

## **BLACK DIAMOND CITY COUNCIL MINUTES**

### **Special Meeting - June 22, 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. 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; Andy Williamson, Economic Development Director; Chip Hanson, IS Manager; Mike Kenyon and Bob Sterbank, City Attorneys and Brenda L. Martinez, City Clerk

#### **EXECUTIVE SESSION:**

Mayor Olness announced an Executive Session at 7:05 p.m. to discuss potential litigation pursuant to RCW42.30.110 (1) (i) which was expected to last approximately 15 minutes.

The regular meeting was called back to order at 7:25 p.m.

Mayor Olness went over the Rules of Procedure of Hearing.

Councilmember Goodwin discussed decision made of having expert witnesses being called “parties of record” and this has the potential to allow for a procedural error; therefore, expert witnesses will not be included as a party of record.

#### **OLD BUSINESS:**

**Resolution No. 10-695, suspending Council Rules and Procedures regarding Quasi Judicial Hearings and Closed Record Hearings and establishing new procedures for the MPD Closed Record Hearings**

A **motion** was made by Councilmember Goodwin and **seconded** by Councilmember Mulvihill to adopt Resolution No. 10-695, suspending Council Rules and Procedures regarding Quasi Judicial Hearings and Closed Record Hearings and establishing new procedures for the MPD Closed Record Hearings with the first bullet point under #4 reading

parties of record shall include any person, but excluding expert witnesses who appeared on behalf or at the behest of another, who timely submitted written or verbal comments to the Examiner on the MPD applications.

Mr. Sterbank further clarified the need for this change to the procedural rules.

Motion **passed** with all voting in favor (5-0).

Councilmember Mulvihill read a statement regarding decorum for the proceedings.

#### **APPEARANCE OF FAIRNESS INQUIRIES:**

**City Attorney Kenyon** – asked the following questions of Councilmember Mulvihill:

1. Do you have any interest in the property that is subject to the MPD applications? **Councilmember Mulvihill** responded I do not.
2. Do you stand to gain or lose financially as a result of the outcome of these proceedings? **Councilmember Mulvihill** responded I do not.
3. Can you hear and consider the application in a fair and unbiased manner? **Councilmember Mulvihill** responded yes I can. **Mr. Kenyon** asked anything you can think of that could impact your ability to do that? **Councilmember Mulvihill** responded nothing.
4. Any ex parte contact since May 2009 outside of the proceeding? If so, describe contacts. **Councilmember Mulvihill** stated she had provided copies of these contacts to the City for the ex parte file. She further explained one of the emails she responded to was in regards to Council's absence at the FEIS appeal hearings in which she stated the reason why. She also stated that like them she does not trust YarrowBay and if their plans do not follow the comprehensive plan that it will not be approved. **Mr. Kenyon** asked if she could think of any other ex parte contacts with any proponents or opponents and **Councilmember Mulvihill** responded not at this time. **Mr. Kenyon** asked Councilmember Mulvihill to whom was the email she was referring to with and **she** responded Cynthia Wheeler. **Mr. Kenyon** asked her to describe the context of the statement she made of not trusting YarrowBay. **Councilmember Mulvihill** responded YarrowBay is just one of many developers who make their business in building developments and changing communities and it's a business for them and does not hold this against them, but she does have certain ideas of how she would like to see Black Diamond grow; in a controlled manner and through the comprehensive plan we worked so hard to achieve and wanted them to be able to follow those guidelines. She added this email was used at the hearings, specifically those words.

**City Attorney Kenyon** asked the audience based on what they heard from Councilmember Mulvihill would any member of the audience like to challenge her continued participation or rebut the substance of the described ex parte contact.

