

## **BLACK DIAMOND CITY COUNCIL MINUTES**

### **September 29, 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 back to order at 6:30 p.m. and lead us all in the Flag Salute.

#### **ROLL CALL:**

**PRESENT:** Councilmembers Hanson, Boston, 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 she would now turn it over to City Attorney Kenyon for Appearance of Fairness.

#### **APPEARANCE OF FAIRNESS INQUIRIES:**

City Attorney Kenyon gave some background information regarding Monday's proceedings and the triggering of the Rule of Necessity. He explained that once the Rule of Necessity is triggered it allows all Councilmembers to come back into the proceedings and participate. He noted Councilmembers Saas and Goodwin did not return however, they are welcome too. He further explained that the ex parte contacts and other issues that occurred prior to Monday's meeting effectively no longer in play and everybody is back with a fresh start.

Since the meeting on Monday night City Attorney Kenyon asked the following questions collectively to Council:

1. Do any Councilmembers have any interest in the property that is subject to the Development Agreements? Council collectively responded – **No**
2. Can you hear and consider the application in a fair and unbiased manner? Council collectively responded – **No**
3. Any ex parte contact with parties of record or applicant since September 26, 2011? **City Attorney Kenyon** stated he heard some yes's from Councilmembers and started the disclosure process with Councilmember Mulvihill.

**Councilmember Mulvihill** reported she received three emails: 1) from Mr. Rimbos requesting more pages for written comments, 2) from Save Black Diamond (Kristen Bryant) and 3) an email from Mr. Bricklin. **City Attorney Kenyon** asked her if she reviewed those matters and **Councilmember Mulvihill** responded yes she did read them. **City Attorney Kenyon** asked that after reading them did she believe she could still render a fair and impartial decision on the development agreements based on the record that comes before you. **Councilmember Mulvihill** responded yes. **City Attorney Kenyon** asked the audience if anyone wished to challenge her continued participation based on her comments heard tonight. Seeing none he moved to Councilmember Boston.

**Councilmember Boston** stated he handed to the City Clerk an email from Peter Rimbos, Kristen Bryant and Mr. Bricklin. **City Attorney Kenyon** then asked Councilmember Boston if he reviewed any of those emails. **Councilmember Boston** responded yes very quickly. **City Attorney Kenyon** then asked based on those emails could he render a fair and impartial decision on the development agreements based on the record that comes before you. **Councilmember Boston** replied I do. **City Attorney Kenyon** asked the audience if anyone wished to challenge Councilmember Boston's continued participation based on his disclosures tonight. Seeing none he moved to Councilmember Hanson.

**Councilmember Hanson** stated the Save Black Diamond email from Kristen Bryant, email from Mr. Bricklin and email from Mr. Rimbos. **City Attorney Kenyon** asked her if she reviewed them and she replied yes she did. **City Attorney Kenyon** asked Councilmember Hanson if she believed she could still render a fair and impartial decision on the development agreements based on the record that comes before you. **Councilmember Hanson** replied yes I do. **City Attorney Kenyon** asked the audience if anyone wished to challenge Councilmember Hanson's continued participation based on her disclosure tonight.

**Arlene Parkin, Black Diamond** questioned Kristine on recusing herself the first time and nothing has changed. **City Attorney Kenyon** noted when the Rule of Necessity is triggered as it was last Monday then even Councilmembers who were previously disqualified are free to participate and added that is not a valid objection as tonight the disclosure are concerning the emails and added if she wished to rebut the substance of those emails for the substance of Mr. Bicklin's letter that is certainly fair.

**Cindy Proctor** objected to the Rule of Necessity being evoked in the sense it is a clear manipulation by YarrowBay and the City Attorney is complicit in this. She then referred to a Planning Commission meeting regarding changes to Title 17 where it should be appealed to Superior Court of the City Council Mr. Pilcher disclosed to the Planning Commission the City Attorney and Administration's position is that if a Councilmember were to have ex parte communication and the City Attorney asked them to leave they would not be covered by the City's liability insurance which is the exact thing that is happening two months later. She objects to YarrowBay's manipulation and the good people that represent the constituents are not here. **City Attorney Kenyon** recommended to not include these objections in the record for this appearance of fairness, although they

can certainly be included in the record of these proceedings, but it does not go to rebutting the substance of the ex parte contact Councilmember Hanson disclosed.

## **OLD BUSINESS:**

### **Resolution No. 11-766, suspending Council Rules and Procedures regarding Quasi-Judicial Hearings and Closed Record Hearings and establishing new procedures for The Villages and Lawson Hills Development Agreements Closed Record Hearings**

Mayor Olness reported staff has prepared a clean version of the suggested Rules of Procedure for these hearings based on Council direction at the September 21, 2011 meeting.

