

BLACK DIAMOND CITY COUNCIL MINUTES

February 18, 2016

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 led us all in the Flag Salute.

ROLL CALL:

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

ABSENT: None

Staff present: Andrew Williamson, MDRT/Economic Development; Jamey Kiblinger, Police Chief; and Brenda L. Martinez, City Clerk.

APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS: None

CONSENT AGENDA:

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

- 1) **Claim Checks** - February 18, 2016 - No. 43187 through No.43228 and EFTs in the amount of \$212,310.55
- 2) **Payroll** – January 30, 2016, No. 18757 through No. 18777 and ACH payment in the amount of \$261,230.02
- 3) **Minutes** – Council Meeting of January 7, 2016 and Council Meeting of February 4, 2016

PUBLIC COMMENTS:

Roger Neal, AWC RMSA Program Manager welcomed the City of Black Diamond to the insurance pool. He discussed not thinking of the pool as an insurance agency but rather as a resource. He further discussed the types of issues and questions he receives from other cities. He noted reading the last minutes and discussed the difference between government structures. He distributed to Councilmembers copies of the Mayor and Councilmember Handbook.

Robbin Taylor, Black Diamond read her written comments in to the record which are attached and incorporated into the minutes.

Carol Lynn Harp, Black Diamond commented on the weight restrictions being posted and wondered if garbage trucks would be allowed to pick up garbage. Mayor Benson let her know this would not affect garbage service for customers.

PUBLIC HEARINGS: None

UNFINISHED BUSINESS: None

NEW BUSINESS:

Resolution No. 16-1076, confirming the Mayor's appointment to the Planning Commission Position #1, first reading

Councilmember Pepper noted this being the first reading of this resolution. She also noted that Mayor Pro-Tem Morgan has referred this item to the Growth Management, Land Use, and Community Services Council Committee.

There was discussion among Councilmembers of why this item was being referred to committee.

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan to refer Resolution No. 16-1076 to the Growth Management, Land Use, and Community Services Council Committee meeting on February 24, 2016. Motion **passed** (3-2, Edelman, Deady).

Resolution No. 16-1077, confirming the Mayor's appointment to the Planning Commission Position #2, first reading

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Weber to refer Resolution No. 16-1077 to the Growth Management, Land Use, and Community Services Council Committee meeting on February 24, 2016. Motion **passed** (3-2, Edelman, Deady).

Resolution No. 16-1078, confirming the Mayor's appointment to the Planning Commission Position #5, first reading

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Weber to refer Resolution No. 16-1078 to the Growth Management, Land Use, and Community Services Council Committee meeting on February 24, 2016. Motion **passed** (3-2, Edelman, Deady).

Resolution No. 16-1079, confirming the Mayor's appointment to the Civil Service Commission Position #3, first reading

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan to refer Resolution No. 16-1078 to the Government Operations and Administration Council Committee meeting on February 25, 2016. Motion **passed** (3-2, Edelman, Deady).

DEPARTMENT REPORTS: None

MAYOR'S REPORT:

Mayor Benson reported attending the SCATBd meeting and discussed delivering a State of the City PowerPoint presentation at the Chamber luncheon.

COUNCIL REPORTS:

Councilmember Deady reported attending the Domestic Violence meeting, joint Council/Planning Commission special meeting. She also discussed meeting with Roger Neal at the gym to do an inspection. She thanked the Public Works crew for getting the weight limit signs up on the city streets.

Councilmember Morgan reported attending the joint Council/Planning Commission special meeting and the WRIA watershed forum meeting. She discussed her work on language regarding the natural environment goals in the comprehensive plan.

Councilmember Edelman reported attending the Domestic Violence meeting, joint Council/Planning Commission special meeting. She also gave an update on the Public Issues Committee meeting she attended.

Councilmember Weber reported attending the joint Council/Planning Commission special meeting, two Budget/Finance/Administration Committee meetings, and a Government Operations and Administration Committee meeting. He encouraged citizens to participate in the online survey regarding the Comprehensive Plan update.

Councilmember Pepper reported attending the joint Council/Planning Commission special meeting and also attending committee meetings. She discussed researching laws, best practices and listening to the public. In closing she thanked everyone for coming out to the meeting.

ATTORNEY REPORT: None

PUBLIC COMMENTS:

Bob Edelman, Black Diamond read his written comments into the record which are attached and incorporated into the minutes. He also distributed to all Councilmembers a draft copy of a complaint for declaratory judgment he intends to file with King County Superior Court regarding the Council Rules that were adopted at the January 21, 2016 Council meeting.

Robbin Taylor, Black Diamond read her written comments into the record which are attached and incorporated into the minutes.

