

# BLACK DIAMOND CITY COUNCIL MINUTES

June 16, 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 were: Andrew Williamson, MDRT/Economic Development; Scott Hanis, Capital Project/Program Manager; Jamey Kiblinger, Police Chief; Natalie Oosterhof, Accounts Payable Clerk, Kevin Esping, Facilities Coordinator; Barbara Kincaid, Community Development Director; Dan Dal Santo, Utility Superintendent; David Linehan, City Attorney (entered meeting at 7:12 pm) Brenda L. Martinez, City Clerk.

## APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS:

Mayor Benson read a prepared statement.

Councilmember Pepper commented that an attorney has come to address the specific item related to Council rules and legal services tonight.

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan that Council hold a ten minute executive session with the Attorney from Talmadge & Fitzpatrick.

Mayor Benson noted that we need to wait until City Attorney Linehan arrives and suggested to move on to the next items on the agenda.

## CONSENT AGENDA:

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

1) **Claim Checks** – June 17, 2016 - No. 43605 through No.43654 (voids No. 43644-43648) and EFTs in the amount of \$133,559.63

## **PUBLIC COMMENTS:**

Brian Derdowski, Bellevue spoke to Council.

Bob Edelman, Black Diamond spoke to Council.

Judy Carrier, Auburn spoke to Council.

City Attorney Linehan entered the meeting at 7:12 pm

Robbin Taylor, Black Diamond spoke to Council.

## **EXECUTIVE SESSION:**

Mayor Benson stated there is a **motion** and a **second** on the floor to go into executive session for ten minutes with the attorney from Talmadge & Fitzpatrick.

There was Council discussion regarding the purpose of the executive session.

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan to waive the Attorney Client Privilege on the memos and because we are bound by the open public meetings and public records requirements that Attorney Talmadge further address the key points of those memos following the executive session.

Council discussion regarding the purpose of the executive session continued.

**Vote:** Motion to hold the executive session **passed** 4-1 (Deady).

It was noted the discussion with Attorney Phil Talmadge will be on items his firm was hired to give an opinion on. Councilmember Morgan stated the executive session will be under RCW 42.30.110(1)(i) and will last 10 ten minutes with possible action to follow.

Councilmember Weber called point of order stating Mr. Edelman is out of order.

Councilmember Deady asked for an amendment to the motion to release the Carol Morris memo so that everything is being released.

At 7:24 p.m. Mayor Benson announced an executive session as authorized under RCW 42.30.110(1)(i) to discuss with legal counsel potential litigation. Two fifteen minute extensions were announced.

Mayor Benson called the meeting back to order at 8:04 p.m.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to also waive privilege on the Carol Morris privileged memo that came out so that everything will be transparent, and you can see the January 19 memo and the Talmadge memo. Motion **passed** with all voting in favor (5-0).

**Vote:** Motion regarding waiving the attorney client privilege on the Talmadge memos **passed** (5-0).

Attorney Phil Talmadge gave a brief background of himself and his partner. He noted with their experience he comes with expertise on the issues he was contracted to provide an opinion on by the City Council. He discussed history of Black Diamond and the code the City operates under. He discussed his opinions in the memo his firm prepared which is attached and incorporated into the minutes.

There was Council discussion around this.

Councilmembers Weber and Pepper thanked Mr. Talmadge for coming out tonight.

## **PUBLIC HEARINGS:**

### **2) AB16-034A- Continuation 2017-2022 Six Year Transportation Improvement Plan**

Mr. Hanis noted the public hearing was left open from the last meeting. He highlighted the changes that were made since the last meeting.

There was Council discussion around this.

Mayor Benson opened the public hearing at 8:37 p.m.

Brian Derdowski, Bellevue discussed his suggestion from the last hearing regarding relating this plan to the development agreement and he believes staff should put together a document that matches up. He further discussed the deadline for submitting this plan and noted it being a soft deadline and many jurisdictions do not meet this deadline as they want to get it right. He also noted there is time for the Growth Management Committee to discuss this plan as it needs to match the development agreement.

Councilmember Weber noted that he would like the public hearing left open for a few more weeks until we get answers back from Mr. Boettcher.

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan to move this item to the Growth Management Committee. (no vote was taken)

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to close the public hearing. (no vote was taken)

Mayor Benson noted that a motion is not needed to hold the public hearing open she just needs consensus. A majority of the Council agreed they would like this public hearing left open. Mayor Benson announced the majority rules and the public hearing will be left open until the next regular Council meeting.

