

PRELIMINARY
REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

November 20, 2003

EXECUTIVE SESSION

At 7:30 p.m., Assistant City Manager Loch announced that Council would remain in executive session for an additional fifteen minutes.

At 7:45 p.m., Assistant City Manager Loch announced that Council would remain in executive session for an additional five minutes.

The regular meeting of the Des Moines City Council was called to order at 7:55 p.m. by Mayor Pro Tem Benjamin in the Council Chambers, 21630 11th Avenue South, Suite B.

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

OATH OF OFFICE

City Attorney Marousek administered the oath of office to Councilmember Sherman.

ROLL CALL - Present: Mayor Pro Tem Richard Benjamin, Councilmembers Gary Petersen, Dan Sherman, Bob Sheckler, Scott Thomasson and Susan White. Absent: Mayor Maggie Steenrod. Also present were City Manager Tony Piasecki, Assistant City Manager Corbitt Loch, Park and Recreation Director Patrice Thorell, and Deputy City Clerk Angela Chaufy.

MOTION was made by Councilmember Sherman, seconded by Councilmember Petersen, and passed unanimously to excuse Mayor Steenrod from the meeting.

COMMENTS FROM THE PUBLIC

Donald Gerlick, 23641 7th Avenue South

Mr. Gerlick said that he wanted to clarify the meaning of the statement "Kill the Chicken" that he had made during a previous meeting.

Assistant City Attorney Marousek explained that as the statement pertained to a public hearing, the comments would be out of order at this time. If Council wished to receive clarification of Mr. Gerlick's comment, they should question him during the public hearing process.

Alex White, 22030 7th Avenue South

Mr. White thanked the City for hosting a Business Roundtable discussion. He appreciated the wide spectrum of businesses represented at the meeting. Mr. White asked Council to attend the next roundtable discussion as he felt it would aid staff and Council in providing a consistent message to City business owners.

Debbie Workman, 23903 7th Avenue South

Ms. Workman voiced support for Mr. White's comments. Although she was unable to attend the roundtable discussion, she had attended a Chamber of Commerce meeting. Ms. Workman encouraged residents to become involved in the community. She encouraged the City to have

more business roundtable discussions. In closing, Ms. Workman thanked Council for their hard work.

BOARD AND COMMITTEE REPORTS

Airport Communities Coalition (ACC)

Councilmember Sheckler announced that the ACC and Port of Seattle had appeared before the Washington State Supreme Court on November 18, 2003 to present their arguments regarding the Port of Seattle's appeal of water quality standards and testing procedures set by the Pollution Control Hearing Board. Options before the Supreme Court include:

- Confirm the Pollution Control Hearing Board's decision,
- Rule the Pollution Control Hearing Board's decision too restrictive, or
- Remand the issue back to the Pollution Control Hearing Board for revision.

A decision is expected later this year or early next year. Councilmember Sheckler noted that ACC had originally requested \$200,000 from the City for 2003 but the City had only paid \$150,000 so far. The ACC has submitted a request for \$70,000 to the City.

MOTION was made by Councilmember Sheckler, seconded by Councilmember Thomasson to allocate \$70,000 to the ACC to complete the City's obligation for this fiscal year.

Councilmember Thomasson said that he preferred to limit the payment to \$50,000 as originally requested.

In response to Councilmember Sherman's question regarding the availability of money in the Airport Defense Fund, City Manager Piasecki explained that no appropriation was attached to the Airport Defense Fund. Use of the money would require the passage of a budget amendment by a super-majority vote of Council.

Councilmember Sherman voiced support for the motion.

Upon the request of Mayor Pro Tem Benjamin, City Manager Piasecki explained that, for 2003, Burien had committed \$250,000, Normandy Park had committed \$200,000, and Des Moines had committed \$200,000 to the ACC. Burien actually paid \$220,000 for the year. The ACC Executive Board requested that Normandy Park and Des Moines increase their allocation to \$220,000. Normandy Park has agreed to this request. The issue was now being presented to the Des Moines' Council.

Councilmember Sheckler said that the ACC was asking Des Moines to provide an equal share.

