

BLACK DIAMOND CITY COUNCIL MINUTES
February 4, 2010

Council Chamber, 25510 Lawson Street, Black Diamond, Washington

CALL TO ORDER, FLAG SALUTE:

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

ROLL CALL:

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

ABSENT: None

Staff present were: Steve Pilcher, Community Development Director; Seth Boettcher, Public Works Director; Aaron Nix, Natural Resources/Parks Director; Jamey Kiblinger, Police Chief; Greg Smith, Fire Chief; Noel Treat, City Attorney and Brenda L. Martinez, City Clerk.

PUBLIC COMMENTS:

Vicki Harp-Black Diamond, commented on the citizen ride-a-long from the Police Department and said that it was a good experience and wished more citizens would take advantage of it.

Mayor Olness announced that any citizen wishing to participate can call the Police Department to arrange for a ride-a-long with one of the City's police officers.

Gomer Evans-Black Diamond, reported that there was vandalism at the Museum and thanks to the police force, the next day they had the suspects in custody. He also thanked them for their quick action.

Chris Clifford- Renton, WA, reported that he was here to address the presentation from Ms. Wheeler and Ms. Proctor. He discussed that the appeals are governed under section 18 and 19 of the Black Diamond Municipal Code and changes have been made at the request of YarrowBay. The Code says you need to render a decision in 90 days from the appeal, he stated there is confusion and thought it seems tough that the City is going to expect a Hearing Examiner to take in not only the appeals and all the information they will generate but he is sitting there with a pile high of paperwork and everyone expects him to conduct these hearings and have the knowledge. Mr. Clifford talked about the code and SEPA laws and asked that Council support allowing a larger window of time as

the Hearing Examiner has a huge burden and thinks YarrowBay would support this so the Examiner can make a favorable decision.

PRESENTATIONS:

Judge Corinna Harn, stated that she is one of the City's District Court Judges and lives relatively close by. She explained the differences between what Municipal Court hears compared to District Court. She explained that District Court Judges get elected every four years and sometimes these position increase or decrease. Judge Harn informed everyone that the positions went from 26 to 21 judges and that Legislature has authorized King County to bring the positions back to 26 if the King County Council approves. District Court judges have unanimously voted to have one of the positions come to the Southeast portion of King County and she was here tonight to ask for the City's support and to send Mayor Olness or designate Ms. Harn to represent the City at the 2010 King County Districting Committee meeting. Ms. Harn explained the process and encouraged all to contact their King County Councilmembers.

Cindy Wheeler and Cindy Proctor-Black Diamond, Ms. Wheeler thanked everyone for the opportunity to address Council. She stated that the purpose of the proposed change is to make the City's code consistent with other surrounding communities. Ms. Wheeler and Ms. Proctor stated that they both noticed and it was pointed out by the Hearing Examiner that our code is lacking what every other code around us has; our code as written does not allow the Hearing Examiner any latitude or leverage in performing his job. They noted that in contacting other agencies such as Selena Lyons, Senior Planner of Covington, when you haven't gone through a Master Planned Development (MPD) process your code is new and untried. Ms. Wheeler stated that Ms. Lyons mentioned a section was missing from the code which they provided copies to Council. They have also included Maple Valley's section of the code as well. They stated we have an opportunity to have this lesson learned and presented before we go through the process and thought they would bring this to Council's attention and get this addressed. Ms. Proctor stated that the City Attorney has agreed that State law does not mandate a 90 day ruling and the law in general does not mandate a 90 day ruling, the RCW does allow it to go beyond that. Ms. Proctor read from the code regarding Hearing Examiner, she stated that the Hearing Examiner is saying he can only do as the code says and the code does not allow for the flexibility. Time limits in code are what the law requires, but the State law recognized that exceptions may exist and allows extensions to this. The time necessary to process a four lot subdivision does not take the same amount of time to process a MPD application, administrating the same code and the same timeline for these very different processes was certainly not the intent of the code and is not the intent of the Planning Commission and I think we can all agree on that. MPDs are difficult to evaluate even in a major metropolitan areas such as Bellevue or Seattle and even more difficult to evaluate in suburbs such as Redmond or Issaquah. MPDs are nearly impossible to evaluate on a rural-suburban area on the Urban Growth Boundary like Black Diamond it is very complex and there are a lot of things not here that are in those other components. The developers typically spend years putting these large projects together not 90 days and it is unrealistic for staff and the Hearing Examiner to provide

adequate public review in such a short time. Additional time should be required on huge projects such as MPDs. Will they serve existing and new residents equally well? Discussed how code gets amended. Amendment to the text can be from a recommendation of the Planning Commission and have the Council act upon it as soon as possible. Ms. Wheeler and Ms. Proctor discussed the Hearing Examiner process and the amount of paperwork to review to make a recommendation to Council. They noted that YarrowBay over the last year has talked about the fabric of our community and we need to make sure the Hearing Examiner has every tool in his toolbox to make this the best community that we can have.

