EXECUTIVE SESSION - 7 p.m. Real Estate Matters

AGENDA
REGULAR MEETING DES MOINES CITY COUNCIL
February 13, 2003 - 7:30 p.m.

CALL TO ORDER - Mayor Steenrod   all present except Wasson excused 6-0

PLEDGE OF ALLEGIANCE

ROLL CALL

CORRESPONDENCE

COMMENTS FROM THE PUBLIC: At this time you are invited to comment on items that you wish to bring to Council's attention. Please sign in prior to the meeting and limit your comments to three minutes or less.

Linda Tualdie
ACORN Kay Sampley
Brian Wilson
Stu Creighton
Florence McMullen
Wayne Buder
Michael Daniels
agate underway
Tom Sterly

BOARD & COMMITTEE REPORTS

PRESIDING OFFICER'S REPORT

ADMINISTRATION REPORTS

CONSENT CALENDAR*

tabled

removed by Benjamin

1. Motion is to approve the minutes of January 23 and 30, 2003.
2. Findings: Vouchers audited and certified by the auditing officer as required by RCW 42.24.080, and those expense reimbursement claims certified as required by RCW 42.24.090, have been recorded on a listing which has been made available to the City Council.

   Motion: As of this date the Des Moines City Council, by unanimous vote, does approve for payment those vouchers and payroll transfers included in the above list and further described as follows:

   Claim checks # through # & electronic fund transfers in the total amount of $

   Payroll fund transfers in the total amount of $
3. Motion is to purchase 2,513 square feet of land and improvements from Mark D. and Shannon L. Johnson in the amount of $55,732.00 plus closing costs, and to authorize the City Manager to sign the Purchase and sale agreement substantially in the form as submitted.
4. EX Motion is to purchase 700 square feet of land and improvements from James Henry O'Hara and Jennifer Jane O'Hara in the amount of $26,667.00 plus closing costs, and to authorize the City Manager to sign the Purchase and Sale Agreement substantially in the form as submitted.
5. EX Motion is to purchase 3,750 square feet of land and improvements from Jack I. and Lily L. Almo in the amount of $110,186.00 plus closing costs, and to authorize the City Manager to sign the Purchase and Sale Agreement substantially in the form as submitted.
6. Motion is to purchase 924 square feet of land and improvements from DBJ Properties, LLC in the amount of $252,000.00 plus closing costs, and to authorize the City Manager to sign the Purchase and Sale Agreement substantially in the form as submitted.

Ex 7. Motion is to approve the "Consent Judgment & Decree of Appropriation" in King County Superior Court Case No. 02-2-19400-1 KNT and authorize the City Attorney to approve said Judgment and Decree and present to the court, for approval and entry substantially in the form as submitted.

Ex 8. Motion is to approve the "Consent Judgment & Decree of Appropriation" in King County Superior Court Cause No. 02-2-19404-4 KNT and to authorize the City Attorney to approve said Judgment and Decree and present to the court, for approval and entry substantially in the form as submitted.

9. Motion is to approve the :Consent Judgment & Decree of Appropriation" in King County Superior Court Cause No. 02-2-19397-8 KNT and to authorize the City Attorney to approve said Judgment and Decree and present to the court, for approval and entry substantially in the form as submitted. Bartels easement

*NOTE: Items on the Consent Calendar are either
routine or have been previously discussed.
Any item may be removed by a Councilmember.

OLD BUSINESS

NEW BUSINESS

amend ordinance to allow up to 3 non-residents

1. Senior Services Advisory Committee Report 15 min.
SUMMARY: The Committee will present Councilmembers with their annual report with a summary of 2002 and an overview of 2003 activities.

continue to 2/27

2. Draft Resolution No. 02-269 Adoption of an Economic Development Plan Judith
SUMMARY: At its April 2002 retreat, the City Council selected economic development as one of the highest strategic objectives for 2002-2003. Since that time the Finance and Economic Development Committee has worked with Administration to develop a realistic, achievable strategy to maintain and increase the economic vitality in the City. The draft resolution would adopt an economic development action plan and establish a mission statement, goals and implementation priorities.

motion dies for lack of a second

3. Draft Resolution No. 03-023 Ballot Title for Advisory Vote on Funding 3rd Runway Fight Richard
SUMMARY: presentation 3/11/03

amended motion ~~dies for~~ fails 3-3 4/22/03 ballot

4. Draft Ordinance No. 03-036 Marina Rates
SUMMARY: The purpose of this agenda item is to obtain Council approval for changing the moorage rates at the Marina.

removed from agenda by Mayor

Paula & Sue.

add whereas

Peterson motion fails for lack of a second

5. Claims Warrant #83550 Reconsideration

SUMMARY: Rule 9 of the City Council Rules of Procedure allows the Presiding Officer the "option of deleting any item from the agenda until the next regular Council meeting when the full Council shall vote on whether to introduce the item on the agenda of a subsequent Council meeting". At the December 19, 2002 meeting, the Presiding Officer deleted the last three items of the Claims List (warrant 83550) from the Agenda. The purpose of this item is to provide the City Council an opportunity to decide whether or not to authorize payment of the last three items of the December 19, 2002 Claims List, for partial reimbursement of legal fees incurred by Councilmembers Wasson, Benjamin and Steenrod in defense of the lawsuit "Citizens for Des Moines v. Don Wasson, et al".

NEXT MEETING DATE - Regular Meeting February 27, 2003

ADJOURNMENT

Linda

NEW BUSINESS
Item #3

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Draft Resolution No. 03-023

Advisory Ballot re Use of City Funds for Opposition to Third Runway at Sea-Tac Airport

ATTACHMENTS: 1. Draft Resolution
2. Ballot Measure Proposition ("Exhibit A" to Resolution)

FOR AGENDA OF: February 13, 2003

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: February 6, 2003

CLEARANCES:
[X] Legal

APPROVED BY CITY MANAGER FOR SUBMITTAL:

PURPOSE AND RECOMMENDATION

This report is to present to the City Council for approval, Draft Resolution No. 03-023, which submits to the electorate of the City of Des Moines on the April 22, 2003 King County Ballot, for advisory purposes, the question of whether the City of Des Moines should continue to contribute City funds for its share of the expense of organized opposition of the construction of the third runway at Seattle-Tacoma International Airport.

The resolution is presented in accordance with Council action taken at the Special Meeting on January 13, 2003 directing staff to prepare a resolution to place this issue on the April ballot.

MOTION: "To pass Draft Resolution No. 03-023, submitting to the electorate of the City of Des Moines on the April 22, 2003 King County Ballot, for advisory purposes, the question of whether the City of Des Moines should continue to contribute City funds for its share of the expense of organized opposition to the construction of a third runway at Seattle-Tacoma International Airport."

BACKGROUND

Commencing in 1992 and continuing through the 2002 calendar year, as part of its council approved annual budget, the City of Des Moines has been allocating and contributing City funds for its share of the expense of organized opposition to the construction of a third runway at Seattle-Tacoma International Airport. On December 19, 2002 the City Council approved a budget for the 2003 calendar year that does not provide City funds for the expense of such opposition. Citizens of the City of Des Moines have expressed differing opinions regarding the propriety of the use of City funds for the expense of such opposition and the Council, at its special meeting on January 13, 2003 determined that it should have a current and accurate measure of the attitudes and viewpoints of the citizens of the City in order to establish and carry out future policy of the City regarding this issue and directed staff to prepare a resolution for placing the issue on the next county election as an advisory ballot measure.

DISCUSSION

The draft resolution sets forth the background and Council action and directs the Elections Division of the King County Department of Records, Elections and Licensing Services to place the advisory ballot measure proposition on the April 22, 2003 King County Ballot.

The ballot measure proposition has been prepared by the City Attorney's office and is attached as "Exhibit A" to the draft resolution.

ALTERNATIVES

1. Council can pass the resolution as drafted.
2. Council can amend the resolution and pass the amended resolution.
3. Council can vote not to pass the resolution.
4. Council can direct staff to redraft the resolution.
5. Council can take no action.

In order to be placed on the April 22^{nd} ballot, the language of the question to be put before the voters must be provided to King County by the close of work on March 11, 2003

FINANCIAL IMPACT

The estimated cost to the City of placing this ballot measure on the 4/22/03 King County ballot is based on the number of registered voters in Des Moines (16,322) and whether or not the election will be conducted by mail or at polling places. Mail only elections cost between $2.50 and $2.75 per registered voter while an election using polling places costs $2.00 per voter. The cost, therefore, would be between $40,805.00 and $44,886.00 for a mail only election and $32,644.00 for a polling place election.

RECOMMENDATION/CONCLUSION

This draft resolution has been prepared and presented at the direction of the City Council.

CITY ATTORNEY'S FIRST DRAFT 02/06/03

RESOLUTION NO. 03-023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, submitting to the electorate of the City of Des Moines on the April 22, 2003 King County Ballot, for advisory purposes, the question of whether the City of Des Moines should continue to contribute City funds for its share of the expense of organized opposition to the construction of a third runway at Seattle-Tacoma International Airport.

WHEREAS, commencing in 1992 and continuing through the 2002 calendar year, as part of its council approved annual budget, the City of Des Moines has been allocating and contributing City funds for its share of the expense of organized opposition to the construction of a third runway at Seattle-Tacoma International Airport, and

WHEREAS, on December 19, 2002 the City Council approved a budget for the 2003 calendar year that does not provide City funds for the expense of such opposition, and

WHEREAS, citizens of the City of Des Moines have expressed differing opinions regarding the propriety of the use of City funds for the expense of such opposition, and

WHEREAS, the Council believes that it must have a current and accurate measure of the attitudes and viewpoints of the citizens of the City in order to establish and carry out future policy of the City regarding this issue; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES RESOLVES AS FOLLOWS:

(1) The Des Moines City Council hereby requests and directs the Elections Division of the King County Department of Records, Elections and Licensing Services to place on the April 22, 2003 King County Ballot, for submission to the qualified electors of the City of Des Moines, the ballot measure proposition described and set forth in the attached Exhibit A, which, by this reference, is made a part of this resolution.

(2) By enacting this resolution the City Council does not take any official position in favor or opposed to the proposition.

ADOPTED BY the City Council of the City of Des Moines on the _____ day of _____________, 2003 and signed in authentication this _____ day of _______________, 2003.

____
M A Y O R

APPROVED AS TO FORM:

____
City Attorney

ATTEST:

____
City Clerk

DRAFTRES:03-023

EXHIBIT A

City of Des Moines
Proposition No. 1

Citizen Advisory Ballot Measure Regarding Use of City Funds for Organized Opposition to the Third Runway at Seattle-Tacoma International Airport.

Should the City of Des Moines continue to contribute City funds for its share of the expense of organized opposition to the construction of a third runway at Seattle-Tacoma International Airport?

Yes _____

No _____

NEW BUSINESS
Item #4

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT:
Monthly Moorage Rates at the City of Des Moines Marina.

ATTACHMENTS:
- Draft Ordinance No. 03-036, with Rate Alternative A and Rate Alternative B.
- Ordinance No. 1250
- Marina Resident/Non-Resident Rate Structure Proposals, January 2003

FOR AGENDA OF: February 13, 2003
DEPT. OF ORIGIN: Marina

DATE SUBMITTED: February 7, 2003
CLEARANCES:
[X] Marina
[X] Legal
[X] Finance pk

APPROVED BY CITY MANAGER
FOR SUBMITTAL

A. Purpose & Recommendation

The purpose of this Agenda Item is to obtain Council approval for changing the moorage rates at the Marina.

It is recommended that the council discuss Draft Ordinance No. 03-036 at the regular meeting of February 13, 2003 and pass Draft Ordinance No. 03-036 in its current or amended form on first reading.

TWO MOTIONS:
FIRST MOTION: "I move to suspend Rule 26(b) in order to enact Draft Ordinance No. 03-036 on first reading."
SECOND MOTION:

Recommended Second Motion:
"I move to enact Draft Ordinance No. 03-036 with "Rate Alternative A" on first reading.

Alternative Second Motion:
"I move to enact Draft Ordinance No. 03-036 with "Rate Alternative B" on first reading.

B. Background

In November 1999, the City Council adopted Ordinance No. 1250, setting Marina moorage rates. The ordinance adopted a rate structure that charged Des Moines residents less than non-residents.

This rate structure has been in place since that time. Section 2 of Ordinance 1250 committed the Council to consider rates again at an appropriate future time.

C. Discussion

Re-establishing uniform moorage rates is the first step in developing an equitable rate structure that ensures that the City will recover the cost of owning and operating the Marina. Analysis of the moorage rates during the Marina Comprehensive Master Plan process revealed that existing rates did not take into consideration all of the space requirements for mooring a boat at the Marina. This was particularly noticeable for the larger boats. The result of this imbalance is that the smaller boat owners pay a higher "per square foot" rate than the larger boat owners. A more accurate and equitable approach would be to determine the rate per square foot that is needed to recover the cost of owning and operating both open and covered moorage and multiplying the total area needed for each class of moorage by those rates to determine the total monthly moorage. This would ensure that all tenants were paying the same "per square foot" rate.

This imbalance in the rate structure was originally reported to the Municipal Facilities Committee and the full Council in the Des Moines Marina Facility Plan Development Issues Report, (pages 10 & 11), dated May 1999. The recommendation at that time was; "The City should begin the process of equalizing the moorage rates based on the water area required by each slip size." The report also concluded that an equalized rate structure would maximize moorage revenues over time.

D. Alternatives

Alternative 1. Adopt Rate Alternative A, which increases the resident moorage rates and decreases the non-resident moorage rates to produce a revenue-neutral rate structure.

Alternative 2. Adopt Rate Alternative B, which increases the resident moorage rates to the level of the current non-resident rates, which would increase moorage revenue about $33,000 per year.

E. Financial Impact

Alternative 1. For the Marina, there would be no financial impact from this alternative because moorage revenues would not change. From the tenants' perspective, non-resident rates would decrease from 1% to about 6.5% depending on the class of moorage. Because there are fewer residents than non-residents, the residents would have larger changes in their rates. Resident moorage rates would have to increase from 3% to 7%, depending on the class of moorage, to keep moorage revenues at current levels.

Alternative 2. Increasing the resident rates to the level of the non-residents would generate about $33,000 in additional moorage revenue annually. Of course, there would be no change for the non-resident, but the residents would have rate increases that range from 5% to 11%, depending on the class of moorage.

F. Recommendation

The staff recommends that the Council adopt Alternative 1, which would be revenue-neutral for the Marina and have the lowest rate increases for the Marina tenants.

G. Concurrence

The Finance Department and the City Attorney's Office concur with this recommendation.

FINANCE DIRECTOR'S FIRST DRAFT 2/06/03

DRAFT ORDINANCE NO. 03-036

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, relating to the monthly moorage rates for general berths, commercial berths, live-aboard berths, and dry shed storage at the Des Moines Marina, amending DMMC 15.04.480, establishing a uniform rate structure for resident and non-resident tenants for Marina charges and fees effective April 1, 2003 and a formula to determine future rates in order to successfully maintain and operate the Des Moines Marina and implement the Marina Master Plan, unanimously adopted by the City Council on June 8, 2001.

WHEREAS, the Des Moines City Council finds that Ordinance 1250 committed the Council to consider rates again at an appropriate future time, and

WHEREAS, the Des Moines City Council finds that establishing a uniform moorage rate structure for resident and non-resident tenants facilitates equitable recovery of costs of operating the Des Moines Marina, and

WHEREAS, the Des Moines City Council finds that costs of operating the Des Moines Marina are related to the Consumer Price Index, U.S. City Average, All Urban Consumers, Seattle-Tacoma-Bremerton, Washington Area, and that the interests of Des Moines' residents and Marina tenants will be best served by a rate structure that is related to the Consumer Price Index, and

WHEREAS, the Des Moines City Council believes that the successful execution of the Marina Master Plan which was unanimously adopted by Resolution 906 on June 8, 2001, depends on a stable and predictable rate structure, and

WHEREAS, the Des Moines City Council further finds that it should reserve the right to modify moorage rates by resolution if fiscal and economic conditions require it to do so; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:

Sec. 1. DMMC 15.04.480 and section 6(B) of Ordinance No. 466 as amended by section 1 of Ordinance No. 812 as amended by section 1 of Ordinance No. 1172 as amended by section 1 of Ordinance No. 1250 as amended by section 1 of Ordinance No. 1294 are each amended to read as follows:

15.04.480 Marina charges and fees.

(1) Monthly moorage rates shall be established on the basis of the lineal footage of the berth, whether the berth is open or covered, and whether the usage is general moorage or live-aboard moorage. Overhang shall be prorated and any portion of a foot shall be considered a full foot. Dry shed storage rates shall be set in a standard monthly amount. Rates for all other goods and services shall be established by executive order of the City Manager and published at the office of the Marina. Charges for continuing services and moorage fees are payable in advance and due on or before the tenth day of each month.

(2) ((~~For tenants who are bona fide residents of the City of Des Moines, t~~)) The baseline for rates for general moorage berths and dry shed storage shall be as reflected on Appendix "A", which is incorporated herein by this reference. The baseline rates contained in Appendix "A" shall take effect ~~December 31, 2001~~ April 1, 2003.

~~(((3) For tenants who are not bona fide residents of the City of Des Moines, the baseline rates for general moorage berths and dry shed storage shall be as reflected on Appendix "B", which is incorporated herein by this reference. The baseline rates contained in Appendix "B" shall take effect December 31, 2001.))~~

~~(((4) Determinations as to residency shall be made by the Harbormaster. Such determinations shall be deemed administrative decisions which are subject to appeal before the Hearing Examiner as provided in DMMC 18.94.))~~

~~(((5)))~~ (3) Live-aboard berth rates shall be twenty percent (20%) greater than the applicable rate for general moorage berths. Notwithstanding the preceding provisions, the City Council reserves the authority to set or alter such rates by resolution at any time, provided the resolution is adopted 30 days prior to the effective date of any new rates.

((~~(6)~~))(4) Persons using the Marina facilities shall pay in full all applicable state and federal taxes imposed by statute including the State Leasehold Excise Tax (chapter 82.29A RCW) as adopted by the City in Ordinance No. 387, passed by the City Council April 15, 1976, and codified in chapter 3.28 DMMC as presently constituted or as may be subsequently amended.

((~~(7)~~))(5) Persons using the Marina facilities shall pay for all electricity and other utilities or services which shall be furnished to his berth at the established rates provided by the applicable schedule of rates posted by the City. Such person shall also install the vessel's electrical circuitry in the manner specified by the harbormaster.

~~(((8)))~~(6) Formula to establish future rates. The baseline for rates for general moorage berths, liveaboard berths and dry shed storage shall be the rates contained in Appendix A ~~and B~~ of this ordinance. These rates will be used to calculate total moorage due as set forth in Marina Rules 6.0, 6.2 and 6.3 on ((~~February 1, 2002~~)) April 1, 2003. On the first day of January of each succeeding year, rates for general moorage berths, liveaboard berths and dry shed storage shall be established by application of the Consumer Price Index, All Urban Consumers, Seattle-Tacoma-Bremerton, Washington Area, for the twelve (12) month period ending August 31st, published by the U.S. Department of Labor, Bureau of Labor Statistics (hereinafter, "CPI"). Rates to be effective on February 1, ((~~2003~~)) 2004 shall be established by multiplying the baseline rates contained in this ordinance by the CPI percentage published for the period ending August 31, ((~~2002~~)) 2003, and adding the results to the baseline rate. Rates effective on the first day of February of each succeeding year shall be established by applying the CPI in a like manner to the rates of the previous year. Notwithstanding previous provisions, the City Council reserves the authority to set or alter Marina moorage rates by resolution at any time, provided the resolution is adopted thirty (30) days prior to the effective date of any new rates.

Sec. 2 Severability - Construction.

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

(2) If the provisions of this ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this ordinance is deemed to control.

Sec. 3 Effective date. This ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

PASSED BY the City Council of the City of Des Moines this ___day of______, 2003 and signed in authentication thereof this ___day of______, 2003.

____
M A Y O R

APPROVED AS TO FORM:

____
City Attorney

ATTEST:

____
City Clerk

Published: ____________, 2003

Appendix "A"

Ordinance No. XXXX
Rate Alternative A

A. Effective April 1, 2003, the following baseline rates, exclusive of any applicable tax, shall be charged for facilities and services at the Des Moines Marina:

General Moorage Berths
(Per lineal foot per month)

BERTH SIZE	OPEN	COVERED
20 Foot	$4.64	$5.75
24 Foot	$4.72	$5.84
28 Foot	$5.23	$6.65
32 Foot	$5.75	$7.30
36 Foot	$6.35	$8.05
40 Foot	$6.85	$8.25
50 Foot	$7.00	$8.60
54 Foot	$7.00	N/A
62 Foot	$7.15	N/A

B. Overhang shall be prorated. Any portion of a foot shall be considered a full foot.

C. Dry Shed Storage baseline rates shall be $110.25, as of April 1, 2003.

D. Rates for all other goods and services shall be as established by executive order of the City Manager and published at the office of the Des Moines Marina.

Appendix "A"

Ordinance No. XXXX
Rate Alternative B

A. Effective April 1, 2003, the following baseline rates, exclusive of any applicable tax, shall be charged for facilities and services at the Des Moines Marina:

General Moorage Berths
(Per lineal foot per month)

BERTH SIZE	OPEN	COVERED
20 Foot	$4.64	$5.75
24 Foot	$4.72	$5.84
28 Foot	$5.28	$6.78
32 Foot	$5.80	$7.47
36 Foot	$6.46	$8.27
40 Foot	$6.99	$8.83
50 Foot	$7.21	$8.89
54 Foot	$7.21	N/A
62 Foot	$7.39	N/A

B. Overhang shall be prorated. Any portion of a foot shall be considered a full foot.

C. Dry Shed Storage baseline rates shall be $110.82, as of April 1, 2003.

D. Rates for all other goods and services shall be as established by executive order of the City Manager and published at the office of the Des Moines Marina.

ORDINANCE NO. 1250

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, relating to the monthly moorage rates for general berths, commercial berths, live-aboard berths, and dry shed storage at the Des Moines Marina, amending DMMC 15.04.480, and calling for reconsideration and/or repeal of these monthly moorage rate increases if the state legislature replaces City funding lost through passage of Initiative 695.

WHEREAS, as a result of Initiative 695, the City of Des Moines stands to lose approximately 20% of general government revenues that were anticipated for the year 2000, and

WHEREAS, in response to the budget shortfall created by I-695, the City Council is eliminating or reducing various positions, services and programs, and

WHEREAS, while responsible budget cuts have been and will continue to be made wherever appropriate, the City Council finds that it is not prudent or in the best interests of Des Moines residents to see vital City services reduced to ineffective levels, and

WHEREAS, several days after passage of I-695, Moody's Investment Services issued a "negative outlook" regarding the bonded debt credit rating for the City of Des Moines, and

WHEREAS, the City Council finds that it is in the City's interests to take affirmative steps, which must include some effort to replace lost revenues, in order to protect the City's credit rating, as an adverse or negative rating will result in significantly higher interest rates and other financing costs, and

WHEREAS, the City Council sincerely hopes that the state legislature will replace funding for local governments that will be drastically cut as I-695 takes effect, particularly for sales tax equalization revenues that will no longer be available to the City of Des Moines and other small residential jurisdictions located throughout the State; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES DO ORDAIN AS FOLLOWS:

Sec. 1. DMMC 15.04.480 and section 6(B) of Ordinance No. 466 as amended by section 1 of Ordinance No. 812 as amended by section 1 of Ordinance No. 1172 are each amended to read as follows:

15.04.480 Marina charges and fees.

(1) Monthly moorage rates shall be established on the basis of the lineal footage of the berth, whether the berth is open or covered, and whether the usage is general moorage, commercial moorage, or live-aboard moorage. Overhang shall be prorated and any portion of a foot shall be considered a full foot. Dry shed storage rates shall be set in a standard monthly amount. Rates for all other goods and services shall be established by executive order of the City Manager and published

at the office of the marina. Charges for continuing services and moorage fees are payable in advance and due on or before the fifteenth day of each month.

(2) For tenants who are bona fide residents of the City of Des Moines, the baseline for rates for general moorage berths and dry shed storage shall be as reflected on Appendix "A", which is incorporated herein by this reference. The baseline rates contained in Appendix "A" shall take effect December 31, 1999.

(3) For tenants who are not bona fide residents of the City of Des Moines, the baseline rates for general moorage berths and dry shed storage shall be as reflected on Appendix "B", which is incorporated herein by this reference. The baseline rates contained in Appendix "B" shall take effect December 31, 1999.

(4) Determinations as to residency shall be made by the Harbormaster. Such determinations shall be deemed an administrative decision which is subject to appeal before the Hearing Examiner as provided in DMMC 18.94.

(5) Commercial and live-aboard berth rates shall be twenty percent (20%) greater than the applicable rate for general moorage berths. Notwithstanding the preceding provisions, the City Council reserves the authority to set or alter such rates by resolution at any time, provided the resolution is adopted 30 days prior to the effective date of any new rates.

(6) Persons using the marina facilities shall pay in full all applicable state and federal taxes imposed by statute including the State Leasehold Excise Tax (chapter 82.29A RCW) as adopted by the City in Ordinance No. 387, passed by the City Council April 15, 1976, and codified in chapter 3.28 DMMC as presently constituted or as may be subsequently amended.

(7) Persons using the marina facilities shall pay for all electricity and other utilities or services which shall be furnished to his berth at the established rates provided by the applicable schedule of rates posted by the City. Such person shall also install the vessel's electrical circuitry in the manner specified by the harbormaster.

Sec. 2. Reconsideration, reduction, and/or repeal of marina rate increases if state legislature provides replacement funding. In the event the legislature enacts legislation that results in funding for City services at a level that is reasonably comparable to revenue that would be derived through passage of this ordinance, the City Manager is directed to return this ordinance to the City Council for reconsideration and possible reduction and/or repeal of Marina moorage rate increases on the earliest possible date.

Sec. 3. Severability - Construction.

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

(2) If the provisions of this ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this ordinance is deemed to control.

Sec. 4. Effective date. This ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

PASSED BY the City Council of the City of Des Moines this 29th day of November, 1999 and signed in authentication thereof this 29th day of November, 1999.

Scott Thomasson
MAYOR

APPROVED AS TO FORM:

Gary N. McLean
City Attorney

ATTEST:

Denis Staab
City Clerk

Published: December 3, 1999

Appendix "A"

Ordinance No. 1250

A. Effective December 31, 1999, the following baseline rates, exclusive of any applicable tax, shall be charged for facilities and services at the Des Moines Marina:

General Moorage Berths - Resident
(Per lineal foot per month)

BERTH SIZE	OPEN	COVERED
20 Foot	$4.39	$5.44
24 Foot	$4.47	$5.53
28 Foot	$4.76	$5.91
32 Foot	$5.25	$6.49
36 Foot	$5.79	$7.12
40 Foot	$6.09	$7.48
50 Foot	$6.18	$7.61

B. Overhang shall be prorated. Any portion of a foot shall be considered a full foot.

C. Dry Shed Storage baseline rates shall be $102.11, as of December 31, 1999.

D. Rates for all other goods and services shall be as established by executive order of the City Manager and published at the office of the Des Moines Marina.

Appendix "B"

Ordinance No. 1250

See Sec. 1(3).

A. Effective December 31, ~~2001~~ 1999 ae, the following baseline rates, exclusive of any applicable tax, shall be charged for facilities and services at the Des Moines Marina:

General Moorage Berths – Non-Resident
(Per lineal foot per month)

BERTH SIZE	OPEN	COVERED
20 Foot	$4.39	$5.44
24 Foot	$4.47	$5.53
28 Foot	$5.00	$6.42
32 Foot	$5.49	$7.08
36 Foot	$6.12	$7.84
40 Foot	$6.62	$8.37
50 Foot	$6.83	$8.42

B. Overhang shall be prorated. Any portion of a foot shall be considered a full foot.

C. Dry Shed Storage baseline rates shall be $104.97, as of December 31, ~~2002~~ 1999. ae
See Sec. 1(3)

D. Rates for all other goods and services shall be as established by executive order of the City Manager and published at the office of the Des Moines Marina.

MARINA
Resident/Non-Resident Rate Structure Proposals
January 2003

Alternative 1: Rate Alternative A Equalize rates to remain revenue neutral.

Alternative 2: Rate Alternative B Raise resident rates to equal non-resident rates.

