

BLACK DIAMOND CITY COUNCIL MINUTES

Special Meeting – August 12, 2010

Council Chambers

25510 Lawson Street, Black Diamond, Washington

CALL TO ORDER, FLAG SALUTE:

Mayor Olness called the special meeting regarding the closed record hearing of the proposed Master Planned Developments back to order at 4:02 p.m. and lead us all in the Flag Salute.

ROLL CALL:

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

ABSENT:

Staff present were: Bob Sterbank, City Attorney and Brenda L. Martinez, City Clerk

Mayor Olness announced that Councilmember Hanson will be arriving late for the meeting tonight.

APPEARANCE OF FAIRNESS:

City Attorney Sterbank – asked the following question collectively of all four Councilmembers: Do you have any interest in the property that is subject to the Master Planned Development (MPD) applications? All four Councilmembers responded no.

City Attorney Sterbank – asked the following question collectively of all four Councilmembers: Do you stand to gain or lose financially as a result of the outcome of these proceedings? All four Councilmembers responded no.

City Attorney Sterbank – asked the following question collectively of all four Councilmembers: Has anything happened since the last proceedings you can think of that could impact your ability to be fair and unbiased? All four Councilmembers responded no.

City Attorney Sterbank – asked the following question collectively of all five Councilmembers: Any ex parte contact outside of the proceeding? If so, describe contacts. Three Councilmembers responded no and Councilmember Boston stated yes, responded to email from Cindy Wheeler dated August 6th and his response to the email was dated today.

Mayor Olness reminded all in attendance of no distractions from the audience.

Mayor Olness announced we will be starting with the Public Works Director who will be addressing the questions that were asked on Monday and Tuesday.

Public Works Director Boettcher responded to question regarding traffic counts at various locations; responded to question regarding monitoring the Level of Service (LOS); responded to roundabouts being included in the model; responded to question regarding funded vs. unfunded projects; distributed handouts from Environmental Impact Statement (EIS) and Comprehensive Plan regarding definition of LOS.

Mayor Olness announced the continuation of discussion regarding density.

Councilmember Boston complimented Councilmember Goodwin on his statements last night; discussed information on handouts Councilmember Goodwin distributed last night regarding units and asked if he was proposing a different unit target than what is being proposed.

Councilmember Goodwin responded no, he is just trying to understand that what we are looking at is an average of up to 6 units per acre on low density and up to 30 units on ultra high density, not 4 units per acre density; wants everyone to understand the density and the number of units proposed.

Councilmember Boston noted staff comments regarding density also agreed with what Councilmember Goodwin numbers are.

Discussion ensued between Councilmembers Boston and Goodwin regarding units and density.

Councilmember Boston asked if Councilmember Goodwin is looking to tighten down what percentage needs to be clustering.

Councilmember Goodwin responded that right now he is just trying to share information; referred to Comprehensive Plan adopted June of 2009; one option for Council to consider may be indentifying for more open space done by providing ultra density housing if more open space is provided, he pointed out there is no provision for this in the proposal.

Councilmember Boston asked Councilmember Goodwin if he had any ideas of what should be part of the MPD and what should be part of the development agreement, could this option be done in the development agreement.

Councilmember Goodwin replied it could be done that way but does not want to see it done in the development agreement.

Councilmember Saas noted he has been silent on the density to hear everyone's point, and commented that Councilmember Goodwin made a good point on the open space yesterday; noted not being part of the vision process and it doesn't sit well with him using

the TDR to compensate for wetlands and on top of that transferring undeveloped lands to developmental land use; Hearing Examiner made a great reference to philosophy regarding what does open space mean to all; whose opinion should it be to come up with what clustering should look like; reference page 144 of Hearing Examiner recommendation regarding Green Valley Road connector and noted last sentence says this is a major concern of public outcry. Looking at the dynamics and tactics that were used to get to where we are now and it doesn't seem to fit well for the confines of the community. Councilmember Saas stated he would like to see growth prove growth and would like to approve portions rather than the development as a whole.

Councilmember Hanson entered the meeting at 4:27 p.m. and City Attorney Sterbank administered the Appearance of Fairness questions:

City Attorney Sterbank – asked the following question of Councilmember Hanson: Do you have any interest in the property that is subject to the Master Planned Development (MPD) applications? Councilmember Hanson responded- No.

