

REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

November 1, 2007

At 7:28 p.m. Mayor Sheckler announced that Council will remain in an Executive Session for approximately 10 more minutes.

The regular study session of Des Moines City Council was called to order at 7:38 p.m. by Mayor Sheckler in the Council Chambers, 21630 11th Avenue South, #B.

PLEDGE OF ALLEGIANCE to the Flag was led by Mayor Sheckler.

ROLL CALL - Present: Mayor Bob Sheckler, Mayor Pro Tem Scott Thomasson, Councilmembers Dave Kaplan, Ed Pina, Carmen Scott, Dan Sherman and Susan White. Also present were City Manager Tony Piasecki, City Attorney Pat Bosmans, Planning Manager Denise Lathrop, Land Use Planner II Jason Sullivan, and City Clerk Denis Staab.

DISCUSSION ITEMS

Water District #54

Mayor Sheckler introduced the subject and advised this is a continuation of the briefing that was begun on October 4th.

Water District #54 Engineer, John Hastig of Gray & Osborne, addressed Council and expressed appreciation for the prior decision made that limits the maximum fire flow to 3,500 gallons per minute. He noted this allows the District to give different consideration in terms of how they approach the infrastructure changes downtown. In regards to the testimony given by the Fire District at the first meeting, he noted the following:

- Primary concern is with velocity in the pipes. When you stop rapid flow quickly, it can generate high pressure changes in the pipes, which can cause potential damage.
- Showed charts on how flows relate to the velocity in the various sizes of pipes.
- For a 3,500 gallon per minute, can use 2 or 3 hydrants.
- 6" pipes are located on 8th Avenue S and 7th Avenue and the alley between

He advised that the long term plan is to place a 12" line down Marine View Drive to service both sides of the street.

Upon questioning, Mr. Hastig advised that the lines currently down Marine View Drive only cross down 227th and 223rd and do not cross Marine View Drive, therefore are dead end lines.

City Manager Piasecki questioned whether you could tunnel the line down Marine View Drive, rather than tearing the street up. Mr. Hastig advised that there are concrete slabs under the Street which would make it extremely difficult to service afterwards, and you would have to put it in a sleeve making it much more expensive. In regards to how long installation would take, he figured 200' feet per day, and a lot would depend on the restrictions they City placed on the job.

In regards to "mushy" pipes, Mr. Hastig advised that the AC pipes are old. His concern is not with fibers flaking off, but rather if you have a rapid change in velocity in a brittle pipe with it busting. He advised that the District is trying to get rid of all the AC pipe. He stated some of the pipe has been down for around 40 years.

Mr. Hastig advised that the District is digging itself out of some poor decisions made in the past, including having the lowest rates around. He noted the latest project of putting in a booster station and reservoir to address an issue raised in the 1970s puts the District in the hole in terms of financial capability. He advised that currently the District has replaced broken lines, and has asked a consultant to prepare and identify a replacement program and priorities, what type of pipe and at what locations, including costs. He further noted the District has engaged a financial consultant to prepare a rate study so they can identify what their financial capabilities are as well as to identify potential sources of income. He stated that progress is being made with virtually a new Board of Directors who recognize there are issues. He noted they suffered a setback when the City went forward with the Marine View Drive Bridge project as they had just installed a new pipe they are still paying for, and that had to be pulled out and replaced, which was a large impact on the District financially.

In regards to discussion with the Highline Water District over a possible merger, Mr. Hastig advised that there are no current discussions underway. He advised that even a friendly merger would take a number of years and must in the end be approved by the voters of both Districts. However, he noted, even if approved it would take time to prioritize the projects between the two Districts. In regards to purchasing storage capacity from Highline, a study almost completed should be available in the next couple of weeks.

Mr. Hastig informed Council that the survey of Marine View Drive, with utility locates has been completed and drawings have been prepared. However, the District has not authorized him to proceed with a design or a proposal, since there is no source to fund the project. Minimizing traffic disruptions for any work on Marine View Drive will depend on where the City wants the line located, including other constraints the City may have.

Councilmember Pina stated residents should be willing to pay for any upgrades and the Water District should have the ability to charge connection fees for new construction based on the size of the development.

Mr. Hastig estimated costs for replacing the waterlines for the downtown area at 2.43 million dollars.

City Manager Piasecki questioned whether the District has any financing capabilities to borrow money, build the project and then over a 10-20 year period pay it off with connection charges.

