

BLACK DIAMOND CITY COUNCIL MINUTES

Special Meeting - July 7, 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; Andy Williamson, Economic Development Director; 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 night have any of you acquired any 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 night has anything occurred 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 night has anything occurred that would make it difficult or impossible to remain fair or impartial in your consideration of these matters ? All five Councilmembers responded no.

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

Councilmember Hanson responded no.

City Attorney Kenyon – asked the following question of Councilmember Boston:

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Councilmember Boston responded no.

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

Councilmember Goodwin responded no.

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

Councilmember Mulvihill responded no.

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

Councilmember Saas 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.

Mayor Olness announced the continuation of item number five on the agenda – party of record statements. She noted that this item should conclude tonight.

PARTY OF RECORD STATEMENTS:

Jeff Taraday (Maple Valley) spoke about traffic impacts on SR 169, SR 516 and Witte Road. He summarized his speaking points to consist of a summary of evidence in the record, travel demand models, trip distribution, level of service (LOS) analysis and a SIM traffic video presentation. He distributed handouts and discussed travel demand models and trip distribution. He explained the Puget Sound Regional Council (PSRC) model (Exhibit 211(d)) used by the city and the Maple Valley model (Exhibit 211(e)). He stated the FEIS estimated the total number of trips in the PM peak hour from the MPDs to be 8,665, with 7,702 trips leaving Black Diamond. He discussed the size and detail of the Maple Valley model and referenced the testimony of Dr. Janarthanan.

Mr. Taraday noted mistakes were made during the analysis and referenced the Examiner's Finding of Fact #5b. He discussed the importance of validation of the model and that Parametrix did not validate the PSRC model for use in Black Diamond. He referenced the Examiner's statement that the scale of development justifies a project specific model. He explained the trip distribution forecast done by Parametrix was rounded (see Perlic's declaration). He discussed the differences in distribution of the

models using a map from the EIS Transportation Technical Report (TTR) and a PSRC model exhibit.

Mr. Taraday noted a flaw in the PSRC model was lack of detail. He referenced previous exhibits submitted by Maple Valley (Exhibits #3 and #15). He discussed the large exhibits which showed the mitigation proposed by staff, mitigation proposed by Maple Valley and a table showing LOS at failing intersections. He presented a video model of the SR 169 and Witte Road intersection. He stated that Maple Valley is not opposed to growth in Black Diamond but it is not properly mitigated.

Council member Hanson stated that SR 169 is not four lanes in all areas and asked if Maple Valley or the state is looking at expanding it? Mr. Taraday responded that it depends on the condition of the road in 2025. He stated that Maple Valley assumed all of the planned and unfunded projects in their comprehensive plan will be built over the course of the MPD project. He noted that Yarrow Bay and Black Diamond staff have said that they only should look at funded projects.

Christy Todd (Maple Valley) submitted a brief to the Council which contains Maple Valley's full argument. She clarified that Maple Valley does not seek to stop development in Black Diamond, but they want adequate mitigation. She referenced their previous submittals (Exhibits #15, 67, 211 and 212) and requested that Council impose Maple Valley's recommendations. She referenced the Examiner's Finding of Fact #5 and Conclusion of Law #24. She explained that enhanced mitigation is to come from a new traffic model.

Mrs. Todd stated the Examiner's recommendations do not comply with the MPD code criteria because transportation mitigation cannot be created until outputs are understood. She asked the Council how they would be able to legally conclude that all adverse impacts are mitigated and stated that the Examiner threw out all Black Diamond staff recommended traffic conditions. She stated the Examiner's Conclusion of Law #24 is legally unsupportable. She noted there is no evidence in the record from professionals to support truth testing or the applicant's proposed midpoint review. She requested Council reject the applicant's and city staff's proposals to revise the Examiner's conditions. She proposed Council remand the projects to the Examiner and submitted a proposed order on remand.

Sally Neary spoke for Dan Streiffert of the Sierra Club. She stated the MPDs cannot be approved unless significant adverse environmental impacts are mitigated. She listed areas of concern which included habitat, wildlife corridor protection, air quality and greenhouse gas emissions. She explained that emissions are underestimated by using average vehicle miles traveled (vmt), when in reality MPD residents will have higher vmt due to longer commutes. She explained that water quality will be affected by new impervious surfaces and low impact development technologies have developed beyond what is proposed in the application. She spoke about local salmon runs and habitat restoration.

Mrs. Neary also spoke about impacts to surrounding lakes, wetland preservation, inadequate mitigation, forest preservation, loss of recreation areas, wind events and transportation concurrency requirements. She stated the proposed midpoint review is not

adequate and there is no way to mitigate the project. She said infrastructure cannot be provided in an economically or environmentally sustainable manner. She recommended Council follow the Critical Areas Ordinance and reject the MPD applications.

