

REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

October 25, 2007

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

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

Announcement

Mayor Pro Tem Thomasson announced that Mayor Sheckler is ill this evening, therefore he will be presiding officer for the meeting. However, he pointed out that Mayor Sheckler will participate via speaker telephone for a portion of the meeting.

ROLL CALL - Present: Mayor Bob Sheckler (participated via telephone until 8:50 p.m.), Mayor Pro Tem Scott Thomasson, Councilmembers Dave Kaplan, Ed Pina, Carmen Scott, Dan Sherman and Susan White. Also in attendance were City Manager Tony Piasecki, City Attorney Pat Bosmans, Development Services Manager Robert Ruth, Land Use Planner II Jason Sullivan and City Clerk Denis Staab.

CORRESPONDENCE

Letter - Request for Reconsideration of Council Action

City Manager Piasecki advised that Council has been given a letter from the applicant for South Shores Modified Subdivision. The letter is a request for Council to reconsider its decision from the last Council meeting (October 11, 2007).

COMMENTS FROM THE PUBLIC

Georgie Nupen, 24816 12th Avenue South

Ms. Nupen noted that in July 2007 the Senior Advisory Committee brought Council recommendations requesting support of the Sr. Activity Center expansion for the 2008 CIP Budget. She read a memo from concerned citizens as follows:

"We, the undersigned, urge the Councilmembers to restore the expansion project to the 2008 CIP Budget. The background for our request is as follows: The current Senior/Activity center building was modified and restored to provide space for Senior/Community activities when the Beach Park facility was flooded, sustained earthquake damage and was condemned. At the time it was recognized that the building would not be adequate to meet all the community needs. Some programs continue to be held at off site facilities and others had to be dropped due to lack of space. The Park and Recreation Staff has been extremely supportive in meeting everyone's needs and now need your support to provide a full range of activities to the citizens of Des Moines. It is time for the Council to act and restore the Senior/Activity Expansion project to the Capital Improvement Plan."

Ms. Nupen informed Council that the petition contains 211 signatures supporting the effort. She noted it is recognized that there are many projects and problems and that finances are short. She advised they are not asking for funding, only restore the item to the CIP. If there should be an opportunity to apply for a grant, they cannot do so if the project is not listed in the CIP or even be allowed to organize fund raisers, if no project exists. She encouraged Council to restore this item to the CIP for 2008.

John Carroll, 24832 11th Avenue South

Mr. Carroll informed Council he is here to support Ms. Nupen and the petition as presented. He stressed the importance of the Activity center to the community. He stated the Center staff does a great job of keeping everything running smoothly under difficult conditions. He felt by restoring the project to the CIP it would show staff that Council cares.

David Osgood, 1411 4th Avenue, Suite 1506, Seattle, Attorney for Owner of King's Arms Motel

Mr. Osgood stated that earlier this year, Council passed Ordinance 1395 which amended the overnight lodging code. He noted the owner, Mr. Singh, has requested he update Council on the Police enforcement and the effect it is having on his business. He reported his client received a letter from the Chief of Police informing him that the Motel is subject to the revised Code for the number of 911 calls for service. He advised that they dispute the number of calls. He reported that two days after the letter, two Police officers came and parked at the Motel and wrote citations day and night for 3 days, 24 tickets in all. The tickets are for violation of DMMC 5.60 for failing to have a parking registry and are in the amount of \$1,050 each. He advised that had the Officers gone in the Motel and spoken with the Manager or other staff, they would have been shown the guest register and parking permit that showed these cars were legally parked. He noted other incidents such as:

- A Police officer coming on the premise accusing a single mother of being a prostitute in front of her son.
- On all hours of the day Police have asked customers 'why are you staying here? This is not a place to stay'.
- This morning beginning at 6 a.m. a Police car was there with lights flashing in front of the Manager's office for ½ an hour. He never came in, but just sat there with lights flashing.

