

BLACK DIAMOND CITY COUNCIL MINUTES

Special Meeting - July 6, 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 Saas, Mulvihill, Goodwin, Boston and Hanson.

ABSENT: None

Staff present were: Steve Pilcher, Community Development Director; Stacey Borland, Planner; Chip Hanson, IS Manager; Mike Kenyon and Bob Sterbank, City Attorneys and Brenda L. Martinez, City Clerk

APPEARANCE OF FAIRNESS:

City Attorney Kenyon – asked the following question collectively of all five Councilmembers: Since the close of the hearing last Wednesday evening have any of you acquired an interest in the property that is subject to the MPD applications? All five Councilmembers responded no.

City Attorney Kenyon – asked the following question collectively of all five Councilmembers: Since the close of the hearing last Wednesday evening has anything happened that would cause you to gain or lose financially as a result of the outcome of these proceedings? All five Councilmembers responded no.

City Attorney Kenyon – asked the following question collectively of all five Councilmembers: Since the close of the hearing last Wednesday evening has anything happened that would cause you to not be fair and impartial in your consideration and deliberation of these matters? All five Councilmembers responded no.

City Attorney Kenyon – asked the following question of Councilmember Saas: Since the close of the hearing last Wednesday evening have you had any ex parte contacts with any known proponents or opponents of the project?

Councilmember Saas disclosed ex parte contact with a telephone conversation with Rick Ryercy regarding the no parking signs along 312th and mentioned Mr. Ryercy asked if

YarrowBay was in control of everything in the City. Councilmember Saas he ceased the conversation and changed the subject.

City Attorney Kenyon asked if Mr. Ryercy was in attendance; he was not.

City Attorney Kenyon – asked the following question of Councilmember Mulvihill: Since the close of the hearing last Wednesday evening have you had any ex parte contacts with any known proponents or opponents of the project?

Councilmember Mulvihill responded I have not.

City Attorney Kenyon – asked the following question of Councilmember Goodwin: Since the close of the hearing last Wednesday evening have you had any ex parte contacts with any known proponents or opponents of the project?

Councilmember Goodwin responded no.

City Attorney Kenyon – asked the following question of Councilmember Boston: Since the close of the hearing last Wednesday evening have you had any ex parte contacts with any known proponents or opponents of the project?

Councilmember Boston responded no.

City Attorney Kenyon – asked the following question of Councilmember Hanson: Since the close of the hearing last Wednesday evening have you had any ex parte contacts with any known proponents or opponents of the project?

Councilmember Hanson responded no.

City Attorney Kenyon – announced to audience if anyone had any objections they may submit that in writing to the City Clerks' office by end of business day tomorrow. He also added as we come to the close of the party of record statements that he wanted to make sure that the parties of record and the applicant have the opportunity to submit to the Council if they wish any list of objections of matters that have been put forward to Council that are outside the record compiled by the Hearing Examiner.

Mayor Olness announced they would now continue with item number five on the agenda.

PARTY OF RECORD STATEMENTS:

Mike Nelson, Enumclaw School District Superintendant, stated that the two projects will generate a need for four new elementary schools, two middle schools and partial need for a new high school. He noted that Exhibit B-14 in the record includes the District's comments. Mr. Nelson noted that the draft schools mitigation agreement provides for sites within the projects, which is a benefit to the district. He noted that contrary to the Examiner's findings, the draft of the agreement that is in the record (dated 10/22/09) is

not acceptable to the District, but that District staff and Yarrow Bay have subsequently worked to create a new draft that his staff will be recommending their school board adopt.

Councilmember Goodwin asked whether the District's analysis had included a high density residential area located in Parcel B of The Villages. Mr. Nelson stated that it had and that all residential lands within the MPD are located within the school district's boundaries (only the North Triangle portion of Lawson Hills is not).

Mr. Goodwin asked how important is the ½ mile walking distance to schools standard? Mr. Nelson replied it is important for elementary schools, but less so for middle and high schools.

Mr. Goodwin asked what the fallback position is in the event the agreement is not adopted. Mr. Nelson responded they would abide by the conditions as recommended by the Hearing Examiner. He indicated their preference is to come to an agreement

Harry Reinhardt (King County) stated that both the King County Countywide Planning Policies (LU-11) and King County Comprehensive Plan policies call for the County to work with cities to minimize the impact of urban development upon rural areas. He stated that schools and utilities serving urban development should be located within Urban Growth Areas. While elementary schools are allowed in rural areas, middle and high schools definitely should be within a UGA.

