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Via Email

September 21, 2011

Mike Kenyon
Bob Sterbank
Kenyon Disend
11 Front Street South
Issaquah, WA 98027

Re: Appearance of Fairness Issues for City Council Closed Record Hearing on Final Development Agreements for The Villages and Lawson Hills MPDs (PLN10-0020, PLN10-0021, PLN11-0013, and PLN11-0014)

Dear Mr. Kenyon and Mr. Sterbank:

This firm represents BD Village Partners, LP and BD Lawson Partners, LP (collectively, YarrowBay) regarding The Villages and Lawson Hills Development Agreements. Recommendations from the City's Hearing Examiner regarding The Villages and Lawson Hills Development Agreements were received last week, and the City Council has set September 21, 2011 as the opening date for its closed record hearings on the Development Agreements.

We write today to raise concerns about four of the five City Councilmembers under the Appearance of Fairness doctrine. If these issues are not addressed proactively, there is a strong likelihood of significant divisiveness being generated in the Development Agreement hearings as parties are required to state their specific concerns with each Councilmember. Therefore, this letter summarizes the key rules under the Appearance of Fairness doctrine that trigger our concerns, lists those concerns, and recommends a process by which all four Councilmembers can recuse themselves and in so doing, trigger the "doctrine of necessity." In this way, YarrowBay and community member against community member attacks can be avoided, the City's fiscal interests will be protected, and the full five-member City Council can sit, together with the community, to review The Villages and Lawson Hills Development Agreements.

EXHIBIT

nrogers@cairncross.com
direct: (206) 254-4417

{01766357.DOCX;2 }

(1) The Rules of the Appearance of Fairness Doctrine

Under the Appearance of Fairness doctrine, chapter 42.36 RCW, the test for recusal of quasi-judicial decision-makers is whether a disinterested person, apprised of the situation, would be reasonably justified in thinking that partiality may exist. Partiality means either prejudgment concerning issues of fact, or personal bias or prejudice signifying an attitude for or against a party. As described by the MRSC,¹ the test is “ would a fair minded person in attendance at this hearing say (1) that everyone was heard who should have been heard, and (2) that the decision-maker was impartial and free from outside influences.” Any Councilmember who has prejudged the facts, or has acted in a manner that signifies an attitude for or against a party must recuse himself or herself from participating in the Development Agreement hearings. One member’s partiality taints the entire process and, on appeal, can require that the entire process be re-done.

We acknowledge that some members of the Black Diamond community believe the review of the Development Agreements should not be conducted in a quasi-judicial manner. However, as the Washington State Supreme Court has recently confirmed, a City is “bound to follow its own ordinances,” when those ordinances set a quasi-judicial process. *Phoenix Development, Inc. v. City of Woodinville*, ___ Wn.2d ___, ___ P.3d ___, 2011 WL 2409635 at 6 (June 16, 2011). Here, BDMC 18.08.030 and BDMC 18.08.070 require quasi-judicial review of any development agreement.

One way in which partiality is established under the Appearance of Fairness doctrine is when a decision-maker owns property in the area of the project and participates in the hearing and/or votes. In *Buell v. Bremerton*, 80 Wn.2d 518, 495 P.2d 1358 (1972), a planning commissioner owned property adjacent to an area to be rezoned. The court determined that the commissioner’s self-interest was sufficient to invalidate the entire proceeding. The *Buell* case includes a map (copy enclosed) showing that Planning Commissioner Jennings owned property that was separated from the pending re-zone by two small parcels.

Sufficient evidence of partiality under the Appearance of Fairness doctrine also includes being both a Councilmember and holding membership in an organization that either supports or opposes the proposal. In *SAVE v. Bothell*, 89 Wn.2d 862, 576 P.2d 401 (1978), a Chamber of Commerce was supporting a re-zone. One employee of the Chamber and another Board member of the Chamber were also quasi-judicial decision-makers on the Planning Commission. The Court found that the employee’s position at the Chamber “establishe[d] an interest which *might* have substantially influenced her decision” as a Planning Commissioner. Similarly, even though the Chamber Board member did not participate in the Chamber’s vote to support the re-zone, she was aware of that support and “from the point of view of a disinterested observer her position on its board of directors might well suggest entangling influences impairing her ability to be impartial.”

¹ *The Appearance of Fairness Doctrine in Washington State*, MRSC Report No. 32 (revised April 2011), available on-line at: <http://www.mrsc.org/Publications/afd11.pdf>.

The *SAVE v. Bothell* Court acknowledged – as does YarrowBay – that membership and participation in “community and civic organizations” is “desirable and common among persons with active community roles.” However, the Court held that when an individual is a member of a community organization, participation in quasi-judicial proceedings constitutes a violation of the appearance of fairness doctrine because such membership “demonstrates the existence of an interest which might substantially influence the individual’s judgment.”

Partiality also can be demonstrated by substantial *ex parte* contacts regarding matters relevant to the Development Agreements, when substantial *ex parte* contacts occur between a decision-maker and persons on one side of an issue. A disinterested observer would conclude that the decision-maker participating in those contacts cannot be “free from outside influence” due to bias in favor of the *ex parte* communicators, and may have pre-judged the facts based on those communications. *Ex parte* contacts that were not disclosed on the record before the Hearing Examiner also present a unique and significant problem for the Council’s review. While RCW 42.36.060 includes an exception to the prohibition on *ex parte* contacts that allows disclosure of the substance of those contacts and rebuttal of that disclosure, the disclosure and rebuttal can only be on the record. In addition, under BDMC 18.08.070(A)(2), during the Council’s review of the Development Agreements, “all argument and discussion must be based on the factual record developed at the hearing examiner open record hearing.” The MRSC reflects the following as the City of Renton’s email policies to address exactly this problem facing its City Council members in quasi-judicial proceedings (emphasis added):²

4.7 Quasi-Judicial Role of Council. Councilmembers who are serving in a quasijudicial role (i.e., land use appeals) must not engage in generating or reading substantive e-mails concerning the matter on appeal. For purposes of this provision, a substantive e-mail is one that relates to a matter before the Council while acting in a quasi-judicial role and has any information other than the scheduling or procedures of the hearing. Any substantive e-mail received by a Councilmember must, without review by the Councilmember, be routed to the Council liaison to then be routed to the City Attorney’s office. If the substantive e-mail contains or discusses information that is within the closed record, it may be considered by the quasi-judicial body and presented at the hearing. If the substantive e-mail contains or discusses information that is not within the closed record, the quasi-judicial body may not consider it. In the event the substantive e-mail contains or discusses information that is both within and without the closed record, only those parts of the e-mail that relate to information within the record may be considered by the quasi-judicial body. Other parts must be redacted and may not be considered.

² See, <http://www.mrsc.org/govdocs/R43-800-11.pdf>

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To the extent that the solution proposed in section (3) below is not undertaken, then during each Councilmember's disclosure of *ex parte* contacts, the disclosure must be limited only to matters that are within the record, and rebuttal must also be limited to the record. To the extent an *ex parte* contact includes items outside the record, the affected Councilmember must disclose whether a disinterested person would conclude that information has resulted in any pre-judgment of fact or bias and, if so, that Councilmember must recuse him or herself.

While you may also wish to seek the advice of the City's insurance counsel, it is our position that participation in the Development Agreement hearings by a Councilmember who should have recused himself or herself exposes both the City and that Councilmember to substantial liability under RCW 64.40.020 and 42 U.S.C 1983.³ See *Mission Springs, Inc. v. City of Spokane*, 134 Wn2d 947 (1998) (rejecting city councilmembers' claim of absolute or qualified immunity and instead finding councilmembers' individual liability pursuant to 42 U.S.C 1983). Also, if the Development Agreements are overturned on appeal due to an Appearance of Fairness violation, the City will be forced to re-do the entire process at great expense to the City.

(2) Summary of YarrowBay's concerns under the Appearance of Fairness Doctrine

The following concerns are not comprehensive, but are intended to summarize the simplest conflicts that arise under the Appearance of Fairness doctrine. These matters are further detailed on the enclosures. Please note that so as not to overwhelm your analysis, the attached tables and documents are not a complete list of YarrowBay's concerns with the participation of these Councilmembers. Should it become necessary for YarrowBay to present objections to each Councilmember, additional items may be provided.

Councilmembers Saas, 32524 McKay Lane, Mulvihill, 32202 5th Ave., and Hanson, 32506 236th Ave. SE, each own property and live within 1 lot of the border of The Villages or Lawson Hills projects. Diagrams showing the relationship of each Councilmembers' property to the project sites are enclosed.

Records reviewed by YarrowBay reveal that both Councilman Goodwin and Councilman Saas have participated in substantial *ex parte* contacts with a citizens' "Technical Action Team" regarding matters relevant to the Development Agreements. As summarized in the tables below, these communications appear to contribute to bias, and pre-judgment of facts.

³ The Washington Supreme Court's holding in *Alger v. City of Mukilteo*, 107 Wn.2d 541 (1987), is not inapposite. In *Alger*, plaintiffs alleged that the City of Mukilteo was liable for its negligence in passing an ordinance that was later invalidated for violation of the appearance of fairness doctrine. The Washington Supreme Court held that the City could not be held liable in tort for violation of "appearance of fairness" doctrine in regard to its zoning decision. Most critically to the facts at issue in the City of Black Diamond, however, in *Alger* the plaintiffs did not assert claims under Ch. 64.40 RCW or 42 U.S.C. 1983. Thus, *Alger* does not prevent the imposition of damages for a violation of the doctrine under a civil rights action.

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Councilman Goodwin is believed to be a member the Lake Sawyer Community Club (LSCC). In November 2010, the LSCC solicited a vote of its members and in response chose to donate \$10,000 to the Diamond Coalition, a group raising money to fund the opposition testimony and litigation regarding The Villages and Lawson Hills. In addition, Councilman Goodwin is known to be a Board member and treasurer of the Middle Green River Coalition (MGRC). While the MGRC has not taken a formal position on The Villages and Lawson Hills projects, with Mr. Goodwin's knowledge, the MGRC has lobbied King County officials seeking to halt the City's processing of YarrowBay's Development Agreements. Mr. Goodwin has forwarded at least one email reflecting MGRC's lobbying efforts to known opponents of The Villages and Lawson Hills. Under *SAVE v. Bothell*, Mr. Goodwin's participation in these quasi-judicial proceedings constitutes a violation of the appearance of fairness doctrine because his membership in these community organizations "demonstrates the existence of an interest which might substantially influence the individual's judgment."

Records reviewed by YarrowBay reveal that both Councilman Goodwin and Councilman Saas worked with a known project opponent to craft a Resolution that would have limited the legal effect of the Development Agreements, and that Mr. Goodwin and Mr. Saas agreed to introduce it to the City Council. YarrowBay believes a disinterested party informed of this situation would conclude that this evidences actual bias against YarrowBay's rights to proceed with permitting The Villages and Lawson Hills as provided by adopted, unappealed and valid City Codes as well as Washington State laws regarding vested rights

(3) Recommended Process for Recusal

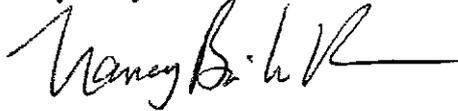
As detailed above and in the enclosed tables and documents, the facts and the law call for Mr. Goodwin, Mr. Saas, Ms. Mulvihill and Ms. Hanson to each recuse themselves from participating in the Development Agreement hearings. Each of them may already be planning to do so. However, we also see a risk that some members might refuse to recuse themselves to assure the opportunity to review the Development Agreements with the community.

Fortunately, the City's Council Rules, at Rule 9.6, allow a majority of the remainder of the Council to vote to force members who should recuse themselves off the Council. Rather than an awkward procedure in which four separate votes are taken on four separate Councilmembers, we recommend that the full Council adopt a motion or resolution stating that upon review of the facts, legal advice, and to protect the financial integrity of the City, Mr. Goodwin, Mr. Saas, Ms. Mulvihill and Ms. Hanson agree that each needs to recuse themselves from consideration of the Development Agreements. After a vote on that resolution, each Councilmember should disclose, in turn, the reasons listed in this letter for their recusal and recuse themselves. In the event that Mr. Boston also has engaged in some activity or membership of which we are not aware, he should also be joined in this process. While the doctrine of necessity will be triggered by the third Councilmember to so act, fairness to the community dictates that the additional Councilmember also be provided that opportunity.

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Thank you for attention to this matter. Please contact me at (206) 254-4417 if you have any follow up questions or concerns.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Nancy Bainbridge Rogers". The signature is fluid and cursive, with a long horizontal stroke at the end.

Nancy Bainbridge Rogers

cc: Brian Ross, YarrowBay

Encl.: Diagrams of Property Ownership, Table of Appearance of Fairness concerns, and backup documentation

TABLE 1

GOODWIN AND SAAS MEETINGS WITH CITIZENS TECHNICAL ACTION TEAM⁴

Doc ID	Documents	Violation of Appearance of Fairness Doctrine
A	Rimbos email to Goodwin, 12/3/2010, including Rimbos's legal analysis of RCW 42.36.060	<p>Rimbos tells Goodwin that "as you can see from my email this morning, I followed the instructions of the City Attorney" and sent the TAT's Development Agreement comments "only to Mayor Olness and Brenda." However, since Rimbos knows that Goodwin "can see" from that earlier email to whom it was sent, this presumably means Rimbos either blind carbon-copied Goodwin, or separately forwarded his email to Goodwin. Therefore, the email sent was an <i>ex parte</i> contact from a project opponent.</p> <p>Next, this email includes Rimbos's argument that the exception to the prohibition on <i>ex parte</i> contacts should be applied to allow citizens to contact their city councilmembers at anytime. Rimbos's argument is that the exception to the prohibition on <i>ex parte</i> contacts should swallow the rule. Courts do not look favorably upon such arguments.</p>
B	Rimbos to Goodwin email of 3/6/2011, describing plan for TAT "Private Meetings" to potentially be followed by "Public Meetings" regarding Transportation, Environment, Stormwater, Fiscal.	<p>Together with the rest of the TAT package described in this table, this evidences <i>ex parte</i> contacts and bias in favor of parties who are project opponents.</p> <p>For example, this email also includes the request of Rimbos that any "Public Meetings" not include video recording because it might be used "against the citizens in the LUPA Appeals." A disinterested person, apprised of the situation would be reasonably justified in thinking that partiality may exist due to an attitude in favor of the opponents.</p>

⁴ Hereinafter the Citizens Technical Action Team is referred to as the "TAT."

Doc ID	Documents	Violation of Appearance of Fairness Doctrine
C	Goodwin/Saas and Rimbos email exchange 3/15/2011, setting the private meeting schedule for review of the TAT issues.	This email is an <i>ex parte</i> communication between a project opponent and Mr. Goodwin and Mr. Saas. The email describes the opponents' plan for presentation from named individuals who are also opponents, and the topics to be addressed. Rimbos's email reference to an earlier "productive transportation committee" meeting references a past <i>ex parte</i> communication in which an opponent felt that either or both Mr. Goodwin and Mr. Saas assisted Rimbos in his opposition. A disinterested person, apprised of the situation would be reasonably justified in thinking that partiality may exist due to an attitude in favor of the opponents.
D	Rimbos mail to Goodwin and Saas, 3/15/11, transmitting the TAT's "rationale" for conduct of an "early" Traffic Demand Model."	This is an <i>ex parte</i> contact about how the TAT opponents wish to see the Development Agreements modify the timing for conduct of a new traffic model. A disinterested person, apprised of the sheer number of communications and meetings with Rimbos would be reasonably justified in thinking that partiality may exist, in the form of bias in favor of Rimbos's view, and that prejudgment of facts is occurring because Goodwin and Saas are receiving so much one-sided information outside the hearing process.
E	Rimbos email to Saas of 3/27/11, requesting Saas review and give feedback to Rimbos regarding the text of a summary of TAT/Goodwin/Saas meetings.	This email is an <i>ex parte</i> communication between a project opponent and Mr. Saas. It documents that a project opponent felt comfortable seeking review and approval from Mr. Saas prior to communicating with others. A disinterested person, apprised of the situation would be reasonably justified in thinking that partiality may exist due to an attitude in favor of the opponents.