CURRENT RATE STRUCTURE

Size Slip	Residents: No of Tenants	Residents: Proposed 2003 Rate (1)	Residents: Rate Spread	Non-Residents: No of Tenants	Non-Residents: Proposed 2003 Rate (1)	Non-Residents: Rate Spread	Annual Revenues: Residents	Annual Revenues: Non-Residents	Annual Revenues: Total	Rate Differential Resid vs Non-Resid Rates: $ Incr	Rate Differential Resid vs Non-Resid Rates: % Incr
Open:											
20	3	$4.64		10	$4.64		$3,340.80	$11,136.00	$14,476.80	$0.00	0.000%
24	11	4.72		37	4.72		14,952.96	50,296.32	65,249.28	0.00	0.000%
28	22	5.02		83	5.28		37,107.84	147,248.64	184,356.48	0.26	5.179%
32	2	5.54	0.52	16	5.80	0.52	4,254.72	35,635.20	39,889.92	0.26	4.693%
36	10	6.11	0.57	20	6.46	0.66	26,395.20	55,814.40	82,209.60	0.35	5.728%
40	8	6.43	0.32	30	6.99	0.53	24,691.20	100,656.00	125,347.20	0.56	8.709%
50	4	6.52	0.09	15	7.21	0.22	15,648.00	64,890.00	80,538.00	0.69	10.583%
54	1	6.52	0.00	1	7.21	0.00	4,224.96	4,672.08	8,897.04	0.69	10.583%
62	1	6.73	0.21	2	7.39	0.18	5,007.12	10,996.32	16,003.44	0.66	9.807%
Covered:											
20	9	5.75		20	5.75		12,420.00	27,600.00	40,020.00	0.00	0.000%
24	40	5.84		101	5.84		67,276.80	169,873.92	237,150.72	0.00	0.000%
28	46	6.24		120	6.78		96,445.44	273,369.60	369,815.04	0.54	8.654%
32	11	6.85	0.61	39	7.47	0.69	28,934.40	111,870.72	140,805.12	0.62	9.051%
36	11	7.52	0.67	29	8.27	0.80	35,735.04	103,606.56	139,341.60	0.75	9.973%
40	17	7.90	0.38	9	8.83	0.56	64,464.00	38,145.60	102,609.60	0.93	11.772%
50	4	8.03	0.13	7	8.89	0.06	19,272.00	37,338.00	56,610.00	0.86	10.710%
Dry Sheds	21	107.80		86	110.82		27,165.60	114,366.24	141,531.84	3.02	2.801%
TOTAL REVENUES							**$487,336.08**	**$1,357,515.60**	**$1,844,851.68**		

(1) 2003 rates increased 1.9% over 2002 Rales

Alternative 1 Rate Alternative A: Eliminate duel rate structure remaining revenue neutral

---------------------------Recommendation---------------------------

Size Slip	Rates Required To Remain Revenue Neutral by Slip: Rates	Annual Revenue	% Chg Res Rates	% Chg Non-Res Rates	Revenue Neutral Rates Adj to Spread & Total Revenue Req: Rates	Annual Revenue	% Chg Res Rates	% Chg Non-Res Rates	Spread in Rates by Slip
Open:									
20	$4.64	$14,476.80	0.000%	0.000%	$4.64	$14,476.80	0.000%	0.000%	
24	4.72	65,249.28	0.000%	0.000%	4.72	65,249.28	0.000%	0.000%	
28	5.23	184,373.28	4.104%	-1.023%	5.23	184,514.40	4.183%	-0.947%	
32	5.77	39,889.15	4.170%	-0.500%	5.75	39,744.00	3.791%	-0.862%	$0.52
36	6.34	82,205.28	3.813%	-1.811%	6.35	82,296.00	3.928%	-1.703%	0.60
40	6.87	125,345.28	6.874%	-1.688%	6.85	124,944.00	6.532%	-2.003%	0.50
50	7.07	80,541.00	8.359%	-2.011%	7.00	79,800.00	7.362%	-2.913%	0.15
54	6.87	8,897.04	5.291%	-4.785%	7.00	9,072.00	7.362%	-2.913%	0.00
62	7.17	16,003.44	6.538%	-2.977%	7.15	15,958.80	6.241%	-3.248%	0.15
Covered:									
20	5.75	40,020.00	0.000%	0.000%	5.75	40,020.00	0.000%	0.000%	
24	5.84	237,150.72	0.000%	0.000%	5.84	237,150.72	0.000%	0.000%	
28	6.63	369,794.88	6.250%	-2.212%	6.65	370,910.40	6.571%	-1.917%	
32	7.33	140,812.80	7.066%	-1.821%	7.30	140,160.00	6.569%	-2.276%	0.65
36	8.06	139,345.92	7.234%	-2.491%	8.05	139,104.00	7.048%	-2.660%	0.75
40	8.22	102,610.56	4.076%	-6.886%	8.25	102,960.00	4.430%	-6.569%	0.20
50	8.58	56,608.20	6.812%	-3.521%	8.60	56,760.00	7.098%	-3.262%	0.35
Dry Sheds	110.23	141,531.47	2.251%	-0.535%	110.25	141,561.00	2.273%	-0.514%	
TOTAL REVENUES		**$1,844,855.10**				**$1,844,681.40**			

MARINA
Resident/Non-Resident Rate Structure Proposals
January 2003

Alternative 2 Rate Alternative B: Raise resident rates to equal non-resident rates.

	Residents:			*Non-Residents:*			Annual Revenues		
Size Slip Open:	No of Tenants	Proposed 2003 Rate	Rate Spread	No of Tenants	Proposed 2003 Rate	Rate Spread	Residents	Non-Residents	Total
20	3	$4.64		10	$4.64		$3,340.80	$11,136.00	$14,476.80
24	11	4.72		37	4.72		14,952.96	50,296.32	65,249.28
28	22	5.28		83	5.28		39,029.76	147,248.64	186,278.40
32	2	5.80	0.52	16	5.80	0.52	4,454.40	35,635.20	40,089.60
36	10	6.46	0.66	20	6.46	0.66	27,907.20	55,814.40	83,721.60
40	8	6.99	0.53	30	6.99	0.53	26,841.60	100,656.00	127,497.60
50	4	7.21	0.22	15	7.21	0.22	17,304.00	64,890.00	82,194.00
54	1	7.21	0.00	1	7.21	0.00	4,672.08	4,672.08	9,344.16
62	1	7.39	0.18	2	7.39	0.18	5,498.16	10,996.32	16,494.48
Covered:									
20	9	5.75		20	5.75		12,420.00	27,600.00	40,020.00
24	40	5.84		101	5.84		67,276.80	169,873.92	237,150.72
28	46	6.78		120	6.78		104,791.68	273,369.60	378,161.28
32	11	7.47	0.69	39	7.47	0.69	31,553.28	111,870.72	143,424.00
36	11	8.27	0.80	29	8.27	0.80	39,299.04	103,606.56	142,905.60
40	17	8.83	0.56	9	8.83	0.56	72,052.80	38,145.60	110,198.40
50	4	8.89	0.06	7	8.89	0.06	21,336.00	37,338.00	58,674.00
Dry Sheds	21	110.82		86	110.82		27,926.64	114,366.24	142,292.88
TOTAL REVENUES							**$520,657.20**	**$1,357,515.60**	**$1,878,172.80**
					Increase in Revenues		$33,321.12		

NEW BUSINESS
Item #5

AGENDA ITEM

SUBJECT: Warrant 83550 Comprising the last three items of the Claims List of December 19, 2002	AGENDA OF: February 13, 2003
	DEPT. OF ORIGIN: Administration
	DATE SUBMITTED: January 28, 2002
ATTACHMENTS: Last two pages of Claims List of December 19, 2002	CLEARANCES: [ ] ____ [ ] ____ [ ] ____
	APPROVED BY CITY MANAGER FOR SUBMITTAL: AJ

Purpose and Recommendation:

The purpose of this is item is to provide the City Council an opportunity to decide whether or not authorize payment of last three items of the December 19, 2002 Claims List (warrant 83550), for partial reimbursement of legal fees incurred by Councilmembers Wasson, Benjamin, and Steenrod in defense of the lawsuit "Citizens for Des Moines v. Don Wasson, et al".

Suggested Motion:

I move authorize payment of the last three items of the December 19, 2002 Claims list (warrant 83550).

Background:

The last three items on the December 19, 2002, Claims List represented partial reimbursement of legal fees incurred by Councilmembers Wasson, Benjamin, and Steenrod in their defense of the lawsuit "Citizens for Des Moines v. Don Wasson, et al." The total bill submitted for reimbursement was $41,787.59. Warrant 83550 represents reimburses of $28,805 of the amount requested.

Rule 9 of the City Council Rules of Procedure allows the Presiding Officer the "option of deleting any item from the agenda until the next regular Council meeting when the full Council shall vote on whether to introduce the item on the agenda of a subsequent Council meeting".

Discussion:

At the December 19, 2002 meeting, the Presiding Officer deleted the last three items of the Claims List (warrant 83550) from the agenda and the warrant was placed on the January 9, 2003, agenda for the City Council to decide which, if any, agenda to place it on for consideration. Because of the great number of citizens who wanted to speak at the January 9, 2003, meeting, the Presiding Officer deleted this item

VOUCHER/ CHECK NUMBER	CHECK DATE	VENDOR NUMBER	VENDOR NAME	ITEM DESCRIPTION	ACCOUNT NUMBER	ITEM AMOUNT	CHECK AMOUNT
				DM VS WASSON,STEENROD,B	520.000.046.514.70.41.0	6,150.96	
				DM VS WASSON,STEEENROD,	520.000.046.514.70.41.0	15,203.18	28,805.35
		***	KEY BANK	BANK TOTAL			334,727.43
				TOTAL CHECKS			334,727.43

PRELIMINARY
SPECIAL MEETING DES MOINES CITY COUNCIL

MINUTES

January 23, 2003

The special meeting was called to order at 6:00 p.m. by Mayor Wasson in the City Hall Conference Room, 21630 11th Avenue South, Suite A.

ROLL CALL - Present: Mayor Don Wasson, Mayor Pro Tem Richard Benjamin, Councilmembers Gary Petersen, Bob Sheckler, Maggie Steenrod, Scott Thomasson and Susan White. Also present were City Manager Tony Piasecki, Assistant City Manager Corbitt Loch, City Attorney Linda Marousek, Assistant City Attorney Richard Brown (arrived at 6:30 p.m.), Harbormaster Joe Dusenbury (left at 6:30 p.m.), Attorney Stew Estes (left at 6:30 p.m.), ACC Attorneys Peter Eglick and Kevin Stock (arrived at 6:30 p.m.), ACC Member Stu Creighton (arrived at 6:30 p.m.), and ACC Staff Kelly Evans (arrived at 6:30 p.m.).

Mayor Wasson announced that the Council will hold an Executive Session for approximately one and one half hours to discuss with legal counsel representing the City litigation, or potential litigation to which the City is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the City.

At 6:30 p.m., Harbormaster Dusenbury and Attorney Estes left the meeting. Assistant City Attorney Brown, Peter Eglick, Kevin Stock, Stu Creighton, and Kelly Evans arrived at the meeting.

At 7:30 p.m., City Manager Piasecki announced that the Council would remain in executive session for approximately fifteen minutes more.

No formal action was taken.

ADJOURNMENT

The special meeting adjourned at 7:45 p.m.

Respectfully submitted,

Linda A. Marousek
City Attorney

PRELIMINARY
REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

January 23, 2003

At 7:30 p.m., City Manager Piasecki announced that Council would remain in Executive Session for approximately another fifteen minutes.

The regular meeting of the Des Moines City Council was called to order at 7:54 p.m. by Mayor Wasson in the Council Chambers, 21630 11th Avenue South, Suite B.

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

ROLL CALL - Present: Mayor Don Wasson, Mayor Pro Tem Richard Benjamin, Councilmembers Gary Petersen, Bob Sheckler, Maggie Steenrod, Scott Thomasson and Susan White. Also present were City Manager Tony Piasecki, Assistant City Manager Corbitt Loch, City Attorney Linda Marousek, Senior Planner Robert Ruth, Harbormaster Joe Dusenbury, and Deputy City Clerk Angela Chaufty.

COMMENTS FROM THE PUBLIC

Mayor Wasson announced that Council would accept public comments for thirty minutes and then they would deal with the matters on the agenda. Upon the conclusion of the business, public comments would resume. He said that he would remain at the meeting until the last person had opportunity to speak.

Harvey Rowe, 8850 9th Avenue SW, Seattle

Mr. Rowe informed Council that he has been a professional aviator for most of his working life. He said that he was not in support of the construction of a third runway. Mr. Rowe gave copies of his previous letters to Council to the Clerk for distribution. Mr. Rowe asked Council to call him if they had any questions regarding the material. Mr. Rowe voiced concern with the water quality and noise pollution currently generated by the airport. In closing, Mr. Rowe said that as candidates, the Councilmembers had campaigned against the third runway. He asked Council to fund the fight against the third runway.

Upon Mayor Wasson's request, City Attorney Marousek read the rules of conduct for comments from the public.

Jeanne Moeller, 22211 Cliff Avenue South, #104

Ms. Moeller spoke against New Business, Item No. 5 (Draft Ordinance No. 03-014 Allowing Suspension of Council Rules of Procedure). She felt that the passage of the proposed ordinance would remove a protection and safety mechanism for the citizens. Ms. Moeller said that she was saddened by the events that had transpired. She hoped that the issues could be resolved quickly and Council could return to running an ethical and moral town.

Dan Caldwell, 19547 2nd Avenue South

Mr. Caldwell informed Council that he was concerned with the happenings in the City. He said that the City had been sold to the Port of Seattle for $49,000. Mr. Caldwell urged Council to do what they could to restore order.

Lala Klenman, 24804 9th Place South
Ms. Klenman asked Council to state their reason for considering Draft Ordinance No. 03-014. She felt that rules were necessary. Ms. Klenman asked Council to consider the potential consequences if the rules could easily be changed or suspended. She urged Council to work within the established Council Rules of Procedure.

Alli Larkin, 21937 7th Avenue South
In regard to New Business, Item No. 4 (Draft Resolution No. 03-013 Amendment of Council Rule 36, Videotaping of Council Meetings), Ms. Larkin asked Council to continue to allow recording from the front of the room until the quality of the sound system has been upgraded.

Stan Scarvie, 204 South 206th
Mr. Scarvie addressed Council regarding Draft Ordinance No. 03-014. He identified due process as one of the most important facets of democracy. Mr. Scarvie said that processes and procedures protected citizens from the whims of four Councilmembers. He noted that the previous Councils had worked within the rules and suggested that Council take the time to learn the existing rules and then work within them.

Al Furney, 24718 Marine View Drive South
Mr. Furney voiced his opposition to Draft Ordinance 03-014. He said that the rules served an important purpose. Mr. Furney said that transcripts of the Councilmembers' PDC statements taken under oath had been posted at www.citizensfordesmoines.com. He encouraged citizens to read them.

Gene Achziger, 28708 Soundview Drive South
Mr. Achziger questioned whether Council intended to fund the ACC this year. He felt that their decision to eliminate the funding had been based upon an unscientific poll conducted by Scott MacFarlane. He questioned who had paid for Mr. MacFarlane's poll.

Wayne Bader, 21938 Marine View Drive South
Mr. Bader said that the majority of the citizens supported the Council and did not want their money spent on fighting airport expansion. He said that the previous Council had ignored the citizens. Mr. Bader felt that all newspapers would soon be considered tabloids. He posed the following questions:

- Why won't the airport groups account for their money?
- Why doesn't the press investigate the "Citizens for Des Moines"?
- Whose money is the "Citizens for Des Moines" group spending?
- Why are the Councilmembers being discredited?
- Why are certain groups receiving free press?

Mike Foote, Des Moines Marina
Mr. Foote addressed his comments to the voting taxpayers. He said that Des Moines would never become an airport ghetto. Mr. Foote stated that the City needed strong leadership from people who were willing to assist the business community. He said that the people needed to know of the deceit and corruption of a small group of people both from within and outside of City Hall. He said that the group would stop at nothing to advance their personal agendas. During his involvement in the political scene, Mr. Foote said that he had his residence broken into, his political papers stolen, his dog poisoned, his car tires slashed, and his family and

friend's lives threatened. He said that the corrupt groups, with the assistance of Highline School District, local politicians and the media, have been able to manipulate the truth. Mr. Foote said that the groups have spent more than $13,000,000 of tax money without any accountability. He said that he has tried to warn the citizens of the corruption since 1999. Mr. Foote said that if you dare to disagree with the Des Moines News, they will attempt to destroy you.

Catherine Carbone Rogers, 22516 10th Avenue South

Ms. Carbone Rogers asked for Council's endorsement of the Highline School District Levy that would be presented to the voters on February 4, 2003. She cited the following reasons to support it:

- The quality of the schools impact the quality of community life.
- The levy was not a new tax but a continuation of the existing levy.
- Levy money would pay for the direct education of children. It would provide for up to one-fifth of the School District's total budget.
- The levy would be endorsed by all of the other cities in Highline.

Ms. Carbone Rogers noted that a mailpiece listing endorsers would be sent to the voters. She said that she would welcome an endorsement from Council at their next meeting.

BOARD & COMMITTEE REPORTS

Highline School District Levy

Councilmember Sheckler voiced agreement with Ms. Carbone Rogers' comments. He said that his name could be added to the list of endorsers in the mailer.

Statement

Mayor Pro Tem Benjamin said that a supplemental regional airport, rather than a third runway, was needed in the area. Nevertheless, the Corp of Engineers, the governor, the legislature, and the Port of Seattle were committed to the third runway project. Despite court battles and the issuance of permits, Mayor Pro Tem Benjamin stated that the ACC, RCAA, and another political action group wanted to continue spending tax dollars on a fight that was over. Mayor Pro Tem Benjamin said that there was corruption in the special interest money recipients, consultants, lobbyist, and money managers. He said that the corruption ran deeper than he had originally suspected. Mayor Pro Tem Benjamin stated that no matter what happened with the runway, no benefit could possibly outweigh the corruption the money has brought to the Des Moines/Highline area. Mayor Pro Tem Benjamin said that for over a year, the Des Moines Council has been the target of tactics designed to stymie them. He said that the group, ACC, RCAA, and the Citizen of Des Moines action group have pursued their political agenda at any cost, regardless of who stood before them. Mayor Pro Tem Benjamin said that the groups had tried to intimidate Councilmember Petersen on the basis of a conflict of interest and had attacked his personal character. He said that the ACC, RCAA, and Citizens for Des Moines action group had no regard for anything that might conflict with their own lust for public funds. Mayor Pro Tem Benjamin stated that Al Furney, Vice President of the RCAA and an officer of the political action group Citizens for Des Moines, had been reckless with his accusations. Mayor Pro Tem Benjamin said that the RCAA contracts with the City and receives tax dollars. He asked Mr. Furney where he received his money to file lawsuits against elected officials and why he wanted to obstruct the people's business. Mayor Pro Tem Benjamin asked how he could know that the money was not being used for illegal purposes. He questioned why the RCAA did not open their books to the public. Mayor Pro Tem Benjamin said that the RCAA must assure Council that public money was not being spent to pay lawyers to bring lawsuits against elected officials. He stated that, instead of working with legislators, the RCAA and ACC had sued them, probably with public money. Mayor Pro Tem Benjamin said that it was not a surprise that these groups had lost the fight against the third runway. In addition, Mayor Pro Tem Benjamin said that during the Ad Hoc Mount Rainier Pool meeting two days ago, he learned of Normandy Park's intent to hold the Mount Rainer Pool hostage by holding up funding that had previously been approved by their Council. He said this was an attempt of the ACC to extort funds. Mayor Pro Tem Benjamin said that a concerned Normandy Park resident had since told him that the pool money would be released by Normandy Park.

SR 509 Committee

Councilmember Petersen reported that the SR 509 Project was on hold until the status of the project's funding was determined.

Activity Center Remodel

Councilmember White reported that the remodel of the Activity Center was progressing nicely.

South County Area Transportation Board

Councilmember White informed Council that the Board had recommended that the funding for the SR 405, Highway 167, and SR 509 projects be consolidated and placed on the November ballot.

Council Meetings

Councilmember White stated that she had viewed the videos of the last few Council meetings. She said that she was disheartened by what had occurred. Councilmember White stated her hope that Council could carry on with their business.

Public Disclosure Commission (PDC) Hearing

Councilmember Steenrod reported that the PDC hearing for the charges would be conducted at the end of March. She said that the information provided by the press was not always accurate. Councilmember Steenrod stated that she did not intend to resign from her position as a Councilmember as she had done nothing wrong.

Activity Center Remodel

Councilmember Steenrod said that the Scholarship Award Night on May 3, 2003 would be the first City event conducted in the remodeled activity center. She said that the facility would be available for tours prior to the event.

Highline School District Levy

Councilmember White asked that Council endorse the Highline School District levy at their next meeting. She voiced her support for the issue.

PRESIDING OFFICER'S REPORT

Resignation from Mayor Position

Mayor Wasson read the following statement into the record:

I have decided to resign the position of Des Moines Mayor, effective at the end of this meeting. I do not make this decision lightly as I have accomplished many good things for this community. I intend to continue to serve as a Des Moines Councilmember for the remainder of my term. I am making this decision now because I want the City Council to be able to go on with its business without the distraction caused by the recent PDC charges. I expect the Council will elect a new mayor next Thursday in accordance with our Council Rules of Procedure. I wish him or her the best in undertaking the responsibilities of this office. This statement will be the only comment about this event that I will make at this time.

ADMINISTRATION REPORTS

Mount Rainier Pool Contributions

City Manager Piasecki announced that $24,640 had been donated to the Mount Rainier Pool Fund. He has requested a list of donors willing to have their names published in a future edition of the *City Currents*.

CONSENT CALENDAR was read by Deputy City Clerk Chaufty.

1. Motion is to approve the minutes of January 9, 2003
2. Findings: Vouchers audited and certified by the auditing officer as required by RCW 42.24.080, and those expense reimbursement claims certified as required by RCW 42.24.090, have been recorded on a listing which has been made available to the City Council.

   Motion: As of this date the Des Moines City Council, by unanimous vote, does approve for payment those vouchers and payroll transfers included in the above list and further described as follows:

   Claim checks # 83894 through #84040 & electronic fund transfers in the total amount of $450,349.22

   Payroll fund transfers in the total amount of $328,490.47

~~3. Motion is to approve the Memorandum of Understanding between the Cities of Auburn, Burien, Covington, Des Moines, Federal Way, Kent, Renton, SeaTac and Tukwila for planning, funding and implementation of a joint Human Services Application and Funding Program and authorize the City Manager to sign the Memorandum substantially in the form as submitted.~~

~~4. Motion is to approve the Contract for Flooring installation at the Des Moines Activity Center with Greater Seattle Floors, in the amount of $27,725.00, plus tax, and authorize the City Manager to sign the contract substantially in the form as submitted.~~

5. Motion is to approve the interlocal agreement between the City of Auburn and the City of Des Moines for the use of the Auburn Police Range Facility by the City of Des Moines Police Department and authorize the City Manager to sign the interlocal substantially in the form as submitted.

6. Motion is to approve the agreement with Wood/Harbinger, Inc. for the first phase of the design and engineering work for the Power Distribution System Project at the Marina for the amount of $35,973, and authorize the City Manager to sign the agreement substantially in the form as submitted.

~~7. Motion is to approve the re-allocation of $14,074 in unexpended Capital Improvement Program funds from the Woodmont Elementary School Soccer Field Project for the purchase of a T-1 Phone and Data System for the renovated Des Moines Activity Center.~~

Councilmember Steenrod removed Item No. 7.

Councilmember Benjamin removed Item No. 4.

Councilmember Thomasson removed Item No. 3.

MOTION was made by Councilmember White, seconded by Mayor Pro Tem Benjamin, and passed unanimously to approve the consent calendar as amended.

Transfer of CIP Funds for Phone and Data System at Des Moines Activity Center

Councilmember Steenrod voiced her concern with the purchase of the system as she felt it was a "want" rather than a "need". She said that the money should be reallocated to other needs such as the overlay program.

Park and Recreation Director Thorell explained that a T-1 system would greatly improve the efficiency of staff due to the data and voice connection to other City departments it would provide.

Councilmember Thomasson voiced support for the T-1 system. He noted that Council had asked staff to do more with less and that the T-1 would provide them with a way to do so. He noted that the savings resulting from the reduced monthly cost would eventually cover the installation expense.

MOTION was made by Councilmember Thomasson and seconded by Councilmember Sheckler to approve the purchase of a T-1 Phone and Data System for the renovated Des Moines Activity Center.

Councilmember Thomasson said that he expected the appropriate CIP adjustment to be made if the motion passed.

Mayor Pro Tem Benjamin asked staff to investigate whether any used or refurbished equipment was available at a reduced price.

VOTE ON MOTION: Motion passed, 6 – 1, with Councilmember Steenrod opposed.

Activity Center Remodel Flooring Installation Contract

In response to Mayor Pro Tem Benjamin's questioning, Park and Recreation Director Thorell explained that while the installation of the donated floor would result in the same price as materials and installation of another type of floor, the quality of the floor would be better as it was a better product. Park and Recreation Director Thorell explained the selection process for the installers. She said that two official bids and one verbal bid had been received.

MOTION was made by Councilmember Thomasson, seconded by Councilmember White and passed unanimously to approve the contract for flooring installation at the Des Moines Activity Center with Greater Seattle Floors, in the amount of $27,725 plus tax, and to authorize the City Manager to sign the contract, substantially in the form as submitted.

Joint Human Services Application and Funding Program

As Exhibit A would be updated each year, Councilmember Thomasson asked that language be added to the proposed contract which would required annual approval of Exhibit A by Council.

In response to Councilmember Steenrod's questioning, City Manager Piasecki confirmed that the insurance requirements of the proposed agreement were already in effect.

MOTION was made by Councilmember White and seconded by Councilmember Sheckler to adopt the Memorandum of Understanding between the Cities of Auburn, Burien, Covington, Des Moines, Federal Way, Kent, Renton, SeaTac, and Tukwila for planning, funding, and implementation of a joint Human Services Application and Funding Program.

Councilmember Thomasson asked that a clause stating that Exhibit A would be updated each year by approval of amendment to this agreement be added to Section 3 of the Memorandum.

The maker and seconder of the motion **accepted** Councilmember Thomasson's request **as a friendly amendment**.

VOTE ON MOTION: Motion passed unanimously.

PUBLIC HEARING

Draft Resolution No. 03-002 Shoreline Permit for the Redondo Boat Launch Renovation Project - File #LUA2002-008

Mayor Wasson opened the public hearing.

City Attorney Marousek read the rules for conducting a public hearing. She announced that the subject was a quasi-judicial matter and polled Council to determine whether the Appearance of Fairness doctrine applied to any of them. It did not. *(Editor's Note: Councilmember Sheckler had briefly left the chambers. The question was posed to him later in the meeting.)*

Senior Planner Ruth informed Council that the shoreline permit was a city-sponsored application as the facility was owned an operated by the City of Des Moines. He explained that Assistant City Manager Loch and Harbormaster Dusenbury would be representing the City as applicants while he would be reviewing the project for permit purposes. Senior Planner Ruth displayed a map and aerial photograph of the area. He highlighted the legal notification area on the map and briefly summarized the following proposed improvements:

- Within the same footprint of the existing ramp launch, make improvements that would allow the existing single lane launch to be used as a two lane launch.
- Remove the existing boarding float on the north side of the ramp and its associated creosote treated wood pilings and approach ramp.
- Install new removable boarding floats at the north and south side of the ramp.
- Remove and replace the precast concrete panels at the end of the ramp and recondition the base material beneath them.
- Install a new floating breakwater perpendicular to the launch ramp to reduce wave activity near the launch.
- Restripe and change alignment for aisleways and parking stalls within the upland parking facility to improve efficiency.
- Develop an access from Soundview Drive to improve traffic circulation and user queuing.
- Install a water runoff treatment system for the parking area including the vehicle wash-down area.

- Make miscellaneous improvements in and around the parking area such as resurface select areas along side streets, enhance existing landscaping, provide irrigation, improve safety/security lighting, create better definition of pedestrian walkways and installation of security gates.

Senior Planner Ruth informed Council that the review criteria for a conditional shoreline permit review was listed on Page 3 of their packet while the environmentally sensitive areas' review criteria was listed on Page 5. He stated staff's belief that the applicant had met the review criteria and that the project attempted to further enhance the policy direction of the City's Shoreline code. Senior Planner Ruth said that the project application had already received aquatic biologic studies, State Environment Policy Act review, and SEPA review. The SEPA official had determined that there were no significant adverse environmental impacts. No comments were received during the comment period and no appeals were filed. The project met all of the approval criteria and was consistent with the ESA development exceptions. Approval was recommended.

City Attorney Marousek placed all persons wishing to participate in the public hearing under oath to testify truthfully and accurately to best of their knowledge.

Proponents

Corbitt Loch, 21630 11th Avenue South
As the applicant of the project, Assistant City Manager Loch said that he and Harbormaster Dusenbury were available for questions. He explained that a permit from the Department of Fish and Wildlife was also needed for the project. Funding for the project was provided by a $750,000 State Interagency Committee for Outdoor Recreation grant and the sale of Marina bonds. Mr. Loch said that the City sought to modernize the facility without increasing its capacity and to insure that it served its current level of usage well. If all the permits were secured he hoped to put the project to bid in March or April, 2003 with construction occurring during the summer. He noted that the State Fisheries' regulations require that any work done in the water be performed during the summer. The exact schedule or the extent of the closures would not be known until a contractor had been secured. He said that the City hoped to minimize the amount of time the facility would be down. Mr. Loch noted that the project did not solve the neighborhood's parking problem. He believed that the project maximized the mix of parking between vehicle and trailer spaces to best serve the boating community and the neighborhood. In closing, Mr. Loch informed Council that the Municipal Facilities Committee had reviewed the project.

Due to the quasi-judicial nature of the hearing, City Attorney Marousek confirmed that Councilmember Sheckler was eligible to participate in the hearing.

Dan Ayers, 308 SW 295th Place
Mr. Ayers said that he had used the Redondo boat ramp for thirty years. He thanked Council for considering the project and the applicants for their hard work. On behalf of the State's Sport Fishery Advisory Group, Mr. Ayers voiced support for the project. He suggested that the breakwater be moved south as its current location would channel boats directly in front of the on-shore anglers. Mr. Ayers predicted that the ramp would be a money producing facility for the City.

Norm McDonell, 908 South 279th Place
As a member of the Redondo Community Club, Mr. McDonell informed Council that he had participated in the planning for the existing ramp facility. He voiced support for project. Mr. McDonell asked that the proposed project proceed expeditiously so that the parking lot work could be completed by June. He asked that the beach phase commence as soon as the Department of Fisheries permit was obtained. He recommended that the construction timetable hold the contractor responsible for getting the ramp operable by a date certain. As the Redondo ramp was the only ramp between Seattle and Tacoma, Mr. McDonell said that it was imperative, within cost and quality limitations, to re-open the ramp this summer. Mr. McDonell asked that Council also address the parking problems in the area as he believed that the improvements would bring increased parking pressure. He asked that the city aggressively pursue the acquisition of the large tract of land immediately east of Wooton Park and develop the area adjacent to the park for single car parking.