Mayor Pro Tem Thomasson stated that for revenue bonds there is no statutory limit on the amount borrowed.

Eric Clark, Water District #54 employee, advised that there are 765 water district connections in the whole system, and that would work out to \$20 per bill to pay off the \$2.43 million over 20 years. In the immediate proposed downtown area there is approximately 172 residential units on the west side of Marine View Drive. The question is should those who do not live in the downtown area pay for the downtown improvements.

Upon questioning as to whether there is adequate fire flow in the downtown area currently, Mr. Hastig replied for domestic use yes, but there are deficiencies in the overall fire flow. He stated

there is sufficient service for the domestic customers, so to involve them in an LID it would have to be demonstrated there is added value to their properties.

Mr. Hastig noted that in general developers pay for development, but he questioned who is the developer. Individual developers paying over time creates a piece meal design, even with late comer agreements, however if the City wants the lines before the development comes in then the City is assuming the roll of the developer. He felt it is not clear cut who should be paying - the District, the City or new development.

Councilmember Kaplan stated it is the Water District's responsibility. He questioned whether the District is eligible for Public Works Trust Fund loans. Mr. Hastig advised yes, but in the competition for money, fire flow issues score very low.

Councilmember Kaplan questioned whether the District is willing to solicit the State legislature and Federal Government to try to obtain financing. Mr. Hastig advised that the District has been working with City staff over the past year to help fill out grant applications.

Councilmember Kaplan questioned whether the District would be willing to use a well defined Utility Local Improvement District. Mr. Hastig said he cannot speak for the District's Board, but would assume they would be willing. He further noted a combination of rate payers and developers paying for the improvements would be determined by the rate study that is just getting underway.

Mayor Pro Tem Thomasson referenced a letter dated October 17, 2007, from Mayor Sheckler to the Water District and agreed to the first item in the letter, but not the next three items as he felt these issues were staff's interpretation but had not been addressed by Council as a whole. In regards to a merger with Highline Water District he felt that 3 years is a very realistic time frame. He continued by noting that in the 20 years Water District #54 has brought their Water System Plan to this Council he has consistently said that the Fire Flow Analysis of this system is way off base. He stated he is glad that the Engineer for the District is finally telling them that. He stated that the District has made representation to the Fire Department that there is a fire flow available, but it is not, he felt that new customers should not have to pay for it, but it is the responsibility of the District to make good on the representations. He felt that in years past the Board of Commissioners were actually responsible for robbing the downtown area of its future by not having a vision for what the downtown had the potential to become. He stated the downtown area has been zoned commercial for a long time and the District has had 50 years to upgrade its system to meet the zoning where the Water System Plan had to be compatible with the City's land use plan. He stated that he does not believe the City is the savior for the District, but the District's responsibility to talk to potential developers and rate payers that there is a problem that needs to be solved through their money. It is not the City's place to tell the District how to do this. He felt that 3,500 gallons is an adequate amount. He concluded by stating that perhaps the City needs to be in contact with the Department of Health to let them know about these issues so their engineers can get involved and help as well.

Ron Biesold, Fire Marshall for South King Fire and Rescue, acknowledged the Fire District's main concern was to get the fire flow to 3,500 gallons in the downtown area, but would prefer the higher goal of 5,000 gallons. He stated water hammers that Mr. Hastig mentioned can be a problem with smaller pipes, but advised that their fire trucks do have a release valve so if lines are shut down too quickly, the water will dump on the ground. He stated one of the main

problems is the size of the pipes and mains and the high velocity of water needed to fight a major fire downtown, he felt this would damage water mains having a major effect on the whole downtown area. He advised it would be very beneficial to add 12" lines and require developers to do extensions down 6th and 7th Avenues to grid the system out.

Upon questioning, Fire Marshall Biesold confirmed that the only real problem in regards to fire fighting issues is the downtown area with condos and commercial development. He pointed out that each fire hydrant used ties up an entire engine company.

In conclusion, Mayor Sheckler thanked everyone for the participation in the discussions.

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

Agenda Revision

Mayor Sheckler advised that he will be taking discussion item 3 next.

Reconsideration - South Shore Modified Subdivision

Mayor Sheckler announced that he has viewed last week's Council meeting since he was not physically present. He asked whether any Councilmember has had any ex-parte contact with any of the parties involved in this matter.

Councilmember White announced that she did have a conversation with a friend of hers who is present this evening. She noted the conversation was strictly a friend to friend, and in no way will influence her decision on this matter.