Doc ID	Documents	Violation of Appearance of Fairness Doctrine
F	<p>Save Black Diamond webpage, printed 3/29/11, showing TAT update. This webpage discloses summary of TAT/Goodwin/Saas meetings.</p> <p>In addition, this webpage discloses the TAT goal to “develop a winning strategy to exploit” “all critical technical issues” in all pertinent documents, including the “Development Agreements.” This update discloses 11 hours of meetings with Goodwin and Saas to review MPD Approval Conditions that the TAT “recommended be revised, eliminated, or added.”</p>	<p>The meetings referenced in this summary are <i>ex parte</i> contacts in which Goodwin and Saas heard directly about and apparently contributed to the language of changes to conditions that the TAT is now seeking in the Development Agreement process.</p> <p>For example, the TAT update reflects that each substantive area included a “two-way dialogue” and “discussion” which “discussion” resulted in lengthy documents presenting either a “comprehensive set of conditions, and supporting rationale,” or a “set of targeted conditions and supporting rationale.”</p> <p>This documents that Goodwin and Saas discussed potential terms for the Development Agreements and contributed to opposition statements seeking revisions to the Development Agreements. But a basic principle of fair hearings is that decisions are made entirely on the basis of evidence presented at the proceedings.</p> <p>A disinterested person, apprised of the situation would be reasonably justified in thinking that partiality may exist. First, participation in a discussion that led to the creation of documents and rationales seeking changes in the Development Agreements demonstrates prejudgment concerning issues of fact. In addition, the decision to spend 11 hours reviewing these matters outside a hearing demonstrates an attitude in favor of the opponents.</p>
G	<p>Rimbos emails full Council on 3/28 with a similar TAT summary of meetings posted on the Save Black Diamond website, and seeks to meet</p>	<p>The email is an <i>ex parte</i> contact about conditions that Rimbos and the TAT wish to see revised in the Development Agreement process.</p>

Doc ID	Documents	Violation of Appearance of Fairness Doctrine
	with all other members.	<p>A disinterested person, apprised of the situation would be reasonably justified in thinking that partiality may exist. First, participation in a discussion that led to the creation of documents and rationales seeking changes in the Development Agreements demonstrates prejudgment concerning issues of fact. In addition, the decision to spend 11 hours reviewing these matters outside a hearing demonstrates an attitude in favor of the opponents.</p>
H	Rimbos email to Goodwin and Saas of 4/5/11, transmitting Bortleson's "final" package of changes and additions to Environment Conditions	<p>The email is an <i>ex parte</i> contact about conditions that Rimbos and the TAT wish to see revised in the Development Agreement process.</p> <p>This attachment discloses that the TAT meeting "dialogue" included back and forth between Goodwin and Saas and Bortleson regarding condition language and how issues of concern to opponents might be addressed. For example, Bortleson answers a Goodwin question about "what in the development would change the water flows [to the core-lake wetland complex]".</p> <p>In the event that Mr. Goodwin and Mr. Saar are not recused from Council, YarrowBay would point the Council to rebuttal materials submitted during the Development Agreement Hearings, including Exhibit 211.</p> <p>To the extent this communication is included in the record, YarrowBay also rebuts Mr. Bortleson's assertion that YarrowBay is somehow planning to count as open space something called "Jones Lake Park" supposedly shown on Figure 3-31 in The</p>

Doc ID	Documents	Violation of Appearance of Fairness Doctrine
		<p>Villages FEIS. That figure simply shows an <i>existing</i> open space area controlled by the City, not land area that YarrowBay is counting as open space.</p> <p>The back and forth commentary implies that Mr. Goodwin is seeking additional width for the wildlife corridor, and seeks additional measurements of water levels and flows based only on information from project opponents.</p> <p>A disinterested person, apprised of the situation would be reasonably justified in thinking that partiality may exist. First, participation in a discussion that led to the creation of documents and rationales seeking changes in the Development Agreements demonstrates prejudgment concerning issues of fact. In addition, these conversations demonstrate an attitude in favor of the opponents.</p>
I	<p>Rimbos email to Goodwin and Saas of 4/5/11, transmitting Proctor and Edelman "final" packages of changes and additions to "Fiscal Conditions"</p>	<p>The email is an <i>ex parte</i> contact about conditions that Rimbos and the TAT wish to see revised in the Development Agreement process.</p> <p>To the extent this communication is included in the record, YarrowBay points the Council to Exhibits 8, 139, 209, and 245 for rebuttal information, and notes that the draft organization chart is not accurate nor is it an accurate organization chart legally relevant to the Development Agreement proceedings.</p> <p>A disinterested person, apprised of the situation would be reasonably justified in thinking that partiality may exist. First, participation in a discussion that led to the creation of documents and rationales seeking</p>

Doc ID	Documents	Violation of Appearance of Fairness Doctrine
		changes in the Development Agreements demonstrates prejudgment concerning issues of fact. In addition, these conversations demonstrate an attitude in favor of the opponents.
J	Sperry and Goodwin/Saas emails of 4/6/2011 and 4/7/2011 transmitting Sperry's Lake flooding analysis and with a Goodwin response.	<p>Sperry asks for flooding analysis to be conducted "prior to approval of the Development Agreement." This is an <i>ex parte</i> contact about the Development Agreements.</p> <p>Goodwin responds, stating that this is "very well done and quite interesting" and that "we should learn more about Covington Creek." This response plainly demonstrates prejudgment of facts later discussed in the Development Agreement hearings. To the extent this communication is included in the record, YarrowBay points the Council to Exhibits 139 (Attachment 9), 215, and 245 (Attachment 2) for rebuttal information.</p>
K	Rimbos/Goodwin email exchange of 4/22 – 23/11, setting a meeting in Goodwin's home to include Saas.	This further evidences Goodwin's and Saas's frequent <i>ex parte</i> communications with Rimbos, a known project opponent, leading the opposition's Technical Action Team. A disinterested person apprised of the situation would be reasonably justified in thinking that partiality may exist, in the form of bias in favor of the opposition's view, and that prejudgment of facts is occurring because Goodwin and Saas are receiving so much information outside the DA hearing process.

TABLE 2
GOODWIN MEMBERSHIP IN TWO ORGANIZATIONS WHICH HAVE FINANCIALLY SUPPORTED THE OPPOSITION AND ACTIVELY OPPOSED THE VILLAGES AND LAWSON HILLS

Doc ID	Documents	Violation of Appearance of Fairness Doctrine
A	<p>During the MPD hearings in July 2010, Mr. Goodwin conceded he was a long-time member of the LSCC, paid the annual \$50 dues, and contributed toward the summer fireworks fund, but rarely attended meetings. Mr. Goodwin appears to still be a member of the Lake Sawyer Community Club (LSCC). A summer 2011 newsletter indicates Mr. Goodwin may still be a member of the LSCC.</p> <p>11/2/2010 and 11/17/2010 LSCC Board meeting minutes reflect a request for funding from the Diamond Coalition.</p> <p>In November 2010, LSCC sent a "Donation Election" letter to all members, seeking a vote on whether to donate money to the Diamond Coalition.</p> <p>1/12/2011 LSCC meeting minutes indicate that on a vote of 60 yes, and 28 no, LSCC moved forward to make a donation to the Diamond Coalition of \$10,000.</p>	<p>Excerpts from the Summer 2011 LSCC newsletter, list "Craig and Judy Goodwin" as contributing to the fireworks fund, and as still being members of the LSCC.</p> <p>November 2010 letter documents that the LSCC Board received a request to donate \$25,000 to the Diamond Coalition to "fund the \$25,000+ expense incurred generating water quality analysis, reports, expert testimony and associated legal expenses for use in the Environmental Impact Study appeal of the Villages and Lawson Hills Master Plan Developments." A \$5,000 matching donation was proposed for a membership vote. The January Board meeting minutes reflect that a vote was taken and a donation made.</p> <p>Under <i>SAVE v. Bothell</i>, and just as Mr. Boston recused himself from considering the MPD Applications in 2010, Mr. Goodwin's membership in the LSCC precludes his participation in quasi-judicial proceedings because, in the eyes of a disinterested person, his membership in the LSCC demonstrates the existence of an interest which might substantially influence his judgment. Mr. Goodwin must recuse himself in order to avoid a violation of the Appearance of Fairness doctrine.</p>
B	<p>As documented by the website print out dated 9/8/2011, as well as Mr. Goodwin's blog entry on Black Diamond NOW dated 6/18/2010, Goodwin is a member</p>	<p>Under <i>Save v. Bothell</i> abstaining from participation in a community organization does not protect and preserve one's right to act as a quasi-judicial decision-maker. In fact, the opposite is true. The mere entanglement with a</p>

Doc ID	Documents	Violation of Appearance of Fairness Doctrine
	<p>of the Middle Green River Coalition (MGRC), and is a Board member currently serving as Treasurer. Greg Wingard is the President of the MGRC.</p> <p>MGRC Board meeting minutes of May 2, 2011 reflect Mr. Goodwin was present, and the YarrowBay Black Diamond developments were discussed, including a potential “race to the courthouse – Will Yarrow Bay developments get vested?”</p> <p>Email dated May 11, 2011 from Greg Wingard to Lauren Smith in the King County Executive’s office arguing that the County should intervene to demand the Development Agreements not be approved until any chance of rural-area facilities was eliminated. Mr. Goodwin forwarded this email to Rimbo, Proctor, Edelman, Sperry, Bortleson, and Rothschilds, indicating that “As you can see, we are working this from a number of angles. I still believe working directly with Yarrow Bay is our best hope.”</p> <p>An email exchange between 7/13/2011, 7/14/2011, then 7/19/2011, and 7/20/2011, in which Rimbo sought MGRC testimony in the Development Agreement hearings. Mr. Goodwin asked to not be included in those emails due to his quasi-judicial status.</p>	<p>community organization that has acted with regard to a matter that is subject to quasi-judicial review mandates recusal from the quasi-judicial decision-making process.</p> <p>Thus, even though the Middle Green River Coalition did not take a formal position in the Development Agreement hearings, the behind the scenes actions of MGRC to delay or halt processing of the Development Agreements, and Mr. Goodwin’s awareness of those actions mandate his recusal as a quasi-judicial decisionmaker.</p> <p>Even without the <i>Save v. Bothell</i> case, a disinterested person apprised of Goodwin’s having received and then forwarded Wingard’s email to known project opponents, stating that “we are working this from a number of angles.” demonstrates partiality against YarrowBay’s current plans.</p> <p>To the extent these communications remain in the record, YarrowBay offers as rebuttal that the possible location of schools is just that, a possibility, not a requirement. See, Exhibits 8, 139, 209, and 245. As to the location of the stormwater detention facility in the rural area, that location was actually chosen for engineering and environmental reasons. See, Exhibits 209 and 212.</p>

TABLE 3
GOODWIN AND SAAS SPONSORSHIP OF RESOLUTION TO LIMIT THE LEGAL EFFECT OF THE DEVELOPMENT AGREEMENTS

Doc ID	Documents	Violation of Appearance of Fairness Doctrine
A	<p>On 4/11/2011, Edelman emails Goodwin a draft resolution to cease City processing of the Development Agreements, and asks that Goodwin copy the file to avoid disclosing Edelman's identity in the metadata.</p> <p>On April 12, Edelman notifies Goodwin that the "stay was granted," meaning Judge Carey granted YB's motion to stay the GMHB compliance schedule. Edelman states: "this adds urgency to a resolution to suspend action on the development agreements. Another 'whereas' is in order." Goodwin replies that he will try to discuss the matter by phone, and Edelman confirms he will be available to discuss the matter by phone.</p> <p>Goodwin/Edelman emails of 4/21/2011 and 4/22/2011 in which Edelman provides a summary of the <i>Karpinski</i> case, notes he got his info from attorney David Bricklin and in which Goodwin says he will review. Edelman argues that the City should not proceed with the Development Agreements.</p> <p>On 5/5/2011, Edelman emails Goodwin, providing a link to the City Council rules which provide that a resolution can be prepared</p>	<p>This is a group of <i>ex parte</i> contacts between Mr. Goodwin, Mr. Saas and known project opponents about the Development Agreements.</p> <p>These communications evidence that Mr. Goodwin accepted advice from a known project opponent, Mr. Edelman and, perhaps, through Mr. Edelman, even accepted legal advice from the opponent's attorney Mr. Bricklin (at least as to Mr. Bricklin's position about the meaning of the <i>Karpinski</i> case). That Mr. Goodwin accepted a draft resolution from Edelman, then worked on revisions with Edelman, all to limit the legal effect of the Development Agreements, and that Mr. Goodwin and Mr. Saas agreed to introduce it to the City Council is evidence of actual bias against YarrowBay's rights to proceed with permitting The Villages and Lawson Hills as provided by adopted, unappealed and valid City Codes as well as Washington State laws regarding vested rights.</p> <p>A disinterested person apprised of the situation, would be reasonably justified in thinking that partiality exists.</p> <p>Finally, to the extent the emails regarding the <i>Karpinski</i> case remain in the record, YarrowBay rebuts by noting that RCW 36.70A.300(4) plainly states that a finding of noncompliance and order of remand "shall not affect the validity of comprehensive plans and development regulations during the period of remand." In addition, RCW 36.70A.302 is clear that when there has been no determination of invalidity rights may vest under state and local law, and</p>

<p>and introduced by <u>two</u> Councilmembers.</p> <p>On 5/20/2011, at 1:55 p.m., Goodwin emails a draft resolution to Edelman, seeking his input. The draft proposes to allow the hearings to occur, but only so long as the Development Agreements do not vest YarrowBay and that the “validity of the two MPD ordinances” “will be frozen, meaning there would be no vesting of the MPDs” until the GMHB appeal is resolved.</p> <p>On 5/20/2011, at 5:08 p.m., Edelman replies with his comments and understanding of the process, including a suggestion that the Development Agreement include a provision voiding the agreement if the GMHB Order is sustained. Edelman also notes that he “will be happy to suggest revisions” to the proposed resolution.</p> <p>On 5/29/2011, Edelman emails both Goodwin and Saas regarding the resolution “you plan to introduce at the June 2nd Council meeting.” Edelman explains his concerns and encloses a proposed mark up version of the resolution.</p> <p>On 5/31/2011, Mr. Saas emails himself to document a “conversation on the phone with Bob Edelman” on 5/29/2011.</p>	<p>that a determination of invalidity is prospective in effect only. Therefore, the <i>Karpinski</i> discussion of potential risks in reliance on non-compliant but valid codes is directly contrary to the plain language of state statute.</p>
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TABLE 1 DOCUMENTS

Craig Goodwin

From: Peter Rimpos [primbos@comcast.net]
Sent: Friday, December 03, 2010 12:09 PM
To: Craig Goodwin
Subject: LAST NIGHT'S BDCC MEETING

Craig,

Hi. As you can see from my e-mail this morning, I followed the instructions of the City Attorney and sent our Citizen's Technical Team comments on the DRAFT Development Agreements only to Mayor Olness and Brenda. I'd like to talk with you briefly by phone (425-432-1332) at your convenience about *ex parte* communication. When we read the RCW, etc. we find the following (my underlining):

Ex Parte Contacts Are Prohibited*

RCW 42.36.060: During the pendency of any quasi-judicial proceeding, no member of a decision-making body may engage in *ex parte* communications with opponents or proponents with respect to the proposal which is the subject of the proceeding unless that person:

- (1) Places on the record the substance of any written or oral *ex parte* communications concerning the decision or action; and
- (2) Provides that a public announcement of the content of the communication and of the parties' rights to rebut the substance of the communication shall be made at each hearing where action is considered or taken on the subject to which the communication is related. This prohibition does not preclude a member of a decision-making body from seeking in a public hearing specific information or data from such parties relative to the decision if both the request and the results are a part of the record. Nor does such prohibition preclude correspondence between a citizen and his or her elected official if any such correspondence is made a part of the record when it pertains to the subject matter of a quasi-judicial proceeding.

The way I, as a layman, interprets this, is that an *ex parte* communication simply has to be made part of the "record." In fact, Steve Pilcher has already told us that our DRAFT Development Agreement Comments will be forwarded to the Hearing Examiner for the upcoming Open-record Development Agreement Hearings to become part of the "record." What am I missing here?

Should you not wish to discuss this, I will accept that decision. Thank you.

Peter Rimpos
Leader, Citizens' Technical Team
primbos@comcast.net

Please consider the environment before printing.