Councilmember Goodwin responded that it appears we haven't even heard testimony in terms of Master Planned Developments and hearings. He stated he was trying to get to the urgency of getting something done quickly.

City Attorney Treat replied the hearing dates are for appellants on the FEIS and open hearing on the MPDs.

Ms. Wheeler explained the urgency with them being concurrent. She stated that she felt we needed to give the Hearing Examiner flexibility.

Councilmember Goodwin noted that the Hearing Examiner has not heard testimony on the MPD until March 11 and 12 and asked under the current code when the Hearing Examiner would be required to provide his recommendation to the Council based on the testimony on March 11.

City Attorney Treat responded he believed March 28.

Community Development Director Pilcher went over the dates involved with the MPD applications and EIS and reported that in December the FEIS was published. Per the Hearing Examiner's request, we have set dates for both the FEIS appeals and MPD hearings. Code required that the Hearing Examiner render a recommendation within two weeks after he closes a hearing, he can always request more time if needed, that is how the code is currently written.

Councilmember Goodwin stated he was trying to understand the flexibility of the Council to change the date or to establish a different date upon which the Hearing Examiner can render his decision.

City Attorney Treat replied that theoretically yes, you can do this and there are different options on how you can do it.

Councilmember Goodwin asked if the code would need to be changed in order to allow the Hearing Examiner flexibility.

City Attorney Treat replied yes, the code would need to be changed.

Councilmember Goodwin stated that he would like Ms. Proctor and Ms. Wheeler to clarify as there is more in their suggestion than this. He asked if they were truly asking to give the Hearing Examiner more time should he need it.

Ms. Wheeler stated yes.

Councilmember Goodwin asked City Attorney Treat to clarify this interpretation and asked if this is fairly common as other surrounding codes.

City Attorney Treat stated that the language that is being proposed he has not seen in other cities. Generally in other communities he sees the 90 day rule. He clarified what the 120 day in surrounding codes represents in relation to the appeals 90 day process.

Councilmember Saas asked what the pros and cons are if we open this up to the Hearing Examiners discretion without putting a deadline on it.

City Attorney Treat responded that this is a legislative decision and is a proposed amendment to a code and is largely a policy decision. State law does very strongly encourage and in some cases mandates the expedite permit and land use decisions, that is why you see the 120 day requirement. There are special exceptions that you can opt out of the 120 day requirement; you could craft an amendment to do that because of the complexity of it. He noted it really is a policy decision for this body to make.

Councilmember Mulvihill asked if the Hearing Examiner has the entire document.

Community Development Director Pilcher replied yes and clarified that the 90 days starts ticking when the appeals are filed.

Councilmember Boston stated the Hearing Examiner is bound by our code and I don't know if he gives feedback if he is overloaded and maybe staff needs to ask him.

Councilmember Goodwin asked if there was any compelling reason why Council can not take two weeks to let Council get educated and make an informed decision.

A **motion** was made by Councilmember Mulvihill and **seconded** by Councilmember Boston to move this Code Amendment to the Planning Commission and come back to Council at the February 18, 2010 meeting. Motion **passed** with all voting in favor (5-0).

APPOINTMENTS:

Mayor Olness explained the process taken for the Planning Commission vacancy and announced that she is seeking confirmation of Sheri Roth to fill the open vacancy of the Planning Commission.

A **motion** was made by Councilmember Mulvihill and **seconded** by Councilmember Boston confirming the Mayors selection of Sheri Roth to the Planning Commission. Motion **passed** with all voting in favor (5-0).

UNFINISHED BUSINESS: None

NEW BUSINESS:

Ordinance No. 10-934, updating Section 10.04.100 of the Black Diamond Municipal Code regarding parking fees

Natural Resources/Parks Director Nix reported this is an issue the City began addressing late last year. This was brought forward to Council and Mr. Nix was asked to research more. He reported that this ordinance clarifies that the fee applies to vehicles with boat trailers and allows the fees to be updated with the City's resolution. Mr. Nix stated that City Attorney Treat has reviewed the code and offered some clarifying language to the existing code.

Councilmember Hanson asked how many parking spots were available for a vehicle and trailer.

Natural Resources/Parks Director Nix replied four.

A **motion** was made by Councilmember Mulvihill and **seconded** by Councilmember Boston to adopt Ordinance No. 10-934, updating Section 10.04.100 of the Black Diamond Municipal Code regarding parking fees. Motion **passed** with all voting in favor (5-0).

Mayor Olness stated that the intent of the new parking area was for cars.

