

BLACK DIAMOND CITY COUNCIL MINUTES
Council Meeting of March 4, 2021
Virtual Meeting Via Zoom

CALL TO ORDER, FLAG SALUTE:

Mayor Benson called the regular meeting to order at 7:00 p.m. and led us all in the Flag Salute.

ROLL CALL:

PRESENT: Councilmembers Deady, Oglesbee, Wisnoski, Stout, de Leon, O'Donnell, Paige.

ABSENT: None

Staff present: Jamey Kiblinger, Police Chief; Andrew Williamson, MDRT/Ec Dev Director; May Miller, Finance Director; Mona Davis, Community Development Director; David Linehan, City Attorney; and Brenda L. Martinez, City Clerk/HR Manager.

AGENDA REVIEW AND APPROVAL:

City Attorney Linehan spoke about the SEPA appeal that has been filed for the proposed Comp Plan Amendments for the 2020 Annual Update and preliminary matters in connection with that SEPA appeal that Council needs to consider in a quasi-judicial capacity and he proposed that Council add that as an item of new business so they can take care of those preliminary matters.

Councilmember Wisnoski **moved** to add David's concern as item number 4 to the agenda. **second** Councilmember Deady. Motion **passed** with all voting in favor (7-0).

Councilmember de Leon **moved** to adopt the agenda as amended; **second** Councilmember Deady. Motion **passed** with all voting in favor (7-0).

APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS:

Presentation – Oakpointe

Brian Ross, Jon Lakefish, and Justin Wortman from Oakpointe shared with Council a PowerPoint presentation updating Council on what is happening at Ten Trails. In the PowerPoint it showed the types of housing that is available at Ten Trails, what traffic improvements will be done in 2021 and 2022, a retail update, an update on Phase 3 & Lawson Hills, the Lawson Fire Station, and lastly schools within the MPDs.

CONSENT AGENDA:

Councilmember Wisnoski **moved** to adopt the Consent Agenda; **second** Councilmember Deady. Motion passed with all voting in favor (7-0). The Consent Agenda was approved as follows:

- 1) **Claim Checks** – March 4, 2021, Check No. 49722 through 49758 (voids 49732-49759) in the amount of \$117,233.44
- 2) **Minutes** –Council Meeting of February 18, 2021

PUBLIC COMMENTS:

PUBLIC HEARINGS: None

UNFINISHED BUSINESS: None

NEW BUSINESS:

- 3) **AB21-013** - Ordinance Amending Black Diamond Municipal Code 8.24.220 Related to the Use of Paddlecraft During Speeding Hours on Lake Sawyer

Chief Kiblinger briefed Council on this item and discussed the proposed addition to the amendment sent in by Mr. Kombol.

There was discussion between Councilmembers and Chief Kiblinger.

Councilmember Wisnoski **moved** to adopt Ordinance No. 21-1156, amending section 8.24.220 of the Black Diamond Municipal Code related to use of paddlecraft during speeding hours in the presence of motor boats as we discussed the amendment on Lake Sawyer; providing for severability; and establishing an effective date; **second** Councilmember Deady. Motion passed with all voting in favor (7-0).

- 4) **SEPA Appeal Preliminary Matters**

Mayor Benson stated that Council will now convene a preliminary hearing regarding an appeal of the SEPA determination of non-significance DNS of the proposed 2020 Annual Amendments to the City of Black Diamond Comprehensive Plan. She noted the appeal was filed by Stop Black Diamond Rezone group on February 17, 2021. She further stated the purpose of this hearing is for Council to make an initial determination of the timeliness of the appeal and if necessary to set a schedule for the appeal hearing. She added that she understands that Kristen Bryant is here tonight as a representative of the appellant group.

Mayor Benson stated that first because this is a quasi-judicial proceeding she must ask the members of the Council if any of you have a personal or financial interest in the outcome of this appeal, meaning do you stand to gain or lose any financial benefit as a result of the outcome of this SEPA appeal. **All Councilmembers answered no.**

Next, she noted that she must ask the Council if any of them have had any exparte communications regarding this appeal with members of the Stop Black Diamond Rezones group, Kristen Bryant, or other citizens, or other city staff. **All Councilmembers answered no.**

Mayor Benson then stated, since those two preliminary questions have been addressed, they can now proceed to take up the two initial questions for this appeal. The first question for the Council's consideration tonight is whether the SEPA appeal was filed timely.