**Sheila Hoefig** is concerned with comments Councilmember Mulvihill made at the March 4, 2010 Council meeting regarding King County county growth projection target of 1,900

homes. Quoted what she said during the meeting, 1). As a starter we will probably build that in the first six months when the building starts, 2) the goal of 1900 home is laughable, it's laughable, 3) we are on the threshold of becoming something really amazing here, 4) I am tired of King County not taking Black Diamond seriously and that is exactly what those numbers are, a joke, and 5) we know what we are doing we have been planning this all along. She stated the statements have left her with the impression that Councilmember Mulvihill has already made up her mind without the consensus of the community. Concerned with statement she had only read half of the EIS (March 4 meeting); and that Councilmember Mulvihill stated she would personally like to stick it to the eye of the county. Since her mind is made up Ms. Hoefig feels Councilmember Mulvihill does not have the citizens' best interest at hand and requested that Councilmember Mulvihill step down from voting on her own merit or if she chooses not to that she be released from the voting process.

**Councilmember Mulvihill** thanked Ms. Hoefig for her comments and clarified her statements made during the March 4 meeting. She noted she was speaking to the comprehensive plan and not the MPD applications or the FEIS. She also added that until a couple of months ago the Council was advised by our previous legal counsel that we could not read the FEISs. She stated a forensic analysis was done on the audio for the meeting and proved that what she said about King County was she was tired of getting kicked around by King County and noted she could see how the error was made, but what she was accused of saying she did not say. Councilmember Mulvihill read another statement regarding a letter to wrote to Mayor Botts regarding her vision and discussed the Elder's vision for Black Diamond; discussed the guidelines the City has put in to place and developers will have to abide by them; meeting David Macduff right after her appointment to the Planning Commission and not knowing who he was; YarrowBay being able to use the same email against her to challenge her ability to sit without prejudice during these proceedings; noted she believes developers know she is a fair and objective person and will use her judgment accordingly. In closing she stated Black Diamond is a very special place and because of her passion for this town and the people who live here she will not recuse herself from this process.

**Attorney Kenyon** asked Councilmember Mulvihill who David Macduff is and **she** replied an employee of YarrowBay. Mr. Kenyon asked her if she thought she was prepared to make a well and informed decision on these applications, **she** responded I do. Mr. Kenyon asked if there were other members of the audience who would like to challenge Councilmember Mulvihill's continued participation. **Ms. Hoefig** asked if she had the option to respond. Mr. Kenyon replied you do not you have one opportunity and was then interrupted and asked to let him finish. **Ms. Hoefig** objected to that for the record. Mr. Kenyon discussed the procedural process being implemented for challenges and rebuttals.

**Cindy Proctor** believes under Appearance of Fairness, it would be difficult for Councilmember Mulvihill to be unbiased; clarified email that Councilmember Mulvihill was referring to earlier was sent to her and not Ms. Wheeler; discussed content of email and noted this email came from Councilmember Mulvihill's home email address, not her city email address; handed in an affidavit stating that she attended the December 17, 2009

City Council meeting and attest that I heard and saw Councilmember Mulvihill walking up to and grabbing YarrowBay attorney Jamie Balint's hands, holding them and then apologizing to Jamie for the Citizens being so rough on her and proceeding to hand her a gift; discussed statements Councilmember Mulvihill made at the March 4 Council meeting and others who witnessed this and turned in affidavits and is concerned Councilmember Mulvihill did not take ownership for what she said and feels this shows somebody who is not honest and does not take accountability for her actions and doesn't understand the implications of the appearance of fairness; concerned with comment Councilmember Mulvihill made last night about redundancy.

**City Attorney Kenyon** announced for the record the paperwork Ms. Proctor handed in. Mr. Kenyon asked Councilmember Mulvihill if she remembered the incident at the December 17, 2009 Council meeting involving Jamie Balint. **Councilmember Mulvihill** responded yes I do. **She** added she has had the pleasure of watching Jamie grow up here in Black Diamond and at this particular time the Council meeting was over and I was talking to a daughter of a friend of mine and the gift I gave her was a napkin with a cute little quote on it. **She** further added Ms. Balint was not an applicant at that time nor was she a Councilmember at that time, but rather two city people getting together to chat and a small gift – her Councilmember hat came off. There was no discussion of the MPD applications during this encounter. Discussed email sent to Cindy Proctor.

**City Attorney Kenyon** asked if there was anyone else in the audience that wished to challenge Councilmember Mulvihill's continued participation.

