

REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

October 23, 2008

The regular meeting of the Des Moines City Council was called to order at 7:30 p.m. by Mayor Sheckler in the Council Chambers, 21630 11th Avenue South, #B.

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

ROLL CALL - Present: Mayor Bob Sheckler, Mayor Pro Tem Dan Sherman, Councilmembers Dave Kaplan, Ed Pina, Carmen Scott, Scott Thomasson and Susan White. Also in attendance were City Manager Tony Piasecki, City Attorney Pat Bosmans, Finance Director Paula Henderson, Development Services Manager Robert Ruth, Transportation Engineer Dan Brewer and City Clerk Denis Staab.

CORRESPONDENCE

COMMENTS FROM THE PUBLIC

Potential Mt. Rainier Pool Closure

The following individuals addressed Council over their concerns of a potential closure of Mt. Rainier swimming pool at the end of 2008, requesting Council think hard about continuing to fund the pool:

Bill Whisler, 418 S@ 185 th Pl	Jack Tueu, 816 S 216 th Street
Olga Locher, 23243 28 th Ave S	Cassidy Faber, 23410 23 rd Place S
Charlotte Schwartz, 914 S 224 th Pl	Kelsey Zaches, 18134 Brittany Dr SW
Joley White, 20911 7 th Pl S	Schell Ross, 23444 26 th Avenue S
Joelle White, 20911 7 th Pl S	Eric Williamson, 17804 Marine Vw. Dr SW
Jean Anstry, 815 S 216 th Street	Mary Zaches, 18134 Brittany Dr. SW
Faith Callahan, 816 S 216 th Street	Elizabeth Althausser, 2616 SW 110 th Street
Rose Marie Miller, 21925 4 th Ave. S #102	Connie Midget, 815 S 216 th

These individuals cited many reasons for urging the Council to continue funding of the pool, such as:

- Therapeutic health benefits for elderly and certain health conditions
- Fun and safe environment for youth
- Used by competitive swim teams
- Teaching youngsters and adults how to swim
- Teaching life guard classes
- Family time
- Exercise
- Few if any Olympic sized pools in area
- Consider pool levy to let citizens decide on funding

Upon questioning, City Manager Piasecki explained the Pool was opened in 1974, built by King County with Bonds that came from the 1967 Forward Thrust Initiative and was run by King County until December 2003. In 2003 the County decided any pool that was in an incorporated City should become a local service and if a City did not accept the pool it would be closed due to

budget restrictions in the County. Normandy Park, SeaTac and the Highline School District joined together with Des Moines to figure out how to keep the pool open, and now Normandy Park and Des Moines are joint owners of the pool. This was decided by Council who felt an aquatic center needed to be in the region and also learned that the Y.M.C.A. was looking at building a facility somewhere in the region. Therefore it was agreed that we would continue funding the pool until another "replacement pool" could be built. It was in 2004 that Normandy Park and Des Moines became the owners of the pool and according to the Agreement in March 2009 the pool will then go to the Highline School District. The reason for the pool to go to the School District is that the District owns the property on which the pool sits and in the original agreement that the County had with the District, it was noted the District would allow the pool to be built on their property and that in 2009 the pool would become the property of the School District. He noted that pools do not support themselves and stated when the County was operating the pool in 2004 (on behalf of the cities) the operating deficit was well over \$200,000. Now in 2008, the deficit is just short of \$100,000 and advised Des Moines' pays about half of that and Normandy Park, SeaTac and the School District divide up the remainder. He remarked that the agreement is set up that when another pool is completed in the area, our agreement is subject to termination. He also advised that when the new pool is completed, located in the City of SeaTac around South 180th, the City of SeaTac will no longer contribute to the pools operation or be part of the existing agreement. He also pointed out there are problems with the pool and we are working with the School District to get a solid assessment of the pool and what it will need if it continues operations. He cautioned that it will need some major work, perhaps well over \$1 million of rehab work.

Councilmember White felt there are many needs in the community but the City is facing rough economic times and funding decisions are not easy. She informed the audience that Council is having a special meeting on Saturday regarding budget issues and making decisions on cutting employees and other services to balance the budget. She assured that Council will do what it can to keep the pool open until a solution is found.

