

BLACK DIAMOND CITY COUNCIL MINUTES

Special Meeting – August 10, 2010

Council Chambers

25510 Lawson Street, Black Diamond, Washington

CALL TO ORDER, FLAG SALUTE:

Mayor Olness called the special meeting regarding the closed record hearing of the proposed Master Planned Developments to order at 4:03 p.m. and lead us all in the Flag Salute.

ROLL CALL:

PRESENT: Councilmembers Hanson, Boston, Goodwin, Saas and Mulvihill.

ABSENT: None

Staff present were: Bob Sterbank, City Attorney and Brenda L. Martinez, City Clerk

Mayor Olness reminded audience members to refrain from any interruptions or distractions that may distract Council.

APPEARANCE OF FAIRNESS:

City Attorney Sterbank – asked the following question collectively of all five Councilmembers: Have any of you acquired an interest in the property that is subject to the MPD applications since the last meeting? All Councilmembers responded no.

City Attorney Sterbank – asked the following question collectively of all five Councilmembers: Do any of you stand to gain or lose financially as a result of the outcome of these proceedings? All Councilmembers responded no.

City Attorney Sterbank – asked the following question collectively of all five Councilmembers: Has anything happened since the last proceedings you can think of that could impact your ability to be fair and unbiased? All Councilmembers responded no.

City Attorney Sterbank – asked the following question collectively of all five Councilmembers: Any ex parte contact outside of the proceeding with any known proponent or opponent of the projects? If so, describe contacts. All Councilmembers responded no.

Mayor Olness stated that Council will continue with traffic discussion pertaining to Green Valley Road and Plass Road.

Councilmember Hanson recapped yesterday's decision to have the Green Valley Road mitigated and monitored; discussed signage on the Green Valley Road.

Councilmember Boston stated the Hearing Examiner put it back to Council stating a new study should be done.

Councilmember Goodwin doesn't see anything technically which would lead Council in a different direction; Hearing Examiner model takes some from each; discussion on appropriate timeline, discussion on positive and negatives to getting the study done now as opposed to waiting five years.

Councilmember Mulvihill stated the study and model needs to be done now, there are too many different studies saying too many different things.

Councilmember Hanson asked what one more study now going to do; discussed traffic along 516 and Hwy. 169; good if Washington Metropolitan Area Transit Authority (METRO) had something to get people to the train station; a new study without some numbers at end of a phase or half of a phase.

Councilmember Hanson stated she doesn't have a problem with the new model but not everything was taken into consideration with either one. The state highway doesn't have much improvement on it, wasn't always updated as it should have been.

Councilmember Goodwin stated the model when validated will be based on what is happening on Hwy. 169; will know where traffic is flowing and drives additional mitigation measures. He added it will incorporate numbers available from two models.

Councilmember Mulvihill asked at what numbers does it impact traffic negatively; should be based on number of units; how many units trigger that study/validation, Phase 1 is 850 which she believes is too many.

Councilmember Boston replied 850 units plus commercial retail.

Councilmember Mulvihill stated that is a lot of vehicles to be driving; suggested trigger being 1,000 to 1,250 trips.

Councilmember Boston stated the model is going to assume 10 car trips a day per household; agrees with Mulvihill that it should be a unit count and not years; would like to put some suggestions together and have staff come back with what sounds appropriate; 850 units in Phase 1A and 250 units in 1B, that would be 1,050 units and at what point do you do a study?

Councilmember Goodwin replied the City should set a trigger at 500 homes then based on validation after that you might vary the next trigger point to be more or less based on what you are learning so you have some flexibility. He noted this addresses the legitimate concern of applicant to not do another full blown study so let's create the model now, set trigger of 500 homes then add language to set triggers for next model.

Councilmember Saas asked about the midpoint model; assumed a model would be created initially and reviewed materials in the record; prefers experts deal with the experts; what if transportation model was done and Council remanded it and have the Hearing Examiner give a recommendation on it.

Councilmember Hanson stated she would like to review staff's recommendation.

Councilmember Boston referred to King County's recommended number.

Councilmember Hanson stated infrastructure is supposed to be in place before homes are built, that is already in the application; concern is about outside of the City.

Councilmember Goodwin replied inside the City is an equal concern, agreed upon set of mitigation measures. Whether they work or not is the question. He added an agreement between Maple Valley, and applicant is desirable and there is framework there to address outside of Black Diamond.

Councilmember Mulvihill stated she would like to see it start sooner to see if it is correct, so changes can be made in the infrastructure before it's too late.

Councilmember Boston replied there is proposed concurrency as phases are done.