John Payseno, 524 2nd Avenue, Suite 500, Seattle
On behalf of the owners of Salty's Restaurant, Mr. Payseno said that they were excited about the improvements but concerned about the parking situation. He said that Salty's Restaurant would like to collaborate with the City to improve the situation. For example, he said that their staff could help secure the security gate if the parking lot remained open later. Mr. Payseno asked the city to examine other possibilities to increase parking in the area. In regard to the timing of the project, Mr. Payseno strongly urged the City to do the work before or after the summer months.

Mayor Wasson called for additional speakers three times.

None responded.

In response to Councilmember Thomasson's questioning, City Attorney Marousek explained that Section 1(7) of the proposed resolution was intended to reference the development exception allowed by DMMC 18.86.094(6) which requires lawful alteration as a condition of going to the previously altered sensitive area.

Harbormaster Dusenbury said that the City may be required to obtain a Department of Natural Resource's lease for the project. He explained that the current lease was being surveyed. The engineers and consultants for the project were seeking to minimize conflicts with the fishing pier anglers. If the Redondo pier was operated under the same rules as the Des Moines Marina, fishing and crabbing from the pier would not be allowed. The breakwater and fingerpiers would be taken out during certain seasons of the year.

Councilmember Thomasson suggested that language that gave the city flexibility in operations in the upland activities be added to the conditions of approval.

Senior Planner Ruth voiced support for the suggestion.

In response to Mayor Pro Tem Benjamin's questioning regarding parking options, Assistant City Manager Loch explained that the City was exploring the possibility of purchasing the lot east of Wooton Park. The flat portion of the property could be used to increase parking.

Mayor Pro Tem Benjamin suggested that the horseshoe area in Wooton Park be converted to parking area.

Assistant City Manager Loch said that he had not yet explored that possibility as he had not heard the community's comments as a whole regarding the option but that he would explore the option if Council directed him to do so. Assistant City Manager Loch briefly described the proposed landscape improvements and ramp arrangement.

In response to Mayor Pro Tem Benjamin's questioning, Harbormaster Dusenbury said that there would be room for two boats in the proposed wash down area. He explained that the wave analysis data would determine the placement of the breakwater. He anticipated using a crane to remove the breakwater annually.

Senior Planner Ruth said that he would add a condition of approval incorporating flexibility to insure that removal and placement equipment for the breakwater would be adequate.

In response to Councilmember Petersen's question, Harbormaster Dusenbury noted that a safety barrier between launch lanes could create an obstacle for the drivers. He believed that the Recreational Immunities Act would cover the city in terms of liability issues for the ramp.

Councilmember Steenrod said that the Municipal Facilities Committee agreed with the parking concerns raised. She reported that the committee recommended approval of the project. She proposed that Council study different parking options.

Mayor Wasson closed the public hearing.

MOTION was made by Councilmember Thomasson and seconded by Councilmember White to continue Draft Resolution No. 03-002 to the January 30, 2003 meeting.

Senior Planner Ruth confirmed that he would add language to the conditions of approval allowing flexibility for operational changes and for repositioning of the breakwater.

Council concurred that the draft resolution could be placed on the next consent calendar.

VOTE ON MOTION: Motion passed unanimously.

NEW BUSINESS

Draft Ordinance No. 03-014 Allowing Suspension of Council Rules of Procedure

MOTION was made by Councilmember White and seconded by Councilmember Sheckler to table Draft Ordinance No. 03-014 indefinitely.

VOTE ON MOTION: Motion failed, 3 – 4, with Mayor Wasson, Mayor Pro Tem Benjamin, and Councilmembers Petersen and Steenrod opposed.

AGENDA REVISION

MOTION was made by Councilmember Thomasson, seconded by Councilmember Sheckler and passed unanimously to table all remaining agenda items to the next meeting.

NEXT MEETING DATE - Regular Meeting January 30, 2003

ADJOURNMENT

At 10:30 p.m., the meeting expired.

Respectfully submitted,

Angela M. Chaufty
Deputy City Clerk

PRELIMINARY
REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES January 30, 2003

The regular meeting of the Des Moines City Council was called to order by Acting Mayor Benjamin at 7:34 p.m. in the Council Chambers, 21630 11th Avenue South, #B.

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

ROLL CALL - Acting Mayor Richard Benjamin, Councilmembers Gary Petersen, Bob Sheckler, Maggie Steenrod, Scott Thomasson, Don Wasson and Susan White. Also in attendance was City Manager Tony Piasecki, Assistant City Manager Corbitt Loch, City Attorney Linda Marousek, Harbormaster Joe Dusenbury, Public Works Director Tim Heydon, Land Use Planner II Celeste Carlson and Denis Staab.

ELECTION OF MAYOR

City Attorney Marousek read the rules of procedure for the process for electing a Mayor and Mayor Pro Tem.

City Clerk Staab noted that write in ballots have been placed in front of each Councilmember, and called for nominations for the office of Mayor. Nominations were as follows:

Councilmember Sheckler nominated Councilmember Thomasson
Councilmember Petersen nominated Councilmember Steenrod

City Clerk Staab read the following votes into the record:

- Councilmembers Benjamin, Petersen, Steenrod and Wasson voted for STEENROD
- Councilmembers Sheckler, Thomasson and White voted for THOMASSON

Councilmember Maggie Steenrod was announced as the new Mayor by a vote of 4 to 3.

ELECTION OF MAYOR PRO TEM

City Clerk Staab called for nominations for the office of Mayor Pro Tem. Nominations were as follows:

Councilmember White nominated Councilmember Thomasson
Mayor Steenrod nominated Councilmember Petersen
Councilmember Thomasson nominated Councilmember Sheckler

City Clerk Staab read the following votes into the record:

- Councilmember Sheckler voted for SHECKLER
- Councilmembers Thomasson and White voted for THOMASSON
- Councilmembers Benjamin, Petersen and Wasson, and Mayor Steenrod voted for BENJAMIN

Councilmember Richard Benjamin was announced as the new Mayor Pro Tem.

[ED NOTE: These terms shall commence immediately to the first City Council meeting of 2004.]

AGENDA REVISION

Mayor Steenrod advised that she is moving Comments from the Public and placing it after Item #1 under Old Business.

BOARD & COMMITTEE REPORTS

Statement

Councilmember White stated that she has been upset over recent events and hopes with new elections the Council can get a new start and work together to get things done.

Finance & Economic Development Committee

Mayor Steenrod advised that the Committee will meet this coming Monday.

Municipal Facilities Committee

Mayor Steenrod reported that the Committee will meet next week.

Mt. Rainier Swim Meet

Mayor Steenrod noted that Mt. Rainier High School will be holding a swim meet on Friday at Mt. Rainier Pool. She congratulated all who spent so much time and effort on keeping the Pool open.

Eagle Scout Recognition

Mayor Steenrod expressed accolades to Zach Adam, Eagle Scout, who will be honored tomorrow at the Criminal Justice Training Commission for doing a State K-9 Memorial as part of his Eagle Scout project.

ADMINISTRATION REPORTS

Mt. Rainier Pool

City Manager Piasecki advised that no additional Pool funds have been received since his last report.

He noted that a proposal from the Northwest Center regarding the Pool has been distributed to other cities, staff and the school district. He also advised that the City of Kent is close to finalizing an agreement with the County and the King Aquatics Group. He has asked the City of Kent to let the Group know that Des Moines would be interested in what they may have to say in regards to the Mt. Rainier Pool.

He advised that currently Mt. Rainier Pool funds stand at a little over $26,000 in private donations and the School District has submitted another $20,000.

Potential 3rd Runway Ballot Issue

Upon questioning by Councilmember Sheckler, City Manager Piasecki advised that the City Attorney and Assistant City Attorney are preparing draft resolutions for Council consideration. He hopes to have the drafts to Council at the February 13th Council meeting.

CONSENT CALENDAR was read by City Clerk Staab.

1. Motion is to approve the minutes of January 13 and 16, 2003.

~~2. Draft Resolution No. 03-002 - Title: A Resolution of the City of Des Moines, Washington approving a Conditional Shoreline Substantial Development Permit and an Environmentally Sensitive Areas Development subject to conditions specified herein.~~
~~MOTION is to approve Draft Resolution No. 03-002.~~ [ED NOTE: This item was removed by Councilmember Thomasson.]
~~3. Motion is to approve the amendments to the contract for professional engineering services for financing the Des Moines Transportation Element Update with The Transpo Group for up to an amount of $5,000, and to authorize the City Manager to sign said contract amendments substantially in the form as attached.~~ [ED NOTE: This item was removed by Mayor Steenrod.]
~~4. Motion is to award R custom Excavation, Inc. the contract to purchase and remove 12 mobile homes that the City has acquired through right-of-way purchase of the Pacific Highway South Redevelopment Project in the amount of $30,000, plus authorize the City Manager or his designee to approve change orders up to an amount of 10% and further to authorize the City Manager to sign said contract substantially in the form as submitted.~~ [ED NOTE: This item was removed by Councilmember Petersen.]

Councilmember Petersen requested that Consent Item #4 be removed. City Attorney Marousek reminded Councilmember Petersen and Mayor Steenrod, that this item is related to the Pacific Highway South Project.

Councilmember Thomasson requested that Consent Item #2 be removed.

Mayor Steenrod requested that Consent Item #3 be removed.

MOTION was made by Councilmember Sheckler, seconded by Councilmember Wasson, that the remaining Consent Calendar (Item #1) be approved. Motion passed unanimously.

REMOVED CONSENT ITEMS

Consent Item #2 Draft Resolution No. 03-002 - Conditional Shoreline Substantial Development Permit & an Environmentally Sensitive Areas Development

Councilmember Thomasson noted that he only received the revised document this evening, therefore he is not prepared to vote this evening.

City Manager Piasecki advised that this revised item was placed in Council's boxes on Tuesday.

MOTION was made by Mayor Pro Tem Benjamin, seconded by Councilmember Wasson, to place this item as a Consent Calendar for the meeting of February 6, 2003. Motion passed unanimously.

Consent Item #3 Contract Amendments with The Transpo Group for the Des Moines Transportation Element Update

Mayor Steenrod questioned why the amount of $5,000 was selected when the actual amount is $1,900.

Public Works Director Heydon advised that the amount to date is around $2,400. If the Council should choose additional studies or meetings to cover this item, then additional funding will be needed. He stated that the consultant will only be paid for the number of hours that are actually put into the project.

City Manager Piasecki informed Council that the City has already spent over $1,900 for the work that Transpo has done and meetings they have attended that was not part of the original contract. Staff is asking for an additional $5,000 contract authorization to pay the $1,900, plus have an additional $3,100 in reserve for whatever future meetings Council may ask for. If there are no additional meetings then the money will not be spent.

MOTION was made by Mayor Steenrod, seconded by Councilmember White to approve the amendments to the contract for professional engineering services for financing the Des Moines Transportation Element Update with The Transpo Group for up to an amount of $5,000 and to authorize the City Manager to sign the contract amendments substantially in the form as submitted.

MOTION was made by Mayor Pro Tem Benjamin to amend the motion to reduce the fee to $3,500. Motion died for lack of a second.

VOTE ON MAIN MOTION: Motion passed 6 to 1 with Mayor Pro Tem Benjamin voting NO.

Consent Item #4 Award Contract to R Custom Excavation, Inc. to purchase & Remove 12 Mobile Homes

Councilmember Petersen questioned the revised contract.

City Attorney Marousek informed Council that the change to the contract is that there is no sales tax liability so that language was changed. Also the obligation regarding utilities was changed. It was also noted that no permits are required from the City for removal. Changes are contained within paragraphs two and four.

Upon questioning by Councilmember Petersen, City Attorney Marousek advised that the purchaser is responsible for removing the mobile homes from the tax rolls.

MOTION was made by Councilmember White, seconded by Mayor Pro Tem Benjamin, to award R Custom Excavation, Inc. the contract to purchase and remove 12 mobile homes that the City has acquired through right-of-way purchase of the Pacific Highway South Redevelopment Project in the amount of $30,000, plus authorize the City Manager or his designee to approve change orders up to an amount of 10% and further to authorize the City Manager to sign said contract substantially in the form as submitted. Motion passed unanimously.

OLD BUSINESS

Draft Ordinance No. 02-186 ***[ASSIGNED ORDINANCE NO. 1315]*** Dangerous Fences - 2nd Reading

Land Use Planner II Carlson advised that the two minor changes requested by Council at the January 9, 2003 meeting have been made. In response to Councilmember Thomasson's request to provide a reason for the 10' setback, she noted that if Council wishes to amend this setback staff has no problem. She concluded by noting that staff recommends Council approval.

MOTION was made by Councilmember Sheckler, seconded by Councilmember White to approve Draft Ordinance No. 02-186.

Councilmember Thomasson stated that he is not comfortable with the compliance requirement section. He felt that if this can be achieved for fences then the same requirements should be applied to containers. He noted that while he is in support of the regulation of the fences, he will probably vote against the ordinance because of the compliance language. He noted that perhaps existing fences should be grandfathered, but has no specific changes to offer.

VOTE ON MOTION: Motion passed 6 to 1 with Councilmember Thomasson voting NO.

COMMENTS FROM THE PUBLIC

Steve Henderson, 22222 Dock Street

Mr. Henderson suggested that Council build the Marina dry stack storage facility where the existing dry storage sheds are located. He felt that the Quartermaster Store property is too valuable of real estate to be used for the dry stack storage area. He felt this property could be sold if needed for City funds to help balance the budget, or developed by the City for a duel use as a Senior Center and rental facility. He also felt that the existing dry storage area would offer better operating efficiency since it is closer to the water and the boat launch site. He also felt this would save money by not having to reconfigure Dock Street.

Mike Foote, Des Moines Marina

Mr. Foote noted he wished to address a couple of items of importance to the voting tax payers. He stated that last week he reminded citizens of the corruption and deception of certain members of the past City Council and the past City Manager had engaged in regarding embezzlement of tax payer funds.

Councilmember White expressed displeasure with personal attacks and left the Council Chambers.

Mayor Steenrod asked Mr. Foote to not make any disparaging personal remarks.

Mr. Foote noted that the practice of deceiving tax payers continues in Des Moines and the 33rd District from the Harbormaster's office, to local Little League, certain members of Des Moines Council, members of Des Moines staff, members of local community, and the local media. He noted this deceit is increasing at an accelerating level. He stated that be believes information based on facts and truth has been intentionally withheld from the voting public in the City of Des Moines and the 33rd District to protect this group. Any facts directly addressed have been spun to benefit the friends of the corrupt political machine. He named the following groups: ACC, CASE, RCAA, the Political Action Group called Citizens for Des Moines, with the assistance of the Burien Highline Times and the Redondo connection.

Due to outbursts from the audience, Mayor Steenrod called for order in the Council Chambers. She once again cautioned Mr. Foote against making disparaging remarks concerning individuals.

Mayor Steenrod requested that the Police remove an audience member from the Council Chambers.

Mr. Foote continued and questioned whether this is ethical or even legal, and stated we should ask the PDC why the same people get printed in the Highline Times. He questioned whether they are connected to the political action committee.

Dr. Marie Rosenberg, 22222 Dock Avenue South

Dr. Rosenberg addressed the dry stack storage issue at the Quartermaster site. She advised that the drawings being presented this evening are deceptive as they are different from the drawings shown to neighbors earlier. She expressed concerns over the noise factors, dangers and hazards of dry stack storage. She noted that the commercial venture at this location would be totally out of character with the neighborhood and would be very disruptive. She felt that was is being proposed is "an ugly little shed". She stated that she understands that a park may be placed on top of the shed. She noted there is no place for vehicles or bicycles to park to be able to come and go and feels this is bad planning and bad business.

Frank Jovanovich, 22431 10th Avenue South

Mr. Jovanovich spoke against a new business item on the agenda tonight to consider allowing Council to suspend its Rules of Procedure. He noted that these Rules of Procedure have been in place and worked well for a long time. He concluded by stating if Council approves such a suspension, they might as well also suspend Robert's Rules of Order.

Brett Fish, 801 SW 168th, Normandy Park

Mr. Fish, speaking as part of the press who video records Council meetings, addressed Draft Resolution No. 03-013 concerning video taping of Council meetings. Mr. Fish quoted the Open Public Meetings Act 42.30, noting that the meeting is required to be open and public, and in particular noting that you may only regulate audio and video recordings to the extent necessary to preserve orderly conduct. He also quoted that recordings may not be prohibited. In conclusion, Mr. Fish noted that the audio in the back of the Council room is so degraded and undependable that a good recording cannot be made. He stated that until improvements are made, they only good place for him to record is in the front corner where he has always filmed from which does not interfere with staff or public access.

Ed Pina, 24219 7th Avenue South

In regards to the proposal to allow waiving of Council Rules, Mr. Pina felt they should not be waived as they provide for an orderly process. He stated if there is a particular rule that is causing a problem then that should be addressed.

Mr. Pina noted that by Don Wasson resigning his position of Mayor it did not change control of the Council. He noted that three of the Councilmembers were elected by the channeled funding that was identified by the PDC. He felt that Mr. Wasson's resignation from the Council would be the only way that Council may be able to balance itself and take actions in the interests of the City of Des Moines.

Ben Stark, 1310 South 230th

Mr. Stark advised that he has been reviewing previous Council meeting tapes and reading the PDC transcripts. He felt that we are suffering from pollution of the spirit. He felt this pollution is caused by the money of the Port of Seattle and the people who would profit from the Port's money. He suggested that if the City of Des Moines has $50,000 to use to put a ballot issue on whether to fund the fight against the 3rd runway, then it should be actually given to ACC and budget for the rest of the money later in the year. He stated that everyone who ran for a Council position ran on that platform.

Mysty Beal, 22628 16th Avenue South

Ms. Beal expressed concern about future years when the cost of maintaining our City infrastructure and human services will present additional financial burdens. She noted that the City of Normandy Park has threatened to revoke funding for Mt. Rainier Pool, there may be an additional $30,000 that Des Moines may have to provide. She has been told that Council is considering lowering the utility tax, which will further strain the City's budget. She felt it is time to think outside the box and seek new revenue sources. She noted that the recent Public Disclosure Commission findings basically say that the City was sold to the Wescot Company for $49,000. She concluded by stating the City could have done better by selling itself on E-bay.

NEW BUSINESS

Draft Ordinance No. 01-142 ***[ASSIGNED ORDINANCE NO. 1316]*** Telecommunications Code Readoption - 1st Reading

City Attorney Marousek introduced Carol Arnold of Preston, Gates & Ellis, who assisted the City in drafting the revisions to the Telecommunications Code.

Ms. Arnold advised Council that both state and federal law has changed which curtailed the ability of local governments to regulate telecommunication services and reminded Council that a Court of Appeals invalidated the City's current ordinance in its entirety. She reported that the proposed ordinance reenacts most of the City's telecommunications ordinance, with modifications changing only items that conflict with federal law. Changes have been made throughout the ordinance to make it clear that the City is regulating its rights-of-way, not the telecommunications providers.

City Attorney Marousek informed Council that applications are currently pending.

MOTION was made by councilmember Sheckler, seconded by Councilmember White and passed unanimously, to suspend Council Rule 26(b) in order to act on Draft Ordinance No. 01-142 on first reading.

MOTION was made by Councilmember Sheckler, seconded by Councilmember Thomasson, to approve Draft ordinance No. 01-142.

City Clerk Staab read the ordinance by title into the record.

VOTE ON MOTION: Motion passed unanimously.

Draft Ordinance No. 02-264 Traffic Impact Fees - 1st Reading

Public Works Director Heydon reminded Council that the City's Comprehensive Transportation Plan was approved at the December 5, 2002 meeting. He noted that in order to accomplish critical projects an additional source of funding is needed. He advised that as the Council Public Safety and Transportation Committee discovered there is really only one source that has the possibility of raising a significant amount of money, and that is traffic impact fees. He advised that there are basic GMA requirements for impact fees which he noted as follows:

- Related to improvements to serve new development, not existing deficiencies.
- Assessed proportionally to the impacts of new development.
- Allocated for new improvements that reasonably benefit new development

- Spent on facilities identified in the capital facilities plan.

He further advised that impact fees are not limited to new capital projects as an agency may impose impact fees to cover costs of previous improvements, provided they meet the above criteria.

Larry Toedtli of The Transpo Group proceeded to review various figures and tables from the adopted Comprehensive Transportation Plan, including a project cost summary, impact fee calculation and potential impact fees per unit of development. He displayed a map showing potential intersection and roadway capacity improvement projects for the traffic impact fee program.

Upon questioning by Council, Public Works Director Heydon advised that there already is an impact fee in the Pacific Ridge Area, that will not be in addition to the new impact fees.

MOTION was made by Councilmember Sheckler, seconded by Councilmember Thomasson, to suspend Council Rule 26(b) in order to enact the draft ordinance on a first reading.

Mayor Steenrod stated that she felt this issue is too complicated for just one reading. She questioned how fees would be calculated.

City Manager Piasecki advised that all impact fees would be based on a formula depending on what type of development.

Mayor Steenrod, noting the status of Transportation Impact Fees of other cities furnished in Council's packet, questioned why someone would choose to build in Des Moines when SeaTac is cheaper.

Mayor Pro Tem Benjamin felt that the City needs to balance the impact fee so we do not drive away new construction, yet have developers pay their fair share.

Councilmember Thomasson spoke in support of the proposed Transportation Impact Fees, advising that if Council does not pass this legislation the City will be putting more pressure on tax payers to pay for transportation improvements. He reminded Council that the City of SeaTac is pretty much built out and Des Moines needs to be ready as the growth will spread here.

Upon questioning, Public Works Director noted that the fees will be uniform throughout the City and that certain portions of the Pacific Ridge Area will pay some of the costs of roadway improvements within Pacific Ridge.

Mayor Steenrod advised she is in favor of the idea, but has some concerns over the actual fees.

VOTE ON MOTION: Motion passed 4 to 3 with Councilmember Wasson, Mayor Pro Tem Benjamin and Mayor Steenrod voting NO.

MOTION was made by Councilmember Sheckler, seconded by Councilmember Thomasson, to approve Draft ordinance No. 02-264.

Councilmember Sheckler read the ordinance by title into the record.

9:26 p.m. Mayor Steenrod called for a 10 minute break.

Mayor Pro Tem Benjamin stated that while the Public Safety and Transportation Committee had consensus that Transportation Impact Fees should be instituted, no set amount had been discussed. He suggested this should be discussed by the PS & T Committee and come back to Council next week for final action.

Councilmember Thomasson stated that the fees have been talked about and this item has been on Council's agenda for a couple of months. He noted the Transportation Plan is well laid out and the fee calculations have been laid out and circulated, with no one commenting over the last couple of months.

MOTION was made by Councilmember Wasson, seconded by Mayor Pro Tem Benjamin, to amend the ordinance by striking the fee structure and making that a separate ordinance.

City Manager Piasecki suggested that the draft ordinance be remanded back to the PS & T Committee for further review and return to a future Council meeting.

Councilmember Sheckler commented that the draft ordinance has been recommended by the PS & T Committee already, and it would make no sense and waste time to send it back to Committee.

Councilmember Petersen, as a member of the PS & T Committee, stated that they did not discuss actual rates.

Councilmember Thomasson reminded Council that they adopted the Transportation Plan and no one questioned that Plan. He noted the Transportation Fees are based on that Plan. He felt it would be pointless to adopt an ordinance with no fee structure in it. He also reminded Council that the City's transportation consultants, who are the experts, have helped to develop this fee schedule.

MOTION was made by Councilmember Wasson, seconded by Mayor Pro Tem Benjamin, to remand the draft ordinance to the PS & T Committee for further review and place the item on the March 6, 2003 agenda. Motion passed 4 to 3 with Councilmembers Sheckler, Thomasson and White voting NO.

Draft Resolution No. 03-025 ***[ASSIGNED RESOLUTION NO. 946]*** Highline School District 401 Education Programs and Operations Levy

City Manager Piasecki noted that staff has no recommendation on this issue.

Councilmember Thomasson noted that Council had discussed last year the appropriateness of whether Council should support another agencies levies. He stated Council did support the school district's levy for new school construction because it was important to our City and its citizens. However, he felt this issue is more debatable and has not been researched by Council.

Mayor Pro Tem Benjamin advised that as Acting Mayor he had requested this Agenda Item prepared. He acknowledged that in the past there has been a grey area whether Council should endorse such levy issues. However, he is concerned over the quality of education and feels this is an issue the City should be concerned about and therefore he will support the resolution.

Mayor Steenrod voiced the opinion that voters are capable of making these kinds of decisions and it is not Council's job to tell citizens how to vote.

Catherine Carbone Rogers of the Highline School District, expressed the belief that citizens and parents must take a strong stand on quality of life in the community and education is part of that.

Councilmember White felt it is Council's responsibility to bring important issues to the citizens.

Councilmember Sheckler noted that it is Council's job to educate citizens and wished it known that this is not a new tax, but renewing a commitment voters made before. He advised he will support the resolution.

Councilmember Wasson stated that while he will support the resolution as being important, he knows it will not benefit laid off Boeing employees.

VOTE ON MOTION: Motion passed 6 to 1 with Councilmember Thomasson abstaining.

10:03 p.m. Councilmember Sheckler left the Council meeting.

Marina Dry Stack Storage Alternatives

Harbormaster Dusenbury began by noting that last December Council requested a briefing on the options that have been developed for the proposed dry stack storage unit. He reviewed basic background information noting existing conditions, trends in recreational boating, the Master Plan process itself and how dry stack storage helps accomplish some of the objectives. He noted that dry stack storage units are becoming more popular because they provide the protection, ease and convenience of a dry shed, and they can accommodate larger boats. It was pointed out that in 1996 due to the snowstorm, changes were made to local building codes to require all future covered moorage structures to support heavier roof loads. This increased costs significantly and took away the option of replacing wood floats with concrete floats and keeping existing roof structures, since they no longer meet code. Therefore, it became apparent during the Comprehensive Master Plan process of concerns about being able to generate enough revenue to cover the costs of building and operation of covered moorage for smaller boats. This led to the idea of dry stack storage.

Harbormaster Dusenbury displayed 4 dry stack storage concepts noting the following:

Concept C Existing Dry Shed Site:

- would stack 162 boats, two high
- interior wash-down areas
- some exterior storage lockers
- some outside racks

Drawbacks:

- boats moving out to launch site on west side would conflict with traffic to N and M docks
- would conflict with public launching

Preliminary revenue estimates are about $300,000 per year

Upon questioning by Councilmember White, Harbormaster Dusenbury advised that the use of the existing dry shed site, was not talked about with the Municipal Facilities Committee since the last Council election.

Concept D Existing Dry Shed Site:

- would stack 152 boats, two high
- wash-down areas are inside
- contains lockers
- minimize traffic conflicts, doors on north side

Drawbacks:

- would preclude any public launching
- would require wider area than current dry sheds footprint

Preliminary revenue estimates would be about $280,000 - $300,000.

Mayor Steenrod noted that the current Municipal Facilities Committee has never seen concepts C and D and questioned why they were not shown to them.

Councilmember Wasson advised that the previous Municipal Facilities Committee did review these concepts.

Harbormaster Dusenbury noted that these concepts were rejected because the building costs per boat was excessive. He also noted that stacking 2 high would not be financially sound, that it would have to be 3 or 4 high, and more view impacts would occur. So the idea of building a dry stack facility was tabled until the Quartermaster property became available.

Concept A Quartermaster Property:

- Would store the most boats
- Revenue estimates $200,000 a year
- Boats stacked 3 or 4 high
- Has fewer view impacts

Drawbacks:

- Closer to neighbors on both the north and south

Concept B Quartermaster Property:

- Building is shorter, but extends further out from bank
- Building to allowable heights, boats stacked 3 or 4 high
- Access north, south and an interior space
- Further from neighbors
- Revenue estimates $200,000 a year

Drawbacks:

- More view impacts than Concept A

Harbormaster Dusenbury noted that the current dry sheds generate about $150,000 a year. He noted however, that should the dry shed area be used, it would free up the Quartermaster property for other development that could raise revenue. In conclusion he advised that expanding the dry shed capacity accomplishes the foremost goal of providing affordable moorage for small boat owners in the future and for increasing Marina revenues.

Councilmember Thomasson addressed the issue of where to place the proposed dry stack storage. He noted Council has heard from the residents to the north who seem to recommend building two stories where the existing dry sheds are located, which would put it in front of other neighbors. He felt that in terms of impacts to the neighborhood, the recommended Concept A seems to have the least impacts for the most people. He noted however, that he is somewhat disappointed in that these drawings to not seem to reflect the architectural concept that was shown to Council earlier in the process. These drawings appear to look like open carports.

Harbormaster Dusenbury pointed out that these drawings do not show the roofing and cladding. He advised that the building would have by-passing doors on the front, and will be enclosed on all four sides.

Councilmember Thomasson stated that 15 roll-up garage doors is not the image that was talked about when the Plan was adopted. He felt this concept will be more disruptive and he does not feel that those who voted for the Master Plan would have, if this particular concept had been shown.

Harbormaster Dusenbury responded that trying to balance view impacts, operational impacts and just what could be done with the site, these were the two concepts that would give the most capacity with the least amount of view impacts.

Councilmember Thomasson stated that he cannot support this concept as it does not comply with the essentials of the Marina Master Plan.

Harbormaster Dusenbury advised that staff is looking for direction to pursue an alternative. He noted this will still take a full blown Shoreline Permit so there will be plenty of opportunity for further comments and will require another public hearing. He commented that given the constraints of the site, an interior aisle is not possible.

Councilmember Thomasson felt that Council may need to go back and review the Master Plan.

Mayor Steenrod advised that the Committee has reviewed ideas to make the building aesthetically pleasing, realizing the impacts on the environment. She stated that Concept A was chosen partly because it provided the least disruption and impact upon the neighbors.

