

BLACK DIAMOND CITY COUNCIL MINUTES
December 17, 2015
Council Chamber, 25510 Lawson Street, Black Diamond, Washington

CALL TO ORDER, FLAG SALUTE:

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

ROLL CALL:

PRESENT: Councilmembers Deady, Morgan, Edelman, Weber, and Taylor.

ABSENT: None

Staff present: Seth Boettcher, Public Works Director; May Miller, Finance Director; Jamey Kiblinger, Police Chief; Andrew Williamson, MDRT/Economic Development Director; Barbara Kincaid, Community Development Director; Carol Morris, City Attorney; and Brenda L. Martinez, City Clerk.

APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS:

Mayor Benson presented to Councilmember Taylor a plaque for his service as a Councilmember to the City of Black Diamond.

Mayor Benson also announced that two employees, Dan Dal Santo and Ken Blakely were honored and recognized for their 20 years of service to the City of Black Diamond.

A **motion** was made by Councilmember Edelman and **seconded** by Council member Deady to move the executive session after the second public comment period on the agenda. Motion **passed** with all voting in favor (5-0).

A **motion** was made by Councilmember Weber and **seconded** by Councilmember Morgan to amend the agenda to hold item #4 until the first meeting in January. Motion **failed** (2-3, Deady, Edelman, Taylor).

CONSENT AGENDA:

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Morgan to adopt the Consent Agenda. Motion **passed** with all voting in favor (5-0). The Consent Agenda was approved as follows:

- 1) **Claim Checks** - December 17, 2015 - No. 42397 through No. 43006 and EFTs in the amount of \$163,661.87
- 2) **Minutes** – Special Council Meeting of December 7, 2015

PUBLIC COMMENTS:

Bill McDermid, Black Diamond commented on being concerned about Councilmember Edelman having a conflict of interest for items 9 and 10 on agenda and asked Council to address this concern.

Brock Deady, Black Diamond, asked questions and sought clarification regarding Resolution No. 15-1060, Gym Rental Policy that was on the agenda.

Colin Lund, YarrowBay commented on having two resolutions before Council tonight. He noted that as the Master Developer they will continue in that role going forward and thanked Council for their consideration on those items tonight. He also commented on activity at the site and will be addressing Council at the first meeting in January on those activities.

Peter Rimbo, Maple Valley spoke on behalf of the Citizens Technical Advisory Team and commented on them wanting a concurrency ordinance and proposing one five years ago. He noted they want it, however they want to get it right and that's what the problem is. He thanked Ms. Morris and Mr. Boettcher for putting together a good document. He discussed the teams experience and the purpose of concurrency and asked Council to make use of their experience and to hold off on taking action on this item tonight. He thanked Ron Taylor and Craig Goodwin for their service.

Robbin Taylor, Black Diamond commented on reviewing Resolution No. 15-1061 and 15-1062 and seeing nothing that would have Councilmember Edelman recuse herself or preclude her from voting on these two items.

Gary Davis, Black Diamond noted placing 2016 calendars and flashlights on the table for anyone who is interested.

PUBLIC HEARINGS: None

UNFINISHED BUSINESS: None

NEW BUSINESS:

Ordinance No. 15-1069, adopting the 2016 Budget

Finance Director Miller reported that before Council tonight is Ordinance No. 15-1069 which adopts the 2016 Budget along with the 2016 Salary Schedule. She distributed to Councilmembers handouts that show the fire budget which includes the annexation study. She apologized that the documents provided in the packet did not reflect this information.

A **motion** was made by Councilmember Taylor and **seconded** by Councilmember Deady to adopt Ordinance No. 15-1069, adopting the 2016 Budget. Motion **passed** (3-2, Morgan, Weber).

Ordinance No. 15-1070, adopting Transportation Concurrency Regulations

Public Works Director Boettcher reported the concurrency ordinance has been presented to the Planning Commission and two public hearings were held before the City Council. He discussed it being drafted by the City Attorney and reviewed by a professional engineer and then again by another senior traffic engineer at Parametrix, Inc. He noted minor edits were made to the document, however no substantive edits are being recommended. He highlighted the basic outline of concurrency actions which are: 1) Count cars, 2) Assess LOS of City Transportation System, 3) When development applications come in assess traffic loading and impact of the development on transportation system, 4) Issue Capacity Reservation Certificate (CRC) – or – Issue CRC with mitigation project – or – deny CRC, 5) Track traffic loading that is reserved and coming from developments in process, and 6) Prepare an overall city LOS capacity report annually.