Mayor Benson ask Ms. Davis as the SEPA official if she had any remarks or information on the timelessness of the filing this SEPA appeal. Ms. Davis noted believing the SEPA appeal was filed in a timely manner.

Mayor Benson then asked Ms. Bryant as a representative of appellants Stop Black Diamond Rezones if she wished to make any further remarks on the timeliness of the appeal. Ms. Bryant responded no and thanked Ms. Davis for providing the information on the notice as well as letting them send a copy on email at the same time they filed the paper one.

Mayor Benson asked Council if they had any questions for Ms. Bryant or Ms. Davis concerning the timeliness of the appeal. **All Councilmembers responded no.**

Mayor Benson asked if anyone on Council would like to make a motion to determine that the SEPA appeal was timely and therefore may be set for a hearing.

Councilmember Deady **moved** that the SEPA appeal was in a timely manner and we move to make a date scheduled; **second** de Leon. Motion **passed** with all voting in favor (7-0).

Mayor Benson noted the second question and consideration for Council tonight is setting the date for the appeal hearing. She stated this will be an open record appeal hearing and will be conducted under Council Rules of Procedure 11.2 which governs quasi-judicial hearings for the Council as the decision maker. She added because the appellant and City staff are entitled to present testimony and argument at the hearing the Council will need to set a deadline prior to the hearing for each party to submit any prehearing briefs, exhibits, or written testimony they wish the Council to consider when reaching their decision on the merits of the appeal.

Mayor Benson asked Ms. Davis if she wished to provide a recommendation from the city staff regarding a proposed hearing date and related prehearing deadlines. Ms. Davis deferred to staff Attorney Ms. Keiffer to answer.

Ms. Keiffer of Madrona Law Group introduced herself and noted that she will be representing staff with respect to the SEPA appeal hearing. She noted that staff was looking at resolving this SEPA hearing one way or the other in a timely manner and having an open hearing in front of Council as soon as possible and the date they were looking at is

the Council meeting on April 1st. She added it seems logical to set the hearing date first and then work backwards on the other procedural deadlines such as prehearing briefs.

Mayor Benson asked Ms. Bryant if she wished to respond to the city's proposed hearing date. Ms. Bryant responded that the proposed hearing date presents two potential issues: 1) this is an open record hearing and that all the relevant information that has been building up over more than a year related to the items in the comprehensive plan need to be pulled together and presented in a way that makes sense. She added there is a potential they will have an expert witness and thinks this timing is a little faster than they can pull things together to present to Council as clearly as it could be, and 2) she added that doing it on a council meeting night may not be ideal as some meetings go long and she would propose a hearing date at the end of April when there isn't a council meeting and work back from that date.

David Linehan, attorney for Council suggested that now would be a good time to explore any questions Council may have on how long it would take to get ready for the hearing.

Attorney Keiffer responded that Council Rules 11.2 does anticipate a shorter hearing in front of Council than there would be in front of a Hearings Examiner. For these types of hearings each party would get 15 minutes and then five minutes for rebuttal with ten minutes for Council questions. Given the limited time provided under the Council rules that's why staff was thinking an early April hearing.

Ms. Bryant commented on that Council Rule and noted that further down in section 11 of the rules it does allow the full presentation of testimony as needed and that time be extended. The Council rules have a limited section on these quasi-judicial matters and shared sitting in some in the past where it was a week-long process with hours and hours of meetings. She added that more importantly there are other quasi-judicial hearings that this section needs to accommodate multiple different purposes and on this kind of appeal the presentation of 15 minutes is not sufficient to present on this appeal and again she emphasized that everything we can do to get all of the information is both part of what the open record hearing requires under state law, but all of the relevant information that you want to present, and also this leads to a better outcome to the City and the Council so nobody feels that a decision was made on something that was incomplete or rushed.

There was a suggestion of holding a special meeting.

Attorney Linehan suggested to Council that one way of dealing with a voluminous record and the potential for testimony is to allow the parties to submit both a brief, submit all exhibits and submit written testimony from any experts or any outside witnesses that the party wishes to offer evidence from can be submitted in writing. He noted this cuts down on the length of the in-person proceeding if the Council is inclined to consider written testimony as opposed to in-person testimony. He noted this is Council's choice and a quasi-judicial hearing is to make a decision based on the facts and the law and if Council would rather have the facts in writing rather than in person that is a choice Council may make.

