to look at this issue in depth. He noted a written opinion from Mr. Walter has been provided in Council's packet. In addition he advised that he asked Mr. Walter to review the notice provisions contained in 18.60.140 that essentially says that a comp plan or zoning amendment that changes lot area per dwelling unit needs to have notice procedures followed that are part of SEPA, and about the applicability of that part of the Code to the issue of removing densities from the land use maps.

Mr. Walter, partner in the law firm of Keating, Bucklin & McCormack, noted that he had been asked whether specific densities are a required element of comprehensive plan maps or even to be included in the comprehensive plan, and secondly, to look at the issue if they are not required whether it is a good idea to have those specific densities put in the comp plan or plan maps. He informed Council that he and an associate did an exhausted research of the issue, looking at applicable GMA regulations and statutes, applicable board decisions, case law, legal parameters and calls to other cities and entities. He reviewed his letter contained in Council's packet. In conclusion he stated there is simply no good reason to put normative, site-specific densities or other regulations in the City's Comprehensive Plan or regulations on Plan maps currently under amendment. He summarized the following reasons:

- It invites further amendment of the Comp Plan to include a myriad of other development stands
- It unnecessarily burdens and delays requests for re-zones of property
- It leaves the City open to litigation over conflicts between adopted densities in the City's zoning code and those in the comp plan
- The comp plan is not a regulatory law, an ordinance, or a statute and cannot be directly enforced
- It is not consistent with the general nature of a comprehensive plan, which is designed to be an overall guide - a "blueprint" - rather than a list of regulations

Mayor Pro Tem Thomasson stated that historically the City has zoning that represents 3 units per acre, 4 units per acre, along with zoning for 5 and 6 units. He noted that to make the land use map consistent with the zoning, Council felt you needed to put the designations on the maps. He felt the legislative intent historically was that the character of well established neighborhoods should be maintained. He felt that if you do not use a specific unit requirement on the comp plan map to match the zoning map, there is no basis to deny a rezone request.

Mr. Walter acknowledged the legislative history as explained, but advised that it does not change his opinion. He advised that all concerns can be addressed through the zoning code. He stated that Des Moines' has an opportunity to simplify the comp plan by removing densities, and adopt specific criteria and standards for rezones that best fits the City. He also noted that the Council has broad discretion to decide how and to whom notice is given regarding rezone requests, and all this should be addressed in the Zoning Code entitled: Rezone Applications, Process and Procedure. He reminded Council that the burden of proof is upon the applicant requesting a rezone to prove that "there has been a substantial change in circumstances" since the last zoning of a particular piece of property, must prove that the rezone is "in the public health, welfare and economic benefit of the City". He noted the Code can add even more if Council chooses, but those two items are required by State law. He stressed there is not a court case anywhere in the State of Washington, where a court reversed a decision made by a body of elected officials on a rezone request, noting that courts bend over backwards to support decisions of elected bodies on rezone requests because rezoning is a unique local aspect of law.

In response to questioning by Councilmember Steenrod as to when Council will address changes such as adding 'public facilities' to the comp plan, City Attorney Marousek advised it will be next year at this time in the regular cycle of comprehensive plan amendments.

City Manager Piasecki stated this will allow Council to complete the policy discussion of a public facilities zone and to develop language for the zoning code that will match the comp plan.

Upon questioning by Councilmember Sherman, Consultant Kilgore suggested that under background and comments additional language could be used such as "Des Moines has several established single family neighborhoods, with historically lower density" and then in the policies add language such as "preserve integrity of existing single family neighborhoods, lower density neighborhoods is this zoning, and medium density is this zoning, high density is this zoning". She advised that she will add a little background and context giving a little more history of the City, and in the policies she will add language to specific zones.