Upon questioning, City Manager Piasecki noted that he believes the Y.M.C.A.s pool is scheduled to open no later than the end of 2009, but it is possible it could be June/July 2009. He further pointed out that the new pool is not a competition sized pool.

Mayor Pro Tem Thomasson stated we could talk to the School District and perhaps help with some funding at least until the new pool is completed.

Councilmember Pina commented that we were saddled with the pool by the County and reminded everyone that Des Moines is faced with a \$2.8 million short fall. He suggested that perhaps Normandy Park, Des Moines and the School District could support a levy to fund restoration and maintenance of the pool, and along with a slight fee increase, we might be able to save the pool. However, he noted, it cannot be done with Des Moines' budget. He requested staff review the idea of a levy and bring back a recommendation, and for Mayor Sheckler to discuss the idea with Normandy Park's Mayor and the School District's Superintendent.

Councilmember Kaplan remarked that this brings up a concept that could begin in 2010 with having a Park and Recreation District, encompassing the area of Des Moines and Normandy Park, which would not only consider the Pool but all of the Parks and Recreation facilities. Then they would not be competing for resources for other services throughout the City. He noted a couple of weeks ago during budget discussions, the consensus of the Council was to keep the

pool open until the Y.M.C.A. pool is open. He felt we need to look for some long term solutions.

Councilmember Scott expressed the opinion that the pool is as essential as the Beach Park, Field House, or the Underwood Sports Park. She acknowledged it is difficult to figure out how to do the financing and she appreciates the thought of a special levy. She noted that the retirement homes in the City do not pay property taxes and a pool is enticement for retirees living here. She suggested the City approach the retirement homes to see if they would contribute to the cost of running the pool. She pledged she will do what she can to figure out how to keep the pool going and requested citizens join in the efforts.

Mayor Sheckler thanked citizens who have e-mailed or spoke this evening for their thoughtful comments regarding the pool and in being proactive instead of waiting until a final decision had been made. He felt it is important to look at a long term solution, and should it be a levy, he requested all those in attendance be supportive in such an effort.

8:10 p.m. Mayor Sheckler called for a 5 minute break.

BOARD & COMMITTEE REPORTS & COUNCILMEMBER COMMENTS

Last Week's Council Meeting

Councilmember Kaplan stated he was very frustrated during last week's Council meeting and felt it showed. He apologized to Council and the public in expressing his frustration during the meeting.

Environment Committee

Councilmember Thomasson noted the Committee met earlier tonight. One item discussed was the Barne's Creek Detention Facility and they were advised that Federal Wetland Regulations have changed so that 3.9 acre feed detention we were hoping to have, we can now only fit 2.9 acre feed on it. Staff is still recommending building the pond, but it will be smaller. This will be part of the CIP that will come to the Council as a whole. The second item was on the Highline Water District's Water System Plan and the Committee received a briefing from the District and consultants regarding adequate fire flows and coverage for Pacific Ridge and the Business Park developments.

Marine View Drive at South 239th Street - Zenith Viewpointe

Councilmember Thomasson pointed out that the development has had barricades on the street for about a year and a half. He felt the City needs to insist that the Street be re-opened to its full width and stabilize the slope. He requested a report from staff at the next Council meeting about the status of their street use permit.

City Manager Piasecki reported that the slope is stabilized. He advised he will provide a report as to why the sidewalk has not been done and the street is not fully opened.

Fence Problem

Councilmember Thomasson reported a citizen called him stating that someone from the City had stopped by and told them they could not build their fence after they had spent around \$7,000 to have a nice fence built. He advised apparently the fence does not meet code because it is too high and it was built in the street right-of-way. After reading the Code, he stated he does feel the

Code is correct and suggested this be corrected when Council adopts the new zoning Code. In the meantime he noted he would hate to see enforcement actions taken, even though he believes in enforcing the Code, he does not believe this one would be just. He felt somehow the Code should not be enforced on fences such as this, as the home owner essentially fenced in where his lawn and landscaping were.

City Manager Piasecki advised that he has not had a chance to follow up with staff on this issue. He suggested that if he sees no objection from Council as a whole or by consensus, he will ask staff to hold off on regulation of those kinds of issues until Council has had a chance to review that particular part of the Code. He also noted if we have a fence issue where we have a sight distance problem, then we will have to take action. Council concurred by consensus with the City Manager's suggestion.

