

BLACK DIAMOND CITY COUNCIL MINUTES

September 26, 2011 Special Meeting

Black Diamond Elementary School Gymnasium
25314 Baker Street, Black Diamond, Washington

CALL TO ORDER, FLAG SALUTE:

Mayor Olness called the special meeting to order at 6:30 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: Stacey Borland, Associate Planner; Andy Williamson, Executive Director of Engineering Services and Economic Development; Steve Pilcher, Executive Director of Community Development; Chip Hanson, IS Manager; Mike Kenyon, City Attorney and Brenda L. Martinez, City Clerk.

Mayor Olness announced we would continue with the Appearance of Fairness issues from the last meeting on the 21st and will go into executive session with legal counsel to discuss potential litigation pursuant to RCW 42.30.110(1)(i) and noted there may be action to follow.

City Attorney Kenyon noted before we recess into executive session he would like to mark for the record as exhibit 2 a letter dated September 26, 2011 from Cindy Proctor and as exhibit 3 a letter from Monica Stewart. There was no date to this document and Attorney Kenyon added today's date to the top right hand corner of the document.

Councilmember Goodwin announced he would like to make a statement prior to executive session. Councilmember Goodwin read the following written statement:

THE VILLAGES AND LAWSON HILLS MPD DEVELOPMENT AGREEMENT PUBLIC HEARINGS

**Statement of Councilmember Craig Goodwin
September 26, 2011**

1. As many of you are aware, Yarrow Bay Holdings has asked that I recuse myself from participating in hearings before the Black Diamond City Council regarding the Villages and Lawson Hills MPD Development Agreements.

- Among other things, Yarrow Bay points to a string of emails with Mr. Bob Edelman that they claim represent inappropriate exparte communications.
- Let me first make it clear that the Appearance of Fairness Doctrine, which governs quasi-judicial hearings, does not prohibit any communication between Council members and parties of record in these hearings. Communication with respect specifically to the Development Agreements is prohibited without due disclosure. But communication with parties of record regarding other matters that are legislative in manner are not prohibited. One clear example of this is the Tri-Party School Agreement which has been before the Council as a Legislative matter, though it clearly pertains to the MPD's.
- The issue at hand with respect to Mr. Edelman's communication was clearly focused on the question of MPD vesting. This took place after the Growth Management Hearing Board (GMHB) ruling that concluded that the MPD hearings should have taken place as a Legislative and not a Quasi-Judicial process. It was also after Yarrow Bay had submitted 3 preliminary plat applications, with their clear goal of obtaining vesting for the plats despite the fact that no Development Agreement had yet been finalized and before GMHB rulings could be resolved.
- It is entirely appropriate for a City Council member to seek to better understand this issue of vesting.
- The fact is that both Councilmember Saas and I actively engaged in direct conversations with Yarrow Bay (Brian Ross and Colin Lund) to better understand their intent and direction – and the issue of vesting. In that discussion we were assured that no further preliminary plat applications would be forthcoming until after pending GMHB issues were resolved.
- To Yarrow Bay's credit, one week after I drafted a Council resolution that would have required that Yarrow Bay cease from pursuing further plat vesting pending the issues at hand, they then submitted a voluntary letter making such a commitment.
- Was this action and its results in the interests of the City of Black Diamond – absolutely!
- If this communication were somehow construed to be exparte, then Yarrow Bay is fully complicit.

2. Without wasting everyone's time with a point by point response to each of Yarrow Bay's assertions of impropriety or bias, let me make it very clear:

- I regret not one action that I have taken and am fully prepared to defend any and all such actions. **None of this serves as legitimate grounds for me to recuse myself.**

3. What advice do the lawyers provide?

- To defend myself from Yarrow Bay assertions, I may well be required to hire my own personal attorney at my expense.
- Were I to lose in court, I open myself up to the potential for **PUNATIVE** damages.
- Case law is not definitive here. Who knows how the Courts might decide.

