

# **BLACK DIAMOND CITY COUNCIL MINUTES**

**April 5, 2012**

Council Chamber, 25510 Lawson Street, Black Diamond, Washington

## **CALL TO ORDER, FLAG SALUTE:**

Mayor Olness called the regular meeting to order at 7:00 p.m. and lead us all in the Flag Salute.

Mayor Olness announced she was going to change up the order of the agenda to swear in Carol Benson.

## **PRESENTATIONS:**

### **Council Position #4 Appointment --**

Mayor Olness swore in Carol Benson to Position No. 4 of the Black Diamond City Council.

## **ROLL CALL:**

**PRESENT:** Councilmembers Deady, May, Goodwin, Benson and Taylor

**ABSENT:** None

Staff present were: Steve Pilcher, Community Development Director; Andrew Williamson, Economic Development Director; Greg Goral, Police Commander; Greg Smith, Fire Chief; Chris Bacha, City Attorney and Rachel Pitzel, Deputy City Clerk.

## **EXECUTIVE SESSION:**

Mayor Olness announced an Executive Session at 7:04 p.m. to discuss with legal counsel litigation pursuant to RCW 42.30.110(1)(i) which was expected to last approximately 15 minutes.

A 15 minute extension was called to the executive session.

A 10 minute extension was called to the executive session.

The regular meeting was called back to order at 7:39 p.m.

A **motion** was made by Councilmember Goodwin and **seconded** by Councilmember Deady to add to the agenda discussion related to MPD Permit Applications filed by YarrowBay in December 2011 (PLN 11-0020 and 11-0021) before the public comment period. Motion **passed** (5-0).

Councilmember Goodwin read into record a letter received from Brain Ross, YarrowBay dated April 4, 2012 received to the City of Black Diamond around 4:30 p.m. on April 5, 2012 addressed to Mayor and Councilmembers. This letter is attached and made part of the record.

Councilmember Goodwin asked if Council would like to discuss.

Councilmember Taylor commented that as Council they have been wondering how to handle the duplicate MPD applications; considered asking a Judge to decide if they are valid as applied; that it was not an intention on his part to sue YarrowBay for damage or monetary relief; Council just wanted to know who is right and are the MPD applications valid or not. Councilmember Taylor stated that YarrowBay's letter is pretty bold and can be considered blackmail unless we play ball- the city is going to get both barrels. He stated he is not trying to be adversarial, he just wants someone to tell Council if the second applications are valid or not.

Councilmember Goodwin stated first it is very important to clarify that it has nothing to do with the MPD that has already been approved or the Development Agreements that has been approved. YarrowBay submitted a second application to protect them from a vesting standpoint in the event that the courts appeal against. There is not going to be a ruling on April 24 but a review; secondly he would like to point out we first tried to address in January to say Council is confused by the second MPD applications with implications of Appearance of Fairness and steps to process them; correspondence back and forth with YarrowBay in trying to find a way to bridge the gap and not successful; Council not being able to find a common ground and faced with a threat of trying to bankrupt the City or agree with YarrowBay, that is troubling to him in a very significant way; critical time in this project and stated he is only speaking for himself, when do we as a City stand up for ourselves in the face of overwhelming pressure from the other side, he hoped that we will be able to sit down with YarrowBay and work it out to mutual satisfaction but will not give in to the threat to the City and it not because we are against the MPDs, it has everything to do with the second applications.

A **motion** was made by Councilmember Goodwin and **seconded** by Councilmember Taylor to authorize the Mayor to file a lawsuit for a declaratory judgment and other appropriate relief, seeking a judicial determination that MPD Permit Application Nos. PLN 11-0020 and 11-0021 are invalid or should otherwise be rejected. Motion **passed** (5-0).

## **PUBLIC COMMENTS:**

**Brian Ross, YarrowBay** – stated he was really surprised this is what it came to and stated that Councilmember Goodwin mischaracterized the letter and that YarrowBay did not threaten to bankrupt the City, that was Goodwin's words, not his; working hard to protect property rights; YarrowBay offered to negotiate and is sadden to find ourselves in this position tonight.