Ballot Drop Box

Councilmember White advised that there is a ballot drop box at the Des Moines Library and felt this is a great idea.

City Manager's Written Report

Mayor Pro Tem Sherman noted that in the latest City Manager's report for September, he read an item under Crime Task Force Report concerning the Police Department purchasing, and deploying, "covert surveillance camera's" and stated he does not remember approving the purchase of these items.

City Manager Piasecki commented he does not remember the actual date, but noted it was purchased as part of the money that is in the Levy Lid Lift fund for various pieces of technology and equipment that they need to conduct their business.

Mayor Pro Tem Sherman questioned whether there are any other Councilmembers who have concerns about the Police doing covert video surveillance of the general population, as he does.

Councilmember Pina stated he does not feel that is what the cameras are intended for. He felt they are intended to be located at different spots where problems may be occurring, so the people who are drug dealers, etc., will not recognize them as cameras.

Councilmember Kaplan noted that he has mixed feelings about it in terms of the use, but has a broader issue about not having a laundry list of the equipment that is being purchased as part of the Budget every year, rather than an equipment line item. He felt there are appropriate times that the Police need some sort of surveillance equipment when they have a particular operation going on. But the general use of surveillance equipment kind of troubles him to some degree depending on whether or not it is stationary.

Mayor Pro Tem Sherman acknowledged the Police can have cameras in their cars, but to have stationary cameras covertly placed versus a targeted situation where there is a specific sting operation going on to catch somebody, that he can understand as it is very specific. However, having a camera in an area where there may be drugs or prostitution, most of what they are going to record is ordinary citizens.

Councilmember Pina stated if they were going to place a camera in a private area such as his home he would be concerned. However, when he is in a public place he does not care if he is

being recorded, because his goal is to not do anything wrong. So if someone is doing something wrong, he has no problem gathering evidence so they can be prosecuted.

Councilmember Thomasson commented this may be the "slippery slope to the big brother in the bedroom" sort of problem and where do you start and where to you draw the line. He noted he has some concern and he would like to see an adopted policy about how and when they would be used. He stated there are places where it is appropriate, but not to just put cameras everywhere just to see what can be seen.

Councilmember White expressed agreement with Councilmember Thomasson. She noted private citizens are doing this now and noted there is a web site where you can go and see the Boardwalk at Redondo.

Mayor Sheckler stated this technology is being used in a heavy crime area, and the activity they are trying to capture would be used in Court to prosecute these criminals.

Mayor Pro Tem Sherman stated he is adamantly opposed even though other Councilmembers do not seem to be. However he noted the issue has been raised as to what is the policy for use and what would stop the Police from putting a camera on the front of your house covertly. He also questioned who has access in the Police Department to the equipment, how long are the videos kept, and what protection is there for improper release of video tapes. He also requested that this program not be instituted until Council has an opportunity to look over those issues and whether all questions have been answered, such as, is there a specific written policy. He further noted that the entire City of London is covered with cameras and pointed out that those cameras did not stop the 2005 subway bombings.

City Manager Piasecki noted that the cameras are currently in use in a high crime area where we are having problems. The cameras are mobile and are only kept in an area until the issue is resolved. They record video only, no audio. As far as written policies, he reported he has not seen them but will contact the Chief to see what the department has and will report back to Council.

Mayor Pro Tem Sherman requested whether there was a consensus of Councilmembers to have the Police desist until Council has reviewed to determine whether appropriate policies are in place.

Mayor Sheckler advised he would not want to tell the Police to stop, however he does want to see policies and if Council does not like what they see, then at that point we can stop their use. Council's consensus was agreement with this thought.

PRESIDING OFFICER'S REPORT

Happy Birthday

Mayor Sheckler presented a Birthday Cake to Mayor Pro Tem Sherman in honor of his 60th birthday. Everyone joined in singing Happy Birthday.