He stated this ordinance has been an excuse for high level harassment of a motel in which the owners have invested over a quarter of a million dollars in the property located in Des Moines. Also the owners have worked very cooperatively with the City, and have done everything that has been asked and he advised this has got to stop. He reported that he and his clients would like to work constructively with the City. However, they have problems with the way the law is enforced, and the way the numbers have been compiled for calls for service. He pointed out that the Police have come in doing welfare checks and written them up as calls for service, also have shown up saying they have seen suspicious activity, and that is written up as a call for service. He informed Council that he does not want to go through a law suite and civil discovery to carve down the number of calls for service and find out what is legitimate or not, as he believes there were very few calls for service that are caused by the Motel. Police are suppose to respond to calls for service and you want citizens calling 911, rather than hiding problems. He asserted the Police have gone beyond stringent enforcement over the last 3 months and it has become "actionable harassment". He advised he is not here to make threats but to look for help and ask for a meeting with the City Manager, Mayor and City Attorney to review the facts and find another way to settle the matter. He concluded by noting this is his clients life, livelihood and their investment and property, and if the City of Des Moines does not let them operate their business in reasonable peace, we have to find another alternative.

Upon questioning regarding the parking tickets, Mr. Osgood stated they are scheduled for a pre-trial hearing in Des Moines Municipal Court on December 6th.

Balbir Singh, 23226 30th Avenue South, Owner of King's Arms Motel

Mr. Singh informed Council he purchased the Motel in 2004. He advised that he has cleaned up the property and prior to August, the Police department has helped a lot. Since then the Police have issued tickets, Police cars circle the property every ½ hour to 45 minutes. He noted sometimes they check all the cars and sometimes they stop people walking on the property questioning them. He gets questions from customers asking what is wrong with the property and why are the Police bothering us. He informed Council that he needs to know what he has done wrong so he can fix it.

Gurpreet Singh, 23226 30th Avenue South, Son of Owner of King's Arms Motel

Mr. Singh informed Council that this is a family motel and he lives there. He reported seeing police questioning customers as to what they are doing there, 'are you selling drugs?'. He stated this is his home and asked Councilmembers how they would feel if you did not have a parking pass on your own car. He stated there is no basis for any of the tickets since they have proof of giving every customer a parking pass. He stated he has been personally harassed by the Police when he questioned under what law they were asking to review the Motel register, and the Police did not answer. He requested that the City work with them cooperatively so they do not have to take this to another level.

Dr. Vinod Gaur, 23226 30th Avenue South

Dr. Gaur advised that he is new to Des Moines and is looking for property to set up a medical diagnostics manufacturing business in the City. He informed Council he is in support of the owners of the Motel. He stated he witnessed a Police officer questioning a motel guest as to why he was staying there. He noted that if this is how the Police treat immigrants he questions whether he wants to start a business in this City. He felt the Police are harassing Mr. Singh who is a hard working businessman.

Rikki Marohl, 22807 17th Avenue South

Speaking on behalf of the Farmer's Market, Ms. Marohl reminded everyone that this Saturday is the last day of the Farmer's Market. She invited Council to attend and be judges at the Chili Cook Off. She thanked the City for its continued support of the Farmer's Market.

ADMINISTRATION REPORTS

King's Arms Motel

City Manager Piasecki assured the owners of the King's Arms Motel that he will follow up on their comments. He will meet with the Police Chief and ask for a full report, including any 911 calls. Once he has had a chance to do that, he will meet with the owners to determine what is going on and what needs to be done according to the Code. He also felt it would be appropriate for staff to give a general report to the Public Safety and Transportation Committee as to how things are going with the implementation of the revised Hotel/Motel Code. He advised Council that he will keep them informed of progress of meetings with the owners of the Motel and their Attorney.

Mayor Sheckler advised that he will attend the meetings on behalf of the City Council.

Councilmember Sherman felt the allegations made by the Motel owners are serious and he would like a public report made at a regular Council meeting on all findings prior to the end of the year.

Councilmember White expressed agreement with Councilmember Sherman.

City Manager Piasecki advised it is a constant challenge for staff to balance the activities that they are doing with the policies and ordinances of Council. He reminded Council that we have had problems with just about all of the hotels/motels in town over the years, which is why the hotel/motel was adopted and then later revised. He noted it is a fine line to balance and we need to find that balance.

Upon questioning, City Manager Piasecki stated that City Attorney Bosmans had spoken with the Singh's Attorney, Mr. Osgood. He also noted various staff have met with the Singh's from time to time and the Police have also met with them over the years.

Councilmember Kaplan stated as part of the final report to Council he wants to see the number of calls to all the motels/hotels for the last 10 years if possible.

BOARD & COMMITTEE REPORTS & COUNCILMEMBER COMMENTS

Reconsideration - Previous Meeting Council Action re. South Shores Modified Subdivision

In regards to the South Shores Modified Subdivision, Councilmember Scott stated she would like this to come back to the Council to reconsider.