Resolution No. 10-669, authorizing the Supplement No. 4 to the Professional Services Agreement with Hammond Collier Wade Livingstone for the Railroad Avenue Street Improvement project

Public Works Director Boettcher reported the project has been very active the past few weeks with utility relocations. The City has accepted and awarded the contract a few weeks ago to J.R. Hayes and Sons, Inc. and needs assistance with the project management. Mr. Boettcher explained that project bids came under budget and distributed new budget information. He added that because the construction dollars came in so low, Transportation Improvement Board (TIB) funds have been reduced approximately \$100,000 dollars; with this additional expense we would still be under by approximately \$50,000.

Councilmember Goodwin asked that with the \$70,000 allowance the City is still looking at being under budget by \$50, 000.

Public Works Director Boettcher responded yes, that was correct.

Councilmember Boston asked about the ¾ inspection. Mr. Boettcher explained the Project Manager being on the project 40 hours but not all of that time would be for inspection.

A **motion** was made by Councilmember Goodwin and **seconded** by Councilmember Hanson to adopt Resolution No. 10-669, authorizing the Mayor to execute the 4th Supplement with Hammond Collier Wade Livingstone for services during construction for the Railroad Avenue Street Improvement project in the amount of \$135,890. Motion **passed** with all voting in favor (5-0).

DEPARTMENT REPORTS:

Fire Chief Smith thanked the Mayor for asking him to speak tonight. He updated Council on the residential fire the City experience last Monday; this was the first substantial fire in several years. Chief Smith reported that he is compiling some statistics and gave a recap of the information report related to this residential structural fire. He added that the first engine was in route within 2 minutes of the call, in a matter of a few minutes over 22 firefighters were on site. Chief Smith discussed the cause of the fire and noted there were no injuries to occupants or emergency personnel. Police were first to arrive and gave via radio an update to firefighters.

Mayor Olness also added the pets that were rescued.

Chief Smith provided Council a copy of the districts newsletter and discussed what new equipment was purchased and the benefits to Black Diamond. He also updated Council on NIMS training and wanted to let everyone know that they offer ride-a-longs.

Mayor Olness thanked the Fire Department for all their hard work that they do to keep our citizens safe.

MAYOR'S REPORT:

Mayor Olness updated Council on the Association of Washington Cities (AWC) Legislative Conference she attended. She discussed some bills regarding fiscal flexibility to our City and will give an update once we hear if they pass or not. She also reported that the Suburban Cities Association is in need of an alternative member and any Councilmember interested should see her after the meeting. Mayor Olness also reminded everyone to vote in the upcoming school levy votes and also noted that she was very surprised that the ballot box is no longer located at the library, as King County did this for cost saving purposes so you will need to mail in your ballots. She also thanked Council and staff for their continued support and commitment.

COUNCIL REPORTS:

Councilmember Hanson reported that education is required for the Western Washington Phase II Municipal Stormwater Permit and is seeking support to work with staff on education to present to schools. The committee would consist of Councilmember Hanson, Economic Development Director Williamson and Natural Resources/Parks Director Nix.

Mayor Olness reiterated that the education needs to take place at all Elementary Schools that serve Black Diamond residents.

Councilmember Hanson also discussed the Low Impact Development tour she attended with Natural Resources/Parks Director Nix.

ATTORNEY REPORT:

City Attorney Treat reported that he is continuing to get up to speed as there was a back log and stated he is starting to turn the corner. He also reported that an Executive session is scheduled for 10 minutes on potential litigation with no action to follow.

PUBLIC COMMENTS: None

CONSENT AGENDA:

A **motion** was made by Councilmember Mulvihill and **seconded** by Councilmember Boston to adopt the Consent Agenda.

Councilmember Goodwin recused himself from item #7-Claim Checks on the consent agenda due to a conflict; as he is employed and a shareholder for one of the vendors.

Motion **passed** with all voting in favor (5-0) on times 4, 5, 6 and 8 and (4-0) on item 7.

The Consent Agenda was approved as follows:

Resolution No. 10-670, Authorizing Amendment #2 to Local Hazardous Waste Management Program #D37962D Contract

Resolution No. 10-671, Authorizing Interlocal Agreement for 2010-2011 Recycling Program

Resolution No. 10-672, Authorizing Coordinated Prevention Grant Agreement

Claim Checks – February 4, 2010 No. 35129 through No. 35184 in the amount of \$79,888.25

Minutes –Council Meeting of January 21, 2010

EXECUTIVE SESSION:

Mayor Olness announced an Executive Session at 8:35 p.m. to discuss potential litigation pursuant to RCW 42.30.110(1) (i) which was expected to last 10 minutes. No action was anticipated to follow.

The regular meeting was called back to order at 9:45 p.m.

ADJOURNMENT:

A **motion** was made by Councilmember Boston and **seconded** by Councilmember Mulvihill to adjourn the meeting. Motion **passed** with all voting in favor (5-0).

ATTEST:



Rebecca Olness, Mayor



Rachel Pitzel, Deputy City Clerk