City Attorney Morris commented that if Council wants to strike out the reference of “secured by an enforceable development agreement” in section 11.11.014(A) and “embodied in a development agreement” in section 11.11.015 they certainly can as basically all this ordinance does is set up procedure – this is a procedural ordinance and has been adopted by many cities in its current form.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to adopt Ordinance No. 15-1070, establishing a transportation concurrency ordinance which established codes and policies to ensure that transportation facilities are planned, funded and constructed concurrent with the development according to state law with the strike outs to the reference of “secured by an enforceable development agreement” in section 11.11.014(A) and “embodied in a development agreement” in section 11.11.015. Motion **passed** with all voting in favor (5-0).

Resolution No. 15-1057, authorizing a Flood Reduction Grant Agreement with King County

Public Works Director Boettcher reported staff applied for and was selected for a flood reduction fund grant from King County. He stated grant funds will be used for the design of the Covington Creek Culvert Replacement Project as this infrastructure is failing. He noted applying for full funding for the project, however there were not enough grant dollars so staff will be applying for construction funds during the next grant cycle.

A **motion** was made by Councilmember Deady and **seconded** by Councilmember Weber to adopt Resolution No. 15-1057, authorizing the Mayor to execute a Flood Reduction Grant Application with King County for the design of the Covington Creek Culvert project. Motion **passed** with all voting in favor (5-0).

Resolution No. 15-1058, authorizing a Fuel Tax Agreement with Transportation Improvement Board

Public Works Director Boettcher stated that even though the paperwork states fuel tax agreement, it is really a grant agreement. Public Works staff applied for and was selected for a Small City Preservation Program Fuel Tax Grant from the Washington Transportation Improvement Board (TIB). He noted this project will provide for some patching, widening, and asphalt overlay of Jones Lake Road and that design work will be done in-house.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to adopt Resolution No. 15-1058, authorizing the Mayor to execute a Fuel Tax Grant Agreement for the Jones Lake Road Overlay project, TIB #2-P-800(004)-1. Motion **passed** with all voting in favor (5-0).

Resolution No. 15-1059, adopting an Interlocal Agreement with Covington and Maple Valley for Building Services

Community Development Director Kincaid reported the City has been using the building services from the cities of Covington and Maple Valley under an Interlocal Agreement for many years as there has not been enough building permit activity for the city to fund its own Building Officials and inspectors. She noted the current ILA authorized by Resolution No. 15-102, is set to expire on December 31, 2015. She also noted the 2016 Budget includes the funding for this service.

A **motion** was made by Councilmember Deady and **seconded** by Councilmember Edelman to adopt Resolution No. 15-1059, authorizing the Mayor to execute an Interlocal Agreement with the cities of Covington and Maple Valley for building department related services. Motion **passed** with all voting in favor (5-0).

Resolution No.15-1060, adopting Facility Use Policy

City Attorney Morris stated she put this together from a bunch of documents and noted that Council can choose to postpone action on it tonight.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Weber to postpone action on Resolution No. 15-1060 to the second business meeting in January. Motion **passed** with all voting in favor (5-0).

Mayor Benson asked City Attorney Morris to address the conflict of interest issue with Councilmember Edelman that was brought up earlier by a citizen regarding the next two items on the agenda.

City Attorney Morris stated not understanding what their challenge is other than someone thinking because Councilmember Edelman's husband was a member of a group that had to pay attorney fees to YarrowBay that now she has a conflict of interest in voting on these

next two motions. Ms. Morris went on to state that she does not see there is a conflict of interest.

Resolution No. 15-1061, consent to Assignment of certain Water Supply Agreements

MDRT/Economic Development Director Williamson reported a lot of different agreements in the city automatically change over as ownership of the properties change. He noted there are some water agreements that do have a process which requires the City to provide its formal consent for reassigning the assignments, otherwise that automatically occurs in 60 days. He discussed working with the Public Works Director to determine the dollar value for the WSFFA projects and staff determined that in order for Crown Community Development Black Diamond Partners, LLC to assume the financial responsibilities under each of these agreements that it would have to have \$2,888,300 in available funds. The assignee has proposed that it provide the City with a letter of credit in this amount, to secure those obligations/responsibilities with said form for the letter of credit to be approved by the City Attorney. He added that currently there are no financial assurances in place to the City for the WSFFA and described the current process that is used.

Councilmember Morgan asked when the City was notified of this and when the Mayor was notified and were any Councilmembers notified. Mr. Williamson ran through the timeline and process on this issue.