Mayor Pro Tem Benjamin said that Normandy Park had chosen to fund the ACC rather than the Mount Rainier Pool as a matter of priority. He said that he did not support allocating more funds to the third runway fight.

Councilmember Sheckler said that Mayor Pro Tem Benjamin's comment regarding Normandy Park was an assumption.

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

Business Roundtable

Councilmember White informed Council that she had attended the Business Roundtable. She expressed the following concerns voiced at the meeting:

- The permitting process frustrated business owners.
- The permitting process needed to be simplified
- Better coordination between City departments was needed.
- Business owners desired a clear picture of the development requirements and the expected timelines.
- Business owners requested electronic access to review a project's status.
- The City's Comprehensive Plan and DMMC should be in agreement with each other.
- Council and staff's relationship was not cohesive as staff's recommendations were not supported by Council.

Councilmember White felt that it was important to hire a person to rewrite the City Code and simplify the process. She felt that economic development should be the number one issue at Council's retreat.

Election to Council Position

Councilmember Sherman thanked citizens for their votes. He said that Council needed to work on leadership, police force issues, and the financial status of the City.

Mount Rainier Pool

Mayor Pro Tem Benjamin said that he looked forward to addressing the Mount Rainier Pool issue as the proposed agreements were a collaborative effort.

ADMINISTRATION REPORT

Business Roundtable Meeting

City Manager Piasecki said that the participants of the Business Roundtable discussions had said that the permitting process and fees should be more predictable and coordination between departments, utilities, and the fire department should be improved.

Ordinance 1329 – Adopting the 2004 Property Tax Levy

City Manager Piasecki verified that only four votes of Council were required to approve the 2004 Property Tax Levy ordinance.

Chip and Slurry Sealed Streets

City Manager Piasecki announced that a map of chip & slurry sealed streets in Tacoma had been provided to Council. He encouraged them to view the streets.

2004 Council Retreat

City Manager Piasecki distributed potential dates for the 2004 Council retreat. He asked Council to determine a specific date.

Councilmember Sherman suggested that Council meet locally on two Saturdays rather than going away for an entire weekend.

City Manager Piasecki asked Council to provide direction.

CONSENT CALENDAR was read by Deputy City Clerk Chaufy.

1. Motion is to approve the minutes of November 6, 2003
2. Motion is to authorize the City Manager to approve all vouchers for payment of the following claims during the period of November 7, 2003 through November 20, 2003:
 - a. All vouchers for payment of payroll checks, including Marina payroll, and
 - b. All vouchers for payment of claims and Marina checks, provided that all vouchers and checks approved by the City Manager in accordance with this motion shall be presented at the December 11, 2003 Council meeting.
3. Motion is to approve the Consent Judgment and Decree of Appropriation in King County Superior Court Cause No. 02-2-19402-8 KNT and to authorize the City Attorney to approve said Judgment and Decree and present it to the court, for approval and entry, substantially in the form as submitted.
4. Draft Ordinance No. 03-001 [Assigned Ord. No. 1330] - Motion is to approve the second reading of Draft Ordinance No. 03-001, vacating that portion of unopened 19th Avenue South (previously identified as 20th Street) consisting of the area between Blocks 10 and 11 from Lots 9 through 16, inclusive, between South 222nd Street and South 223rd Street, situated in the City of Des Moines, as per the plat of Bay View addition recorded in Volume 4 of Plats, Page 97, records of King County, Washington; while obtaining the necessary surface water utility easement, and conditioning the street vacation with the necessary lot consolidations and native growth protection easements.

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

CONTINUED PUBLIC HEARING

SEPA Appeal and Unclassified Use Permit Zenith Viewpointe

Councilmember White recused herself from the hearing.

City Manager Piasecki noted that the hearing was open but the comment period was closed. He confirmed that the briefs submitted by Mr. Jensen (Exhibit 28) and by Ms. Rogers (Exhibit 29) had been received by Council.