MOTION was made by Councilmember Scott, seconded by Councilmember Kaplan, for Council to reconsider the South Shores Modified Subdivision at the November 1st Council meeting.

Councilmember Sherman noted that the applicant has requested an official reconsideration. He stated that under DMMC 17.16.150 it allows for a reconsideration, and they have asked for one. So he questioned why we need to use this process.

Councilmember Scott stated she felt that their request is very narrowly defined as to what they can bring up, and she feels there are other issues that are worth discussing. The Council can bring these issues up where the proponent cannot.

Mayor Pro Tem Thomasson read Council Rule 28 regarding a Councilmembers reconsideration.

Councilmember Sherman noted that one of the issues the applicant brought up in the letter requesting reconsideration was the financial impact and the costs, and whether it was feasible financially to follow the request Council made of them. It asked that, should this item come back, the applicant present to Council the financial information, including claims that the developer is walking away because the financial impact is such that the project will not proceed. He suggested an impartial analyst review of that financial information, including finished lot prices.

Mayor Sheckler advised he is participating via telephone because of this issue. However, he wanted it clear that he is not swayed by a person's plea for their financial condition. He truly believes this issue needs to be reconsidered for other reasons.

Mayor Pro Tem Thomasson stated Council had a public hearing, with a record, and closed that hearing. New testimony, or answers to Councilmembers questions by applicants, would need to be only considered through a re-opened public hearing and not by private meetings or other

means since Council was acting on a quasi-judicial matter. Therefore, as part of the motion to reconsider, Council needs to express its intent as to whether it intends to have new discussion on the record that was made, or take additional testimony, including re-notice the hearing and re-open the hearing. He noted if we are going on the record, there are no new questions to ask other than what we would normally do in going through Council deliberations.

City Attorney Bosmans advised that essentially Council sits as a judge in the matter, so if the Council wants additional information and testimony, then that can be provided. First Council has to decide if they are going to reconsider, and then give the applicant an idea of what Council will be discussing and what you will be expecting.

Councilmember Pina urged a re-opened public hearing to allow additional testimony.

Mayor Pro Tem Thomasson noted he is a little concerned with the wording of the reconsideration rule. He repeated the last sentence which reads: "Upon passage of a motion to reconsider the subject matter is returned to the table a new at the next regular Council meeting for any action the Council deems advisable". His understanding of the sentence is it essentially rescinds the action that Council previously took, and a motion to adopt the resolution would start fresh, as opposed as to starting with what Council had done and then making motions to change it. In other words, the previous action is rescinded and we are starting over, is how he understands the motion to reconsider.

City Attorney Bosmans advised that the record that was made previously remains the record. Council can add to that record either with evidence or testimony, or just by allowing the applicant's letter in. She further noted that the persons entitled to notice are the parties to the action. She reminded Council this is a public hearing only in the most general sense, in that it is a hearing being held in public, this is a quasi judicial action of the Council where you sit as a judge.

Councilmember Sherman felt the request for reconsideration by the applicant would be a closed reconsideration, unless there is an extremely new fact that was not discoverable at the time of the first hearing. He stated by Council making a motion to reconsider it will open up discussions further and even allows new information to be generated. Therefore he felt in all fairness, full notification should be required to all those who were previously notified.

Councilmember Scott reported a meeting with staff this morning regarding this issue. One thing she learned, that she missed at the original hearing, is that the applicant is furnishing a very large sewer line hundreds of feet in order to sewer this property and that it will have the capacity to serve even more area surrounding their site. She noted this would have influenced her thoughts previously had she known, as there are numerous homes in that area on large sites that are not served by sewers. She advised that she could support a different number of lots in this subdivision if a few things were tweaked. She noted she wants to see some sort of play equipment in the dedicated park area, landscaping around the drainage ponds and it should be the responsibility of the homeowners to maintain it, the access to the ball field should go directly north even if it means losing a lot, these reasons among others is why she would like to hear this matter again.

Councilmember Kaplan felt re-noticing should not be required if the reconsideration decision is based on the previously provided information. He felt the question is whether or not the

information provided was either misunderstood or not taken into consideration. Council has the ability to make a decision based upon the information that was already provided, without having to re-open the public hearing portion of it. He advised he supports the motion to reconsider.