Mr. Reinhardt also noted that King County supported the water quality conditions, but there needs to be more detail which can be worked out in the Development Agreement. He noted that the County does not support the location of urban infrastructure in rural areas, such as the large storm pond proposed just outside the City's western limits. He also noted this site is within designated King County open space.

Matt Nolan (King County) noted that Green Valley Road is a designated Heritage Corridor and, although there is capacity for the significant increased traffic from the project that will use that road, it will have negative impacts on the character of the roadway. He stated that King County finds the proposed condition submitted by Yarrow Bay to be acceptable. He also stated the King County would favor an earlier review of actual traffic patterns, somewhere between 1000 and 2000 household mark. Mr. Nolan stated that the revised traffic study needs to evaluate unfunded projects and should re-evaluate the proposed internal trip capture rate. King County also favors the wider traffic modeling area proposed by the Hearing Examiner, to ensure it includes all County roads that are likely to be impacted to the point of requiring mitigation.

Sue Waller (Fish) stated she is a Lake Sawyer resident and is concerned with the loss of sense of community as the city grows. She noted that too much traffic will make it difficult to get commercial and industrial development in town. She supports the Hearing Examiner's traffic mitigation recommendations and incremental growth.

Ulla Kemman noted that both Snoqualmie Ridge and Issaquah Highlands have quick access to the interstate highway system, while these proposals are located in an area within inadequate roads. She stated the transportation issues need to be solved. She noted that the GMA requires concurrency, which limited the rate of growth in Issaquah Highlands. She also expressed concern with Yarrow Bay's request to reduce parking in the proposed town center area of The Villages and whether they will be able to attract commercial development. She noted that commercial development in Issaquah Highlands has been very slow.

Erika Morgan stated her concern for the environment, urging continuous project oversight and monitoring by qualified experts. She expressed her concern for Black Diamond Lake and asked for an increased buffer where the project is near her property. Ms. Morgan also indicated there is a need for an increased wildlife corridor of 300 ft. in sections 14 and 23.

Ms. Morgan stated she has requested Yarrow Bay to remove trails in the vicinity (see Hearing Examiner exhibit 41). She indicated the corner of her property is wetter than the submitted studies show, but that an increased wildlife corridor will solve any drainage problems.

Bob Rothschilds urged the Council to "do no harm," noting this is the best time to protect the city. He stated he has been studying surface water quality issues in the area for 18 years, including performing many water quality sampling tests. He questioned the expertise of the Hearing Examiner and the applicant's consultants in these areas, as he felt they made mistakes and do not have the local knowledge base that he has. He urged that proper conditions need to be made as part of the MPD process, not at the development agreement stage, as the burden of proof for requirements will shift to the City once the MPDs are approved.

Mr. Rothschilds submitted written comments which included a number of recommended conditions. He noted there should be water quality monitoring throughout the project and adaptive management, stating that both staff and Yarrow Bay supported this position. However, he noted that monitoring needs to measure more than just phosphorous and be done at more than just at storm pond outlets. Mr. Rothschilds advocated a yearly review of water quality monitoring, with open public hearings concerning the results.

Another recommended condition is to require each pound of phosphorous added by the MPDs to be mitigated to ensure no net gain in Lake Sawyer. He also recommends that additional analysis be required to calculate how much additional phosphorous (in pounds) these projects are likely to add to Lake Sawyer. Finally, he also recommends that the stormwater phasing plan required by the MPD code be further defined.

Mr. Rothschilds stated the 2005 DOE Stormwater Manual doesn't guarantee there will be no TMDL problems. He noted that the 2009 Lake Sawyer Water Quality Plan indicates that phosphorous in the lake will be recycled in that system for years. Therefore, it is important to reduce external sources to the greatest extent possible.

Councilmember Goodwin asked if there are other sources of phosphorous in the area that might reach Lake Sawyer, then how should the applicant respond. Mr. Rothschilds indicated the applicant could mitigate those sources in an effort to ensure no net gain. He stated that monitoring is critical to determining sources.