**Cynthia Wheeler** commented on being a Councilmember 24/7 and that hat does not go off and on and quasi judicial is applicable to 24/7; serious issue with her accuracy and recall of events; doesn't like that she has prepared statements; discussed March 4 Council meeting issues; discussed subsection of appearance of fairness regarding pre-judgments and Councilmember Mulvihill's statements of, "we are going to build something amazing" and "we are going to build 1800 homes within the first year" indicate very strong prejudgment; discussed her attendance at a Planning and Community Services meeting in January 2010 regarding the Community Facilities District and believes this was ex parte communication and also requested through a PDR minutes from the meeting and was provided very non specific minutes and asked that they be amended to reflect the specifics on this topic; discussed seeing an old acquaintance while dining with a friend and what she told her Councilmember Mulvihill had shared in regards to what is being planned for Black Diamond due to the pending development and this clearly shows that Ms. Mulvihill does have prejudgment and a predetermination about the size, success and approval of these projects. In addition, she not only has an appearance of fairness challenge she has herself been a proponent of this project and finds this very concerning. She believes her statement along with the statement of others shows a very serious pattern of behavior to be noted for the record and there is a cumulative effect of Ms. Mulvihill marketing for the project and the applicant.

**Mike Irrgang** objecting based on a degradation of credibility produced by Councilmember Mulvihill in a combination of statements last night and of this evening. He stated he listened with great attention to Ms. Hoefig's initial comments and

Councilmember Mulvihill's prepared remarks in response and is quite interested in the comments that Ms. Hoefig made, which Ms. Mulvihill did not refute as he thinks it creates a credibility gap; discussed Councilmember Mulvihill's remark that she has dedicated her work to preserving the nature of Black Diamond and thinks the nature of Black Diamond is something that very much lives up to the name of this state – the Evergreen State. Yet Councilmember Mulvihill did not refute the comment that she felt that King County's 1900 homes was not sufficient and yet it is an oxymoron to say that you can preserve this as an evergreen community if you build more than 1900 homes. Because if you build 1900 homes within the two applications it would allow you to leave trees, but if you build more than the 1900 homes you are clear cutting and that destroys the nature of Black Diamond absolutely and completely - it turns it into another Renton or Kent, or worse of all, the horrible scar on the hillside of Issaquah. He discussed the decision to not allow expert witnesses to speak; believes that over the course of last night and tonight that Councilmember Mulvihill created and widened a credibility gap that she is interested in fairly listening to the discussion over the next couple of weeks.

**Robert Taeschner** aware that Councilmember Mulvihill has a business in this City and feels this would affect her decision as it would increase her bottom line for that business and resents being told how to act.

**Vicki Harp** stated in regards to the appearance of fairness doctrine she feels Councilmember Mulvihill should be recused; noted she was present at the March 4 Council meeting and witnessed Ms. Mulvihill's comments and is concerned when someone does not own up to what they say; discussed being present at the December Council meeting and saw Councilmember Mulvihill giving Jami Balint a gift and added that it didn't look good to citizens and therefore, does not believe she can make an independent decision as it's already been made.

**City Attorney Kenyon** asked if any others had any objections to Councilmember Mulvihill's continued participation.

**Councilmember Mulvihill** stated that in respecting everyone's opinions and attitudes she will recuse herself from the process.

**City Attorney Kenyon** - asked Councilmember Mulvihill to leave the meeting tonight.

**City Attorney Kenyon** asked the following question of Councilmember Hanson:

1. Do you have any interest in the property that is subject to the MPD applications?  
**Councilmember Hanson** stated she does not have any interest, but is concerned that on two sides her property abuts their land and feels this could cause an appeal under legal reasons and does not want to put the City in a situation where she has created a reason for an appeal and added for that reason she is recusing herself from the proceedings.