Councilmember Sherman stated the purpose of the motion is so Council can do a wider consideration. However if we did a reconsideration as requested by the applicant then reconsideration is not an issue. Doing it by motion we will be opening up the matter for all sorts of things to occur and therefore he feels it should be notified. He questioned the City Attorney that if the motion fails, then the applicant still has its right to request a reconsideration.

City Attorney Bosmans advised that Councilmember Sherman is correct should the motion fail. She stated the motion is to continue the matter and hear additional information.

Mayor Pro Tem Thomasson felt the motion if approved, would allow Council to start debate anew, and this is his interpretation of the intent of the Council rule. Therefore Council would hear the matter as a closed hearing, since there is no direction in the motion to hold the hearing anew. It would be possible at the November 1st meeting for Council to determine it wants a new hearing, then notice would need to be given.

City Attorney Bosmans called Council's attention to DMMC 17.16.120 Continuation of a Hearing - that during the hearing Council announces the time and place of the next hearing on the hearing and no further notice of that hearing need to be given. To facilitate that hearing Council may give direction to staff or applicant as to what they want to hear at the next hearing.

City Manager Piasecki noted the words ". . . at the next regular Council meeting for any action the Council deems advisable". He suggested that at next weeks meeting, if the motion passes, Council can debate with the information it already has, and if Council cannot come to a decision because it wants more information, then Council could determine it wants to re-open the public hearing and a motion could be made and staff would do the proper notification.

Councilmember Sherman voiced a strong opinion that public notice is important and feels we should notify anyone who had been notified of the original hearing, knock on their doors or put a notice on their screen door if there is not enough time to do a mailing.

Councilmember Kaplan expressed disagreement regarding the notice to the public since they had been notified before and no one appeared at the hearing expressing any concerns. He believes the decision will be made on the information already provided, and Council has the flexibility to make changes to what was required previously, based on the same information.

Councilmember Pina felt if Council is going to reconsider based on new facts, then it should be re-notified.

MOTION was made by Councilmember Pina, seconded by Mayor Pro Tem Thomasson, to amend the main motion to advertise as a Public Hearing.

Upon questioning, City Manager Piasecki advised that the Code requires the notice to be made 15 days prior to the hearing, so the earliest notices could be done properly would be for the Council meeting of November 15th.

Councilmember Scott felt it would be best to hold the meeting next week so everything is out in the open and if it is determined that we need another public hearing this would give the applicant time to address any issues.

VOTE ON AMENDING MOTION: Motion FAILED 4 to 3 with Councilmembers Kaplan, Scott and White, and Mayor Sheckler opposed.

Mayor Pro Tem Thomasson advised this brings us back to the main motion which is to reconsider, on a closed record, at the next Council meeting.

Councilmember Pina stated it is his opinion that if the motion passes, Council cannot consider any new information including the letter received from the applicant.

Mayor Pro Tem Thomasson expressed agreement with Councilmember Pina's opinion. If there is any new information, that can only be brought out if there is a new Public Hearing.

Councilmember Scott expressed the opinion that if Council brought the issue back, it creates greater latitude than if we acted on the proponents request.

City Manager Piasecki noted the Code is written that when the applicant makes a request for reconsideration, there are only 2 ways for Council to reconsider, one is if the applicant shows Council that there is an error in fact, law or procedure and if Council does not agree, then it cannot be reconsidered. The second reason is there was some material information that was unavailable at the original hearing that is now available, and if you had known about it, you may have changed your decision. If what the applicant states was available, but they just forgot to bring it up, then Council must deny their request for reconsideration. Under the Council Rule it is wide open to use all the information already presented and you come to a different conclusion, or because you have thought about it, and if there were other conditions, you could have supported the original application, or something less modified. This would not allow anything new to be considered, only what was heard at the previous hearing. He pointed out that next week, if Council cannot come to a decision using the previously provided information, you can ask for a new re-opened hearing or, you can act upon the applicant's reconsideration request.

Mayor Sheckler stated that he saw no merit or basis in the applicant's request for reconsideration based on the City's Code. However, based on the Council Rules it is clear to him that a Councilmember can request a reconsideration and he is willing to do that.

VOTE ON MAIN MOTION: Motion passed 5 to 2 with Councilmember Sherman and Mayor Pro Tem Thomasson opposed.

8:50 p.m. Mayor Sheckler left the meeting.

Victorian Concert - December 1st

Councilmember Scott noted there is information available, including tickets, during Council's break for anyone who is interested.