ADMINISTRATION REPORTS

Correspondence

City Manager Piasecki noted that on October 2nd Mayor Sheckler sent a letter to County Executive Ron Sims regarding the proposed new Metro Route 156. The new route would operate at least every 30 minutes during week day peak hours and every 60 minutes during mid day hours, and he advised Metro has indicated they might actually add additional service every 60 minutes on weekends between 8 and 6. He pointed out that Metro is doing an outreach program open house that they have proposed to talk about all the various routes on Thursday, October 30th from 1:30 p.m. to 3:30 p.m. at SeaTac City Hall, and then at Foster High School on the same day 6:30 p.m. to 8:30 p.m.

CONSENT CALENDAR was read by City Clerk Staab.

1. Motion is to approve the special and regular minutes of October 2, 2008.
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 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 #116426 through #116652 & electronic fund transfers in the total amount of \$1,216,689.30

Payroll fund transfers in the total amount of \$442,460.21

MOTION was made by Councilmember Kaplan, seconded by Councilmember Pina and passed unanimously, to approve the Consent Calendar as read.

Agenda Revision

Mayor Sheckler suggested if there is no objection he will take New Business Item 1 first. There were no objections.

NEW BUSINESS

Comprehensive Transportation Plan Policy - Update

Transportation Engineer Brewer noted staff received general direction from Council last July on various items concerning the City's Comprehensive Transportation Plan. He informed Council that the City's consultant, Katherine Casseday from Fehr & Peers/Mirai, will brief Council on the results of the recent study.

Ms. Cassedy advised that during this summer they have taken growth and forecasting traffic volumes to determine what future needs are. They have translated the expected growth in housing and jobs between now and 2030 and translating that into anticipated travel demand for vehicles, transit, and biking and identifying those future network needs. She noted the Growth Management Act directs the cities and counties to match the network to the planned growth and what is needed from Council tonight is an endorsement of the draft network needs list that has been developed, or give direction on how to set that new balance of the planned growth with the street network and the level of service, or operational standards, set for the City.

Ms. Cassedy continued with a power point presentation covering various items including some of the following:

CTP Traffic Analysis

- Translated expected growth to estimate future (2030) traffic in City of Des Moines
Applied this growth to 2 network scenarios

- Reviewed how the street network operates under each scenario - existing network & planned net work
- Identified capacity needs - & ways to address those needs
- Compare list of projects to current CIP/TIP

Existing Level of Service in 2008

2030 Traffic on Existing Street (without FR 509)

She continued by noting the Draft List of Street Capacity Projects as follows:

Pacific Highway South:

- S 216th Street add one through lane, east and westbound. Add second left turn lane east and westbound
- S 220th Street add left turn pockets east and west legs, revise signal operations
- S 224th Street Change left turn phasing to permitted left turn east & west
- SR 516 Kent-Des Moines Road widen eastbound approach to five lanes, add right turn overlap phases
- S 240th Street add dual left turn eastbound
- S 260th Street change east & westbound left turn phasing to protected/permitted

South 216th Street

- Marine View Dr. to 18th Ave. S widen to three lanes
- 18th Ave. S to I-5 overpass widen to five lanes
- 20th Ave. S install signal (with development)

Des Moines Memorial Drive

- SR 509/Marine View Dr. to S 200th St. widen for left turn pockets at key intersections
- S 200th Street widen for left turn pockets
- Marine View Drive/S 216th Street lengthen approach lanes, increase cycle length & coordinate with MVD at 7th/S 216th. Consider roundabout

Marine View Drive

- 7th Ave. S/S 216th Street optimize signal time, implement overlap phases, coordinate with DMMD at MVD
- S 220th Street right turn only during peak periods
- S 222nd Street right turn only during peak periods
- S 227th Street revise lane configuration for one right turn eastbound with overlap phase
- S 240th Street revise lane configuration, add westbound right turn pocket or roundabout

7th Avenue South

- S 220th Street right turn only during peak period or add left turn pocket east and westbound
- S 222nd Street right turn only during peak period or add left turn pocket east and westbound

24th Avenue South

- North of S 216th Street widen for five lanes with development
- South of S 216th Street add left turn pockets where needed
- S 222nd Street add left turn pockets where needed or consider roundabout
- S 223rd Street add eastbound left turn pocket
- SR 516/Kent-Des Moines Road add southbound left turn pocket, add westbound right turn lane, widen KDM Road to five lanes to SR 99

16th Avenue South

- S 240th Street add left turn pockets and optimize signal

- S 250th Street convert 4 way stop to 2 way stop, add eastbound right turn pocket

There was some Council discussion regarding championing for future bridges across the Freeway, even though they are technically not in Des Moines as they would benefit both Des Moines and Kent as the population becomes more dense as Pacific Ridge and the Midway areas develop.

