

BLACK DIAMOND CITY COUNCIL MINUTES
Special Meeting – August 17, 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 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

EXECUTIVE SESSION:

Mayor Olness announced an Executive Session at 4:03 p.m. to discuss potential litigation pursuant to RCW 42.30.110(1) (i) which was expected to last approximately 15 minutes with no action to follow.

The special meeting was called back to order at 4:18 p.m.

APPEARANCE OF FAIRNESS:

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

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

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

Mayor Olness reminded all in attendance of no distractions from the audience; she noted our IS Manager is out due to an accident so we will not be able to get the recording up on the web by noon tomorrow; asked Councilmember Hanson if she was able to talk with Finance Director Miller about questions she had last Thursday.

Councilmember Hanson stated she was able to sit and talk with Finance Director Miller regarding YarrowBay Funding.

Mayor Olness announced that from the last meeting Councilmember Goodwin suggested that Council exercise objectively to find reasons whether or not to deny, remand or accept with conditions.

Councilmember Goodwin explained this is very complex and finds it helpful to look at issues from every possible angle and for that reason noted he tried to go through the documents the Hearing Examiner and other documents trying to make the case and what should we point to that might be caused for denial and to do that, started with the Black Diamond Municipal Code 19 dealing with objectives and he read from the code. Question-does this MPD application meet those requirements, for guidance he turned to the record (passed out handout), in the FEIS Exhibit 1-3; referred to alternative 1 (no action alternative) contrasted this with alternative 2 (MPD submittal alternative); discussed clustering; not sure the MPD submittal is doing a lot for generating open space; preservation and enhancement of topography, pointed to Hearing Examiner recommendations and observations in The Villages, discusses preservation and enhancement.

Councilmember Hanson discussed topography in the Villages that abuts the Auburn-Black Diamond Road.

Councilmember Goodwin discussed staff's recommendation that we balance between what is hauled off and what is used.

Councilmember Hanson commented on additional EIS requirements.

City Attorney Sterbank clarified there will be individual site specific SEPA analysis performed if necessary.

Councilmember Boston read excerpt from the Hearing Examiners decision.

Councilmember Goodwin stated the point is we are equally going to protect the sensitive areas.

Councilmember Hanson referred to in the code in the Hearing Examiners recommendations, page 147 paragraphs 3, and read excerpt.

Councilmember Goodwin stated all that does is it doesn't change the amount of cut and fill, this balances the cut and fill it doesn't change the fact that same amount is going to be cut going on, it balances it.

Councilmember Hanson asked if this could be a condition in the development agreement.

Councilmember Goodwin commented that going through the same questions at Lawson Hills he finds the differences striking; referred to Exhibit 1-3 on Lawson Hills highlighted alternative 1 (no action alternative) and compared alternative 2 (MPD submittal alternative).

Councilmember Hanson discussed medium density, this was not supposed to be next to sensitive areas, and did anyone else read this.

Councilmember Goodwin continued the comparison of The Villages and Lawson Hills in regards to open space; does not see the same type of benefits, referred to BDMC Chapter 18, thought this was interesting.

Councilmember Boston questioned schools needing to find land.

Councilmember Goodwin discussed the land requirement for schools; believes this is one area of investigation and reason to deny; submittal is incomplete and leaves too much to the development agreement; gave examples referred to the Villages case could be made this is all we see and we do not have a clue as to what will go on here, and there is a gap between what's in legal form and what can be implemented, one could make the case that the amount of specificity and the amount of submittal is inadequate for vesting and vesting at this point without having a development agreement in detail to make that judgment is worth some consideration.

Councilmember Boston stated so the process of doing an MPD within a development agreement and then vesting and asked Councilmember Goodwin if that was what he was saying.

Councilmember Goodwin clarified yes; next point of high density housing one could make that case that at that scale that in given the concentration one of the important guidelines for high density is that there is clustering and it is not clear in the application. Referred to applicant response to his question regarding high density housing; referred to page 27 of applicants response to his earlier question and asked what do we see, he doesn't see clustering and lots of open space; referred to BDMC 18.98.010 (K); Hearing Examiner pointed out and read excerpt; apologies for the term he used of "ghetto" and said what we're trying to avoid is concentration of just the same housing types rather than mixes throughout the entire development.

Councilmember Hanson made known that Council approves the development agreement; explained the reason Council wanted the final say was that we wanted to make sure the vision was met.

Councilmember Boston discussed the reason for adding high density; added another reason is to give a critical mass of population to support any retail and commercial.

Councilmember Goodwin commented that what the applicant proposed is inconsistent with the code in that sense.

Councilmember Hanson referred to page 5-15 of the Comprehensive Plan and read excerpt; asked City Attorney Sterbank if she is reading this correctly.

Councilmember Goodwin clarified her question of can medium density be next to sensitive areas.

City Attorney Sterbank commented that it is not inconsistent with the Comprehensive Plan criteria for designation as medium density residential and noted these properties are designated MPD which is a separate designation and referred to the criteria in the Comprehensive Plan.

Councilmember Goodwin asked how this affects stormwater and our ability to plan, do we get a benefit for it being an MPD; feels if this develops incrementally it would be a lot harder achieving stormwater requirements. He does not feel this is achieved in The Villages as only 30% of this development is going to flow into the Rock Creek basin; question is are those benefits at The Villages worth the extra cost; last point, is the current minimum density in our code that creates significant consequences whether we address them now or for future development is another question; commented there are things that warrant denial particularly in The Villages.