Craig Goodwin

From: Peter Rimbos [primbos@comcast.net]
Sent: Sunday, March 06, 2011 8:08 AM
To: Craig Goodwin
Subject: MEETINGS WITH COUNCIL MEMBERS

Importance: High

Councilman Goodwin,

DECISION

Our Citizens' Technical Team wishes to first conduct Private Meetings with you and Councilman Saas, then determine if any Public Meetings would be useful on a Topic-by-Topic (i.e., Transportation, Environment, Stormwater, Fiscal) basis.

RATIONALE

We have several reasons for this, but the most important is our desire to conduct unfettered in-depth discussions with City Council members in the setting of a Private Meeting. Please understand our express purpose of meeting with City Council members is to discuss specific MPD Approval Ordinance Conditions which we have rewritten, eliminated, or added. This will take a lot of time, is highly technical in nature, and is not conducive to an Open Public Meeting format.

As an example, on Transportation, our first Topic for discussion, we have prepared 13 pages of revised/new Conditions and supporting rationale. We wish to discuss the specific language and reasoning of each of these revised Conditions in detail. We expect this will take more than the 2 hours we have proposed--even in a Private Meeting format.

QUESTIONS/REQUESTS

Following the completion of the proposed set of Private Meetings, should we determine to participate in the Public Meetings you have proposed, we have some questions regarding their conduct:

1. Will their be formal Public Notice and open attendance?
2. Will anyone wishing to speak, be able to speak?
3. Who will chair the meeting?
4. What will be the basic format?
5. Will the City Attorney be present to provide legal "watch-dogging" and counsel?

We also have two requests regarding the Public Meetings:

1. Video recording is not acceptable, as we remain concerned that anything said at the meeting could be used against the citizens in the LUPA Appeals.
2. Should Yarrow Bay desire copies of what is discussed by our Citizens' Technical Team, they should be required to file a PDR with the City just like anyone else.

SUMMARY

We appreciate the attempts you are making to try to get the dialogue moving with as many Council members as possible. Ultimately, we share that same goal. Thank you for your efforts.

If our decision as described above is acceptable to you and Councilman Saas, we request the Private Meetings be conducted as proposed starting this Thursday at 7 PM (and Tuesday evenings the following 3 weeks) in the Council Chambers, unless that venue is deemed not appropriate.

If you have questions about any of this, please feel free to call me at 425-432-1332. Thank you, again.

Peter Rimbos
425-432-1332
Citizens' Technical Team Leader
primbos@comcast.net

"To know and not to do is not to know."-- Chinese proverb

Please consider the environment before printing.

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Craig Goodwin

From: Craig Goodwin
Sent: Tuesday, March 15, 2011 2:43 PM
To: 'Peter Rimbo'; William Saas
Subject: RE: ORDIN COND MTG TOPIC SCHEDULING

Thanks, Peter – this works for us and Monday night at our home works for Judy and I. Our address is below. If anyone needs directions, let me know. Our address is below.

Craig

Craig Goodwin
29044 222nd Pl. S.E.
Black Diamond, WA 98010
(360) 886-1847 home
(253) 405-6564 cell

From: Peter Rimbo [mailto:primbos@comcast.net]
Sent: Tuesday, March 15, 2011 9:42 AM
To: Craig Goodwin; William Saas
Subject: ORDIN COND MTG TOPIC SCHEDULING

Councilmen Goodwin and Saas,

Hi. Due to some scheduling conflicts, we've had to juggle some of the Topics to be discussed for our upcoming 6:30 PM Meetings. Here is what we are planning:

Tuesday, 3/15: Gil & Peter (Environment); Location: BD Community Center *TONIGHT*
Friday, 3/18: Jack (Flooding, etc.) & Cindy (Fiscal & Schools); Location: BD Community Center
Monday, 3/21: Bob E. (Fiscal) & Bob R. (Stormwater Quality); Location: Councilman Goodwin's home (awaiting final confirmation)

Unfortunately, we've had to split up the Topics for Friday and Monday, but still expect it to work out fine. We expect there will be sufficient time to cover each of the Topics. If you have any concerns with this schedule, please let us know. Thank you.

P.S.: We are working through our *Action Items* from last Thursday's very productive Transportation Conditions Meeting. Thank you for meeting with us.

Peter Rimbo
425-432-1332
Citizens' Technical Team Leader
primbos@comcast.net

"To know and not to do is not to know."-- Chinese proverb

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Brenda Martinez

From: William Saas
Sent: Wednesday, May 04, 2011 9:03 AM
To: Brenda Martinez
Subject: FW: TRANPS COND--A.I.s--MODEL VALIDATION
Attachments: Traffic_Modeling_Story--CONDENSED.doc; ATT00001..htm

From: Peter Rimbo [primbos@comcast.net]
Sent: Tuesday, March 15, 2011 11:38 AM
To: Craig Goodwin; William Saas
Subject: TRANPS COND--A.I.s--MODEL VALIDATION

Councilmen Goodwin and Saas,

Hi. At last Thursday's meeting on MPD Approval Ordinance Transportation Conditions our Citizens' Technical Team took several Action Items. We previously completed one of those by providing you more background and contacts regarding Transportation Concurrency testing performed by King County. We hope that information has proven helpful.

In this installment please find attached a document which lays out our rationale for early Traffic Demand Model validation and use. It contains a lot of detailed information, but the Overview should give you a good perspective of the arguments. It also includes an assessment on all the points on which we agree and a few on which we differ. In addition, we strongly urge the City obtain the services of an independent Traffic Consultant to address, at a minimum, the somewhat complex, yet critical step of Traffic Demand Model validation.

In subsequent correspondence we will address our other Action Items which include:

1. Applicable ITE Handbook ICR Scenarios
2. Specifics of Recommended Cost/Benefit/Risk Analyses
3. Arguments for Abating Traffic on Green Valley Road

Please contact us should you have any questions, comments, suggestions, etc. Thank you.

BLACK DIAMOND MPD TRANSPORTATION DISCUSSION

The purpose of this document is to lay out the Citizens' Technical Team's arguments in support of early validation and use of the new Traffic Demand Model currently under construction by Parametrix under subcontract to the City of Black Diamond. This document is consist of three (3) major sections:

- I. **Overview** -- A Summary of points on which we agree and differ, the Hearing Examiner findings, and our technical team's assessment and conclusions.
- II. **Hearing Examiner Findings** -- Detailed statements from the Hearing Examiner's FEIS Decision and MPD Application Recommendations.
- III. **Technical Team's Recommendations** -- Revised and New Conditions for the MPD Approval Ordinance (these were discussed at our March 10, 2011 meeting).

I. OVERVIEW

1. Points on which we agree.

A new Traffic Demand Model is needed to address the deficiencies identified by the Hearing Examiner.

The model's expanded area of focus should include the Issaquah-Hobart-Ravensdale-Black Diamond Rd.

Specific assumptions and parameters such as ICRs, PHFs, Queuing must be addressed.

Sensitivity analyses should be performed to understand how much and how fast key assumptions and parameters change under various traffic scenarios.

The new Model must be validated for existing traffic (i.e., replicate actual traffic data).

A validated new Model will provide better insight into understanding future traffic volumes and patterns.

2. Points on which we have not yet reached closure.

Timing of validation of the new Traffic Model: Today using existing traffic data vs. a point at which 850 (or 500) building permits have been issued. We tend to agree with the Hearing Examiner who stated in his MPD Application Recommendations Section IV. **FINDINGS OF FACT** (p. 124): *"...added mitigation be added to the project either through the development agreement or processed as a major amendment to the MPD. Traffic and noise mitigation should go through one of those processes to provide the public an opportunity to comment on the new mitigation. Although mandating an MPD amendment might arguably violate the one hearing rule of the Regulatory Reform Act, Chapter 36.708 RCW, the Applicant and other parties may find this to be the best option to avoid further litigation. If the new mitigation is processed through a development agreement, Maple Valley and other interested parties may feel compelled to file a judicial appeal to the MPD because their appeal rights may not be entirely preserved by waiting for the results of the MPD process."*

3. Technical Team's Assessment.

The Hearing Examiner ruled the FEISs adequate, but deficient in many areas, especially Traffic Modeling and subsequent mitigations proposed therefrom. When the MPD Approval Ordinances did not include some of the Hearing Examiner's stipulated FEIS Conditions, it essentially resulted in an incomplete FEIS process.

Consequently, there exists no credible analyses of projected traffic impacts from the proposed MPDs. Although the City has contracted with Parametrix to develop a new Traffic Demand Model, it does not intend to immediately validate and then run that model to determine a new set of mitigations that could be deemed more credible. Such validation and analyses are deferred until such a time when 850 permits have been issued.

This appears to be risky and unnecessary. The new Traffic Demand Model being prepared by Parametrix should be validated using existing traffic now and run for various future scenarios to project needed mitigations. This will protect the City and provide a better evaluation of the true impacts of the massive density of the proposed MPDs.

4. Hearing Examiner's FEIS Decision.

The Hearing Examiner ruled the FEISs adequate. However, he went out of his way to criticize many individual inadequacies in the FEISs. Several statements in the decision should be particularly noted:

1. Black Diamond's use of a regional traffic model to project local traffic impacts: *"... there are definite advantages to using a more localized traffic model and the Examiner will address this in the conditions of approval recommended for the MPD."*

2. Black Diamond's use of a 0.97 Peak-Hour Factor (PHF): *"...sufficient evidence has been provided to require the use of a more mainstream factor as a condition of MPD approval."*

3. Black Diamond's use of a 1.5% growth rate in background traffic: *"...the Hearing Examiner will recommend additional conditions for this topic as part of the MPD."*

4. The feasibility of implementing mitigation measures: *"... the measures will be subsequently analyzed, and it would be premature to attempt to analyze the feasibility of implementation of mitigation measures at this juncture."* "If

BLACK DIAMOND MPD TRANSPORTATION DISCUSSION

mitigation is determined to be unfeasible at the time the project will be built, then GMA concurrency will prevent the development from proceeding."

5. **Conditions:** *"...there are more accurate methodologies and assumptions available to ensure more complete mitigation. The Examiner will recommend conditions on the MPD that incorporate the better methodologies and assumptions."*

5. Hearing Examiner's MPD Application Recommendations.

The Hearing Examiner was skeptical about the Traffic Modeling conducted to support the MPD Applications. He stated *"the most significant condition"* to be added was in the area of Traffic Modeling and recommended targeted and detailed Transportation Conditions of Approval. Several statements in his recommendations should be particularly noted:

1. *"... reassess traffic impacts through more detailed traffic modeling."*

2. *"... put together a local model that extends to all jurisdictions within the vicinity."*

3. *"This scale of development justifies the creation of a project specific transportation demand model that accounts for all existing and planned local land uses, is validated for local traffic, contains an appropriately fine grained transportation analysis zone network, considers existing peak hour factors, considers both funded and unfunded transportation improvements that coincide with the build out timeframe for the project, considers safety concerns, attempts to preserve the rural Heritage Corridor, provides a realistic mode split analysis for both transit and non-motorized uses and determines a reasonably accurate internal trip capture rate."*

4. *"...added mitigation be added to the project either through the development agreement or processed as a major amendment to the MPD. Traffic and noise mitigation should go through one of those processes to provide the public an opportunity to comment on the new mitigation."*

6. Conclusions

The Hearing Examiner has stated that Black Diamond currently has an inadequate model, which lacks sufficient detail, and has used several suspect input variables. This results in a total lack of confidence in the output of the existing model (currently defined traffic mitigations). Therefore, the mitigations proposed to Black Diamond and Maple Valley by Yarrow Bay may be wholly inadequate. This puts the City and its citizens at risk until 850 building permits are issued. With the long lead times typically involved for traffic mitigation construction this will mean a traffic volume increase of between 50% and 75% before the correct traffic mitigations can be put in place. This will mean that much greater congestion will exist at many key intersections in Black Diamond and surrounding communities. These situations can be avoided.

If an improved traffic model, as defined above, is built, validated with existing traffic data, and then used to conduct sensitivity analyses prior to Development Agreement approval, the proper mitigations can be known early enough to forestall the exacerbation of existing and growing traffic problems during peak commuting times. In this way the acceptance and associated funding responsibilities for those mitigations can be made a part of the Development Agreements. We believe this would be the prudent path to take.

II. HEARING EXAMINER DECISIONS & RECOMMENDATIONS

Hearing Examiner's FEIS Decision

"Although many facets of the transportation analysis could have been better, the choices made by Parametrix are all within the parameters of reasonably justified professional judgment, especially given the substantial weight that must be given to the SEPA Responsible Official's determination that the analysis is adequate. The FEIS contains a reasonably thorough discussion of significant adverse transportation impacts of the proposed project at the programmatic level of analysis."

As with any large development project, traffic is a major issue with the MPDs. Most of the issues raised by the SEPA Appellants highlight reasonable differences of professional opinion. The traffic expert hired by the City, John Perlic, was highly credible and qualified to take charge of the City's traffic analysis. **Despite Mr. Perlic's expertise, there are three areas in the traffic analysis that did not hold up particularly well.**

The first was the use of a regional traffic model to project local traffic impacts. Maple Valley raised this issue, asserting that its local traffic model was more accurate than the Puget Sound Regional Council ("PSRC model") used by Black Diamond. Maple Valley and Black Diamond both had good reasons for the use of their respective models. **Ultimately, the Examiner must provide substantial weight to the determination of the SEPA Responsible Official that the EIS is adequate, and this burden of proof requires ruling in favor of Black Diamond's traffic engineer. However, there are definite advantages to using a more localized traffic model and the Examiner will address this in the conditions of approval recommended for the MPD.**

BLACK DIAMOND MPD TRANSPORTATION DISCUSSION

The second area of concern was Mr. Perlic's use of a 0.97 "peak hour factor" ("PHF"). This factor is used to measure variability during peak hour traffic and ultimately influences the amount of traffic projected for a project. The SEPA Appellants established that the PHF used by Mr. Perlic was at the outer boundaries of accepted professional judgment. The PHF was inflated and served to underestimate traffic impacts within intersections. Even so, the SEPA Appellant's traffic expert admitted that in some cases a PHF of 0.97 would be appropriate, but that would be extremely rare. Use of a lower PHF would probably have been more accurate, but its use does fall within the outer limits of professional judgment. **The PHF used by Mr. Perlic does not affect the overall adequacy of the EIS, but sufficient evidence has been provided to require the use of a more mainstream factor as a condition of MPD approval.**

The third traffic issue that needs greater attention is the **traffic impacts to Green Valley Road**. The Road has Heritage Status under the King County Historic Preservation Program. Testimony from several citizens makes it clear that this road is a historic, aesthetic and recreational resource. The road is frequently used by bicyclists, horses and farm equipment. The MPDs will add 300-400% traffic to this community resource. **As a condition of MPD approval, further analysis should be undertaken to find ways to discourage MPD traffic from using Green Valley Road, such as the use of traffic calming devices like medians and speed bumps.** The factors that merit special treatment of Green Valley Road are subjective and it is within the parameters of a "reasonable discussion" that the TV FEIS failed to single out Green Valley Road for additional analysis.