School Impact Fees

Councilmember Pina remarked when Council approves a new subdivision, we bring in new homes with more children. The schools get crowded and need more teachers. He encouraged Des

Moines City Manager to contact the school superintendent and see if we can work out a fee that can be charged each new home.

Mayor Pro Tem Thomasson commented that State law allows school district impact fees, but the Highline School District has done nothing to implement that law.

Councilmember Kaplan expressed the opinion that it is up to the school district to contact the City.

Handicapped Parking

Councilmember Pina requested that the Police Department staff come up with a recommendation on what we can do to enhance their ability to enforce the current handicapped parking laws.

Projects Before Council

Councilmember White commented that staff spends a huge amount of time working on projects such as the modified subdivision that will be reconsidered. She questioned whether Council can review projects earlier to avoid having staff waste their time or having to redo numerous items. She reminded Councilmembers that they represent the constituents and not our own personal interests.

Municipal Facilities Committee

Councilmember Sherman noted the Committee discussed the Space Study Contract (Consent Item #5 on the Agenda). He advised this topic of configuring the City property to expand, will be discussed when Council gets to the CIP, or whether we need temporary extra space. Other items of discussion included the Marina bulkhead replacement project, the Beach Park historic buildings renovations, and a recreation and conservation grant (Consent Item #6 on the Agenda).

Association of Washington Cities - Pre Legislative Session Meeting and Suburban Cities Association

Councilmember Sherman reported attending both meetings and a common topic was the Streamlined Sales Tax of which Des Moines should benefit significantly. This will be in place beginning July 2008 and Des Moines could benefit by up to \$1 million a year.

Revamp B & O Ordinance

Councilmember Sherman questioned when we will look at revisions to our Business and Occupation Tax ordinance.

City Manager Piasecki advised that it is scheduled to come before Council on November 15, 2007.

Correspondence from Port of Seattle - 4th Runway Rumors

Councilmember Sherman reported that Council received a letter from the Port of Seattle signed by all of the Port Commissioners, sent to the Highline Forum Members, emphatically stating that there is no 4th runway being planned and there is no interest in studying the possibility.

Quasi-Judicial Matters

Councilmember Sherman questioned the City Attorney on who he is allowed to talk to regarding quasi judicial matters. He was under the impression that he could only talk to staff, but questioned if Councilmembers are allowed to talk to each other on a one to one basis.

City Attorney Bosmans noted that the Open Public Meetings Act does not apply to quasi judicial matters. However, one of the rules to be concerned about is the Fairness of Appearance Doctrine, which prevents Councilmembers from having ex-parte contacts while a matter is pending, which does not preclude having contact with other Councilmembers.

Mayor Pro Tem Thomasson requested more information, perhaps from Municipal Research and Services Center.

City Manager Piasecki advised that staff did contact MRSC and they stated they had not written an opinion on the matter, but will follow up.

9:05 p.m. Mayor Pro Tem Thomason announced that Council will take a 10 minute break, and when Council reconvenes, he will take the Public Hearing on the South 239th Street Vacation first, and then revert back to Administration Reports.

PUBLIC HEARING

Draft Ordinance No. 07-198 Street Vacation for South 239th Street, City File No. LUA-07-044 - 1st Reading

Mayor Pro Tem Thomasson introduced the subject and declared the public hearing Open. He stated we will start with the staff report and then call for speakers.

Development Services Manager Ruth acknowledged for the record that everyone has been provided with a four page written staff report accompanied by seven attachments and entered this as Exhibit A. He noted that since the report was distributed two additional letters arrived and he noted them as follows: Exhibit B, dated 10/16/07 from petitioner Alex White encouraging Council to grant the vacation request, and Exhibit C, dated 10/25/07 from Mrs. Debbie Workman expressing some concerns about development activity and impacts, and if the vacation is granted there may be additional development capacity. He proceeded to describe the request as follows:

- Staff has reviewed the petition and it is a qualifying application with 100% participation by the abutting properties
- Petitioners are Alice McCabe, Robert & Maxine Benson and Alex White
- Location: S. 239th Street between 7th Avenue S and Marine View Drive S, approximately 32' wide and 197' long
- Native condition: Steep slope ascending to the east of approximately 18%, higher toward Marine View Drive S of approximately 30%, with an abrupt drop off by Marine View Drive S (Not possible to create a through street because of the drop off)

Development Services Manager Ruth stated that the right-of-way has limited public purpose as it serves only 3 properties and due to the grade conditions. He noted however there are numerous utilities located within the subject area. Since there were concerns from neighbors of a planned construction by Mr. White that would be effectively in their back or side yard areas, therefore Council directed staff to seek a creative solution to elevate the problem. Staff feels by granting the vacation it would give staff more latitude in requiring certain improvements, while not requiring others.

