

BLACK DIAMOND CITY COUNCIL MINUTES

Special Meeting – August 9, 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 back to order at 4:02 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 Attorneys and Brenda L. Martinez, City Clerk

EXECUTIVE SESSION:

Mayor Olness announced an Executive Session at 4:02 p.m. to discuss potential litigation pursuant to RCW 42.30.110(1) (i) which was expected to last 15 minutes with no action to follow.

Mayor Olness announced a 10 minute extension to the Executive Session.

The meeting was called back to order at 4:27 p.m.

Continuation of Special Meeting:

Mayor Olness addressed Council Rules involving no interruptions or distractions; referred to page 4 of the Black Diamond City Council Rules and read the excerpt; Council has decided if there is any sort of disruption or distractions one warning and then asked to be removed if outburst happens again; Mayor discussed changing the schedule.

Discussion took place on what times would be best for all.

Mayor Olness reminded Council that all audio from these meetings will be available by noon the following day on the City website.

Mayor Olness asked who would be available to meet tomorrow August 10 from 4 p.m. – 7 p.m.; three Councilmembers raised their hands.

Mayor Olness announced that the continuation of the special meeting will be Tuesday, August 10 from 4 p.m. – 7 p.m.; Wednesday, August 11, 6:30 p.m. – 9 p.m.; Thursday, August 12, 4 p.m. – 7 p.m.; skip Monday; Tuesday, August 17, 4 p.m. – 7 p.m. and Wednesday, August 18, 6:30 p.m. – 9 p.m. with all meetings taking place at the Council Chambers. Mayor Olness then turned the meeting over to City Attorney Sterbank.

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 last proceedings you can think of that could impact your ability to be fair and unbiased? All Councilmembers responded no.

City Attorney Sterbank – stated the last question relates to ex parte contacts with any known proponent or opponent of the projects. He added before he asks each Councilmember this question he would like to note for the record a number of emails from or to parties of record. The first is an email from Councilmember Goodwin to Mayor Olness that was cc'd to Lynn Christy who is a party of record and dated August 4, 2010 and sent at approximately 1:00 p.m. The second is an email from Lynn Christy, a party of record to Mayor Olness and Councilmembers and dated July 30, 2010. The third is an email from Lori Seeman dated July 22 2010 and sent at 7:12 p.m. and was sent to the City's info@blackdiamond email address which was distributed to Councilmembers and was addressed "Dear Black Diamon City Councilmembers". The fourth is from Fred and Polly Rohrbach, also parties of record and was sent to the info@cityofblackdaimond on July 22, 2010 at 7:08 p.m. which was delivered to Councilmembers and was addressed "Dear Mayor Olness and Black Diamond City Councilmembers". In addition to the emails previously noted he added August 6 emails from Cindy Wheeler and also an email from Cindy Proctor who both are parties of record. City Attorney Sterbank stated that he will ask Councilmembers one by one of any ex parte contact with any known proponent or opponent of the projects other than those emails that were noted on the record.

Councilmember Hanson discussed email from Mr. Edelman that was cc'd to all Councilmembers; speaking with Vicki Harp Thursday after the Council meeting on her husband's health status and the sewer agreement that was from the 80's when their area was developed and she was updating her on what she has done with that. She added the conversation did not concern the MPDs.

Councilmember Goodwin discussed emailing Lynne Christie by mistake.

Councilmember Saas stated no ex parte contact.

Councilmember Mulvihill discussed earlier mentioned email from Mr. Edelman; noted emails from Cindy Wheeler and Cindy Proctor and sent to Clerk for ex parte file.

Councilmember Boston replied nothing in regard to the MPDs.

City Attorney Sterbank announced the City would make those emails available to all tomorrow so other parties of record can review them if they wish to; because the communications just listed were made from a specific point of view adverse to the proponent, it would be appropriate the proponent be able to rebut the substance of the communication as provided for by the Appearance of Fairness Doctrine and offer the proponent until the close of business day tomorrow to submit anything in writing if they would like to rebut any of the substance of the communications.

Mayor Olness asked Council how they would like to proceed; asked if there is anyone that needs to have Public Works questions answered to please address them this week as Public Works Director Boettcher will be on vacation next week.