Another traffic issue that probably does not rise to the level of an EIS deficiency but is still worth addressing is SEPA Appellant Judith Carrier's concerns regarding Plass Road. **The MPD will be conditioned to require the Applicant to pursue a street vacation and/or to work with the City Council in creating a cul de sac on Plass Road.**

Parametrix's use of a 1.5% growth rate in background traffic based on recent growth trends was within the bounds of professional judgment. However, **the Hearing Examiner will recommend additional conditions for this topic as part of the MPD.**

The FEIS contains no discussion of the traffic impacts posed by construction of the proposed projects. **It is clear that the many years of construction arising out of the extensive development proposed by applicant will result in ongoing construction traffic impacts.**

It was not necessary that the FEIS address the feasibility of implementing mitigation measures. SEPA requires the FEIS to discuss reasonable mitigation measures that would significantly mitigate impacts, and indicate what the intended environmental benefits of mitigation measures are for significant impacts. The FEIS may discuss the economic practicability of mitigation measures if there is concern about whether a mitigation measure is capable of being accomplished. It need not analyze mitigation measures in detail unless they involve substantial changes to the proposal causing significant adverse impacts, and those measures will not be subsequently analyzed under SEPA. **In this case, the measures will be subsequently analyzed, and it would be premature to attempt to analyze the feasibility of implementation of mitigation measures at this juncture.** Such an analysis is of limited use given the multitude of other factors that could derail the project. Cost-sharing arrangements may be addressed by development agreements entered into between the developer and City. While SEPA does not require the FEIS to discuss mitigation measures in detail in all instances, mitigation but [TYPO] must be reasonable and capable of being accomplished. **If mitigation is determined to be unfeasible at the time the project will be built, then GMA concurrency will prevent the development from proceeding.**

As is evident from the findings above, the EIS traffic analysis is adequate but in several instances **there are more accurate methodologies and assumptions available to ensure more complete mitigation. The Examiner will recommend conditions on the MPD that incorporate the better methodologies and assumptions.**

Hearing Examiner's MPD Application Recommendation

I. SUMMARY

(p. 2): "Several conditions have been added to the project as a result of the hearings and public involvement. **Probably the most significant condition added by the Examiner is a requirement to reassess traffic impacts through more detailed traffic modeling.**

The Black Diamond traffic model is composed of a local model for traffic impacts within the City and the Puget Sound Regional Council ("PSRC") model for all exterior impacts. **This model and the assumptions underlying it came under considerable attack by the SEPA appellants, Maple Valley and other affected agencies.** Maple Valley pointed out that the PSRC model is only intended to predict impacts at a regional level and that it does not contain local streets or integrate much detail on local land use and development patterns. Maple Valley advocated the use of its local model, which employed a much more detailed basis for its assumptions for Maple Valley and surrounding cities. Maple Valley and Black Diamond provided extensive expert testimony on the shortcomings of each other's model. **The result was a fairly compelling case that neither model is appropriate.**

The conditions of approval require the Applicant to put together a local model that extends to all jurisdictions within the vicinity, but without the flaws in the Maple Valley model. The new modeling may prove to be costly, but it may

BLACK DIAMOND MPD TRANSPORTATION DISCUSSION

also stave off litigation from Maple Valley and other interested parties, which would result in a significant savings to all involved. Most importantly, the new modeling will more accurately predict traffic impacts, which will be of a profound benefit to the quality of life of Black Diamond residents."

IV. FINDINGS OF FACT

(p. 124): "Black Diamond and Maple Valley each made very compelling arguments that the traffic model of the other was deficient. The record is clear that neither model is optimally suited to predict traffic impacts for the Black Diamond community. The MPD, when completed, will have the effect of introducing the traffic of a new, small city to south King County. **This scale of development justifies the creation of a project specific transportation demand model that accounts for all existing and planned local land uses, is validated for local traffic, contains an appropriately fine grained transportation analysis zone network, considers existing peak hour factors, considers both funded and unfunded transportation improvements that coincide with the build out timeframe for the project, considers safety concerns, attempts to preserve the rural Heritage Corridor, provides a realistic mode split analysis for both transit and non-motorized uses and determines a reasonably accurate internal trip capture rate.** Therefore, the project applicant will be required to create a new transportation model that incorporates all the controls identified above and subject that model to peer review and periodic updates. For both traffic and noise, the Examiner recommends that added mitigation be added to the project either through the development agreement or processed as a major amendment to the MPD. Traffic and noise mitigation should go through one of those processes to provide the public an opportunity to comment on the new mitigation. Although mandating an MPD amendment might arguably violate the one hearing rule of the Regulatory Reform Act, Chapter 36.708 RCW, the Applicant and other parties may find this to be the best option to avoid further litigation. If the new mitigation is processed through a development agreement, Maple Valley and other interested parties may feel compelled to file a judicial appeal to the MPD because their appeal rights may not be entirely preserved by waiting for the results of the MPD process."

V. CONCLUSIONS OF LAW

(p. 152): As identified in Finding of Fact 5(B) [SEE p. 124 ABOVE], the traffic modeling proposed by the FEIS is adequate from an environmental review standpoint but may yield more accurate results through a more localized model similar to that employed by Maple Valley. Greater accuracy in anticipated impacts will in turn provide for greater accuracy in the amount and timing of mitigation. A recommended condition of approval is the development of a more localized traffic model.

VI. RECOMMENDATION [CONDITIONS OF APPROVAL]

(pp. 193-194):

"11. The applicant shall create a new traffic model for this project which incorporates, at an appropriately fine level of detail, and at a minimum, the transportation network from the northern boundary of the City of Enumclaw on SR 169 through the City of Maple Valley to the northern limits of that city" and west to SR 167 in Auburn, External trips may be captured by any valid methodology including overlaying the new model onto the existing Puget Sound Regional Council transportation model. The new model must be validated for existing traffic."

16. The resulting project impacts and mitigations must be integrated into the development agreement or processed as a major amendment to the MPD prior to City approval of any implementing projects.

17. The intersections needing mitigation as identified in the analysis required above shall be monitored under a Transportation Monitoring Plan which shall be incorporated into the Development Agreement for the MPD, with each designated improvement being required at the time defined in the Monitoring Plan. The Monitoring Plan shall require that improvements be constructed with development in order to bring mitigation projects into service before the Level of Service is degraded below the City's standard."

III. CITIZENS' TECHNICAL TEAM RECOMMENDATIONS

The Citizens' Technical team recommends the Traffic Model-specific MPD Ordinance Approval Exhibit C -- Conditions be revised as follows:

Recommendations for Condition #11 -- Traffic Demand Model Preparation. "The City shall create, at the expense of the Applicant, a new transportation demand model for this project for use in validating analyzing the distribution of project traffic at the intervals specified in Condition No. 17. The new model shall incorporate, at an appropriately fine level of detail, and at a minimum, the transportation network from the northern boundary of the City of Enumclaw on SR 169 through the City of Maple Valley to the northern limits of that city. The new model shall include the intersections studied in

BLACK DIAMOND MPD TRANSPORTATION DISCUSSION

the FEIS, together with the following additions: all existing principal and minor arterials in Black Diamond, Covington and Maple Valley and the unincorporated areas between these cities and specifically including the Kent-Black Diamond Road additional study intersections at SE 231st Street/SR 18 westbound ramps, SR 169/SE 271st Street and SR 169/SE 280th Street in Maple Valley. External trips may be captured by any valid methodology including overlaying the new model onto the existing Puget Sound Regional Council transportation model. The new model must be validated for existing traffic, based on actual traffic counts collected no more than two years prior to model creation. Key to the success of the new model is a well-coordinated effort and cooperation among the cities of Black Diamond, Maple Valley and Covington, the Applicant, King County and the Washington State Department of Transportation. Although the specific assumptions ultimately made in the model may be the subject of differences in professional judgment, the City Council's goal is that, notwithstanding these differences in judgment, the model will be comprehensive and therefore acceptable to all parties. The City Council therefore directs staff in preparing the model to work within the spirit of openness and cooperation with these other agencies and the Applicant, and similarly requests that other agencies and the Applicant join with the City of Black Diamond staff in working together in the same spirit for the common good. The resulting project impacts and mitigations must be integrated into the development agreement."

Recommendations for Condition #12 -- Traffic Demand Model Implementation Details. "The new demand model must take into account recent traffic counts, current and proposed land uses as defined in the applicable Comprehensive Plans areas covered in the study area, current peak-hour factors, intersection spacing, signal timing, and queue lengths; and existing speed limits on all roadway links included in the model's roadway network. The new model must contain a sensitivity analysis for the effect of projected peak-hour factor, intersection spacing, signal timing, and queue length assumptions and the varying consequences to project impacts and mitigation measures must be presented to the City and all affected jurisdictions for full evaluation of performance. The model must be run with currently funded transportation projects for each affected jurisdiction as shown in the applicable 6-year Transportation Improvement Plans (TIPs) and with transportation projects shown in the applicable 20-year Transportation Improvement Plans which projects are not funded but are determined to have a reasonable likelihood of obtaining funding based on consultation with each jurisdiction. A rigorous Cost / Benefit / Risk Analysis shall be performed on at least three scenarios: 6-year TIPs are funded on time; 20-year TIPs are not funded; and 20-year TIPs are funded on time."

Recommendations for Condition #14 -- Model Internal Capture Rate Assumptions. "The new model must include a reasonable internal trip capture rate assumption. The assumed internal trip capture rate must be based upon and justified by an analysis of the internal trip capture rates suggested by the currently applicable ITE publication as well as information concerning actual internal trip capture rates in other master planned developments with similar land use mixes in W. Washington. Internal trip capture rate assumptions must be vetted through a comprehensive validation of the model. Such validation must show that the internal trip capture rate assumptions are realistic and results are reproducible and compare to those experienced with other master planned developments with similar land use mixes in W. Washington. Any subsequent revisions to the model should include the realized trip capture rates for the project, if available. Such subsequent model revisions also shall be validated to ensure results are real and reproducible. Sensitivity analyses shall be conducted to gauge the adequacy of the internal trip capture rate assumptions. Such sensitivity analyses must assess the risks associated with assuming different internal trip capture rate assumptions."

Recommendation for a new Condition #14 A (same as HE Condition 16; underlined sentences are new). "The resulting project impacts and mitigations must be integrated into the Development Agreement or processed as a major amendment to the MPD prior to City approval of any implementing projects." Transportation Concurrency testing shall be periodically conducted at the beginning, midpoint, and end of each Phase to ensure concurrency at full build-out.

Recommendation for a new Condition #14 B (same as HE Condition 17) -- Evaluations Before the Development Agreements. "The intersections needing mitigation as identified in the analysis required above shall be monitored under a Transportation Monitoring Plan which shall be incorporated into the Development Agreement for the MPD, with each designated improvement being required at the time defined in the Monitoring Plan. The Monitoring Plan shall require that improvements be constructed with development in order to bring mitigation projects into service before the Level of Service is degraded below the City's standard."

Peter Rimbo
425-432-1332
Citizens' Technical Team Leader
primbos@comcast.net

"To know and not to do is not to know."-- Chinese proverb

Please consider the environment before printing.

10

Brenda Martinez

From: William Saas
Sent: Wednesday, May 04, 2011 9:03 AM
To: Brenda Martinez
Subject: FW: MEETINGS
Attachments: Environ_3-15-11_DISCUSSION.doc; ATT00001..htm

From: Peter Rimbo [primbos@comcast.net]
Sent: Wednesday, March 16, 2011 11:21 AM
To: William Saas; Craig Goodwin
Cc: Gil Bortleson
Subject: Re: MEETINGS

Bill and Craig,

Hi. Thank you for meeting with us last night. At your request, attached is the **Environment Condition** material we discussed.

CITIZENS TECHNICAL ACTION TEAM—ENVIRONMENT OVERVIEW

The Black Diamond MPD's engulf a small historic town with high density development on the rural/suburban fringes of southeast King County. Many environmental impacts can not be adequately mitigated because of the massive size and placement in a highly-constrained and water-bound environment. Mitigation attempts are challenged by the cumulative environmental effects of the MPDs.

The largest MPD in the history of King County deserves considerable thought and deliberation. The process should involve many steps in a long-term iterative process. Shown below is a part of an iterative process starting with proposing revisions and new Conditions of Approval for the MPD Ordinances' related to the environment. Recommended new Conditions concentrate on wetlands, wildlife habitat, and open space. Stream-lake-wetland complexes are a dominant part of the landscape and are contained within the MPDs.

ORDINANCE REQUIREMENTS: EXHIBIT C -- CONDITIONS OF APPROVAL RECOMMENDED REVISIONS AND NEW CONDITIONS (for The Villages Condition Numbers)

VISUAL AND AESTHETICS

Condition 86. The Development Agreement shall include a narrative of the process and basis for selectively removing hazard trees within sensitive areas only if public safety is an issue. The intent of this section will be to leave the majority of the sensitive areas as designated passive open space but to have it appear and function as native forest.

RATIONALE. Tree fall in sensitive areas is part of the natural functioning of sensitive areas. Since human intrusions into these areas is discouraged, no trees should be deemed "hazardous".

Condition 87. The Development Agreement shall define when and under what conditions an active development parcel may be logged for timber revenue, how that parcel must be secured to minimize the impacts on the community and how long the parcel may remain undeveloped before it must be reforested.

RATIONALE. Any clearing within should require a clearing and grading permit, and be allowed only as part of an active development phase.

NEW CONDITION. To provide a Buffer Plan that addresses visual and aesthetic values that identifies and locates placement of buffers, setbacks, and conservation easements to transition incompatible land uses at perimeter and adjoining properties of the MPDs.

GOAL. To minimize visual, noise, and night glare impacts of urbanization in rural and suburban surroundings

RATIONALE. Retain the existing topography, vegetation, and landforms for screening and buffering. For example, provide forest screening and set backs to minimize visual blight of row housing, especially on hilltops close to steep slopes.

CODE. BDMC:18.98.010(L): "Promote and achieve the city's vision of incorporating and/or as adapting the planning and design principles regarding mix of uses, compact form, coordinated open space, opportunities for...; as well as such additional design principles as may be appropriate for a particular MPD, all as identified in book 'Rural by Design' by Randall Arendt and in the City's Design Standards."

PUBLIC SERVICES - PARKS AND RECREATION

Condition 91. As part of the Development Agreement, the fee-in-lieu values for park facilities shall be re-evaluated to ensure appropriate levels of funding and to include a mechanism to account for inflationary rises in construction costs and potentially, the costs of maintaining these types of facilities in the future. The City shall maintain discretion concerning when and if a lump sum payment will be accepted in lieu of constructing off-site recreational facilities after a public comment process.

RATIONALE. The fee-in-lieu payment option for off-site recreational facilities avoids up-front commitments of costs, available space, and timing of construction and places burdens of uncertainty on the City and may not be acceptable to citizens.

Condition 97. The Development Agreement shall include a tabular list of the characteristics and acreages of passive open space and active open space and permitted activities thereon so that future land use applications can accurately track the type and character of open space that is provided.

RATIONALE. Complete documentation of open space is required according to MPD standard 18.98.150: "The MPD permit and development agreement shall establish the sizes, locations, and types of recreational facilities and trails to be built and also shall establish methods of ownership and maintenance."

NEW CONDITION. The Development Agreement shall provide specific details by phase for the timing, uses, and acreages of park, trails, recreation facilities to be constructed on- and off-site.

GOAL. To provide specific details of timing, uses and acreages of park, trails, recreation facilities to be constructed on- and off-site for each phase of development.

RATIONALE. The MPD Ordinance is inadequate in providing up-front commitments of costs, available space, and timing of construction of off-site recreational facilities. The City's Comprehensive Plan indicates it currently and in the future will need, "...a full variety of park types, such as open space and neighborhood parks, as well as enough recreational facilities, such as baseball diamonds, to support the City's population."

CODE. Complete documentation of open space is required according to MPD standard 18.98.150: "The MPD permit and development agreement shall establish the sizes, locations, and types of recreational facilities and trails to be built and also shall establish methods of ownership and maintenance."

EROSION HAZARDS

Condition 110. Prior to approval of the first Implementing plat or site development permit within a phase, the applicant shall submit an overall grading plan by phase that will preserve existing topography to maximum extent possible and to balance the cut or fill so that the amount of cut or fill does not exceed the other by more than 20% as an upper limit to mining of materials.

RATIONALE. Adhere to "Rural by Design" principles to preserve existing topography and insure that unnecessary mining of soil material does not occur.

LANDSLIDE HAZARDS

CITIZENS TECHNICAL ACTION TEAM—ENVIRONMENT

Condition 113. Geologically hazardous areas shall be designated as open space and roads and utilities routed to avoid such areas. ~~Where avoidance is impossible, utilize the process in the Sensitive Areas Ordinance (supplied with adequate information as defined in code) and Engineering Design and Construction Standards (ED&CS) to build roads and utilities through these areas.~~

RATIONALE. Construction in geologically hazardous areas can exacerbate environmental damage and cause public health and safety problems and detracts from retaining natural features of the City's landscape. Grading out natural features detracts from preserving the City's landscape.

CODE. One purpose of the City's SAO is "to protect members of the public and public resources and facilities from public health or safety concerns, including injury, loss of life, or property damage due to events such as landslides and steep slopes failure, erosion, seismic events, and mine hazards." (SAO, 19.10.010 C, p. 5).

MINE HAZARDS

Condition 114. Development within the moderate mine hazard area will may require additional mitigation measures or set-asides as open space, which shall be evaluated and specified with future implementing development proposals.