Development Services Manager Ruth directed Council's attention to Attachment 7, Draft Ordinance No. 07-189, page 4, Section 3, noting the 4 conditions of approval as follows:

- (1) Compensation requirement

- (2) Easement for all existing utilities, and any future required utilities
- (3) Easement for all 3 petitioners to have vehicular access (westerly 100' only)
- (4) Sunset provision in event payment not made or other conditions are not met

Development Services Manager Ruth concluded by advising Council that staff supports this request, feeling it solves some existing problems.

Mayor Pro Tem Thomasson called for public speakers.

Robert Benson, 23905 Marine View Drive South

Mr. Benson noted he lives immediately south of South 239th and has been there for 35 years. He informed Council that about 33 years ago barricades were installed so this road could not be used as a through street. He advised that he built his fence years ago, based on a monument, and have recently learned the City actually owns about 4 to 5 feet into his property. He informed Council that granting the vacation would be a good solution for all involved.

Lloyd Lytle, 23929 Marine View Drive

Mr. Lytle spoke in support of the vacation as it would allow Mr. Benson and Ms. McCabe to keep 5 feet of their property and it would help to expedite Mr. White's project.

Alice McCabe, 23902 7th Avenue South

Ms. McCabe spoke in favor of the street vacation noting it would simplify things for everyone concerned. However, she wanted it emphasized that the builder, Mr. White, would not be able to enlarge his construction but would be limited to plans as already submitted for his project.

Debbie Workman, 23903 7th Avenue South

Ms. Workman informed Council she lives directly west from Ms. McCabe. She informed Council that her property has been impacted by Mr. White's project, with trespassers and damage. She advised she is generally in favor of the street vacation but has the following concerns:

- With the increased property, Mr. White should not be allowed to enlarge his construction
- Some of the additional space should be used for additional parking for Mr. White's project as parking in the neighborhood is already sparse
- Compensation - The Developer and/or the City should be required to fairly and adequately compensate the Bensons and Ms. McCabe in exchange for the real property they will be surrendering after the street vacation has been completed

George Pettibone, 23653 Marine View Drive

Mr. Pettibone advised he owns the property adjacent to Mr. White's property on the north. He expressed concern about a 35-40' deep hole on Mr. White's construction project and the lack of structure to protect Marine View Drive. He advised that he is here in support of approving the vacation. He reminded Council that the neighbors have spent six years fighting Mr. White's development, so he requested that Mr. White not be allowed to expand his project with the additional land he gains from the vacation.

Cindy Thompson, 23641 7th Avenue South #18

Ms. Thompson stated her main concern is that the subject right-of-way does not just serve three properties. She reminded Council that there are no sidewalks in the area. In the winter if it snows she cannot drive out, but walks on South 239th as the only safe pedestrian access to

Marine View Drive. She stated if the street is vacated there needs to be some remedy for pedestrian access. She also expressed concern over Mr. White's development with additional commercial and residential stating that safe pedestrian access is even more critical.

Nancy Stephen, 23641 7th Avenue South, Sea Shore Club

Ms. Stephen expressed agreement with Ms. Thompson's concerns over pedestrian access to Marine View Drive. She felt the proposal is good, but she wants the access to go to Marine View Drive with a pedestrian access stairway.

Shirley Robertson, 23660 7th Avenue South

Ms. Robertson expressed support for the vacation, but also expressed concern about pedestrian access, especially when it snows.

Mayor Pro Tem Thomasson called for any additional speakers three times. As there were no further speakers, he asked staff if there were any misstatements of facts or issues they wished to add to the presentation.

Development Services Manager Ruth noted the following:

- If the Street Vacation goes forward, Mr. White has been asked to amend his plans for right-of-way to reflect current plans, but he is unaware of any additional development plans.
- Additional parking - The site is very tight and is currently under excavation. However he ensured that the proposed development meets the City's parking code.
- Hole in ground - Staff is aware of the hole and have stopped the work to call attention to the need for reinforcement on the side adjacent to Marine View Drive. Applicant is in the process of preparing plans to fortify the slope.
- Developer's Participation - Applicant knows he has to fulfill the public street requirements and has an approved plan to install sidewalks per City Street Standards. However, has agreed to participate in the Street Vacation as a way to respond to the neighbors concerns.
- Costs assigned to a successful vacation are equally born. There is an agreement for the developer to pay on behalf of the Bensons and Ms. McCabe.