Councilmember Hanson asked City Attorney Sterbank to explain the 50 percent standard open space in the west annexation and the BDUGGA.

City Attorney Sterbank referred to BDUGGA- referred to Black Diamond Municipal Code 18.98.140 in subsections (G) and (F) read excerpts; the BDUGGA is a prior agreement that speaks to open space and defines separately categories of open spaces.

Councilmember Boston asked City Attorney Sterbank to look at 18.98.120 (G), read excerpt; asked about clustering of units not being allowed.

City Attorney Sterbank clarified the conditions regarding allowable clustering.

Councilmember Saas referred to condition 128 and asked Mr. Sterbank for clarity between the development agreement and the requirements.

City Attorney Sterbank responded the Council has discussed before the obligation of the code criteria for the MPD applications; the code criteria allows the Council to approve a MPD if the criteria are met on the applications or the application approval can be conditioned so they are met, so the Council has some flexibility under the code in approving to allow the criteria to be met in the future through the position of the condition as well as to look at what's in front of you right now; the expansion area you

discussed earlier, the Hearing Examiner was recommending some specificity in the development agreement.

Councilmember Goodwin asked about requesting a definition on vesting, and asked can City Attorney Sterbank spend some time to put together a document explaining the conditions.

Councilmember Hanson discussed going back to 18.98.120, read excerpt.

Councilmember Goodwin stated that Council has not spent a lot of time on the design guidelines.

Councilmember Mulvihill questioned conditional vesting, can we vest by phase or section so we have tighter control.

Discussion took place regarding vesting, including what was discussed earlier.

City Attorney Sterbank discussed where the Council may want to have more legal advice, we may need to go into another executive session after the break, generally as we talked about last week in approving this Council needs to look at the criteria as opposed to individual Council's vision.

Councilmember Boston clarified the reasoning for vesting is part of due diligence.

Mayor Olness called a recess at 5:36 p.m. for approximately 5 minutes.

Meeting was called back to order at 5:42 p.m.

EXECUTIVE SESSION:

Mayor Olness announced an Executive Session at 5:42 p.m. to discuss potential litigation pursuant to RCW 42.30.110(1) (i) which was expected to last approximately 15 minutes with no action to follow.

Mayor Olness announced a 5 minute extension to the executive session.

The special meeting was called back to order at 6:04 p.m.

Councilmember Saas stated at this point we should come back tomorrow and City Attorney Sterbank will have our additional conditions and would like to discuss condition by condition and have topics like public services, land use and so forth, and are conditions we have not addressed yet; suggest to come back tomorrow have Mr. Sterbank update and go through the conditions we have trouble with.

Councilmember Hanson recapped conditions they have talked about and asked they talked about the 750 homes and why not do it at the end for the First Phase 1A which is 1,050 homes and feels this will give us better real data.

City Attorney Sterbank clarified 1A 800 or 850 and 1B is 1,050 homes.

Councilmember Hanson feels this would be real data which would get a better sense of the traffic flow and it is not assumptions.

Councilmember Boston agreed with Councilmember Hanson, that real data is better.

Councilmember Goodwin commented on he feels there needs to be a number identified and you could very easily find yourself with Phase 1 and Phase 2, what really counts is how many numbers, would like to tie it to a number and not a phase as the phases may not be completed.

Councilmember Hanson referred to Phase 1A is around the town center and Phase B area is North of Auburn Black Diamond Road, there is more commercial in the B phase and would give more data and would like it to see the entire Phase 1 because of the commercial component.

Councilmember Goodwin commented there is no requirement that they do this, applicant wants the flexibility to do what the market demands.

City Attorney Sterbank replied concerning crafting language to address the number of units and/or amount of commercial footage developed.

Councilmember Mulvihill commented that it would make sense to go 850 - phase 1A and/or add the commercial.

Councilmember Saas asked question regarding the traffic models.

City Attorney Sterbank replied estimated trips; they are distributed by the model differently if they are commercial or residential.

Councilmember Hanson asked why not the 1,050 units.

Councilmember Mulvihill replied because there is not the guarantee that the homes will be completed before the next phase starts we need to set a number rather than go by phase.

Councilmember Hanson stated she would like to see the commercial part from Sterbank.

Councilmember Goodwin commented that the other part of the condition is follow the second check point, this would give the ability to take into consideration certain conditions as they appear; not require commercial to be in there because it may not be in there for some time.

City Attorney Sterbank questioned following Councilmember Goodwin's point, which is who will control or make that decision of how many more units or commercial, is this Council's decision or a staff decision.

Councilmember Boston feels Council can do this with staff input.

Councilmember Mulvihill agreed.

Councilmember Boston asked if there was any other areas of the Hearing Examiner to discuss, would like to see a nice compact list of all the conditions and Mr. Sterbank can have this for tomorrow.

City Attorney Sterbank questioned whether Council wanted side by side of Hearing Examiner vs. Staff or applicant we can lay this out what kind of format are you looking for, what is your preference. Feels it might be more useful to see them side by side with different colors.

Council consensus there was no preference.

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 18, 2010 in the Council Chambers at 6:30 p.m. Motion **passed** with all voting in favor (5-0).

ATTEST:



Rebecca Olness, Mayor



Rachel Pitzel, Deputy City Clerk