RATIONALE. The City's SAO defines moderate mine hazard as locations that pose significant risks of property damage that may be mitigated by implementing special engineering or architectural recommendations. Vulnerable facilities include the siting of schools, hospitals, and emergency fire and police.

VEGETATION AND WETLANDS

NEW CONDITION. Water-levels for core wetland-lake complexes must be monitored through a Wetland Preservation Plan to assess the performance of storm-water infiltration techniques and facilities. An adaptive management plan must be developed to address the ability to alter storm-water infiltration techniques or facilities if water levels in Core stream-lake-wetland complexes are negatively affected.

GOAL. To protect against no net long-term loss of water to Core stream-lake-wetland complexes.

RATIONALE. Stormwater management is not an exact science and challenges exist as stormwater is distributed post development to wetlands, lakes, streams, and ground water. Monitoring and correcting for stormwater management deficiencies is needed ensure pre-development flows to wetlands and ground water are maintained.

CODE. BDMC 19.10.320(A): The streams, lakes, ponds and wetland complex associated with Rock Creek, Jones Lake, Jones Creek, Black Diamond Lake, Black Diamond Creek, and Ravensdale Creek are designated as Core Stream and Wetland Complex....."

NEW CONDITION. Assess post-development water quality of the Core stream-lake-wetland complexes associated with Rock Creek, Jones Lake, Jones Creek, Black Diamond Lake, Black Diamond Creek. Apply corrective actions should post-development water-quality conditions not meet State standards.

GOAL. Goals for surface- water management should be to maintain the present quality of water bodies by: (a) complying to State anti-degradation policies, (b) prevent contamination of

surface water from urban activities, and (c) prevent flooding along natural or constructed drainage systems.

RATIONALE. To ensure that urban runoff from development does not violate water quality standards for the Core stream-lake-wetland complexes.

CODE. BDMC 18.98.020 (B)- "protection of surface and groundwater quality both on-site and downstream, through the use of innovative, low-impact and regional storm water management technologies." Black Diamond Comprehensive Plan policy NE-10: "Avoid disturbance to valuable fish and wildlife habitat through the proper location, design, construction, and management of new development."

NEW CONDITION. Provide a project-level Grading Plan targeted to protect wetlands during construction phase of the development.

GOAL. To provide a overall Grading Plan targeted to minimize the potential of sediment discharge to wetlands or their buffers caused by large storms or an unexpected interception of springs that overwhelm temporary erosion-control facilities.

RATIONALE. The construction phase when soils are bare and exposed can cause considerable harm to the environment. The MPD's construction impact will continue for years during buildout.

FISH AND WILDLIFE

Condition 124. Mass-producing species (such as hazelnut) and such other native, preferred vegetation as may be specified by the Development Agreement shall be used to mitigate for reduced food sources resulting from habitat reductions when designing landscape plans for development parcels adjoining wetland buffers, or for wetland buffer enhancement plantings. [FEIS Mitigation Measure] The Development Agreement shall specify a process by which such landscape plans are to be reviewed by a Wildlife and Habitat Committee and approved by the Director of Natural Resources and Parks for compliance with the mitigation requirement herein.

RATIONALE. To provide volunteer community assistance to the Director on Natural Resource for review and oversight.

NEW CONDITION. To provide a Wildlife and Habitat Preservation Plan to enhance existing wildlife habitat and corridors to meet the needs of large animals such as deer and elk to migrate on- and off-site using non-wetland and wetland corridors. Guidelines for the size, placement, and connections of on- and off-site habitats to be done in consultation with outside experts and agencies.

GOAL. To provide non-wetland upland habitat and corridors for large animals to move on- and off- site.

RATIONALE. To mitigate impacts of large-scale development abutting rural lands and rural resource lands that currently provide forage and habitat for deer and elk. High-value wildlife habitats exist around streams and wetlands in the City of Black Diamond.

CODE. BDMC 18.98.155 (B)-- Development shall be designed, located and constructed to minimize impact to wildlife habitat and migration corridors. BDMC 18.98.010(C)-- "Preserve passive open space and wildlife corridors in a coordinated manner while also preserving usable open space lands for enjoyment of the city's residents." BDMC 18.98.140(C) --"The open space shall be located and designed to minimize the adverse impacts on wildlife resources and achieve a high degree of compatibility with wildlife habitat areas where identified."

CITIZENS TECHNICAL ACTION TEAM—ENVIRONMENT

SENSITIVE AREAS/OPEN SPACE

Condition 151. The Development Agreement shall include a tabular list of the types of activities and the characteristics and acreages of passive open space and active open space so that future land applications can accurately track the type and character of open space that is provided.

RATIONALE. Complete documentation of open space is required according to MPD standard 18.98.150: "The MPD permit and development agreement shall establish the sizes, locations, and types of recreational facilities and trails to be built and also shall establish methods of ownership and maintenance."

NEW CONDITION. Provide on-site acreage of at least 50 percent open space for both MPD's with open space meeting definition of BDMC 18.98.140(A).

GOAL. Provide at least 50 % open space for total project area of both MPD's.

RATIONALE. To fulfill the Black Diamond Comprehensive Plan of at least 50 % of the total project area of MPD site is devoted to open space uses. Fifty percent open space is critical for allowance of certain housing densities. Forty percent open space is necessary for the project to be exempt from tree replacement formulas in the City Tree Ordinance. Exhibit A of the Development Agreement shows Open Space is comprised of the land-use categories: (a) Open Space, Trails and Parks, (b) Buffers, and (c) Wetlands which is 42.2 % of the total Villages project area. These same Open Space categories make up 38.8 % of the total Lawson Hills project area. The Hearing Examiner leaves the door open for the City to satisfy a 50 percent requirement when he says: "The agreements presumably do not place a cap on the amount of open space the Applicant can dedicate and applicant could also satisfy a 50 percent requirement for the entire Villages MPD by dedicating additional open space in areas that are not subject to agreements." (Villages, Findings, Conclusion of Law, and Decision, p. 239).

CODE. According to the Black Diamond Comprehensive Plan, the MPD overlay lists as the designation criteria 7: "at least 50 % of the MPD site is devoted to open spaces uses, which may include recreational amenities."

REFERENCE. BDMC 18.98.140(A) defines Open Space in part as "wildlife habitat areas, perimeter buffers, environmentally sensitive areas and their buffers, and trail corridors. It may also include developed recreational areas, such as golf courses, trail corridors, play-fields, parks of one-quarter acre or more in size, pocket parks that contain an active use element, those portions of school sites devoted to outdoor recreation, and storm water detention/retention ponds that have been developed as a public amenity and incorporated into the public park system....."

Brenda Martinez

From: Peter Rimbos <primbos@comcast.net>
Sent: Sunday, March 27, 2011 8:20 AM
To: William Saas
Cc: William Saas
Subject: PLEASE REVIEW THIS

Bill,

Hi. Our Technical Team has drafted an e-mail which we would like to send to all BDCC members. Could you please review that e-mail below and give us your thoughts before we send it out. Please tell us if you have any problems with it. Call or e-mail with your thoughts / recommendations. Thank you.

Black Diamond City Council Members,

Good morning. Several weeks ago the Citizens' Technical Action Team (TAT) requested meetings with all Council members to discuss the MPD Ordinances and specific recommendations to improve the Conditions of Approval. Two Council members agreed to meet with the TAT--Councilmen Goodwin and Saas. At that time the other three Council members refused to meet with the TAT based on what we believe is the mistaken rationale that they cannot meet with citizens involved in the Legal Appeals.

Some background is in order. There are two citizen actions:

(1) **Growth Management Hearings Board (GMHB):** This is an administrative appeal that is still pending. It may resume depending upon the content of the MPDs after the 75-day (now 105-day) order is met. The order requires the City to implement a Legislative Process and restart the MPD Application Hearing Process with the Planning Commission holding Hearings followed by the City Council holding Hearings. Yarrow Bay has appealed this GMHB Decision, not the City.

(2) **Superior Court:** The LUPA appeal is still pending depending upon whether or not the Court of Appeals accepts direct review of Yarrow Bay's GMHB appeal and the outcome of that appeal. If the GMHB jurisdiction is upheld, then the LUPA appeal dies. Otherwise the LUPA appeal would commence.

(3) **Federal District Court:** There is a Civil Rights suit pending until the LUPA appeal is decided. Again, it probably goes away if the GMHB jurisdiction is upheld and the City follows the proper Public process.

None of these cases should cause a breakdown of dialogue between City Council members and any citizen. This is especially true with the dialogue we propose in which technical deficiencies in the existing MPD Ordinance Conditions of Approval would be discussed. Our meetings with you, as they did with Councilmen Goodwin and Saas, would focus on improvements to the Conditions of Approval that should be carefully considered, along with detailed supporting rationale.

Consequently, we encourage you to specifically ask your Legal Counsel if what we say above is correct and, if so, request they allow you to talk with both Appellants and Non-Appellants alike. An open two-way dialogue would be beneficial to all.

The TAT meetings with Councilmen Goodwin and Saas were mutually informative and productive. Between March 10 and 21, 2011, members of the TAT held a series of four meetings (a total of 11 hr) with Councilmen Goodwin and Saas on **Transportation, Environment, Stormwater & Flooding, and Fiscal Impacts & Schools**. Each meeting consisted of 2+ hour, in-depth, two-on-two discussions. The focus of these discussions were specific Ordinance Conditions the TAT recommended be revised, eliminated, or added. We believe everyone benefited from such a two-way dialogue denied citizens for the past 18+ months.

In our **Transportation Conditions** discussion the following areas were addressed: Traffic Modeling, Assumptions for the Models, Sensitivity Analyses of Critical Parameters, Cost/Benefit/Risk Analyses, Internal Capture Rates, Green Valley Road, Funding Sources, etc. The result was a 21-page comprehensive set of revised and new Conditions, supporting rationale, and a detailed treatise on Traffic Modeling and Validation.

In our **Environment Conditions** discussion the following areas were addressed: Wildlife Habitat Preservation, Wildlife Corridors, Stream-Lake-Wetland Complexes, Groundwater Flow, Stormwater Infiltration

Techniques, Mine Hazards, Geologic Hazards, Open Space, Parks & Recreation Facilities, etc. An array of detailed maps were used to augment the discussion. The result was a 6-page comprehensive set of revised and new Conditions and supporting rationale.

In our **Stormwater & Flooding Conditions** discussion the following areas were addressed: Phosphorus Loading, Stormwater Runoff, Infiltration, Monitoring, etc. The result was a set of targeted Conditions and supporting rationale.

In our **Fiscal Impacts & Schools Conditions** discussion the following areas were addressed: Fiscal Impact Analyses, Community Facilities Districts (CFDs), City Solvency, Letters of Credit, Yarrow Bay Organizational Structure, Schools, Bonding, Vesting, etc. The result was a set of targeted Conditions and supporting rationale.

We look forward to discussing all the above items and more with you at your convenience. We await your considered replies.

Thank you.

Peter Rimbo
425-432-1332
Citizens' Technical Team Leader
primbos@comcast.net

"To know and not to do is not to know."-- Chinese proverb

Please consider the environment before printing.

Save Black Diamond

CITIZENS' TECHNICAL ACTION TEAM (TAT) UPDATE by Peter Rimbos, TAT Leader

A Citizens' Technical Action Team (TAT) formed shortly after the Black Diamond City Council passed the MPD Approval Ordinances in September 2010. The TAT's objective is to understand all critical technical issues and develop a winning strategy to exploit them. It's strategy is to review and assess all pertinent documents including the MPD Ordinances, Development Agreements, Preliminary Plat Agreements, etc.

In February 2011 the TAT requested meetings with BD City Council members to discuss the MPD Approval Ordinances and specific recommendations to improve the Conditions of Approval. Two members of the City Council agreed to meet with the TAT—Councilmen Goodwin and Saas. At that time the other three Council members stated they could not meet with the TAT based on what we believe is a mistaken rationale—they could not engage in dialogue with citizens involved in the Legal Appeals.

Between March 10 and 21, 2011, members of the TAT held a series of four meetings (a total of 11 hr) with Councilmen Goodwin and Saas on Transportation, Environment, Stormwater & Flooding, and Fiscal Impacts & Schools. Each meeting consisted of 2+ hour, in-depth, two-on-two discussions. The focus of these discussions were specific Ordinance Conditions the TAT recommended be revised, eliminated, or added. We believe everyone benefited from such a two-way dialogue denied citizens for the past 18+ months.

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Background and Literature

What Will the New Development Look Like?

What's the Solution?

King County Historical Organizations

Home

3/29/2011

Save Black Diamond

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In our Fiscal Impacts & Schools Conditions discussion, the following areas were addressed: Fiscal Impact Analyses, Community Facilities Districts (CFDs), City Solvency, Letters of Credit, Yarrow Bay Organizational Structure, Schools, Bonding, Vesting, etc. The result was a set of targeted Conditions and supporting rationale.

The TAT is exploring meetings with the other three BD City Council members. At this time none are scheduled.

52

Brenda Martinez

From: Leih Mulvihill
Sent: Thursday, April 28, 2011 8:15 PM
To: Brenda Martinez
Subject: FW: MPD ORDINANCE CONDITION MEETINGS

Leih Mulvihill

City Council Member
Black Diamond, WA

From: Peter Rimbos [primbos@comcast.net]
Sent: Monday, March 28, 2011 9:32 AM
To: Kristine Hanson; Bill Boston; Leih Mulvihill
Cc: Craig Goodwin; William Saas
Subject: MPD ORDINANCE CONDITION MEETINGS

City Councilwoman Hanson, Councilman Boston, and Councilwoman Mulvihill,

Good morning. Several weeks ago the Citizens' Technical Action Team (TAT) requested meetings with all Council members to discuss the MPD Ordinances and specific recommendations to improve the Conditions of Approval. Two Council members agreed to meet with the TAT--Councilmen Goodwin and Saas. At that time the other three Council members stated they could not meet with the TAT based on what we believe is the mistaken rationale--they could not engage in dialogue with citizens involved in the Legal Appeals.

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Consequently, we encourage you to specifically ask your Legal Counsel if what we say above is correct and, if so, request they allow you to talk with both Appellants and Non-Appellants alike. An open two-way dialogue would be beneficial to all.

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We look forward to discussing all the above items and more with you, at your convenience, in an open across-the-table dialogue. We await your considered replies. Please feel free to contact me via phone or e-mail.

Thank you.

Peter Rimbo
425-432-1332
Citizens' Technical Team Leader
primbos@comcast.net

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Please consider the environment before printing.

16

Brenda Martinez

From: William Saas
Sent: Wednesday, May 04, 2011 9:01 AM
To: Brenda Martinez
Subject: FW: ENVIRONMENTAL CONDITIONS "FINAL" PACKAGE
Attachments: Envir_Cond_&_Rationale--Final.doc; ATT00001..htm

From: Peter Rimbo [primbos@comcast.net]
Sent: Tuesday, April 05, 2011 7:13 PM
To: Craig Goodwin; William Saas
Cc: Gil Bortleson
Subject: ENVIRONMENTAL CONDITIONS "FINAL" PACKAGE

Craig and Bill

Hi. Attached is a "Final" Package from our **Environmental Conditions** meeting on March 15. Please feel free to contact Gil Bortleson (360-886-1939) should you have any questions/comments. Thank you.

CITIZENS TECHNICAL ACTION TEAM—ENVIRONMENT OVERVIEW

The Black Diamond MPD's engulf a small historic town with high density development on the rural/suburban fringes of southeast King County. Many environmental impacts can not be adequately mitigated because of the massive size and placement in a highly-constrained and water-bound environment. Mitigation attempts are challenged by the cumulative environmental effects of the MPDs.

The largest MPD in the history of King County deserves considerable thought and deliberation. The process should involve many steps in a long-term iterative process. Shown below is a part of an iterative process starting with proposing revisions and new Conditions of Approval for the MPD Ordinances' related to the environment. Recommended new Conditions concentrate on wetlands, wildlife habitat, and open space. Stream-lake-wetland complexes are a dominant part of the landscape and are contained within the MPDs.