After discussion Council changed Item No 1 to 3 hours; Item No. 2 to include October 10, 2011; and Item No. 7 to read, Staff and applicant will be granted 5 business days from the close of the parties of record statements to respond in writing, not to exceed 10 pages, to written statements from parties of record. These responses will be posted to the City's website. Parties of record will be granted 3 business days from the date of posting to respond in writing, not to exceed 10 pages, to staff and applicant's written responses to written statements, and these responses will be posted to the City's website. Staff and the applicant will then have three additional business days after such posting to respond in writing, also not to exceed 10 pages, after which the written record will be closed. All submissions provided by staff, applicant or parties of record must be received by the City Clerk by 5:00 p.m. on the due date.

A **motion** was made by Councilmember Mulvihill and **seconded** by Councilmember Boston to adopt Resolution No. 11-766, suspending Council Rules and Procedures regarding quasi-judicial hearings and closed record hearings and establishing new procedures for The Villages and Lawson Hills Development Agreements Closed Record Hearings with the agreed upon changes. Motion **passed** with all voting in favor 3-0.

## **STAFF PRESENTATION:**

**Community Development Director Pilcher** presented staff with a presentation regarding the Development Applications. Mr. Pilcher highlighted the following areas of the presentation: 1) ADUs, 2) constraint maps, 3) high school site and fiscal analysis, 4) traffic monitoring, and 5) funding agreement.

## **APPLICANT PRESENTATION:**

**Colin Lund – YarrowBay**, commented on the history of the negotiations. He then highlighted the following areas of The Villages Phase 1A: A) Front loaded homes, B) Alley loaded homes, C) Cottage Homes, D) Townhomes, E) Senior Living, F) Multi-family, G) Commercial Retail, H) Parks and Open Space, and I) Stormwater facilities.

In closing he noted a lot of care, thought, planning and time went into the designs if Phase 1A of The Villages.

**Nancy Rogers – Legal Counsel for YarrowBay**, commented that the role of YarrowBay has been to be transparent through this process and added they will be distributing changes to the Agreements per the Hearing Examiner’s recommendation. She then discussed the following items: 1) Black Diamond MPD Code, 2) Nature of the Development Agreements, 3) Addressing Public Concerns, 4) Hearing Examiner recommendations – DA concepts, and 4) Next steps- If the City approves the Development Agreement with revisions called for by the Hearing Examiner’s Recommended Implemented Conditions, with no further modifications, YarrowBay is also willing to accept the Recommended Implementing Conditions.

**Brian Ross – CEO YarrowBay Holdings**, gave closing remarks. He noted he does not usually address Council very often, but felt tonight was an opportunity for him to speak directly and he takes this matter seriously and wanted them to know from him personally where he stands. He added they have been working in Black Diamond for a long time and have built lasting relationships within the community, secured a spot within the business community, and have worked towards making this a better community. He added they look forward to partnering with the City of Black Diamond to make the award winning Master Planned Communities of Lawson Hills and The Villages a reality. He noted they are committed to getting the MPDs off the ground and committed to local jobs including the Enumclaw School District and every student and family that will go to the schools within the MPDs as well as the current residents so their concerns are met whenever possible. He strongly encouraged folks to read YarrowBay’s Guide to the MPDs which is Exhibit 8. He hoped the City Council would take the following points under consideration as they move forward: 1) Countless hours spent developing and negotiating the agreements that are now under Council review; reached a mutual agreement with City Staff on all of the terms included in the agreements, 2) The proposed Villages and Lawson Hills Development Agreements as modified by the Hearing Examiner and further by the City Staff do meet all of the criteria included in the approved MPD permits and city code. In closing he thanked the City Staff for their hard work over the last year and who has always had the best interest of the City at mind. He noted they have given a lot through the negotiating process and believe the agreement in its totality is the best agreement for the City of Black Diamond. They do not agree in all cases but are willing to accept the agreement as proposed by the Hearing Examiner. He then recognized the work of the citizens and staff and asked for Council for their vote to approve the agreements that are before them.


**Councilmember Hanson** asked a question regarding fire and ADUs.

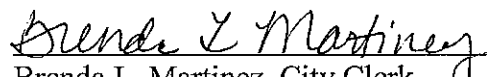
**Councilmember Boston** asked a question regarding the fire station.

**ADJOURNMENT:**

**Mayor Olness** reminded folks of the sign in sheets and added this is the conclusion to tonight's meeting and Council will continue next Monday, October 3, 2011 at 6:30 p.m. at the Black Diamond Elementary Gymnasium.

ATTEST:

  
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Rebecca Olness, Mayor

  
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Brenda L. Martinez, City Clerk