**City Attorney Kenyon** asked Councilmember Hanson to leave the meeting tonight.

**City Attorney Kenyon** asked the following questions of Councilmember Goodwin:



1. Do you have any interest in the property that is subject to the MPD applications? **Councilmember Goodwin** replied I do not.
2. Do you stand to gain or lose financially as a result of the outcome of these proceedings? **Councilmember Goodwin** replied I do not.
3. Can you hear and consider the application in a fair and unbiased manner? **Councilmember Goodwin** replied yes I can.
4. Any ex parte contact with any proponents or opponents of the MPD applications since May 2009 outside of the proceeding? If so, describe contacts. **Councilmember Goodwin** stated that he was sworn in as a Councilmember January 7 of this year. **Mr. Kenyon** clarified that his ex parte contact would be anything after being sworn in. **Councilmember Goodwin** explained that after being elected as a Councilmember in November of 2009 he indicated to everybody that it's time to have no more conversations about the MPDs and noted he was very vocal about that with folks he had been discussing the projects with earlier. **He** noted that there were probably a dozen or more all of which were disclosed from mostly people he did not know offering information by email (not one on one conversations) and his response was he could not read as it pertained to the MPDs and turned it over to the City for the record. **He** also mentioned one notable email from a notable proponent Ms. Wheeler related to saying here is some information regarding the Issaquah Highlands and again he responded as he has all along that he could not read this and received a rather negative response to that. **He** further added that he has taken great pains to avoid face to face conversations or email conversations and if he received something he did not solicit he would turn it over immediately and respond in that fashion. Discussed public meetings he has had with citizens and the ground rule that is stated at the beginning prior to those meetings that there will be no conversations about the MPDs and they have lived up to that.

**City Attorney Kenyon** asked the audience if they would like to challenge Councilmember Goodwin continued participation or rebut the substance of the ex parte contact.

**Nancy Rogers** stated we would like the record to reflect and to raise an objection under the appearance of fairness doctrine as Mr. Goodwin is a known member and active of the Lake Sawyer Community Club (LSCC) when in February 10<sup>th</sup> (Ms. Rogers referred to LSCC Minutes) of this year the Club voted to contribute \$5,000 to the Diamond Coalition for purposes of opposing land use applications in the City of Black Diamond which are these. Ms. Rogers referred to the 1978 State Supreme Court case of SAVE vs. Bothell and noted that the court concluded that memberships in community organizations prohibits participation in quasi judicial proceedings when such membership demonstrates the existence of an interest which might substantially influence the individuals judgment. She added when you combine that with Mr. and Mrs. Goodwin's comments on the draft EIS, which plainly expressed concerns and requests for project conditions and feels there is a significant possibility of prejudgment and bias in particular as to the issue of stormwater and how it should be treated and his comment letter on the draft EIS requested in position of standards and conditions that go beyond existing regulation and code.

**City Attorney Kenyon** asked Councilmember Goodwin if he recalled the date of his draft EIS comments. **Councilmember Goodwin** responded it would have been September or earlier of 2009. **Mr. Kenyon** clarified for the record that Mr. Goodwin became a Councilmember on January 7, 2010.

**Councilmember Goodwin** discussed his limited involvement with the Lake Sawyer Community Club (LSCC) and noted he has not attended a board meeting in about ten years and has made it clear he will not attend particularly given these circumstances; he thanked Ms. Rogers for pointing out that they had contributed money as this was the first he heard regarding information that the LSCC contributed money to something;. comments on the statement of his relative bias he believes the comments made raised questions and did not suggest independent solutions particularly since we are in a draft EIS process and that is what you are looking to do is to provide input – it does not prejudice or prebias. He noted he does have some knowledge in that arena but it does mean how he will decide in this case. He pointed out it is very important to understand the basis upon which we must judge – that is, that anything we do must be consistent with the Black Diamond Municipal Code, Comprehensive Plan, BDUGAA, and the whole history of law set forth for the City of Black Diamond and that is the only basis upon which a judgment can be rendered in this case. He believes he is very capable of doing that and in addition he pointed out that anyone who has read his BLOG has seen that it has been very consistent and extremely objective. Very balanced in terms of neither being pro or against and in fact respecting the past and embracing the future is the theme and believes objectivity is what he is best at.

**City Attorney Kenyon** asked if any other audience members care to challenge Councilmember Goodwin's continued participation.

**Robert Taeschner** stated that he was at the February meeting of the Lake Sawyer Community Club when the money was collected and Councilmember Goodwin was not.