GOODWIN: *There is a 2005 King County Map that shows all the Open Space. The SAO requires the buffers depending on the Wetlands classification. That mapping should be available.*

ORDINANCE REQUIREMENTS: EXHIBIT C -- CONDITIONS OF APPROVAL RECOMMENDED REVISIONS AND NEW CONDITIONS (for The Villages Condition Numbers)

VISUAL AND AESTHETICS

Condition 86. The Development Agreement shall include a narrative of the process and basis for selectively removing hazard trees within sensitive areas only if public safety is an issue. The intent of this section will be to leave the majority of the sensitive areas as designated passive open space but to have it appear and function as native forest.

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RATIONALE. Any clearing within should require a clearing and grading permit, and be allowed only as part of an active development phase.

NEW CONDITION. Provide a Buffer Plan that addresses visual and aesthetic values and adapts design principles that incorporates buffers, setbacks, and conservation easements to transition incompatible land uses of the MPD's and perimeter and adjoining properties.

GOAL. To minimize visual, noise, and night glare impacts of urbanization in the community and in rural and suburban surroundings.

RATIONALE. Minimize adverse urbanization impacts to visual and aesthetic values by retaining the existing topography, vegetation, and landforms for purposes of screening and buffering. For example, provide forest screening and setbacks to minimize visual impact of row housing, especially on hill slopes.

CODE. BDMC:18.98.010(L): "Promote and achieve the city's vision of incorporating and/or as adapting the planning and design principles regarding mix of uses, compact form, coordinated open space, opportunities for...; as well as such additional design principles as may be appropriate for a particular MPD, all as identified in book 'Rural by Design' by Randall Arendt and in the City's Design Standards."

PUBLIC SERVICES - PARKS AND RECREATION

Condition 91. As part of the Development Agreement, the fee-in-lieu values for park facilities shall be re-evaluated to ensure appropriate levels of funding and to include a mechanism to account for inflationary rises in construction costs and potentially, the costs of maintaining these types of facilities in the future. The City shall maintain discretion concerning when and if a lump sum payment will be accepted in lieu of constructing off-site recreational facilities after a public comment process.

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CITIZENS TECHNICAL ACTION TEAM—ENVIRONMENT

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RATIONALE. The MPD Ordinance is inadequate in providing up-front commitments of costs, available space, and timing of construction of off-site recreational facilities. The City's Comprehensive Plan indicates it currently and in the future will need, "...a full variety of park types, such as open space and neighborhood parks, as well as enough recreational facilities, such as baseball diamonds, to support the City's population."

CODE. *Complete documentation of open space is required according to MPD standard 18.98.150: "The MPD permit and development agreement shall establish the sizes, locations, and types of recreational facilities and trails to be built and also shall establish methods of ownership and maintenance."*

EROSION HAZARDS

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RATIONALE. Adhere to "Rural by Design" principles to preserve existing topography and insure that unnecessary mining of soil material does not occur.

LANDSLIDE HAZARDS

Condition 113. Geologically hazardous areas shall be designated as open space and roads and utilities routed to avoid such areas. ~~Where avoidance is impossible, utilize the process in the Sensitive Areas Ordinance (supplied with adequate information as defined in code) and Engineering Design and Construction Standards (ED&CS) to build roads and utilities through these areas.~~

RATIONALE. Construction in geologically hazardous areas can exacerbate environmental damage and cause public health and safety problems and detracts from retaining natural features of the City's landscape. Grading out natural features detracts from preserving the City's landscape. Preserving topography and landforms is one of the key principles in Rural by Design.

CODE. *One purpose of the City's SAO is "to protect members of the public and public resources and facilities from public health or safety concerns, including injury, loss of life, or property damage due to events such as landslides and steep slopes failure, erosion, seismic events, and mine hazards." (SAO, 19.10.010 C, p. 5).*

MINE HAZARDS

Condition 114. Development within the moderate mine hazard area will may require additional mitigation measures or set-asides as open space, which shall be evaluated and specified with future implementing development proposals.

RATIONALE. The City's SAO defines moderate mine hazards as locations that pose significant risks of property damage that may be mitigated by implementing special engineering or architectural recommendations. Vulnerable facilities such as schools, hospitals, and emergency fire and police can not be located on moderate mine hazard areas, as specified in the City's SAO.

SAAS: *There are 4 types of classes for Mine Hazards. These classes were overlooked in the FEIS analyses.*

GOODWIN: *Class A requires at least fencing to be erected around it for Public Safety.*

PETER: *If these were classified, then they should not be counted in Open Space calculations as they were.*

GOODWIN & SAAS: *Yes, they shouldn't.*

[GIL: added comment--The City's SAO requires performance standards to be met to allow development in mine hazard areas.]

VEGETATION AND WETLANDS

CITIZENS TECHNICAL ACTION TEAM—ENVIRONMENT

NEW CONDITION. Water-levels for core wetland-lake complexes shall be monitored pre- and post- development through a Wetland Preservation Plan. The Wetland Preservation Plan shall assess the performance of storm-water infiltration techniques and facilities and adapt management plans to maintain pre- development water-levels for Core stream-lake-wetland complexes within the project area.

GOAL. *To protect against net long-term loss or gain of water to Core stream-lake-wetland complexes.*

RATIONALE. *Stormwater management is not an exact science and challenges exist as stormwater is distributed post development to wetlands, lakes, streams, and ground water. Monitoring and correcting for stormwater management deficiencies is needed to ensure pre- development flows to wetlands and ground water are maintained at pre-development levels.*

CODE. *BDMC 19.10.320(A): The streams, lakes, ponds and wetland complex associated with Rock Creek, Jones Lake, Jones Creek, Black Diamond Lake, Black Diamond Creek, and Ravensdale Creek are designated as Core Stream and Wetland Complex....."*

GOODWIN: *What in the development would change the water flows?*

GIL: *Summer flows of shallow ground water to wetlands are a potential problem, if springs and shallow ground are interrupted by grading, essentially dewatering shallow wetland depressions, or stormwater is not distributed to wetlands to match pre-development conditions. They are trying to mimic the natural hydrologic cycle by infiltration of stormwater to shallow ground water and artificially recharge to deeper ground water at infiltration points. Routing stormwater to the regional detention facility from wetlands east of Black Diamond Lake would increase the risk of dewatering those wetlands.*

GOODWIN: *They are particularly concerned with Horseshoe Lake. The Detention Pond is going to be very pervious, so I don't see how they will control flow and infiltration.*

GIL: *The Applicant has a network of monitoring wells to monitor ground water levels; however, they have not presented a Groundwater Monitoring Plan in the Development Agreement to measure water levels pre- and post development.*

[GIL: added comment--They probably would line the detention "lake" to control infiltrate rates to reduce the likelihood of creating a ground water mound and saturating soils. Soil saturation increases the risk of a landslide hazard downslope towards the Green River valley]

NEW CONDITION. Assess pre- and post-development water quality of the Core stream-lake-wetland complexes associated with Rock Creek, Jones Lake, Jones Creek, Black Diamond Lake, Black Diamond Creek. Apply corrective actions should post-development water-quality conditions not meet State standards.

GOAL. *Goals for surface- water management should be to maintain the present quality of water bodies by: (a) complying to State anti-degradation policies, (b) prevent contamination of surface water from urban activities, and (c) prevent flooding along natural or constructed drainage systems.*

RATIONALE. *To ensure that urban runoff from development does not violate water quality standards for the Core stream-lake-wetland complexes. To ensure that urban runoff from development does not cause chemical or physical deterioration of sensitive bogs adjacent to Black Diamond Lake.*

CODE. *BDMC 18.98.020 (B)- "protection of surface and groundwater quality both on-site and downstream, through the use of innovative, low-impact and regional storm water management technologies." Black Diamond Comprehensive Plan policy NE-10: "Avoid disturbance to valuable fish and wildlife habitat through the proper location, design, construction, and management of new development."*

GOODWIN: *We need more detail on your recommendation to "Apply corrective actions." We need to establish a baseline, etc. We plan to measure flow where Rock Creek enters Lake Sawyer and where Ravensdale Creek enters Lake Sawyer, as well as out of Ginder Lake.*

GIL: *Pre-development baseline data for water quality are needed. Some periodic data are provided in Appendices of the FEIS, but the coverage and frequency of sampling may be inadequate to qualify for pre- and post-development comparisons. Water-quality measurements that reflect urban contaminants or impacts such as household chemicals, greases and oils, pesticides, water temperatures, and fine sediment should be considered in the baseline measurements. Measuring the biological health of selected stream reaches pre- and post-development also is recommended. For example, Ravensdale and Rock Creeks support coho salmon and cut-throat trout. I would agree with your high priority to measuring water flow at Rock Creek and Ravensdale Creek. This would represent critical data for pre- and post-development monitoring. As you know, accurate flow data depend on establishing discharge rating curves that include measurements at extremes of high storm flows and summertime low flow.*

CITIZENS TECHNICAL ACTION TEAM—ENVIRONMENT

[GIL: added comment--It may be worth inquiring about outside agency assistance for installation, maintenance, quality assurance, and record keeping of multi-year stream gaging stations].

[GIL: added comment--Corrective actions may include use of King County Surface Water Design Manual for water-quality treatment requirements for discharge to bogs per comments to DEIS/FEIS by King County, employ enhanced water quality treatment for stormwater throughout the project, regulate and pump dilution water to Ginder Lake and Ginder Creek from the John Henry Mine lake, limit pesticide and fertilizer applications throughout the project, reduce lawn irrigation practices near paved surfaces, regulate street sweeping, control hazardous materials, home-owner educational materials aimed at reducing urban-generated contaminants.....]

NEW CONDITION. Provide a project-level Grading Plan targeted to protect wetlands during construction phase of the development.

GOAL. To provide a overall Grading Plan targeted to minimize the potential of sediment discharge to wetlands or their buffers caused by large storms or an unexpected interception of springs that overwhelm temporary erosion-control facilities.

RATIONALE. The construction phase when soils are bare and exposed can cause considerably harm to the environment. The MPD's construction impact will continue for years during buildout and tightest safeguards practical are warranted.

GOODWIN: *Doesn't the 2005 Stormwater Management Manual take care of this?*

GIL: *True. However the suggestion is to target construction activity within wetland proximities with tighter safeguards, especially considering the amount of Core wetland complexes within the project area. The Hearing Examiner provided many conditions which appear to add emphasis to issues of critical concern, but ,in fact, probably can be said to be addressed in the Stormwater Manual or Sensitive Area Ordinance.*

FISH AND WILDLIFE

Condition 124. Mass-producing species (such as hazelnut) and such other native, preferred vegetation as may be specified by the Development Agreement shall be used to mitigate for reduced food sources resulting from habitat reductions when designing landscape plans for development parcels adjoining wetland buffers, or for wetland buffer enhancement plantings. [FEIS Mitigation Measure] The Development Agreement shall specify a process by which such landscape plans are to be reviewed and approved by the Director of Natural Resources and Parks for compliance with the mitigation requirement herein. The process by which landscaped plans are to reviewed shall include a Wildlife and Habitat Review Committee.

RATIONALE. To provide volunteer community assistance to the Director on Natural Resource for review and oversight of wildlife and habitat in landscaping plans.

NEW CONDITION. To provide a Wildlife and Habitat Preservation Plan to enhance existing wildlife habitat and corridors to meet the needs of large animals such as deer and elk to migrate on- and off-site by coordinating the use of non-wetland and wetland habitat and corridors. Guidelines for the size, placement, and connections of on- and off-site habitats are to be done in consultation with outside experts and agencies.

GOAL. To provide wildlife habitat and corridor linkages for large animals to move on- and off-site.

RATIONALE. To provide a high degree of compatibility for wildlife from urbanization impacts on- and off-site. Coordinate the use of high-value wildlife habitats that exist around streams and wetlands in the City of Black Diamond with upland habitat to minimize the adverse impacts on wildlife resources. Study the use of the area around Black Diamond Lake already suggested in the City's Comprehensive Plan (June, 2009) as an additional Fish and Wildlife Conservation Area (Figure 4.2).

CODE. BDMC 18.98.155 (B)—“Development shall be designed, located and constructed to minimize impact to wildlife habitat and migration corridors.” BDMC 18.98.010(C)— “Preserve passive open space and wildlife corridors in a coordinated manner while also preserving usable open space lands for enjoyment of the city's residents.” BDMC 18.98.140(C) —“The open space shall be located and designed to minimize the adverse impacts on wildlife resources and achieve a high degree of compatibility with wildlife habitat areas where identified.”

GOODWIN: *Is there some justification for an increased buffer width for wildlife? The WA State officials testified that 300-ft buffers are adequate. How do we refute that?*

SAAS: *I believe they are 225-ft buffers.*

GIL: *The main corridor for wildlife in the Villages duals with its use as a Core wetland complex and its buffer. The Core wetland and its 225-ft buffer on both sides meets the 300-ft width for the wildlife corridor overlap. A*

CITIZENS TECHNICAL ACTION TEAM—ENVIRONMENT

wildlife and habitat preservation plan in a revised set of ordinances would allow a revisit of the Black Diamond MPD's to assess the adequacy of wildlife corridors in coordinated fashion with agency and outside experts. The mitigated alternative 3 in the FEIS shows reasonable possibilities do exist to increase habitat areas. The Development Agreement Constraint Maps do not designate the additional wildlife corridor extension from the west end wetland complex of Black Diamond Lake to western edge of MPD. City staff is aware of this issue.

SENSITIVE AREAS/OPEN SPACE

Condition 151. The Development Agreement shall include a tabular list of the types of activities and the characteristics and acreages of passive open space and active open space so that future land applications can accurately track the type and character of open space that is provided.

RATIONALE. Complete documentation of open space is required according to MPD standard 18.98.150: "The MPD permit and development agreement shall establish the sizes, locations, and types of recreational facilities and trails to be built and also shall establish methods of ownership and maintenance."

NEW CONDITION. Provide on-site acreage of at least 50 percent open space for both MPD's with open space meeting definition of BDMC 18.98.140(A).

GOAL. Provide at least 50 % open space for total project area of both MPD's.

RATIONALE. To fulfill the Black Diamond Comprehensive Plan of at least 50 % of the total project area of MPD site is devoted to open space uses. Fifty percent open space is critical for allowance of certain housing densities. Forty percent open space is necessary for the project to be exempt from tree replacement formulas in the City Tree Ordinance. Exhibit A of the Development Agreement shows Open Space is comprised of the land-use categories: (a) Open Space, Trails and Parks, (b) Buffers, and (c) Wetlands which is 42.2 % of the total Villages project area. These same Open Space categories make up 38.8 % of the total Lawson Hills project area. The Hearing Examiner leaves the door open for the City to satisfy a 50 percent requirement when he says: "The agreements presumably do not place a cap on the amount of open space the Applicant can dedicate and applicant could also satisfy a 50 percent requirement for the entire Villages MPD by dedicating additional open space in areas that are not subject to agreements." (Villages, Findings, Conclusion of Law, and Decision, p. 239).

CODE. According to the Black Diamond Comprehensive Plan, the MPD overlay lists as the designation criteria 7: "at least 50 % of the MPD site is devoted to open spaces uses, which may include recreational amenities."

REFERENCE. BDMC 18.98.140(A) defines Open Space in part as "wildlife habitat areas, perimeter buffers, environmentally sensitive areas and their buffers, and trail corridors. It may also include developed recreational areas, such as golf courses, trail corridors, play-fields, parks of one-quarter acre or more in size, pocket parks that contain an active use element, those portions of school sites devoted to outdoor recreation, and storm water detention/retention ponds that have been developed as a public amenity and incorporated into the public park system....."

GOODWIN: YB will say that they met all the past agreements and have provided what the Code states. The numbers are less than 50%, because they are providing Open Space through the BDUGAA (e.g., "past agreement"). These calculations are in the MPD Application.

GIL: The Applicant should provide an accurate accounting of open space in the Development Agreement such as done for Grand Ridge in Issaquah. As written, the Development Agreement is not a stand-alone document that future City Council members can reference with specificity and clarity.

[GIL: added comment--It is important the Applicant clearly provide an accounting of open space acreages and map locations by active and passive categories. The Applicant has provided only small percentages of open space in non-sensitive areas. Most open space are sensitivity areas or "nature's gifts" to the Applicant including open water. Some areas that can reasonably be argued to remain as passive open space are proposed for parks. One example would be the proposal to use a large area adjacent to Jones Lake within a Core wetland area as Jones Lake Park (Villages FEIS exhibit 3-31).]

