

## **BLACK DIAMOND CITY COUNCIL MINUTES**

**Special Meeting - June 28, 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 regarding the closed record hearings on the MPD applications at 7:00 p.m. and lead us all in the Flag Salute.

### **ROLL CALL:**

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

**ABSENT:** Councilmember Hanson (Excused)

**Mayor Olness** noted that Councilmember Hanson will receive a copy of the recording from tonight.

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 questions collectively of all Councilmembers:

1. Since the close of the hearing last Thursday night has any Councilmember acquired an interest in the property that is subject to the MPD applications? All four Councilmembers responded no.
2. Since the close of the hearing last Thursday night has anything occurred that would make you stand to gain or lose financially as a result of the outcomes of these proceedings? All four Councilmembers responded no.
3. Since the close of the hearing last Thursday night has anything happened that you can think of that could impact your ability to be fair and unbiased? All four Councilmembers responded no.
4. Since the close of the hearing last Thursday night has any Councilmember had any ex parte contact with any known opponents or proponents of the projects?

**Councilmember Saas** responded no.

**Councilmember Mulvihill** stated that directly after the meeting last Thursday Mr. Rimbo and Mr. Ostrowski came up to Councilmember Hanson who was next to her to

talk about literature that YarrowBay had handed out. She added she received an email from Peter Rimbos with the same question.

**City Attorney Kenyon** asked if Mr. Rimbos is present tonight and asked if there is anything from what you have heard that causes you to want to rebut the substance of that ex parte communication.

**Peter Rimbos** stated that he had sent an email to all the Councilmembers and Mr. Kenyon and the question he asked Councilmember Hanson and Mayor Olness on Thursday was whether or not he would be able to get a copy of YarrowBay's presentation and noted that Mr. Kenyon took care of this on Friday.

**Rich Ostrowski** stated their only concern was we felt this was new evidence that we hadn't seen and thanked Mr. Kenyon for providing it to them for their review.

**City Attorney Kenyon** asked Councilmember Boston if he had any ex parte contacts other than the email from Mr. Rimbos.

**Councilmember Boston** stated he did have a conversation on Saturday June 26 with his neighbor Phil Acasta. They exchanged introductions and he asked him if he was on the City Council and Councilmember Boston told him he was. They discussed a home maintenance project that Councilmember Boston had done and he was considering doing also. Councilmember Boston added that as Mr. Acasta was leaving he stated that he doubted if he could find five people to support YarrowBay and Councilmember Goodwin responded it is a contentious matter. He added as Mr. Acasta was leaving he stated he was opposed to anything to do with YarrowBay and he preferred that the proposed Lake Sawyer Regional Park remain in its natural state and added there should be some parking provided along 312<sup>th</sup> even if it is just on one side. Councilmember Boston noted that he did not respond and closed with saying it was nice to meet you.

**City Attorney Kenyon** asked if Mr. Acasta was present this evening and not seeing him moved on and asked Councilmember Goodwin if he had any ex parte contacts since last Thursday's meeting.

**Councilmember Goodwin** stated he received a voicemail message and an email message from Mr. Rimbos which has already been submitted.

**City Attorney Kenyon** – announced to audience if anyone had any objections or cares to rebut the substance of these communications they may submit that in writing to the City Clerk's office by end of business day tomorrow and they will be considered timely filed.

In addition, he reminded Council to feel free to use/blame the lawyers when citizens are approaching them during the proceedings as it is important not to talk with them. He added he will continue to remind them of this throughout the duration of the proceedings.

**Mayor Olness** announced that we would continue with the next item on the agenda party of record statements and added if anyone has not signed up and wishes to so the sign up sheet is at the staff table and they can do so at anytime tonight.

## **PARTY OF RECORD STATEMENTS:**

**Rich Ostrowski** stated his general concern about the MPDs and noted that the Black Diamond Urban Growth Area Agreement (BDUGAA) and the City's Comprehensive Plan do not predetermine the density or amount of commercial development that should be allowed. He expressed his preference for incremental growth and protection of small town character and the environment. He indicated that Yarrow Bay is not entitled to this permit. He also listed his concerns on traffic and referenced dissatisfaction with the studies that were done.

