

## REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

May 8, 2008

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

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

ROLL CALL - Present: Mayor Bob Sheckler, Mayor Pro Tem Dan Sherman, Councilmembers Ed Pina, Carmen Scott, Scott Thomasson and Susan White. Absent: Councilmember Dave Kaplan. Also in attendance were City Manager Tony Piasecki, City Attorney Pat Bosmans, Finance Director Paula Henderson, Planning, Building and Public Works Director Grant Fredricks and City Clerk Denis Staab.

MOTION was made by Mayor Pro Tem Sherman, seconded by Councilmember White and passed unanimously, to excuse Councilmember Kaplan.

### AGENDA REVISION

Due to scheduling problems with a guest speaker, Mayor Sheckler announced that item number 3 under New Business, Passenger Only Ferry (POF) Update, has been removed from the Agenda and will be rescheduled to another meeting.

### COMMENTS FROM THE PUBLIC

#### Reynaldo, Hagood, 26839 16<sup>th</sup> Avenue South

Mr. Hagood informed Council that during recent major construction on 16<sup>th</sup> Avenue South, the contractor had parked a large bulldozer on his front lawn, causing a large hole in his front yard. While he was told that he would receive a new yard, he complained that after the contractor dumped some dirt and minor hydro seeding, only weeds and very little grass has come up. He complained that no one is taking responsibility and the sewer district, who used the bull dozer, never gave him advanced warning of use of his property, and no permission was given to do so.

After some discussion by Councilmembers, City Manager Piasecki stated the contractor will be hydro seeding Mr. Hagood's yard again.

Transportation Engineer Brewer advised that the goal is to restore Mr. Hagood's yard to his satisfaction and stated they were at the property today removing weeds. He further advised more top soil will be brought in and additional hydro seeding will be done.

Mayor Sheckler advised Mr. Hagood that he will be contacted tomorrow by Administration.

### BOARD & COMMITTEE REPORTS & COUNCILMEMBER COMMENTS

#### Store Front Studio Open House

Councilmember Scott reported there will be another open house tomorrow between 3 p.m. and 6 p.m. in the Jackson Square building in downtown Des Moines.

#### Municipal Facilities Committee

Councilmember Scott noted a meeting will be held tomorrow at the Beach Park to review building conditions and proposed improvements.

#### Farmer's Market

Councilmember Scott advised that the Farmer's Market will begin on June 7<sup>th</sup> between 10 a.m. and 2 p.m. She noted the new mural dedication will occur at Noon.

#### Public Safety and Transportation Committee

Councilmember Pina advised that the committee met earlier tonight and they are reviewing existing safety conditions of roads in the City. He noted an open house is scheduled for June 10<sup>th</sup> to receive public input and comments.

#### Planning Association of Washington and Washington Trust for Historic Preservations Meetings

Councilmember White reported attending the meetings April 20<sup>th</sup> - May 1<sup>st</sup> held at Lake Chelan. She advised the meetings were well attended and the seminars were inspiring and instrumental for learning new ideas that can enhance our City, but also there were valuable networking opportunities. She offered to share written material from the meetings with any interested Councilmember.

#### Public Safety and Transportation Committee

Mayor Pro Tem Sherman noted the committee met earlier this evening. The focus was concerning the level of service of our roads. He advised an open house will be held June 10<sup>th</sup> in the Council Chambers and stated citizen view points on issues are welcomed.

### PRESIDING OFFICER'S REPORT

#### Public Information Agent

Mayor Sheckler introduced Ralph Nichols, who has been hired part time, to represent the City to help get information out to the public on all the great events happening in the City.

City Manager Piasecki informed Council that it had been noted that very few Des Moines events were being covered in the local paper. It was discovered that most cities are sending their stories to the newspaper and it is hoped that this contract will increase Des Moines visibility, adding Mr. Nichols' contract is initially for just a few months.