Councilmember Thomasson noted that the City is trying to plan the streets on the basis that the State may not fund 509 by the time we want it. However as we are moving forward we need to make sure we have the right amenities for it (509) as it gets funded and built. He felt it is important for Des Moines to encourage, hope for and lobby for 509. Therefore he hopes the Transportation Plan will address 509 and the improvements we feel it should have.

Councilmember Pina felt maybe we should add another chart in 2030 if 509 existed and show how the relief would occur on many intersections, it could be a strong chart to lobby the Legislature to build 509.

Ms. Cassedy informed Council that they have already prepared such a chart, however she did not bring it with her tonight.

Councilmember Kaplan doubted that anything will happen with 509 soon, so he is more inclined to look at options without 509. If 509 gets built the result will be over capacity or improved level of service beyond what our expectations were.

In regards to South 216th Councilmember Thomasson noted it is easy to say "widen to 3 lanes" or as an alternative, is it appropriate to say "put in a center turn lane at appropriate intersections".

Upon questioning, Transportation Engineer Brewer advised that tonight's list of projects is just talking about vehicle capacity. In another part of the plan, staff will bring in a discussion about where we have bike lanes and how they are planned.

Transportation Engineer Brewer stated that when the Business Park goes in there is going to be a need for some kind of signalized access, but this should not be part of the Comp Plan. He would consider this an access improvement to be mitigated by the development.

Upon questioning regarding Des Moines Memorial Drive improvements, City Manager Piasecki advised we are not legally obligated to anything, but because of the work we did with other cities on the Des Moines Memorial Drive Committee, he feels there is some sort of a commitment made to consider some of the treatments to maintain the character of the road as a remembrance type road for the Veteran's of World War I.

9:42 p.m. Mayor Sheckler called for a 10 minute break.

Transportation Engineer Brewer drew Council's attention to attachment 6 in Council's packet and requested concurrence with the capacity adding projects listed or is there anything that should be removed. Also if Council prefers, staff can look at adjusting some of the level of service standards, instead of adding some of the capacity projects, but need guidance to do that.

Councilmember Thomasson stated he would prefer that the level of service standards were more clear. He does feel that on South 223rd at Marine View Drive improvements are needed, such as a dedicated left turn time. He would not change the other intersections on Marine View Drive, unless over time, accidents increase.

Upon questioning regarding the intersection of 16th Avenue South at South 250th, Transportation Engineer Brewer responded that staff can look at the potential of putting a signal at that location or if that is not warranted, we will need to make some kind of modification to the level of service standards at that intersection.

PUBLIC HEARING [ED NOTE: Not held]

Draft Ordinance No. 08-120 Correcting Building Code Regarding Subdivision Provisions and Draft Ordinance No. 08-212 Correcting Building Code Regarding Construction on Artificial Grades - 1st Readings

Mayor Sheckler requested the City Attorney address this issue.

City Attorney Bosmans advised Council that Des Moines Municipal Code 1.10.045 allows for scribes errors to be corrected by the City Clerk and she believes this correction falls into that category.

City Manager Piasecki advised that the Code provision was pointed out by Councilmember Thomasson and therefore no Public Hearing is necessary as the City Clerk can correct the errors.

Agenda Revision

Mayor Sheckler advised he will take Old Business Item #1 next.

OLD BUSINESS

Draft Ordinance Nos. 08-243 and 08-244 for Bond Issuance for Marina & Transportation Improvements

Finance Director Henderson advised that before Council is two draft ordinances, one for the Marina Bond issuance and one for the Transportation Bond issuance. She stated this is to provide Council with an opportunity to review, comment or make changes as requested earlier. She called Council's attention to the schedule of events for the bond issuance as provided in the Agenda Item, noting a first reading for both ordinances is scheduled for the November 13th Council meeting.