Councilmember Scott stated she had been called by the same individual who she informed that she could not discuss the matter at all.

Mayor Sheckler noted that Presiding Officer Thomasson had closed the hearing. He questioned whether any Councilmember wished to offer a motion.

MOTION was made by Councilmember Scott, seconded by Councilmember Kaplan, that the Council having reconsidered Resolution No. 07-188 approving the preliminary modified subdivision entitled Southshore, does now supersede Resolution 07-188 by the adoption of Draft Resolution No. 07-188A, approving the preliminary modified subdivision entitled Southshore, subject to the mitigation terms identified in the SEPA mitigation agreement included as attachment 5 and the eight additional conditions of approval included in the September 27, 2007 administration report and adding the following conditions:

1. The pedestrian access to Steven J. Underwood Memorial Park is to be moved from the northwest corner of the subdivision to a location ~~using~~ *eliminating* (friendly amendment) either lot 11 or 12, that the access be a minimum of fifteen feet wide with not less than 6 feet of asphalt width and 4.5 feet of landscaping on either side, and that the remainder of the width of the lot used be spread out among the lots on the north side of the subdivision.
2. ~~Any All~~ lots ~~under 6,000 square feet~~ (friendly amendment) shall have backyard setbacks of not less than 20 feet.
3. A new tract be created using the area north of the wetland and its buffer to be under common ownership by the owners of all lots and maintained by the homeowner's

association. To be used as a private recreational area to include installation of not less than a picnic table and play equipment.

4. Landscape screening to be installed along all peripheries of the surface water ponds that are not adjacent to the wetland or its buffer, screening to be maintained by the homeowner's association.

Councilmember Scott explained that to her it is important that certain features need to be incorporated for the subdivision to have the desirability to compete well with other choices that buyers may have. She expounded on the above numbered items as follows:

#2 If lots go to less than 6,000 sq. ft. it would allow a 10' back yard. She felt this is too small and serves no purpose to the homeowner for any real use as a patio, barbeque or landscaping.

#1 Straight line makes more sense. Kids will not travel past 6 to 12 homes to get to the Park and this route will be less disruptive to the home owners.

#3 Play area is important due to smaller than normal yards, and this provides a place for neighbors to meet creating a healthier neighborhood environment.

#4 Landscape necessary to avoid the detention pond becoming an eyesore.

She noted many of the lots in the area were developed before the 2nd World War. She advised that lot sizes are not as relevant to today's life style, as they used to be for gardens, chickens, etc.

Councilmember Sherman stated he would like to see the original resolution, and there is not a prepared draft showing the new language as proposed. He felt it should be specific which lot will go away, to allow for the pedestrian access. He further cited the following:

- Area north of tract B, not sure of the lot size
- Unclear whether a bench or a play structure would be in the recreational area
- Neighbors were not notified
- Not clear whether there is a maximum number of lots that will be allowed
- If lose a lot, you could have a path and a play area where that lot was to be

Councilmember Scott felt it would be inappropriate to install a play area by the path as it would be too disruptive to neighboring homes.

Councilmember Kaplan suggested that under condition #1 the word 'using' should be struck and insert the word "eliminating". This was accepted as a FRIENDLY AMENDMENT by the maker and seconder of the motion.

Councilmember White stated she felt the project as presented originally was more than adequate and that it is unnecessary to require a play area when it next door to a Park. She would like to ask the applicant if they approve of the amendments.

Mayor Sheckler pointed out that the approved resolution limited the lots to 26, but the reconsideration would allow for more lots under certain conditions.

Mayor Pro Tem Thomasson pointed out that the hearing has been closed so it would be inappropriate to hear from the applicant. He noted that he is okay with the proposal but requiring a play feature be installed does not make a lot of sense being next door to a large Park. He stated he is in favor of condition #1, however would like it stipulated that the path needs to be fenced. In condition #2 he suggested striking the word 'Any' adding "All" and strikes the words 'under

6,000 square feet'. This was accepted as a FRIENDLY AMENDMENT by the maker and seconder of the motion.

Upon questioning, Land Use Planner II Sullivan stated the minimum lot width will be 45 feet.

Councilmember Pina expressed agreement that the pathway should be fenced. He requested that whatever is agreed to this evening should be brought back in final form on the next Consent Calendar.

MOTION was made by Councilmember Pina, seconded by Councilmember Sherman, to direct staff to prepare a draft resolution, including an updated plat map, to be placed on the next available Consent Calendar, November 8, 2007. This was accepted as a FRIENDLY AMENDMENT by the maker and seconder of the main motion.