### ADMINISTRATION REPORTS

#### Port of Seattle & Des Moines Creek Business Park Proposed Developer Majestic Realty

City Manager Piasecki introduced Mark Griffin, of the Port of Seattle, and Ed Konjoyan of Majestic Realty.

Mr. Griffin informed Council that back in November an RFQ was issued for the proposed business park development and received over 10 proposals. In January this was narrowed down to 3 development firms and recently a final selection was made of Majestic Realty, a developer based in Los Angeles to negotiate on a long term ground lease to actually develop the project. He advised that Majestic's conceptual plans meet, at least on a preliminary basis, the development objectives that both the Port and City Council outlined last summer in Resolution 1049. He noted over the course of the next several months the Port will be negotiating a long term ground lease and are working with City staff to move the design and entitlement process

associated with the Master Plan forward. He concluded by stating the Port looks forward to coming back over the course of the next several months with more project details as they are refined.

City Manager Piasecki informed Council that at a future meeting Council will have an opportunity to discuss their visions and expectations for the site, along with Majestic talking about their expectations and visions to understand where everyone is coming from.

Mayor Sheckler commented that he was pleased with Majestic's proposal in addressing those key issues that Council was looking at.

Mr. Konjoyan of Majestic expressed pleasure and honor at being selected and stated they understand that this piece of property is very important for the City and holds a lot of potential. He informed Council that Majestic is one of the largest privately held real estate companies in the country, headquartered in southern California, with regional offices throughout the country. He advised Majestic tends to build and hold, and as a result their portfolio has grown over the past 60 years to 70 million square feet. He stated their philosophy is to be corporate neighbors and want to be good responsible corporate citizens in the community as they are here for the long term. He concluded by stating Majestic is sensitive to Council's desires and concerns, and look forward to working with Council and staff to become part of the Des Moines community.

CONSENT CALENDAR was read by City Clerk Staab.

1. Motion is to approve the special and regular minutes of April 24, 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 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 #114196 through #114362 & electronic fund transfers in the total amount of \$440,146.20

Payroll fund transfers in the total amount of \$407,915.88

3. Motion is to approve the use of the Marina for a classic car and boat show on July 19<sup>th</sup> of this year, providing that the City Manager approves the operations and site plan for the event.

Upon questioning by Mayor Pro Tem Sherman, Harbormaster Dusenbury advised that Marina staff sponsors and organizes the classic car and boat show event.

**MOTION** was made by Councilmember White, seconded by Councilmember Scott and passed unanimously, to approve the Consent Calendar as read.

## NEW BUSINESS

### 1<sup>st</sup> Quarter 2008 Financial Report

Finance Director Henderson proceeded to provide the Council with a financial update of the City's operating and capital funds for the first quarter 2008 as detailed in Council's packets. She began with the following:

<i>ITEM</i>	GENERAL FUND	STREET FUND	TOTAL
Beginning Fund Balances	\$ 753,414	\$ 307,687	\$ 1,061,101
1 <sup>st</sup> Quarter Revenues	3,939,056	194,910	4,133,966
Less 2007 Revenue Accruals	(1,071,198)	(1,817)	(1,073,015)
Subtotal 1 <sup>st</sup> Quarter Revenues	2,867,858	193,093	3,060,951
1 <sup>st</sup> Quarter Revenues	(4,135,025)	(232,577)	(4,367,602)
2007 Deferred Revenues	109,658	-	109,658
ENDING FUND BALANCES	\$ (404,095)	\$ 268,203	\$ (135,892)

She continued with a detailed review of the following:

- Property Taxes - General, Street Funds & Levy Lid Lift at 4.7%
- Sales Taxes at 18.6% of Budget
- Criminal Justice Sales Taxes at 226.2% of Budget
- B & O Taxes at 45.2% of Budget
- Franchise Fees at 24.3% of Budget
- Utility Taxes a 31.1% of Budget
- Other Taxes at 5.7% of Budget
- Licenses and Permits at 23.2% of Budget
- Intergovernmental Revenues at 22.8% of Budget
- Charges for Services at 30.1% of Budget

She concluded by noting the 1<sup>st</sup> quarter balance sheet showing the following:

- General and Street Funds total assets - \$1,722,143
- Citywide total assets - \$15,984,297
- Total Liabilities for General & Street Funds - \$1,858,025
- Total Liabilities Citywide - \$3,565,646

At 8:57 p.m. Mayor Sheckler called for a 10 minute break.