City Attorney Marousek said that Mr. Jensen's brief had raised appearance of fairness issues concerning Mayor Pro Tem Benjamin. She recounted the following allegations and Mayor Pro Tem Benjamin's response to them:

- 1) At the hearing on October 30, 2003, he [Mayor Pro Tem Benjamin] displayed unmistakable bias and prejudgment against the project. He took great pleasure in announcing to the other Councilmembers and the public that it was time to "kill the chicken".

Response: Mayor Pro Tem Benjamin said that he felt that the people had waited long enough for a decision. He was encouraging Council to make a decision rather than expressing a position.

2) During recesses at most hearings, Councilmember Benjamin frequently talked with opponents of the project, including the former mayor, in hushed tones and often stopped speaking when Alex or his representatives approached.

Response: Mayor Pro Tem Benjamin said that he had discussed unrelated topics (fishing and onions) with the Workman's. He was only exchanging pleasantries with former Mayor Don Wasson.

3) At the hearing on September 11, 2003, Councilmember Benjamin abused his position by seeking to disqualify Councilmember Sheckler for accepting campaign contributions from people who live near the property, when there is no evidence that Councilmember Sheckler was acting with bias or had prejudged the project.

Response: Mayor Pro Tem Benjamin said that he had raised the issue and it had been addressed.

City Attorney Marousek explained that, for Des Moines, campaign contributions legally reported to the Public Disclosure Commission were acceptable contributions. In her opinion, based upon Mayor Pro Tem Benjamin's explanations, an Appearance of Fairness challenge against Mayor Pro Tem Benjamin would not likely be successful. She questioned whether any Councilmember would like to raise the issue with Mayor Pro Tem Benjamin.

Councilmember Sheckler indicated that he would.

As only one Councilmember had challenged, City Attorney Marousek asked Mayor Pro Tem Benjamin whether he would continue to participate in the hearing.

Mayor Pro Tem Benjamin said that he agreed with the City Attorney's opinion and that he had not pre-judged the issue. He would continue to participate in the hearing.

Mayor Pro Tem Benjamin questioned if Council had any questions for any of the speakers.

No questions were voiced.

Mayor Pro Tem Benjamin closed the hearing.

In response to Councilmember Sherman's question, City Attorney Marousek explained that, as a quasi-judicial body, Council must take an action on the issues before them.

In regard to the sensitive area exception request, Councilmember Thomasson said that the DMMC identified the purpose of regulating slopes was to avoid soil instability, erosion, runoff, destruction of a community's aesthetic resources, and future expenditures due to damage. Councilmember Thomasson stated his belief that natural function still existed on the hillside. No specific testimony stating how much of the land area was covered by buildings had been received but pictures of the site indicated that at least 60% of the property had not been disturbed. Therefore, he was not in support of eliminating the 60% condition. Councilmember Thomasson said that, in his opinion, the 60% of the exception rule only applied to the land and not the right-of-way area. The Code said that use of the right-of-way shall be avoided unless there were no practical alternatives. He agreed that the right-of-way was needed to access the

property. Councilmember Thomasson stated that the SEPA requirement to regrade the street to 14% did not adequately consider the sensitive area issue.

MOTION was made by Councilmember Thomasson and seconded by Councilmember Sherman to direct Administration to prepare the necessary resolution and findings to deny the requested Sensitive Area Exception request.

City Attorney Marousek advised Council that it was important to handle the separate issues in the proper order when final action was taken.

Councilmember Sherman voiced support for Councilmember Thomasson's comments as he believed significant vegetation was still providing stability to the slope. He said that no testimony indicating that the slope had been altered had been provided.

VOTE ON MOTION: Motion passed unanimously.

MOTION as made by Mayor Pro Tem Benjamin and seconded by Councilmember Thomasson to deny the SEPA appeal and the Unclassified Use Permit.

Mayor Pro Tem Benjamin said that SEPA had been satisfied but, in regard to the Unclassified Use Permit, the project was out of character with the neighborhood.

In response to Councilmember Sheckler's questioning, Community Development Director Kilgore explained that if Council denied the SEPA appeal (upheld the SEPA decision), they still reserved the right to deny the UUP and Development Exception. If Council approved the SEPA Appeal, the process would stop until SEPA was completed.