**City Attorney Kenyon** asked if any other audience member would like to challenge Councilmember Goodwin's participation. Seeing no one Mr. Kenyon asked Ms. Rogers if she would like to come forward and offer a response to Councilmember Goodwin's statement.

**Nancy Rogers** stated that from their information regarding the Lake Sawyer Community it indicates a mailer was sent out to all residents notifying them of the meeting and yet Councilmember Goodwin indicated tonight was the first he had heard about it; discussed Councilmember Goodwin referred to his blog and raised an objection to the fact this his blog has a direct link to the Lake Sawyer Community Club website which itself clearly expresses opposition to the YarrowBay MPD projects. She further added the blog also contains statements of concern and opposition to ideas of referred to entry from May of 2005 regarding thinking outside the box, all go to Johnson's Do It Center any day of the week and how do we get that to move to Black Diamond rather than having to go to Lowe's or Home Depot, discussion of the return of revenue from local merchants into the local economy in other words local independent businesses return more than twice the

economic value to their community than does a big box retailer such as Target. She noted that while obviously the Master Planned Development is not yet at a level of proposing a specific retail use it does allow for that type of retail use to be proposed and feels this is evidence of bias against that style and that portion of the project itself. Second, Ms. Rogers referred to an entry of April 2010 and the quote there was "For what it's worth, I think it is unwise for our community to be nothing more than another Commuter Town. We need jobs. Where and how can we best attract them?" She feels this raises concerns as the MPDs are intended to provide both housing and jobs and this does raise a concern in their mind about how and whether Mr. Goodwin will be fair and impartial in viewing that balance and mix of residential and commercial in this project. The next item Ms. Roger's referred to was a detailed entry from January 2010 regarding notification that the Hearing Examiner has confirmed a schedule for the open record hearings that occurred earlier this year and encouraging everyone's participation noting that the Council does play a quasi judicial role and are not allowed to attend. He then passed on a link to the State Department of Commerce website providing a short course on land use planning processes and indicating that he had found it to be very readable and informative in contrast to many such materials and encouraging his readers to learn about the quasi judicial roles and the appearance of fairness doctrine or if you really want to know what your are talking about you might mention ex parte communication which is a no no and thanks to Cindy Proctor for providing and believes this is clear evidence of an ex parte contact from Cindy Proctor that does not believe was disclosed earlier. She does not know what else was in that communication but is concerned about what may have been in that communication and the fact that clear opponent of this project was communicating directly with a Councilmember.

**City Attorney Kenyon** stated for the record documents Ms. Rogers handed in an undated page reported to be from Councilmember Goodwin's blog and he added to the upper right hand corner the date 6/22/2010, his initial MRK and received from Nancy Rogers. He then handed it to the City Clerk to be numbered and added to the record.

**Nancy Rogers** stated she has a few more entries. Referred to an April 2010 Blog entry in which Councilmember Goodwin is discussing his business life dealing with water and wastewater infrastructure for communities, where he and his colleagues have translated these definitions into 3 measurable standards that they strive to meet for their clients when evaluating water and sewer infrastructure alternative. She added the three alternative listed are 1) Environmental Impacts – Each infrastructure alternative should be judged/evaluated based on the following criteria: a. Land use patterns and conservation, b. Energy requirements, c. Groundwater quality and aquifer impacts, d. Surface water quality impacts, e. Water conservation, f. Stormwater generation and mitigation needed, and g. Roads and other site infrastructure maintenance required 2) Economics – Each infrastructure alternative should be judged/evaluated based on the following economic criteria: a. Initial capital costs, b. Ongoing operating costs, and c. 30+ year life cycle costs, and 3) Institutional – What institutional structures are in place or need to be in place to insure the long term integrity of the infrastructure profile proposed? Ms. Roger's stated the concern she raises is that these are setting up a decision tree that is independent of the MPD code criteria and the use of this sort of decision tree versus the code.