**Erika Morgan, Black Diamond** – commented on the School Siting Task Force; suggested everyone read an article in the paper on the Tahoma land swap.

**Colin Lund, YarrowBay** – commented on the Council Retreat back in February and what was discussed; stated that every step of the way has been a way to stymie or slow down these MPDs from moving forward and tonight is another example of that; discussed the three consultants on the agenda for approval and hopes they are passed and move on to processing the plat applications; stated it was time to move forward.

**Mario Sorci, Black Diamond** – commented on the CFD and the presentation that Chief Smith did regarding a Fire Station and the level of service; asked when this will be presented to the Public Safety Committee meeting.

Councilmember Goodwin replied that Chief Smith will be presenting his PowerPoint presentation at the next CFD Committee meeting on April 17.

**Peter Rimbos, Maple Valley** – commented on the section process; protecting economic health of the City; stated he keeps hearing the citizens are against growth which is not the case, they are just against the massive size of this development; noted he will talk about the School Siting Task Force during the next public comment period.

**Cindy Proctor, Enumclaw** – commented on the EIS and Development Agreement on Police and Fire LOS; Supreme Court ruling on April 24; discussed projects she has been involved with regarding development.

**Kristine Hanson, Black Diamond** – commented on Council Rules and Procedures, read excerpt 15.4 and stated she believed Council has done just the opposite; discussed lawsuit and where will the money come from and if they thought it was the City's best interest; discussed how this item was "leaked" out and YarrowBay had to defend themselves and now look like the bad guys; commented on Council not wanting to see the City grow.

**Harvey Senecal, Black Diamond** – commented he was encouraged to see the items on the agenda; discussed pursuing a reasonable time frame.

**Robbin Taylor, Black Diamond** – commented that she is speaking on behalf of herself and any comments she makes is unrelated to her husband being on the Council; discussed the tri-city agreement and the quasi-judicial state; discusses formation of the CFD committee and muddying up the waters.

**Gomer Evans, Black Diamond** – commented on the history of Black Diamond; commented on how everything now is all negative; talked about moving the City forward and how much it is needed.

**Brock Deady, Black Diamond** – thanked the Council for looking out for the citizens; discussed everything happening too fast and it being too big; discussed not being against growth but it needing to be slow and to be right and appreciated what Council is doing and is behind them.

**Vicki Harp, Black Diamond** – commented on not being against the growth, but it is more about lessening and the density.

**Pam McCain, Black Diamond** – commented on the stall tactic and to what benefit is it to the citizens of Black Diamond; commented on the permits being issued and there being delay after delay, growth pays for growth; stated as a tax payer she wanted it on the record that she does not want her tax money spent for litigation.

**Mark Mullet, Issaquah** – stated he was a member of the City of Issaquah Council and running for State Senate; reaching out to all Council in the 5<sup>th</sup> District and encouraged people to look at the City of Issaquah’s webpage and check out his information.

**Brian Derdowski, Issaquah** – commented he was there on behalf of Save Black Diamond and thanked Council; discussed the Master Planned Developments; consultant selections; Council Rules and needing flexibility in the contract.

**Tammy Calbom, Black Diamond** – thanked the Council for looking at issues and heard both sides, sad that it comes down to taking to Court; believes in the growth of Black Diamond; understands wanting it to be smaller and thinks about what the vision means; believes in “if you build it they will come”; commented on working in conjunction with YarrowBay and encouraged Council to go talk with YarrowBay on an individual basis.

**Tim Lombardo, Ravensdale** – commented that it is disappointing to see what it has come down to; discusses being a property owner; plans that YarrowBay has submitted and the money wasted; noted that it has already been a slow process that things have not been moving too quickly.

**Geoff Bowie, Black Diamond** – commented on how great it is to see the City moving forward with consultants; discussed Council’s involvement in the process; stated it is important to do something positive; noted the budget and no money in it to sue someone and asked Council not to raise utility rates to support the litigation.