Beverly Harrison Tonda stated she is a member of the Greater Maple Valley Area Council but was speaking on her own behalf. She spoke about the Green River Valley and that traffic impacts will affect the wider area. She said people are tired of commuting and the Council should consider an appropriate transportation model. She referenced testimony made by others that she concurred with and spoke of her history of living in the area. She listed additional concerns which include phosphorous in Lake Sawyer and the stormwater pond proposed in the rural area.

Mrs. Tonda also expressed concern about the lack of conditions put on the permit and wants to see schools placed within the development. She said commercial areas cannot be filled now. She expressed her concerns about grading and how surface water will be controlled and whether King County is going to issue a grading permit for the project. She advised that a franchise use permit is needed for waterlines and that construction truck trips will affect people with post traumatic stress disorder.

Dennis Boxx stated the projects should provide sustainable family wage jobs and the city should be protected from adverse effects. He expressed concern for the effect on the environment once the forest is removed. He stated that the developments will not be self sufficient and people will have to commute for work. He listed additional concerns including increased traffic, noise and truck trips that may be similar to the third runway traffic. He said he wanted to have the Hearing Examiner involved in this process and questioned whether there is a demand for these projects. He stated he believes Council will do what is best for the city and citizens.

Monica Stewart referenced a condo project in Burien and discussed traffic congestion and retail success. She commented how new development can occur quickly and expressed her dislike for housing constructed close together. She provided examples of nearby developments including Adler's Cove and one off of Witte Road. She stated that Remington and Suncadia are examples of good developments. She noted the value of retaining trees, which helps to blend development. She asked where the new fire department is going to go and suggested an area of the development proposed for retail space. She also expressed her dislike for cookie cutter neighborhoods.

Laure Iddings stated these are the largest MPDs in King County and in uncertain economic times Council must work hard to protect the community. She recommended approval of smaller phases with multiple review points along the way. She noted that Council should not approve anything until the Development Agreement is approved. She dislikes the proposed midpoint review and stated there is no entitlement for the applicant. She said requirements can only be imposed through the Development Agreement and discussed MPD ordinance requirements. She stated the fiscal impact analysis does not meet code requirements and the special funds were not studied. She questioned how privatization of services would work.

Mrs. Iddings recommended the city require a more detailed fiscal analysis and the applications should be denied if a negative fiscal impact is shown. She noted the fiscal

analysis makes aggressive assumptions for commercial build out and the MPDs do not meet job creation objectives for the city. She stated her concerns regarding the proposed sewer system for these projects, including the use of interim pump stations and impacts of a new storage facility.

Mrs. Iddings submitted suggested amendments to the projects which address how to define major and minor amendments, what triggers a public hearing, phasing, the city's discretionary authority, transportation and construction committees and environmental reviews. She recommended procedural tools for Council's use in deliberation. She stated this is a legislative process and Council should take the time they need.

Steve Heister explained he is the chairman of the GMVAC and what the organization does. He stated their concerns about the size of the projects and severe regional impacts. He listed traffic concerns including inadequate existing infrastructure, the mid point review, Yarrow Bay's proposal to control the process with other jurisdictions and Green Valley Road (GVR). He noted concerns about the proposed adjacent schools and storm pond near GVR. He explained that GVR is not represented by the GMVAC. He spoke about unsustainable growth and the King County growth target of 1900 households. He refuted Yarrow Bay's statement that King County would be glad for the city to take growth. He spoke about Vision 2040 and the role of smaller cities. He expressed concern over the number of TDRs and that Black Diamond is a poor choice to be a receiver of a large number of TDRs. He stated the project should not rely on rural areas to locate schools and a stormwater pond.

Jay McElroy presented pictures of elk on his property. He is a Green Valley Road resident and discussed his personal background and love of the area. He spoke about concerns with dense compact housing and provided calculations noting the development is actually proposing 9 du/ac. He quoted items from two letters from King County to the City regarding growth targets, traffic and school locations. He advocated keeping schools within the boundaries of the development. He stated the project is outsized, there will be impacts to wells due to impervious surface and the MPDs do not meet concurrency requirements.

Mr. McElroy stated the traffic mitigation is inadequate and noted concerns about wildlife impacts and the elimination of some species. He stated that it appears some Council members may ignore the citizens and Examiner's recommendation. He said the development will transform the community into another Covington or Bonney Lake, and he recommended the Council turn the project down and scale it down.