Councilmember Mulvihill stated infrastructure needs to be based on combination of the findings from both models.

Councilmember Boston replied that is what studies will do at whatever cutoff whether that be at a phase or a number of homes.

Councilmember Saas replied develop a model first and come up with a number.

Councilmember Goodwin stated once you begin Phase 1 you have to implement what is identified before phase 1 gets built or be concurrent so you are not waiting and noted this is part of the fundamental agreement as he understands it.

Councilmember Hanson stated staff has done a good job on infrastructure and we don't have any control over 169; discussed staff's comments on the Maple Valley model; doesn't think it has to be a whole new study.

Councilmember Mulvihill replied she doesn't want a whole new study, just to move the trigger up sooner so we can control what happens here and going outbound north, south, east and west.

Councilmember Saas stated that Councilmember Hanson doesn't think a new model needs to be created.

Councilmember Boston asked about a model that is a blend between Janarthanan and Perlic model, and reviewed by an independent person.

Councilmember Goodwin noted that staff does not want to use the other model and would be inappropriate to ignore Hearing Examiner recommendation; applicant believes it makes sense to do a new model and Council needs to figure out when; does not accept staff's recommendation that existing model is adequate.

Councilmember Mulvihill stated Council should take all that we have and make something good out of it.

Councilmember Hanson stated the studies conflict too much.

Councilmember Saas stated due to large size of project there is no reason not to do a new model.

Councilmember Hanson stated she is comfortable to have new model completed as long as it includes both Maple Valley and the States capital improvement plans on transportation in our area.

Councilmember Mulvihill agreed with the suggestion.

Councilmember Goodwin stated that is a formula for nothing as it will cause a deadlock and disagrees with Councilmember Hanson's suggestion.

Councilmember Hanson stated each place has a list of projects and it's not a matter of negotiating, it is seeing where the roadways are prioritized in these different areas.

Councilmember Boston replied the Puget Sound Regional Council (PSRC) 2040 Plan will show what they have planned for this area and assumes if he have another study done someone look at that and capital plans for other cities. He added it would be hard for cities to come up with an agreement.

Councilmember Goodwin stated it comes down to funding not a matter of priorities.

Councilmember Hanson stated it seems the State doesn't want to fund things out here.

Councilmember Goodwin replied yes that is correct and what do you do. He noted there are also a lot of issues related to outside of Black Diamond as the applicant has recommended. He further added the applicant has already recommended additional mitigation in other communities as they realize there are impacts beyond 169 to other communities and is willing to pay a pro-rata share and this is where the negotiation comes in., but there has to be other funding in order for those projects to actually occur. We need to bring to the table some reasonableness and recognize this development is going to have impacts outside of Black Diamond and we need to make sure the impacts within Black Diamond are fully mitigated upfront and concurrent and then in addition we (Council) need to recognize there are other components that are appropriate for applicant

to mitigate at least a share of. The new model is intended to get into some of those areas and to bring some reality to those impacts we are going to have outside of Black Diamond. Let's get the model done and then the next question is when do we validate it.

Councilmember Boston noted the Capital Improvement Plan (CIP) has funded vs. the unfunded.

Councilmember Saas stated that it brings Council back to a new model, validated at how many units?

Councilmember Goodwin suggested validation after 750, which is close to the end of phase 1 and a reasonable period of time as it gives us a start and as a condition we need to set the number.

Councilmember Hanson asked to try and mesh the two studies and isn't sure how that would work. She also asked Counsel if the condition sets the unit count then does the development agreement fine tune it.

City Attorney Sterbank replied it could be done at either place, assumptions used affects model output; could walk through some of it with or without staff.

Councilmember Saas had a question for staff - doesn't see in Hearing Examiner recommendation about traffic related to funded and unfunded projects.

Councilmember Goodwin referred to Exhibit 6-1 are the same on both; what are new are the applicant's improvements outside of the City within Maple Valley included on page 7, same as what the Hearing Examiner recommended.

City Attorney Sterbank replied that recommendation condition #12 mentions funded and unfunded transportation projects; applicant's #11 mentions next 6 years, funded projects. If you include future projects in the model then it can affect Level of Service (LOS) and trip assignment and if you include those who contributes what share; whoever prepares the new model would want guidance on this matter and we can provide that guidance now or through the development agreement.

Councilmember Boston discussed mass transit and noted it has been talked about but no real requirement and there are proposals for a transit center on Auburn-Black Diamond Road near the Town Center and should it be a condition to be either sited or planned at a certain phase.

Councilmember Hanson stated she would like to see something too. She also mentioned commutes to Auburn and Federal Way involve bus transfers and it is quite a process, and we need to look at this in future along with carpool parking lots.