## **UNFINISHED BUSINESS:**

### **3) AB16-026B-Resolution Approving an Agreement with DKS Associates**

Attorney Linehan discussed his reading of code is if Council denies a payment that has been paid out of City funds, the City has an obligation to go back and try to recover the dollars. He does think there is some concern that DKS may feel they provided work they have not been compensated for and would be willing to discuss this further in executive session under potential litigation.

Community Development Director Kincaid asked for Council's consideration to approve a services agreement with DKS for the transportation element of the Comprehensive Plan update. She noted it would be beneficial to have DKS complete the work they have started and it makes sense to have them continue.

There was Council discussion on this item.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to adopt the resolution authorizing the Mayor to sign a professional services agreement with DKS associates.

It was noted this was with the additional \$10,000 dollars due to the City invoicing the vendor for that past voucher of \$10,000.

**Roll call vote:** Councilmember Deady voted aye, Councilmember Morgan voted no, Councilmember Edelman voted aye, Councilmember Weber voted no, Councilmember Pepper voted no. Motion **failed** 2-3 (Weber, Morgan, Pepper).

Councilmember Edelman called point of order for Councilmember Pepper.

### **4) AB16-031A-Resolution Authorizing an Interlocal Agreement (ILA) with City of Maple Valley for Building Inspection Services**

Community Development Director Kincaid reported she would like Council to adopt an ILA with Maple Valley to provide building inspection services for Black Diamond. She noted the ILA between Covington and Maple Valley was terminated and noted the Maple Valley Inspectors being a good fit for Black Diamond and this contract would be for two years.

There was Council discussion on this item.

Councilmember Deady suggested going into executive session to discuss the personnel issue surrounding the terminated Interlocal Agreement. There was Council consensus to do this.

At 9:07 p.m. Mayor Benson announced an executive session as allowed under RCW 42.30.110(1)(g) to discuss a personnel issue. The executive session was anticipated to last ten (10) minutes with possible action to follow. A five minute extension was announced.

Mayor Benson called meeting back to order at 9:23 p.m.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to adopt a Resolution authorizing the Mayor to execute an Interlocal Agreement with the City of Maple Valley for building inspections services. Motion **passed** 4-1 (Pepper).

**5) AB16-032A-Resolution Awarding Jones Lake Overlay Project to Lakeridge Paving Co., LLC**

Mr. Hanis reported the Jones Lake Overlay Project was identified on the TIP and staff went out to bid and the low bid was from Lakeridge Paving. He noted there is an urgency as the bid is up next week and if not acted upon this project will not happen this summer as planned. He commented that staff is asking for contingency funds as noted in the agenda bill.

There was Council and staff discussion on this item.

A **motion** was made by Councilmember Deady and **seconded** by Councilmember Edelman to adopt a resolution authorizing the Mayor to execute a \$77,415.20 contract with Lakeridge Paving Company, LLC for the Jones Lake Road Overlay Project and authorizing a \$52,000 contingency fund for the construction of this project. Motion **passed** 4-1 (Pepper).

**7) AB16-029A-Resolution Authorizing a Water Quality Grant Agreement with King County for the North Commercial Stormwater Treatment Facility Project**

Mr. Hanis reported this project was a priority several years ago and staff was able to secure a Water Quality Improvement Project Grant to help fund the project from King County. He noted staff would like to start on the project next year. It was also noted that Public Works will continue to apply for funding for the remaining funds to complete this project.

Question and answers ensued between Council and staff regarding the project.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to adopt a resolution authorizing the Mayor to execute a Water Quality Improvement Project Grant Agreement with King County for the North Commercial and SR 169 Stormwater Treatment Facility Project. Motion **passed** 3-2 (Pepper, Morgan).

Mayor Benson stated she missed the below item on the agenda and asked Mr. Hanis to address it.

**6) AB16-028A- Resolution Authorizing a Conservation Grant Agreement with Puget Sound Energy (PSE) for the LED Streetlight Conversion Project**

Mr. Hanis gave background information on the project and discussed the funding. He explained how this project will provide a cost savings for the City in the future. He noted receiving a phone call from PSE asking for a status report as they are ready to close out this project due to the work being completed.

Question and answers ensued between Council and staff regarding the project.