In regard to the Unclassified Use Permit, Councilmember Sherman said that he believed businesses in the Neighborhood-Business zone must be compatible and useful to the immediate residential neighborhoods. In his opinion, condominiums were the primary purpose of the project and the business was included to allow approval of the project.

Councilmember Sheckler said that he did not believe the proposed development was acceptable as the business use was secondary.

Councilmember Sherman said that he still had questions regarding the actual zoning of the property.

City Attorney Marousek noted that zoning was not one of the three issues before Council. She advised Council to not consider the zoning of the property.

Upon request, Mayor Pro Tem Benjamin **clarified that the intent of his motion** was to direct administration to prepare the necessary documents and findings of fact to deny the SEPA appeal and the Unclassified Use Permit.

Regarding the Unclassified Use Permit, Councilmember Thomasson said that the number of units discussed in the project exceeded the test of the Unclassified Use Permit. While a smaller number of units might be acceptable, Council's duty was to review the present development. He believed that the development was incompatible with the surrounding neighborhood and that the

business should provide a service to the neighborhood. Councilmember Thomasson said that the SEPA conditions limited the business use to uses that did not serve the neighborhood. He felt this was contrary to the zoning. Councilmember Thomasson said that the SEPA appeal was a quagmire of issues. Although he thought there were defects within the proposed SEPA mitigation conditions, he did not believe they warranted remanding the project for an EIS. Councilmember Thomasson said that he was not content upholding SEPA as it would imply that he was satisfied with existing SEPA mitigation. He preferred to change the mitigation that required a 14% slope to match natural grade. He said that he might wish to have the limitation on the business opportunities eliminated, as it was not, in his opinion, in conformance with the intent of the zoning. He said he preferred to changed the mitigation conditions. Councilmember Thomasson said that he could support denial of the Unclassified Use Permit, but felt that the SEPA mitigations were not satisfied. He stressed the importance of applying a proper and thorough process for the SEPA issues.

City Attorney Marousek suggested that Council deal with the issues separately for drafting and subsequent action purposes.

As the maker and seconder of the motion on the table, Mayor Pro Tem Benjamin and Councilmember Thomasson **amended the motion** to direct administration to prepare the necessary documents and findings to deny the unclassified use permit based on the project being incompatible with the surrounding neighborhood.

Councilmember Sherman felt it was important to clarify an appropriate project for the property for the property owner.

Councilmember Sheckler said that he was not convinced that the SEPA Official had made a bad decision but that the project was out of character and incompatible with the neighborhood.

Councilmember Thomasson said that the size, shape and bulk of the conceptual plan made it incompatible with the neighborhood. If it complied with the code, the project would look much different.

VOTE ON MOTION: Motion passed unanimously.

Councilmember Thomasson said that he did not believe the project needed to be remanded for an EIS but felt the SEPA conditions should be changed.

In response to Councilmember Thomasson's questioning, City Attorney Marousek said that Council could propose or substitute SEPA conditions.

MOTION was made by Councilmember Thomasson to uphold the SEPA official's decision with the following changes to the SEPA mitigations:

- Not require South 239th Street to be built to a 14% grade but to follow the existing grade, plus or minus two feet.
- Require full curb and gutter on both sides of the street.
- Eliminate the restriction to the commercial area (Item 12) as it was incompatible with Council's finding that the business uses were incompatible as they would not provide a service to the neighborhood.

- Delete Item 13 as not enough of the project had been presented for Council to determine whether it was a good idea.

In response to Councilmember Sheckler's questioning, Councilmember Thomasson said that he had several additional items to add to the motion.

Councilmember Sheckler suggested that Councilmember Thomasson submit his proposed revisions to staff so that they might be given an opportunity to respond to them.

City Attorney Marousek advised that the proceedings should be conducted on the record.

Councilmember Thomasson noted that the motion had not yet been seconded. **Motion died** for lack of a second.

MOTION was made by Councilmember Thomasson and seconded by Councilmember Sheckler to table the SEPA issue to the next regular meeting.