Lastly, she referred to a March 2010 Blog entry that states the above picture is taken of Aaron and Councilmember Bill Saas at Ravensdale Creek as it enters Lake Sawyer at the Regional Park. While it would be inappropriate to draw conclusions from the data on any one day, I was surprised by the differences in water temperature. At this time of year I would expect them to be fairly similar and be less than 10 degrees C or 50 degrees F – nice and cold. Water temperature here at Ravensdale Creek was 9.2 C or 48.6 F – not dissimilar from most of the other sites except two. Water temperatures at the Ginder Creek and Mud Lake outlets from the John Henry Mine were significantly warmer. Both of these sample points measured water temperatures exceeding 73 degrees F. Maybe an aberration but we'll learn more in the weeks ahead. Ms. Roger's noted her concern here is using information that Councilmember Goodwin has through his specialized employment as well as independent investigations of the Black Diamond area perhaps as evidence in his deliberations of these proceedings.

**City Attorney Kenyon** asked Councilmember Goodwin if he would like to respond to Ms. Roger's concerns.

**Councilmember Goodwin** clarified that the referred to ex parte communication with Cindy Proctor took place during a City Council meeting where Ms. Proctor urged each of the Councilmembers to take a course sponsored by these people and has a hard time understanding that this would be an ex parte communication. Councilmember Goodwin addressed Ms. Roger's first point and stated that he has made it very clear and to his wife as well that in their mail he wants to know nothing that comes to our place that is relative to the MPDs and it was very important that he established that up front and clearly he did not know what the Lake Sawyer Community Club had done and thanked Ms. Roger's for informing him.

He then referred to the Blog supporting local business and doesn't see anything wrong with supporting local business and it doesn't mean he is anti big box and has never stated he is anti big box. He discussed jobs and reminded Council there is a jobs provision in the MPD that requires a significant amount of job formation so doing things that supports bringing jobs to this community is fully in concert with the objectives of the MPDs and fully in concert with the objectives of our community and does not understand how there can be a conflict there.

He noted that in terms of the hearing record, land use planning and quasi judicial he has been very clear all along in talking with people in noting when there are dates for hearings and the like to please no ex parte communication and be quasi judicial and that has been stated many times in the Blog and in face to face conversations.

With respect to the article on sustainability Councilmember Goodwin stated that was the context – how do you provide long term sustainability and it just take a business model that he has used and explains how we do and go about those calculations. It has nothing to do with how we would approach the specific issues here in Black Diamond and is certainly not in conflict with anything set in stone.

He addressed the March 2010 water quality sampling and noted there have been several posts in terms of updating everybody on what those results are and educating people about what the measurements are and it is simply reporting on what the City is doing today in terms of measuring water quality, which he feels is rather prudent and quite good for this community.

**Audience Member at Podium** stated he wished to comment on Ms. Roger's comments.

**City Attorney Kenyon** responded to Mayor Olness that this would be completely out of order.

**Mayor Olness** noted that he could comment if he was challenging Councilmember Goodwin and other than that there is no comments.

**Audience Member at Podium** stated he was challenging Ms. Rogers.

**Mayor Olness** stated he was out of order.

**City Attorney Kenyon** asked if anyone has an objection to Councilmember Goodwin's participation or would like to challenge his participation. He added it is not necessary, nor authorized to come up and support him as Councilmember Goodwin has supported himself.

**David Bricklin** point of clarification regarding the procedures. It is his understanding that you are establishing rules here for this process as you go along and does not believe this issue was addressed in any of the rules and procedures that were debated and adopted by the Council last night and earlier this evening and does feel it's appropriate for people who have factual and legal information about these matters to be able to present that information for the record and asked Council to allow that. He further noted in the absence of that he doesn't think you are giving a fair chance for the record to be made.

**City Attorney Kenyon** disagrees and asked if anybody else wishes to challenge Councilmember Goodwin's continued participation. Not seeing any further objections City Attorney Kenyon asked Councilmember Goodwin if he was intending to stay in and **Councilmember Goodwin** responded yes he is.