1<sup>st</sup> Addendum to the Development Agreement with the Port of Seattle

Planning, Building and Public Works Director Fredricks explained that staff has recommendations to amend, ratify and confirm Ordinances 1428 and 1429 that Council considered on March 6<sup>th</sup>, and to approve the draft First Addendum to the First Development Agreement with the Port of Seattle, which basically puts in contract form the real estate agreement we reached following Council's policy direction. He called Council's attention to the changes to the 2 ordinances, noting the changes in the recitals explain why they are coming back to Council, Section 3.3 extends the time permitted to fully execute the draft addendum to the 1<sup>st</sup> Development Agreement. He advised that the reasons for these changes center around the inability of City staff and the Port to move these addendums through the process as quickly as first thought.

Councilmember Thomasson noted that page 7, Section 3(4), directs the City Manager to finalize the ordinance only upon receipt of final payment by the Port and fulfillment of all conditions. Yet page 9, Section 6 says the ordinance will take effect and be in full force after sixty days after its passage, approval and publication. He noted originally Section 3(3) also matched with 60 days and now it is 150 days. He questioned how to determine the actual date for the City

Manager to act. He questioned when is the ordinance in effect to allow the rest of the items to take place.

City Attorney Bosmans responded that the triggers for the actions are different. The trigger for the 150 days is the Council action, the trigger in Section 6 requires a different time frame, and then the actions of the City Manager in Section 3(4) can only occur after the effective date of the ordinance. She advised that she has distributed case law to help Council understand that the Council needs to express its intent in the Whereas' and it is the intent of the ordinance that the Court will abide by, if a Court needs to look at it. She stated that is the significance of the language that we are re-enacting and ratifying Council's prior action to express the intent.

Councilmember Thomasson voiced the opinion that the Port is not going to write a check if Section 6 has not been accomplished, as the vacation would not be in effect. He felt the ordinance should take effect as soon as possible.

Planning, Building and Public Works Director Fredricks noted staff has attempted to deal with a payment schedule and contingency and establish a process through the contract. He felt the ordinance is simply the Council's decision to vacate the dedicated and surplus property and sell the deeded property. The contract will bring the decisions all together.

In regards to the Development Agreement, Councilmember Thomasson stated that he has no issues in terms of the value per square foot. However, he originally voted no is because he does not want to vacate right-of-way that we will need to have rededicated. To him this is a flaw in the Agreement, so he cannot support the Agreement. He is also concerned about the way it talks about the frontage improvements and future transportation impact fees. To the extent the agreement somewhat says 'this is what you will build on 24<sup>th</sup> and what you will build on 216<sup>th</sup>' when Council has not yet got to the discussions of what are the project mitigations and what really needs to be built, especially if SEPA has to be reopened to cover the retail part of the development. He expressed concern that the language may be too binding on the City as it sets out some specifics that may need to be altered based on the new proposal. He noted that this seems more like a subject for the 2<sup>nd</sup> Development Agreement and while he understands its relationship to the vacation and the payment of the impact fees, he does not feel it needs to have cross sections of the streets in the context, as this is too specific about things Council has not discussed.