Councilmember Boston suggested using something as a guide and noted one proposal would be to take the Hearing Examiners report and use that as a guide.

Councilmember Mulvihill likes this suggestion and asked if you would go step by step with the Examiners Recommendations or by topic.

Councilmember Saas would like to do this by topic and would like to start out with density.

Councilmember Hanson would like to start out with noise, stormwater and transportation; taking stormwater first.

Mayor Olness reminded Council that any questions they have will be presented to staff in the morning so answers can be brought back tomorrow.

Council consensus the first three items of discussion will be stormwater, traffic and noise.

Councilmember Boston asked all to get out the Hearing Examiners recommendations on stormwater.

Mayor Olness called a five minute recess at 4:45 p.m.

Meeting was called back to order at 4:50 p.m.

Councilmember Boston asked if there are any recommendations that need added emphasis; may disagree with or comment on these recommendations.

Councilmember Goodwin discussed the Hearing Examiners recommendation regarding the Total Maximum Daily Load (TMDL) report with the assumption of a statement made

on the recommendation that says as long as the 2005 stormwater regulations were followed, development should be ok. He disagrees from the stand point there is considerable evidence on both sides (applicant, appellants and Rothschilds) and the issue is not what is right or wrong, but the challenge is what happens if there is a problem and in reading the applicants closing statements, when asked the question “what if there is a problem”, the response was basically, it is liability and placing liability. Understands from a builder and developer perspective they want assurances by following the stormwater regulations. However, this does not provide if the guidance from the 2005 stormwater does not work, there are no guarantees. Discussed monitoring and needing to establish how much maximum phosphorus load and feels there has been a reluctance to do this. Discussed adaptive standards, require perspective phosphorus load on both MPDs be determined and a monitor schedule put in place to assess.

Councilmember Hanson stated that the other part of the puzzle is fixing the existing.

Councilmember Boston stated his concern with the amount of stormwater that runs off of Lawson and ends up back through the old wastewater treatment plant and every time we have an occurrence there is more phosphorus still coming out of that wastewater treatment plant. Not sure if you can bypass that or if you can build a storm retention pond somewhere on Lawson Hill to handle that or if that’s where we want to go.

Councilmember Hanson referred to applicants closing statements on stormwater page 2 they talk about using Low Impact Developments (LID) and TMDL at Lake Sawyer and wonders if Mr. Goodwin feels that this is not good enough, and is this something that can put in the development agreement regarding getting the information that Councilmember Goodwin is asking for and getting more specific on how much phosphorus.

Councilmember Goodwin stated that it’s required a condition that asks them to 1) quantify total kilograms per year that can be expected to be derived from the MPD The Villages on the Rock Creek basin and the same for Lawson, 2) monitoring program put in place as a condition approval and, 3) details be established in the development agreement should the Council approve.

City Attorney Sterbank references to LIDs and brought attention to recommended conditions #60 in The Villages and #58 in Lawson Hills and proceeded to read condition.

Councilmember Saas asked about simplistic calculation and why was it not approached by either party.

Councilmember Hanson asked if everyone was in agreement with setting those conditions.

Councilmember Mulvihill thinks that’s an excellent way to stop it before it becomes a problem.

Councilmember Hanson would like to show Public Works Director Boettcher and get his opinion and input on the conditions.

Councilmember Mulvihill referred to condition #60 in The Villages on page 202, concerned with Homeowners Association (HOA) should bear the cost of landscaping and maintenance of stormwater ponds, concerned with this happening and there should be more teeth to this requirement and that if the City is forced to come in and take care of it, there is something in place to assess a fine and recoup costs.

City Attorney Sterbank clarified this can certainly be part of the Development Agreement. He also mentioned the City's stormwater management has enforcement provisions that essentially say what Councilmember Mulvihill just spelled out.

Councilmember Goodwin stated he was not sure it is wise to have HOAs be responsible for the upkeep of stormwater facilities.

Councilmember Boston concerned with another issue on stormwater with the term "silver bullet" when it comes to stormwater treatment and the applicant would use one if one became available, if it was approved by Department of Ecology, if it was considered Best Available Science and it applied new stormwater retention facilities.

