

BLACK DIAMOND CITY COUNCIL MINUTES

Special Meeting - July 14, 2010

Black Diamond Elementary Gymnasium
25314 Baker Street, Black Diamond, Washington

CALL TO ORDER, FLAG SALUTE:

Mayor Olness called the special meeting back to order at 7:04 p.m. regarding the closed record hearing of the proposed Master Planned Developments and lead us all in the Flag Salute.

ROLL CALL:

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

ABSENT: None

Staff present were: Steve Pilcher, Community Development Director; Stacey Borland, Planner; Aaron Nix, Natural Resources/Parks Director; Seth Boettcher, Public Works Director; Andy Williamson, Economic Development Director; Chip Hanson, IS Manager; Mike Kenyon and Bob Sterbank, City Attorneys and Brenda L. Martinez, City Clerk

STAFF CLOSING STATEMENT:

Community Development Director Pilcher delivered the staff closing statement, a copy of which was provided in writing (Exhibit C-77).

Councilmember Goodwin asked staff about the “minimum” 4 dwelling units per acre and buffers along the west and east end of The Villages. **Mr. Pilcher** explained the buffer on the west side of The Villages is a pre-existing King County trail easement. He noted regarding the east side buffer, when the MPD design guidelines were being considered, the concept of super high density was not adopted by Council. He explained the city had received a lot of public comment about noise concerns.

Councilmember Goodwin asked staff for an explanation of the legal criteria for buffer widths. **Mr. Pilcher** explained that the Sensitive Areas Ordinance contains buffers based on scientific analysis. He noted that most planning buffers are arbitrary and reflect community values.

Councilmember Goodwin asked regarding the Planned Action Ordinance (PAO) proposed by the applicant, what is to be gained and why would Council want to entertain it now. **Mr. Pilcher** stated staff does not support the concept since it is typically used for

smaller sites. He explained what a PAO is, and he noted that the EIS was more programmatic in nature so staff felt there was not enough specificity to allow a PAO and does not recommend it as an option for Council.

Councilmember Goodwin noted that the R4 and R6 zones have minimum lot sizes, but The Villages and Lawson Hills do not have minimum lot sizes established. He asked for further explanation of what is proposed. **Mr. Pilcher** stated the MPD is more general in nature and establishes land use categories with density ranges. He clarified the MPD does not authorize any development. He explained the Development Agreement would establish building heights and other development related details. He also explained that there would be later stages of approval including implementing plats. He stated the Development Agreement would guide future permit decisions and serve like a zoning code for the MPDs.

Councilmember Hanson asked whether the 4 du/ac includes the wetland areas. **Mr. Pilcher** responded that is correct.

Councilmember Hanson stated some transportation items were left out even in the City's model. She explained concerns that there are more trips showing people going to SR169 instead of west, no turn lanes and about the Auburn Black Diamond Road intersection with 218th. She also noted that there was little information on Botts Drive and there should be a fair equation for establishing buffers.

Councilmember Boston stated that there has been little emphasis given to mass transportation and asked if staff has a position on that and how it would fit into the transportation plan. **Mr. Pilcher** responded in The Villages there is a location where a transit stop is identified and that METRO will provide services once there is the demand.

Councilmember Boston stated that it seems there has to be a problem first. **Mr. Pilcher** replied that a need must be demonstrated first, but he was not sure exactly how METRO makes their operation decisions.

Councilmember Saas asked about the relationship between the MPD and the Development Agreement (DA). **Mr. Pilcher** responded city code specifies a process that first there is an MPD then comes the DA phase.

Councilmember Saas said that for specificity they would need to have the DA. **Mr. Pilcher** stated that there is some specificity in the MPD now but more would come later with the DA.

Councilmember Boston asked staff if they feel the City has a good baseline on water quality data so that future testing is adequate. **Natural Resources/Parks Director Nix** responded there is a good amount of data and it is a good idea to get more now. He noted the City established a comprehensive water quality sampling regimen and would like to see it continue. He stated many members of the community have knowledge on this topic.

APPLICANT CLOSING STATEMENT:

Nancy Rogers, an attorney for the applicants, delivered the applicant closing statement, a copy of which was provided in writing (Exhibit C-78). She stated the applicants are seeking approval with conditions. She noted they prepared a detailed written response to all questions which covers additional topic areas.

Ms. Rogers explained the MPDs are designed and conditioned in several ways, including through the 2005 Department of Ecology manual. She discussed infiltration and source control and extensive mitigation recommended by the Examiner. She explained they will go beyond what are required and offered new conditions are including establishing a water quality committee.