Planning, Building and Public Works Director Fredricks noted that the First Addendum to the First Development Agreement is basically the agreement for compensation of the vacated rights-of-way and deeded streets. It is an interlocal agreement staff has been on working on at the program level and at the legal level with the Port, and a lot of the detail in this agreement were not in earlier drafts of the agreement because it was felt Des Moines Code adequately covered it. He stated it was at the Port's request that we added the additional detail and tried to distinguish between the kinds of improvements and the rights-of-way that were dedicated that were able to be credited against the traffic impact fees. Therefore, compensated by the City through offsets, and those that were associated with the project and which were project responsibilities for which there were to be no credits, or no offsets. So the cross section, Exhibit C in the addendum defines the system improvements that our Comprehensive Transportation Plan requires. To the extent that the project requires additional rights-of-way or road improvements, there is no credit.

Councilmember Thomasson stated his concern is that the paragraph says 'you only have to build a half street', but he does not know that it is not going to take all five lanes to support this project. By doing it the way he reads this, we have limited it to say you only have to build a half street and we cannot stop you from doing your project. He felt we could have two south bound lanes and no north bound lanes. He stressed again, he does not know that we do not need all five lanes and they will not have to build it. He felt by approving this agreement, Council is making a decision that he feels they do not have enough information to make such a decision.

Councilmember Scott felt Council needs to look at the broader picture which could involve several other properties, especially if the Port purchases part of the SR 509 right-of-way. She stated the access the Port shows in their drawings is much, much closer to 24<sup>th</sup> Avenue South and in terms of the amount of traffic that might head into a large retail store at a busy time of day, could very well involve the need for a fairly long lane to make the turns, both in and out, and if there is traffic going into Ono's, she agrees with Councilmember Thomasson that we should not "pin ourselves down" quite yet, that we have a lot to consider about the full scope of what is going to be happening in that small area.

Planning, Building and Public Works Director Fredricks advised this presents a bit of a problem that should the Council amend and re-adopt Ordinances 1428 and 1429, there is a decision made on how to deal with the vacation of rights-of-way and the surplus and sale of the deeded properties. He stated we need to establish the contractual mechanism that effects that vacation and compensation. He pointed out that the reality is we are not going to know exactly what the project looks like until sometime this Fall after the Port and the developer have worked out all the details of the land lease, master plan approval process and then the second development agreement. He stated they have agreed to deposit the compensation in an interest bearing escrow account and to immediately remit that money whenever we get the property fully entitled. It is difficult to add the kind of detail that does not yet exist in terms of the project.

Mayor Pro Tem Sherman questioned why Ordinances 1428 and 1429 were never published. He noted Council approved these ordinances back on March 6<sup>th</sup> and wondered what his expectation should be, since when he feels Council approves an ordinance it will go into effect. He asked 'what is the order of things'.

City Attorney Bosmans advised that the order of things is that it is provided for in the ordinance itself. The expectation was we were going to publish it at a point in time. She noted we were trying to give assurances to the Port as to the vacation of the property and at the same time give assurance to Council that we were going to receive compensation for those vacated properties.

City Manager Piasecki assured Mayor Pro Tem Sherman that normally staff publishes an ordinance as soon as possible. However, what happened here is that prior to publishing, staff heard from the Port that they would not be able to get the whole thing running on their end to get the First Addendum approved in time to meet the time lines contained in the ordinances. Therefore staff delayed publishing so that we would not have to do even more 'undoing'.

Mayor Pro Tem Sherman stated he is very upset as it is his expectation is when Council approves an ordinance it is passing a law and it is going to become law as soon as possible.

MOTION was made by Mayor Pro Tem Sherman, seconded by Councilmember Pina, to approve the Draft First Addendum to the First Development Agreement with the Port of Seattle regarding

compensation for dedicated and deeded rights-of-way for the Des Moines Creek Business Park, and authorize the City Manager to sign the Addendum substantially in the form as provided.  
[ED NOTE: Motion later withdrawn]

City Manager Piasecki, noted that Section E of the Addendum, is trying to make it clear that as part of our Transportation Impact Fee ordinance and our normal frontage improvement requirements for development is that this is the minimum that would have to be done. However, given that all the analysis that will have to be done for the proposed development has not been done, it is quite possible that the SEPA process and the entitlement process is going to require additional mitigation. He felt as long as we can address that issue in this agreement, hopefully the Port will understand that. He suggested that paragraph 2 of Section E, first line, be changed to read: The Port may also be required to “build” - striking the word ‘dedicate’ . . . add “improvements” and strike the words ‘ additional rights of way’, and the second sentence read: The value of these “improvements” striking the words ‘additional rights of way’.