Councilmember Sherman proposed that Councilmember Thomasson meet with staff to draft a document addressing his issues. The document could then be presented to Council in open session.

City Attorney Marousek advised that the discussion be held on the record as it was a public hearing.

Councilmember Thomasson said that he could work with staff on a proposed mitigation document that would address his interests. He could then bring back the document to Council and have the discussion at that point.

Mayor Pro Tem Benjamin urged Council to continue discussing the issue.

At 9:35 p.m., Mayor Pro Tem Benjamin declared a ten-minute break.

VOTE ON MOTION: Motion passed, 3 – 2, with Mayor Pro Tem Benjamin and Councilmember Petersen opposed.

PUBLIC HEARING

2003 Comprehensive Plan Amendments – Parks, Recreation and Senior Services Master Plan and Environmentally Sensitive Areas

Mayor Pro Tem Benjamin opened the hearing.

Assistant City Manager Loch informed Council that the Planning Agency had conducted a hearing on the proposed Greater Des Moines Comprehensive Plan (GDMCP) amendments and had recommended adoption. He explained that the following two types of amendments were before Council:

- Adoption of new environmentally sensitive area (critical area) maps as part of the Conservation Element of the GDMCP.
- Adoption of the 2003 Parks, Recreation and Senior Services Master Plan.

Assistant City Manager Loch said that the proposed maps were a technical mapping exercise only as nine maps had been consolidated into seven maps. He briefly described and displayed current and proposed versions of the following maps:

- Slope and Topography
- Drainage Basins
- Surface Water
- Wetlands
- Geologically Hazardous Areas
- Frequently Flooded Areas
- Critical Aquifer Recharge Areas (no current map for this subject)

Park and Recreation Director Thorell informed Council of the 2003 Parks, Recreation and Senior Services Master Plan. The purpose of the Master Plan was to assess the current recreational needs and interests of Des Moines stakeholders, to provide a vision, goals, and priorities for the program and service needs, and to meet the requirements of the Growth Management Act and Washington State funding agencies through the development of a needs analysis and a comprehensive capital planning tool. She informed Council of the Master Plan process and highlighted the following capital policy recommendations:

- Dedicate a sustainable portion of Real Estate Excise Tax as an ongoing capital funding source for the major capital maintenance of existing recreation buildings and park facilities.
- Consider a Levy Lid Lift to fund future projects and a citizen voted bond issue to fund the future Community Center project.
- Actively seek joint use and shared cost opportunities.
- Support economic development.
- Support Marina and Redondo Waterfront improvement plans to capitalize upon Des Moines' waterfront amenities.

Park and Recreation Director Thorell reviewed the following Master Plan Capital Project recommendations:

- Acquire two new park sites
 - East Woodmont Park
 - Pacific Ridge Park
- Acquire one interlocal park site
 - Midway Park/Puget Sound Energy property expansion
- Renovate or repair existing park and recreation facilities
 - Activity Center
 - Beach Park
 - Cecil Powell Park
 - Des Moines Memorial
 - Field House Park
 - Kiddy Park
 - Midway Park
 - Parkside Park
 - Wooton Park

- Renovate or repair interlocal park and recreation facilities
 - Watertower Park
 - Zenith Park
- Develop new park facilities
 - Steven J. Underwood Memorial Park Phase II
 - Des Moines Creek Trail Phase II
 - Community Center
 - East Woodmont Park
 - Pacific Ridge Park
- Develop new interlocal facilities
 - Aquatics facility
 - Off-leash dog park
 - Midway Park expansion

Park and Recreation Director Thorell explained that adoption of the proposed amendment would cause Section 5 of the Des Moines Parks, Recreation, and Senior Services Master Plan to supersede the Parks, Recreation and Open Space Element (Chapter 6) of the GDMCP. Contents of Chapter 6 would be deleted and replaced with a reference to the 2003 Parks, Recreation and Senior Services Master Plan. She noted that a funding plan was recommended in the Master Plan.

Mayor Pro Tem Benjamin called for speakers.