Councilmember Weber stated understanding why the City has to approve some agreements and wondered why the Council needs to approve this agreement. City Attorney Morris discussed the agreements and the process each agreement has for reassignment. She discussed her memo regarding this issue which is attached and incorporated into the minutes. She further stated that Council's decision tonight is whether to consent to the transfer to the new developer from the old developer and the criteria used for that is whether they have the ability to assume those obligations. They are providing this in the form of a letter of credit and Council can vote to approve this based on her approval of the irrevocable letter of credit as to form. She then reviewed with Council the process she and staff took in reviewing the contracts and how to proceed to determine a method which was later decided to be the irrevocable letter of credit.

Councilmember Weber commented it being hard to vote on an issue when things are coming in late. Mayor Benson stated those items were inadvertently left out of the packet and it was not intentional.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Taylor to adopt Resolution No. 15-1061, regarding consent to assignment of certain water supply agreements, subject to the City Attorney's approval of the final version of the irrevocable letter of credit as to form.

Councilmember Morgan stated not having very much time to look at this deeply, however she googled Crown Community Development and lawsuits and found a Better Business

alert from South Carolina. She further stated needing more time to look this over so she could represent the citizens of Black Diamond knowing what she is doing is what she thinks she is doing as it's not a matter of not trusting staff she just needs to be sure in order to cast her vote.

Mr. Williamson responded that staff is not allowed to be arbitrary and capricious and is charged with looking at the facts. He discussed being charged with looking at whether or not they could provide the financial assurances to the City which came in the form of the letter of credit.

Vote: Motion **passed** (3-2, Morgan, Weber).

Resolution No. 15-1062, confirmation of assignment of MPD Funding Agreement

Mr. Williamson discussed the material provided in the packet and noted that the Master Developer BD Village Partners and BD Lawson Partners are assigning its rights and obligations under the MPD Funding Agreement to Crown Community Development. He noted the City currently holds a Letter of Credit from Seattle Bank and this will remain in place as this process have been on-going for many years.

A **motion** was made by Councilmember Deady and seconded by Councilmember Taylor to adopt Resolution No. 15-1062, regarding confirmation of assignment of MPD Funding Agreement. Motion passed with all voting in favor (5-0).

DEPARTMENT REPORTS: None

MAYOR'S REPORT:

Mayor Benson reported attending Shop with a Cop at the Walmart in Covington, Home Town Christmas, SCA Caucus, SCATBd meeting where the discussion was on WSDOT's six year plan, the Finance, Public Safety, and Planning and Community Services Committee meetings.

COUNCIL REPORTS:

Councilmember Deady reported serving Christmas lunch at the Community Center, attending the SCA Caucus, SCATBd meeting and the Home Town Christmas.

Councilmember Morgan reported attending with Pat Pepper an economic development conference at Microsoft. She commented that what is holding back the Seattle-Tacoma area is traffic and education.

Councilmember Edelman reported attending the Public Information Committee meeting, Staff Appreciation dinner, Planning and Community Services Committee meeting to discuss Comp Plan updates, Home Town Christmas, SCA Caucus, and the Chamber Luncheon. She

gave a big shout out to Mire Hoke and Melissa Olgabee for all their hard work on the Home Town Christmas and wished Councilmember Taylor well.

Councilmember Weber – no report.

Councilmember Taylor reminded Council that the Fire Ad Hoc Committee resolution names himself and Councilmember Deady as members and the need for this to be addressed soon. He also commented on this being his last meeting and read his parting address in to the record which is attached and incorporated into the minutes.

ATTORNEY REPORT:

City Attorney Morris discussed providing training with the newly elected Councilmembers. Mayor Benson suggested holding this training on January 7 for the two newly elected members.

PUBLIC COMMENTS:

Mira Hoke, Black Diamond commented on the success of the Home Town Christmas held in Black Diamond in December. She noted other events and festivals that take place in the City and how they speak to the spirit of our community. She also encouraged folks to please consider volunteering at these events.

EXECUTIVE SESSION:

At 8:50:52 p.m. Mayor Benson announced that Council would be going in to executive session to discuss with Legal Counsel (Susan Drummond) potential litigation pursuant to RCW 42.30.110(1)(i). The executive session was anticipated to last 20 minutes with no final action to follow.


The meeting was called back to order at 9:10:04 p.m.

ADJOURNMENT:

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

Meeting ended at 9:10:06 p.m.

ATTEST:



Carol Benson, Mayor



Brenda L. Martinez, City Clerk