

PRELIMINARY

REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

September 6, 2007

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

PLEDGE OF ALLIGIANCE to the Flag was led by Councilmember Dave Kaplan.

ROLL CALL – Present: Mayor Bob Sheckler, Mayor Pro Tem Scott Thomasson, Councilmembers Dan Sherman, Susan White, Ed Pina, Dave Kaplan and Carmen Scott. Also in attendance were Acting City Manager Grant Fredricks, City Attorney Pat Bosmans, Assistant Director Utilities/Environmental Engineer Loren Reinhold, Parks, Recreation and Senior Services Director Patrice Thorell, Harbormaster Joe Dusenbury, Planning Manager Denise Lathrop, Land Use Planner II Jason Sullivan, Vice President of Anthony's Restaurants Jeff Arhno and Acting Council Clerk Kendra Johnson.

BOARD & COMMITTEE REPORTS & COUNCILMEMBER COMMENTS

Saltwater Bridge Contract

Mayor Sheckler called upon Planning, Building & Public Works Assistant Director Utilities/Environmental Engineer Loren Reinhold to brief the Council on the Saltwater Bridge Contract. Loren Reinhold reported a successful bid for the project awarded to the Scarsella Brothers.

Councilmember Scott questioned the budget contingency percentage of the Saltwater Bridge project as 12% or 22%. Loren Reinhold reported the project budget has 12.5% included but that the motion before the Council is only to authorize the City Manager to approve change orders up to 10% of the contract amount. Mayor Sheckler commented that no City funds were being used, and Loren Reinhold affirmed the statement. Mayor Pro Tem Thomasson asked if the motion on the table went far enough for the issue and whether the motion should also ratify the City Manager's decision to sign the contract. Mayor Sheckler explained the motion was to ratify the City Manager's actions to award contracts as well as to approve change orders.

MOTION was made by Councilmember Kaplan, and seconded by Councilmember White and passed unanimously, to ratify the City Manager's actions to award contracts and to authorize the City Manager to approve change orders up to 10% of the contract amount.

Des Moines Beach Park Historic Buildings Rehabilitation Projects – Engineering & Design Contract

Parks, Recreation and Senior Services Director Patrice Thorell briefly presented the Des Moines Beach Park Historic Buildings Rehabilitation Projects – Engineering & Design Contract. Councilmember Scott inquired about how/if the concrete floor level of the picnic area would be raised. Patrice explained there are many permitting issues regarding the concrete floor. Councilmember Scott stated she had access to pictures of the original structure and pictures of the structure with additions that she would share with those working on the project.

MOTION was made by Councilmember White, seconded by Mayor Pro Tem Thomasson, and passed unanimously, to approve the award of the contract for architectural and engineering services for rehabilitation of Des Moines Beach Park historic buildings in the amount of \$253,447 plus a 10% contingency to BOLA Corporation.

City Attorney Bosmans provided information regarding the shut down of the Three Bears Motel on the corner of 216th and Pacific Highway South And clarified the situation by explaining the motel had a number of life/safety issues identified by the City Building Official and Fire Marshall and did not have a business license, and needed one to come into code compliance.

Marina Bulkhead Phase I Concept and Anthony's 2nd Restaurant

Mayor Sheckler introduced the Marina Bulkhead Phase I Concept and Anthony's 2nd restaurant. Councilmember Sherman, Chair of the Municipal Facilities Committee, introduced the bulkhead project to the Council. Harbormaster Joe Dusenbury explained the project issues. Harbormaster Dusenbury also introduced Anthony's Vice President Jeff Arhno, and reviewed the packet regarding the plans for a new Anthony's restaurant. Harbormaster Dusenbury then presented issues regarding the placement of the bulkhead including the addition of aquatic area, which lead to permitting issues regarding habitat.

Councilmember Kaplan asked a question regarding the connection of the gangway in the new plans. Harbormaster Dusenbury explained it as an operational requirement, and the floatation ramp would meet ADA [Americans with Disabilities Act] requirements. Councilmember Kaplan asked if no net loss of aquatic lands was also a requirement. Harbormaster Joe Dusenbury explained that it was not a requirement but it was a net "give back" to fish and wildlife as an environmental condition for permit approval.

Councilmember Scott asked if the new utilities placement would be affected by the tidal fluctuations. Joe Harbormaster Dusenbury stated that it will be affected by the tides and it was more of a challenge and would cost more. Councilmember White thanked the Municipal Facilities Committee for all its hard work on the bulkhead project, and asked what the size of the floatation gangway would be. Joe Harbormaster Dusenbury answered with the dimensions of 12 ft. W x 100 ft. L. Councilmember White asked when the project would begin. Harbormaster Joe Dusenbury answered with September 2008.