4. So what should I do?

- Given the personal risks and the mismatch of my personal resources compared to Yarrow Bay, I would be foolish to take this risk and not recuse myself.
- I can't ask Judy and the rest of my family to take this on. It's neither prudent nor fair to them. Nor is it appropriate that I spend a large part of the rest of my life so consumed.

5. What about Yarrow Bay's suggestion that if all 4 Council members that can be challenged just recuse themselves, that they could all then come back and participate in the hearings? "All would be forgiven".

- You may wish to note that during the MPD hearings, two Council members immediately recused themselves, followed by a third Council member the next evening. They all returned despite admitted grounds for recusal.
- For me to follow this same path, I believe that it would make a total **MOCKERY** of this whole process.
- For me to recuse myself and then return in this manner – I just couldn't live with myself. It would totally violate my personal principles and what I believe to be in the best interests of our community.

6. Given the personal risks that I would have to take to contest Yarrow Bay's challenge, I have no choice but to recuse myself. Nor can I participate in a process so tainted.

THEREFORE, I HEREBY RECUSE MYSELF FROM THESE DEVELOPMENT AGREEMENT HEARINGS AND WILL NOT RETURN DESPITE YARROW BAY'S OFFER TO "ALLOW" (emphasis added) ALL 5 COUNCIL MEMBERS TO PARTICIPATE IN THE HEARINGS. Councilmember Goodwin left the building.

EXECUTIVE SESSION:

Mayor Olness recessed the special meeting into executive session at 6:39 p.m. to discuss with legal counsel potential litigation pursuant to RCW 42.30.110(1)(i) which was anticipated to last approximately 30 minutes and action may follow.

The meeting was called back to order at 7:01 p.m.

Mayor Olness turned the meeting over to City Attorney Kenyon who asked Council if they had any announcements to make.

Councilmember Saas stated he didn't assume it would go this way so when the packet was presented to him he wanted plenty of time to digest and look at what was on paper as far as he had done and consider his conscience and everything he had done and the matters and the facts before him and at face value it doesn't look good and he had to sit back and say is this something he could stand against, is this something I could live with and sit on the stand if that ever came to be and unbiasedly say I had (in audible) through this whole process I've learned a lot and more of a person who understands better when he is face to face rather than reading numerous pages of material and does not regret one bit what he did. He felt he wanted to do what he said he was going to do and that was listen to people and that is what he sought to do. Would he do things differently in retrospect and he would say yes and no. Personally he couldn't feel he could defend what he did as he stands on both sides of the line and so going forward he will recuse himself and in doing he will not be coming back to continue with the development agreement process. Councilmember Saas left the building.

Councilmember Mulvihill stated this position is not an easy one to be in and she ran because she believes in a process and she believes in Black Diamond and to have the opportunity taken away to do the job she signed up to do was very disconcerting. I am disappointed that Craig took such a desperate measure to announce that he would not come back should three or more recuse themselves and also disappointed that Saas made that same statement as both have a lot to bring to the table and feels they are missing a lot by not having them involved in the process. She added because of her recusal in the MPD hearings she feels that regardless if her home is in a position that is defensible, based on history she too has to recuse herself. Councilmember Mulvihill left the building.


Councilmember Hanson stated that because of the proximity of her property and doesn't want to put the city in the position for anybody to come back and appeal on these grounds. Councilmember Hanson recused herself and left the building.

City Attorney Kenyon reported the decisions of the Councilmembers has triggered the Rule of Necessity and asked that we continue the hearings to 6:30 p.m. on Thursday night at which time all five Councilmembers are qualified to participate.

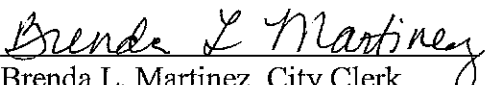
ADJOURNMENT:

Mayor Olness announced the hearing is continued to Thursday, September 29, 2011 at 6:30 p.m. at the Black Diamond Elementary School Gymnasium and thanked everyone for attending.

ATTEST:



Rebecca Olness, Mayor



Brenda L. Martinez, City Clerk