A **motion** was made by Councilmember Deady and **seconded** by Councilmember Edelman to adopt a Resolution authorizing the Mayor to execute a Conservation Grant Agreement with Puget Sound Energy for the LED Streetlight Conversion Project. Motion **passed** 3-2 (Pepper, Weber).

**8) AB16-030A-Resolution Confirming Mayor's Appointment to the Planning Commission Position #7**

Mayor Benson noted this confirmation was referred to committee on May 5 and at the last three meetings there was not a quorum of the Council so no action has happened.

There was Council discussion regarding this item and the candidate interview at the Committee meeting.

A **motion** was made by Councilmember Deady and **seconded** by Councilmember Edelman to adopt a Resolution authorizing the Mayor's Planning Commission appointment of Jason Seth to the Black Diamond Planning Commission Position #7. Motion **failed** 2-3 (Morgan, Weber, Pepper).

**9) AB16-033A- Resolution Approving a Professional Services Contract with Parametrix, Inc. for Design of Covington Creek Culvert Replacement**

Mr. Hanis discussed with Council the project and noted the project will replace the three aging culverts where Lake Sawyer outlets to Covington Creek under 224<sup>th</sup> Ave SE. He noted this grant expires at the end of the year and the design work needs to be completed.

There was Council discussion on this item.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to adopt a resolution authorizing the Mayor to execute a Professional Services Agreement with Parametrix, Inc. for the design of the Covington Creek Culvert Replacement Project. Motion **passed** 3-2 (Pepper, Morgan).

## **NEW BUSINESS:**

### **10) AB16-016B-Resolution Accepting Dept. of Ecology Grant for 2015 –2017 Stormwater Capacity Grant**

A **motion** was made by Councilmember Weber and **seconded** by Councilmember Pepper to postpone this item to the next regular Council meeting (July 7). Motion **passed** 3-2 (Deady, Edelman).

### **11) AB16-021B-Resolution Confirming Mayor's Appointment to Civil Service Commission**

Mayor Benson noted this has been on the agenda since February 18 when it was referred to Committee.

There was Council discussion on this.

A **motion** was made by Councilmember Weber and **seconded** by Councilmember Edelman to postpone confirmation of the Mayor's Civil Service appointment until the July 7 regular scheduled meeting with the caveat that the City Attorney to have a legal opinion. Motion **passed** with all voting in favor (5-0).

### **12) AB16-024C-Resolution Authorizing an Agreement with BHC for Building Services**

Ms. Kincaid noted this piece of legislation is to get the City's building department back on track. She noted Mr. Hill from BHC is working under a contract with the Mayor's limited authority.

There was Council discussion and staff noted this will be a two year agreement.

A **motion** was made by Councilmember Deady and **seconded** by Councilmember Edelman to adopt a resolution authorizing the Mayor to execute a Professional Service Agreement with BHC Consultants, LLC for building services. Motion **passed** 4-1 (Pepper).

### **13) AB16-035-Resolution Accepting the Downtown Watermain Project**

Mr. Hanis reported on this project. He discussed the project is complete as of May 19. He noted to close out this project it takes formal action from the Council to accept it. He noted staff being happy with the project and the work done by the vendor. He noted after 45 days and after release is received from the state departments (DOR, L&I, and ESD), the City may release retainage to Iversen and Sons, Inc.

There was Council discussion on this item.

Councilmember Pepper noted she would like to see this referred to the Growth Management Committee.

A **motion** was made by Councilmember Deady and **seconded** by Councilmember Edelman to adopt a resolution accepting the Downtown AC Watermain Replacement and Looping Project by Iversen & Sons, Inc. according to the contract documents. Motion **passed** 3-2 (Pepper, Morgan).

#### **14) AB16-036-Resolution Accepting 5<sup>th</sup> Avenue Road Repairs Project**

Mr. Hanis reported this was a small project on 5<sup>th</sup> avenue that tied into improvements completed by the developer for frontage improvements. He noted after the 45 days, the City may release retainage to Johansen Excavating, Inc. He also noted the City does not need to receive a release from State agencies since this project was less than \$35,000; the City just needs to officially accept this project.

There was Council and staff discussion on this.

A **motion** was made by Councilmember Deady and **seconded** by Councilmember Edelman to adopt a resolution accepting the Fifth Avenue Road Repairs Project by Johansen Excavating Inc. according to the contract documents. Motion **passed** 3-2 (Pepper, Morgan).