Gary Davis, Black Diamond commented that he has resigned his position on the Black Diamond Planning Commission effective March 31, 2016 and wanted to make sure that this doesn't fall through the cracks and is noticed.

Kristen Bryant, Bellevue discussed the Planning Commission appointment process under Mayor Gordon's term. She applauded the new Council for having a new process and read excerpts from RCW 35A.

EXECUTIVE SESSION:

At 8:00:41 p.m. Mayor Benson announced an executive session pursuant to RCW 42.30.140(4) to discuss collective bargaining. She stated the executive session is anticipated to last 30 minutes and no final action will be taken following the session.


The meeting was called back to order 8:30:06 p.m.

ADJOURNMENT:

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

Meeting ended at 8:30:06 p.m.

ATTEST:



Carol Benson, Mayor



Brenda L. Martinez, City Clerk

Comments by Robbin Taylor 2-18-2016

1st Comment Period

The Planning Commission Appointments will be referred to Committee this evening. There were four applications for three vacancies, of which one was withdrawn. Why does this have to go to Committee? Three vacancies and three applicants, not exactly much choice or decision making involved. The City was probably doing well to get an applicant for each vacancy. The Comprehensive Plan Update has just started and it is highly involved. The new Commissioners will need all the time they can get to acquaint themselves with not only the process, but the Comp Plan itself. If you send these to Committee you will be taking away two weeks of much needed education time, and instead allowing the new Commissioners only five days, and to what end? Sending these appointments to Committee does the City a great disservice. These appointments need to be made tonight so the new Commissioners can be ready to move forward at the next Planning Commission meeting.

At the February 11th Gov't Operations Committee meeting Brian Derdowski stated that he wrote the Council Rules. He said it was at the direction of Councilmembers Morgan and Pepper. This is absolutely no surprise to me, as Mr Derdowski has been looking for inroads so he can rewrite our Council Rules for years. Hence forth I shall be referencing these Rules as the "Derdowski Rules and Procedures"

At the Feb 4th Council meeting Councilmember Pepper assigned the Stormwater Grant Resolution 16-1074 to the Growth Management Committee. Two issues here:

1. Section 9.1 of the Derdowski Rules and Procedures state that the Mayor Pro Tempore shall assign all Ordinances and Resolutions to the appropriate Standing Committee. Councilmember Pepper was out of line to do so.
2. The Stormwater Grant Resolution 16-1074 should have been assigned to the Gov't Operations Committee as Stormwater is within the scope of issues reviewed by this Committee

Also at the Gov't Operations Committee meeting a member of Save Black Diamond made several suggested changes to the Derdowski Rules and Procedures, two of which are highly significant and will most likely take place since a Save Black Diamond member made the suggestion:

1. Do away with the work study on the second Thursday of the month
2. Create yet another position of power on the Council by instituting a Council Vice-President

I suggest to the Council majority to maintain the regularly scheduled Work Study so the five members of the Council have an opportunity to work together. It is not healthy governance to have only three of the five elected Councilmembers doing everything. Also, if the new majority insists on amending Derdowski's Rules and Procedures to include a Council Vice-President, then you will have a Council hierarchy with three Members holding special powers over and above the other two EQUALLY elected Members. You end up with a two-tier Council, and in reality a Council with only three seats. This is not healthy governance.

Two weeks ago, I sent a note to Councilmembers Morgan, Pepper, and Weber in which I discussed their implementation of new Council Rules. As we know, Brian Derdowski and Save Black Diamond were behind these actions.

I discussed in my note that when the Council was considering the revised rules, the City Attorney warned that they were illegal – that actions under the new rules could subject Council Members and their families to personal liability for adverse impacts. The City’s insurance carrier also warned that there would be a “good chance” that suits arising from illegal rules would fall under the exclusion clause of the City’s Coverage Agreement.

I ended my note with the following:

“I am concerned that Janie and I might need to defend ourselves against a lawsuit brought about by your illegal actions. If you continue down this road then I may find it necessary to seek a judicial remedy to prevent illegal rules from being implemented.”

There have been numerous events which show the Save Black Diamond Councilmembers will disrupt City government through the new rules, to what ends I can only speculate. Here are some examples:

1. The three requested that the planned Work Study Council Meeting with the insurance carrier be cancelled. This Work Study would have been a good opportunity for the Council to explore the City’s Coverage Agreement in depth. Cancellation of this meeting by the three can only be an act of willful ignorance.
2. The City is late in updating the Comprehensive Plan. The plan must be completed to prevent any negative consequences, such as elimination of state grants for failure to comply with the Growth Management Act. A joint meeting was scheduled with the Council and Planning Commission to discuss the update. The three City Councilmembers cancelled this joint meeting. The Planning Commission held the meeting anyway to continue the work plan.

