

RESOLUTION NO. 11-737

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON CONCERNING THE MATTER OF TOWARD RESPONSIBLE DEVELOPMENT v. THE CITY OF BLACK DIAMOND, GROWTH MANAGEMENT HEARINGS BOARD CASE NO. 10-3-0014

WHEREAS, on November 17, 2010, a number of individuals and the group Toward Responsible Development ("TRD") filed a Petition for Review with the Central Puget Sound Growth Management Hearings Board ("Growth Board"), alleging that the City of Black Diamond's approval of Master Planned Development Permits in Ordinance Nos. 10-946 and 10-947 ("MPD Permit Ordinances") did not comply with various requirements of the Growth Management Act, Ch 36.70A RCW ("GMA"); and

WHEREAS, on January 11, 2011, the petitioners, the City of Black Diamond, and the MPD Permit applicants BD Villages Partners LP and BD Lawson Partners LP filed dispositive motions requesting that the Growth Board rule whether it did or did not have jurisdiction to review the MPD Permit Ordinances; and

WHEREAS, the petitioners' dispositive motion contained two additional requests, namely, that the Growth Board determine that the public process utilized by the City leading up to the adoption of the MPD Permit Ordinances did not comply with the GMA, and that the Growth Board invalidate the MPD Permit Ordinances; and

WHEREAS, on February 15, 2011, the Growth Board issued its Order on Motions, in which it ruled that the Board did have jurisdiction to review the MPD Permit Ordinances; and

WHEREAS, the Growth Board's Order on Motions also concluded that "the City did an accomplished, exceptional effort to involve the public through their quasi-judicial process related to MPDs" which included a multi-week public hearing before the Hearing Examiner and that "notice was given as to the MPDs beyond that required for Growth Management Act amendments," and

WHEREAS, notwithstanding the City's "accomplished, exceptional effort," the Growth Board nevertheless concluded that the City had not complied with GMA public participation requirements, because the MPD Permit Ordinances had not been the subject of a Planning Commission public hearing prior to their adoption by the City Council; and

WHEREAS, the Growth Board remanded the MPD Permit Ordinances to the City for compliance with the requirement for a Planning Commission public hearing and recommendation, pursuant to a schedule requiring compliance by April 29, 2011 and notification thereof to the Growth Board by May 6, 2011; and

WHEREAS, the Growth Board rejected the petitioners' request to invalidate the MPD Permit Ordinances; and

WHEREAS, the Growth Board's Order on Motions has been appealed by the Intervenors; and

WHEREAS, conducting a compliance process as contemplated by the Growth Board's Order on Motions will require additional expenditure of time and resources by the City, the project applicant, and Toward Responsible Development, all of which could be unnecessary and which could result in MPD Permits that differ from or conflict with the adopted MPD Permit Ordinances, should the Growth Board's Order on Motions be reversed on appeal;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. Appeal. The Board's Order on Motions has been appealed by the Intervenors. Accordingly, the City of Black Diamond will not file its own appeal of the Growth Board's Order on Motions and will limit its participation to responding to other appeals filed.

Section 2. Conservation of Public Resources. In order to avoid potentially unnecessary expenditure of time and resources, and to avoid the potential for conflicting results in the event that the Growth Board's Order is reversed, the City Council directs the City's attorneys to request that the Growth Board stay and/or extend the schedule for compliance set forth in the Order on Motions, so as to allow sufficient time for the City to consider and implement all steps necessary as a result of the outcome of any appeals of the Growth Board's Order on Motions.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 17TH DAY OF FEBRUARY, 2011.

CITY OF BLACK DIAMOND:



Rebecca Olness, Mayor

Attest:



Brenda L. Martinez, City Clerk