Development Services Manager Ruth agreed this should come back in final form and this would allow the applicant to work on the plat map to ensure that Council actually sees the preliminary plat, making it easier when it is time to approve the final plat.

City Manager Piasecki suggested this item be tabled until we have a cleaned up draft resolution, mitigation and a new plan from the applicant, and then placed on a future Consent Calendar.

MOTION was made by Councilmember Sherman, seconded by Mayor Pro Tem Thomasson, to amend the main motion have a maximum number of 29 lots.

Councilmember White stated she is opposed to the amending motion as picking a number out of a hat.

Councilmember Pina stated he believes the applicant and staff know how staff feels about keeping the number of lots down.

VOTE ON AMENDING MOTION: Motion failed 5 to 2 with Councilmember Sherman and Mayor Pro Thomason voting yes.

Councilmember Pina **CALLED FOR THE QUESTION**. **VOTE:** Motion passed 6 to 1 with Mayor Pro Tem Thomasson opposed.

VOTE ON MAIN MOTION: Motion passed 6 to 1 with Mayor Pro Tem Thomasson opposed.

CONTINUED PUBLIC HEARING

Draft Ordinance No. 07-134A Amending Permitted Uses in the Business Park Zone - 1st Reading

Mayor Sheckler introduced the topic.

City Manager Piasecki noted that a couple of weeks ago he distributed a copy of the Draft RFQ that the Port had put together to start the process to get a developer for the development of the 90 acres of Port buy out area. He announced that the RFQ was released today.

Mayor Sheckler noted that no one has signed up to speak and there are no individuals in the audience who wish to speak. He requested Administration describe the matter.

Planning Manager Lathrop noted that the purpose of tonight's hearing is to gain Council's approval of an ordinance that amends the permitted uses section of the Business Park Zone codified under Chapter 18.25.020, so that the permitted uses are consistent with the First Development Agreement that was executed on July 11, 2005. She noted that the proposed amendments, as established in the first agreement, would expand the range of permitted uses related to manufacturing, warehousing and office uses, contained on pages 5 and 6 of Attachment 3 in Council's packet item.

Mayor Sheckler called for anyone who wished to speak on this matter three times. There was no response. He questioned if any Councilmembers had questions for staff.

Mayor Pro Tem Thomasson expressed concerns with the ordinance as written. He acknowledged the Development Agreement said 'we will allow these uses', but he does not feel the agreement said that by allowing a use, such as airfreight warehousing, that it would be Council's intention that it would be permitted throughout the entire Business Park. He stated the ordinance as written would do just that. He felt if the Port brought forward a proposal that had that use in any mix, the Council would have no basis to not approve it. He felt the ordinance needs to provide some additional rules that would say "these uses are only permitted up to a certain percentage in the approved Master Plan". Then through Council's approval of the Master Plan, Council would retain control of what uses are okay and in what proportion. He asked if staff had any suggested amending language.

Planning Manager Lathrop noted there is a North Sub Area and a South Sub Area, and suggested language could be added that would clarify if you wish to place specific limitations on the North Sub Area of the Business Park.

Councilmember Sherman suggested we add a section saying 'permitted uses may be modified by a development agreement that has gone through SEPA and a Public Hearing process'. He felt that agreement could supersede the specific uses listed in the draft ordinance, within the area that the agreement was formed for.

City Attorney Bosmans stated the purpose of the zoning code is to provide certainty to developers as to what are permissible uses to specific property. She stated that to essentially limit an ordinance by saying we can put it in a development agreement, is stepping backwards. State law regarding development agreements says the development agreement has to be consistent with the City's ordinances and does not supersede ordinances. She stated it is wrong to establish zoning through a development agreement.

Mayor Pro Tem Thomasson commented that perhaps through the Master Plan process you could approve an appropriate amount of certain uses. He felt that instead of having uses throughout the text, they should each be their own section as special uses that are permitted in Master Plans and that are approved as laid out where these uses can be. He felt that only through the Master Plan process can you earn certain uses, and then the Master Plan process says how much of these uses you can have.

City Manager Piasecki pointed out that a development in the Business Park area must go through the Master Planning process anyway. All Council is doing is laying out the uses that are allowed, and it still has to go through the Master Plan process.

