

BLACK DIAMOND CITY COUNCIL MINUTES
Council Meeting of September 17, 2020
Virtual Meeting Via Zoom

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, Oglesbee, Wisnoski, Stout, de Leon, and Paige.

ABSENT: None

Staff present: Barb Kincaid, Community Development Director; Jamey Kiblinger, Police Chief; David Linehan, City Attorney; Seth Boettcher, Public Works Director; and Brenda L. Martinez, City Clerk/HR Manager.

AGENDA REVIEW AND APPROVAL:

Councilmember Deady **moved** to adopt the agenda; **second** Councilmember Oglesbee. Motion **passed** with all voting in favor (6-0).

APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS:

1) Council Position #6 Interviews with Applicants

Mayor Benson recapped the process for the appointment to this position and announced the order for the interviews.

- Bernie O'Donnell
- Ben Singleton
- Tony Moss
- Briana Durham
- Chad Hoffman

Councilmembers asked each candidate a set of prepared questions. The last candidate Chad Hoffman was not present during the meeting and therefore was not interviewed.

CONSENT AGENDA:

Councilmember Deady **moved** to adopt the Consent Agenda; **second** Councilmember Wisnoski. Motion **passed** with all voting in favor (6-0). The Consent Agenda was approved as follows:

- 2) **Claim Checks** – September 17, 2020 Check No. 49136 through 49180 (void 49069) and EFTs in the amount of \$531,898.08
- 3) **Payroll** – August 31, 2020 Check No. 19999 through 20006 and ACHs in the amount of \$334,395.82
- 4) **Minutes** – Council Meeting of September 3, 2020

PUBLIC COMMENTS:

Any written comments received are included with the minutes for this meeting.

PUBLIC HEARINGS:

- 5) **AB20-067** - Closed Record Appeal Hearing – CCD Black Diamond Partners, LLC

Mayor Benson opened the closed record appeal hearing at 8:28 p.m.

City Attorney Linehan discussed that this agenda item before Council is what is called a closed record appeal hearing of an appeal that was filed by a local property owner CCD Black Diamond Partners LLC and Council's role tonight in this closed record hearing is for Council to put on their quasi-judicial hat, which means Council will kind of be playing the same kind of role that a judge or hearing examiner would be playing. Rather than making legislative policy for the city, Council will be ruling on a specific request from a specific property owner on an appeal that they have brought before the Council as authorized by Black Diamond Municipal Code. He stated the general process here is that the Black Diamond Municipal Code makes at least one decision that relates to the TDR program a decision that only the Council can make. He explained that what Council is dealing with tonight relates to some actions that were taken a while ago regarding the sending areas that were designated by the Council as areas they didn't want to be densely developed. Council identified there were other parts of the City where they would concentrate on the development of the city and those areas were called receiving areas. He shared that the idea was through this TDR program, the sending areas could have the development rights stripped off and allocated to areas who are receiving sites, so you have additional density built there as opposed to the sending sites. After that program was created it was adopted as part of the development agreement, and the master planned development permits for Ten Trails and Lawson Hills. And the way it was incorporated was that under the development agreement was that in order to build out to the full maximum number of units they are allowed to build, they could only do that if they first acquired enough TDRs to make up the difference. Which means under the development agreement they are required to go after and acquire these development rights from sending sites so they can apply them to their receiving site in order to build out to the full capacity they are allowed. As part of the process of importing density from other parts of town so they can be used at Ten Trails, Oakpointe is in the process of acquiring the TDRs that we told them they had to go out and get. This appeal tonight relates to one of the TDR transactions they engaged in and purchased a development right certificate. That development right certificate related to a piece of property that is owned by the Kombol family or by one of its companies and is property that is near the intersection of 169 and Ravensdale Road. That property had a certain number of development rights that were assigned to it under the original development rights certificate issued by the City. After that development right certificate

was issued it was then transferred to Oakpointe as part of that TDR acquisition process. The appeal relates to the number of development rights that should be associated with that development right certificate that Oakpointe now owns. He then handed it over to Director Kincaid to discuss what the appeal is and what the staff report and recommendations is on how the Council should decide it.