Mr. Ostrowski also listed eight ways that the MPDs violate existing codes/policies. These include the Maple Valley traffic analysis, Vision 2040, the King County Comprehensive Plan and the book *Rural by Design*. He stated that open space should consist of lands that could have been developed and TDRs preserve land that could not have been developed, which does not benefit the public. He noted that a storm pond and schools are proposed outside the City's Urban Growth Area. He questioned the fiscal analysis which requires payments from Yarrow Bay and the utility of narrow and wet wildlife corridors. He indicated that the stormwater analysis did not include the Total Maximum Daily Load input of phosphorus into Lake Sawyer. He stated that the MPDs are unacceptable and should be denied until adequate mitigation is assessed and the projects reduced in size.

**Vicki Harp** referenced her previous exhibits and prior testimony to the Hearing Examiner. She stated that The Villages MPD will impact her property. She noted the noise impacts will occur for at least 2-3 years near their property and that the FEIS was inadequate in the area of noise. She stated that the Hearing Examiner required an additional noise mitigation study be completed by the applicant. She discussed recommendations of the World Health Organization, best management practices, and her preferences regarding the noise hotline. She requested a level of noise that would be 40-50 decibels lower than what is proposed.

Mrs. Harp stated that a three story apartment complex could be built next to their property, and they are not being afforded the same guidelines as MPD residents for separation and transition of uses. She discussed natural open space, grading concerns and enforcement of mitigation. She would like the Development Agreement to have site specific mitigation for her property including a 100'-200' setback between the new development and her property and a fence along the commercial area. She indicated the project should not be allowed to have 18 du/ac. If the projects cannot be mitigated then they should be denied.

Council member Saas asked Mrs. Harp how she came up with the 40-50 db. She indicated the information came from Jerry Lilly, a noise expert

**Peter Rimbos** indicated he is a member of the Greater Maple Valley Area Council and expressed his concerns on the size of the projects, location, infrastructure, impacts and preference for a lower density. He noted that the BDUGAA does not require approval of this proposal and that a lack of EIS appeals should not be construed as public acceptance. He provided a response to the John Hempelmann's testimony from the applicant's presentation about Black Diamond taking growth. He stated concerns about the programmatic EIS and what it will mean for project review later. He said the Hearing Examiner would have found the EISs inadequate but did not because of the low threshold. He noted that mitigation may not be economically or politically feasible.

Mr. Rimbos identified four major issues: fiscal analysis, noise, transportation and stormwater management and water quality. He stated that transportation is a major issue, with the projects having a lack of adequate infrastructure. He listed additional mitigation measures for transportation including those requested by other jurisdictions. He stated that Yarrow Bay's proposed mid-point review is inadequate and the project will not meet concurrency standards. He referenced the transportation analysis and John Perlic's EIS appeal hearing testimony from 3/11 regarding no off-site analysis done for schools and funding of improvements. He encouraged the Council to ask for data on travel times, and stated that the current 6 year Transportation Improvement Plan will not mitigate the MPDs.

Mr. Rimbos recommend the Council deny both MPD applications but if they choose to approve them they should condition the projects by reducing the number of units and addressing all environmental and traffic issues.

**Janie Edelman** indicated the MPD will lead to urban sprawl and huge tax increases. She stated that the BDUGAA has no financial plan for recreation spaces or where they will be located. She disagrees with allowing a stormwater facility to count as open space and payment in lieu of providing recreation facilities. She stated that Lake Sawyer Park should not be used for project mitigation. She stated the Development Agreement should map and dedicate sites for parks and have impact fees to construct and maintain facilities.

Mrs. Edelman also requested that the Council not allow the MPDs to vest against future park standards and not approve a blanket tree preservation waiver. She requested a condition for Washington State Department of Fish & Wildlife to review and approve a wildlife corridor plan. She said the BDUGAA references 1900 homes. She spoke about additional concerns, including the absence of an adopted comprehensive capital improvement plan, no impact fees established and the fiscal analysis. She stated that the Development Agreement should provide for several small phases and require 80% occupancy before accepting applications for further development.