**City Attorney Kenyon** – asked the following questions of Councilmember Boston:

1. Do you have any interest in the property that is subject to the MPD applications?  
**Councilmember Boston** replied no.
2. Do you stand to gain or lose financially as a result of the outcome of these proceedings? **Councilmember Boston** replied, no he would not.
3. Can you hear and consider the application in a fair and unbiased manner?  
**Councilmember Boston** replied yes I can.
4. Any ex parte contact with any proponents or opponents of the MPD applications since May 2009 outside of the proceeding? If so, describe contacts.  
**Councilmember Boston** replied yes and stated he chose to disclose this because he is uncertain as to when the conversation took place; it may have well been

prior to the MPD applications being filed. He went on to disclosed that while exiting the Council Chambers after a Council meeting he happened to pass Brian Ross of YarrowBay and said to Mr. Ross, "Brian I will be constructively critical of what YarrowBay does in our community". Mr. Ross' reply as he recalls was, "it can only make us better" and that was the end of the conversation.

**City Attorney Kenyon** asked the audience based on what they heard from Councilmember Boston would anyone like to challenge Councilmember Boston's continued participation or rebut the substance of the ex parte contact he disclosed.

**Nancy Rogers** stated she is raising the same objection to Councilmember Boston that she raised for Councilmember Goodwin as she believes Councilmember Boston is also a member of the Lake Sawyer Community Club and believes the case law is very clear as to both of them although Councilmember Goodwin has already made his decision and could certainly reconsider that, that memberships in community organizations prohibits participation in quasi judicial proceedings when such membership demonstrates the existence of an interest which might substantially influence the individuals judgment. She noted the objection again to Councilmember Boston's is membership in the Lake Sawyer Community Club just as with Councilmember Goodwin and would like Councilmember Goodwin to reconsider his position. SAVE vs. Bothell case is pretty clear that memberships within community organizations prohibits participation in quasi judicial proceedings when that membership demonstrates the existence of an interest which might substantially influence the individuals judgment. She added many of the opponents here are also members of the Lake Sawyer Community Club and there was a vote in February of 2010 to donate \$5,000 from the Lake Sawyer Community Club to the Diamond Coalition expressly to oppose this project and she believes that creates a clear violation of the appearance of fairness doctrine as to both members and again asks that Councilmember Boston recuse himself and that Councilmember Goodwin reconsider his position.

**David Bricklin** stated for the record that Counsel is presenting legal argument about this case and would like the opportunity to respond to it.

**City Attorney Kenyon** clarified that that is not what we are here for. Ms Rogers stated an objection to his continued participation and she stated the basis for that objection as she is required to do. Mr. Kenyon explained that if Mr. Bricklin has an objection to please identify it and state the basis.

**Mr. Bricklin** stated this basis which is in the SAVE vs. Bothell case the member who was disqualified was a paid Executive Director of the Chamber of Commerce and based on that fact the Chamber of Commerce was supporting that application and their support...

**Mayor Olness** announced Mr. Bricklin was out of order and **City Attorney Kenyon** asked him to please sit down.

**Mr. Bricklin** continued speaking stating that their support was found to be crucial. The words of the Supreme Court was the Chamber of Commerce's support was found to be crucial and the paid

**Mayor Olness** announced again Mr. Bricklin was out of order.

**Mr. Bricklin** continued speaking stating Executive Director was participating that's what resulted in disqualification and the Council is required to know that.

**City Attorney Kenyon** again asked if there was anybody from the audience who would like to challenge Councilmember Boston's continued participation and if so, to please come forward and state the basis for your objection. Mr. Kenyon stated for the record Ms. Rogers handed him a total of three pieces of paper and handed them to the City Clerk to be added as one exhibit collectively.

**Councilmember Boston** stated that he has been a member of the Lake Sawyer Community Club through the end of 2009 because he paid his dues in February of 2009 and has chose not to continue his membership in the club because of his estimation it was not prudent in his position to be affiliated with the Community Club which he thinks is a fantastic organization, he just did not agree with the political take it was having going that way so he chose not to be a member as of this year. He was not in agreement with the \$5,000 which he heard about and had no role in that whatsoever and is not a member of the Lake Sawyer Community Club. Councilmember Goodwin clarified his membership lapsed in February of 2010.

**City Attorney Kenyon** asked Councilmember Boston if he intends to recuse himself or stay in. Councilmember Boston replied I intend to stay in.

