

BLACK DIAMOND CITY COUNCIL MINUTES

October 8, 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 9:00 a.m. and lead us all in the Flag Salute.

ROLL CALL:

PRESENT: Councilmembers Hanson, Boston, and Mulvihill.

ABSENT:

Staff present were: Stacey Borland, Associate Planner; Andy Williamson, Executive Director of Engineering Services and Economic Development; Chip Hanson, IS Manager; Bob Sterbank, City Attorney and Brenda L. Martinez, City Clerk.

Mayor Olness announced any party of record wishing to speak today needs to be signed up on the sign-up sheet by 10 a.m. She then turned it over to City Attorney Sterbank for Appearance of Fairness inquiries.

APPEARANCE OF FAIRNESS INQUIRIES:

City Attorney Sterbank 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. Do you stand to gain or lose financially as a result of the outcome of these proceedings? Council collectively responded **no**.
3. Can you hear and consider the application in a fair and unbiased manner? Council collectively responded **no**.
4. Any ex parte contact with parties of record or applicant since the closed record proceeding? Council collectively responded **no**.

PARTY OF RECORD STATEMENTS:

Geoff Bowie, Black Diamond spoke about the history of annexations, agreements, MPDs and sensitive area protections. He discussed erosion control measures and inspections, park amenities, new roads and that the sewer will be hooked into the city system. He spoke about the new storm drainage system built pursuant to the new manual and discussed the phosphorous standard for the development. He discussed types of

housing proposed. He provided background on the establishment of accessory dwelling units in the code, which were planned to be small and not have much of an impact. He stated if accessory dwelling units are not allowed then that is treating people differently in one part of town than another. He encouraged Council to authorize the MPDs.

Kristen Bryant, Bellevue was ceded speaking time by Monica Stewart, Steve Marshall and Bill McDermott. She spoke on behalf of herself and Save Black Diamond. She discussed protecting trees, wetlands and the importance of measures to protect wetlands. She discussed wetland boundaries, categorization and buffers. She stated the buffer widths on the constraints maps were not done correctly and referenced page 55 of the Hearing Examiner recommendation. She provided information on Dr. Cooke. She stated the required work to call headwater designations final has not been done for wetlands K & F in Lawson Hills. She discussed the best available science document adopted in 2008 and referenced page 53 of the Hearing Examiner's recommendation regarding Dr. Cooke's opinion of miscategorized wetlands. She stated it is not appropriate to lock boundaries at this time. She said the Parametrix wetland review needs to be addressed. She discussed concerns about categories of wetlands and wrong buffer widths done based on land use intensity. She stated all wetlands in Lawson Hills received the lowest buffer width for their category. She said the applicant has offered to remove buffers from the map at this time, but that doesn't remove the problem because wetland categories won't have changed. She wanted constraints maps amended to state wetland categories are preliminary. She referenced MPD condition of approval 155 and said she believes that boundaries have not been agreed to. She stated wetland boundaries don't need to be part of the vesting and provided proposed additional language for Section 8.2.1. She said the Hearing Examiner's Addendum stated that Council should not agree unless project level discrepancies can be verified. She said an outdated delineation methodology was used and the new manual should be used. She discussed discrepancies in the DA with state and federal review requirements. She said the Army Corps of Engineers permits have not been applied for and there is a timing discrepancy between how long delineations are valid. She stated the Hearing Examiner did not think the Army Corps of Engineers was an issue. She spoke to concerns about not notifying the Corps if the wetland is under the size requirement. She asked what if larger areas are required, how will it affect the project density. She provided additional suggested language and discussed the costs of not protecting wetlands. She suggested an impact fee for wetlands be added to the DA.

Carol Lynn Harp, Black Diamond spoke about hastily done work and cutting corners. She discussed testimony she had heard, traffic and inadequate mitigation. She said schools should be paid for by the developer and the phosphorous content is high in Lake Sawyer. She said flooding in Lake Sawyer is a concern. She stated the Hearing Examiner said the funding agreement should be executed separately. She discussed concerns about how far away homes will be from jobs and the poor economy.

Brian Derdowski, Issaquah was ceded speaking time by Howard Meece, Karen Benedetti, Rebecca Sullivan, Miriam McDermant and Steve Sundquist. He spoke on behalf of Save Black Diamond, and the Sensible Growth Alliance, in addition to those who ceded their time to him. He spoke to Council about the process and his

disappointment in the MPD approval. He believes the process should be legislative. He spoke about his experience with other MPDs. He spoke about and referenced his submitted document on 11 unintended consequences of the MPDs: apartments built without retail; construction traffic hurts local businesses; noise of construction activities hurts local residents; road projects don't work well and traffic backs up; runoff and erosion will cause pollution and flooding; clearing and grading doesn't follow the plan and damages the environment; shallow groundwater is intercepted with no regulations to protect streams and lakes except for SEPA; the city is forced into accepting variances; Council finds it is powerless to affect the direction of the development; the project happens faster than you can keep up with; and costs and revenues become unbalanced. He presented 10 common sense precautions: environmentally sensitive areas should be surveyed at the time of development; need environmental monitoring and contingency plans to handle emergencies; sensitive area enforcement and penalties should be separately funded and specified; noise levels should comply with Department of Health standards at all times; gridlock is never an option the city needs a tool if traffic mitigations don't work-concurrency should be the standard at the time of the implementing project; the need to prohibit undesirable development such as an ugly apartment building-need design review standards; need proportional development between housing and commercial; need to use SEPA to effectively condition projects; the City needs to have discretionary authority over amendments and variances; and Council needs to have legislative authority protected-too much authority is given to the Mayor and staff. He discussed implementing these items legally: ask the attorney what would be the strongest language to implement what you want; remand the DA back to the Hearing Examiner; Council should consider retaining an independent attorney; Council can walk away from the development agreement; Council needs to act as a check and balance with the Mayor and staff; and Council could hold the record open for amendments from parties of record, which he could provide. He provided additional information in writing and referenced the staff report and language contained therein. He stated he disagreed with proposed mine safety hazard language listed in the staff report. He stated Council should keep the record open to receive additional testimony during the 3-day response period. He disagreed with new language proposed on steep slopes. He stated concerns on accessory dwelling units, which should be counted as two units.