Councilmember Deady suggested holding the meeting April 6 or April 8 and noted she would like to have written testimony as it's easier to follow and would like to do that. She also mentioned that it is Council's decision to schedule the date.

There was a brief discussion on the timing of the briefs and conflicts with the newly proposed dates.

Ms. Bryant commented that April 1 and 15 are regular council meeting dates and suggested April 19 as it is after the second Council meeting and gives time to get things to Council in the way they want it presented such as in written form and again asked them to consider this date. She also noted April 8 could work too if there was no work session.

Councilmember Paige **moved** to schedule the appeal hearing for April 1; **second** Councilmember Wisnoski. Motion **passed** with all voting in favor (7-0).

Mayor Benson noted the following due dates:

March 18 – Appellant's brief and exhibits

March 25 – City's brief

Ms. Bryant commented that March 18 is not a reasonable date to prepare the prehearing brief and exhibits, and suggested they come on March 25. She also suggested that prior to the hearing and filing deadline we build into the schedule a session for the parties to discuss potential negotiated settlements.

Attorney Keiffer noted that staff is happy to work with the appellants to narrow down the scope.

Ms. Bryant added that the pre-hearing brief makes sense and believes two weeks is not a realistic time. She respectfully asked for March 25 to file the prehearing brief.

Councilmember Paige **moved** for Council to accept the schedule Ms. Keiffer has proposed; **second** Councilmember Wisnoski.

Attorney Linehan asked that for clarification that the proposed scheduled be read.

Attorney Keiffer stated the following schedule:

Appellant's brief and pre-filed testimony to be filed on March 18

Staff's brief and pre-filed testimony to be filed on March 25

Councilmember Paige added the above dates to his motion; **second** Councilmember Wisnoski. Motion **passed** with all voting in favor 7-0.

Attorney Keiffer noted that we need a date for exchange of exhibits and proposed March 25 for this.

Ms. Bryant put on record the concern that the appeal may be limited in a way that is not appropriate for an open record hearing by the compressed schedule. There should be more time for the brief and the exhibits as well as ensuring the scheduling of witnesses.

Attorney Linehan noted that he typically sees when a party files a brief is the brief includes the exhibits and if they file testimony that refers to exhibits they need to be filed together so they can be referred to each other. Briefing and exhibits need to come in at the same time, otherwise when reading a brief that refers to an exhibit you won't have it to look at.

Councilmember Deady **moved** to have the briefs and exhibits presented at the same time the appellant on March 18 and staff on March 25; **second** Councilmember Paige. Motion **passed** with all voting favor (7-0).

Mayor noted this is the conclusion of the quasi-judicial portion of tonight's meeting.

DEPARTMENT REPORTS:

Fire – Chief Smith discussed the plan for the Covington creek culvert replacement project. He shared the summary of calls. He spoke on House Bill 1168 that supports for wildland firefighting. He shared there are 11 volunteers in academy and the new fire engine should be in production soon with delivery sometime in April. He commented that the week of 22nd they will be practicing trench rescue in Ten Trails. He touched on a newspaper article prohibiting fireworks in the County; should the City vote not to allow personal fireworks to be discharged it takes one year to become effective. He continues to work on new fire station.

MAYOR'S REPORT:

Mayor Benson discussed March 11 special meeting at 5:30 p.m. and reschedule the town hall to a date possibly in April. She attended the ribbon cutting for Our Hive, a briefing with King County Health on COVID and administering vaccines; she attended the city manager/administrator meeting and shared that no one is starting in person council meetings yet. She also reported meeting the clerk on the retreat and tri city council meeting.

COUNCIL REPORTS:

Councilmember Paige noted not being able to attend the committee meeting today. He announced that his work schedule has him traveling a lot and will be increasing even more and for that reason and personal reasons he has thought for a few months about this matter and feels that the Council would benefit from a Councilmember who could devote more time and is announcing he is resigning and is willing to serve at the pleasure of the mayor and council and is willing to step aside and offering his resignation as of tonight. He thanked Mr. Ross and his team for their presentation, and it is great news about the families moving in and who bring a new dimension to our citizen base and this is what we are talking about with diversity. He noted sharing some of the same concerns with the

retail development and his impression based on the presentation that in the end this is a positive development and we will have one party that can better ensure that. He touched on the Lake Sayer ordinance and noted it being long overdue. In closing he commented that he does appreciate working with all the Councilmembers.