Brenda Martinez

From: William Saas
Sent: Wednesday, May 04, 2011 9:01 AM
To: Brenda Martinez
Subject: FW: FISCAL CONDITIONS "FINAL" PACKAGE
Attachments: 6241-S.PL.pdf; ATT00001..htm; bd%20agenda.pdf; ATT00002..htm; CFD _Emails_Sen. Devlin_and_Foster Pepper.xps; ATT00003..htm; City Council School Info[1].doc; ATT00004..htm; MelloRoosPolicy.PDF; ATT00005..htm; Overview CFD.doc; ATT00006..htm; SEADOCS 50726445 LID OVERVIEW 1.pdf; ATT00007..htm; Tax Rate CFD Comparison.docx; ATT00008..htm; Fiscal-3-18-11_DISCUSSION2[1][1].doc; ATT00009..htm; Bobs Proposed Condition 156 revision[1].doc; ATT00010..htm; Fiscal Analysis.doc; ATT00011..htm; Funding Agreements.doc; ATT00012..htm

From: Peter Rimbos [primbos@comcast.net]
Sent: Tuesday, April 05, 2011 8:39 PM
To: Craig Goodwin; William Saas
Cc: Cindy Proctor; Bob Edelman
Subject: FISCAL CONDITIONS "FINAL" PACKAGE

Craig and Bill,

Hi. Please find attached the 12 files listed below that were discussed in our two **Fiscal Conditions** meetings of March 18 and 21. Feel free to contact Cindy Proctor (206-595-0212) or Bob Edelman (360-886-7166) should you have any questions/comments. If some of these files do not come through, please contact me. Thank you.

Cindy's Files:

- (1) SB 62441
- (2) School CFD from CA
- (3) CFD Emails--Sen. Delvin and Foster Pepper
- (4) Comments on the Tri-Party School Agreement
- (5) MelloRoos Policy--LA, CA
- (6) CFD Overview--Cindy Proctor
- (7) K&L Gates and Foster Pepper Document
- (8) Tax Rate Chart
- (9) Fiscal Analysis with revised Conditions 156 and 157

Bob's Files:

- (10) Revised Condition 156
- (11) Fiscal Analysis with a revised Condition 156
- (12) Comments on the Funding Agreement

To recap: We have now provided "Final" Packages on Transportation, Environment, Stormwater, and Fiscal Impacts from our four meetings. Still to come is a "Final" Package on Flooding which will be brief.

We look forward to upcoming Ordinance Conditions of Approval meetings (still to be scheduled) with Kristine Hanson and Leih Mulvihill now that they have agreed to meet with us (see their 3/28 & 3/29 e-mails, respectively).

Peter Rimbos
425-432-1332

Tri-Party School Mitigation Agreement Information for Black Diamond City Council

RCW 58.17.110 which is the Revised Code of Washington's section for conditions on subdivision approval mandates that a subdivision shall not be approved unless the city makes written findings that appropriate provisions are made for schools and school grounds. However, language in Section 3.2.1 of the Tri-Party School Mitigation Agreement states that "the City will find that appropriate provision will be made for school and school grounds to serve the MPDs."

It is impossible for the City to presuppose and agree that they "will find that appropriate provisions will be made for school and school grounds" and thereby preempt state law RCW 58.17.110. The City cannot conclude appropriate provisions are made just by agreeing to it in the Tri-Party School Mitigation Agreement. The City may claim that the Tri-Party School Mitigation Agreement satisfies the requirements of RCW 58.17.110 but that would be an incomplete and incorrect interpretation of the state law.

Mitigation from the School Agreement is a component of this state law, but the law does not infer that mitigation alone satisfies the requirement that appropriate provisions are made for schools. Even with mitigation, if appropriate provisions for schools will not be made, then state law prohibits the approval of the subdivision. This state law takes precedence over the Tri-Party School Mitigation Agreement.

Attorneys may differ in their interpretations of legal language. However in this case lay persons, attorneys and judges from every court will likely agree that there is a problem with the language in Section 3.2.1 of the Tri-Party School Mitigation Agreement.

For your consideration, attached is a second page which contains the language from both Section 3.2.1 of the Tri-Party School Mitigation Agreement and state law RCW 58.17.110 concerning subdivision approvals. A third page summarizes why appropriate provisions for Schools are not guaranteed by the Tri-Party School Agreement. The Tri-Party Agreement only specifies an amount of mitigation.

Reference - Section 3.2.1 of Tri-Party School Mitigation Agreement

3.2.1 The City agrees that this Agreement, if fully implemented, will fully and adequately mitigate the probable significant environmental impacts of the Projects on schools facilities and the City will find that appropriate provision will be made for school and school grounds to serve the MPDs. The Parties agree that the City shall include, and the other Parties will support, the inclusion of this Agreement within the Projects' Land Use Approvals as the mitigation for school impacts that could have been mitigated by the use of impact fees or land conveyance, and none of the Parties shall appeal the Land Use Approvals as to this mitigation measure. This Agreement shall be so included in all relevant Land Use Approvals issued subsequent to the Agreement Effective Date.

Reference - RCW 58.17.110 from Revised Code of Washington

RCW 58.17.110 Approval or disapproval of subdivision and dedication — Factors to be considered — Conditions for approval — Finding — Release from damages.

- (1) The city, town, or county legislative body shall inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication. It shall determine: (a) If appropriate provisions are made for, but not limited to, the public health, safety, and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops,

potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds, and shall consider all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) whether the public interest will be served by the subdivision and dedication.

(2) A proposed subdivision and dedication shall not be approved unless the city, town, or county legislative body makes written findings that: (a) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) the public use and interest will be served by the platting of such subdivision and dedication. If it finds that the proposed subdivision and dedication make such appropriate provisions and that the public use and interest will be served, then the legislative body shall approve the proposed subdivision and dedication. Dedication of land to any public body, provision of public improvements to serve the subdivision, and/or impact fees imposed under RCW 82.02.050 through 82.02.090 may be required as a condition of subdivision approval. Dedications shall be clearly shown on the final plat. No dedication, provision of public improvements, or impact fees imposed under

RCW 82.02.050 through 82.02.090 shall be allowed that constitutes an unconstitutional taking of private property. The legislative body shall not as a condition to the approval of any subdivision require a release from damages to be procured from other property owners.

Appropriate provisions for Schools are not guaranteed by the Tri-Party School Agreement

The Tri-Party School Agreement's estimated value over 20 years is 35 to 50 million dollars. The total cost for seven new schools is about 300 million dollars. Mitigation from the Tri-Party Agreement offsets about 15% of the total costs at most (much less when accounting for inflation and school bond interest).

The impact fees per dwelling are low due to the negotiated option for receiving school sites. Besides being low they are also vested for up to 20 years and their upper limit is capped without an adequate adjustment for inflation. The school impact fees proposed for the first five years are one-third of those recommended by the School District's 2010 Capital Facilities Plan and the maximum impact fees for 20 years in the future can never be more than what was recommended for last year. Impact fees are returned to the developer up to the appraised value of school sites when school sites are conveyed.

Section 10.7 allows the developer to obtain mitigation fee credit for school sites before they are conveyed to the School District by adding an encumbrance using a deed of trust. This is effectively a long term no interest loan from the School District to the developer (until the school site is conveyed or the agreement ends) and allows the developer to delay paying impact fees. If the developer becomes insolvent, it will be difficult for the School District to receive compensation. The courts could remove the encumbrance and compensate another creditor earlier in line or one with a higher priority.

One school site is conveyed at the beginning of the agreement (Elementary School A). The remaining six schools sites may be conveyed during the agreement after voter approval of school construction bonds when a specific number of dwelling permits are approved. At the end of agreement three school sites (Elementary School B, Middle School A and the High School) may be conveyed under certain conditions without voter approved bonds. Without voter approved school construction bonds there are three school sites (Elementary School C & D and Middle School B) which are never conveyed.

Various conditions and termination clauses affect the school agreement's value, especially when full build-out does not occur. In one case 26% (1,599 out of 6,050 dwellings) of the development can be built and if construction stops, only the land for one elementary school is provided and possibly some low impact fees are collected. Also school site conveyance lags growth required for school facilities.

King County has stated numerous times that they will discourage and may not approve conditional use permits for the proposed middle schools located outside of the Urban Growth Boundary (Middle School A & B). The School District's sole remedy for school sites not allowed by King County will be to sell the land at its actual rural market value which will be substantially less than the impact fee credit received by the developer for the same land when appraised for its value as a school site. Middle School B may be essentially worthless since it is potentially land-locked without road access inside of a larger parcel. No alternate school sites will be provided by the developer for Middle School A and B.

The Auburn School District may not agree to adjust its school boundaries for the proposed school located in their district (Middle School B). The School District's sole remedy for this school site if not allowed by the Auburn School District will be to receive mitigation fees for the land when appraised for its value as a school site, but only after voters approve school construction funding bonds for Middle School B. No alternate school site will be provided by the developer for Middle School B.

Historically, development in the Enumclaw School District has been gradual and schools have evolved rationally. Because of this only a small portion, about 2 million dollars per year, of school property taxes are used to repay school construction bonds and the rest can be used for other purposes. Building seven new schools will require enormous construction bonds and even if the land for these schools is provided by the school agreement, it will still cost about 250 million dollars to build these schools. Compare this to the 2 million a year being spent now which would pay about 2 months of interest on these future school bonds. All residents will see their school property taxes double, redouble and potentially double redouble. It will be worse if funding assistance from the state is reduced. Even voters who want appropriate schools will not approve school bonds if they are not affordable.

HE Condition: A separate school mitigation agreement shall be entered into between the applicant, the City and the Enumclaw School District which provides adequate mitigation of impacts to school facilities and be incorporated into the MPD permit and Development Agreement by reference. [FEIS Mitigation Measure] alternatively, school mitigation may be addressed in the Development Agreement if authorized by the City. The capital facilities plan adopted by the City shall govern the acreage requirements for school sites and shall also serve as the source of enrollment projections. Smaller sites may be used if it can be established that less areas will still meet the needs of the District. All proposed schools shall be located within a half-mile walk or residential areas.

HE Condition: An updated fiscal analysis shall be required for any proposal to locate a high school within any lands designated on Figure 3-1 (Land Use Plan) for commercial/office/retail use.

MPD Approval Conditions:

PUBLIC SERVICES – SCHOOLS

98. The Applicant shall enter into a separate school mitigation agreement, with substantially the same key terms as the agreement in the record as Exhibit 6, so long as such agreement is approved by the City and the Enumclaw School District which approval provides adequate mitigation of impacts to school facilities. If approved, such agreement shall be incorporated into the Development Agreement by reference. Alternatively, school mitigation may be addressed in the Development Agreement, using terms similar to those contained in Exhibit 6, or through a combination of (1) school impact fees under a City-wide school impact fee program for new development or a voluntary mitigation fees agreement and (2) the dedication of land for school facilities (subject to credit under State impact fee laws). The agreed number of school sites and associated minimum acreage, both as set forth in Exhibit 6, shall be used to guide any school mitigation alternative. To the extent reasonable and practical, elementary schools shall be located within a half-mile walk of residential areas. All school sites shall be located either within the MPDs or within one mile of the MPDs.

99. An updated fiscal analysis shall be required for any proposal to locate a high school within any lands designated on Figure 3-1 (Land Use Plan) for commercial/office/retail use.

Tri Party Agreement:

7.2.4 If the High School Site or the Alternative High School Site is located on lands identified in the Village Project as being used for commercial purposes, then prior to the conveyance of the Alternative High School Site the Developer in its sole discretion shall either (a) amend, or (b) shall already have amended, its MPD application to add additional Commercial-zoned expansion areas to offset the fiscal impact to the City for the loss of the commercially zoned property, or (c) shall otherwise show that the Village Project, even with the loss of the commercially zoned property will still be at least fiscally neutral for the City.

Outcome Goal:

BD City Council must find that the Tri-party agreement does not provide adequate mitigation of school under three measurements: RCW 58.17.11; the Hearing Examiners MPD Conditions and MPD Approval Condition #98 and must complete a major amendment to the MPD Ordinance requiring a public hearing and adequate mitigation measures.

Yarrow Bay initially promoted legislation in Olympia, which was to mimic "Mello-Roos" districts in California. In 1982, the Mello-Roos Community Facilities Act of 1982 (Government Code §53311-53368.3) was created in CA to provide an alternate method of financing for needed improvements and services that could no longer be funded through property taxes.

Since Washington State has a different property tax system and constitutional restrictions regarding taxation, the legislation as originally proposed by Yarrow Bay raised many legal and financing issues. Therefore the Washington statute, as enacted, was reduced by the legislature to a more modest tool and cannot be used in the same capacity as the "Mello-Roos" districts in CA. It really becomes another special assessment tool, but with some unique flexibilities on how the district is drawn and the eligible uses. **The City must make sure that the "whole picture" is considered in the application of the special tax.**

One of the biggest issue in using CFDs in Washington, is that Washington State still clearly and heavily relies on an existing property taxation model where property taxes are not limited by the value of the home per se, but are layered with school, fire, safety, parks, housing, other programs/facilities financed through property tax levies. It is irrelevant if at this point in time we agree or disagree with Washington State's property tax system, the point, is that the structure is in place and the City needs to understand how a CFD can enhance the existing system and it not be a detriment or risk.

For example, the City should carefully consider the effect of taxes and burdens imposed by other levels of government that are being paid by individual property owners. Another WA City that has similar proposed legislation advocated for a killing of the SB 6241 CFDs if the enacted legislation didn't have mechanism in-place to prevent the undermining of existing taxing assessment. The concern is that these "overlapping" taxes can add up to considerable burdens. As a result, when imposing a new CFDs or special assessment tax, public agencies should ensure that all tax and assessment burdens are considered when setting the maximum rate of taxation in the "new" CFD. This is a policy/perception/common sense issue not necessarily a legal issue.

Advantages of CFDs over other financing tools:

- It can overlay with impact mitigation fees (to the extent that the total impact fees and CFD assessment do not exceed the value of the facility cost)
- It allows the establishment of finely defined financing district boundaries. This means that newly developing areas, where demand for a fire station or for additional school facilities is greatest, can be isolated from those parts of the community in which facilities are adequate or where demand is otherwise low e.g. taxpayers in the City of Enumclaw and old Black Diamond would be excluded from a CFD for some schools within the MPD. (Note: there are some policy concerns to be addressed regarding non-assessed property owners use of a CFD financed school)

- CFDs have more eligible uses other than traditional lids including streets, highways and parking facilities; public pedestrian malls, parks, recreational and open space facilities; landscaping; public safety, community facilities and other public buildings; publically owned natural gas or electric transmission and distribution facilities and communication facilities; transportation facilities; library, educational and cultural facilities; auditoriums, field houses, gymnasiums, and public swimming pools; bridges, culverts and trestles; bulkheads and retaining walls; sidewalks, curbing and crosswalks; and aquatic plant control, lake and river restoration and water quality enhancements. {A CFD may not finance private facilities, private residences, nonprofit, health care, higher education or certain economic development facilities}

It should be noted that specifically under the Washington statute it would be very difficult for a CFD to finance 100% of proposed facility. The CFDs bond amount and corresponding special assessment is limited by the "Special Benefit" it brings to the land values within the defined CFD district. {RCW 35.51.030}¹

Example 1:

If it cost \$45M dollars to build an elementary school an independent MAI appraisal would need to support that the improved value to the property owners within that CFD also increased by \$45M. That rarely if ever happens, usually the special benefit is closer to \$5M-\$6M for an elementary school, and therefore bonds could only be issued in the amount of \$6 M.

- a) Additionally in CA, the State matching funds for school construction has been proportionately reduced by the CFD bond amount. It is unknown if the Washington Legislation would take the same approach.

Example 2:

Let's assume that the City and YB (or the CFD) successfully obtain a MAI appraisal that demonstrates the first elementary school increases the value of the property owners in Phase I by \$45M. {Note: there are unknown consequences of forcing the special benefit value up; such as the impacts on County ad valorem taxes}

- a) The source of repayment is the collection of special assessments; the projections would assume that all projected DU and commercial build-out occurs exactly as projected (no delays in construction or absorption)
- b) The greatest exposure to default on CFDs or special assessment bonds is the period between the issuance of the bonds and project stabilization (the point at which the cash flow is sufficient to generate 110% of developer obligations). The risk of default is increased when only a single or a few property owners are responsible for the special assessment or special tax payments.