Councilmember Thomasson voiced the opinion that should the Port have to build all five lanes on 24<sup>th</sup> Avenue South, they should be eligible for credit to the transportation impact fees.

After further discussion, Mayor Sheckler called for a 5 minute break for staff to draft new language for the Agreement.

City Manager Piasecki informed Council that after talking with staff and Mark Griffin from the Port, that the nature of the changes proposed to the Addendum to the Development Agreement are such that he feels it would only be fair to draft the changes as Council has requested and have the Port of Seattle review the changes. He suggested not to adopt the changes tonight and bring the changes back.

The maker and seconder of the motion agreed to WITHDRAW the motion on the table, with the understanding that staff will be preparing modifications per Council’s discussion this evening and return the draft Addendum to the next available meeting..

City Manager Piasecki advised that after further reflection staff feels that a time frame as contained within the Whereas of the Ordinances 1428 and 1429 is not necessary. All it needs to say is the ordinance will not take effect until Council has adopted the First Addendum to the Development Agreement and then the effective date of the ordinance will be 30 days.

City Attorney Bosmans walked Council through the changes to Ordinance No. 1428 as follows:

- First Whereas on Page 3 - strike the word extend and add the word “modify” and strike the end of the sentence after 1428.
- Second Whereas on Page 3, 3<sup>rd</sup> line add a period after Council and strike the remainder of the sentence.
- Top of page 7, 2<sup>nd</sup> line after the word ordinance strike the remainder of that sentence.
- Section 6 - effective date delete sixty days and insert 30 days.

After further discussion, Council’s CONSENSUS was to accept City Attorney Bosmans changes EXCEPT no amendment to top of page 7, 2<sup>nd</sup> line. (Leave as 150 days.)

**MOTION** was made by Councilmember Pina, seconded by Councilmember White, to suspend Council Rule 26(b) to consider Ordinance No. 1428 on first reading. Motion passed unanimously.

**MOTION** was made by Councilmember Pina, seconded by Councilmember White, to amend, ratify and confirm Ordinance No. 1428 to allow the City and the Port of Seattle an additional 90 days in which to execute the Draft First Addendum to the First Development Agreement with the Port of Seattle as agreed this evening. Motion passed 5 to 1 with Councilmember Thomasson opposed.

Upon questioning, City Manager Piasecki noted the only change to Ordinance 1429 would be:

- Section 6 - effective date delete sixty days and insert 30 days.

**MOTION** was made by Mayor Pro Tem Sherman, seconded by Councilmember White, to suspend Council Rule 26(b) to consider Ordinance No. 1429 on first reading. Motion passed.

**MOTION** was made by Mayor Pro Tem Sherman, seconded by Councilmember White, to amend, ratify and confirm Ordinance 1429 to allow the City and the Port of Seattle an additional 90 days in which to execute the Draft First Addendum to the First Development Agreement with the Port of Seattle, with the change to Section 6. Motion passed 5 to 1 with Councilmember Thomasson opposed.

Mayor Sheckler read Ordinances 1428 and 1429 by title into the record.

**NEXT MEETING DATE**

Mayor Sheckler noted the next regular meeting will be May 22, 2008.

**ADJOURNMENT**

At 10:16 p.m. **MOTION** was made by Mayor Pro Tem Sherman, seconded by Councilmember White and passed unanimously, to adjourn.

Respectfully submitted,

Denis Staab  
City Clerk