#### **15) AB16-037-Resolution Approving Legal Services Contract with Kenyon Disend, PLLC**

Mayor Benson discussed the interview process. She noted Kenyon Disend having extensive municipal experience and can handle all issues of the City. Mr. Linehan noted their firm only represents cities and does not represent developers as it creates a conflict.

There was Council discussion on this with Mr. Linehan and also discussion on the other applicant qualifications.

A **motion** was made by Councilmember Deady and **seconded** by Councilmember Edelman to adopt a resolution authorizing the Mayor to execute a Legal Service Agreement with Kenyon Disend, PLLC. Motion **failed** 2-3 (Pepper, Morgan, Weber).

#### **16) AB16-038-Resolution Regarding Labor Policy and Grievance Review**

Councilmember Morgan addressed this item and noted this item is not ready and she noted discussion would be from the new appointed attorney and from labor attorney specialists and suggests we postpone until there is a government ops meeting.

Mayor Benson stated you have to have a date certain.

Councilmember Morgan then stated that this will be brought up at the next Council meeting.



A **motion** was made by Councilmember Morgan and **seconded** by Councilmember Weber to postpone this until the next Council meeting. Motion **passed** with all voting in favor (5-0).

#### **17) AB16-039-Resolution Regarding Mediation**

Councilmember Morgan addressed this item with Council.

Mayor Benson stated this is a free service from our insurance carrier (AWC RMSA). Councilmember Morgan stated she has the floor.

Councilmember Morgan continued addressing this item and there was Council discussion.

A **motion** was made by Councilmember Morgan and **seconded** by Councilmember Weber for her to do some more investigation and postpone to July 7.

Councilmember Pepper stated this should be assigned to the Budget and Finance Committee.

**VOTE:** Motion **passed** with all voting in favor (5-0).

#### **18) AB16-040-Resolution Revising Council Rules of Procedure**

Councilmember Morgan stated she would like to waive the normal rules so we can adopt these rule changes that were advised by the Talmadge memo. She noted the Council Rules being a living document and will probably have revisions in the future. She also noted the eight revisions suggested which are mostly about clarifying language and making things more specific.

There was Council discussion on this.

Councilmember Edelman stated she has the floor and noted she sees thirteen revisions.

Council discussion continues on this item and scheduling a work session.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to have a workstudy on the Council Rules on July 14 commencing at 6 p.m. Motion **passed** with all voting in favor (5-0).

Councilmember Pepper **moved** to amend the agenda with a resolution regarding legal services contract. This resolution accepts the firm Vancil Law to provide legal services. She further stated she served on the interview committee and was impressed with Mr. Vancil's energy and fresh perspective. She continued to read a prepared statement. Councilmember Morgan **seconded** the motion to amend the agenda.

There was Council discussion on this.

Councilmember Weber called point of order for keeping the audience in order.

Council discussion continued on the contract.

**Vote:** Motion **passed** 3-2 (Deady, Edelman).

**19) AB16-041-Resolution Regarding Interlocal Agreement with City of Maple Valley and Covington for Building Inspection Services**

A **motion** was made by Councilmember Morgan and **seconded** by Councilmember Pepper to withdraw item #19 from the agenda. Motion **passed** with all voting in favor (5-0).

Councilmember Edelman proposed suspending going through Mayor's Report and Council Report's considering it is 11:20 p.m. and adjourn the meeting after the Public Comments.

Councilmembers stated there is no motion on the floor regarding the attorney contract.

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan to hire the lawyer Vancil Law Firm.

Councilmember Pepper appealed the decision to the chair.

Council discussion continued on the above motion.

**Vote:** Motion **failed** 2-3 (Deady, Morgan, Edelman).

**DEPARTMENT REPORTS: None**

**MAYOR'S REPORT: None**

**COUNCIL REPORTS: None**

**ATTORNEY REPORT: None**

**PUBLIC COMMENTS:**

Robbin Taylor, Black Diamond spoke to the Council.

Daryl Bus, Black Diamond spoke to the Council.

Bob Edelman, Black Diamond spoke to the Council.

**EXECUTIVE SESSION: None**

**ADJOURNMENT:**

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

The meeting adjourned at 11:36 p.m.

ATTEST:

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Carol Benson, Mayor

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Brenda L. Martinez, City Clerk