Ms. Rogers explained they cannot address an 80% phosphorous removal standard and referenced MPD Exhibit 122. She stated that 100% removal is not possible and there is no nexus in the record to demand that. She explained the applicant is willing to go beyond their vested rights in that any new technology will be implemented on new projects even if they are in the middle of a phase.

Ms. Rogers explained that no loading model was done because it misses the big picture which is the basin and referenced MPD Exhibits H-7 and H-8, the TMDL and Lake Sawyer Management Plan. She noted that Ecology is the agency with jurisdiction over TMDL. She stated Yarrow Bay is proposing additional protective oversight, projects would subject to additional review, and stormwater vests by phase and Council would receive annual reports by the water quality committee.

Ms. Rogers discussed how the projects will include construction of new roadway improvements identified in the comprehensive plan and building or contributing to a list of 30 improvements per the EIS analysis. She stated prior to phases staff will review and impose a schedule on the applicant. She explained that a periodic review process to reassess and revise mitigation would occur twice. She also discussed a new transportation model and establishment of a Green Valley Road committee to review traffic calming measures.

Ms. Rogers explained a new condition related to Botts Drive and other areas where they are proposing differences from the Examiner. She discussed the Maple Valley model and urged rejection of the remand concept. She described how the applicant is proposing to go beyond requirements including additional transportation projects in Maple Valley. She also noted implementing projects such as plats will require Hearing Examiner review.

Ms. Rogers stated their written materials include answers to questions and how the projects implement policies on density and small town character.

Laurie Fehlberg showed revised land use maps for the projects with removal of several areas of the 18-30 du/ac categories and a light industrial overlay. She discussed having a

broad range of housing options where all residents feel included. She addressed concerns about large buildings with good architectural site and quality design.

Ms. Rogers addressed fiscal issues and their desire for the City to be in the black. She explained that 4 phases means 4 updates to the fiscal analysis and the \$1 million projected deficit is due to the number of police officers. She noted the Yarrow Bay analysis shows a fiscal benefit for both projects and full build out needs to be vested up front to plan infrastructure and pursue commercial development. She explained any deficits will be cured before development continues or if it is a large amount a different solution will be pursued. She also explained that privatizing infrastructure does not mean taking over existing parks and other facilities.

Ms. Rogers stated they plan to limit construction noise and according to the EIS there would be occasional peak noise of 90 dbs. She discussed constructing Lawson Parkway at Phase 2 as a construction route and meeting with adjacent neighbors to pursue noise reduction measures to be installed before construction begins. She explained that a noise committee for each project would be formed and there would be multiple opportunities for city oversight.

Ms. Rogers discussed density and phased and incremental development, referencing page 5-13 of the Comprehensive Plan. She noted they agree with phased and incremental development, with multiple continued opportunities for city oversight. She discussed a flow chart that was distributed with information on review timelines, processes and areas for public participation. She stated approving development in smaller phases violates the City's comprehensive review and ability to ensure coordinated development. She described the MPDs as phased developments with safeguards in place for the 15-20 year build out.

Ms. Rogers discussed the vision of a warm and welcoming community with small town character that preserves valuable environmental assets.

John Hempelmann, co-counsel for the applicants thanked Council for their work and discussed implementing the last major part of the vision started in 1993. He discussed the history of the process and vision of integrated open space with concentrated development. He explained the Black Diamond Urban Growth Area Agreement (BDUGAA), the 4:1 program, mandated Transfer of Development Rights, small town character and the Black Diamond Open Space Protection Agreement (BDOSPA). He noted they cannot complete the open space network if the MPDs are not done. He described the Water Supply and Facilities Funding Agreement (WSFFA) as benefitting both existing and future residents.

Mr. Hempelmann stated that it is now time for the MPDs and they have to be done at a minimum of 4 du/ac and referenced page 10 of the BDUGAA for the west, south and east annexation areas. He noted that the Central Puget Sound Growth Management Hearings Board established 4 du/ac as the minimum. He explained that small town character and rural by design principles are done by retaining natural features including critical areas,

providing a mix of uses and different housing types to accommodate all income levels, compact design and having a walk able community.

Ms. Rogers responded to previous Council questions noting that a Planned Action Ordinance is not being pursued at this time. She said that Chapter 3 of the MPD application explains density ranges and has diagrams, and that the Development Agreement will have further detail and has to be reviewed by staff. She stated that mitigation is proposed at the intersection of Auburn Black Diamond Road and 218th. She explained the EIS did not assert a large load split, rather it focused on cars.

Councilmember Saas asked how Botts Drive would be addressed. **Ms. Rogers** reviewed a proposed additional condition and discussed the number of existing trips.