Mayor Pro Tem Benjamin suggested that it may be time to step back and review the idea of dry storage. He felt that the Quartermaster property is a prime piece of real estate and Council should not be in a rush to put such an industrial application in a residential neighborhood. He also felt that moving boats from one end of the Marina to the other end does not make sense and the application does not fit.

10:28 p.m. **MOTION** was made by Mayor Pro Tem Benjamin, seconded by Councilmember Petersen, to extend the meeting 5 minutes. Motion passed.

Mayor Pro Tem Benjamin questioned whether dry stack storage would be the highest and best use of the land. He would say no.

Mayor Steenrod stated that due to the lateness of the meeting, she will continue this discussion item to the February 6, 2003 meeting. She expressed surprise over seeing concept drawings that the Municipal Facility Committee and never seen. She requested that when packets are prepared that states that a Committee concurs with the information in the packet, that there be no surprises.

Remaining Agenda Items Not Discussed

MOTION was made by Councilmember Thomasson, seconded by Councilmember Wasson, that all remaining agenda items be continued to appropriate meeting dates as determined by the Mayor and City Manager. Motion passed unanimously.

NEXT MEETING DATE - Study Session February 6, 2003

ADJOURNMENT

10:33 p.m. **MOTION** was made by Councilmember Wasson, seconded by Councilmember Petersen and passed unanimously, to adjourn.

Respectfully submitted,

Denis Staab
City Clerk

CONSENT CALENDAR
Item #8

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Property Acquisition for Pacific Highway South Project (Benzel & Cerna/Mom & Dad's)

ATTACHMENTS: Consent Judgment & Decree of Appropriation

FOR AGENDA OF: February 13, 2003

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: February 7, 2003

CLEARANCES:
[X] Legal

APPROVED BY CITY MANAGER FOR SUBMITTAL: CTL for TP

PURPOSE AND RECOMMENDATION

This report is to seek City Council approval for the acquisition of right-of-way property, a temporary construction easement, and a slope easement for the Pacific Highway South Improvement Project.

It is recommended that the council:

1. Approve the "Consent Judgment & Decree of Appropriation" in King County Superior Court Cause No. 02-2-19404-4 KNT, which provides for acquisition by the City, for $41,011.00, of right-of-way property, a slope easement, and a temporary construction easement, all of which are necessary for the Pacific Highway South Improvement Project; and

2. Authorize the City Attorney to approve and present to the court, for approval and entry, the "Consent Judgment & Decree of Appropriation" substantially in the form as submitted.

SUGGESTED MOTION: "I move to approve the "Consent Judgment & Decree of Appropriation" in King County Superior Court Cause No. 02-2-19404-4 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.

BACKGROUND

On July 11, 2002, the City Council, through the exercise of its powers of eminent domain, enacted Ordinance No. 1304 for the acquisition of right-of-way property for the Pacific Highway South Improvement Project and directed the City Attorney to initiate court proceedings to carry out such acquisition. This court action is pursuant to such direction and the proposed "Consent Judgment & Decree of Appropriation" is a product of settlement negotiations with the property owners and their attorney and advisors.

DISCUSSION

This "Consent Judgment & Decree of Appropriation" provides for the acquisition in fee of a strip of right-of-way, (approx. 915 square feet), a slope easement for construction and maintenance of excavation and/or embankment walls and slopes (approx. 2,074 square feet) and a temporary construction easement, all of which are necessary for the development and construction of the Pacific Highway South Improvement Project, for a total of $41,011.00 including attorney and appraisal fees.

ALTERNATIVES

There are the following alternatives:

1. Approve the Consent Judgment and Decree and authorize the City Attorney to approve and present it to the court.

2. Do not approve the Consent Judgment and Decree and direct the City Attorney to continue to negotiate and/or litigate.

FINANCIAL IMPACT

Considering the fair market value appraisal of the property, the unusual facts and circumstances of this particular property, the uncertainties of continuing litigation, , and the expenses of alternative methods of roadway construction, this is a fair settlement and probably the least expensive way for the City to acquire this property and easements.

RECOMMENDATION

The City Attorney recommends the approval of this "Consent Judgment and Decree of Appropriation" as the most efficient and cost effective method of acquiring the subject property and easements.

SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

City of Des Moines, a Municipal Corporation, Petitioner, vs. Larry V. Benzel and Linda D. Benzel, Husband & Wife; and Carlos Cerna, a single man, Respondents	Case No: 02-2-19404-4 KNT Consent Judgment and Decree of Appropriation

SUMMARY OF JUDGMENT
(RCW 4.64.030)

Judgment Creditor	Larry V. Benzel and Linda D. Benzel, Husband & Wife; and Carlos Cerna, a single man
Attorney for Judgment Creditor	Thomas F. Peterson (WSBA # 16587)
Judgment Debtor	City of Des Moines, a Washington Municipal Corporation
Principal Judgment Amount	$41,011.00
Pre-judgment Interest	None
Post-judgment Interest	None, the Petitioner/City has deposited the amount of the judgment into the registry of the court on or before the date of this judgment
Attorney Fees	Included in the Principal Judgment Amount
Expert Fees	Included in the Principal Judgment Amount
Total Judgment Amount	$41,011.00
Real Property Awarded	Ptn SWSE/09-22-04
Assessor's Tax Parcel Number(s)	2156400221

STIPULATED JUDGMENT & DECREE

This matter has come before this court by stipulation of the parties upon the petition of the petitioner, City of Des Moines, seeking:

Office of the Des Moines City Attorne
21630 11th Ave. South, Suite
Des Moines WA 9819
Tel: 206-870-655
Fax: 206-870-438

1. A determination of just compensation to be paid to the owners and all other persons interested in the subject property for the taking and appropriation of the subject property, a slope easement and a temporary construction easement;

2. A judgment and decree of the Court providing for payment of the just compensation so determined; and

3. A decree of appropriation vesting title to the subject property in the petitioner together with slope easement and temporary construction easement rights.

The court has previously entered an adjudication of public use and necessity declaring that the use for which the subject property is sought is a public use and declaring that there is a necessity for such appropriation.

The parties, through their attorneys, have stipulated and approved this Consent Judgment and Decree of Appropriation. The petitioner is represented by the City Attorney for the City of Des Moines. The respondents are represented by their attorney, Thomas F. Peterson.

The petitioner has, on or before the date of this judgment, deposited the full amount of the consent judgment into the registry of the court.

NOW, THEREFORE, in accordance with the parties' stipulation and agreement, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. The sum of $41,011.00 represents the total just compensation for the subject property, the slope easement and the temporary construction easement;

2. The above sum also includes just compensation for respondents' reasonable attorney fees and appraisal fees;

3. The petitioner, City of Des Moines, is granted the right to appropriate, use and take the following described property (the subject property):

A portion of that property described in instrument recorded under Number 8201050239, records of King County, Washington, described as follows:

Beginning at the northeast corner of the above said parcel, being 50.00 feet west of the center line of Pacific Hwy South SR(99) from which a radius point bears North 84°34'59" East; thence parallel with and 50.00 feet west of said center line along a 5779.58-foot radius curve to the left with a central angle of 0°45'41" an arc distance of 76.79 feet to the southeast corner of said property; thence along the south line of said property North 88°27'36" West a distance of 34.40 feet; thence North 42°07'47" East a distance of 36.37 feet to

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a point on a non-tangent curve 57.00 feet west of said center line from which a radius point bears North 84°06'25" East; thence parallel with and 57.00 feet west of said center line along a 5786.58-foot radius curve to the right with a central angle of 0°29'04" an arc distance of 48.93 feet to the north line of said property; thence along said north line South 88°26'52" East a distance of 7.05 feet to the Point of Beginning, **containing 915 square feet**, more or less.

All of the right, title and interest in and to the above described subject property shall be and is hereby vested in the petitioner, City of Des Moines, in fee simple absolute.

4. The petitioner, City of Des Moines, is also awarded and granted a temporary construction easement over the following described property (the temporary construction easement property):

Tax Parcel No. 2156400221

That portion of the south half of the northeast quarter of the southwest quarter of the southeast quarter of Section 9, Township 22 North, Range 4 East, W.M., in King County, Washington, lying west of State Highway No. 1 and north of Vashon Street (South 222nd Street).

The terms of the temporary construction easement are as follows:

a. The temporary construction easement shall allow the City, its contractors, employees, agents, successors and assigns, the right of ingress and egress to enter upon the land subject to the temporary easement as required to complete the construction work, to place personnel and equipment, and to reconstruct roadway access;

b. The temporary construction easement shall allow the City, its contractors, employees, agents, successors and assigns the right to demolish and remove the existing building located on or near the slope easement property;

c. The City shall, to the extent possible, leave the property in as good condition as existed on the day construction commences. This shall include the timely removal of any and all debris, rubbish or combustible material resulting from construction activities;

d. The temporary construction easement shall remain in force during construction and until such time as the street improvements have been accepted for operation and maintenance by the City, but not later than January 1, 2005;

e. The City, its agents and assigns, will notify the respondent of its construction schedule, and will, to the full extent possible, schedule the construction activity so as to minimize any inconvenience to the property;

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f. The City shall indemnify and hold the respondent harmless against and from all liability for losses, damages and expenses on account of damage to property or injury to persons resulting from or arising out of the easement rights.

5. The petitioner, City of Des Moines, is also awarded and granted a slope easement, for the purpose of constructing and maintaining roadway wall and slopes in excavation and/or embankment, over, under, upon and across the following described property (the slope easement property):

A portion of that property described in instrument recorded under Number 8201050239, records of King County, Washington, described as follows:

Beginning on the north line of the above said parcel, being 57.00 feet west of the center line of Pacific Hwy South (SR99) from which a radius point bears North 84°35'29" East; thence parallel with and 57.00 feet west of said center line along a 5786.58-foot radius curve to the left with a central angle of 0°29'04" an arc distance of 48.93 feet; thence South 42°07'47" West 36.37 feet to a point on the south line of said property; thence North 5°44'53" West 76.79 feet to the north line of said property; thence along said north line South 88°26'52" East 32.24 feet to the Point of Beginning, containing 2073.72 square feet, more or less.

The terms of the slope easement are as follows:

a. The respondents, their heirs, successors or assigns, shall not perform any excavation nor disturb the soil in any manner within the easement area unless written approval is granted by the Public Works Director of the City of Des Moines;

b. Any proposals for excavation in this area must be submitted in writing to the Public Works Director of the City of Des Moines. Such proposals shall be stamped by a professional engineer licensed in the State of Washington, and shall include an analysis of the support structure for the City's roadway;

c. Approval by the Public Works Director of the City of Des Moines shall not be unreasonably withheld.

d. In the event that respondents, their heirs, successors or assigns, shall place an embankment upon the area covered by this slope easement to the level of the grade of the roadway abutting thereon, as approved and accepted by the Public Works Director of the City of Des Moines, all rights of the petitioner, City of Des Moines, herein shall cease and terminate.

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6. All other claims, counterclaims and causes of action alleged herein shall be and are hereby dismissed with prejudice.

DONE IN OPEN COURT this _____ day of ________________, 2003

____
Judge/Court Commissioner

Presented by:

____
Richard S. Brown (WSBA # 1985)
Assistant City Attorney
City of Des Moines

Stipulated for Entry,
Agreed to as to form and content; and
Notice of Presentation Waived by:

____
Thomas F. Peterson, (WSBA # 16587)
Attorney for Respondents

Office of the Des Moines City Attorne
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Des Moines WA 9819
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Fax: 206-870-438

AGENDA ITEM

SUBJECT: Purchase of Property for Pacific Highway Project	AGENDA OF: February 13, 2003
ATTACHMENTS: A. Purchase & Sale Agreement - (Pawn Exchange) B. Acquisition Map-Parcel 44 C. Project Map	DEPT. OF ORIGIN: Public Works
	DATE SUBMITTED: February 5, 2003
	CLEARANCES: [X] Finance P.a. Henderson [X] Public Works [X] Legal
	APPROVED BY CITY MANAGER FOR SUBMITTAL: CTL for TP

Purpose and Recommendation:

The purpose of this report is to seek City Council approval for purchase of right-of-way along SR 99 for the Pacific Highway South Redevelopment Project.

Suggested Motion

The following motion will appear on the Consent Calendar:

1) "I move to purchase 924 square feet of land and improvements from DBJ Properties, LLC in the amount of $252,000.00 plus closing costs, and further to authorize the City Manager to sign the Purchase and Sale Agreement substantially in the form as submitted."

Background:

The Pacific Highway South Redevelopment Project requires right-of-way purchases along SR 99 from Kent Des Moines Road to South 216th Street as well as three full lots for detention ponds. The City Council has previously approved proceeding with purchasing the required property. Because the project is funded through federal, state and local grants, there are special procedures for obtaining the needed properties. An appraisal is prepared for each property by our consultant appraiser. A state-certified independent review appraiser reviews the appraisal, then offers are made for the appraised value of the property. There are 50 parcels that require purchase of some portion of their right of way. With the purchase of this property, we will have successfully made arrangements for 36 parcels.

Discussion:

The Pacific Highway South Redevelopment Project is scheduled to be advertised for construction this spring. The biggest challenge to this schedule will be obtaining the necessary right-of-way certification from the State and undergrounding utility agreements. In order to meet this challenge, it is imperative that properties be purchased as quickly as possible.

DBJ Properties, LLC, Parcel 44, which is Pawn Exchange at 22862 Pacific Highway South, have agreed to sell 924 square feet of their property including improvements and damages at a price of $252,000.00. Upon approval, staff will proceed with closing.

Alternatives:

There are no viable alternatives that would not result in considerable alteration to the project design or in delay and increased costs to the project. We have already successfully purchased 72% of the properties needed.

Financial Impact:

It is important that this step is taken to minimize continuously escalating costs associated with delay to the project. The purchase prices are consistent with federal, state and city guidelines regarding appraisals and other pertinent factors involved in valuing property in the affected area.

Recommendation/Conclusion:

Staff recommends this motion is approved to ensure that the Pacific Highway South project stays on schedule.

Concurrence:

The Legal Department and City Manager are kept apprised of negotiations and approve all paperwork as required. When specific issues come up that require input by Community Development, we solicit their input. This is a joint effort to improve the conditions along Pacific Ridge.

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is entered into by and between **DBJ PROPERTIES, L.L.C.**, as Seller, and the CITY OF DES MOINES, a Washington municipal corporation, as Buyer.

AGREEMENT

FOR AND IN CONSIDERATION of the mutual promises and covenants contained herein, the sufficiency of which is unconditionally acknowledged by Seller and Buyer, the parties hereto agree as follows:

1. The Property. Seller agrees to sell and Buyer agrees to purchase from Seller the property located at 22862 PACIFIC HIGHWAY SOUTH, Des Moines, WA 98198 (the "Property" or the "Site"), and legally described as follows, on the terms, covenants, and conditions set forth herein:

SEE EXHIBIT "A" ATTACHED HERETO

Situate in the City of Des Moines, County of King, State of Washington.

Tax Parcel # 250060-0226-06

2. Purchase Price and Payment. The total purchase price is **TWO HUNDRED FIFTY TWO THOUSAND and NO/100ths Dollars ($252.000.00)** (the "Purchase Price"), payable as follows: **TWO HUNDRED FIFTY TWO THOUSAND and NO/100ths DOLLARS ($252,000.00)** cash, including earnest money, shall be paid at Closing.

3. Contingencies. This Agreement and the obligations of Buyer hereunder are contingent upon satisfaction or written waiver of all of the conditions as hereinafter set forth.

(a) **Period of Examination.** For a period of Sixty (60) days from Buyer's receipt of a mutually executed copy of this Agreement (the "Period of Examination"), Buyer may examine the Property and conduct such studies of the Property as Buyer shall deem necessary, which shall be conducted at Buyer's sole cost, and which investigations shall include, without limitation, the suitability (economic or otherwise) of the Property in Buyer's sole discretion of the Property for Buyer's intended purposes. Seller, at its expense, shall deliver or cause to be delivered to Buyer true and correct copies of all documents, instruments, and materials relating to the Property including but not limited to any existing surveys, soils reports, and all other leases, contracts, documents, instruments or papers of significance to the Property or which might assist Buyer with its examination of the Property.

(i) **Notice of Intent.** By or before the close of the Period of Examination, Buyer shall provide Seller with Written Notice of Buyer's intent to purchase the Property or terminate this Agreement (the "Notice

ATTACHMENT A

of Acceptance"). Failure to provide such written Notice of Acceptance as required herein shall be conclusively deemed waiver by Buyer of its right to purchase the Property and this Agreement shall immediately become null and void.

(ii) **Right of Entry.** Buyer, its agents and its contractors, shall be entitled to reasonable access to the Property at any time during the Period of Examination and, if Buyer decides to purchase the Property, prior to closing, to conduct its studies. Buyer may disturb the Property as may be required for its tests and studies on condition that to the extent possible such tests and studies shall be nondestructive. Buyer shall indemnify and hold Seller harmless from any liability arising out of Buyer's negligent performance of such tests and studies. However, it is specifically agreed that Buyer shall not be responsible for any cleanup costs, claims, liabilities, or obligations relating to any hazardous waste contamination at the Property that Buyer may uncover during its pre-closing inspections, and Sellers shall indemnify and hold Buyer harmless from any such costs, claims, liabilities, or obligations. The obligations set forth in this section shall survive expiration or termination of this Agreement.

(b) **Seller's Warranties.** The continuing truth and correctness of Seller's representations and warranties contained in this Agreement, and the timely performance by Seller of Seller's covenants, and delivery by Seller to Buyer of all documents or instruments required hereunder.

(c) **Title and Survey.** Buyer's acceptance of title and the survey pursuant to section 5 of this Agreement. Buyer, at any time or times on or before Closing, at its sole election, in order to close, may waive any of the conditions to its obligations hereunder, but any such waiver shall be effective only if contained in a writing signed by Buyer and delivered to Seller.

(d) **Permit Approval for Parking.** Approval by the City of Des Moines of Seller's application for a parking lot development permit to serve Seller's property.

4. **Title.**

(a) **Title Commitment.** Buyer shall, at Buyer's sole cost and within five (5) days of the mutual execution of this Agreement, order a Preliminary Title Report from Pacific Northwest Title Company, to be delivered directly to Buyer (the "Report"), for the Property together with copies of all documents supporting exceptions (the "Exceptions") set forth in the Report. Buyer may, at Buyer's sole cost and expense, order an ALTA survey of the Property, certified to Buyer and Title Company, having all corners marked and all other easements and utilities delineated in the Survey (the "Survey"). After execution of this Agreement, Seller shall not alter the condition of title except as to remove any defects of title.

(b) **Title Exceptions.** Buyer shall have thirty (30) calendar days from receipt of the Report and any Survey within which to give written notice to Seller of Buyer's disapproval of any Special Exceptions. For purposes of this Agreement, "Special Exceptions" means the special exceptions to title set forth in the Preliminary Title Commitment or the Survey, which relate to restrictions, conditions, defects or other matters, which would interfere with Buyer's intended use of the Property. The written notice shall state with specificity those Special Exceptions to which objection is being made. Buyer's failure to specifically enumerate such Special Exceptions within such written notice or Buyer's failure to provide such written notice shall be conclusively deemed Buyer's waiver and/or approval of all Special Exceptions. Buyer hereby approves those standard exceptions commonly and ordinarily found in commitments or title binders for standard coverage fee owner policies.

(c) **Seller's Cure of Objections.** Seller shall have until closing to cure such objections to Special Exceptions or have the Special Exceptions waived or removed by the Title Company issuing the commitment. If, within such period, Seller fails to cure and/or have waived such objections to Special Exceptions, or within such period Seller delivers written notice to Buyer that it will not so cure, then, within ten (10) days from the delivery of such notice or the end of the period for cure, whichever is first, Buyer shall have the option to:

(i) Agree in writing to extend the period of time in which Seller may cure such Objections and/or Exceptions; or

(ii) Purchase the Property subject to such objections to Special Exceptions with no diminution in the Purchase Price; or

(iii) Terminate this Agreement, in which event all sums paid or deposited by Buyer shall be returned to Buyer. Buyer's failure to respond to Seller in writing shall be conclusively deemed an election of its right to terminate this Agreement.

(d) **Condition of Title.** Seller covenants to convey the Property in a condition to be insured by Pacific Northwest Title Company, (hereinafter "Title Company") as hereinafter provided. Closing shall be conditioned upon Title Company issuing or committing to issue to Buyer a Washington Land Title Association standard or extended form Owner's Policy of Title Insurance in the amount of the Purchase Price insuring a fee interest in the Property in Buyer free and clear of all matters except Special Exceptions permitted or waived by Buyer, the lien of current real property taxes not yet due and payable, and those matters excluded from coverage by the printed exceptions and exclusions in the form of title insurance policy required herein.

5. <u>Closing</u>.

(a) **Escrow.** Closing this Purchase and Sale Agreement shall occur through an escrow (the "Escrow") with the Title Company when Title Company is in a position to issue the Title Policy and all documents and funds have been deposited with Title Company.

(b) **Deposit of Closing Documents.**

(i) **Seller.** On or before the Date of Close of Escrow, Seller shall duly execute and deposit into Escrow with Closing Agent:

(A) A Statutory Warranty Deed (the "Deed"), in form and substance acceptable to Buyer for the Property together with an accompanying Real Estate Excise Tax Affidavit; and

(B) Such assignments, bill of sale, and/or other transfer instruments, in form and substance acceptable to Buyer, sufficient to transfer to Buyer all of Seller's right title and interest in any and all leases contracts, licenses, or other documents or instruments relating to the Property.

(C) An Affidavit of Non-Foreign Status required by Title Company in connection with section 1445(e) of the Internal Revenue Code.

(ii) **Buyer.** On or before the Date of Close of Escrow, Buyer shall deposit the following:

(A) TWO HUNDRED FIFTY TWO THOUSAND AND NO/100ths Dollars ($252,000.00), constituting the Purchase Price.

(B) Additional cash in an amount necessary to pay closing costs, title insurance, and prorations set forth herein.

(c) **Closing Costs and Prorations.** At Closing, Seller shall pay all prorated real property taxes due and payable and brokerage commissions. Buyer shall pay all other closing expenses, including Escrow fees and charges, title insurance, and the cost of recording the Deed. All property taxes, and utilities, shall be prorated between Seller and Buyer as of Closing. The real property taxes shall be prorated using the most recent tax information available. The utilities shall be prorated by the parties outside of Escrow.

(d) **Procedure.** Closing Agent shall close Escrow as follows:

(i) Prepare a Real Estate Excise Tax Affidavit showing that the sale of the Property is to a governmental entity "made under threat of or exercise of eminent domain", and record the Deed with instructions for the county recorder to deliver the Deed to the Buyer; and

(ii) Pay the Purchase Price to Seller, reduced by prorations; and

(iii) Deliver the executed Affidavit of Non-Foreign Status to Buyer; and

(iv) Forward to Buyer and Seller, in duplicate, a separate accounting of all funds received and disbursed for each party and copies of all executed and recorded or filed documents deposited into Escrow, with such recording and filing date endorsed thereon.

(e) **Incorporation of Escrow Instructions.** This Agreement shall serve as escrow instructions, and an executed copy of this Agreement shall be deposited by Buyer with Closing Agent following execution hereof. The parties may execute additional escrow instructions, provided such additional instructions do not change the terms of this Agreement.

6. <u>Possession</u>. Buyer is entitled to possession of the Property on the date of closing.

7. <u>Seller's Warranties</u>. Seller represents and warrants the following to Buyer:

(a) Seller has the power, right, and authority to make this Agreement with Buyer;

(b) Seller is not in default and will not during the term of this Agreement default or permit a default to exist on any of its obligations under any real estate contract, lease, mortgage, or deed of trust affecting any portion of the Property;

(c) Seller is and shall be entitled to terminate on or before the date of closing and without breach of any agreement the rights of all parties who are not a party to this Agreement and who are entitled to possession of any part of the Property;

(d) Seller has good and marketable title to all of the Property;

(e) There are no pending zoning changes of the Property or any change to any easements or utilities relating to the Property;

(f) There are no material defects in the Property;

(g) All persons and corporations supplying labor, materials, and equipment to the Property have been paid and there are no claims of liens;

(h) There are no current assessments for public improvements against the Property or any local improvement district or other taxing authority having jurisdiction over the Property in the process of formation;

(i) The property has legal access to all streets adjoining the Property; and

(j) There are no claims, defects, or boundary disputes affecting the Property; and no person claims any right to possession to the Property or any portion thereof adverse to Seller.

The warranties and representations set forth in this section will be deemed to have been made again, on the Date of Closing, and will continue to be true, complete, and correct as of the Closing.

8. Hazardous Material Provisions.

(a) **Definition.** The term "hazardous waste or materials or substances" as used in this Agreement is used in its very broadest sense and includes, but is not limited to, materials and substances designated as hazardous under any federal, state, or local act or ordinance.

(b) **Seller's Representations.** Seller represents that it has not received notification of any kind from any agency suggesting that the Property is or may be targeted as a Superfund or clean up site. Seller represents that, Seller does not keep, use, or dispose of, and Seller has not permitted anyone else to keep, use, or dispose of, whether permanently or temporarily, on the Property, any hazardous waste or materials or substances, and has no reason to believe or suspect that Seller or any other person or entity has kept, used, or disposed of, either temporarily or permanently, any hazardous waste or materials or substances on the Property. Except as set forth below in section 9(c), Seller represents that Seller has not conducted any test or studies to specifically determine whether any hazardous waste or materials or substances existed on the Property prior to Seller's ownership or as of the date of this Agreement.

(c) **Fuel Tanks on the Property.** If Sellers or Buyer has determined that various tanks and soil and/or ground water contamination are in existence below ground level on the Property, Sellers agree, at their sole cost and expense, to remove the tanks and provide for all associated remediation of any and all contaminated soils caused by the tanks or any other source to the satisfaction of Buyer and to a level which is acceptable to the appropriate regulating agency which is responsible for such matters. The work shall be completed prior to closing. Sellers shall diligently pursue the completion of such removal of such tanks and the remediation of any soil or ground water contamination. Sellers agree to comply with all applicable laws, statutes, rules, regulations, and ordinances in completing its work under this section. In the event Sellers refuse to perform such removal and remediation, Buyer may terminate this Agreement, in which event all sums paid or deposited by the Buyer shall be returned to the Buyer.

(d) During the period of examination, Buyer shall determine the cost of the remediation of hazardous contaminants on the Property. If Buyer determines that the cost of such remediation is TWENTY THOUSAND AND NO/100 DOLLARS ($20,000.00) or less, Buyer shall be responsible for cleanup and this sale shall close. If Buyer determines that such cost of cleanup exceeds TWENTY THOUSAND AND NO/100 DOLLARS

($20,000.00), Buyer may, at Buyer's option, terminate this Agreement, and the Earnest Money shall be returned to Buyer.

9. **Remedies.**

(a) **Seller's Default.** In the event Seller defaults in fulfilling its obligations under this Agreement, Buyer shall be entitled to all remedies at law or equity including without limitation the right to enforce specific performance of this Agreement against Seller.

(b) **Buyer's Default.** In the event Buyer fails, without legal excuse, to complete the purchase, or otherwise defaults under the terms of this Agreement, the Deposit shall be forfeited to the Seller as the sole and exclusive remedy available to the Seller for such failure and default.

10. **Eminent Domain.** Buyer confirms that in the event Seller fails or declines to execute this Purchase and Sale Agreement, it will be the intention of Buyer to exercise its rights under the laws of the State of Washington to acquire the Property by eminent domain.

11. **Risk of Loss; Insurance.** Risk of loss of or damage to the Property shall be borne by Seller until the date of closing. Thereafter, Buyer shall bear the risk of loss. In the event of material loss of or damage to the Property prior to the date of closing, Seller shall not be obligated to restore the Property nor pay damages to Buyer by reason of such loss or damage, and Buyer may terminate this Agreement by giving notice of such termination to Seller and Closing Agent, and such termination shall be effective and the Deposit shall be refunded ten (10) days thereafter; provided, however, that Buyer may elect to purchase the Property in the condition existing on the date of closing and on closing Seller shall assign to Buyer the proceeds of any policy of insurance carried by or for the benefit of Seller covering any loss or damage to the Property occurring after the date hereof and prior to the closing date. Seller will submit an insurance claim and use its best efforts to obtain insurance proceeds. On closing Seller will pay to Buyer, outside of escrow, the entire amount of insurance proceeds received prior to closing from such claim.

12. **Notices.** Except as specifically set forth herein, any demand, request or notice which either party hereto desires or may be required to make or deliver to the other shall be in writing and shall be deemed given when personally delivered, or when delivered by private courier service (such as Federal

Express), or three days after being deposited in the United States Mail first class, postage prepaid and addressed as follows:

(a) Seller's Addresses:

Mr. Bradley E. Shain
DBJ Properties, LLC
16625 Redmond Way PMB 448
Redmond WA 98052

(b) Buyer's Address:

City of Des Moines
21630 11th Avenue South
Des Moines, WA 98198

The foregoing addresses may be changed by written notices to the other party as provided herein.

13. **Time.** Time is of the essence in every provision herein contained.

14. **Seller's Period of Acceptance.** Seller shall have twenty-one (21) days from the date of delivery of this instrument to Seller's Agent to accept this offer by written signature. In the event Seller does not accept this offer within the 21-day period, the offer will be considered withdrawn, and this Agreement will be null and void. Buyer, and only Buyer, may waive this 21-day limitation.

15. **Approval by the Des Moines City Council.** The parties to this Purchase and Sale Agreement understand that this Agreement shall not be binding on the Buyer until approved by the Des Moines City Council in an open public meeting.

16. **Binding Agreement.** This Agreement shall inure to the benefit of and be binding upon the heirs, personal representative, successors, and assigns of the parties hereto.

17. **Attorneys' Fees.** In the event of any litigation regarding the rights and obligations of the parties under this Agreement, the prevailing party shall recover its costs and attorneys' fees, including such costs and attorneys' fees for appeals.