Councilmember Sherman noted that cutting back the bulkhead by excavating landward by 17 ft. would be a notable difference to citizens. Councilmember Scott asked if there were any alternatives to cutting back the bulkhead. Harbormaster Joe Dusenbury explained it was an operational requirement. Councilmember Kaplan clarified Joe Harbormaster's statement by telling Council it was part of the ADA requirements to have a longer gangway/ramp.

Mayor Pro Tem Thomasson shared that he had received citizen emails regarding the removal of the sling launch, and suggested posting signage now for the 2009-scheduled removal. Councilmember Kaplan explained that those affected by the sling launch removal would be able to join the yacht club, or go to Redondo. Joe Harbormaster Dusenbury explained there was limited membership to the yacht club. Mayor Pro Tem Thomasson asked what would be the impact to the Marina. Joe Harbormaster Dusenbury answered that there would be less need for labor; therefore the staff would run Redondo full time in 2008. Councilmember Pina inquired as to the moorage rental for boat cleaning and sling launch usage. Councilmember Sherman asked what the sling launch size limits and usage pricing are. Joe Harbormaster Dusenbury explained that the size limit is roughly 20 ft.; it depended on the size of the boat for pricing, around \$75.00 for smaller boats and \$150.00 for larger boats. Mayor Sheckler thanked the committee.

MOTION was made by Mayor Sheckler, seconded by Councilmember Kaplan and passed unanimously, to approve the bulkhead alignment project.

FOR PUBLIC RECORD Mayor Sheckler noted that he and other Council-members had received citizen requests to reconsider the removal of the sling launch. For the record, the Mayor stated that he will not ask Council to reconsider the decision to remove the sling launch unless three Council members ask that the issue be placed on a future City Council agenda as allowed for under Council rules.

Councilmember Sherman stated that there may be a request for proposals for a restaurant at the site being considered by Anthony's. Councilmember Scott stated, however, that the Council needed input on the bulkhead, building placement, walkway, parking, and building height to site and design any commercial facility at this location. [JoeHarbormaster](#) Dusenbury explained that the concept proposal drawings are helping to clarify Marina project issues. Councilmember Pina asked if there would be two Anthony's. Jeff Arhno, Anthony's Vice President, explained the project as view enhancement, a complementary restaurant to the original Anthony's, and a tie between the community and the restaurant with the addition of the Harbor Steps.

Councilmember White asked about the name of the new restaurant. Jeff was not sure. Councilmember White asked about the capacity of the restaurant. Jeff explained it as a 6500 sq. ft. structure with seating for 165-180 guests, and a staff of 85-100. Councilmember White liked the idea to link the Marina to downtown, and stated that passenger ferry needed to be kept in mind.

Councilmember Sherman raised the issue of parking at Beach Park as a major issue with the project. Councilmember Scott stated that the project needed to be the least intrusive to the area, and parking must be a consideration. Jeff Arhno explained that the plan was to keep the parking area as large as possible. Mayor Sheckler asked if the parking would be dedicated or shared. Jeff noted that Anthony's fully intended to provide all the parking required by the City's development regulations.

Councilmember Pina needed clarification to understand the drawing. [JoeHarbormaster](#) Dusenbury explained that the drawing was primarily site orientation. Jeff noted that Anthony's had spent a lot on design and wanted to be sure their approach was meeting with the City's approval before proceeding further with design.

Councilmember Kaplan asked how the fuel tanks were currently filled. [JoeHarbormaster](#) Dusenbury explained it was an intricate process of trucks coming in and maneuvering to the tanks. Jeff Arhno explained the building placement, building height, dining area, bar, patio, and how kitchen deliveries would be made using the conceptual drawing. Councilmember Pina asked Jeff Arhno to explain the elevator in the Harbor Steps drawing. Jeff Arhno explained the drawing was two images layered on top of one another, and the concept would be either the steps or the elevator. Councilmember Kaplan asked what the inspiration for the steps was. [JoeHarbormaster](#) Dusenbury explained it was always in the Marina "wish list," and credited Anthony's President for the concept.

Councilmember Scott stated she was able to visualize the tie between the City and the Marina. Mayor Pro Tem Thomasson stated that the Committee was open to the concept, but there was a land lease issue with the parking lot by Cliff Ave. He continued to explain that the lot was purchased for \$500,000 and the investment needed to be recouped from the business. Mayor Pro Tem Thomasson asked a rough estimate for rent on parking.

Councilmember Scott stated that the building height should not compromise the view. Mayor Sheckler stated that there may be a view issue with the condominiums in the area. Councilmember Sherman stated the bulkhead will be one foot higher than now. Jeff Arhno explained that elevating the building

height would not challenge the view. Mayor Sheckler asked if there would be a “shadow effect” for the view. Jeff Arhno explained that there is no such effect at this point.