**PUBLIC HEARINGS: None**  
**UNFINISHED BUSINESS: None**

**NEW BUSINESS:**

**Resolution No. 12-791, authorizing the Mayor to execute a contract with Parametrix to serve as the traffic engineering consultant to the MDRT**

Executive Director of Engineering Services Williamson reported on the series of contracts for the MDRT, decision by city staff for Council’s involvement. Thanked Council for participating in that process and stated that this contract went to the Finance Committee as well and recommends adoption.

A **motion** was made by Councilmember Benson and **seconded** by Councilmember May to postpone the consideration of the three resolutions in 1, 2 and 3 until such time that Council can review the selection process and contracts for all consultants to the MDRT.

Councilmember Goodwin stated that he can't agree and respects the considerations, in all cases we have to balance the urgency, having participated in the Transportation interview team he came away with two qualified candidates and in his judgment Parametrix was strongest, he respects the desire to get it perfect, but stated we need to get started.

Councilmember Benson started that part of her reason is conflict of interest, feels the contracts should be tighter and more specific.

Discussion took place between Council regarding understanding the contracts better; annual rate increases; concerns for safety of citizens and City.

Councilmember Taylor asked Councilmember Benson if she wanted to make the motion to postpone to a more definitive date.

A **motion** was made by Councilmember Benson and **seconded** by Councilmember Taylor to **amend** to postpone the consideration of the three resolutions in 1, 2 and 3 until such time that Council can review the selection process and contracts for all consultants to the MDRT until the next regular Council meeting in two weeks.

Roll call Vote: Motion **passed** (3-2, Deady and Goodwin).

## **DEPARTMENT REPORTS:**

Community Development Director Pilcher reported that the annual Comprehensive Plan amendment is June 15<sup>th</sup>.

## **MAYOR'S REPORT:**

Mayor Olness reported on March 28<sup>th</sup> she attended a Mayors meeting with the Mayors from Covington and Maple Valley; March 29<sup>th</sup> was the last meeting of the School Siting Task Force; April 4<sup>th</sup> attended the Growth Management Council of Suburban Cities; handed out SEATS brochures for Council; Green Valley Road committee and representation; upcoming events include the Easter Breakfast at the Black Diamond Community Center, Easter Egg Hunt at Lake Sawyer Community Club; April 12<sup>th</sup> is the Town Hall meeting at the Black Diamond Community Center at 7 p.m.; April 17<sup>th</sup> Workstudy on Impact Fees 4 p.m.; May 24<sup>th</sup> on the MDRT Team process in Council Chambers.

## **COUNCIL REPORTS:**

Councilmember Taylor gave a Public Safety Committee report, discussed mitigation fees and requested the Mayor call a workstudy session of the Council which is scheduled for April 17<sup>th</sup>.

Councilmember Deady gave a Parks and Cemetery Committee report; cemetery volunteers; attended the Suburban Cities Association meeting and Puget Sound Regional Council workshop.

Councilmember Goodwin reported that there was the first meeting of the CFD meeting next meeting on April 17<sup>th</sup> to follow up with Chief Smith and the LOS and impacts.

## **ATTORNEY REPORT:**

## **PUBLIC COMMENTS:**

**Geoff Bowie, Black Diamond** – commented on sanitary sewer systems.

**Brock Deady, Black Diamond** – commented that he appreciated that the Town Hall meeting being held at the Community Center; commented on committee reports; refers to Mr. Derdowski's comments.

**Mario Sorci, Black Diamond** – commented on moving forward; discusses minutes to committee meetings; being a previous Councilmember and the nature of dealing with consultants; discussed the consultants that were chosen being the right people to do the right job.

**Cindy Proctor, Enumclaw** – apologized for what Council has to deal with and the mess; discusses the MRDT selection; conflict of interest form; energy at the meetings; read excerpt from a PDR request in 2009; open and transparent partnership.

**Robbin Taylor, Black Diamond** – commented on the second applications of MPDs; condition of approval on the new set of applications vs. the conditions of approval on the old set.