Councilmember Hanson stated that it took five years to adopt the state Stormwater manual and if a "silver bullet" came out and Best Available Science what process does it have to go through? Can we adopt and amend or wait that whole time until it comes to that next phase.

Councilmember Goodwin replied that when it comes to the term "silver bullet" it comes on the construction side. Mr. Goodwin stated what he was understanding is that what Councilmember Hanson is saying- if there is some proven science then we ought to have the right to adopt it prior to anything Department of Ecology implements.

Councilmember Hanson stated yes.

Councilmember Boston asked can't we make a condition in the Development Agreement that we use the newest DOE regulations?

Councilmember Saas stated they do and referred to applicant's revised condition #75 under their request for approval.

City Attorney Sterbank clarified the 2005 Ecology manual is the minimum standard that is specified by the NPDES permit for stormwater for Western Washington. The City can adopt this as part of their manual if you choose, and you would not need to wait for the Department of Ecology to adopt as part of the manual if something became available and you wanted to make it part of the City's program. The City has adopted by reference the 2005 manual with some modifications to incorporate parts of the permit rather than just the straight manual.

Councilmember Hanson stated that there must be something better out there.

Councilmember Goodwin references the Department of Ecology All Known and Reasonable Technologies (AKART) as opposed to the manual as a standard we will have more flexibility and puts some discipline on the City.

Councilmember Saas asked that what Council is addressing is to revise condition #75 to not do the Department of Ecology standard but AKART as the criteria.

City Attorney Sterbank clarified there are two different conditions Council is talking about, 1) #50 in Lawson Hills and #60 in The Villages regarding the Department of Ecology stormwater manual and, 2) condition #75 that is part of the applicants closing statements. I believe what you are talking about is modifying #75 to indicate you'd like it applied when it's known and reasonably available as opposed to waiting on the Department of Ecology approval process.

Councilmember Boston referred to the Hearing Examiners recommendations on page #75 on page 203 regarding the size of the stormwater hydraulics on a phase by phase basis, part of his concern is you can do it on anything new, but do you have to retrofit and maybe there is conditions if you have to modify or retrofit existing stormwater retention facilities.

Councilmember Goodwin referred to the benefit of focusing on performance.

Councilmember Saas stated the need to clarify what "new" is in the applicant's recommended new condition.

Councilmember Goodwin believed anything that is built new and moving forward.

Councilmember Goodwin stated he would like to argue one specific point which would be when the applicant said anything coming off roofs does not require treatment and does not agree with this as it will flow into the stormwater system.

City Attorney Sterbank referred to condition #66 that says the development agreement shall include restrictions on roof types to ensure that stormwater discharge from roof downspouts is suitable for direct entry into wetland and streams with water treatment. He noted the need to confer with Public Works Director on this.

Mayor Olness asked if there are any other questions regarding stormwater.

Councilmember Goodwin questioned of the flooding that has been raised and we need to monitor flooding as well as part of the monitoring condition.

Mayor Olness called a recess at 5:43 p.m. for approximately five minutes and announced the next section to be discussed will be noise.

Meeting was called back to order at 5:50 p.m.

Councilmember Hanson also would like to reflect Jones Lake and Black Diamond Lake as well. She then referred to noise recommendations starting on page 199 of the Villages; noted in applicants closing statements on page 1, second paragraph, second sentence and wondered what the definition of sustained is, need clarification; next sentence believes it is just the Harps, but Councilmember Hanson noted other affected property owners.

Councilmember Goodwin referred to page 10 of applicants closing statements they were careful to address more than just one property and feels we need to do the same.

Councilmember Saas stated they do address them on page 12 of revised conditions of approval and noted what areas are referenced and what constitutes affected areas.

Councilmember Goodwin stated what is being suggested is condition 45 being rewritten.

Councilmember Saas referred to page 12 of the conditions of approval of Lawson Hills and it is adequate.

Councilmember Hanson commented on ground shaking, vibrations, and how the effect of sand and where the soil changes, need to ask Seth and would like to see this addressed; would like to see this added to the list; noise hours will this be addressed in the development agreement.

City Attorney Sterbank stated yes, the noise hours will be addressed in the development agreement.