Councilmember White stated that there seemed to be no issues for this project not to proceed. Mayor Sheckler stated that the concept was “okay,” but the committee needed to “take on” the parking and lease issues. Councilmember Kaplan stated that the concept was good, the connection of the community to the Marina was important, and he raised stabilization issues regarding cutting in to the hill for the Harbor Steps. Kaplan also suggested that traffic impacts be considered, i.e. conflicts with fueling truck access. ~~Joe~~Harbormaster Dusenbury explained the fuel tank vents would need to be relocated due to the walkway, parking and the road. Jeff Arhno explained that a “parking problem” was an indication of a successful business, which was a community amenity.

Councilmember Pina stated some fine-tuning needed to be done on the project, but the timing was good. Mayor Sheckler sent the project back to the Committee for further review.

ADJOURN for a 10-minute break by Mayor Sheckler at 9:40p.m.

RECONVENED the meeting at 9:50 p.m. by Mayor Sheckler.

Des Moines Zoning Code Update – Package 1 Continued Discussion

Planning Manager Denise Lathrop discussed the Zoning code updates relating to the NAICS 1997 definitions. Denise Lathrop responded to some Council questions raised prior. The first question raised that was discussed was “Should the NAICS [North American Industry Classification System] definitions be included in the Des Moines Municipal Code [DMMC]?” Denise Lathrop explained the closest match would be included. The next question discussed was “Should the ‘Zoning’ code be changed to the ‘Development’ code?” Denise Lathrop explained that Title 18 of the DMMC included more information than Zoning issues, and the code should be cross-referenced.

Mayor Pro Tem Thomasson asked for clarification on how to deal with the issue of updating the code. Thomasson stated that earlier Council provided comments on grammar, policy, and usage of terms. Councilmember Kaplan explained that the State has specific definitions for certain terms that pre-empt City definitions. Denise Lathrop stated that the terms kept in the DMMC were those heavily used in the code. Mayor Pro Tem Thomasson asked what certain items led to setting the correct definitions. Councilmember Sherman stated that the NAICS definition packet was confusing, and asked what the process to finish the DMMC was.

Denise Lathrop stated that she had no administrative support staff and there was version control challenges. Councilmember Kaplan stated the last packet had organizational issues, formatting, and multiple layers and was impractical. Councilmember Pina suggested the process should be accepted or rejected and a new draft of the best comments should be formed. Councilmember Sherman suggested a page-by-page review dealing with each issue to reduce redundancy. Mayor Pro Tem Thomasson stated that it was a daunting task, and suggested the first review should be feedback on sections to gain a better understanding of the items to be defined.

Land Use Planner II Jason Sullivan suggested leaving the definitions of usage open, correcting the grammar, and bring the minor issues forward because Zoning issues were difficult to discuss. Councilmember Pina raised the concern of unclear definitions and suggested working the definitions first. Councilmember Scott stated that it would be valuable to see comments made following the first session, and she was having difficulty wading through/understanding the issues and needed clarification.

Councilmember Sherman explained that Council set policy and a page-by-page review would be most logical. Mayor Sheckler recapped the discussion; Councilmember Sherman wanted a page-by-page review and Mayor Pro Tem Thomasson wanted a subject-by-subject review with page-by-page detail.

Mayor Pro Tem Thomasson stated that the original goal of the review was to change the DMMC into modern language then alter the items within the code. Councilmember White asked where the money went from hiring a consultant [Beckwith] to aid in the review of the code, and stated that it was a waste of taxpayer money. Denise Lathrop stated that the original goal for the consultant was to modernize and reformat the code, not to deal with policy issues.

Mayor Sheckler called for a Council consensus on how to proceed with the review of the code. Councilmember Pina stated he liked the section-by-section and page-by-page review style. Councilmember Kaplan liked the section-by-section review and suggested it be worked during a one-day retreat. Mayor Sheckler supported a one-day retreat to work the code issues. Mayor Pro Tem Thomasson agreed that a one-day retreat worked for him. Councilmember Sherman also agreed to a retreat. Councilmember White stated she would do whatever it took to work the codes. Councilmember Pina agreed to a one-day retreat to work on the City code. Councilmember Scott also agreed.

Jason Sullivan explained that DMMC 18.04 was intended to consolidate administrative responsibility, and the Zoning section was renamed Development, and Zoning was a division of the section. Jason Sullivan also explained that any person seeking reference to Zoning might do so in the Development section. Mayor Pro Tem Thomasson stated that there seemed to be enough language in the definition and titling sections to reference Zoning. Mayor Sheckler made a motion to amend DMMC 18.04, Councilmember Kaplan seconded. Councilmember Pina still had issues with the code language regarding certificate of occupancy.