Upon questioning by Councilmember Steenrod, Consultant Kilgore advised before the comp plan can be adopted Council must resolve the outstanding 31 issues from the October retreat. She further advised that last year the Legislature gave cities another year to complete their comp plans, and that date is December 1, 2005. She noted that if the comp plan is not completed by then, any grants or loans through the State will be prohibited until Des Moines sends them a completed Comprehensive Plan.

Mayor Sheckler declared the Public Hearing CLOSED.

At this point Council begin reviewing the issues as noted in Ms. Kilgore's Memorandum to Council dated November 9, 2005, with comments or consensus as noted.

- *Issue 1:* Revisit and redesignate and possibly rename neighborhood boundaries now or during 2006 Comprehensive Plan review?

CONSENSUS: Leave to 2006

- *Issue 2:* Should Council adopt proposed schedule included in Appendix C?

CONSENSUS: Change Land Use Element to 2006 and move the Downtown Element to 2007. (Rest the same)

- *Issue 3:* Should public notice include posting on website and cable access under Citizen Involvement (3)?

CONSENSUS: Remove specific places and types of notification, so not to be inconsistent with the Zoning Code regulations. Just use term “proper legal requirements”.

- *Issue 4:* Shall the Council revise Goals to include the terms ‘diverse’ and ‘affordable housing’?

CONSENSUS: Yes.

- *The second Issue 3:* Shall the following revision be included in the final draft in 2-02-01, which removes the specific number?

CONSENSUS: Yes.

- *The second Issue 4:* Shall the Council keep the following statement without revision in 20-02-04, ‘Generally, the City of Des Moines meets the residential density requirement of 4 units per acre by neighborhood’?

CONSENSUS: Yes.

- *Issue 5:* Shall the Council remove the word ‘existing’ from 2-03-03?

CONSENSUS: Yes.

- *Issue 6:* Shall the following be revised as follows? (1) Promote new development and redevelopment within the Downtown Business District *consistent with community character* to . .

CONSENSUS: Yes.

- *Issue 7:* Shall single family residential density designations be removed from the land use maps included in this element (2-04-01)?

DISCUSSION: Mayor Pro Tem Thomasson felt these designations are here to protect the RS 9600, RS 8400 and RS 15,000 zones. He expressed concern over being flooded with RS 7200 rezone requests since there is no written code criteria to give Council the power to say no.

City Attorney Marousek advised that the Washington State Supreme Court has very clearly stated that the Growth Management Hearing Boards may not impose a four units per acre bright line test if the City meets an average density, and can prove it is meeting its growth management goals. (Home vs. Viking Properties)

10:22 p.m. MOTION was made by Councilmember Steenrod to extend the meeting for 10 minutes. Motion died for lack of a second.

Councilmember Steenrod voiced the opinion that there should not be duplicative zoning designations, that they should be in the Zoning Code and the comp plan should direct people to that area of the Code that contains the designations.

Councilmember Sherman questioned whether Council can just say that the Comprehensive Plan use map is the Zoning Map.

Consultant Kilgore replied in the affirmative and stated you can attach the Zoning Map to the Comprehensive Plan as an appendage. There would be a note in the Policies that says 'density is displayed on the Zoning Map which is attached as "-". She noted the use maps would stay, with the designations removed, and refer to the zoning map.

10:28 p.m. **MOTION** was made by Mayor Sheckler, seconded by Councilmember Steenrod to extend the meeting 5 minutes. Motion failed with Councilmembers Petersen, Steenrod and Mayor Sheckler voting yes and Councilmember Sherman and Mayor Pro Tem Thomasson opposed. (Requires super majority.)

It was noted that Council will continue discussion regarding Issue 7.

NEW BUSINESS

Draft Resolution No. 05- Adopting 2006-2011 Capital Improvement Plan

Mayor Sheckler noted he will reschedule this item to another meeting.

NEXT MEETING DATE

Mayor Sheckler announced that the next meeting will be a study session on December 1, 2005.

ADJOURNMENT

At 10:30 p.m. the meeting adjourned by time expiring.

Respectfully submitted,

Denis Staab
City Clerk