18. **Survival of Warranties.** The terms, covenants, warranties, and representations contained in this Agreement shall not merge with the deed of conveyance, but shall continue and survive closing.

19. **Entire Agreement.** This Agreement contains the entire understanding between the parties and supersedes any prior understandings and agreements between them regarding the subject matter hereof. There are no other representations, agreements, or understandings, oral or written, between the parties hereto relating to the subject matter of this Agreement. No

amendment of, or supplement to, this Agreement shall be valid or effective unless made in writing and executed by the parties hereto.

20. **Seller's Covenants Pending Closing.** Seller covenants for the benefit of and agrees with Buyer that, pending Closing, Seller shall not do or permit to be done any of the following other than in the ordinary course or operation of the Property and without in each case securing Buyer's prior written consent, which consent shall not be withheld unreasonably; enter into any lease or rental agreement for the Property; make any agreements or commitments relating to the maintenance, repair, replacement or operation of the Property for a period extending beyond Closing; or commence or continue any construction affecting the improvements other than ordinary maintenance and repair. Seller shall cooperate with Buyer in all matters relating to Buyer's intended use of the Property.

IN WITNESS WHEREOF, the parties hereto have executed one or more copies of this Agreement to be effective on the date of final signature.

Dated: 2/6/03

SELLER:

DBJ Properties, LLC

By ______________
Bradley E. Shain
Its Manager

Dated: ______________

BUYER:

CITY OF DES MOINES,
A Washington municipal corporation

By: ______________
Anthony A. Piasecki
Its City Manager

APPROVED AS TO FORM:

____
Linda A. Marousek
City Attorney

At the direction of the Des Moines City Council taken at an open public meeting on ______________.

CONTRACT:

"EXHIBIT A"

FEE SIMPLE ACQUISITION FROM PARCEL NO 2500600226

A portion of that property as described in instrument recorded under Recording Number 9501301272, records of King County, Washington, being described as follows:

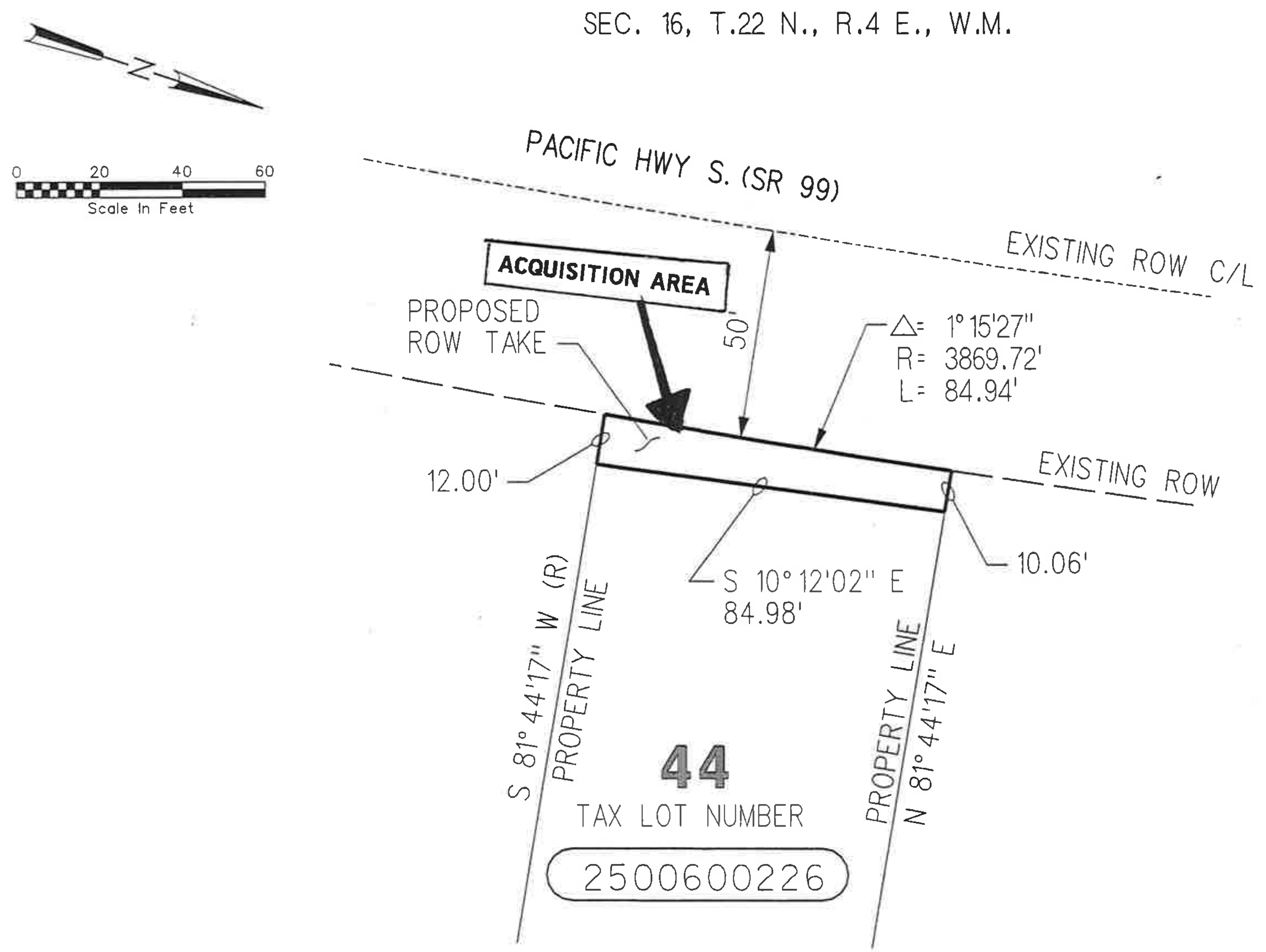
Beginning at the southwest corner of above said parcel, being 50.00 feet east of the center line of Pacific Hwy South SR(99), and from which a radius point bears South 81° 44′ 17″ West; thence parallel with and 50.00 feet east of said center line along a 3869.72-foot radius curve to the left with a central angle of 1° 15′ 27″ an arc distance of 84.94 feet to the north line of said parcel; thence along said north line North 81° 44′ 17″ East a distance of 10.06 feet; thence South 10° 12′ 02″ East a distance of 84.98 feet to the south line of said parcel; thence along said south line South 81° 44′ 17″ West a distance of 12.00 feet to the Point of Beginning, containing 922 square feet, more or less.

2/06/2002

JERRY G. MORRIS
STATE OF WASHINGTON
16?
REGISTERED
PROFESSIONAL LAND SURVEYOR
EXPIRES 09/02/2002

Original signature made with blue ink.

ATTACHMENT B



PREPARED BY: EWH DATE 5-10-01
CHECKED BY: JGM DATE 5-10-01
REVISED BY: GCB DATE 7-12-01

FOR INFORMATION PURPOSES ONLY
THIS DRAWING IS NOT A RECORD OF
SURVEY NOR MEETS MINIMUM STANDARDS

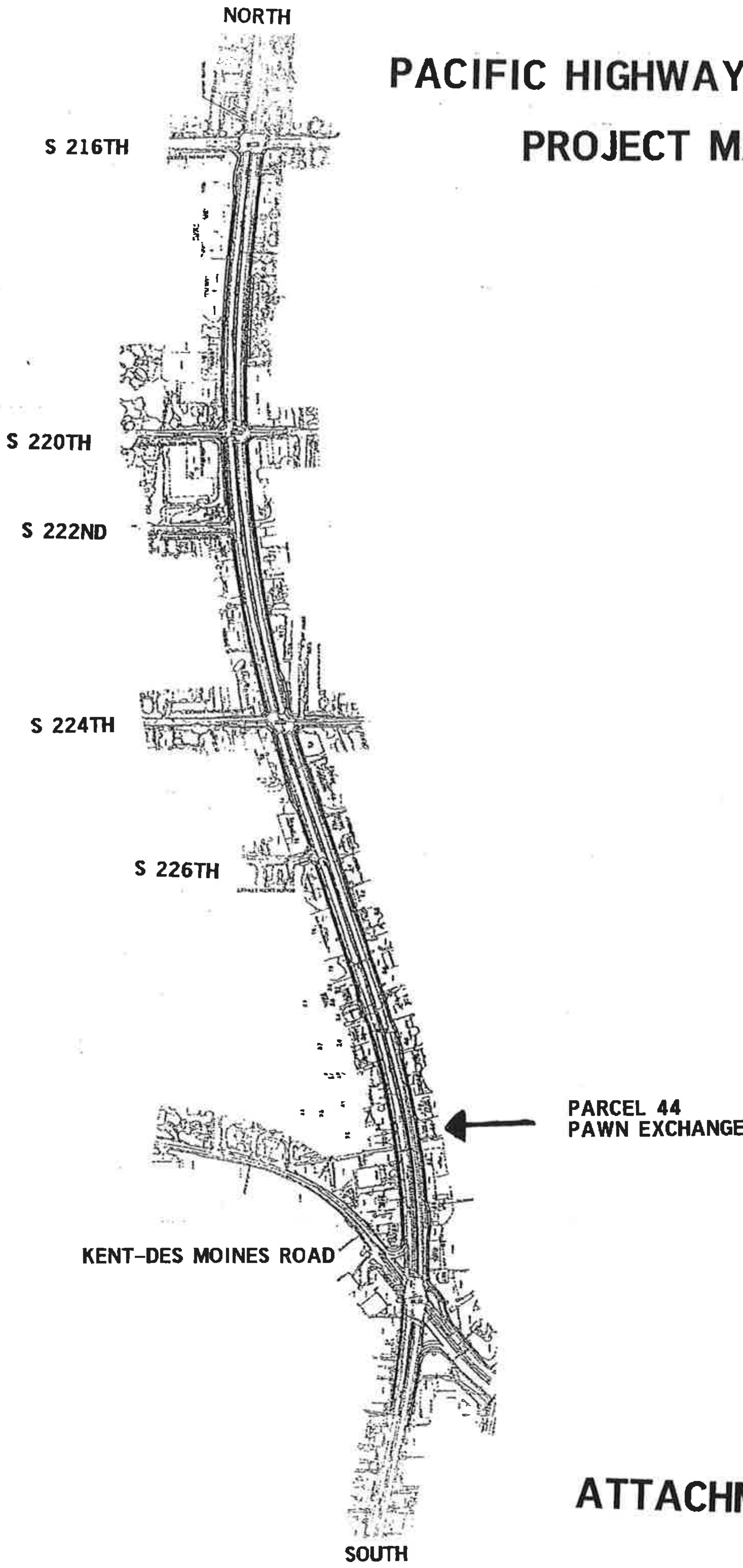
EXHIBIT MAP

CH2MHILL

FILE NAME: parc44.dlv

05-FEB-2002 17:33:00

PACIFIC HIGHWAY SOUTH
PROJECT MAP



ATTACHMENT C

CONSENT CALENDAR
Item #3

AGENDA ITEM

SUBJECT: Purchase of Property for Pacific Highway Project

ATTACHMENTS:

A. Purchase & Sale Agreement - (Cascade Truck)
B. Acquisition Map-Parcel 65
C. Project Map

AGENDA OF: February 13, 2003

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: February 3, 2003

CLEARANCES:
[X] Finance PatAnderson
[X] Public Works
[X] Legal CAM

APPROVED BY CITY MANAGER FOR SUBMITTAL: CTL for TP

Purpose and Recommendation:

The purpose of this report is to seek City Council approval for purchase of right-of-way along SR 99 for the Pacific Highway South Redevelopment Project.

Suggested Motion

The following motion will appear on the Consent Calendar:

1) "I move to purchase 2513 square feet of land and improvements from Mark D. and Shannon L. Johnson in the amount of $55,732.00 plus closing costs, and further to authorize the City Manager to sign the Purchase and Sale Agreement substantially in the form as submitted."

Background:

The Pacific Highway South Redevelopment Project requires right-of-way purchases along SR 99 from Kent Des Moines Road to South 216th Street as well as three full lots for detention ponds. The City Council has previously approved proceeding with purchasing the required property. Because the project is funded through federal, state and local grants, there are special procedures for obtaining the needed properties. An appraisal is prepared for each property by our consultant appraiser. A state-certified independent review appraiser reviews the appraisal, then offers are made for the appraised value of the property. There are 50 parcels that require purchase of some portion of their right of way. With the purchase of this property, we will have successfully made arrangements for 33 parcels.

Discussion:

The Pacific Highway South Redevelopment Project is scheduled to be advertised for construction this spring. The biggest challenge to this schedule will be obtaining the necessary right-of-way certification from the State and undergrounding utility agreements. In order to meet this challenge, it is imperative that properties be purchased as quickly as possible.

Mr. and Mrs. Johnson, Parcel 65, which is Cascade Truck at 22002 Pacific Highway South, have agreed to sell 2513 square feet of their property including improvements at a price of $55,732.00. Upon approval, staff will proceed with closing.

Alternatives:

There are no viable alternatives that would not result in considerable alteration to the project design or in delay and increased costs to the project. We have already successfully purchased 66% of the properties needed.

Financial Impact:

It is important that this step is taken to minimize continuously escalating costs associated with delay to the project. The purchase prices are consistent with federal, state and city guidelines regarding appraisals and other pertinent factors involved in valuing property in the affected area.

Recommendation/Conclusion:

Staff recommends this motion is approved to ensure that the Pacific Highway South project stays on schedule.

Concurrence:

The Legal Department and City Manager are kept apprised of negotiations and approve all paperwork as required. When specific issues come up that require input by Community Development, we solicit their input. This is a joint effort to improve the conditions along Pacific Ridge.

PURCHASE AND SALE AGREEMENT

Mark D. Johnson + Shannon L. Johnson, Husband & Wife

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is entered into by and between ~~THE HEIRS AND DEVISEES OF PATRICIA J. SEVERSON, DECEASED,~~ as Seller, and the CITY OF DES MOINES, a Washington municipal corporation, as Buyer.

AGREEMENT

FOR AND IN CONSIDERATION of the mutual promises and covenants contained herein, the sufficiency of which is unconditionally acknowledged by Seller and Buyer, the parties hereto agree as follows:

1. The Property. Seller agrees to sell and Buyer agrees to purchase from Seller the property located at 22002 PACIFIC HIGHWAY SOUTH, Des Moines, WA 98198 (the "Property" or the "Site"), and legally described as follows, on the terms, covenants, and conditions set forth herein:

SEE EXHIBIT "A" ATTACHED HERETO

Situate in the City of Des Moines, County of King, State of Washington.

Tax Parcel #215640-0241-09

2. Purchase Price and Payment. The total purchase price is **FIFTY FIVE THOUSAND SEVEN HUNDRED THIRTY TWO and NO/100ths Dollars ($55,732.00)** (the "Purchase Price"), payable as follows: **FIFTY FIVE THOUSAND SEVEN HUNDRED THIRTY TWO and NO/100ths DOLLARS ($55,732.00)** cash, including earnest money, shall be paid at Closing.

3. Contingencies. This Agreement and the obligations of Buyer hereunder are contingent upon satisfaction or written waiver of all of the conditions as hereinafter set forth.

(a) **Period of Examination.** For a period of Sixty (60) days from Buyer's receipt of a mutually executed copy of this Agreement (the "Period of Examination"), Buyer may examine the Property and conduct such studies of the Property as Buyer shall deem necessary, which shall be conducted at Buyer's sole cost, and which investigations shall include, without limitation, the suitability (economic or otherwise) of the Property in Buyer's sole discretion of the Property for Buyer's intended purposes. Seller, at its expense, shall deliver or cause to be delivered to Buyer true and correct copies of all documents, instruments, and materials relating to the Property including but not limited to any existing surveys, soils reports, and all other leases, contracts, documents, instruments or papers of significance to the Property or which might assist Buyer with its examination of the Property.

(i) **Notice of Intent.** By or before the close of the Period of Examination, Buyer shall provide Seller with Written Notice of Buyer's intent to purchase the Property or terminate this Agreement (the "Notice

ATTACHMENT A

of Acceptance"). Failure to provide such written Notice of Acceptance as required herein shall be conclusively deemed waiver by Buyer of its right to purchase the Property and this Agreement shall immediately become null and void.

(ii) **Right of Entry.** Buyer, its agents and its contractors, shall be entitled to reasonable access to the Property at any time during the Period of Examination and, if Buyer decides to purchase the Property, prior to closing, to conduct its studies. Buyer may disturb the Property as may be required for its tests and studies on condition that to the extent possible such tests and studies shall be nondestructive. Buyer shall indemnify and hold Seller harmless from any liability arising out of Buyer's negligent performance of such tests and studies. However, it is specifically agreed that Buyer shall not be responsible for any cleanup costs, claims, liabilities, or obligations relating to any hazardous waste contamination at the Property that Buyer may uncover during its pre-closing inspections, and Sellers shall indemnify and hold Buyer harmless from any such costs, claims, liabilities, or obligations. The obligations set forth in this section shall survive expiration or termination of this Agreement.

(b) **Seller's Warranties.** The continuing truth and correctness of Seller's representations and warranties contained in this Agreement, and the timely performance by Seller of Seller's covenants, and delivery by Seller to Buyer of all documents or instruments required hereunder.

(c) **Title and Survey.** Buyer's acceptance of title and the survey pursuant to section 5 of this Agreement. Buyer, at any time or times on or before Closing, at its sole election, in order to close, may waive any of the conditions to its obligations hereunder, but any such waiver shall be effective only if contained in a writing signed by Buyer and delivered to Seller.

4. <u>Title</u>.

(a) **Title Commitment.** Buyer shall, at Buyer's sole cost and within five (5) days of the mutual execution of this Agreement, order a Preliminary Title Report from Pacific Northwest Title Company, to be delivered directly to Buyer (the "Report"), for the Property together with copies of all documents supporting exceptions (the "Exceptions") set forth in the Report. Buyer may, at Buyer's sole cost and expense, order an ALTA survey of the Property, certified to Buyer and Title Company, having all corners marked and all other easements and utilities delineated in the Survey (the "Survey"). After execution of this Agreement, Seller shall not alter the condition of title except as to remove any defects of title.

(b) **Title Exceptions.** Buyer shall have thirty (30) calendar days from receipt of the Report and any Survey within which to give written notice to Seller of Buyer's disapproval of any Special Exceptions. For purposes of this Agreement, "Special Exceptions" means the special exceptions to title set forth in the Preliminary Title Commitment or the Survey, which relate to restrictions, conditions, defects or other matters, which would interfere with

Buyer's intended use of the Property. The written notice shall state with specificity those Special Exceptions to which objection is being made. Buyer's failure to specifically enumerate such Special Exceptions within such written notice or Buyer's failure to provide such written notice shall be conclusively deemed Buyer's waiver and/or approval of all Special Exceptions. Buyer hereby approves those standard exceptions commonly and ordinarily found in commitments or title binders for standard coverage fee owner policies.

(c) **Seller's Cure of Objections.** Seller shall have until closing to cure such objections to Special Exceptions or have the Special Exceptions waived or removed by the Title Company issuing the commitment. If, within such period, Seller fails to cure and/or have waived such objections to Special Exceptions, or within such period Seller delivers written notice to Buyer that it will not so cure, then, within ten (10) days from the delivery of such notice or the end of the period for cure, whichever is first, Buyer shall have the option to:

(i) Agree in writing to extend the period of time in which Seller may cure such Objections and/or Exceptions for not longer than 60 days; or

(ii) Purchase the Property subject to such objections to Special Exceptions with no diminution in the Purchase Price; or

(iii) Terminate this Agreement, in which event all sums paid or deposited by Buyer shall be returned to Buyer. Buyer's failure to respond to Seller in writing shall be conclusively deemed an election of its right to terminate this Agreement.

(d) **Condition of Title.** Seller covenants to convey the Property in a condition to be insured by Pacific Northwest Title Company, (hereinafter "Title Company"). Closing shall be conditioned upon Title Company issuing or committing to issue to Buyer a Washington Land Title Association standard or extended form Owner's Policy of Title Insurance in the amount of the Purchase Price insuring a fee interest in the Property in Buyer free and clear of all matters except Special Exceptions permitted or waived by Buyer, the lien of current real property taxes not yet due and payable, and those matters excluded from coverage by the printed exceptions and exclusions in the form of title insurance policy required herein.

5. <u>Closing</u>.

(a) **Escrow.** Closing this Purchase and Sale Agreement shall occur through an escrow (the "Escrow") with the Title Company when Title Company is in a position to issue the Title Policy and all documents and funds have been deposited with Title Company.

(b) **Deposit of Closing Documents.**

(i) **Seller.** On or before the Date of Close of Escrow, Seller shall duly execute and deposit into Escrow with Closing Agent:

(A) A Statutory Warranty Deed (the "Deed"), in form and substance acceptable to Buyer for the Property together with an accompanying Real Estate Excise Tax Affidavit; and

(B) Such assignments, bill of sale, and/or other transfer instruments, in form and substance acceptable to Buyer, sufficient to transfer to Buyer all of Seller's right title and interest in any and all leases contracts, licenses, or other documents or instruments relating to the Property.

(C) An Affidavit of Non-Foreign Status required by Title Company in connection with section 1445(e) of the Internal Revenue Code.

(ii) **Buyer.** On or before the Date of Close of Escrow, Buyer shall deposit the following:

(A) FIFTY FIVE THOUSAND SEVEN HUNDRED THIRTY TWO AND NO/100ths Dollars ($55,732.00), constituting the Purchase Price.

(B) Additional cash in an amount necessary to pay closing costs, title insurance, and prorations set forth herein.

(c) **Closing Costs and Prorations.** At Closing, Seller shall pay all prorated real property taxes due and payable and brokerage commissions. Buyer shall pay all other closing expenses, including Escrow fees and charges, title insurance, and the cost of recording the Deed. All property taxes, and utilities, shall be prorated between Seller and Buyer as of Closing. The real property taxes shall be prorated using the most recent tax information available. The utilities shall be prorated by the parties outside of Escrow.

(d) **Procedure.** Closing Agent shall close Escrow as follows:

(i) Prepare a Real Estate Excise Tax Affidavit showing that the sale of the Property is to a governmental entity "made under threat of or exercise of eminent domain", and record the Deed with instructions for the county recorder to deliver the Deed to the Buyer; and

(ii) Pay the Purchase Price to Seller, reduced by prorations; and

(iii) Deliver the executed Affidavit of Non-Foreign Status to Buyer; and

(iv) Forward to Buyer and Seller, in duplicate, a separate accounting of all funds received and disbursed for each party and copies of all executed and recorded or filed documents deposited into Escrow, with such recording and filing date endorsed thereon.

(e) **Incorporation of Escrow Instructions.** This Agreement shall serve as escrow instructions, and an executed copy of this Agreement shall be deposited by Buyer with Closing Agent following execution hereof. The parties may execute additional escrow instructions, provided such additional instructions do not change the terms of this Agreement.

6. Possession. Buyer is entitled to possession of the Property on the date of closing.

7. Seller's Warranties. Seller represents and warrants the following to Buyer:

(a) Seller has the power, right, and authority to make this Agreement with Buyer;

(b) Seller is not in default and will not during the term of this Agreement default or permit a default to exist on any of its obligations under any real estate contract, lease, mortgage, or deed of trust affecting any portion of the Property;

(c) Seller is and shall be entitled to terminate on or before the date of closing and without breach of any agreement the rights of all parties who are not a party to this Agreement and who are entitled to possession of any part of the Property;

(d) Seller has good and marketable title to all of the Property;

(e) There are no known material defects in the Property;

(f) All persons and corporations supplying labor, materials, and equipment to the Property have been paid and there are no claims of liens;

The warranties and representations set forth in this section will be deemed to have been made again, on the Date of Closing, and will continùe to be true, complete, and correct as of the Closing.

8. Hazardous Material Provisions.

(a) **Definition.** The term "hazardous waste or materials or substances" as used in this Agreement is used in its very broadest sense and includes, but is not limited to, materials and substances designated as hazardous under any federal, state, or local act or ordinance.

(b) **Seller's Representations.** Seller represents that it has not received notification of any kind from any agency suggesting that the

Property is or may be targeted as a Superfund or clean up site. Seller represents that, Seller does not keep, use, or dispose of, and Seller has not permitted anyone else to keep, use, or dispose of, whether permanently or temporarily, on the Property, any hazardous waste or materials or substances, and has no reason to believe or suspect that Seller or any other person or entity has kept, used, or disposed of, either temporarily or permanently, any hazardous waste or materials or substances on the Property. Except as set forth below in section 9(c), Seller represents that Seller has not conducted any test or studies to specifically determine whether any hazardous waste or materials or substances existed on the Property prior to Seller's ownership or as of the date of this Agreement.

(c) **Fuel Tanks on the Property.** If Sellers or Buyer has determined that various tanks and soil and/or ground water contamination are in existence below ground level on the Property, Sellers agree, at their sole cost and expense, to remove the tanks and provide for all associated remediation of any and all contaminated soils caused by the tanks or any other source to the satisfaction of Buyer and to a level which is acceptable to the appropriate regulating agency which is responsible for such matters. The work shall be completed prior to closing. Sellers shall diligently pursue the completion of such removal of such tanks and the remediation of any soil or ground water contamination. Sellers agree to comply with all applicable laws, statutes, rules, regulations, and ordinances in completing its work under this section. In the event Sellers refuse to perform such removal and remediation, Buyer may terminate this Agreement, in which event all sums paid or deposited by the Buyer shall be returned to the Buyer.

(d) During the period of examination, Buyer shall determine the cost of the remediation of hazardous contaminants on the Property. If Buyer determines that the cost of such remediation is TWENTY THOUSAND AND NO/100 DOLLARS ($20,000.00) or less, Buyer shall be responsible for cleanup and this sale shall close. If Buyer determines that such cost of cleanup exceeds TWENTY THOUSAND AND NO/100 DOLLARS ($20,000.00), Buyer may, at Buyer's option, terminate this Agreement, and the Earnest Money shall be returned to Buyer. If Buyer determines that such cost of cleanup exceeds TWENTY THOUSAND AND NO/100 DOLLARS ($20,000.00), and elects to proceed with the sale, Seller will have no obligation to reimburse Buyer for clean up costs.

9. Remedies.

(a) **Seller's Default.** In the event Seller defaults in fulfilling its obligations under this Agreement, Buyer shall be entitled to all remedies at law or equity including without limitation the right to enforce specific performance of this Agreement against Seller.

(b) **Buyer's Default.** In the event Buyer fails, without legal excuse, to complete the purchase, or otherwise defaults under the terms of this Agreement, the Deposit shall be forfeited to the Seller as the sole and exclusive remedy available to the Seller for such failure and default.

10. **Eminent Domain.** Buyer confirms that in the event Seller fails or declines to execute this Purchase and Sale Agreement, it will be the intention of Buyer to exercise its rights under the laws of the State of Washington to acquire the Property by eminent domain.

11. **Risk of Loss; Insurance.** Risk of loss of or damage to the Property shall be borne by Seller until the date of closing. Thereafter, Buyer shall bear the risk of loss. In the event of material loss of or damage to the Property prior to the date of closing, Seller shall not be obligated to restore the Property nor pay damages to Buyer by reason of such loss or damage, and Buyer may terminate this Agreement by giving notice of such termination to Seller and Closing Agent, and such termination shall be effective and the Deposit shall be refunded ten (10) days thereafter; provided, however, that Buyer may elect to purchase the Property in the condition existing on the date of closing and on closing Seller shall assign to Buyer the proceeds of any policy of insurance carried by or for the benefit of Seller covering any loss or damage to the Property occurring after the date hereof and prior to the closing date. Seller will submit an insurance claim and use its best efforts to obtain insurance proceeds. On closing Seller will pay to Buyer, outside of escrow, the entire amount of insurance proceeds received prior to closing from such claim.

12. **Notices.** Except as specifically set forth herein, any demand, request or notice which either party hereto desires or may be required to make or deliver to the other shall be in writing and shall be deemed given when personally delivered, or when delivered by private courier service (such as Federal Express), or three days after being deposited in the United States Mail first class, postage prepaid and addressed as follows:

(a) Seller's Addresses:

Patricia J. Severson Estate
c/o Mr. and Mrs. Mark Johnson
864 Northwest Spruce Ridge Drive
Stuart, Florida 34994

(b) Buyer's Address:

City of Des Moines
21630 11th Avenue South
Des Moines, WA 98198

The foregoing addresses may be changed by written notices to the other party as provided herein.

13. **Time.** Time is of the essence in every provision herein contained.

14. **Seller's Period of Acceptance**. Seller shall have twenty-one (21) days from the date of delivery of this instrument to Seller's Agent to accept this offer by written signature. In the event Seller does not accept this offer within the 21-day period, the offer will be considered withdrawn, and this Agreement will be null and void. Buyer, and only Buyer, may waive this 21-day limitation.

15. **Approval by the Des Moines City Council**. The parties to this Purchase and Sale Agreement understand that this Agreement shall not be binding on the Buyer until approved by the Des Moines City Council in an open public meeting.

16. **Binding Agreement**. This Agreement shall inure to the benefit of and be binding upon the heirs, personal representative, successors, and assigns of the parties hereto.

17. **Attorneys' Fees**. In the event of any litigation regarding the rights and obligations of the parties under this Agreement, the prevailing party shall recover its costs and attorneys' fees, including such costs and attorneys' fees for appeals.

18. **Survival of Warranties**. The terms, covenants, warranties, and representations contained in this Agreement shall not merge with the deed of conveyance, but shall continue and survive closing.

19. **Entire Agreement**. This Agreement contains the entire understanding between the parties and supersedes any prior understandings and agreements between them regarding the subject matter hereof. There are no other representations, agreements, or understandings, oral or written, between the parties hereto relating to the subject matter of this Agreement. No amendment of, or supplement to, this Agreement shall be valid or effective unless made in writing and executed by the parties hereto.