Director Kincaid explained that in the packet provided to Council is the material received from Oakpointe requesting a new DRC, a survey and the staff report. Ms. Kincaid commented that as explained in the process for the Transfer of Development Right program, parcels in the established sending sites are issued a certain number of valid development rights that are associated to transfer from the sending area parcel and in 2017 the City issued a development rights certificate to William Kombol et al and the material presented to staff at that time showed it was a 3-acre parcel. She further explained that Code 19.24.030 states how development rights are calculated. The City issued a development rights certificate to Williams Kombol et al for 36 development rights. She stated that development rights certificate was sold to CCD Black Diamond Partners, LLC, and they requested the City to issue a new DRC as the survey that was presented was not accurate and explained in their packet why it should be reissued for 45 development rights and not 36. She discussed the way a person could ask for the DRC to be reassigned, however the time period for this action had passed and they only way to do this was through the closed record appeal. She discussed reviewing the material provided and does agree with the new survey that there is more land and when she did the calculation, she does agree a new DRC should be issued for the appropriate number of development rights for this parcel. She noted that the decision before Council tonight is whether or not Council agrees with staff's findings and conclusions based on the updated survey that is reflective of the acreage that is correct and to issue a new DRC to the new owner for the 45 developments instead of the 36. Ms. Kincaid also commented that Council is tasked during a closed record hearing to look at what is in front of them in the packet and that during a closed record hearing you hear from city staff and you also offer an opportunity for the appellant to speak to Council or answer questions. She stated a represented from Oakpointe's legal staff, Megan Nelson is present and shared Ms. Nelson has indicated she doesn't really need to speak tonight, but it here to answer questions.

City Attorney Linehan explained that at the end Council's consideration tonight we would ask for Council to make a decision. The hearing would be closed after Council has had all their questions answered and an opportunity to hear from anybody they want to hear from the closed record. He noted at the conclusion of the hearing there is a resolution under new business that resolution as drafted would per the staff's recommendation grant the appeal. He stated if Council's decision was to deny the appeal, the language of the resolution could be changed so it is consistent with the Council's decision.

Wisnoski stated from what he is hearing the initial survey said it was 3 acres and it is actually 3.75 upping the TDRs accordingly. Ms. Kincaid responded that is correct based on the record in front of Council.

Councilmember Stout asked about the expiration of the time for correcting the DRC and wondered if there were any ramifications for setting a precedent by changing this DRC. It makes sense to go ahead and change of the actual size of the property has been updated but noted there was a time limit.

City Attorney Linehan responded that the way code is drafted it assumes the original parcel owner issued the DRC would ask for the correction; code doesn't anticipate a situation like this, where the DRC has been years later sold to another party who did not have an opportunity to find an error or raise a need for a correction. Because of the transfer happening years after the issuance of the DRC, it was appropriate to interpret code to allow an appeal.

City Attorney Linehan pointed out that when the appellant filed the appeal the new survey submitted showed the 3.75 acres and to get some independent verification of that staff investigated the King County Assessor office records and found it was close.

Mayor Benson closed the hearing at 8:44 p.m.

UNFINISHED BUSINESS: None

NEW BUSINESS:

6) AB20-068 – Resolution Regarding Closed Record Appeal Hearing Decision

City Attorney Linehan reported to Council on this item.

Councilmember Wisnoski **moved** to adopt Resolution No. 20-1382 entering a final decision on an administrative appeal requesting a revision to the number of transferrable development rights available under DRC No. 09122017KOM01, for King County Parcel No. 11211069051; **second** Councilmember Deady. Motion **passed** with all voting in favor (6-0)

7) AB20-069 – Resolution Authorizing Agreement with King County for Morganville South Watermain Replacement Project

Public Works Director Boettcher brief Council on this item.

Councilmember de Leon **moved** to adopt Resolution No. 20-1383 authorizing the Mayor to execute a grant agreement with King County Department of Community and Human Services, Housing and Community Development Section of \$358,517 for the distribution and administration of Community Development Block Grant funds for the Morganville South Watermain Replacement Project; **second** Councilmember Wisnoski. Motion **passed** with all voting in favor (6-0).