**Peter Rimpos, Maple Valley** – discussed summary of the School Siting Task Force recommendations.

**Colin Lund, YarrowBay** – commented on his frustrations and anger; discussed effort of consultants; corrected misstatements of consultants working for YarrowBay; the deposit made to the City; stated it's time to move forward.

**Brian Derdowski, Issaquah** – commented on the record needs to be clear that you are not suing YarrowBay you are asking for guidance form a court regarding the second MPD applications; explains a motion to table; discusses contracts; offers advice to Council to have him come and speak to Council; notes Exhibit A on all three contracts; issue of staff to serve City to do City's bidding and implement Council ruling.

**Kristine Hanson, Black Diamond** – commented that the city has great staff that went above and beyond; talks about committees; discusses contracts; trust in staff and know they have the best interest of the city; look to staff and have confidence in them and the city attorney.

**Megan Nelson, Black Diamond** – clarified legal statement made by Derdowski; discussed the filing of a suit against YarrowBay; discussed Derdwoski's invitation to have him come to speak; discussed the city's obligation to process in a timely manner; discussed mechanism for applicants if not processed in a timely manner; discussed being compliant with State Law.

**Dave Ambur, Black Diamond** – commented permitting with King County and the costs and delays; two sides to the coin- growth is good thing, but needs to be done with good planning; discusses size of MPD; annexations; size development and stated we need to keep the small town perspective.

**CONSENT AGENDA:**

A **motion** was made by Councilmember May and **seconded** by Councilmember Goodwin to adopt the Consent Agenda. Motion **passed** with all voting in favor (5-0).

The Consent Agenda was approved as follows:

**Claim Checks** – April 5, 2012 Check No. 38061 through No. 38135 (voided No. 38075) in the amount of \$151,673.55

**Minutes** – Special Council Meeting Minutes of March 15, 2012 and March 26, 2012 and Council Meeting Minutes of March 15, 2012, Special Council Meeting Minutes of March 26, 2012

**ADJOURNMENT:**

A **motion** was made by Councilmember Goodwin and **seconded** by Councilmember May to adjourn the meeting. Motion **passed** with all voting in favor (5-0).

ATTEST:

  
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Rebecca Olness, Mayor

  
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Rachel Pitzel, Deputy City Clerk

April 4, 2012

**Via Email Delivery**

Mayor Rebecca Olness  
City of Black Diamond  
P.O. Box 599  
Black Diamond, WA 98010

City Councilmembers Deady, Goodwin, May, Benson and Taylor  
City of Black Diamond  
P.O. Box 599  
Black Diamond, WA 98010

**RE: Collaboration or Litigation – the Choice is Yours.**

Dear Mayor Olness and Councilmembers Deady, Goodwin, May, Benson and Taylor:

I am concerned that the City has immediate plans to sue YarrowBay as was first threatened in it's February 10, 2012 letter. I hope that my concerns are misplaced.

On February 16, 2012, our attorney, Nancy Rogers, wrote to explain that the City's claims are wrong. That letter also made clear that YarrowBay would make no claims for violations of the Appearance of Fairness doctrine based on the filing of the new MPD Applications, such that Councilmembers need not worry about those supposed constraints. Importantly, Ms. Rogers' letter also confirmed that in the event the Washington State Supreme Court denies TRD's pending Petition for Review, YarrowBay would withdraw the "new" MPD Applications which are the focus of the Council's concerns. As you must be aware, the Supreme Court plans to consider that Petition for Review on April 24. Why would the City sue YarrowBay just three weeks before the Supreme Court will decide TRD's Petition?