Rick Bradbury is a Green Valley Road resident and provided recommendations for Council. He urged residents on well water to get it tested and stated the number of proposed truck trips is a forecast. He urged citizens to document and take photos of roads since construction traffic will impact roads. He also recommended citizens pay attention to deer and elk trail locations. He noted that Green Valley Road cannot support these massive housing projects.

Bonnie Scott is a Ravensdale resident and spoke about areas of concern including greenhouse gas emissions, rural character, wind severity, flooding, sensitive area impacts and wetland protection. She noted that many impacts cannot be mitigated. She said the

Hearing Examiner found the EIS adequate because of loose SEPA guidelines. She stated the natural beauty is a legacy. She recommended the Council consider the evidence and deny the applications, but if they decide to approve them put conditions to protect wildlife, wetlands and open space. She noted that wetland mitigation does not work like natural wetlands do. She encouraged retention of large tracts of open space for wildlife and trails. She stated the project is too big and wondered who will buy the homes. She suggested going with 2,000 homes and see how it goes.

William Wheeler stated Yarrow Bay needs to pay for any required traffic mitigation, stay out of Lake Sawyer Park, and not screw up Lake Sawyer. He listed traffic concerns including gridlock and the inadequacy of Yarrow Bay's midpoint review. He noted real traffic data is available and Council should accept the Examiner's recommendation. He said Lake Sawyer Regional Park has a master plan which does not include a high school. He stated schools and the stormwater pond should not be located outside the city and suggested Yarrow Bay scale back or buy more land as a solution.

Mr. Wheeler also suggested Council read pages 2040-2060 of the transcript regarding phosphorous problems for Lake Sawyer and the Muckleshoot Tribe comments on Crisp Creek, aquifer recharge and the Green River. He liked the city vision statement, but he is concerned about too much growth too fast. He is also concerned about loopholes and Yarrow Bay working around conditions to get out of what they do not want to do. He recommended Council adopt a policy of incremental growth, with 5-6 steps and require a detailed project level EIS.

Mr. Wheeler discussed the MPD build out timeline and said the city will have no option but to let Yarrow Bay build what they authorize today. He noted the recent economic downturn and said approval is the city taking its best guess and hoping it will turn out ok. He recommended giving Yarrow Bay a long term plan but requiring multiple approvals. He spoke about incremental growth and rural by design and encouraged the Council to not fear the proposal.

Kristen Bryant discussed the importance of the decision before Council. She noted the MPDs do not meet the regulations in many ways. She expressed her opinion about the developer's lack of experience in mixed use developments. She spoke about the misrepresentation of the project as being environmentally sustainable. She discussed open space requirements in the MPD code and design guidelines, and she noted that The Villages is not providing 50% and should be denied. She said the MPD applications do not contain details about storm ponds as an amenity.

Ms. Bryant also stated school sites are uncertain and do not meet MPD design guidelines. She recommended the MPDs be rejected and to have the developer come up with a better plan. She stated she was unable to find proposed sites for public transit and parks in the MPD application. She expressed concern regarding the content of page 11-3 of the MPD application regarding wetlands. She stated wetland mitigation is not well proven and the project should avoid disturbing any wetlands. She said the traffic model is full of risk. She noted Black Diamond is too far away from economic centers for people to be able to afford homes in the MPDs. She wanted to know what traffic mitigation will be done now.

Julie Early discussed the pitfalls and dangers of the proposed MPDs and how Council needs to make a community serving decision. She stated concern about the size of the MPDs, which exceeds growth targets set by King County and in the city vision. She recommended Council deny the MPDs and have them scaled back. She spoke about fiscal concerns and how growth should pay for growth. She noted the MPD will pollute surrounding lakes and streams including Lake Sawyer and referenced testimony by David Bricklin.

Mrs. Early dislike Ch. 13 of the MPD application and said that Yarrow Bay has an inflated view of what they are entitled to. She observed the application does not say where they will exceed code expectations and the project is more about making money than appropriate growth. She noted Council has adequate material to reject the MPD applications. She also recommended Council obtain necessary information and approve development at a smaller scale.

Carol Lynn Harp asked why Council would want to give away their power. She expressed concern about fiscal impacts and the development not paying for itself, water, light pollution, wildlife, mine hazards, schools, fire protection and other city services. She stated 15 years is a long time to forecast and the proposed midpoint review is too long. She recommended more frequent reviews and approval of a smaller amount and once 80% occupied then more. She noted it is impossible to predict future conditions in many areas.

Mayor Olness announced the conclusion of the party of record statements portion of the public hearings and thanked everyone for all their dedication. She also reminded everyone that all documents for the record must be turned in tonight at the hearing.

ADJOURNMENT:

A **motion** was made by Councilmember Mulvihill and **seconded** by Councilmember Hanson to continue the special meeting to July 14, 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