Upon questioning, Finance Director Henderson advised that Draft Ordinance 08-243 Transportation Bonds will provide for the sale of bonds for refunding the 1997 bond issue for the City Hall expansion.

Finance Director Henderson informed Council that she talked to Seattle Northwest Securities to get a market update. They are looking at average interest rates for bonds at 5 3/4 % which is above what she had presented to Council earlier. She noted Seattle Northwest Securities is recommending we proceed and get the official statement ready, but if it looks like the market is not to our advantage then we will just sit tight. She advised that they asked if Council would be agreeable to a special meeting should the market turn in the direction most favorable to us to sell the bonds. She further advised that across the nation cities are waiting and there are \$12 to \$15 billion of bonds waiting to be priced. She stated this means we are competing with other bond

insurers, so there are too many bonds and not enough buyers or investors. One advantage our city has is that these bonds will be banked qualified because they are under a \$10 million issuance size. Bank qualified means that the IRS allows them to purchase the bonds and 80% of their interest is deductible.

Mayor Pro Tem Sherman stated he is in full approval of the Marina Bond but not the transportation bond.

Councilmember Thomasson advised he cannot support moving forward with the bond ordinances as the questions he asked at the last meeting have not been answered. He advised he is not in favor of doing the transportation projects as he would hope through the budget process some of the transportation issues may not survive the budget process.

Finance Director Henderson stated Council can pull the bonds just before pricing. In other words staff would need to know before November 20th if Council decides not to move forward.

Harbormaster Dusenbury informed Council that the Marina Bond would fund the following: moving the water line, bulkhead north of the launch deck down to the travel lift pier, removal of the travel lift pier, rebuilding the new travel lift pier, some storm water work and all of the parking lot reconfiguration, which is \$6.8 million. In addition to that there are a couple of more small projects listed in the CIP which it is hoped there will funds to do which include: restroom in the south Marina lot and installation of another transformer at J dock.

City Manager Piasecki noted staff is not asking for any motions or actions tonight, the purpose was to answer questions. More detailed information such as impacts due to interest rates will be provided at the 1st reading on November 13th.

Councilmember Kaplan stated it would be helpful to have a complete list of both bond projects at that meeting.

Transportation Engineer Brewer distributed a written list of the projects and potential needs for the Transportation bond. Which includes North Twin Bridge Footing Repairs and seismic retrofit and safety improvements, South 216th Street Improvement Project (MVD to 11th Ave S) 8th Avenue S sidewalk project (North Hill Elementary). He pointed out that the total list of projects would require \$8.2 million, but if staff is successful in getting some grants the City's contributions will vary from just over \$1 million to \$2.3 million.

Councilmember Kaplan stated he feels we need to move forward with the Marina projects as they will only escalate in price the longer we wait. In regards to the Transportation bond he feels it is the best of the bad options and is something we have to do especially when it comes to Bridge safety factors. He stated is comfortable going forward with both.

PUBLIC HEARING

Draft Ordinance No. 08-210 [ASSIGNED NO. 1440] Re-enacting Shoreline Master Program - 1st Reading

Mayor Sheckler introduced the item and declared the hearing open. He noted that no one has signed up to speak so he called on Administration to describe the matter.

Development Services Manager Ruth noted the purpose of this Hearing is to have Council consider re-enacting the 1987 Shoreline Master Program. He explained we currently do not have a Shoreline Master Plan in place due to a series of events that occurred with our last update. He noted in April 2007, Council adopted Ordinance 1401 updating the Program which contained a clause that rescinded the old Program. Around January 2008 the City received notification from the Dept. of Ecology that they had rejected our Program update. He noted after a combination of those events, the City had a rescinded Program and a rejected new Program. He advised the Draft Ordinance will accomplish three things:

- It rescinds Ordinance 1401
- It re-enacts Ordinance 715 which is the 1987 Shoreline Master Program
- It amends the zoning text for the Municipal Code (18.90) which links the stand alone document to the Des Moines Municipal Code

Development Services Manager Ruth continued by advising that staff's recommendation is we need to get our Shoreline Master Program and Policies in place. He noted we are fortunate that we have not had any major applications come in during this vulnerable period. He also requested direction from Council on what they want staff to do in terms of engaging in policy discussion with the Department of Ecology and under what circumstances. He reminded Council funds have already been expended and our former consultant is not available, so staff will need to sift through Ecology's comments (Attachment 4 in Council's packet consisting of 30 pages) and he felt there is general lack of structure in those comments so it is difficult to tell which are opinions, which are mandated, or which would be "nice to have" comments. Staff further proposes to work with the Environment Committee to determine which comments, if any, are the most important and should be resolved. He also suggested the option of contacting DOE and trying to access a willingness or flexibility of their comments early on.