DEPARTMENT REPORTS:

Fire – Chief Smith shared with Council that the new Deputy Chief will start on October 5 and will be introduced at the October 15 Council meeting. He commented that 12 volunteers at the academy, the Pierce plant visit is coming up for the pre-construction meeting and will give a report when they return, and two career firefighters are in the academy. He discussed a house fire and noted that everyone made it out okay due to having working smoke detector. He reported attending the 911 event at Lumber House, and that all crews are back from the wildfires. He mentioned that we should start to see improvement in air quality tomorrow, and it will be even better by Saturday. He advised that the burn ban is still on, including recreational fires, and will not re-open until some substantial rain comes. He thanked the Public Works Director for all the work to make improvements to the City’s water system.

MAYOR’S REPORT:

Mayor Benson reported meeting on the Integrated Aquatic Vegetation Management Plan; she discussed being notified by the Department of Commerce that the City will be receiving additional funding for the Cares COVID Grant and proposed giving the Black Diamond Community Center an additional \$35,000 to help residents with rent or utility bill assistance. She noted this additional money needs to be distributed by the end of November.

Action Item - Councilmember Stout **moved** to give the Black Diamond Community Center an additional \$35,000 to use for Coronavirus relief in our city; **second** Councilmember Wisnoski. Councilmember Deady noted she has stepped down from the Black Diamond Community Center Board as of Monday and will be voting on this item. Motion **passed** with all Councilmembers voting in favor (6-0).

COUNCIL REPORTS:

Councilmember Stout reported attending the Public Works Committee meeting and reviewing the water system plan and attending the Finance Committee meeting where consent agenda items were discussed. She also reported attending the work session where they established a committee of three councilmembers to put together a statement and hopes to have it ready soon. She attended the Sound Cities Association Public Information Committee meeting, and the 3rd Sound Cities Association series on racial equity and justice seminar;

Councilmember de Leon thanked all the candidates who put themselves out there and for taking the time in this process and noted being excited for what is to come to fill this position. She appreciates Chief Smith and all the first responders who keep our communities safe. She reported attending the Sound Cities Association racial equity and justice seminar. She highly encouraged residents to listen to the audio from last week’s work session as the city moves forward with an action from that session, and for citizens to get involved. She also reported attending committee meetings and appreciated the walk through on the water system.

Councilmember Paige - No report.

Councilmember Deady reported attending committee meetings and the Sound Cities Association series on racial equity and justice along with Mayor Benson. She thanked everyone for applying for the vacant position and for staying for the whole meeting. She discussed the issue of the gentlemen from Cascadia Paranormal Investigations who wants to go through the cemetery. She read the answers to the questions that Council had at the previous meeting. She noted being okay with them visiting the cemetery as it does give some attention to Black Diamond.

Action Item - Councilmember Deady **moved** to allow Cascadia Paranormal Investigations to conduct an investigation at the Black Diamond Cemetery on one of these dates, October 10, 17, or the 24th from 5 p.m. to 1 a.m. with the understanding they will contact the City Clerk and the Black Diamond Police Department on the day that they choose to proceed and identify which date they will be in the cemetery; **second** Councilmember Oglesbee. Motion **passed** with all Councilmembers voting in favor (6-0).

Councilmember Oglesbee reported attending work session and 911 celebration at Lumber House. She encouraged everyone to support local businesses and noted the Lumber House did a great job on the 911 event.

Councilmember Wisnoski thanked the candidates for going through the interview process. He reported Attending the Finance Committee meeting, work session on an inclusive statement and noted that it was a really good discussion and shared that he is reaching out to community groups for input. He reminded everyone to not forget it's September and to check smoke detectors and change batteries. He announced that Make a Difference Day is coming up on October 24 and commented on last year's event. He encouraged everyone to reach out to their local small businesses and patronize them.

ATTORNEY REPORT:

Attorney Linehan updated Council on the City Hall lease agreement with Mr. Sorci.

EXECUTIVE SESSION: None

ADJOURNMENT:

Councilmember Oglesbee **moved** to adjourn the meeting; **second** Councilmember Wisnoski. Motion **passed** with all voting in favor (6-0).

The meeting ended at 9:24 p.m.



Carol Benson, Mayor

ATTEST:



Brenda L. Martinez, City Clerk