Councilmember Sass stated that the decrease in the 18-30 du/ac is a step in the right direction and asked why they removed it. **Ms. Rogers** responded that they looked at both project designs and removed it near the project perimeter. **Laurie Fehlberg** responded that there is still some 18-30 du/ac in Lawson Hills but it is buffered by a low density area and a 25' buffer.

Councilmember Sass asked if the light industrial designation in the North Triangle was an increase to what was proposed originally. **Ms. Rogers** stated it was originally proposed in commercial areas and staff asked that they map an overlay for where it is proposed.

Councilmember Boston asked whether once vested can Yarrow Bay sell off pieces of the MPD and if someone else buys it do they have to comply with all the rules. **Ms. Rogers** explained that development agreements are recorded on title and future owners would be subject to all requirements. **Mr. Hempelmann** explained there will be other sub developers and Yarrow Bay will make sure that its vision is carried out by all who buy from them since they have a long term stake in the community. **Ms. Rogers** stated there is a master developer and all subsequent developers will be subject to master control and communication through Yarrow Bay to the city.

Councilmember Boston asked regarding the BDUGAA whether King County met their obligations. **Mr. Hempelmann** explained they have and noted that things that were not done were mostly not done by the City because they were incapable of performing in the early years. He noted King County did more than what they were supposed to, such as their cash contribution to the BDOSPA.

Councilmember Hanson asked how it would work for HOAs to take care of road maintenance in the MPDs. **Ms. Rogers** explained that it is common to have them do this for example, in parks and funds from each homeowner are used to hire professionals who then report back to City what is going on. **Mr. Hempelmann** explained that conditions are recorded on title so all future owners know about these obligations.

Councilmember Hanson noted that in the application housing prices were taken from 2008 at the peak and asked if city income through REET would be accurate. **Brian Ross**

explained that there is no doubt that the economy is down now, and they are looking at the long term build out of the project and significant unmet demand. He stated they want to meet the market where it is at today and not depress in the long term.

Councilmember Mulvihill asked about privatized roads in the projects. **Ms. Rogers** explained that they would be built and maintained to city standards.

Councilmember Goodwin asked the applicants what entitlement they think they will have. **Ms. Rogers** responded a capped number of housing units, square footage of development and locations on the land use plans with the ability to adjust categories once a year.

Councilmember Goodwin asked for clarification on the four phases. **Ms. Rogers** showed the phasing plan map from Chapter 9 of the MPD application.

Councilmember Goodwin asked if they have to complete Phase 1 before moving on or what vesting allows. **Ms. Rogers** replied it is unlikely they would skip phases because of access and infrastructure. She referenced Chapter 9 of the application and noted it is important to be able to start phases concurrently if a commercial developer wants to come to the north part of town.

Councilmember Goodwin asked how the fiscal analysis would work if they are still working on a phase and wanting to start another one. **Ms. Rogers** responded that the Hearing Examiner and staff captured this concern by recommending a condition that the details of phasing and what will be in the fiscal analysis shall be established in the Development Agreement. She explained it is a dynamic process and at any point in time they can analyze what has happened and what will happen in the future.

Councilmember Goodwin stated he wants to find a process that works. **Mr. Hempelmann** stated they will respond to market dynamics and will have to do fiscal analysis no matter what.

Councilmember Goodwin asked if they believe they are legally able to follow through with stormwater regulations and problems with phosphorous in Lake Sawyer. **Ms. Rogers** responded that they are willing to fix problems and use improved technologies.

Councilmember Hanson asked if there is an updated phosphorus treatment would they use that as well. **Ms. Rogers** responded that they would.

Councilmember Saas asked about the specific location for Lawson Parkway because there is a subpar existing trail nearby. **Ms. Rogers** replied that they know roughly where it will go and it will be on Yarrow Bay owned land.

Councilmember Sass asked why they will be directing traffic there. **Ms. Rogers** responded that they had not planned to build there until phase 3 but will do it for construction because of concerns about construction traffic along Lawson Street.


Councilmember Saas asked if it was due to concerns about noise or road impacts. **Ms. Rogers** replied that it was due to noise and they may pave the construction route rather than use the typical heavy rock.

Mayor Olness closed the hearing for the Villages and Lawson MPD Applications at 9:23 p.m.

ADJOURNMENT:

A **motion** was made by Councilmember Mulvihill and **seconded** by Councilmember Hanson to continue the special meeting to July 19, 2010 at 4 p.m. in the Public Works Conference Room at City Hall for an Executive Session. Motion **passed** with all voting in favor (5-0).

ATTEST:



Rebecca Olness, Mayor



Rachel Pitzel, Deputy City Clerk