At 10:29 p.m. **MOTION** was made by Councilmember Thomasson, seconded by Councilmember Kaplan and passed unanimously to continue the meeting to 11:00 p.m.

Development Services Manager Ruth referenced three general categories of DOE's comments as follows:

- *Page 9, #30 - This Restoration topic has four Goal A's which should be re-lettered to be Goal A, B, C and D.* Development Services Manager Ruth felt this is relatively benign as a formatting issue.
- *Page 11, #35 -* He noted this comment caused some concern with the Environment Committee as these are more opinions and advisory comments getting from DOE. He advised what they said is not saying what we did is against their guidelines or State law, it is simply a preference of theirs. He stated staff has had some serious discussions with them asking if they are going to be holding fast to some of these comments they cannot back up.
- *Page 11, #37 -* Development Services Manager Ruth felt this was more of a policy related comment. He felt their comment suggests that with the 115 ft. buffer and the 10 ft. setback that there is some sort of issue with that. This is a substantive issue and he does not know what Ecology meant by their comment.

Development Services Manager Ruth continued by noting there is another category of comment and frankly staff does not understand what DOE means. Example: They made a comment to the effect that "our creeks were not shown in the Shoreline Master Program and that it is very clear that the State has regulatory authority for all waters in the State". He informed Council that

comment is wrong as our maps showed all creeks in the Program, the difference is Des Moines' creeks are not regulated creeks under the Program because they do not have the volume to be a regulated stream. He noted staff is concerned that Ecology is trying to reach into the area of critical area regulations as opposed to just sticking with the Shoreline authority. He concluded by requesting Council authorize reinstating the 1987 Shoreline Master Program and request direction on how Council wants staff to proceed with future Program efforts beginning in 2009.

Mayor Sheckler called for any speakers three times. As there was no response he asked Council if they have any questions of staff.

Councilmember Scott stated she did not see what the problem was on page 11, comment 35 and Development Services Manager Ruth noted that Des Moines had determined that a different buffer and setback would be more suitable in different shoreline environments. Staff felt DOE wants to see all buffers and setbacks to be identical regardless of the environment.

Councilmember Thomasson noted the draft ordinance rescinds Ordinance 1401 which adopted the new language, and rescinded the old language. He questioned if we rescind 1401, do we need to do Section 2 which is re-enacting, because at that point are we not adopting a "new" Shoreline Master Program that does not meet the standards? As opposed to just unwinding the ordinance. He stated that he is not in favor of undoing what we did. While he understands that Ecology has not yet approved it, he would think Ecology would rather have the new version than nothing, and our 1987 Plan is about as close to nothing as he can imagine. He would prefer taking the approach of negotiating a limited or quasi approval of what was done during a two year period, while we continue to amend the Plan. He felt both Des Moines and the State will be better off if we use what we did while we still continue to discuss the differences. He felt DOE should give us a one or two year approval while we negotiate. He also felt we had vested under the guidelines and questioned "did we not make our first submittal before the guidelines" and is there a vesting under State law that says "that when we submitted our plan these were the rules in effect and you cannot make these new things apply to us"?

Development Services Manager Ruth responded by advising that the document provided to DOE has much superior environmental protections than the 1987 plan. Staff is baffled why they did not see it that way and why they did not redline, or conditionally approve components, subject to us making changes that were very specific and targeted. After the first seven months of working with DOE on a couple of pages of comments, we had received head nod approval, however on the second go around what we got was not a paring down of comments, but a ballooning up to 30 pages in length. He informed Council he is not feeling comfortable dealing with an unpredictable entity and while he agrees using Councilmember Thomasson's tact of dealing with it, ultimately DOE has the authority to make the decision, and it could take long time, leaving us in "limbo land" with nothing in place.