Councilmember Goodwin referred to page 12 (C), and mentioned that normally when you have an independent study you have the City do this not the applicant.

Councilmember Mulvihill referred to condition that states the City shall commission the noise study at the applicant's expense and further read on.

Councilmember Saas felt the City should commission the noise study as well as the Green Valley issue.

Condition: to have any of the studies commissioned by the City and funded by the applicant.

City Attorney Sterbank clarified these are two different conditions as one is proposed by the Hearing Examiner and the other is proposed by the applicant.

Councilmember Goodwin stated to using the language that is proposed by the applicant change to have the applicants suggested revised conditions to have the City commission and the applicant fund.

City Attorney Sterbank clarified.

Councilmember Goodwin would like to modify applicant's proposal to have the City Commission the studies and the applicant fund.

Councilmember Boston questioned continual "sustained" noise; have a definition of what is meant by sustained.

Mayor Olness stated she will have Public Works Director Boettcher address about modifying.

Councilmember Boston discussed the haul road and eventually becoming a road and what addresses the issue for those folks who will have continual noise.

Councilmember Saas stated additional mitigation is needed to be done to address those areas.

Councilmember Goodwin agreed this should be in the scope of the study, but the biggest noise will take place during construction and we need to include that it addresses issues after construction.

Councilmember Hanson referred to page 11 under Lawson Hills of applicants closing statements #40; six foot solid wooden fence and a burm to be installed this does not seem adequate.

Councilmember Goodwin suggested modifying Hearing Examiner recommendation #40 for Lawson Hills.

Councilmember Saas stated the City needed to add something in the condition about noise study.

Councilmember Goodwin stated it appears we are covered as long as it is commissioned by the City, #40 and #41.

Councilmember Saas would like to see reference taken out regarding fence and burm and have those conditions to be determined by the study.

City Attorney Sterbank clarified the conditions that Council discussed regarding #40 and #41B (2) in Lawson Hills, referencing the 6 ft. fence and burm and substitute with #41 - barriers plus the study.

Councilmember Goodwin would like to focus specifically on Green Valley Road, page 9 and 10 of the Villages; this study should be commissioned by the City and funded by the applicant; what is the significance of traffic calming devices within the existing improvements.

City Attorney Sterbank stated testimony was submitted to address some of the safety issues regarding widening and traffic calming devices.

Councilmember Goodwin referred to page 10 and read excerpt, we will need some form of monitoring for the Green Valley Road and Plass Road.

Councilmember Saas stated the need to agree on traffic calming devices and closing off Plass Road to locals only.

Councilmember Hanson commented on getting a baseline now and then doing a traffic study in the future; feels when there is no activity it is hard to pin point and we do not monitor every year, but maybe after the first phase is complete. This road is a beautiful road to enjoy and drive, but would not be used as a short cut.

Councilmember Goodwin stated the issue is this could be used an alternative route to avoid where congestion occurs and does not know what the right frequency is, but it should be less than five years and need to establish a baseline.

Councilmember Saas stated that a monitoring program would be nice on a short term basis as to how well those traffic calming devices are used.

Councilmember Hanson replied a baseline would be great, but would like to ask staff how often we should check.

Councilmember Goodwin stated the condition is we need to have a monitoring plan as part of the development agreement.


Councilmember Saas noted he is pro Green Valley Road and what we need to do to restrict traffic on it; 35 mph to discourage the use of Plass Road and be part of the development agreement.

Councilmember Goodwin stated the question again is should this - the hearing examiner specifically said that it would be incorporated into the development agreement for processing an amendment to the MPD and the applicant has been clear to incorporate it in the development agreement and to not process it as an amendment to the MPD. He asked to get an interpretation from legal so Council understands the difference.


ADJOURNMENT:

A **motion** was made by Councilmember Mulvihill and **seconded** by Councilmember Boston to continue the special meeting regarding the closed record hearing of the proposed Master Planned Developments on August 10, 2010 in the Council Chambers from 4 p.m. – 7 p.m. Motion **passed** with all voting in favor (5-0).

ATTEST:



Rebecca Olness, Mayor



Rachel Pitzel, Deputy City Clerk