20. **Seller's Covenants Pending Closing.** Seller covenants for the benefit of and agrees with Buyer that, pending Closing, Seller shall not do or permit to be done any of the following other than in the ordinary course or operation of the Property and without in each case securing Buyer's prior written consent, which consent shall not be withheld unreasonably; enter into any lease or rental agreement for the Property; make any agreements or commitments relating to the maintenance, repair, replacement or operation of the Property for a period extending beyond Closing; or commence or continue any construction affecting the improvements other than ordinary maintenance and repair. Seller shall cooperate with Buyer in all matters relating to Buyer's intended use of the Property.

IN WITNESS WHEREOF, the parties hereto have executed one or more copies of this Agreement to be effective on the date of final signature.

Dated: 1/27/03

SELLER:

Mark D. Johnson

Shannon L. Johnson

Dated: ______________

BUYER:

CITY OF DES MOINES,
A Washington municipal corporation

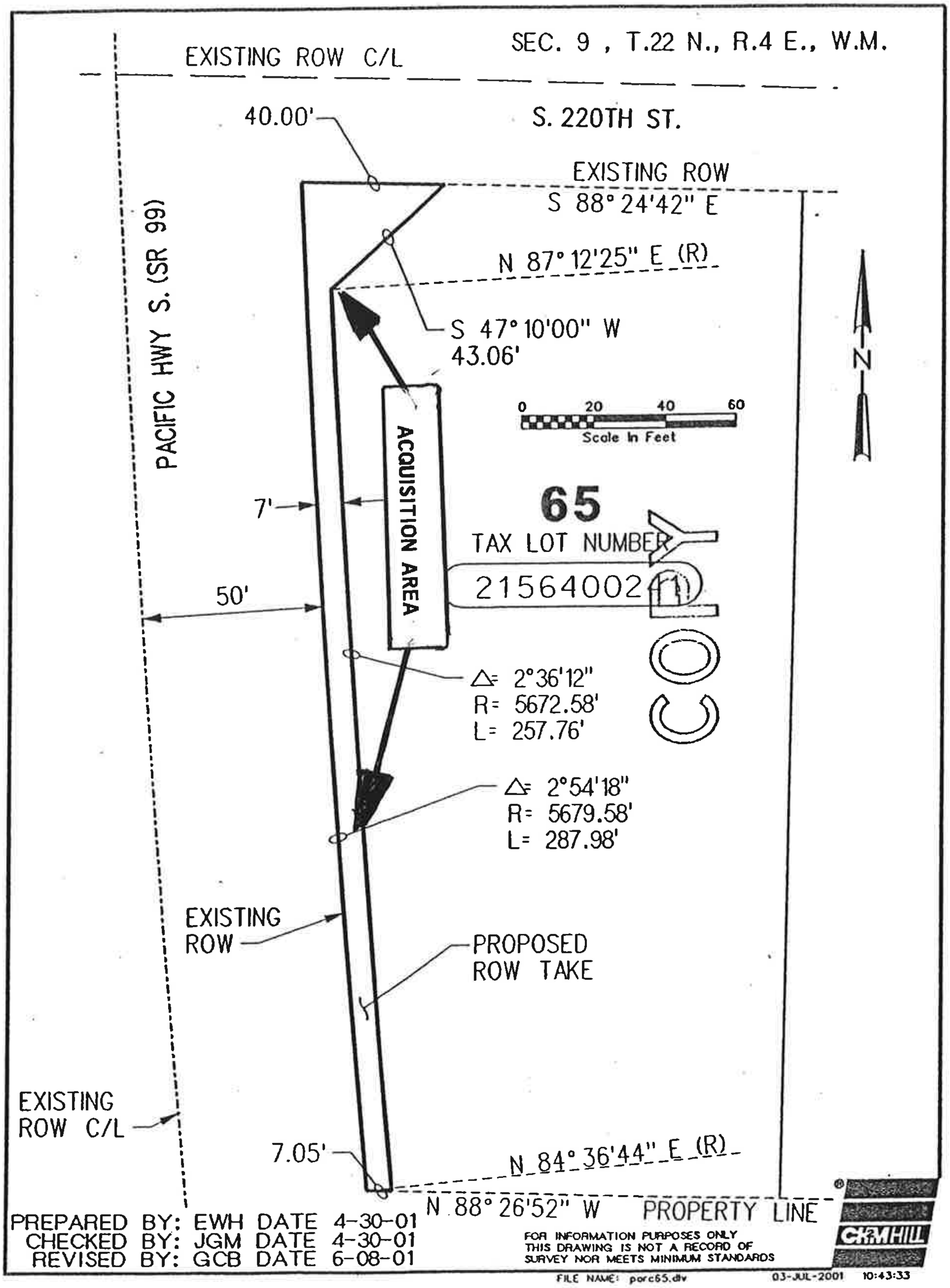
By:___________________________
Anthony A. Piasecki
Its City Manager

APPROVED AS TO FORM:

____
Linda A. Marousek
City Attorney

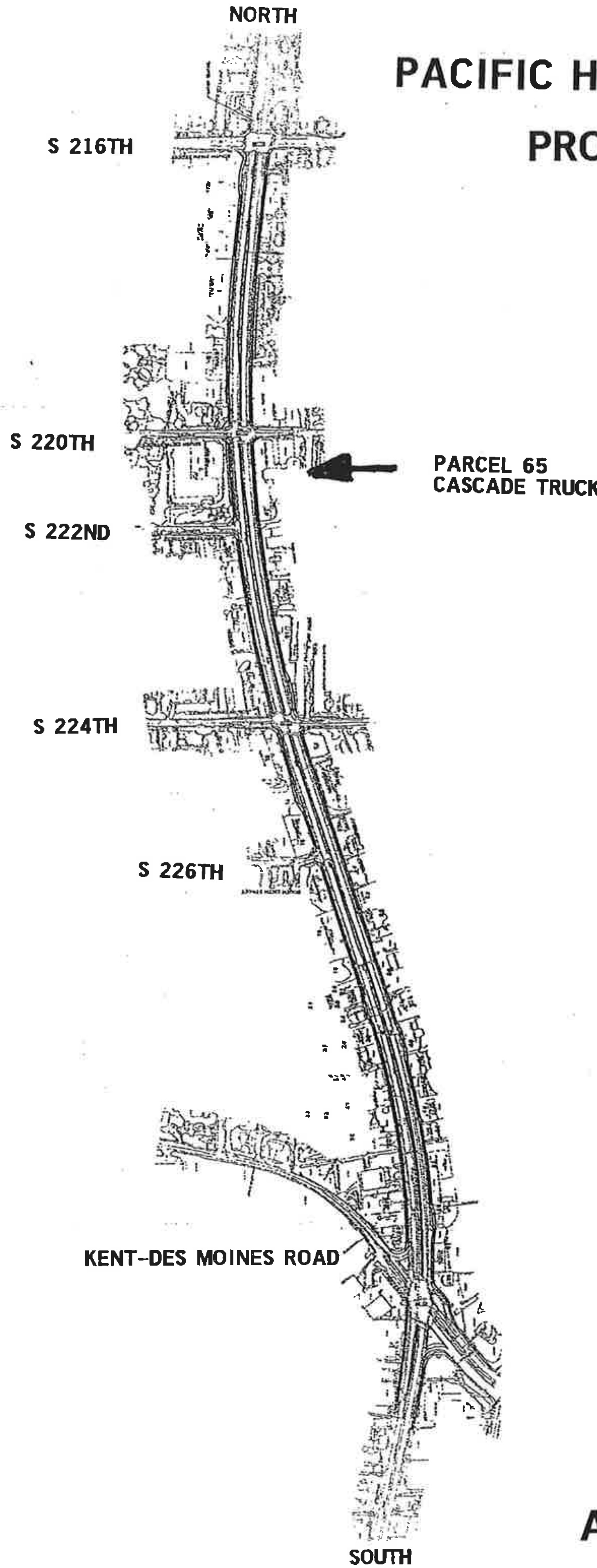
At the direction of the Des Moines City Council taken at an open public meeting on ______________________.

CONTRACT:



ATTACHMENT B

PACIFIC HIGHWAY SOUTH PROJECT MAP



ATTACHMENT C

AGENDA ITEM

SUBJECT: Purchase of Property for Pacific Highway Project

ATTACHMENTS:

A. Purchase & Sale Agreement - (Victory Glass)
B. Acquisition Map-Parcel 52
C. Project Map

AGENDA OF: February 13, 2003

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: February 3, 2003

CLEARANCES:
[X] Finance Pat Anderson
[X] Public Works
[X] Legal

APPROVED BY CITY MANAGER FOR SUBMITTAL: CTL for TP

Purpose and Recommendation:

The purpose of this report is to seek City Council approval for purchase of right-of-way along SR 99 for the Pacific Highway South Redevelopment Project.

Suggested Motion

The following motion will appear on the Consent Calendar:

1) "I move to purchase 700 square feet of land and improvements from James Henry O'Hara and Jennifer Jane O'Hara in the amount of $26,667.00 plus closing costs, and further to authorize the City Manager to sign the Purchase and Sale Agreement substantially in the form as submitted."

Background:

The Pacific Highway South Redevelopment Project requires right-of-way purchases along SR 99 from Kent Des Moines Road to South 216th Street as well as three full lots for detention ponds. The City Council has previously approved proceeding with purchasing the required property. Because the project is funded through federal, state and local grants, there are special procedures for obtaining the needed properties. An appraisal is prepared for each property by our consultant appraiser. A state-certified independent review appraiser reviews the appraisal, then offers are made for the appraised value of the property. There are 50 parcels that require purchase of some portion of their right of way. With the purchase of this property, we will have successfully made arrangements for 34 parcels.

Discussion:

The Pacific Highway South Redevelopment Project is scheduled to be advertised for construction this spring. The biggest challenge to this schedule will be obtaining the necessary right-of-way certification from the State and undergrounding utility agreements. In order to meet this challenge, it is imperative that properties be purchased as quickly as possible.

Mr. and Mrs. O'Hara, Parcel 52, which is Victory Glass at 22624 Pacific Highway South, have agreed to sell 700 square feet of their property including improvements at a price of $26,667.00. Upon approval, staff will proceed with closing.

Alternatives:

There are no viable alternatives that would not result in considerable alteration to the project design or in delay and increased costs to the project. We have already successfully purchased 68% of the properties needed.

Financial Impact:

It is important that this step is taken to minimize continuously escalating costs associated with delay to the project. The purchase prices are consistent with federal, state and city guidelines regarding appraisals and other pertinent factors involved in valuing property in the affected area.

Recommendation/Conclusion:

Staff recommends this motion is approved to ensure that the Pacific Highway South project stays on schedule.

Concurrence:

The Legal Department and City Manager are kept apprised of negotiations and approve all paperwork as required. When specific issues come up that require input by Community Development, we solicit their input. This is a joint effort to improve the conditions along Pacific Ridge.

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is entered into by and between **JAMES HENRY O'HARA AND JENNIFER JANE O'HARA, HUSBAND AND WIFE,** as Seller, and the CITY OF DES MOINES, a Washington municipal corporation, as Buyer.

AGREEMENT

FOR AND IN CONSIDERATION of the mutual promises and covenants contained herein, the sufficiency of which is unconditionally acknowledged by Seller and Buyer, the parties hereto agree as follows:

1. The Property. Seller agrees to sell and Buyer agrees to purchase from Seller the property located at 22624 PACIFIC HIGHWAY SOUTH, Des Moines, WA 98198 (the "Property" or the "Site"), and legally described as follows, on the terms, covenants, and conditions set forth herein:

SEE EXHIBIT "A" ATTACHED HERETO

Situate in the City of Des Moines, County of King, State of Washington.

Tax Parcel #250060-0176-06

2. Purchase Price and Payment. The total purchase price is **TWENTY SIX THOUSAND SIX HUNDRED SIXTY SEVEN and NO/100ths Dollars ($26,667.00)** (the "Purchase Price"), payable as follows: **TWENTY SIX THOUSAND SIX HUNDRED SIXTY SEVEN and NO/100ths DOLLARS ($26,667.00)** cash, including earnest money, shall be paid at Closing.

3. Contingencies. This Agreement and the obligations of Buyer hereunder are contingent upon satisfaction or written waiver of all of the conditions as hereinafter set forth.

(a) **Period of Examination.** For a period of Sixty (60) days from Buyer's receipt of a mutually executed copy of this Agreement (the "Period of Examination"), Buyer may examine the Property and conduct such studies of the Property as Buyer shall deem necessary, which shall be conducted at Buyer's sole cost, and which investigations shall include, without limitation, the suitability (economic or otherwise) of the Property in Buyer's sole discretion of the Property for Buyer's intended purposes. Seller, at its expense, shall deliver or cause to be delivered to Buyer true and correct copies of all documents, instruments, and materials relating to the Property including but not limited to any existing surveys, soils reports, and all other leases, contracts, documents, instruments or papers of significance to the Property or which might assist Buyer with its examination of the Property.

(i) **Notice of Intent.** By or before the close of the Period of Examination, Buyer shall provide Seller with Written Notice of Buyer's intent to purchase the Property or terminate this Agreement (the "Notice

ATTACHMENT A

of Acceptance"). Failure to provide such written Notice of Acceptance as required herein shall be conclusively deemed waiver by Buyer of its right to purchase the Property and this Agreement shall immediately become null and void.

(ii) **Right of Entry.** Buyer, its agents and its contractors, shall be entitled to reasonable access to the Property at any time during the Period of Examination and, if Buyer decides to purchase the Property, prior to closing, to conduct its studies. Buyer may disturb the Property as may be required for its tests and studies on condition that to the extent possible such tests and studies shall be nondestructive. Buyer shall indemnify and hold Seller harmless from any liability arising out of Buyer's negligent performance of such tests and studies. However, it is specifically agreed that Buyer shall not be responsible for any cleanup costs, claims, liabilities, or obligations relating to any hazardous waste contamination at the Property that Buyer may uncover during its pre-closing inspections, and Sellers shall indemnify and hold Buyer harmless from any such costs, claims, liabilities, or obligations. The obligations set forth in this section shall survive expiration or termination of this Agreement.

(b) **Seller's Warranties.** The continuing truth and correctness of Seller's representations and warranties contained in this Agreement, and the timely performance by Seller of Seller's covenants, and delivery by Seller to Buyer of all documents or instruments required hereunder.

(c) **Title and Survey.** Buyer's acceptance of title and the survey pursuant to section 5 of this Agreement. Buyer, at any time or times on or before Closing, at its sole election, in order to close, may waive any of the conditions to its obligations hereunder, but any such waiver shall be effective only if contained in a writing signed by Buyer and delivered to Seller.

4. <u>Title</u>.

(a) **Title Commitment.** Buyer shall, at Buyer's sole cost and within five (5) days of the mutual execution of this Agreement, order a Preliminary Title Report from Pacific Northwest Title Company, to be delivered directly to Buyer (the "Report"), for the Property together with copies of all documents supporting exceptions (the "Exceptions") set forth in the Report. Buyer may, at Buyer's sole cost and expense, order an ALTA survey of the Property, certified to Buyer and Title Company, having all corners marked and all other easements and utilities delineated in the Survey (the "Survey"). After execution of this Agreement, Seller shall not alter the condition of title except as to remove any defects of title.

(b) **Title Exceptions.** Buyer shall have thirty (30) calendar days from receipt of the Report and any Survey within which to give written notice to Seller of Buyer's disapproval of any Special Exceptions. For purposes of this Agreement, "Special Exceptions" means the special exceptions to title set forth in the Preliminary Title Commitment or the Survey, which relate to restrictions, conditions, defects or other matters, which would interfere with

Buyer's intended use of the Property. The written notice shall state with specificity those Special Exceptions to which objection is being made. Buyer's failure to specifically enumerate such Special Exceptions within such written notice or Buyer's failure to provide such written notice shall be conclusively deemed Buyer's waiver and/or approval of all Special Exceptions. Buyer hereby approves those standard exceptions commonly and ordinarily found in commitments or title binders for standard coverage fee owner policies.

(c) **Seller's Cure of Objections.** Seller shall have until closing to cure such objections to Special Exceptions or have the Special Exceptions waived or removed by the Title Company issuing the commitment. If, within such period, Seller fails to cure and/or have waived such objections to Special Exceptions, or within such period Seller delivers written notice to Buyer that it will not so cure, then, within ten (10) days from the delivery of such notice or the end of the period for cure, whichever is first, Buyer shall have the option to:

(i) Agree in writing to extend the period of time in which Seller may cure such Objections and/or Exceptions; or

(ii) Purchase the Property subject to such objections to Special Exceptions with no diminution in the Purchase Price; or

(iii) Terminate this Agreement, in which event all sums paid or deposited by Buyer shall be returned to Buyer. Buyer's failure to respond to Seller in writing shall be conclusively deemed an election of its right to terminate this Agreement.

(d) **Condition of Title.** Seller covenants to convey the Property in a condition to be insured by Pacific Northwest Title Company, (hereinafter "Title Company") as hereinafter provided. Closing shall be conditioned upon Title Company issuing or committing to issue to Buyer a Washington Land Title Association standard or extended form Owner's Policy of Title Insurance in the amount of the Purchase Price insuring a fee interest in the Property in Buyer free and clear of all matters except Special Exceptions permitted or waived by Buyer, the lien of current real property taxes not yet due and payable, and those matters excluded from coverage by the printed exceptions and exclusions in the form of title insurance policy required herein.

5. <u>Closing</u>.

(a) **Escrow.** Closing this Purchase and Sale Agreement shall occur through an escrow (the "Escrow") with the Title Company when Title Company is in a position to issue the Title Policy and all documents and funds have been deposited with Title Company.

(b) **Deposit of Closing Documents.**

(i) **Seller.** On or before the Date of Close of Escrow, Seller shall duly execute and deposit into Escrow with Closing Agent:

(A) A Statutory Warranty Deed (the "Deed"), in form and substance acceptable to Buyer for the Property together with an accompanying Real Estate Excise Tax Affidavit; and

(B) Such assignments, bill of sale, and/or other transfer instruments, in form and substance acceptable to Buyer, sufficient to transfer to Buyer all of Seller's right title and interest in any and all leases contracts, licenses, or other documents or instruments relating to the Property.

(C) An Affidavit of Non-Foreign Status required by Title Company in connection with section 1445(e) of the Internal Revenue Code.

(ii) **Buyer.** On or before the Date of Close of Escrow, Buyer shall deposit the following:

(A) TWENTY SIX THOUSAND SIX HUNDRED SIXTY SEVEN AND NO/100ths Dollars ($26,667.00), constituting the Purchase Price.

(B) Additional cash in an amount necessary to pay closing costs, title insurance, and prorations set forth herein.

(c) **Closing Costs and Prorations.** At Closing, Seller shall pay all prorated real property taxes due and payable and brokerage commissions. Buyer shall pay all other closing expenses, including Escrow fees and charges, title insurance, and the cost of recording the Deed. All property taxes, and utilities, shall be prorated between Seller and Buyer as of Closing. The real property taxes shall be prorated using the most recent tax information available. The utilities shall be prorated by the parties outside of Escrow.

(d) **Procedure.** Closing Agent shall close Escrow as follows:

(i) Prepare a Real Estate Excise Tax Affidavit showing that the sale of the Property is to a governmental entity "made under threat of or exercise of eminent domain", and record the Deed with instructions for the county recorder to deliver the Deed to the Buyer; and

(ii) Pay the Purchase Price to Seller, reduced by prorations; and

(iii) Deliver the executed Affidavit of Non-Foreign Status to Buyer; and

(iv) Forward to Buyer and Seller, in duplicate, a separate accounting of all funds received and disbursed for each party and copies of all executed and recorded or filed documents deposited into Escrow, with such recording and filing date endorsed thereon.

(e) **Incorporation of Escrow Instructions.** This Agreement shall serve as escrow instructions, and an executed copy of this Agreement shall be deposited by Buyer with Closing Agent following execution hereof. The parties may execute additional escrow instructions, provided such additional instructions do not change the terms of this Agreement.

6. <u>Possession</u>. Buyer is entitled to possession of the Property on the date of closing.

7. <u>Seller's Warranties</u>. Seller represents and warrants the following to Buyer:

(a) Seller has the power, right, and authority to make this Agreement with Buyer;

(b) Seller is not in default and will not during the term of this Agreement default or permit a default to exist on any of its obligations under any real estate contract, lease, mortgage, or deed of trust affecting any portion of the Property;

(c) Seller is and shall be entitled to terminate on or before the date of closing and without breach of any agreement the rights of all parties who are not a party to this Agreement and who are entitled to possession of any part of the Property;

(d) Seller has good and marketable title to all of the Property;

(e) There are no pending zoning changes of the Property or any change to any easements or utilities relating to the Property;

(f) There are no material defects in the Property;

(g) All persons and corporations supplying labor, materials, and equipment to the Property have been paid and there are no claims of liens;

(h) There are no current assessments for public improvements against the Property or any local improvement district or other taxing authority having jurisdiction over the Property in the process of formation;

(i) The property has legal access to all streets adjoining the Property; and

(j) There are no claims, defects, or boundary disputes affecting the Property; and no person claims any right to possession to the Property or any portion thereof adverse to Seller.

The warranties and representations set forth in this section will be deemed to have been made again, on the Date of Closing, and will continue to be true, complete, and correct as of the Closing.

8. Hazardous Material Provisions.

(a) **Definition.** The term "hazardous waste or materials or substances" as used in this Agreement is used in its very broadest sense and includes, but is not limited to, materials and substances designated as hazardous under any federal, state, or local act or ordinance.

(b) **Seller's Representations.** Seller represents that it has not received notification of any kind from any agency suggesting that the Property is or may be targeted as a Superfund or clean up site. Seller represents that, Seller does not keep, use, or dispose of, and Seller has not permitted anyone else to keep, use, or dispose of, whether permanently or temporarily, on the Property, any hazardous waste or materials or substances, and has no reason to believe or suspect that Seller or any other person or entity has kept, used, or disposed of, either temporarily or permanently, any hazardous waste or materials or substances on the Property. Except as set forth below in section 9(c), Seller represents that Seller has not conducted any test or studies to specifically determine whether any hazardous waste or materials or substances existed on the Property prior to Seller's ownership or as of the date of this Agreement.

(c) **Fuel Tanks on the Property.** If Sellers or Buyer has determined that various tanks and soil and/or ground water contamination are in existence below ground level on the Property, Sellers agree, at their sole cost and expense, to remove the tanks and provide for all associated remediation of any and all contaminated soils caused by the tanks or any other source to the satisfaction of Buyer and to a level which is acceptable to the appropriate regulating agency which is responsible for such matters. The work shall be completed prior to closing. Sellers shall diligently pursue the completion of such removal of such tanks and the remediation of any soil or ground water contamination. Sellers agree to comply with all applicable laws, statutes, rules, regulations, and ordinances in completing its work under this section. In the event Sellers refuse to perform such removal and remediation, Buyer may terminate this Agreement, in which event all sums paid or deposited by the Buyer shall be returned to the Buyer.

(d) During the period of examination, Buyer shall determine the cost of the remediation of hazardous contaminants on the Property. If Buyer determines that the cost of such remediation is TWENTY THOUSAND AND NO/100 DOLLARS ($20,000.00) or less, Buyer shall be responsible for cleanup and this sale shall close. If Buyer determines that such cost of cleanup exceeds TWENTY THOUSAND AND NO/100 DOLLARS ($20,000.00), Buyer may, at Buyer's option, terminate this Agreement, and the Earnest Money shall be returned to Buyer.

9. Remedies.

(a) **Seller's Default.** In the event Seller defaults in fulfilling its obligations under this Agreement, Buyer shall be entitled to all remedies at law or equity including without limitation the right to enforce specific performance of this Agreement against Seller.

(b) **Buyer's Default.** In the event Buyer fails, without legal excuse, to complete the purchase, or otherwise defaults under the terms of this Agreement, the Deposit shall be forfeited to the Seller as the sole and exclusive remedy available to the Seller for such failure and default.

10. Eminent Domain. Buyer confirms that in the event Seller fails or declines to execute this Purchase and Sale Agreement, it will be the intention of Buyer to exercise its rights under the laws of the State of Washington to acquire the Property by eminent domain.

11. Risk of Loss; Insurance. Risk of loss of or damage to the Property shall be borne by Seller until the date of closing. Thereafter, Buyer shall bear the risk of loss. In the event of material loss of or damage to the Property prior to the date of closing, Seller shall not be obligated to restore the Property nor pay damages to Buyer by reason of such loss or damage, and Buyer may terminate this Agreement by giving notice of such termination to Seller and Closing Agent, and such termination shall be effective and the Deposit shall be refunded ten (10) days thereafter; provided, however, that Buyer may elect to purchase the Property in the condition existing on the date of closing and on closing Seller shall assign to Buyer the proceeds of any policy of insurance carried by or for the benefit of Seller covering any loss or damage to the Property occurring after the date hereof and prior to the closing date. Seller will submit an insurance claim and use its best efforts to obtain insurance proceeds. On closing Seller will pay to Buyer, outside of escrow, the entire amount of insurance proceeds received prior to closing from such claim.

12. Notices. Except as specifically set forth herein, any demand, request or notice which either party hereto desires or may be required to make or deliver to the other shall be in writing and shall be deemed given when personally delivered, or when delivered by private courier service (such as Federal

Express), or three days after being deposited in the United States Mail first class, postage prepaid and addressed as follows:

(a) Seller's Addresses:

Mr. and Mrs. O'Hara
16420 – 148th Ave NE
Renton, WA 98055

(b) Buyer's Address:

City of Des Moines
21630 11th Avenue South
Des Moines, WA 98198

The foregoing addresses may be changed by written notices to the other party as provided herein.

13. **Time.** Time is of the essence in every provision herein contained.

14. **Seller's Period of Acceptance.** Seller shall have twenty-one (21) days from the date of delivery of this instrument to Seller's Agent to accept this offer by written signature. In the event Seller does not accept this offer within the 21-day period, the offer will be considered withdrawn, and this Agreement will be null and void. Buyer, and only Buyer, may waive this 21-day limitation.

15. **Approval by the Des Moines City Council.** The parties to this Purchase and Sale Agreement understand that this Agreement shall not be binding on the Buyer until approved by the Des Moines City Council in an open public meeting.

16. **Binding Agreement.** This Agreement shall inure to the benefit of and be binding upon the heirs, personal representative, successors, and assigns of the parties hereto.

17. **Attorneys' Fees.** In the event of any litigation regarding the rights and obligations of the parties under this Agreement, the prevailing party shall recover its costs and attorneys' fees, including such costs and attorneys' fees for appeals.

18. **Survival of Warranties.** The terms, covenants, warranties, and representations contained in this Agreement shall not merge with the deed of conveyance, but shall continue and survive closing.

19. **Entire Agreement.** This Agreement contains the entire understanding between the parties and supersedes any prior understandings and agreements between them regarding the subject matter hereof. There are no other representations, agreements, or understandings, oral or written, between the parties hereto relating to the subject matter of this Agreement. No

amendment of, or supplement to, this Agreement shall be valid or effective unless made in writing and executed by the parties hereto.

20. **Seller's Covenants Pending Closing.** Seller covenants for the benefit of and agrees with Buyer that, pending Closing, Seller shall not do or permit to be done any of the following other than in the ordinary course or operation of the Property and without in each case securing Buyer's prior written consent, which consent shall not be withheld unreasonably; enter into any lease or rental agreement for the Property; make any agreements or commitments relating to the maintenance, repair, replacement or operation of the Property for a period extending beyond Closing; or commence or continue any construction affecting the improvements other than ordinary maintenance and repair. Seller shall cooperate with Buyer in all matters relating to Buyer's intended use of the Property.

IN WITNESS WHEREOF, the parties hereto have executed one or more copies of this Agreement to be effective on the date of final signature.