Mayor Pro Tem Thomasson stated that the last thing he wants is for 90 acres of airfreight warehouses, and feels that if we add this use to the permitted uses, Council would have no basis to say no to them.

Councilmember Kaplan disagreed, stating we have a development agreement which outlines proportions of what it is Council anticipates in the makeup of the development.

Councilmember Scott believed that Council had already determined that warehousing would only be on the northern portion of the site with something else on the southern portion, and exiting traffic would only be allowed to occur to the north, not S 216th.

City Attorney Bosmans advised that the draft ordinance simply puts in writing what the Council had previously agreed to in the first Development Agreement. She noted there will be separate contract in regards to the right-of-way, a second Development Agreement and a Master Plan.

10:28 p.m. **MOTION** was made by Councilmember Kaplan, seconded by Mayor Pro Tem Thomasson, to extend the meeting until 10:45. Motion passed 6 to 1 with Councilmember Sherman opposed.

Mayor Pro Tem Thomasson remarked it was never Council's intent to allow some of these uses 100% throughout the development. He felt Council can be true to the spirit of the Development Agreement, but set the Code to allow Council to control how much and where, through the Master Plan process. He questioned what options are available to add to the draft ordinance to accomplish Council's control.

Councilmember Sherman voiced support for specifying sub-specific areas for specific uses, or conditional uses, dependent upon a Master Plan, so all uses are not permitted outright throughout the entire area.

Councilmember Pina suggested that in the section of permitted uses in the Draft Ordinance, make the point that subject to Council approving a Master Plan that is consistent with the language in the first Whereas, 9-03-02 .

City Attorney Bosmans reminded Council that the Master Plan will come back before Council, and the draft ordinance is not the tool to exercise control.

City Manager Piasecki noted that the Port has invested hundreds of thousands of dollars in an EIS that looked at two scenarios. He also advised that there is an RFQ that very clearly lays out what the City's expectations are. He advised that should a developer come in with more warehousing than 50% they would have to re-open the EIS. He reminded Council this is a slow process and we will know what sort of a development proposal is coming in well in advance of any type of application being vested. He noted he will sit on the Committee that will review all the proposals presented to narrow them down to 2 or 3 developers, who then will put together a detailed proposal as to what they think should go on this site. From that, the Port will choose one developer who will then get with us and put together a detailed Master Plan. He pointed out this will give Council months of advance notice of what they are thinking about doing which will give Council time to change the Code to prohibit any use you may want.

Dianne Summerhaze, Port of Seattle, stated that if someone came in with an RFQ that was just responding as all warehouse, it would be non-responsive to what the RFQ says. Therefore she does not expect to see such a proposal by anyone who is serious about responding.

Upon questioning, City Manager Piasecki stated we can limit this to the north sub-area and staff can add this to the draft ordinance.

Mayor Pro Tem Thomasson stated Council should not create something as an outright permitted use, if the intention is to only allow it under certain conditions. He felt Council needs to protect the City's interests. He requested staff come up with a couple of ways to ensure this protection.

Mayor Sheckler read the RFQ which stated: "The Port will consider devoting up to one third of the site for large scale big box retail use if the developer presents a viable and compelling concept for melding any proposed big box retail use with the desired business park uses." He felt this was specific enough for him.

As there were no further questions, Mayor Sheckler declared the hearing CLOSED.

MOTION was made by Councilmember White, seconded by Councilmember Kaplan, to suspend Council Rule 26(b).

Mayor Pro Tem Thomasson spoke against the motion, stating the draft ordinance needs a lot of work to address his concerns and put in controls that Council wants.

VOTE ON MOTION: Motion failed 5 to 2 with Councilmembers Kaplan and White voting yes.

MOTION was made by Mayor Pro Tem Thomasson, seconded by Mayor Sheckler and passed unanimously, to pass the ordinance on to a second reading at a date to be set by the Mayor.

Draft Ordinance No. 07-206 Amending Street Vacation Code, Compensation - 1st Reading

MOTION was made by Mayor Pro Tem Thomasson, seconded by Councilmember Sherman, to continue this item to a date selected by the Mayor. Motion passed unanimously.

NEXT MEETING DATE

Mayor Sheckler noted there will be a special meeting on Saturday, November 3, 2007, beginning at 9 a.m. at the Founders Lodge in Des Moines Beach Park and the next regular meeting will be November 8, 2007.

ADJOURNMENT

Meeting adjourned at 10:45 p.m. by time expiring.

Respectfully submitted,

Denis Staab
City Clerk