David Bricklin questioned whether the BDUGAA and City Comprehensive Plan call for this amount of urban density at this scale and timeframe. He noted that while both documents anticipate a minimum of 4 du/ac, neither says how it is to occur and how fast it is to occur. He stated the Council does not have to approve these projects in one fell swoop, noting that the Comp Plan indicates that development in the City should occur incrementally.

Mr. Bricklin stated his concern with vesting the project, as the Council will lose its ability to adjust the plan in the future. He stated that the Comp Plan prohibits approval of the entire project and that it envisions a 100-year build out of the City.

He handed out two pages from the book “Rural by Design,” noting that the Yarrow Bay proposals are in conflict with the preferred development pattern. He stated that they plan to clear cut the entire 2400 acre site, moving 6 million cubic yards of earth. That equates to 153,000 dump trucks, which he indicated as proof the project is not working with the existing landforms. Mr. Bricklin also stated the Comp Plan calls for repeating the existing character of the city as it develops and these projects will not do so.

Mr. Bricklin noted that unlike in the FEIS appeal process, the applicant bears the burden of proof in the MPD proposal and must support its claims that the project is consistent with the Comp Plan and other regulations.

Concerning water quality, he noted that the Examiner found huge gaps in the water quality assessment. He stated that there should be no more phosphorous loading in Lake Sawyer. The Examiner concluded there was a question of how much additional loading would occur from these projects which was never answered. Mr. Bricklin objected to the Examiner’s monitoring condition, noting that both the Lake Sawyer Water Quality Plan and the 2009 DOE Plan don’t include proof that the mitigation techniques recommended by those documents will not result in negative water quality issues.

Concerning transportation, Mr. Bricklin noted the following issues have not been addressed:

- What are the impacts to traffic safety?
- What are the impacts to travel time?
- What are the impacts to both AM and PM peak hour traffic?
- How will increased traffic impact the character of the community?
- What are the impacts of construction truck traffic?
- Do funds exist and is right-of-way adequate for traffic mitigation improvements?
- Will it be necessary to turn SR-169 into a 5-lane configuration?

He referred the Council to the Hearing Examiner’s recommendation, pages 37-43. Mr. Bricklin also questioned the viability of the proposed mid-point traffic review.

Concerning noise impacts, Mr. Bricklin noted there will be sound levels as high as 90 dB, which is equivalent to having a fire alarm go off. He stated there will be at least 15 years of noise impacts from this site. He objected to the Examiner's proposal to require another noise study, that the impacts should be evaluated now. He also noted there is no way to adequately mitigate the impacts of dump truck noise.

Greenhouse gases were another concern raised by Mr. Bricklin. He stated these projects are located too far from the major urban employment and shopping areas, which will result in increased travel trips. He also noted that there is room in other UGAs to accommodate the proposed homes, which are practically 4 times the number called for in the Countywide Planning Policies.

Concerning fiscal impacts, Mr. Bricklin noted the Examiner found there would be an on-going negative fiscal impact from The Villages. He stated it is unlikely that Yarrow Bay would fund this projected shortfall year after year.

Although the Hearing Examiner noted the jobs provision issue may not be legal, Mr. Bricklin noted that Yarrow Bay had failed to protest its adoption as part of the MPD Code and Comp Plan and should therefore comply.


Finally, Mr. Bricklin noted the MPD plans do not offer enough specifics or analysis. The potential of the developer being allowed to move residential density categories is a problem, as it does not provide the City with the proper amount of control.

Mayor Olness reminded everyone that when Council set the rules for the proceedings the last bullet on number four says all written statements must be submitted at the hearing, one statement per speaker and a maximum length of 50 pages double spaced. Items will be accepted through the close of the party of record statements and prior to staff and applicant closing statements. She added this looks like it will happen tomorrow so anyone who is a party of record and has a written statement it must be submitted by the close of the hearing tomorrow night.

ADJOURNMENT:

A **motion** was made by Councilmember Boston and **seconded** by Councilmember Saas to continue the special meeting to July 7, 2010 at 7 p.m. in the Black Diamond Elementary Gymnasium. Motion **passed** with all voting in favor (5-0).

ATTEST:



Rebecca Olness, Mayor



Rachel Pitzel, Deputy City Clerk