**City Attorney Kenyon** – asked the following questions of Councilmember Saas:

1. Do you have any interest in the property that is subject to the MPD applications?  
**Councilmember Saas** replied I don't.
2. Do you stand to gain or lose financially as a result of the outcome of these proceedings? **Councilmember Saas** responded I don't
3. Can you hear and consider the applications in a fair and unbiased manner?  
**Councilmember Saas** responded I do.
4. Any ex parte contact with any proponents or opponents of the MPD applications since you took office in January of 2010 outside of the proceeding?  
**Councilmember Saas** responded any and all emails that bordered that were submitted into the City file, which is probably minimal. Any that come to mind may be legislative type matters or issues that he would correspond to with Mrs. Wheeler or Ms. Proctor and in response may have walked across that line as to an appearance of fairness of which when in doubt submitted to the City file as well. He disclosed a face to face with Mr. Gomer Evans of which he expressed his opinion that he was actually for growth to a degree as he had made during the public comment period of the FEIS appeals or the MPD hearing. Councilmember Saas clarified that Mr. Evans is a previous Mayor, Councilmember and long standing resident of the City. He also clarified his reference of "walked across

that line” of being maybe a reference to YarrowBay or building and nothing was exchanged that changed his opinion or impression of YarrowBay.

**City Attorney Kenyon** asked if anyone from the audience would like to challenge Councilmember Saas’ continued participation in these matters. Seeing none City Attorney Kenyon asked Councilmember Saas if he intends to stay in as well and **Councilmember Saas** replied I will.

**Bob Edelman**, request for reconsideration of an opinion that was made on the first day of these sessions that the Mayor is not subject to the doctrine of appearance of fairness. He referred to the Resolution passed today 10-695 and noted it suspended the Council Rules and Procedures regarding quasi judicial hearings and closed record hearings all other rules and procedures remain in tact, which includes paragraph 9.4 that provides for a vote by the Mayor in the event of a tie and paragraphs relating to appearance of fairness paragraphs 9.3.1 and 9.3.4, 9.6.1, and 9.6.2 specifically contemplate application of the appearance of fairness doctrine to the Mayor as a participant in the proceedings and as a possible voter. Based on this he requested reconsideration of the ruling that the Mayor is not subject to the appearance of fairness doctrine.

**City Attorney Kenyon** stated for the record he handed to the City Clerk a document titled request for reconsideration dated June 22, 2010 and signed by Mr. Edelman.

**David Bricklin** stated that he joins in that have has information to provide if allowed to proceed.

**City Attorney Kenyon** recommended that the Council stick with its decision. He explained the terms of a Council resolution on this matter don’t apply because there are certain land use or other matters subject to the appearance of fairness doctrine that do not require an ordinance for resolution. In this case an ordinance is required if there is approval because it will effectively work a rezone and rezone map amendment. Under state law which would trump the resolution the Mayor in a strong Mayor form of government can not vote on any ordinance.

**Christy Todd** stated that the City of Maple Valley would like to be heard on this issue as well.

**Mayor Olness** responded the Council has adopted a resolution which calls for an ordinance and it’s very clear that the Mayor can not vote on an ordinance. She added the only time the Mayor can vote is in the case of a tie and thinks it is very clear that with three members that it would be hard to have a tie.

**City Attorney Kenyon** clarified that the Mayor can not even vote on an ordinance regardless if there is a tie.

## **ADJOURNMENT:**



A **motion** was made by Councilmember Goodwin and **seconded** by Councilmember Saas to continue the meeting to June 23, 2010 at 7 p.m. in the Black Diamond Elementary Gymnasium.

**Bob Edelman**, stated point of order, point of personal privilege and point of parliamentary procedure the statement was made....**City Attorney Kenyon** noted to the Mayor there is a motion and a second on the table.

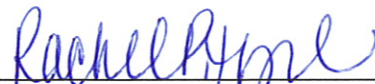
Motion **passed** with all voting in favor (3-0).

**Mayor Olness** announced the meeting is continued until tomorrow.

ATTEST:



Rebecca Olness, Mayor



Rachel Pitzel, Deputy City Clerk