Councilmember Hanson asked Mr. Derdowski a clarifying question regarding his accessory dwelling unit testimony.

Matt McGibbney, Black Diamond spoke about living in the area, the project scope and tree removal. He stated he doesn't want Black Diamond to just be a bedroom community. He said he prefers roundabouts over traditional intersections for intersection improvements.

Erika Morgan, Black Diamond was ceded speaking time by Aaron Scott. She spoke about Black Diamond Lake, the flow of water, location of the South Connector Road and other testimony provided. She said there was not enough time to review the DA. She spoke about a wetland walk with Dr. Cooke around portions of Black Diamond Lake and referenced her written testimony. She stated the peat bog should be protected beyond the

Sensitive Areas Ordinance. She spoke to concerns about water spillage on downstream properties and compared the situation to Horseshoe Lake and the financial obligation that Black Diamond could be facing. She stated the developer did not do due diligence. She referenced the previous failure of the sewer system in Black Diamond, found problems in the Yarrow Bay literature and provided comments on the Hearing Examiner's recommendation. She said the Council should remand the DA back to the Hearing Examiner and provided additional written materials.

Joe May, Black Diamond praised testimony submitted by others. He spoke to the Hearing Examiner recommendation and that Yarrow Bay can say no to some of the items. He said Council should take the time that they need. He spoke about candidates running for election. He stated the funding agreement should be signed separately. He said he believes the agreement should run for 10 years and then be reviewed. He encouraged Councilmembers to ask Councilmembers Goodwin and Saas back.

Cindy Wheeler, Black Diamond was ceded speaking time by Tamie Deady and Arlene Parkin. She spoke about testimony submitted by others. She spoke about additional work needed to be done by Parametrix related to the EIS. She discussed doubts of Council. She spoke about public disclosure requests and contents therein. She stated Council has not addressed all input received from other agencies. She spoke to concerns on the schedule of the hearing. She stated the fiscal analysis needs to be done for a high school in a commercial site. She said the agreement should be remanded to the Hearing Examiner and the funding agreement needs to be executed up front. She said Council should have a redlined version of the DA. She stated concerns about growth paying for growth. She spoke about testimony submitted by others. She said she cannot see the benefit for the city financially with this development. She said data presented by staff is outdated. She stated she believes Ch. 13 of the MPD applications has made its way back into the DA. She stated the work done by Mr. Perlic on transportation was done in August. She said the phosphorous testing was done in the winter. She stated the Hearing Examiner recommendation does not agree with giving staff power and choice. She stated risk to the City is not minimized in the DA. She said Council should incorporate the recommendations of citizens.

Judith Carrier, Green Valley Road was ceded speaking time by Clayton Snyder, Dorothy Snyder and Glenn Carrier. She spoke about preparation of the agreements and the need to cover all details now. She discussed Dr. Cooke's wetland testimony and submitted written materials. She said the Hearing Examiner required Council to determine if the constraint maps are valid to use. She spoke about Dr. Cooke's observations. She recommended wetland boundaries be reviewed by the Army Corps of Engineers. She said Council should utilize experts other than staff and legal counsel. She discussed Dr. Cooke's comments about the SEPA official. She said staff has no qualified wetland expert on staff. She spoke about concerns related to the previous deliberation. She said Council should take time in deliberation. She stated the Hearing Examiner needed more time. She asked Council to not approve the wetland delineations that have been done until it is known if they are correct. She discussed Green Valley Road concerns, including wetlands and a stream across Plass Road. She submitted copies of

letters related to the South Connector and another that stated that Yarrow Bay doesn't plan to connect to SR 169 for up to 10 years. She said she would like a condition that requires the applicant to know sooner what they are going to do. She spoke about Dr. Cooke's wetland tour.

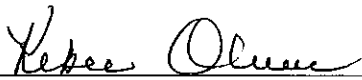
Geraldine Sullivan was called to speak, but was not present.

Mayor Olness announced party of record statement portion of the proceedings is now complete as there are no new parties to call upon. She then reminded folks that all written statements from parties of record are due today at the hearing however, Council did make a provision that they can be emailed to the City Clerk before midnight tonight.

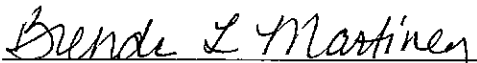
ADJOURNMENT:

Mayor Olness announced the special meeting is continued to Monday, October 10, 2011 at 6:30 p.m. at the Black Diamond Elementary School Gymnasium for staff and applicant presentations and thanked everyone for attending.

ATTEST:



Rebecca Olness, Mayor



Brenda L. Martinez, City Clerk