

## Rachel Pitzel

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**From:** Rebecca Olness  
**Sent:** Tuesday, July 12, 2011 2:32 PM  
**To:** Rachel Pitzel  
**Subject:** FW: Development Agreement hearings

-----Original Message-----

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]  
Sent: Tuesday, July 12, 2011 2:28 PM  
To: Steve Pilcher  
Cc: Rebecca Olness; Brenda Martinez; Stacey Borland  
Subject: RE: Development Agreement hearings

Please post this email.

It is a little surprising that we appear to be seeing less participation during the hearing than at the prehearing conference. As to why so many people have scheduled their presentations at the end of the week, one plausible reason is that they're simply maximizing the time they have to prepare. The hearings were scheduled just days after the reply briefs on the prehearing motions were due, giving people little time to incorporate the rulings on the motions into their presentation strategy. From the written materials I've received so far (especially those from the technical citizen's committee) and some of the testimony, it's clear that some people are investing a tremendous amount of time in their comments and they need a reasonable amount of time to prepare them. Given the somewhat compressed time frame in which we're working, I am a little reluctant to change the rules in mid-stream on hearing participants. I also recognize that every minute of testimony comes at a tremendous cost to the City and/or Applicant, not just in terms of room rental time but also including the numerous staff and consultants that are necessary to run the meetings.

Here is how I will address the situation:

1. Obviously, if there are any "dead" periods I will ask persons scheduled to speak later that evening to do so earlier. Unfortunately, I can't expect this of people who aren't at the hearing room yet because it's not yet their speaking time. One of the main reasons for the hearing reservations was to enable people to not have to be at the hearing room at an earlier time. We also can't expect hearing participants to be monitoring the City's web site each day to ensure that they're reserved time is still valid. If I change the rules on the sign-in sheets, we will probably end up having people show up for their reserved time with the hearing long over for that day.
2. I would try to remove gaps for future sign ups by filling in the undesirable slots with "reserved until open slots filled". If staff has any available time, and I know that's unlikely, you may want to call up some of the people who signed up and ask if they'd be willing to be rescheduled. From what I recall there was one person signed up for 9:00 pm this evening and that person would be an ideal person to call.
3. The prehearing order states that all persons who wish to speak must sign up by 10:00 am on July 16. In a worst case scenario, that gives sufficient time to hear 45 people if we don't hear the rebuttal from the City and Applicant and that's if each person takes up the full ten minutes.

As noted in the prehearing order, people have to be present on Saturday to testify or they are removed from the sign up list. If anyone is left after going through that list, I would be comfortable with finishing the remaining (likely few) participants in the City Council chambers while we do the expert testimony the following week. If the Council Chambers aren't big enough, we fill the room with what's safe and post the audio of the testimony. People will have their two week written response time to comment on the audio if they weren't able to participate in the hearing room. Given that the Sawyer Woods facility was available for testimony for a week and few people took advantage of it, I doubt that a reviewing court will have any problem with the City's use of a smaller facility to finish off the tail end of the testimony.

4. I had planned on asking if the City and Applicant would prefer to finish their rebuttal time at the conclusion of the expert testimony so they could address that in their rebuttal as well. That would have been both for the benefit of staff and applicant (who arguably have a due process right to provide a verbal rebuttal at the conclusion of all verbal testimony) as well as giving me the opportunity to compile some questions. If there is no time on Saturday for rebuttal that would be easy to accommodate, perhaps by even doing it at the end of expert testimony at the same venue. If not held at Sawyer Woods, the audio would be posted and people would be encouraged to submit questions of staff and the applicant in advance in writing in case they could not make the rebuttal time.

The accommodations identified above may be enough to address the City's concerns without necessitating any significant revision to the prehearing order. If that is insufficient I will be happy to discuss it further this evening at the hearing.

-----Original Message-----

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]

Sent: Tuesday, July 12, 2011 10:44 AM

To: olbrechtslaw@gmail.com

Cc: Rebecca Olness; Brenda Martinez; Stacey Borland

Subject: Development Agreement hearings

Mr. Olbrechts:

As of this morning, there are 6 ten minute time slots filled for tonight, 7 slots on Wednesday, 10 on Thursday and 3 on Saturday. (The actual number of speakers is less, as some indicate they will be using "ceded" time from others). No new names are on the "rolling" sign-up sheet. (Some of the people who spoke last night had signed up for specific time slots, but took advantage of the available time last evening to testify). We have expected that more individuals would wish to speak than we are seeing so far.

In the interest of both efficiency and avoiding a potential continuation of public testimony beyond Saturday, we suggest:

1. Announcing that, given the hours of open time that remains available for testimony through Saturday, that you rule that Saturday will be the conclusion of open public testimony. (Expert testimony can still occur next week).
2. After opening the hearing each evening, announcing that any individual who signed up to speak that particular evening may be directed to speak earlier than scheduled if no one else from the audience comes forward. This will avoid "dead time" where everyone sits around waiting (for perhaps half an hour or more) to hear one or two other individuals testify.

We have use of Sawyer Woods Elementary School through Saturday. The Kent School District charges for use of the building for the full duration of scheduled time, regardless of whether the hearings are going on or not, another reason it is our hope that testimony can be concluded this week, as originally planned.

Steve Pilcher  
Community Development Director  
City of Black Diamond  
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