Mayor Sheckler asked City Attorney Bosmans if the motion was proper, and City Attorney Bosmans stated that the motion was not in ordinance format but it may be accepted or rejected by motion. Mayor Pro Tem Thomasson asked what the final ordinance was. Mayor Sheckler withdrew the motion. City Attorney Bosmans suggested that the possible motion might lead the staff to bring the code to new format. Councilmember Kaplan asked how Council review of the Building Code was done. Acting City Manager Fredricks answered that it was accomplished chapter by chapter through consensus.

Mayor Pro Tem Thomasson stated the certificate of occupancy issue was unclear between the Building and Zoning codes. Jason Sullivan explained that the code language from 1964 was left in the current code, and the Zoning section needed removal. Councilmember Scott asked how much of the Zoning section needed removal. Mayor Sheckler asked if 18.04.06 needed total removal. Mayor Pro Tem Thomasson stated that it still needed to remain informative to the public. Councilmember White suggested links on the City website.

Jason Sullivan suggested amending parts A, B, C, sections 2 and 3, and modifying the statement of "certificate of occupancy." Mayor Pro Tem Thomasson suggested that some businesses such as churches do not require business licenses. Jason Sullivan stated that all businesses require a land use review. Mayor Sheckler asked City Attorney Bosmans if there were any exemptions. City Attorney Bosmans stated that she needed to research that issue. Mayor Pro Tem Thomasson stated that there needed to be a catchall for the license issue. Mayor Sheckler stated no motion was needed.

Councilmember Sherman stated that a "certificate of occupancy" was needed only when the building was actually occupied by humans, and a business license referred to "usage" of the building. Sherman

asked if the “certificate of occupancy” outlined the number of maximum occupancy. Acting City Manager Fredricks answered that occupancy numbers were determined by the Fire Department. Jason Sullivan stated that “certificate of occupancy” needed to be changed when “usage” changed. Councilmember Kaplan recommended the deletion of 18.04.060.

Councilmember Scott asked if the public would be able to click on the term, they are used to and get to the information they need under the new code language. Acting City Manager Fredricks noted that technology will soon allow the on line version of the DMMC to be provided in HTML format with embedded links that should allow easier use of the code. Jason Sullivan explained how citizens were able to reach a list of contacts for a face-to-face meeting to gain better understanding of issues.

MOTION was made by Councilmember Kaplan, seconded by Councilmember Sherman and passed unanimously, to extend the Study Session to 10:45 p.m.

Jason Sullivan explained that the City Manager set the fees for land use and building permits. Mayor Pro Tem Thomasson stated that the City Manager authority to set fees was not the issue; the deletion of section 2 was the issue. Jason Sullivan suggested deleting section 2, and that Enforcement needed to be moved and renamed Authority in section 18.04.030. Jason Sullivan also suggested section 18.04.040- revocation of permits-be deleted because Planning does not have the authority to revoke permits. Councilmember Sherman stated that there still might be some items that apply to revocation. Jason explained that a permit cannot be revoked once it is issued, but the Planning department was able to make the public adhere to what they were permitted to do.

City Attorney Bosmans stated that LUPA [Land Use Petition Act] pre-empts revocation, and if there is a fire/life/safety issue, the permit may be revoked. Councilmember Sherman stated there would be a loss of authority if the revocation language were deleted from the code. City Attorney Bosmans explained that the City authority to revoke is stated in LUPA. Councilmember Kaplan explained that State law “trumps” the City code to revoke permits. Jason Sullivan introduced section 18.04.100 regarding criminal/civil penalties. City Attorney Bosmans stated there are equal protection arguments associated with penalties, and there needed to be a choice of one or both. Councilmember Kaplan explained that the City Manager handles civil versus criminal penalties. City Attorney Bosmans stated reference to ratcheting up offenses.

MOTION was made by Councilmember Kaplan and seconded by Mayor Pro Tem Thomasson, to extend the meeting another five minutes. Motion passed 5 to 2.

Mayor Pro Tem Thomasson suggested deleting section 18.04.170 regarding permit continuance. Thomasson also introduced the term “expiration” and stated that the permit would expire if the citizen did not record their plat, and the term “conditional use” and the permit would expire if the use was not determined within the appropriate time. Jason explained that “expiration” should be moved to “land use procedures.”

ADJOURNMENT Mayor Sheckler adjourned the meeting at 10:50 p.m.

Formatted: Font: Not Bold, No underline

Respectfully submitted,

Kendra Johnson
Human Resources Specialist

Acting City Clerk