Councilmember Deady stated she is sorry to hear Councilmember Paige is stepping down and understands and respects his decision and thanked him for the time he put in and the input he has given. She referred to email from Chief Kiblinger on County case statistics showing crime is going up and having no resources to address the caseload. She talked with Chief Smith on the response time study and noted the response time is unacceptable and wants to make sure staff is understanding that she will not support closing the road for four to five months, if that is on the table. She would fully support a partial closure of one side.

Finance – Finance Director Miller shared with Council the 2020 Fourth Quarter Financial Operating Report. She highlighted areas of revenues and expenditures for Council.

Councilmember Deady continued her report and noted not appreciating being cut off on the study for fire department. She reported attending the SCA briefing with Patty Hayes, ribbon cutting at Our Hive, Public Works Committee meeting, Blueline meeting with Mona at the Community Gym, and she stopped in and said happy retirement to Dan Dal Santo. She thanked Oakpointe for the presentation. She gave an update on the gym and it being rented out all but three days in February and it is rented out every day in March. She added that safety protocols are being adhered to.

Councilmember Oglesbee thanked Oakpointe for presentation and thanked May for her presentation. She noted being okay with moving the town hall to a date in April. She reported attending the Public Safety meeting and the ribbon cutting ceremony also.

Councilmember Wisnoski thanked Ten Trails for presentation and hopes to see continued flow of information. He reported attending the Finance Committee meeting and thanked May and her department. He shared that it's Women's history month and encouraged everyone to go and read about it. He reminded everyone to support local small businesses and to stay safe and follow the safety protocol.

Councilmember Stout reported attending the Public Works Committee meeting where they had a robust conversation on the skateboard park. She attended the SCA meeting and the board members forum, the Public Safety Committee meeting and announced she will be resigning after the meeting on March 18th as she is moving out of state. She expressed how she has loved serving on the Council and thanked everyone on the Council, city staff and community members for supporting her.

Councilmember de Leon thanked Councilmember Paige for his work on the Council and thanked Councilmember Stout too and wished them all the best. She reported attending the Finance Committee meeting, ribbon cutting for Our Hive and wished them the best in

our community and appreciates the presentation from Oakpointe and will be sharing that with the community. She thanked Chief for mentioning HB 1168. She expressed being glad that educators have been prioritized to get vaccines and reminded everyone to continue to practice safe protocols.

Councilmember O'Donnell thanked Councilmember Stout for her time and commitment on the Council. To Councilmember Paige he noted him being a good common-sense decision maker and thanked him for his service. He touched on the appeal hearing schedule decision and said that Ms. Bryant is an example of others to care about the community to share and give thought about what the implications with growth are. He really appreciates the time people put in to voice their concerns about the community. He is excited to see the new fire truck coming in and hopes we have time in April to showcase the new truck. He also reported attending his committee meetings.

ATTORNEY REPORT:

Attorney Linehan thanked Councilmembers Stout and Paige and noted they are wonderful representatives of the city and hopes they keep in touch. He discussed the decision that was made by the Washington State Supreme court and how it might affect policing and whether or not we need to do anything to our code to help plug any holes. He further stated that the decision made by the court this week is that it is now unconstitutional to prosecute a simple drug possession crime did not include an element of intent. He shared the Council has a couple of options 1) we could keep our misdemeanor in the code and add a mental state provision to it, or there is an alternative drug paraphernalia provision in code that could be beefed up, or 2) adopt our own version of the possession statute (law) that would comply with the new supreme court's decision.

Chief Kiblinger spoke to how this would affect the department's policing and that it would also affect jail time, public defender, and prosecutor, and other areas too.

It was suggested this would be a good work session item and it would be nice to see the proposals in writing.

It was also suggested to hold a special meeting prior to a regular council meeting. There was also discussion to hold the special meeting at 6 p.m. on the 22nd followed by the Town Hall at 7 p.m.

EXECUTIVE SESSION: None

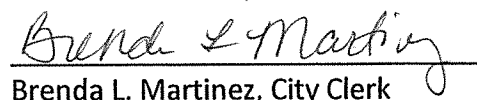
ADJOURNMENT:

Councilmember Deady moved to adjourn the meeting; second Councilmember de Leon. Motion passed with all voting in favor (7-0). The meeting ended at 10:02 p.m.

ATTEST:



Carol Benson, Mayor



Brenda L. Martinez, City Clerk