Councilmember Boston asked at what point it makes sense for mass transit; METRO has made a statement they are considering adding routes out here as we grow.

Councilmember Saas stated that was one of the things crossed out by the applicant, example would be condition #14 regarding mode split and Sound Transit and read the condition.

Councilmember Boston suggested maybe that is made part of the model.

Councilmember Mulvihill stated it depends on METRO's numbers and their plan when they add a new route.

Councilmember Boston stated it is about a function of time, a function of how easy it is to drive to destinations and should be part of the plan, but is not sure how to Council would want to approach that.

Councilmember Saas replied it should be incorporated into the model.

Councilmember Hanson referred to condition #27 which talks about future Park and Ride lot.

Councilmember Boston replied it should be sized according to development it is serving, also walk-ability to a transit center and this needs to be in the model somewhere.

Councilmember Goodwin asked if it needed to be addressed differently than #14.

Councilmember Boston replied no, it addresses it; size will need to be determined.

Councilmember Saas recommended incorporating #14.

City Attorney Sterbank clarified staff can propose language to tie #14 and #27 together, to address the sizing of Park and Ride lots based on additional analysis.

Councilmember Goodwin summarized discussion; consensus that it is appropriate to prepare new model now as recommended by Hearing Examiner and do it now; incorporate applicant's mitigation beyond the City; then data gathering after 750 units.

Councilmember Hanson stated beyond that it is when level of service drops then something has to be done.

Councilmember Boston asked when do you start doing the count to know when level of service drops.

Councilmember Goodwin replied that is the 750 trigger.

Councilmember Hanson replied that Council needed to ask staff about when it triggers, staff knows what level of service each intersection operates at.

Councilmember Goodwin added you would do your monitoring on a more frequent basis.

City Attorney Sterbank clarified conditions #26 and #21, call for a monitoring plan and also to make this plan part of development agreement, timing of triggers to be determined in development agreement.

Councilmember Mulvihill stated the documents states applicant shall monitor traffic levels midway through each phase.

Councilmember Goodwin recapped what Council has consensus is a model; a validation point of a model at a certain trigger point; and ongoing monitoring being another component. He then referred to condition #34 where the applicant has recommended they would be willing to do it at their own expense and send to City for their approval, and believes that consistent with what was previously discussed yesterday the study should be commissioned by the City and funded by the applicant.

City Attorney Sterbank clarified condition #34 refers to Green Valley Road study and noted to see condition #11. He added Council would want to revise first sentence of #11.

Councilmember Goodwin agreed they want to see mode split analysis combination for #14 and #27. He discussed contents of page 21, and asked if there was any reason not to accept applicant's recommendation.

Councilmember Boston discussed intersection improvements, using roundabouts and why the State likes them – gave example of Hwy. 169 and Roberts Drive. He added he hopes when they do a model that they seriously consider roundabouts.

Councilmember Goodwin noted exhibit 6.1 on page 5, specific mitigations identified.

Councilmember Boston referred to item #20 on page 8 in regards to specifics.

Councilmember Saas #18 second sentence wants clarity on why “may” is used.

Councilmember Goodwin explained it relates to the condition on page 7 regarding reaching an agreement funding base and believes this is a reasonable approach.

City Attorney Sterbank clarified on the top of page 5 of the applicant's proposed revised conditions where it states if an agreement is not reached, but he hasn't heard if a consensus is reached to adopt in whole or with revisions.

Councilmember Goodwin stated he believed we are saying accept it in whole as the appropriate approach.

Mayor Olness called a recess at 5:14 p.m. for approximately 3 minutes.

Meeting was called back to order at 5:20 p.m.

Councilmember Goodwin asked for Council consensus to ask staff to draft based upon the conversation and the direction given today a new section on transportation based upon comments and then for Council review.

Councilmember Saas commented on Botts Drive; does not believe there was a study done on that road, needs to be mitigated and either need to reduce traffic or use other roads.

Mayor Olness noted Council wanted to ask staff about study on Botts Drive, for those at the top is there other access and the cul-de-sac.

Councilmember Hanson asked for recap of Council consensus and direction on transportation.

Councilmember Goodwin recapped that Council consensus is consistent with Hearing Examiner recommendations with the following conditions:

1. proceed with putting together the new model including the larger scope;
2. model including details of Maple Valley and Enumclaw;
3. agreed after 750 residences the model will be validated with some language that allows us to vary or make a determination at that point when the model needs to be revalidated;
4. to retain Hearing Examiner in recommendation on #12 the new model must consider both funded and unfunded projects;
5. monitoring plan consistent with and further agreed in large part accept applicants view of mitigation #18 and the proposed new #21;
6. mass transit conditions #14 and #27;
7. #11 preparation of model;
8. #160 on page 26 we substituted our 750 units in lieu of the periodic traffic review

City Attorney Sterbank clarified.