Regardless of the timing, why would the City sue YarrowBay at all? YarrowBay recognizes that there has been a political shift on the City Council. I urge the Council to remember that the Villages and Lawson Hills MPDs are approved for a long-term build-out. Regardless of who is on the City Council, now or years from now, YarrowBay will be moving forward. That means that the City has two paths to choose from. First, the City could choose to litigate and thereby limit its future role in the MPDs to mere regulatory compliance. Alternatively, the City's leaders could choose to collaborate with YarrowBay and thereby not only assure codes are met, but also have active input into the future shape of MPD development. If the City chooses to sue YarrowBay now, you are choosing that first, hard path. While you might personally oppose the MPD build-out, your opinion cannot and will not stop the Villages

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and Lawson Hills MPDs. YarrowBay is ready to aggressively use the Court system to enforce its property rights. Instead, litigation will only prevent the City from having meaningful input on behalf of its constituents on elements of the development. Wouldn't the majority of your constituents prefer you actually be proactively and collaboratively involved so as to have political influence over the shape of MPD build-out?

As to the basis for the City's proposed lawsuit, contrary to the City's argument, the new MPD Applications do not violate the Development Agreements. In the words of your own Planning Director, they are "substantially the same proposal[s] for development" as the approved MPDs. And even if there was some violation of the Development Agreement, the City is the permitting authority. That means the City can condition the new MPD Applications to ensure consistency with the existing Development Agreements. Next, the City's argument about "res judicata" fails. The purpose of the new MPD Applications was to have permit applications on file in the unlikely event that the Growth Board's earlier determination that the prior approvals were legislation is upheld. That means that the prior approvals would be legislation, making the "new" MPD Applications the first permit applications to be filed. And even if both the prior and the new MPD Applications are deemed permit applications, "res judicata" does not apply because the second applications were filed in the face of a substantial change in circumstances because of the Growth Board's decision that the first approvals were legislation.

Not only are the City's current arguments bordering on the frivolous, but they seem to ignore the reality that, in December 2011, the City accepted YarrowBay's new MPD applications, together with \$200,000 in application fees. Again, we recognize the political shift on the Black Diamond City Council. But politics don't matter in court, the law does. How will you explain the legal basis for this flip-flop to a Judge?

Has the City forgotten that without YarrowBay's funding, Black Diamond cannot sustain its current staff, facilities, and equipment? Has the City forgotten the almost 20 years of careful annexation and planning efforts that preceded the MPDs, including agreements to assure the provision of potable water City-wide, and the gift of Lake Sawyer Regional Park to the community? Has the City forgotten that these MPDs present the City's best opportunity to grow with grace, and to bring needed commercial development and new housing with an expanded tax base to town? Has the City Council forgotten that it has an opportunity to partner with YarrowBay, or least participate with YarrowBay as the MPDs build-out, rather than simply police YarrowBay?

If the City decides to sue YarrowBay, you need to understand that YarrowBay will not only defend this case, but will pursue all available counterclaims. We have not yet brought our claims for a variety of violations of the Open Public Meetings Act, but a lawsuit from the City will force our hand. YarrowBay also has not yet brought all of its concerns about delays in permit processing to the City Council's attention, but you should know now that the City appears

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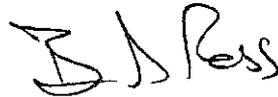
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to be intentionally delaying processing of the implementing permits for the MPD build-out. In addition, vested permit applications are protected property rights. These facts, claims, and more present a substantial risk that the City will be liable under both State and Federal law to YarrowBay for monetary damages. Why would you take that risk, in the face of an opportunity to play a role in shaping the MPDs themselves?

I don't want to be in an adversarial position against the City. I don't want my company or my staff to be in an adversarial position against the City. I have tried at every turn to provide a graceful avenue that allows all of us to move forward together, as the City grows with grace. I am pleased that you have on your Council agenda tonight the appointment of consultants necessary to process YarrowBay's permits, and I ask that you approve those contracts. I also understand the political pressures you are facing and I understand that you may not be ready to be our partners just yet, or ever. But you will solve no problems if you choose to litigate. Instead, I urge you to help find common ground between all of your constituents, YarrowBay and those who oppose the MPDs. Choose the path that allows you the greatest opportunity to shape the future of the City of Black Diamond.

Sincerely,

A handwritten signature in black ink that reads "Brian Ross". The signature is written in a cursive style with a large, stylized "B" and "R".

Brian Ross  
CEO

Yarrow Bay Holdings, LLC