**Susan Ball** stated her concerns include water quality on Lake Sawyer, traffic congestion and 30 units per acre density. She recommended incremental implementation of the plans with periodic reviews. She noted that development should not pass along expenses including local improvement districts, levies and capital facilities districts, and it should be rural by design.

**Steve Sundquist** indicated he is concerned about project impacts to small volume wells and effects of logging on water quality. He noted that a water source is located where two schools are proposed to be built. He also stated concerns about light pollution and the number of units proposed. He suggested limiting the amount of low income housing in the project.

**Lisa Garvich** questioned whether finding the EIS to be adequate is good enough for Black Diamond. She stated that Yarrow Bay is not Black Diamond's financial salvation. She referenced pages 389-391 of the FEIS regarding emergency services. She noted that a plan is needed for how services will be paid for and that the applicant's requested public safety condition of approval is not adequate. She stated that the public safety levy is high and the fiscal analysis assumes the lid lift will be approved, which does not mean development is paying for itself. She discussed existing deficiencies in level of service for emergency services. She recommended Council deny the MPDs as proposed or approve a small piece and see how it works.

**Jack Sperry** stated his concerns about flooding on Lake Sawyer and referenced his prior MPD testimony. He discussed testimony from the applicant's expert contained in Exhibit #123. He noted that the Hearing Examiner failed to consider that the storm pond may already be full in the event of a major storm and that the water level will be high in winter months from additional ground water infiltration. He stated the problem with using the 2005 Department of Ecology Stormwater Manual is that there are no accurate amounts of 50 year peak flow data.

Mr. Sperry also stated that the MPDs fail to address the previous history of flooding at Lake Sawyer and need conditions to mitigate. He recommended that condition #65 of the staff report be mandated by Council. He observed that most people who testified were opposed to the project. He recommended approval of a small amount of the project, see how it works and then provide additional development if mitigation is put in place first.

**Judith Carrier** spoke about the historic nature of Green Valley Road (GVR) and Black Diamond, including the city vision statement of July 1991. She stated that the Council needs to examine the testimony and not be influenced by community displeasure from either side. She said that the Hearing Examiner found the EISs adequate, but they have faults and problems. She stated her transportation concerns for GVR and The Villages South Connector intersection with SR 169.

Mrs. Carrier also spoke about GVR as a heritage corridor and the Hearing Examiner's recommendation of a study for that road. She stated Yarrow Bay's mid-point review is not a good plan and requested additional traffic mitigation beyond what is recommended by the Examiner. She would like a new model to be used to validate impacts including those to GVR; use the analyses to inform mitigations; cost out the mitigations with adjacent jurisdictions and work cooperatively with GVR residents on mitigation. She noted her concerns about Plass Road becoming a bypass route and the level of service for both GVR and the Villages South Connector intersections with SR 169. She recommended that schools be located within the Urban Growth Area and that Council approve the Examiner's recommendations with added transportation conditions.



**Robert Edelman** stated that the MPDs are not an entitlement and discussed the Snohomish County actions from a court case referenced in testimony by Nancy Rogers. He noted that the Hearing Examiner recommended approval with conditions and the job creation item that needs to be resolved. He said Yarrow Bay must include incentives so that employment targets will be met. He recommended that if the MPDs cannot meet all requirements of Title 18 then they should be denied.

**Gwynllyn Vukich** stated that she is a Green Valley Road resident and provided information regarding King County farmland preservation and the Agricultural Production District. She stated her concerns about the size of the development, and that associated traffic going to SR 18 will affect the Green River Valley. She recommended that traffic issues need to be reviewed and solved before the MPDs are approved.

### **ADJOURNMENT:**

A **motion** was made by Councilmember Mulvihill and **seconded** by Councilmember Saas to continue the meeting to June 29, 2010 at 7 p.m. in the Black Diamond Elementary Gymnasium. Motion **passed** with all voting in favor (4-0).

ATTEST:

  
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Rebecca Olness, Mayor

  
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Rachel Pitzel, Deputy City Clerk