Dated: ___________________

SELLER:

____
James Henry O'Hara

____
Jennifer Jane O'Hara

Dated: ___________________

BUYER:

CITY OF DES MOINES,
A Washington municipal corporation

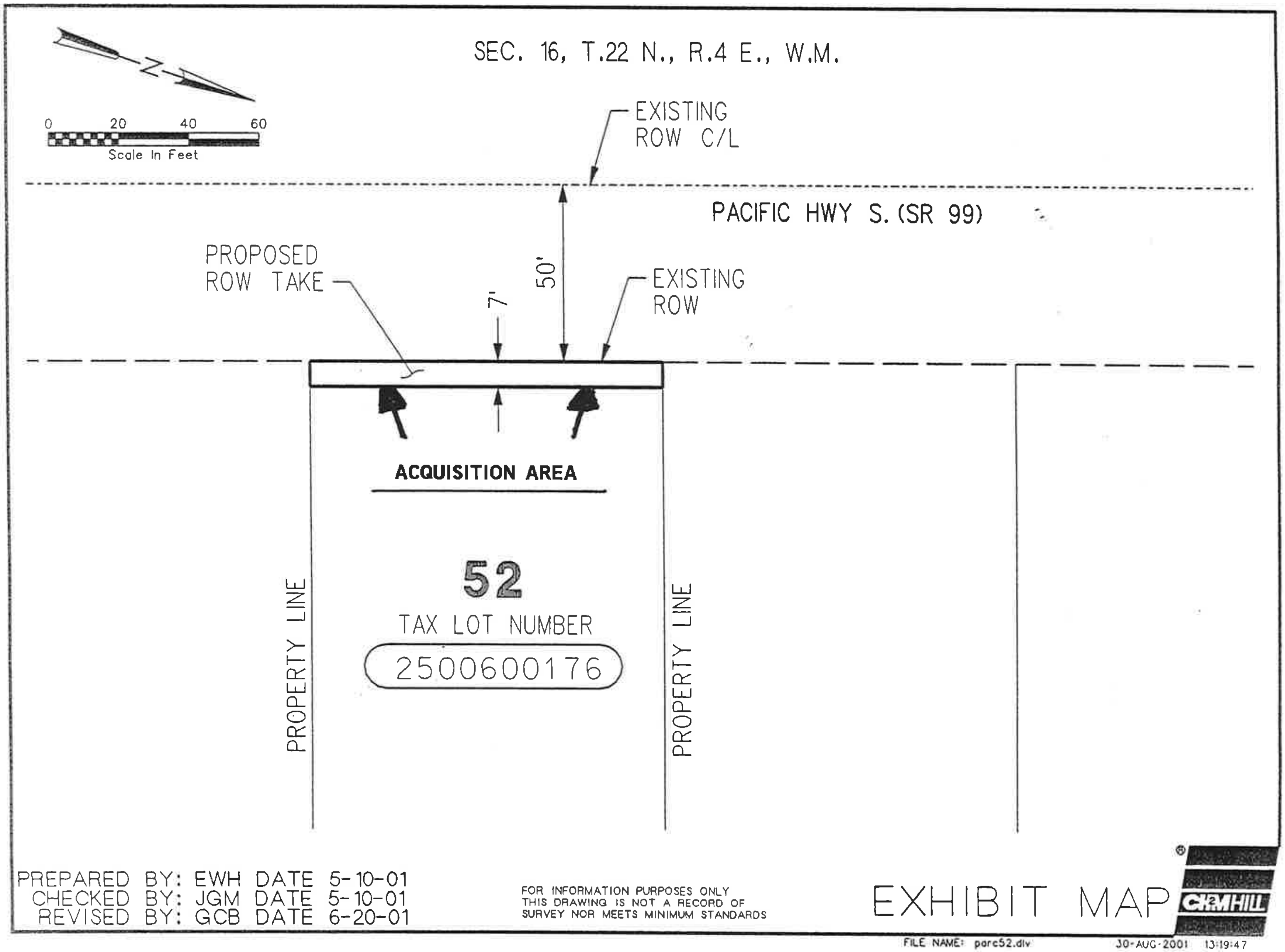
By:_______________________________
Anthony A. Piasecki
Its City Manager

APPROVED AS TO FORM:

____
Linda A. Marousek
Acting City Attorney

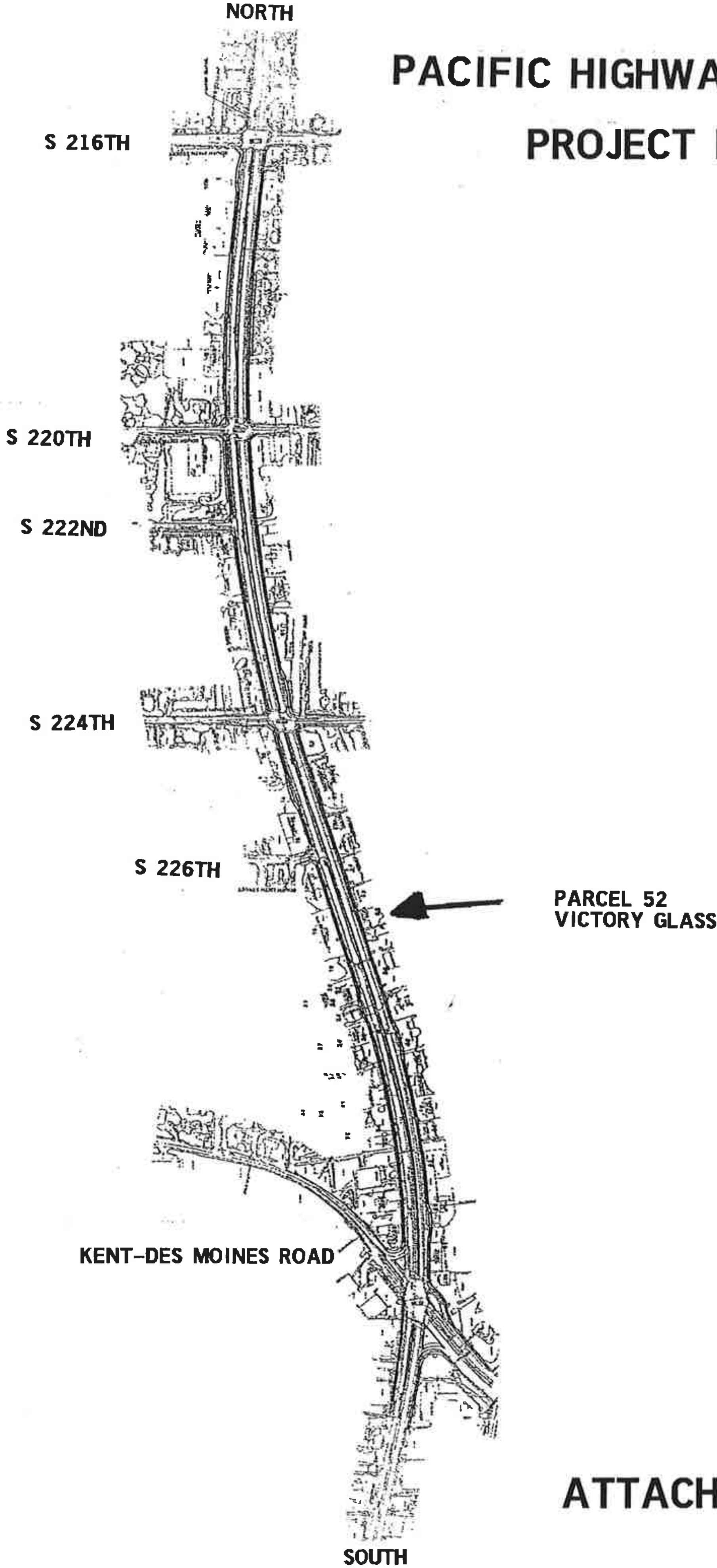
At the direction of the Des Moines City Council taken at an open public meeting on ______________________________.

CONTRACT:



ATTACHMENT B

PACIFIC HIGHWAY SOUTH PROJECT MAP



ATTACHMENT C

CONSENT CALENDAR
Item #5

AGENDA ITEM

SUBJECT: Purchase of Property for Pacific Highway Project	AGENDA OF: February 13, 2003
ATTACHMENTS:	DEPT. OF ORIGIN: Public Works
A. Purchase & Sale Agreement - (Midway Furniture) B. Acquisition Map-Parcel 41 C. Project Map	DATE SUBMITTED: February 3, 2003
	CLEARANCES: [X] Finance Pa Henderson [X] Public Works [X] Legal
	APPROVED BY CITY MANAGER FOR SUBMITTAL: CTL for TP

Purpose and Recommendation:

The purpose of this report is to seek City Council approval for purchase of right-of-way along SR 99 for the Pacific Highway South Redevelopment Project.

Suggested Motion

The following motion will appear on the Consent Calendar:

1) "I move to purchase 3,750 square feet of land and improvements from Jack I. Almo and Lily Lea Almo in the amount of $110,186.00 plus closing costs, and further to authorize the City Manager to sign the Purchase and Sale Agreement substantially in the form as submitted."

Background:

The Pacific Highway South Redevelopment Project requires right-of-way purchases along SR 99 from Kent Des Moines Road to South 216th Street as well as three full lots for detention ponds. The City Council has previously approved proceeding with purchasing the required property. Because the project is funded through federal, state and local grants, there are special procedures for obtaining the needed properties. An appraisal is prepared for each property by our consultant appraiser. A state-certified independent review appraiser reviews the appraisal, then offers are made for the appraised value of the property. There are 50 parcels that require purchase of some portion of their right of way. With the purchase of this property, we will have successfully made arrangements for 35 parcels.

Discussion:

The Pacific Highway South Redevelopment Project is scheduled to be advertised for construction this spring. The biggest challenge to this schedule will be obtaining the necessary right-of-way certification from the State and undergrounding utility agreements. In order to meet this challenge, it is imperative that properties be purchased as quickly as possible.

Mr. and Mrs. Almo, Parcel 41, which is Midway Furniture at 23040 Pacific Highway South, have agreed to sell 3,750 square feet of their property including improvements at a price of $110,186.00. Upon approval, staff will proceed with closing.

Alternatives:

There are no viable alternatives that would not result in considerable alteration to the project design or in delay and increased costs to the project. We have already successfully purchased 70% of the properties needed.

Financial Impact:

It is important that this step is taken to minimize continuously escalating costs associated with delay to the project. The purchase prices are consistent with federal, state and city guidelines regarding appraisals and other pertinent factors involved in valuing property in the affected area.

Recommendation/Conclusion:

Staff recommends this motion is approved to ensure that the Pacific Highway South project stays on schedule.

Concurrence:

The Legal Department and City Manager are kept apprised of negotiations and approve all paperwork as required. When specific issues come up that require input by Community Development, we solicit their input. This is a joint effort to improve the conditions along Pacific Ridge.

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is entered into by and between **JACK I. ALMO AND LILLY LEA ALMO, HUSBAND AND WIFE,** as Seller, and the CITY OF DES MOINES, a Washington municipal corporation, as Buyer.

AGREEMENT

FOR AND IN CONSIDERATION of the mutual promises and covenants contained herein, the sufficiency of which is unconditionally acknowledged by Seller and Buyer, the parties hereto agree as follows:

1. The Property. Seller agrees to sell and Buyer agrees to purchase from Seller the property located at 23040 PACIFIC HIGHWAY SOUTH, Des Moines, WA 98198 (the "Property" or the "Site"), and legally described as follows, on the terms, covenants, and conditions set forth herein:

SEE EXHIBIT "A" ATTACHED HERETO

Situate in the City of Des Moines, County of King, State of Washington.

Tax Parcel #250060-0250-05

2. Purchase Price and Payment. The total purchase price is **ONE HUNDRED TEN THOUSAND ONE HUNDRED EIGHTY SIX and NO/100ths Dollars ($110,186.00)** (the "Purchase Price"), payable as follows: **ONE HUNDRED TEN THOUSAND ONE HUNDRED EIGHTY SIX and NO/100ths DOLLARS ($110,186.00)** cash, including earnest money, shall be paid at Closing.

3. Contingencies. This Agreement and the obligations of Buyer hereunder are contingent upon satisfaction or written waiver of all of the conditions as hereinafter set forth.

(a) **Period of Examination.** For a period of Sixty (60) days from Buyer's receipt of a mutually executed copy of this Agreement (the "Period of Examination"), Buyer may examine the Property and conduct such studies of the Property as Buyer shall deem necessary, which shall be conducted at Buyer's sole cost, and which investigations shall include, without limitation, the suitability (economic or otherwise) of the Property in Buyer's sole discretion of the Property for Buyer's intended purposes. Seller, at its expense, shall deliver or cause to be delivered to Buyer true and correct copies of all documents, instruments, and materials relating to the Property including but not limited to any existing surveys, soils reports, and all other leases, contracts, documents, instruments or papers of significance to the Property or which might assist Buyer with its examination of the Property.

ATTACHMENT A

(i) **Notice of Intent.** By or before the close of the Period of Examination, Buyer shall provide Seller with Written Notice of Buyer's intent to purchase the Property or terminate this Agreement (the "Notice of Acceptance"). Failure to provide such written Notice of Acceptance as required herein shall be conclusively deemed waiver by Buyer of its right to purchase the Property and this Agreement shall immediately become null and void.

(ii) **Right of Entry.** Buyer, its agents and its contractors, shall be entitled to reasonable access to the Property at any time during the Period of Examination and, if Buyer decides to purchase the Property, prior to closing, to conduct its studies. Buyer may disturb the Property as may be required for its tests and studies on condition that to the extent possible such tests and studies shall be nondestructive. Buyer shall indemnify and hold Seller harmless from any liability arising out of Buyer's negligent performance of such tests and studies. However, it is specifically agreed that Buyer shall not be responsible for any cleanup costs, claims, liabilities, or obligations relating to any hazardous waste contamination at the Property that Buyer may uncover during its pre-closing inspections, and Sellers shall indemnify and hold Buyer harmless from any such costs, claims, liabilities, or obligations. The obligations set forth in this section shall survive expiration or termination of this Agreement.

(b) **Seller's Warranties.** The continuing truth and correctness of Seller's representations and warranties contained in this Agreement, and the timely performance by Seller of Seller's covenants, and delivery by Seller to Buyer of all documents or instruments required hereunder.

(c) **Title and Survey.** Buyer's acceptance of title and the survey pursuant to section 5 of this Agreement. Buyer, at any time or times on or before Closing, at its sole election, in order to close, may waive any of the conditions to its obligations hereunder, but any such waiver shall be effective only if contained in a writing signed by Buyer and delivered to Seller.

4. <u>Title</u>.

(a) **Title Commitment.** Buyer shall, at Buyer's sole cost and within five (5) days of the mutual execution of this Agreement, order a Preliminary Title Report from Pacific Northwest Title Company, to be delivered directly to Buyer (the "Report"), for the Property together with copies of all documents supporting exceptions (the "Exceptions") set forth in the Report. Buyer may, at Buyer's sole cost and expense, order an ALTA survey of the Property, certified to Buyer and Title Company, having all corners marked and all other easements and utilities delineated in the Survey (the "Survey"). After execution of this Agreement, Seller shall not alter the condition of title except as to remove any defects of title.

(b) **Title Exceptions.** Buyer shall have thirty (30) calendar days from receipt of the Report and any Survey within which to give written notice to Seller of Buyer's disapproval of any Special Exceptions. For purposes of this Agreement, "Special Exceptions" means the special exceptions to title set forth in the Preliminary Title Commitment or the Survey, which relate to restrictions, conditions, defects or other matters, which would interfere with Buyer's intended use of the Property. The written notice shall state with specificity those Special Exceptions to which objection is being made. Buyer's failure to specifically enumerate such Special Exceptions within such written notice or Buyer's failure to provide such written notice shall be conclusively deemed Buyer's waiver and/or approval of all Special Exceptions. Buyer hereby approves those standard exceptions commonly and ordinarily found in commitments or title binders for standard coverage fee owner policies.

(c) **Seller's Cure of Objections.** Seller shall have until closing to cure such objections to Special Exceptions or have the Special Exceptions waived or removed by the Title Company issuing the commitment. If, within such period, Seller fails to cure and/or have waived such objections to Special Exceptions, or within such period Seller delivers written notice to Buyer that it will not so cure, then, within ten (10) days from the delivery of such notice or the end of the period for cure, whichever is first, Buyer shall have the option to:

(i) Agree in writing to extend the period of time in which Seller may cure such Objections and/or Exceptions; or

(ii) Purchase the Property subject to such objections to Special Exceptions with no diminution in the Purchase Price; or

(iii) Terminate this Agreement, in which event all sums paid or deposited by Buyer shall be returned to Buyer. Buyer's failure to respond to Seller in writing shall be conclusively deemed an election of its right to terminate this Agreement.

(d) **Condition of Title.** Seller covenants to convey the Property in a condition to be insured by Pacific Northwest Title Company, (hereinafter "Title Company") as hereinafter provided. Closing shall be conditioned upon Title Company issuing or committing to issue to Buyer a Washington Land Title Association standard or extended form Owner's Policy of Title Insurance in the amount of the Purchase Price insuring a fee interest in the Property in Buyer free and clear of all matters except Special Exceptions permitted or waived by Buyer, the lien of current real property taxes not yet due and payable, and those matters excluded from coverage by the printed exceptions and exclusions in the form of title insurance policy required herein.

5. <u>Closing</u>.

(a) **Escrow.** Closing this Purchase and Sale Agreement shall occur through an escrow (the "Escrow") with the Title Company when Title Company is in a position to issue the Title Policy and all documents and funds have been deposited with Title Company.

(b) **Deposit of Closing Documents.**

(i) **Seller.** On or before the Date of Close of Escrow, Seller shall duly execute and deposit into Escrow with Closing Agent:

(A) A Statutory Warranty Deed (the "Deed"), in form and substance acceptable to Buyer for the Property together with an accompanying Real Estate Excise Tax Affidavit; and

(B) Such assignments, bill of sale, and/or other transfer instruments, in form and substance acceptable to Buyer, sufficient to transfer to Buyer all of Seller's right title and interest in any and all leases contracts, licenses, or other documents or instruments relating to the Property.

(C) An Affidavit of Non-Foreign Status required by Title Company in connection with section 1445(e) of the Internal Revenue Code.

(ii) **Buyer.** On or before the Date of Close of Escrow, Buyer shall deposit the following:

(A) ONE HUNDRED TEN THOUSAND ONE HUNDRED EIGHTY SIX AND NO/100ths Dollars ($110,186.00), constituting the Purchase Price.

(B) Additional cash in an amount necessary to pay closing costs, title insurance, and prorations set forth herein.

(c) **Closing Costs and Prorations.** At Closing, Seller shall pay all prorated real property taxes due and payable and brokerage commissions. Buyer shall pay all other closing expenses, including Escrow fees and charges, title insurance, and the cost of recording the Deed. All property taxes, and utilities, shall be prorated between Seller and Buyer as of Closing. The real property taxes shall be prorated using the most recent tax information available. The utilities shall be prorated by the parties outside of Escrow.

(d) **Procedure.** Closing Agent shall close Escrow as follows:

(i) Prepare a Real Estate Excise Tax Affidavit showing that the sale of the Property is to a governmental entity "made under threat of or exercise of eminent domain", and record the Deed with instructions for the county recorder to deliver the Deed to the Buyer; and

(ii) Pay the Purchase Price to Seller, reduced by prorations; and

(iii) Deliver the executed Affidavit of Non-Foreign Status to Buyer; and

(iv) Forward to Buyer and Seller, in duplicate, a separate accounting of all funds received and disbursed for each party and copies of all executed and recorded or filed documents deposited into Escrow, with such recording and filing date endorsed thereon.

(e) **Incorporation of Escrow Instructions.** This Agreement shall serve as escrow instructions, and an executed copy of this Agreement shall be deposited by Buyer with Closing Agent following execution hereof. The parties may execute additional escrow instructions, provided such additional instructions do not change the terms of this Agreement.

6. Possession. Buyer is entitled to possession of the Property on the date of closing.

7. Seller's Warranties. Seller represents and warrants the following to Buyer:

(a) Seller has the power, right, and authority to make this Agreement with Buyer;

(b) Seller is not in default and will not during the term of this Agreement default or permit a default to exist on any of its obligations under any real estate contract, lease, mortgage, or deed of trust affecting any portion of the Property;

(c) Seller is and shall be entitled to terminate on or before the date of closing and without breach of any agreement the rights of all parties who are not a party to this Agreement and who are entitled to possession of any part of the Property;

(d) Seller has good and marketable title to all of the Property;

(e) There are no pending zoning changes of the Property or any change to any easements or utilities relating to the Property;

(f) There are no material defects in the Property;

(g) All persons and corporations supplying labor, materials, and equipment to the Property have been paid and there are no claims of liens;

(h) There are no current assessments for public improvements against the Property or any local improvement district or other taxing authority having jurisdiction over the Property in the process of formation;

(i) The property has legal access to all streets adjoining the Property; and

(j) There are no claims, defects, or boundary disputes affecting the Property; and no person claims any right to possession to the Property or any portion thereof adverse to Seller.

The warranties and representations set forth in this section will be deemed to have been made again, on the Date of Closing, and will continue to be true, complete, and correct as of the Closing.

8. <u>Hazardous Material Provisions</u>.

(a) **Definition.** The term "hazardous waste or materials or substances" as used in this Agreement is used in its very broadest sense and includes, but is not limited to, materials and substances designated as hazardous under any federal, state, or local act or ordinance.

(b) **Seller's Representations.** Seller represents that it has not received notification of any kind from any agency suggesting that the Property is or may be targeted as a Superfund or clean up site. Seller represents that, Seller does not keep, use, or dispose of, and Seller has not permitted anyone else to keep, use, or dispose of, whether permanently or temporarily, on the Property, any hazardous waste or materials or substances, and has no reason to believe or suspect that Seller or any other person or entity has kept, used, or disposed of, either temporarily or permanently, any hazardous waste or materials or substances on the Property. Except as set forth below in section 9(c), Seller represents that Seller has not conducted any test or studies to specifically determine whether any hazardous waste or materials or substances existed on the Property prior to Seller's ownership or as of the date of this Agreement.

(c) **Fuel Tanks on the Property.** If Sellers or Buyer has determined that various tanks and soil and/or ground water contamination are in existence below ground level on the Property, Sellers agree, at their sole cost and expense, to remove the tanks and provide for all associated remediation of any and all contaminated soils caused by the tanks or any other source to the satisfaction of Buyer and to a level which is acceptable to the appropriate regulating agency which is responsible for such matters. The work shall be completed prior to closing. Sellers shall diligently pursue the completion of such removal of such tanks and the remediation of any soil or ground water contamination. Sellers agree to comply with all applicable laws, statutes, rules, regulations, and ordinances in completing its work under this section. In the event Sellers refuse to perform such removal and remediation, Buyer may terminate this Agreement, in which event all sums paid or deposited by the Buyer shall be returned to the Buyer.

(d) During the period of examination, Buyer shall determine the cost of the remediation of hazardous contaminants on the Property. If Buyer determines that the cost of such remediation is TWENTY THOUSAND AND NO/100 DOLLARS ($20,000.00) or less, Buyer shall be responsible for cleanup and this sale shall close. If Buyer determines that such cost of cleanup exceeds TWENTY THOUSAND AND NO/100 DOLLARS

($20,000.00), Buyer may, at Buyer's option, terminate this Agreement, and the Earnest Money shall be returned to Buyer.

9. **Remedies.**

(a) **Seller's Default.** In the event Seller defaults in fulfilling its obligations under this Agreement, Buyer shall be entitled to all remedies at law or equity including without limitation the right to enforce specific performance of this Agreement against Seller.

(b) **Buyer's Default.** In the event Buyer fails, without legal excuse, to complete the purchase, or otherwise defaults under the terms of this Agreement, the Deposit shall be forfeited to the Seller as the sole and exclusive remedy available to the Seller for such failure and default.

10. **Eminent Domain.** Buyer confirms that in the event Seller fails or declines to execute this Purchase and Sale Agreement, it will be the intention of Buyer to exercise its rights under the laws of the State of Washington to acquire the Property by eminent domain.

11. **Risk of Loss; Insurance.** Risk of loss of or damage to the Property shall be borne by Seller until the date of closing. Thereafter, Buyer shall bear the risk of loss. In the event of material loss of or damage to the Property prior to the date of closing, Seller shall not be obligated to restore the Property nor pay damages to Buyer by reason of such loss or damage, and Buyer may terminate this Agreement by giving notice of such termination to Seller and Closing Agent, and such termination shall be effective and the Deposit shall be refunded ten (10) days thereafter; provided, however, that Buyer may elect to purchase the Property in the condition existing on the date of closing and on closing Seller shall assign to Buyer the proceeds of any policy of insurance carried by or for the benefit of Seller covering any loss or damage to the Property occurring after the date hereof and prior to the closing date. Seller will submit an insurance claim and use its best efforts to obtain insurance proceeds. On closing Seller will pay to Buyer, outside of escrow, the entire amount of insurance proceeds received prior to closing from such claim.

12. **Notices.** Except as specifically set forth herein, any demand, request or notice which either party hereto desires or may be required to make or deliver to the other shall be in writing and shall be deemed given when personally delivered, or when delivered by private courier service (such as Federal

Express), or three days after being deposited in the United States Mail first class, postage prepaid and addressed as follows:

(a) Seller's Addresses:

Mr. and Mrs. Jack Almo
5194 S Spencer St
Seattle, WA 98188

(b) Buyer's Address:

City of Des Moines
21630 11th Avenue South
Des Moines, WA 98198

The foregoing addresses may be changed by written notices to the other party as provided herein.

13. **Time.** Time is of the essence in every provision herein contained.

14. **Seller's Period of Acceptance.** Seller shall have twenty-one (21) days from the date of delivery of this instrument to Seller's Agent to accept this offer by written signature. In the event Seller does not accept this offer within the 21-day period, the offer will be considered withdrawn, and this Agreement will be null and void. Buyer, and only Buyer, may waive this 21-day limitation.

15. **Approval by the Des Moines City Council.** The parties to this Purchase and Sale Agreement understand that this Agreement shall not be binding on the Buyer until approved by the Des Moines City Council in an open public meeting.

16. **Binding Agreement.** This Agreement shall inure to the benefit of and be binding upon the heirs, personal representative, successors, and assigns of the parties hereto.

17. **Attorneys' Fees.** In the event of any litigation regarding the rights and obligations of the parties under this Agreement, the prevailing party shall recover its costs and attorneys' fees, including such costs and attorneys' fees for appeals.

18. **Survival of Warranties.** The terms, covenants, warranties, and representations contained in this Agreement shall not merge with the deed of conveyance, but shall continue and survive closing.

19. **Entire Agreement.** This Agreement contains the entire understanding between the parties and supersedes any prior understandings and agreements between them regarding the subject matter hereof. There are no other representations, agreements, or understandings, oral or written, between the parties hereto relating to the subject matter of this Agreement. No

amendment of, or supplement to, this Agreement shall be valid or effective unless made in writing and executed by the parties hereto.

20. **Seller's Covenants Pending Closing.** Seller covenants for the benefit of and agrees with Buyer that, pending Closing, Seller shall not do or permit to be done any of the following other than in the ordinary course or operation of the Property and without in each case securing Buyer's prior written consent, which consent shall not be withheld unreasonably; enter into any lease or rental agreement for the Property; make any agreements or commitments relating to the maintenance, repair, replacement or operation of the Property for a period extending beyond Closing; or commence or continue any construction affecting the improvements other than ordinary maintenance and repair. Seller shall cooperate with Buyer in all matters relating to Buyer's intended use of the Property.

IN WITNESS WHEREOF, the parties hereto have executed one or more copies of this Agreement to be effective on the date of final signature.

Dated: ____________________

SELLER:

____
Jack I. Almo

____
Lilly Lea Almo

Dated: ____________________

BUYER:

CITY OF DES MOINES,
A Washington municipal corporation

By:______________________________
Anthony A. Piasecki
Its City Manager

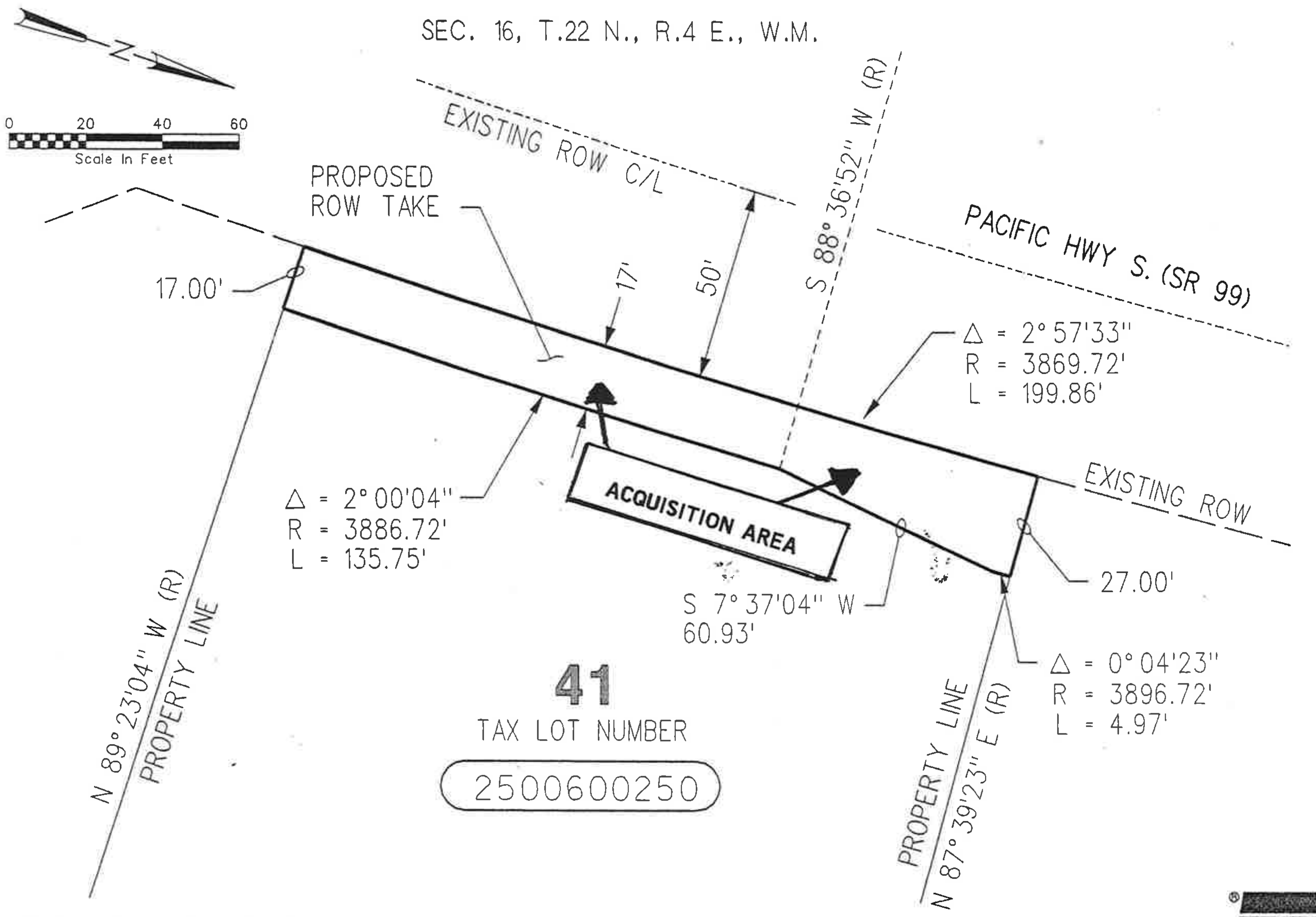
APPROVED AS TO FORM:

____
Linda A. Marousek
City Attorney

At the direction of the Des Moines City Council taken at an open public meeting on ______________________________.