City Attorney Sterbank – asked the following question of Councilmember Hanson: Do you stand to gain or lose financially as a result of the outcome of these proceedings? Councilmember Hanson responded- No.

City Attorney Sterbank – asked the following question of Councilmember Hanson: Has anything happened since last proceedings you can think of that could impact your ability to be fair and unbiased? Councilmember Hanson responded- No.

City Attorney Sterbank – asked the following question of Councilmember Hanson: Any ex parte contact outside of the proceeding? If so, describe contacts.

Councilmember Hanson responded- No.

Councilmember Boston recapped conversation for Councilmember Hanson's benefit.

Councilmember Boston asked if there was any reason to go back to the Black Diamond Urban Growth Area Agreement (BDUGAA) and review all the different Council and steps that got us to this point today.

Councilmember Hanson replied she thought that was a good idea.

Councilmember Goodwin stated that we have some constraints as to what is on the record and asked City Attorney Sterbank to give guidance to this.

City Attorney Sterbank stated that Council's task is to apply the MPD per the code with the application based on the record that is before you.

Councilmember Hanson noted at the time of the Black Diamond Urban Growth Area Agreement (BDUGAA) it was Plum Creek that signed and noted their plan for how the property was going to be harvested.

Councilmember Goodwin noted this is Ravensdale Ridge they are referring to.

Councilmember Hanson referred to 6.3 of the BDUGAA; read excerpt and asked if the ball was dropped.

City Attorney Sterbank clarified that those documents he does not believe are part of the record.

Councilmember Hanson read an excerpt from the Black Diamond Municipal Code Chapter 18 and noted the Hearing Examiner said this has been satisfied and is not sure how this can be if they are taking a million yards of soil.

City Attorney Sterbank referred to the Hearing Examiner recommendations on pages 165 and 166 should she want to refer to them.

Councilmember Boston stated he feels the density is what is stated in the code and what can we do if anything, to change it should it need to be changed; need to do our due diligence to look at this from all sides; gave opinion on MPD vs. separate developments, what would this look like and what could be mitigated.

Councilmember Goodwin referred Councilmember Boston to look at the Final Environmental Impact Statement (FEIS).

Councilmember Boston referred to the FEIS and the alternative; we have to decide is the applicant meeting all the codes and restriction we have put on them and is there a way to allow things like clustering so we can end up with a better product.

Councilmember Goodwin suggested on Monday going through the options of denying, remand; approve with conditions and what are they and let's do this objectively and this way we are not jumping to conclusions.

Mayor Olness noted that Council will not be meeting Monday, but Tuesday, August 17.

Councilmember Goodwin asked if this is a fair way to begin on Tuesday.

Councilmember Boston asked at what level of detail Councilmember Goodwin was looking at; commented on Hearing Examiner condition and YarrowBay and would like to see it all on one list.

Councilmember Goodwin noted the applicants submittal is not a bad starting document; asked if by Tuesday staff could put in the additional things Council talked about and what staff recommended so we are looking at one document; asked if it would be okay on Tuesday starting with the new list and then going through all three options remand, deny and adopt with conditions. Council consensus was yes.

Councilmember Goodwin stated he had a few more things to discuss one being traffic; the importance of this being a cooperative effort between surrounding communities (named them); read condition and noted this may be more window dressing but would like to see this added as we have stated our intent.

Councilmember Boston questioned if density effects transportation, we are putting the horse before the cart.

Councilmember Goodwin stated his intent is only to spur the spirit of cooperation.

City Attorney Sterbank replied the Hearing Examiner has some recommended language that would work well to share with other jurisdictions so it is not inconsistent with what the Hearing Examiner recommended.

Councilmember Goodwin discussed fiscal conditions and the current funding agreement and the monies that may have to be repaid, and prior to moving forward have some resolution of what any obligation we may have before any development agreement. Mr. Goodwin stated this needs to get resolved if we have any obligation for pay back; second suggestion is that any future funding agreement will not require the City to repay; thirdly review the public safety condition #93, why change from Hearing Examiner recommendation; fourth, staff has determined on an alternative on functionally equivalency standards; fifth, avoid the potential for creating the incentive of the applicant for making short term decisions that may not be in the best long term interest of the applicant or the City as of the 15 year build out period, the Council would be open to revising this build out option extending period to 20 or maybe 25 years and remember all this is based on if we approve.