City Manager Piasecki stated that the road will be improved to a private road standard, that will not include a sidewalk but will include curb and gutter. Development Services Manager Ruth confirmed.

City Manager Piasecki stated this will result in the stairs not being improved. Development Services Manager Ruth confirmed. City Manager Piasecki noted that Mr. Benson and Ms. McCabe will own half the road and it will be up to them if they allow people to have access, but there will be no direct connection to Marine View Drive. Development Services Manager Ruth confirmed this, but noted even though the street vacation will be half and half, by prior agreement, Mr. Benson and Ms. McCabe have discussed with Mr. White the need to do a lot line adjustment so the road will only be on Mr. White's property.

In regards to Mr. White's development expanding, Development Services Manager Ruth assured Council this will not be possible.

Mayor Pro Tem Thomasson asked if Councilmember's had any questions of staff or public speakers.

Upon questioning by Councilmember Pina as to whether the stairs to Marine View Drive would be maintained, Development Services Manager Ruth replied that staff had looked at trying to maintain the stairs, but when you get to the last rung, you have to have someplace to go. It would mean directing people to a private street, which is an unsafe walking condition due to no sidewalks.

City Manager Piasecki added leaving the stairs would create major liability problems for the City if it directs them to a private road with no place for them to walk.

Upon further questioning, Development Services Manager Ruth informed Council that approximately 15 years ago the stairway had been declared unsafe and the City actually went in and re-built the stairway. With the new construction the stairway has been removed.

City Manager Piasecki advised that should the requested Street Vacation not be approved, Mr. White will be required to put in the street improvements as previously approved, with a sidewalk, and he will replace the stairway. His recommendation, from a liability standpoint, is when you have a pedestrian facility such as this with no sidewalk, it would be a bad thing to do.

Development Services Manager Ruth advised that the private street section will be designed to a minimum width that will not accommodate a widened shoulder, bike lane or parking. All the width is dedicated to vehicular space only. He pointed out that until this evening, the Zenith neighborhood was opposed to sidewalks to preserve the character of the neighborhood.

Ms. Thompson addressed Council stating she wants some remedy for pedestrian access to Marine View Drive and sees nothing wrong with the stairway ending in asphalt on a limited access street, rather than pushing pedestrians on to the two busier side streets.

Mayor Pro Tem Thomasson questioned whether there is a storm pipe in the street running from Marine View Drive to 7th Avenue South.

Development Services Manager Ruth responded that there currently is a storm pipe that comes down from Marine View Drive onto 7th Avenue South. He noted this is a regional pipe.

Development Services Manager Ruth informed Council that it is not a simple matter to design the stairway to enter onto the private street. Originally the stairway was on the extreme southerly end, where a retaining wall is and it is considerably higher than the street, and to reconfigure it would be extremely difficult.

Upon questioning from Mayor Pro Tem Thomasson regarding drainage, Surface Water Engineer Reinhold advised that there are 2 catch basins at the bottom of the road that are within 7th Avenue right-of-way. He also acknowledged that retention/detention was not required for the project.

Mayor Pro Tem Thomasson remarked that historically there has been pedestrian use allowed. He felt a solution might be to add a condition to build a sidewalk from 7th Avenue South to Marine View Drive either on 236th or 240th. This would at least provide a public way that is being lost by making the street private. He questioned whether this had been considered.

Development Services Manager Ruth replied that staff had reviewed several options, including this one. He pointed out that originally Mr. White did not want a private street and has gone through 2 years of design work to comply with our street standards, including sidewalks, he has expended a lot of funds in doing this. He felt that if such a condition to provide a new sidewalk were added, Mr. White would simply pull out of the proposed Street Vacation.

Mayor Pro Tem Thomasson questioned who will be responsible for maintenance of the private road, and should a maintenance agreement be required among the parties. Development Services Manager Ruth pointed out that there is testimony in Exhibit B that Mr. White contemplates increasing the home owners due to pay for the maintenance of the Street, and if Council wishes, this can be included in the final ordinance.

Mayor Pro Tem Thomasson CLOSED the public hearing.