Councilmember Hanson referred to page 197 of Hearing Examiners findings and conclusion #24- Homeowners Associations; need to add a safety net if the City takes over we need to get some type of recovery and need to address in the development agreement.

Councilmember Goodwin noted it was previously agreed by Council to not allow Homeowners Association to provide up keep and maintenance on stormwater facilities and the question now is do we allow them to provide maintenance on landscaping and street side.

Councilmember Hanson would like to see language that if the homeowners association is failing on maintaining the landscaping and street side there is some type of recovery so the City can take it over.

Councilmember Goodwin asked that Mr. Sterbank provide some suggested options regarding Homeowners Associations and maintenance. Moving on to water and sewer in essence agreed with the Hearing Examiner and have not heard any changes from the

applicant or others testifying that required or suggested any changes, the issues were the fiscal side of it as he read it.

Councilmember Boston referred to page 201 of the Hearing Examiner in regards to sewer and collection center; sensitive to functional equivalent and what that really means.

Councilmember Hanson noted because the sewer goes to King County, METRO handles that.

Councilmember Goodwin stated he felt as long as City staff approved that it would be appropriate, feels like functional equivalency is more of an engineering concept.

Councilmember Hanson reiterated she trusts staff on this.

Councilmember Saas referred to #58 on sewer and does it encompass sewer only or does it apply to water too.

Councilmember Mulvihill stated we should reiterate this for water too.

Councilmember Goodwin suggested moving on to Fiscal and starting fresh on desnity tomorrow.; He noted that the language in the MPD proposals as he believes suggested/confirmed by the Hearing Examiner there would be a fiscal check point after each phase or after five years and nothing could proceed until that fiscal anaylsis had been done in terms of the next phase; noted for clarification one area of the fiscal analysis deals with capital improvements piece of the equation and feels it is important to differentiate ongoing operating costs that come out of the general fund for example from the capital costs that have to be spent to put new facilities in place such as parks; need to address if the fiscal balance is there for those projects that are based on REET revenue and impact fees.

Councilmember Boston questioned an example of a new police station, fire station and city hall and how that is financed regarding REET taxes that will be coming off of new and existing homes.

City Attorney Sterbank clarified the difference between REET and general property tax and noted REET is limited to capital improvements and general property tax can fund capital improvements and operating costs.

Councilmember Goodwin noted that for capital items applicant writing a check is ok, as this is a one time thing; not on ongoing operating costs. We need to have lanuage that requires a capital budget and funding projection as well as at the end of the five years to assess how we did.

Councilmember Hanson referred to page 4 of the applicant's statement regarding language in the fiscal analysis; noted this needs to be tightened up; would like feedback from staff on this.

Councilmember Boston referred to Hearing Examiner recommendation on new funding agreement that is to be outlined in the Development Agreement.

Councilmember Goodwin suggested the need to write/create a condition that operating deficits are only funded for five years.

Councilmember Boston does not want to put a condition on specific years for operating deficits.

Councilmember Goodwin stated he does not agree Capital Facilities District should be a will and need to add language the City may consider at its sole discretion the use of a capital facilities district and in no way will the City be obligated to follow this avenue. He believes this is a good option to have, but does not want the city to be obligated to use. He noted the language he saw regarding this issue is in the applicant's application.

City Attorney Sterbank referred to applicants closing submittal section 8 where it states if the City agrees YarrowBay intends to rely on the new Community Facilities District legislation to finance infrastructure; commented on providing information tomorrow on the conditions Council discussed regarding Fiscal.

Councilmember Goodwin stated he needed more time to reread the fiscal portion again.

Councilmember Boston referred to page 131 of Hearing Examiner recommendation and noted it needs to be clarified regarding shortfall.

Councilmember Goodwin stated he thought it was addressed by having a fiscal analysis done every five years.

Councilmember Hanson referred to Hearing Examiner conclusion and point regarding HOAs.


Councilmember Goodwin suggested that we call the meeting to continue tomorrow.

ADJOURNMENT:

A **motion** was made by Councilmember Goodwin and **seconded** by Councilmember Hanson to continue the special meeting regarding the closed record hearing of the proposed Master Planned Developments on August 11, 2010 in the Council Chambers at 6:30 p.m. Motion **passed** with all voting in favor (5-0).

ATTEST:


Rebecca Olness, Mayor


Rachel Pitzel, Deputy City Clerk