City Attorney Bosmans informed Council that when she talked to technical assistance staff at DOE she advised they are in a state of confusion over a court case and how it applies. Her sense is that DOE will not do anything until the motion for reconsideration is either argued or rejected by the Supreme Court so they know where they stand. She noted at this point they are not able to advise cities because they are not sure what their position is going to be. Her feeling is we should get in line with all the other cities, yes, but it will a long time before anything is done.

Councilmember Thomasson noted that we have adopted critical area ordinances which we believe are valid throughout all of the City's critical areas. The Shoreline Area is an overlay to those which may add some authority. If we do not have a Shoreline Plan he felt our Critical Area ordinances would govern those areas.

City Attorney Bosmans advised Council that what the Supreme Court has said is that the first 200 feet in-land is governed by the Shoreline Master Program and the Shoreline Management Act and that the Critical Areas ordinances do not apply. That is what DOE is hoping to have reconsidered by the Supreme Court.

Development Services Manager Ruth noted that the 1987 plan has in place a process for how we process substantial development permits, conditional shoreline permits and variances. Also we have use categories for those as well. He again expressed concern that if we receive an application and someone argues we do not have any protections in place, we will be put in a compromising position.

Upon questioning, City Attorney Bosmans noted RCW 90.50.090 says if you do not have a DOE approved plan you do not have a plan. She noted what DOE says is essentially it is not possible to not have a plan, so you fall back to something. The question is what is that?

10:56 p.m. **MOTION** was made by Councilmember Kaplan, seconded by Councilmember Thomasson and passed unanimously, to continue the meeting until 11:11 p.m.

After further brief discussion, Mayor Sheckler CLOSED the public hearing.

MOTION was made by Mayor Pro Tem Sherman, seconded by Councilmember White, to suspend Council Rule 26(b) in order to enact Draft Ordinance No. 08-210 on first reading. Motion passed 6 to 1 with Councilmember Kaplan opposed.

MOTION was made by Mayor Pro Tem Sherman, seconded by Councilmember White, to enact Draft Ordinance No. 08-210 rescinding Ordinance No. 1401 that updated the Des Moines Shoreline Master Program which was subsequently rejected by the Washington State Department Ecology, reenacting Ordinance No. 715 which adopted the 987 Shoreline Master Program, and amending DMMC 18.90.010.

Mayor Pro Tem Sherman suggested we change the wording in Section 2 which says "amended and reenacted" and said instead "DMMC 18.90.010 and Section 1 of Ordinance No. 715 are by action of rescinding of Ordinance 1401 above, therefore are amended and reenacted". Accepted as a FRIENDLY AMENDMENT by maker and seconder of the motion.

Councilmember Thomasson questioned whether we want to make it clear that in hindsight the original program never went away at all.

Council questioned what happens if a permit comes in before this ordinance goes into effect, five days after publication.

Councilmember Thomasson felt we could add an emergency clause.

City Manager Piasecki noted that the title of the ordinance would need the emergency language and Section 4 would need the emergency clause language. Also should add a Whereas that states the nature of the emergency. This was accepted as a FRIENDLY AMENDMENT.

Councilmember Kaplan stated he understands why we need to do this, but he is going to vote no. He noted our plan was due to Ecology in 2004, they helped us by giving us a grant for the consultant, we submit comments to them in June, we get comments back from them in November of useless information, we make most of the changes they requested and they still will not accept our Plan.

VOTE ON MOTION: Motion passed 5 to 2 with Councilmembers Kaplan and Thomasson opposed.

Mayor Sheckler read the ordinance by title into the record.

NEXT MEETING DATE

Mayor Sheckler announced there will be a special meeting Saturday, October 25th and a Regular Meeting on October 30, 2008

ADJOURNMENT

At 11:09 p.m. **MOTION** was made by Councilmember Kaplan, seconded by Mayor Pro Tem Sherman and passed unanimously, to adjourn.

Respectfully submitted,

Denis Staab
City Clerk

ACTION ITEMS FOR 10/23/08

- Check with Police Department for policies on covert video surveillance use and whether they are already operating.
- Status report on South 239th Street closure (Zenith Viewpointe)