Councilmember Weber was on a business trip but Councilmembers Morgan and Pepper actually showed up at the meeting. They arrived early thereby keeping any other Councilmember from attending since the participation of another Councilmember would have constituted a Council quorum meeting without proper notice.

3. The February 11 Government Operations Committee meeting included an agenda item to initiate review of the new Council rules. Brian Derdowski gave a lengthy presentation, speaking on behalf of the Committee. He and Councilmember Morgan made it clear that the new rules were their product and that he was at the meeting to tell the public what they meant. There was no discussion of the numerous changes proposed by the insurance carrier. There were questions and comments from the audience, to which Mr. Derdowski wouldn't or couldn't respond. As an example, I asked why a rule on closing debate had been changed. The old rule required a vote by all of the Councilmembers present minus one to close debate. That rule was consistent with Robert's Rules, which requires greater than a two-thirds majority to close debate to protect the rights of the minority. The change allowed a simple majority to close debate on a motion and prevent the minority from making any further comments. This gives the Save Black Diamond Councilmembers absolute control over debate.

Mr. Derdowski was later told by Councilmember Morgan that he should respond in writing rather than at the meeting. I don't know when, if ever, we will see responses or if he will ever respond to the insurance carrier comments.

4. A resolution for an agreement with the Department of Ecology for a routine stormwater capacity grant of \$50,000 was introduced at the February 4th Regular Council Meeting. Councilmember Morgan sent the resolution to committee for review even though the resolution had been available well in

advance of the Council Meeting for review by all five Councilmembers. The chair of the committee, Councilmember Pepper, sent a request for additional information about stormwater projects and prior related grants to the Mayor at 6:35 PM the night before her February 10 committee meeting. The Mayor responded on February 10 that the requested information would be sent the following day. Councilmembers Pepper and Weber chose to take no action, and implied that it was the Mayor's fault for not replying immediately to their last minute request. The resolution continues to be locked up in committee.

5. Finally, you are delaying the appointment of new Planning Commission members even though you had the wherewithal to make those decisions tonight. I don't know what you hope to accomplish. I hope you don't intend to discuss the pros and cons of each candidate in an open committee meeting.

It appears that the only way to resolve the attempt by the Save Black Diamond group of Councilmembers to take over City government is through the legal action that I spoke of before. I have prepared a complaint, which I intend to file with Superior Court, probably within a week. It's a plea for a declaratory judgment, intended to settle the legal questions. I hope that this course of action will settle the controversy.

Comments by Robbin Taylor 2-18-2016

2nd Comment Period

Minutes of Council Meetings are wonderful tools for the Public. Finally, the packet material for the last meeting in February holds the documents the new Council majority tried to ram through during the first meeting in January. This is the FIRST time any of the Public has had the opportunity to see just what this new transparent and open Council tried to do six weeks ago.

At the Jan 21st meeting Councilmember Morgan read a statement regarding the Resolution to change Council Rules. "These Rule changes appear before the Council in this form that sadly has not had the review I described was the concept at the Jan 7th meeting. The reason for this is because City officials were trying to rush the process I described and demanded product prematurely. That behavior on the part of the Mayor and Attorney has resulted in an imperfect product."

While it may be handy to blame the Mayor and the Attorney for an "imperfect product", right in your desired amendments to the Council Rules you stated that the amended Rules would be presented at the next regular Council meeting.

"The Mayor Pro-Tempore, with another Councilmember of his/her selection, is requested to propose an amended 'Rules of Procedure of the City Council of the City of Black Diamond, Washington' at the next Regular Meeting of the City Council." The "next Regular Meeting" was the Jan 21st meeting where you proceeded to blame the Mayor and Attorney for rushing your process and this gave you an "imperfect product".

I will restate this plainly so there is no misunderstanding. Your own amendment, which you tried to ram through on Jan 7th, stated you would bring back amended Rules on Jan 21st. Then on the 21st you blame the Mayor and Attorney for YOUR "imperfect product". I will also note that there is absolutely NOTHING in your proposed amendment that called for public review of the Rules prior to the next meeting on the 21st.

Lastly, the new majority has stated over and over that their purpose for holding Committee meetings in the evening is to increase Public participation. Holding a Committee meeting on a Legal Holiday does not square with that often vocalized ideal. By holding the Budget Committee meeting on Feb 15th you have shown again that what you say is different from what you do. What about the rotating Legal Holidays such as July 4th, Christmas or New Years? There are no issues that will come before any of your Committees which will be so urgent that the meetings cannot be rescheduled to the evening of the following business day. In fact, many three day holidays include Monday, so perhaps moving the Budget Committee to a different day of the week may actually be best, if you truly want increased Public participation.