Councilmember Boston stated we would have to change the code.

City Attorney Sterbank responded yes, that may be the case and he may want to give the Council legal feedback after review and will let you all know.

Councilmember Boston asked if the new traffic conditions have to be completed before Council made a decision.

Councilmember Goodwin responded no, it would be a condition included in the Council making the decision.

Councilmember Hanson referred to page 7 regarding monitoring plan and why couldn't we view the information we have and what they are willing to do and see if Maple Valley is agreeing to that or could incorporate the studies that has been done; knows there is butting of heads on the studies. Councilmember Hanson states she is trying to come to terms with Maple Valley saying theirs is better than ours and is concerned the new model brings another assumption; would like to see the mitigation instead of hiring a third or putting in a third assumption.

Councilmember Saas noted applicant agreed on new traffic model.

Councilmember Goodwin noted what Council had discussed and decided on in regards to the new model.

Councilmember Boston stated the Hearing Examiner was pretty explicit on page 124 of his response; it goes through a whole list of project specific transportation demand model and what it needs to include.

City Attorney Sterbank referred to the Hearing Examiners language in condition 12.

Councilmember Hanson commented that her frustration is the model and all the assumptions.

Councilmember Goodwin stated one of the advantages that all involved are speaking with one voice.

City Attorney Sterbank asked if it would be appropriate now to ask questions on these conditions he has drafted and needed clarification from Council; discussed new model being created, validating the model, comparing the model and calculating mitigation.

Councilmember Goodwin asked City Attorney Sterbank to compare what staff recommended and what the applicant recommended.

City Attorney Sterbank compared the two and noted the differences; referred to condition #160-page 28 regarding the applicant's recommendations.

Councilmember Goodwin commented is our best interest to be very specific on how it should be done.

City Attorney Sterbank noted applicants project list be added that have a pro-rata share in Maple Valley assuming other conditions are met.

Councilmember Hanson commented on Fiscal and noted if Finance Director Miller was asked to look at what Council asked earlier in the week. Mayor Olness stated she will have the Finance Director review.

Councilmember Hanson asked if Council can go back to the BDUGGA so we can look at this and the open space agreement or any agreements that YarrowBay has signed and what about the bought property from plum Creek was there conditions.

City Attorney Sterbank stated he did not believe there was an agreement between YarrowBay and Plum Creek.

Councilmember Goodwin noted item #17 in applicants final comments (scope of Council discretion), it appears applicant has introduced things that were not in the record prior to the final hearing for example, submitted additional potential conditions on Maple Valley,

those were not in the record, are they allowed. Throughout this there are some things that were not in the record during any of the hearings.

City Attorney Sterbank stated factual evidence that was not part of the record in front of the Hearing Examiner is not part of the record for the Council to consider. Parties were free to argue that the code criteria were met, not met, would only be met with certain conditions, the applicants proposed revised conditions were in the way of they think the criteria was met if you impose these conditions, then were willing to add to them. Council is not required to accept their proposed revised conditions if you decide that the evidence calls for you to impose different criteria to meet some portion of the code.

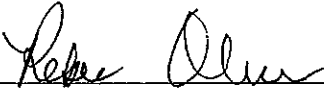
Councilmember Hanson asked about section 17 Council discretion –modifying the Hearing Examiners recommendations.

City Attorney Sterbank stated I would interpret the term “as needed” as referring to modified recommendations to the Hearing Examiners recommendations as long as they are supported by the record.

ADJOURNMENT:

A **motion** was made by Councilmember Goodwin and **seconded** by Councilmember Boston to continue the special meeting regarding the closed record hearing of the proposed Master Planned Developments on August 17, 2010 in the Council Chambers from 4 p.m. to 7 p.m. Motion **passed** with all voting in favor (5-0).

ATTEST:



Rebecca Olness, Mayor



Rachel Pitzel, Deputy City Clerk