MOTION was made by Councilmember Sherman, seconded by Councilmember Kaplan, to pass Draft Ordinance No. 07-198 to a second reading on November 8, 2007.

Councilmember Sherman felt a couple of speakers brought up some good points regarding pedestrian access. He felt the City needs to provide some pedestrian access.

MOTION was made by Councilmember Sherman, seconded by Mayor Pro Tem Thomasson, to add a condition that a stairway be put in, an a public pedestrian easement be allowed on the private street, and signed that it is a dead-end. [Later withdrawn]

Councilmember Pina stated he would prefer a pedestrian access be provided on South 240th.

Mayor Pro Tem Thomasson stated he would prefer South 236th, but could accept either.

Councilmember Kaplan stated he would oppose the amendment at this time and would prefer to wait until the November 8th meeting.

MOTION was **WITHDRAWN** by the maker and seconder, with the understanding that staff would evaluate alternatives for providing a pedestrian access in the area and report the findings at the November 8th meeting.

Mayor Pro Tem Thomasson requested that it be clear at the November 8th meeting which storm drains will be public and which ones private.

Councilmember Scott recognizes concerns about safe pedestrian access and does not mind exploring options, but not if it jeopardizes all the hard work that has gone into this proposal.

VOTE ON MAIN MOTION: Motion passed 5 to 1 with Councilmember Pina opposed.

PUBLIC HEARING

Draft Ordinance No. 07-200 Amending SEPA Noticing Procedures - 1st Reading

Mayor Pro Tem Thomasson introduced the subject and declared the hearing OPEN.

MOTION was made by Councilmember Sherman, seconded by Councilmember White and passed unanimously, to continue the hearing to December 6, 2007.

NEW BUSINESS

2008-2013 CIP

MOTION was made by Councilmember Kaplan, seconded by Councilmember Pina to move this agenda item to the special meeting on November 3, 2007. Motion passed unanimously.

CONSENT CALENDAR

MOTION was made by Councilmember Kaplan, seconded by Councilmember Sherman and passed unanimously, to move all Consent Items, except Item 2, to the next regular meeting.

Item #2 was read by Mayor Pro Tem Thomasson and City Clerk Staab.

1. Motion is to approve the regular minutes of August 16, 2007, the special and regular minutes of September 27, 2007, and the regular minutes of October 4, 2007.

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 #111388 through #111586 & electronic fund transfers in the total amount of \$547,365.27

Payroll fund transfers in the total amount of \$314,761.92

3. Motion is to approve the Local Government Stormwater Grant No. G0800130 between the State of Washington Department of Ecology and the City of Des Moines, and further to authorize the City Manager to sign said agreement in the form as attached.

4. Motion is to accept the deed of land dedication from Highline School District adjacent to public right-of-way along 24th Avenue South at Midway Elementary School at no cost to the City.

5. Motion is to approve \$6,483 of additional funding to the current \$19,000 Space Study contract with Lawhead Architects, P.S., bringing the total to \$25,483, and further to authorize the City Manager to sign said contract amendment, substantially in the form as submitted and to ratify the City's action in this matter.

6. Draft Resolution No. 07-196 - Title: A Resolution of the City Council of the City of Des Moines, Washington, authorizing the City Manager to submit a grant application to the Recreation and Conservation Funding Board (RCFB) pursuant to chapter 79A.25 RCW for the funding of the Field House Park Field #1.

MOTION is to approve Draft Resolution No. 07-196.

7. TWO MOTIONS:

—A. Motion is to authorize the City Manager to approve Professional Services Agreements for Civil Engineering Services (2007-2009) for CH2M Hill, KPFF, KPG, Hammond Collier et al, MIRAI, and AMEC, substantially in the form as submitted, each not to exceed \$500,000 subject to the availability of funds.

—B. Draft Resolution No. 07-204 - Title: A Resolution of the City Council of the City of Des Moines, Washington, revising policies governing City Council participation in public contracts, and superseding Resolution No. 753.

MOTION is to approve Draft Resolution No. 07-204.

MOTION was made by Councilmember Kaplan, seconded by Councilmember Sherman and passed, to approve Consent Item #2 as read.

NEXT MEETING DATE

Mayor Pro Tem Thomasson noted the next meeting will be a study session on November 1, 2007.

ADJOURNMENT

At 10:29 p.m. **MOTION** was made by Councilmember Pina, seconded by Councilmember Scott and passed unanimously, to adjourn.

Respectfully submitted,

Denis Staab
City Clerk