Lauren Lord, 601 South 227th, #208N

Ms. Lord said that many young and elderly individuals resided in the City and used the park facilities. She voiced support for implementing a levy lid lift for future park developments. Ms. Lord recommended that the funds previously re-programmed to the arterial street program be returned to the Priority 1 Park and Recreation needs. She said that maintenance was important and its expense needed to be regularly budgeted.

Alli Larkin, 21937 7th Avenue South, #210

As a citizen of Des Moines, Ms. Larkin informed Council of her concern regarding the recent storms' affect on the Des Moines Beach Park. She distributed pictures of the area during the storm to Council. Ms. Larkin said it was imperative to deal with the culvert and bridge project as a top priority. As the November 18, 2003 rainfall of 2" had a greater affect on the Des Moines Beach Park than the October 20, 2003 rainfall of 5.2", Ms. Larkin questioned whether the Port of Seattle released more water into the creek system during certain periods. She noted that the Department of Fisheries and Wildlife was accepting comments regarding the orcas until February 3, 2004.

Victor Anderson, 27036 8th Avenue South

Mr. Anderson asked Council to designate the East Woodmont Park as a number one priority as there were many youth living south of Saltwater State Park. The land for the project would need to be identified soon. Mr. Anderson asked Council to always consider parking needs when considering projects.

Bill Rudberg, 22715 10th Avenue South

As a member of the Park, Recreation, and Senior Services Master Plan, Mr. Rudberg thanked staff for their efforts on the Plan. He hoped that Council could identify funding sources for the projects.

Mayor Pro Tem Benjamin called for additional speakers.

None responded.

Mayor Pro Tem Benjamin closed the public comment portion of the hearing.

Councilmembers Sherman and Sheckler asked whether the Parks, Recreation, and Senior Services Master Plan members were willing to promote and support a levy lid or bond issue if it were presented to the voters.

Councilmember Sheckler voiced support for the Master Plan but felt that the current city budget could not support its wish list. He said that he would be willing to support presenting a levy lift to the voters at some point.

In response to Councilmember Thomasson's question regarding the scientific basis for the proposed Aquifer Recharge Area map and delineation, Assistant City Manager Loch explained that most of the data had been obtained from Water District #54.

As the City had its own Municipal Code, Councilmember Thomasson asked that the notes on the proposed maps reference the Des Moines Municipal Code rather than King County's Code. If Massey Creek was an influence to Water District #54's well, he felt that it was not reasonable to have the creek wander in and out of the recharge area. Councilmember Thomasson said he was not content to adopt a regulatory map if it was not based on science.

Assistant City Manager Loch confirmed that wellhead protection areas were included in the definition of Critical Aquifer Recharge Areas yet the implications of the designation were difficult to determine scientifically. Staff met with resistance from one of the water districts as they did not want to disclose information that could be used for inappropriate purposes.

Councilmember Thomasson asked staff to explain why they proposed that the contents of Chapter 6 be deleted and replaced with a reference to the 2003 Parks, Recreation and Senior Services Master Plan. He asked that the explanation be provided when the item comes before Council for a second reading.

Mayor Pro Tem Benjamin closed the public hearing.

MOTION was made by Councilmember Sheckler, seconded by Councilmember White and passed unanimously to move the subject to a second reading on December 11, 2003.

NEXT MEETING DATE – Regular Meeting, December 4, 2003

ADJOURNMENT

At 10:25 p.m., **motion** was made by Councilmember Sheckler, seconded by Mayor Pro Tem Benjamin and passed unanimously to adjourn the meeting.

Respectfully submitted,

Angela M. Chaufty
Deputy City Clerk

ACTION ITEMS FROM NOVEMBER 20, 2003 MEETING

- Prepare the necessary resolution and findings to deny the Sensitive Area Exception request for the Zenith Viewpointe project.
- Prepare the necessary documents and findings to deny the unclassified use permit for the Zenith Viewpointe project.
- Explain during Council's second reading of the 2003 Comprehensive Plan Amendments why staff proposed that the contents of Chapter 6 of the GDMCP be deleted and replaced with a reference to the 2003 Parks, Recreation and Senior Services Master Plan.