CONTRACT:

ATTACHMENT B



PREPARED BY: EWH DATE 5-10-01
CHECKED BY: JGM DATE 5-10-01
REVISED BY: GCB DATE 7-18-01

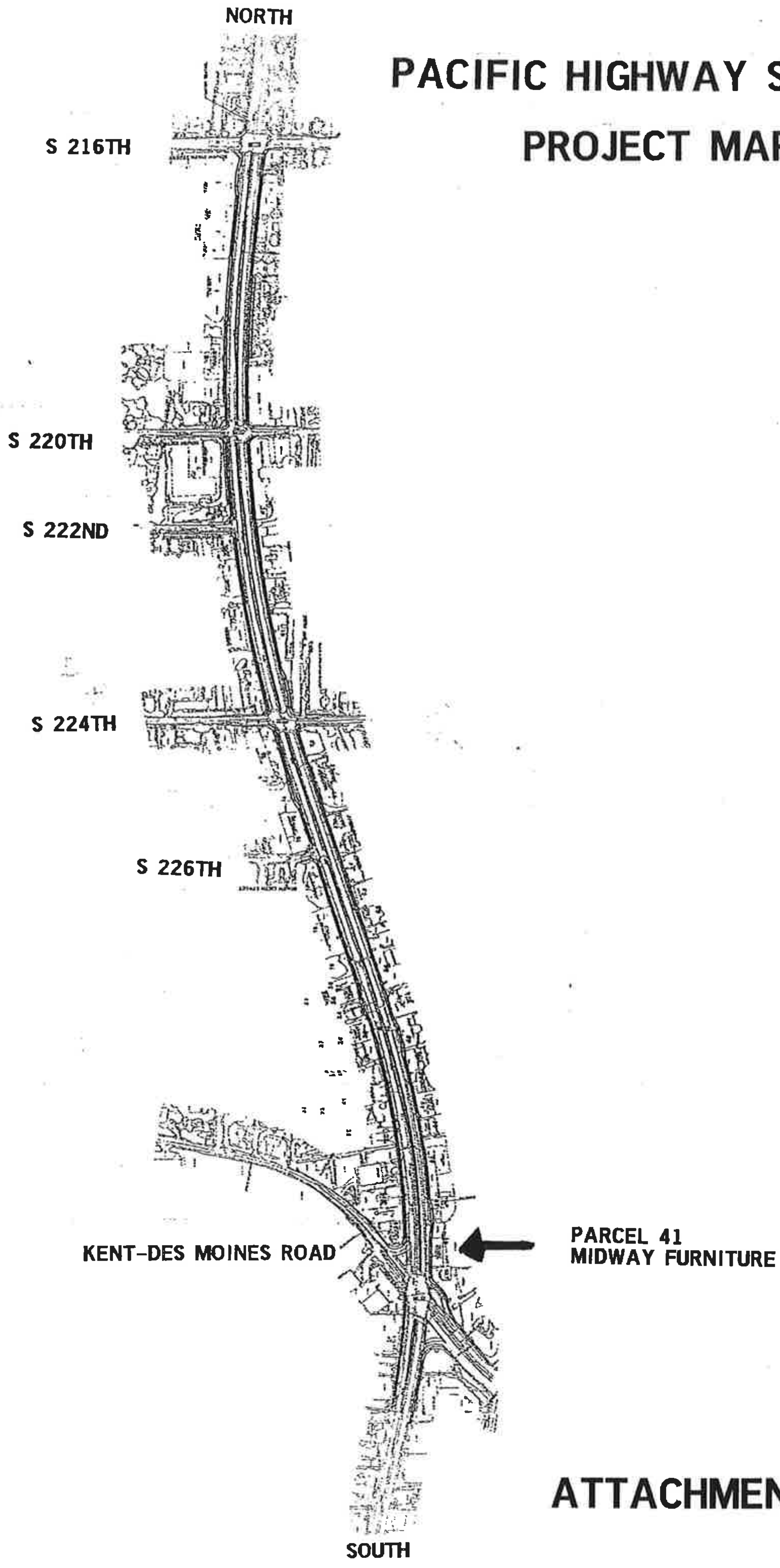
FOR INFORMATION PURPOSES ONLY
THIS DRAWING IS NOT A RECORD OF
SURVEY NOR MEETS MINIMUM STANDARDS

EXHIBIT MAP

CH2MHILL

FILE NAME: parc41.dlv 05-FEB-2002 17:35:58

PACIFIC HIGHWAY SOUTH PROJECT MAP



ATTACHMENT C

CONSENT CALENDAR
Item #7

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Property Acquisition for Pacific Highway South Project (Chinella Property/Kost Auto)

ATTACHMENTS: Consent Judgment & Decree of Appropriation

FOR AGENDA OF: February 13, 2003

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: February 7, 2003

CLEARANCES:
[X] Legal

APPROVED BY CITY MANAGER
FOR SUBMITTAL: CTL for TP

PURPOSE AND RECOMMENDATION

This report is to seek City Council approval for the acquisition of right-of-way property and a temporary construction easement for the Pacific Highway South Improvement Project.

It is recommended that the council:

1. Approve the "Consent Judgment & Decree of Appropriation" in King County Superior Court Cause No. 02-2-19400-1 KNT, which provides for acquisition by the City, for $32,884.00, of right-of-way property and a temporary construction easement, both of which are necessary for the Pacific Highway South Improvement Project; and

2. Authorize the City Attorney to approve and present to the court, for approval and entry, the "Consent Judgment & Decree of Appropriation" substantially in the form as submitted.

SUGGESTED MOTION: "I move to approve the "Consent Judgment & Decree of Appropriation" in King County Superior Court Cause No. 02-2-19400-1 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.

BACKGROUND

On April 11, 2002, the City Council, through the exercise of its powers of eminent domain, enacted Ordinance No. 1302 for the acquisition of right-of-way property for the Pacific Highway South Improvement Project and directed the City Attorney to initiate court proceedings to carry out such acquisition. This court action is pursuant to such direction and the proposed "Consent Judgment & Decree of Appropriation" is a product of settlement negotiations with the property owners and their attorney.

DISCUSSION

This "Consent Judgment & Decree of Appropriation" provides for the acquisition in fee of a strip of right-of-way, (approx. 1,397 square feet) and a temporary construction easement (approx. 2, 985 square feet), both of which are necessary for the development and construction of the Pacific Highway South Improvement Project, for a total of $32,884.00 including attorney and appraisal fees.

ALTERNATIVES

There are no viable alternatives. This agreed settlement is for the fair market value of the property as determined by the City's appraisers plus $1,000 attorney fees.

FINANCIAL IMPACT

This is the most efficient and least expensive way for the City to acquire this property and easement.

RECOMMENDATION

The City Attorney recommends the approval of this "Consent Judgment and Decree of Appropriation" as the most efficient and cost effective method of acquiring the subject property and easements.

SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

City of Des Moines, a Municipal Corporation, **Petitioner,** **vs.** **Judy Chinella, Trustee of the Credit Trust under the FRANK CHINELLA and ELLEN CHINELLA Revocable Living Trust dated November 9, 1998,** **Respondent**	**Case No: 02-2-19400-1 KNT** **Consent Judgment and Decree of Appropriation**

SUMMARY OF JUDGMENT
(RCW 4.64.030)

Judgment Creditor	Judy Chinella, Trustee of the Credit Trust under the Frank Chinella and Ellen Chinella Revocable Living Trust dated November 9, 1998
Attorney for Judgment Creditor	James D. McBride II, WSBA # 1603
Judgment Debtor	City of Des Moines, a Washington Municipal Corporation
Principal Judgment Amount	$31,134.00
Pre-judgment Interest	None
Post-judgment Interest	None, the Petitioner/City has deposited the amount of the judgment into the registry of the court on or before the date of this judgment
Attorney Fees	$1,000.00
Expert Fees	$ 750.00
Total Judgment Amount	$32,884.00
Real Property Awarded	Fee simple to the east 7.0 feet & an easement over the west 15.0 feet of the east 22.0 feet of property described in instrument recorded under King County # 20000131001126
Assessor's Tax Parcel Number	2500600080

Office of the Des Moines City Attorne
21630 11th Ave. South, Suite
Des Moines WA 9819
Tel: 206-870-655
Fax: 206-870-438

STIPULATED JUDGMENT & DECREE

This matter came before this court by stipulation of the parties upon the petition of the petitioner, City of Des Moines, seeking:

1. A determination of just compensation to be paid in money to the owners and all other persons interested in the subject property for the taking and appropriation of the subject property;

2. A judgment and decree of the Court providing for payment of the just compensation so determined; and

3. A decree of appropriation vesting title to the subject property in the petitioner and adjudging that the City of Des Moines is entitled to possession thereof.

The court has previously entered an adjudication of public use and necessity declaring that the use for which the subject property is sought is a public use and declaring that there is a necessity for such appropriation.

The parties, through their attorneys, have stipulated and approved this Consent Judgment and Decree of Appropriation. The petitioner was represented by the City Attorney for the City of Des Moines. The respondents were represented by their attorney, James D. McBride II.

The petitioner has, on or before the date of this judgment, deposited the full amount of the consent judgment, including attorney and expert witness fees, into the registry of the court.

NOW, THEREFORE, in accordance with the parties' stipulation and agreement, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. The sum of $31,134.00 represents the just compensation for the subject property;
2. The sum of $1,000.00 for attorney fees and $750.00 for appraisal fees are reasonable;
3. The petitioner, City of Des Moines, is granted the right to appropriate, use and take the following described property (the subject property):

   The east 7.0 feet, **containing 1397 square feet**, more or less, of that property described in instrument recorded under Number 20000131001126, records of King County, Washington.

4. All of the right, title and interest in and to the above described property shall be and is hereby vested in the petitioner, City of Des Moines, in fee simple absolute.
5. The petitioner, City of Des Moines, is also awarded and granted a temporary construction easement over the following described property (the easement property):

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Tel: 206-870-655
Fax: 206-870-438

The west 15.0 feet of the east 22.0 feet, **containing 2,985 square feet**, more or less, of that property described in instrument recorded under Number 20000131001126, records of King County, Washington.

6. The terms of the temporary construction easement are as follows:

    a. The easement shall allow the City, its contractors, employees, agents, successors and assigns, the right of ingress and egress to enter upon the land subject to the temporary easement as required to complete the construction work, to place personnel and equipment, and to reconstruct roadway access;

    b. The City shall, to the extent possible, leave the property in as good condition as existed on the day construction commences, including the timely removal of debris, rubbish or combustible material resulting from construction;

    c. The easement shall remain in force during construction and until such time as the street improvements have been accepted for operation and maintenance by the City, but not later than January 1, 2005;

    d. The City, its agents and assigns, will notify the respondent of its construction schedule, and will, to the full extent possible, schedule the construction activity so as to minimize any inconvenience to the property;

    e. The City shall indemnify and hold the respondent harmless against all liability for losses, damages and expenses on account of damage to property or injury to persons resulting from or arising out of the easement rights.

7. All other claims, counterclaims and causes of action alleged herein shall be and are hereby dismissed with prejudice.

DONE IN OPEN COURT this ____ day of _____________, 2003

____
Judge/Court Commissioner

Presented by:

____
Richard S. Brown (WSBA # 1985)
Assistant City Attorney
City of Des Moines

Stipulated for Entry, Agreed to as to form and content; and
Notice of Presentation Waived by:

____
James D. McBride II, (WSBA # 1603)
Attorney for Respondent(s)

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Fax: 206-870-438

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Property Acquisition for a Utility Station for Pacific Highway South Improvement Project (Schwab Property/Bartell's)

ATTACHMENTS: Consent Judgment & Decree of Appropriation

FOR AGENDA OF: February 13, 2003

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: February 7, 2003

CLEARANCES:
[X] Legal

APPROVED BY CITY MANAGER FOR SUBMITTAL: CTL for TP

PURPOSE AND RECOMMENDATION

This report is to seek City Council approval for the acquisition of property for a utility station to house electrical equipment necessary for Puget Sound Energy to install and maintain electrical service for the Pacific Highway South Improvement Project.

It is recommended that the council:

1. Approve the "Consent Judgment & Decree of Appropriation" in King County Superior Court Cause No. 02-2-19397-8 KNT, which provides for acquisition by the City, for $9,198.00, of property to house electrical equipment necessary for the Pacific Highway South Improvement Project; and

2. Authorize the City Attorney to approve and present to the court, for approval and entry, the "Consent Judgment & Decree of Appropriation" substantially in the form as submitted.

SUGGESTED MOTION: "I move to approve the "Consent Judgment & Decree of Appropriation" in King County Superior Court Cause No. 02-2-19397-8 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.

BACKGROUND

On November 14, 2002, the City Council, through the exercise of its powers of eminent domain, enacted Ordinance No. 1310 for the acquisition of certain property necessary for the Pacific Highway South Improvement Project and directed the City Attorney to initiate court proceedings to carry out such acquisition. This court action is pursuant to such direction and the proposed "Consent Judgment & Decree of Appropriation" is a product of settlement negotiations with the property owner and his attorneys.

DISCUSSION

This "Consent Judgment & Decree of Appropriation" provides for the acquisition in fee, for \$9,198.00, of small parcel of property near the intersection of 216th and Pacific Highway South, (approx. 504 square feet), for use as a site for a utility station to house electrical equipment for Puget Sound Energy. The utility station is necessary for undergrounding utilities and for operation and maintenance of equipment in connection with the development and construction of the Pacific Highway South Improvement Project.

ALTERNATIVES

There are the following alternatives:

1. Approve the Consent Judgment and Decree and authorize the City Attorney to approve and present it to the court.

2. Do not approve the Consent Judgment and Decree and direct the City Attorney to continue to negotiate and/or litigate.

FINANCIAL IMPACT

Considering the fair market value appraisal of the property and the limited suitable sites for this utility station, this is a fair settlement and least expensive way for the City to acquire this property.

RECOMMENDATION

The City Attorney recommends the approval of this "Consent Judgment and Decree of Appropriation" as the most efficient and cost effective method of acquiring the subject property.

SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

City of Des Moines, a Municipal Corporation, **Petitioner,** **vs.** **Robert H. Schwab, Trustee of the Robert and Louise Schwab Family Trust dated January 16, 1984,** **Respondent**	**Case No: 02-2-19397-8 KNT** **Consent Judgment and Decree of Appropriation**

SUMMARY OF JUDGMENT
(RCW 4.64.030)

Judgment Creditor	Robert H. Schwab, Trustee of the Robert and Louise Schwab Family Trust dated January 16, 1984
Attorney for Judgment Creditor	John R. Tomlinson (WSBA # 14124)
Judgment Debtor	City of Des Moines, a Washington Municipal Corporation
Principal Judgment Amount	$9,198.00
Pre-judgment Interest	None
Post-judgment Interest	None, the Petitioner/City has deposited the amount of the judgment into the registry of the court on or before the date of this judgment
Attorney Fees	None
Expert Fees	None
Total Judgment Amount	$9,198.00
Real Property Awarded	Ptn N½NE¼NE¼SE¼ 09-22-04
Assessor's Tax Parcel Number(s)	215640-0301-06

STIPULATED JUDGMENT & DECREE

This matter came before this court by stipulation of the parties upon the petition of the petitioner, City of Des Moines, seeking:

Office of the Des Moines City Attorne
21630 11th Ave. South, Suite
Des Moines WA 9819
Tel: 206-870-655
Fax: 206-870-438

1. A determination of just compensation to be paid in money to the owner for the taking and appropriation of the subject property;

2. A judgment and decree providing for payment of the just compensation; and

3. A decree of appropriation vesting title to the subject property in the petitioner and adjudging that the City of Des Moines is entitled to possession thereof.

The court has previously entered an adjudication of public use and necessity declaring that the use for which the subject property is sought is a public use.

The parties, through their attorneys, have stipulated and approved this Consent Judgment and Decree of Appropriation.

The petitioner has, on or before the date of this judgment, deposited the full amount of the consent judgment into the registry of the court.

NOW, THEREFORE, in accordance with the parties' stipulation and agreement, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. The sum of Nine Thousand One Hundred Ninety Eight and no/100 ($9,198.00) Dollars represents the just compensation for the subject property;
2. Said sum includes reasonable attorney fees and appraisal fees;
3. The petitioner, City of Des Moines, is granted the right to appropriate, use and take the following described property:

    That portion of the north half of the northeast quarter of the northeast quarter of the southeast quarter of Section 9, Township 22 North, Range 4 East, WM, in King County, Washington, described as follows:

    The west 18 feet of the north 28 feet, **containing 504 square feet**, more or less. Situate in the City of Des Moines, County of King, State of Washington

    Tax Parcel # 215640-0301-06

4. All of the right, title and interest in and to the above described property shall be and is hereby vested in the petitioner, City of Des Moines, in fee simple absolute.

DONE IN OPEN COURT this _____ day of __________, 2003

____
Judge/Court Commissioner

Office of the Des Moines City Attorne
21630 11th Ave. South, Suite
Des Moines WA 9819
Tel: 206-870-655
Fax: 206-870-438

Presented by:

____

Richard S. Brown (WSBA # 1985)
Assistant City Attorney
City of Des Moines

Stipulated for Entry,
Agreed as to form and content; and
Notice of Presentation Waived by:

____

John R. Tomlinson, (WSBA # 14124)
Attorney for Respondent

Office of the Des Moines City Attorne
21630 11th Ave. South, Suite
Des Moines WA 9819
Tel: 206-870-655
Fax: 206-870-438

NEW BUSINESS
Item #2

AGENDA ITEM

SUBJECT:

Draft Resolution No. 02-269
Adoption of an economic development plan

ATTACHMENTS:
1. Economic Development Plan

AGENDA OF: February 13, 2003

DEPT. OF ORIGIN: Community Development

DATE SUBMITTED: December 4, 2002

CLEARANCES:
[X] LEGAL

APPROVED BY THE CITY MANAGER FOR SUBMITTAL

Purpose and Recommendation:

The purpose of this item is to present for City Council consideration the first citywide economic development action plan.

Suggested Motion:

"I move to adopt draft resolution 02-269 establishing an economic development plan for the city."

Background and discussion:

At its April 2002 retreat the City Council selected economic development as one of the highest strategic objectives for 2002-2003. Since that time the Finance and Economic Development Committee has worked with Administration to develop a realistic, achievable strategy to maintain and increase the economic vitality in the city. After many months of work the attached action plan was developed.

Alternatives:

1. Adopt Resolution 02-269
2. Adopt Resolution 02-269 with Council revisions
3. Do not adopt Resolution 02-269

Financial Impact:
There will be financial impacts associated with implementation of the action plan. City Council shall have the opportunity to review and approve these expenditures prior to project implementation.

Recommendation/Conclusion:

Administration recommends adoption of Resolution 02-269.

Concurrence:

None

COMMUNITIY DEVELOPMENT'S FIRST DRAFT 12/02/02
DRAFT RESOLUTION NO. 02-269

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON adopting an economic development action plan and establishing a mission statement, goals and implementation priorities.

WHEREAS, economic development activities broaden and strengthen the local tax bases by providing meaningful employment opportunities and enhancing the quality of life for all residents, and

WHEREAS, successful economic development efforts in other communities have been planned and implemented through partnerships between the City, their local Chambers of Commerce and local businesses, and

WHEREAS, the Growth Management Act encourages establishment of economic development plans, and

WHEREAS, adoption of an economic development plan provides a clear policy basis for project implementation, and

WHEREAS, adoption of a economic development plan clearly articulates to potential developers and employers city priorities and intent, and

WHEREAS, developing a broad base of support including innovative public/private partnerships is critical for the success of any economic development program; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES RESOLVES AS FOLLOWS:

Sec. 1 Economic development and revitalization shall be a priority for the City of Des Moines. The City shall work diligently to implement this strategic objective in cooperation with the Greater Des Moines Chamber of Commerce, local businesses, interested organizations and residents of Des Moines.

ATTACHMENT 1

Sec. 2 The attached "City of Des Moines Economic Development Action Plan" is hereby adopted as the City's official economic development policy document. This plan shall be a working document used to guide and direct all economic development activities of the City.

The City Manager shall keep the City Council appraised of the progress of the Economic Development Action Plan through periodic briefing at Council meeting and the inclusion of Economic Development activities in the City manager's regular report to Council.

PASSED BY THE City Council of the City of Des Moines this ____ day of ______, 2002 and signed in authentication thereof this ___ day of _____, 2002.

____
M A Y O R

APPROVED AS TO FORM:

____
City Attorney

ATTEST:

____
City Clerk

Published: ____________________

Effective Date: ______________

CITY OF DES MOINES ECONOMIC DEVELOPMENT ACTION PLAN

Introduction

At its April 2002 retreat, the City Council ranked economic development as one of its highest strategic objectives. The Finance and Economic Development Committee was assigned the duty to draft a realistic, achievable strategy to maintain and increase economic vitality in the city. After many months of research and discussions with the Committee this action plan was developed.

In addition to a mission statement and goals that clearly articulate the policy directives, the action plan also includes an implementation/work program matrix that prioritizes the city's actions. The matrix also promotes accountability by including specific due dates and responsible parties.

Whereas the mission statement and goals of the economic development action plan may remain consistent for several years, the matrix is designed to be reviewed and updated on an annual basis. The matrix will serve as the major implementation document of the action plan and will be incorporated into work programs in all affected city departments.

What is economic development?

To paraphrase the definition the state legislature used in establishing the Economic Development Tax Authority, economic development broadens and strengthens state and local tax bases by providing meaningful employment opportunities and enhancing the quality of life for all citizens.

The Growth Management Act lists 13 planning goals, one of which is economic development:

> "Encourage economic development throughout the state that is consistent with adopted comprehensive plans; promote economic opportunity for all citizens of the state, especially for unemployed and disadvantaged persons; and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources and local public facilities (RCW 36.70A.020(5)).

How do you make economic development happen?

Only one of three things can happen to a city:

- It can grow
- It can maintain the status quo (at least for a time)
- It can stagnate

Economic development is no one single plan, policy or program. Nor can one single, group whether public or private, can accomplish the task alone. Successful economic development plans involve everyone, from government to the smallest home business in town.

Successful economic development plans generally have three elements:

- Business development/ retention
- Infrastructure development
- Workforce development

Business Development/retention

Business development and retention are the cornerstones of any economic development effort. In this context business development/retention can include business attraction programs, promotion, joint city/ private partnerships, etc.

People will shop, visit, live and work in an area because of available services, not promises or false hype. In this area, critical mass is imperative for success. Having a significant number of commercial, cultural, tourist amenities also helps in attracting new businesses into the community, which in turn creates new jobs for local citizens.

Infrastructure development

Any economic development plan must address the issue of infrastructure support. Without adequate infrastructure support no economic development can occur. In this context infrastructure includes:

  - Roads, including gateways
  - Utilities (i.e. water, gas, electric, etc)
  - Stormwater drainage
  - Flood Control

- Telecommunications
- Schools

With the passage of the Growth Management Act, cities are required to establish "levels of service" and maintain "concurrency" with adopted standards. Luckily in Des Moines most of our infrastructure systems are adequate for a broad range of economic development activities.

Workforce Development

Workforce development is a statewide system of education and training that prepares people for high-skilled jobs and assures employers of a skilled workforce. A trained workforce is critical in securing family wage employers in our community. A good workforce development program will accomplish the following:

- Increase productivity
- Enhance a city's ability to compete
- Provide higher wage jobs for its citizens
- Reduce illiteracy
- Increase standards of living
- Provide opportunities for people historically denied higher-paying jobs
- Stabilize the population

The action plan matrix provides priorities for implementation in each of these three areas.

Mission and goals

Des Moines has many attractions in its favor; they do not need to be enumerated here. What the city has not done is to capitalize upon its assets. Based on a review of our advantages a draft mission statement and goals were developed. A defined mission statement and goals can provide many benefits, including:

- A policy basis for implementation
- Clearly articulates to residents, businesses and potential residents and businesses what the city represents -- a "declaration of intent"
- Inspires people to take pride in their community
- Frees the community from past failures

A good mission statement will respect a community's past while taking a reasonable view of the future. Likewise, a good mission statement cannot be all things to all people. It must always serve as a direct, focused statement of the community's intent and its future.

The City of Des Moines economic development action plan mission statement

The Des Moines Economic Development Action plan will provide a basis for activities designed to foster a diversified, vibrant, and stable economy while preserving community values. The result of this action plan will be an improved business climate leading to an increased tax base and improvements to the standards of living and quality of life for all citizens of the Waterland City

Goals:

- Attract desirable new employers consistent with the area's quality of life
- Eliminate excessive regulatory restrictions while preserving a high level of health and safety in the community
- Focus initial revitalization efforts to the downtown and Pacific Ridge communities
- Improve the image of the city through a targeted marketing and promotion program
- Develop a broad base of community support for economic development efforts including innovative public/private partnerships
- Maintain and upgrade where necessary roads, utilities and other infrastructure improvements

Implementation

Implementation priorities of the Des Moines action plan are detailed in the attached matrix. Progress on these activities will be included in the City Manager's monthly report. On an annual basis Administration will provide the Council an opportunity to review and revise the matrix. It shall be the responsibility of the Finance and Economic Development Committee to make quarterly reports to the full Council on the implementation of these priorities.

Des Moines Economic Development Action Plan Implementation Matrix

	Action	Time frame			Target Date to Start	Target Date to Complete	Est. Cost/ Matching funds	Affiliated Organizations	Action Item For:
		30-90 days	90-180	180+					
Priority 1									
	1. Work with Chamber and other groups to create a marketing plan and business attraction and retention program for the City of Des Moines • Develop marketing plan in conjunction with SWKC group • Work with Chamber to implement Recommendations • Contact Federal Way and Kent on interest in developing a joint business marketing plan	* *	*		Jan 03	?	TBD	DM Chamber	Consultant

	Action	Time frame			Target Date to Start	Target Date to Complete	Est. Cost/ Matching funds	Affiliated Organizations	Action Item For:
		30-90 days	90-180	180+					
Priority 1									
	2. Review government regulations; streamline where possible • ID problem areas	*			Dec. 02	Ongoing until code revision is complete			CD/Legal
	• Review process		*						
	• Include at least one public meeting with user groups								
	• Make recommendations to CC on code/process changes and priorities. Include costs and timelines		*						
	• Begin code/process revisions		*						

	Action	Time frame			Target Date to Start	Target Date to Complete	Est. Cost/ Matching funds	Affiliated Organizations	Action Item For:
		30-90 days	90-180	180+					
	3. Develop downtown revitalization strategy		*		Summer 03	Seasonal	TBD/unknown	DM Chamber	Judith/CD/Joe
	• Allow push carts, farmer markets and other seasonal vendors in the city								
	• Revise DC code to allow for variances	*							
	• Investigate using CDBG float program for a project		*						
	• Conduct market study for Downtown			•					

	Action	Time frame			Target Date to Start	Target Date to Complete	Est. Cost/ Matching funds	Affiliated Organizations	Action Item For:
		30-90 days	90-180	180+					
	4. Continue Implementation of PR Neighborhood Plan • Implement incentive plan • Recommend revisions to PR code to CC • Begin publicity campaign on incentive plan	* * •			Jan 03	Plan implementation ongoing; incentive plan 05			CD/Legal
Priority 2									
	5.Institute neighborhood meetings for businesses • Qtr. By business district		*		Spring 03	Fall 03	0	DM chamber	City Manager
	6. Prepare a development strategy for "south of KDM" area from KDM to 272nd		*		Jan 03	June 03	$2,500	UW, Kent	CD/Adm

	Action	Time frame			Target Date to Start	Target Date to Complete	Est. Cost/ Matching funds	Affiliated Organizations	Action Item For:
Priority 3		30-90 days	90-180	180+					
	7.Work with POS, KC, and partner cities on sub-regional economic development efforts • Develop SBDC • Marketing study • Import/Export Center			* * * *	Jan 00	Ongoing	$5,000/yes	KC, POS, EDA, state, member cities	CD
	8. Implement the Marina Master Plan • Boat storage (04) • Guest moorage (06) • Commercial buildings (03) • Breakers(03) • Bond sale (complete)	*		* * * *	July 01	07			CD/Marina, Legal, CM

	Action	Time frame			Target Date to Start	Target Date to Complete	Est. Cost/ Matching funds	Affiliated Organizations	Action Item For:
Priority 3 cont		30-90 days	90-180	180+					
	9. Work with cities of Kent and Federal Way on straightening boundaries			*	Jan 03	Dec 03			
<u>**Priority 4**</u>	10. Promote economic development objectives by including goals, objectives and strategies on the city's webpage		*		June 03	June 03			
	11.Work with POS on creating a development plan for the buyout area, with the goal of beginning development within 36 months of signing, regardless of final outcome of the 3rd runway			*	Ongoing until complete				
	• Complete "NEST" study			*	Feb 03	Dec 03	$188,000/yes	POS, Seatac, Burien, EDA	
	• Continue encouraging POS to create a development plan			*					

	Action	Time frame			Target Date to Start	Target Date to Complete	Est. Cost/ Matching funds	Affiliated Organizations	Action Item For:
Priority 5		30-90 days	90-180	180+					
	12. Clearly express to all school districts via a resolution the need to work with the CC, administration and the community of the design of their facilities • Adopt HCC master plan • Work with HCC,HSD on permitting of new facilities	*		*	03/03 04	03/03 07			
	13. Working with other organizations develop better strategies of linking student to jobs in the community			*	Sept 03	Develop program by Sept 04, then ongoing		HCC, HSD, DM chamber	

	Action	Time frame			Target Date to Start	Target Date to Complete	Est. Cost/ Matching funds	Affiliated Organizations	Action Item For:
Priority 5 cont		30-90 days	90-180	180+					
	14. Continue implementation of CIP • Where possible provide through the development process the opportunity for telecommunication expansion • Establish positive gateways at 272nd and 16th Ave Explore providing a gateway generally in the KDM/MVD area				* * *				Eng, CC, CD, utilities