¹ (2) The legislative authority of a municipality may classify property into office, retail, residential, public, or any other classifications the legislative authority finds reasonable, and may levy special assessments upon different classes of property at different rates, but in no case may a special assessment exceed the special benefit to a particular property.

- a. To mitigate this risk the typical bond underwriters will ask for the underlying land value to be 4X-5X the value of the bonds being issued and to be in first lien position
- b. They may ask for additional Letters of Credits and guarantees that are reduced pro-rata as the assessments come in and reduce the bond debt (This could jeopardize guaranty and Letter of Credit Capacity to the City for other fiscal mitigation measures)

Example 3:

The Use of CFDs in Washington State with respect to libraries and other facilities that traditionally are financed by general municipal funds, a special assessment financing may not be feasible. *See, Heavens v. King County Rural Library District*, 66 Wn.2d 558 (1965.)

- a) The courts have stated that unlike a park or school some facilities, like a library are not constructed primarily to enhance the value of the real estate surrounding them; therefore their construction cannot constitutionally be financed by assessing the cost thereof against the adjacent real estate

The key advantage of CFDs and special assessment financing of public infrastructure accrues to developers. Most jurisdictions require significantly more infrastructure to be provided by the developer than in the past. There are limits to the amount a commercial bank, investor, insurance company, or other traditional project lender will loan to a given developer or project. Since CFDs and special assessment bonds carry a tax exempt interest rate, the developer's cost to finance certain infrastructure improvements is lower than with more traditional taxable forms of financing. **{However, this may have some benefit to a rural City needing a developer to provide significant infrastructure for anticipated growth.}**

The advantages of these financing tools to subsequent property owners or tenants are not immediately obvious; since these financings are typically requested by larger property owners acting in the capacity of developers, the special taxes and assessment liens will eventually be paid by future property owners and tenants who are not present at the time the transaction is structured.

In order for the real estate market to fully reflect the existence of a CFD or special assessment financing on a particular property, and for subsequent property owners to realize any benefit, the existence of CFD or special assessment financing must be fully disclosed to all purchasers of property throughout the life of the assessment in a comprehensible and timely fashion; therefore, it is the Washington State statute desires to protect the interests of these future taxpayers.

Disclosure Requirement for Sellers: A notice of any special assessment imposed under this chapter must be provided to the owner of the assessed property, not less than once per year, with the following appearing at the top of the page in at least fourteen point, bold font:

******NOTICE******

THIS PROPERTY IS SUBJECT TO THE ASSESSMENTS ITEMIZED BELOW AND APPROVED BY COMMUNITY FACILITIES DISTRICT # AS THE OWNER OR POTENTIAL BUYER OF THIS PROPERTY, YOU ARE, OR WOULD BE, RESPONSIBLE FOR PAYMENT OF THE AMOUNTS ITEMIZED BELOW.

PLEASE REFER TO RCW 36.145.110 OR CONTACT YOUR COUNTY AUDITOR FOR ADDITIONAL INFORMATION.

CFD Property Owners should also know:

The CFD has the right (and if bonds are issued, the obligation) to foreclose on property when special taxes are delinquent for more than 90 days. Additionally, any costs of collection and penalties must be paid by the delinquent property owner. This *accelerated foreclosure* is considerably faster than the standard waiting period on county ad valorem taxes.

If bonds were issued by the CFD, special taxes will be charged annually until the term of the special assessment is completed which is limited to the lesser of (a) twenty-eight years or (b) two years less than the term of any bonds issued by or on behalf of the district to which the assessments or other revenue of the district is specifically dedicated, pledged, or obligated.

All assessments imposed on the respective lots, tracts, parcels of land, and other property included within the boundaries of an approved district in accordance with this chapter are a lien upon the property from the date of final approval and are paramount and superior to any other lien or encumbrance whatsoever, theretofore or thereafter created, except a lien for general taxes. [2010 c 7 § 601.]

CFD property owners should be aware that although their basic property tax levy may be reduced, their overall tax bill may go up if their property is subject to CFD assessments, water district or school district bonds or other special assessments.

CFD Pointers and Pitfalls

- The CFD statute is complicated, and the special assessment process for a CFD is just different enough from a standard city LID or a county RID to confound even the most experienced special assessment lawyer and municipal underwriting team. Read the statute, and then re-read it, before embarking on formation of a CFD or a CFD-created special assessment process. ***CFDs should not be considered without consulting with an independent municipal special assessment team.***
- The biggest challenge to CFDs will be providing adequate security for CFD bonds when the land involved is undeveloped and not worth sufficiently more than the assessment roll. To some extent this challenge is typical to any developer-driven special assessment financing, including developer LIDs. In addition, while cities and counties typically have an ongoing local improvement guaranty funds to back their bonds, and cities have a special property tax that is imposed city-wide if the guaranty fund runs out, ***CFDs will not have the backing of an established guaranty fund.***

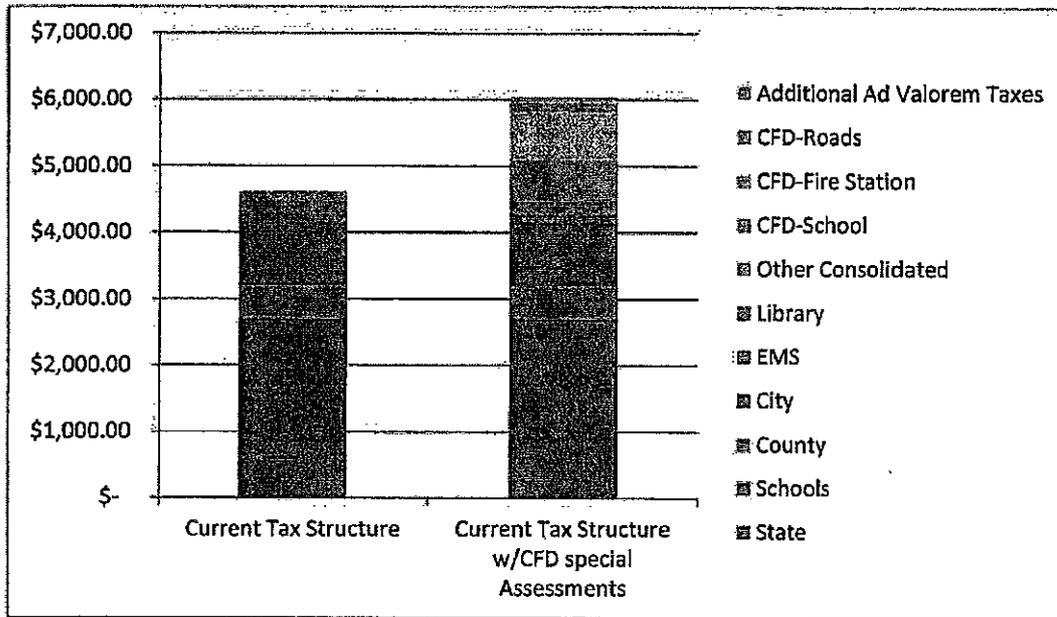
CFDs will be able to size their assessment rolls sufficient to create reserve funds from bond proceeds. However, in many instances that still might not provide sufficient security for bondholders, and underwriters will require letters of credit, certificates of deposit or other types of security from the landowners to ensure payment of assessments until the related land values are many times higher than the value of outstanding assessments. ***Strong fiscal underwriting is needed.***

It isn't clear how (if?) the special benefit would be determined on a future facility if the special benefit value has to be determined at the time of the CFD petition (when the developer is needing to encumber the land all at once) e.g. what is the value of a school or fire-station 10 years in the future, otherwise a CFD would need to be created in the future, after the developer is gone and lacks control. This would require 100% property owner approval and this could be difficult for the City and School district if they are relying on this mechanism.

- The CFD statute differs enough from the city LID or county RID statute to reduce the comfort derived from a long line of cases interpreting provisions of traditional special assessment statutes. Much of the LID and RID case law may be helpful by analogy, but the CFD statute is untested by Washington courts. Some comfort is obtained from the CFD statute's requirement that 100% of the property owners approve of the CFD and certify that they wish to be assessed for the cost of the facilities. This procedural requirement should reduce the possibility of challenges to the CFD, ***at least from initial property owners.***
- It is unclear how the ongoing taxation if coupled with the existing property tax system may create unforeseen legal, court and legislative action. Additionally, as the

voiced by other jurisdictions, a select CFD with enough voters that are excessively burdened by special assessment may undermine the existing voter approval process that the City and schools rely on outside the CFD boundaries. ***Special consideration and experienced CFD guidelines must be in place and thoroughly understood to ensure that the CFDs can truly be used to enhance the financing structures in place and not undermine existing taxing systems.***

Assumes \$385,000 Home Price Current Tax Rate of \$12.07/\$1,000 Plus CFD
Special Assessments



I. FISCAL ANALYSIS

Per Black Diamond's MPD ordinance (18.98.080) requirements, the fiscal analysis should be updated at each phase of development, allowing the City to review and approve inputs and assumptions at each phase, prior to approvals. (Villages FEIS 3-91) The Black Diamond MPD Ordinance established the following specific regulations for an MPD application:

- The MPD must provide needed services in an orderly, fiscally responsible manner;
- The MPD should show an improvement to the City's fiscal performance;
- The MPD will have NO adverse fiscal impact upon the City at any phase of development;
- The ratio of residential to commercial land uses must support a fiscally beneficial impact to the city.

Additionally, the MPD Ordinance also requires that a Fiscal Impact Analysis (FIA) be completed, both during project development and at completion. The FIA that was done does not meet this requirement. A complete fiscal analysis was never done. On page 12-15 of the MPD application for the Villages, under the section titled Special Fund impacts, it states that the MPD Ordinance requires a fiscal benefit to the city for any new MPD and it has been understood that this includes not only the General Fund, *but each of the Special Funds* operated by the city. These Special Funds include the Street, Criminal Justice, Stormwater, Water and Wastewater funds. While these funds are critical to city operations, and they are not to be negatively impacted by this application, the FIA did not calculate revenues or expenditures for these Special Funds. It was assumed that the City would commission new rate studies and adjust rates to meet level of service needs.

The FEIS financial analysis performed by Parametrix reflects that the project is not fiscally neutral, but has a negative cost impact on the City of Black Diamond. The model indicates that the revenues generated by such development will not be sufficient to balance the cost to provide services after 2020. In fact, the model indicates a roughly \$1,000,000 annual deficit by 2030 (5 years after completion of MPD). *Therefore, this alternative would have an adverse financial impact on the City.* (Emphasis added). (The Villages 3-95) Furthermore, the Parametrix fiscal analysis modeling does not directly consider capital facilities needs that *may* result from the development. (Emphasis added) (The Villages 3-93) If, Parametrix would

have included the financing cost related to the financing of capital facilities it likely would have reflected an even greater adverse financial impact to the City. The failure to incorporate capital facilities costs into the Fiscal Analysis renders it incomplete and inadequate

However the Applicant's independent fiscal analysis provided as Appendix J for the FEIS is in startling contrast to the City's analysis and reflects a fiscal surplus to the City. This analysis utilized a different methodology and set of assumptions, and therefore yielded different results than the City's independent analysis. Mike Whipple, the Applicant's fiscal expert, provided written comment regarding the divergent results reached by the Applicant's fiscal impact analysis FIA and that adopted into the TV FEIS. See MPD Ex. 124. The FEIS FIAs determined that the Lawson Hills MPD would have a positive fiscal impact and the Villages a negative fiscal impact, with the Villages MPD reaching a million dollar annual deficit by 2030. Id. at p. 4, TV FEIS, pp. 3-95. Mr. Whipple's analysis found that the fiscal impacts for both MPDs would be positive. MPD Ex. 124, p. 4. As reflected in the TV FEIS, pp. 3-96, Mr. Whipple noted that slight changes in assumptions can lead to differing results in the fiscal impact analysis.

MPD CONDITION-156

ADMINISTRATION

156. The proposed project shall have no adverse financial impact upon the city, as determined after each phase of development and at full build-out. The required fiscal analysis shall include the costs to the city for operating, maintaining and replacing public facilities required to be constructed as a condition of MPD approval or any implementing approvals related thereto. The fiscal analysis shall ensure that revenues from the project are sufficient to

Ex. C - Conditions of Approval
The Villages MPD -- Page 27 of 29

maintain the project's proportionate share of adopted City staffing levels of service. The fiscal analysis shall be updated to show continued compliance with this criterion, in accordance with the following schedule:

- a. Within five years, a new fiscal analysis shall be completed to determine the long-term fiscal impact to the City. If necessary, additional project conditions may be required.
- b. Prior to commencing a new phase, including the first phase of construction.

The exact terms and process for performing the fiscal analysis and evaluating fiscal impacts shall be outlined in the Development Agreement, and shall include a specific "MPD Funding Agreement," which shall replace the existing City of Black Diamond Staff and Facilities Funding Agreement. The applicant shall be responsible for addressing any projected city fiscal shortfall that is identified in the fiscal projections required by this condition. This shall include provisions for interim funding of necessary service and maintenance costs (staff and equipment) between the time of individual project entitlements and off-setting tax revenues; provided, however, that in the event that the fiscal projection prepared prior to the commencement of Phase III indicates a likelihood of significant ongoing deficits in the city's general fund associated with operations or maintenance for properties within the MPD, the applicant must address the projected shortfalls by means other than interim funding..

157. The Applicant and other property owners may petition for the formation of a Community Facilities District to provide a mechanism for funding the costs of "facilities" as defined in Section 501 of SSB 6241. The City Council will review the petition as provided in SSB 6241 and, as set forth in Section 205, determine in its sole discretion whether the petitioners will benefit from the proposed district and whether the formation of a district will be in the best interest of the City and comply with the requirements of the Growth Management Act, Ch. 36.70A RCW.

NEW CONDITION 156:

Amend 156 (b):

As a condition of permit approval and prior to final Development Agreement approval the Applicant must deliver a revised fiscal impact analysis (FIA); The FIA shall be procured by the City and paid by the Applicant and shall include the following items and/or methodology:

- An Absorption Study, projecting the rate at which homes are purchased and office space is leased based on assumptions as to projected sale prices, lease rates, and comparable real estate market information, should be (6) months current;
- Any anticipated construction delays, and extended market absorption periods;
- Include a comprehensive analysis of all special funds and their overall impacts to the City's short-term and long-term budget surplus (shortfalls);
- There should be no consideration of future levy lid lifts since there cannot be a valid presumption of approval;
- No levy lid lift or increase in utility taxes should be considered for funding capital improvements such as sewer, water, and roads that are required to support the MPDs;
- Sales tax generation must be based on retail business projections adjusted for market conditions and realized occupancy rates by retail businesses in commercial property;
- Revise the assumptions to reflect a current market value appreciation rate (The original FIA had a 5% appreciation rate for property tax revenue assumptions), the current

forecasting rates are at (-4.9%) with the five-year average at 3.8%. The Applicants own expert testified that a slight change in assumptions has a significant impact in the analysis;

- All assumptions must be defined and any factor used to adjust results must be defined and justified; and
- The Applicant shall re-certify on an annual basis that there has been no material change in the fiscal solvency or the project feasibility.

This analysis will form the basis for determining the appropriate structure of the third party guarantees.

NEW CONDITION 157:

~~This condition should be deleted in its entirety. Community Facilities Districts are governed by the RCW under Chapter 36.145. The City of Black Diamond should revise the BDMC to allow CFDs as outlined under RCW 36.145 to avoid conflicting language and ambiguity. For example the Condition provided by the City changes the authority from "may" to "will" and leaves out the required findings in subparagraph (2) and (3) of Chapter 36.145.060. The current condition also infers a right to a CFD which is up to the State Statue to govern.~~

157. The Applicant and other property owners may petition for the formation of a Community Facilities District to provide a mechanism for funding the costs of "facilities" as allowed under Chapter 36.145 of the RCW. The City Council will review the petition as provided and will determine in its sole discretion, that the petitioners will benefit from the proposed district and that the formation of the district will be in the best interest of the city, as applicable, and that formation of the district is consistent with the requirements of Washington's growth management act Chapter 36.70A RCW.

The Fiscal Impact Analysis (FIA) will not assume a CFD as a mechanism to create a fiscally neutral project and the Development Agreement shall include language that specifically defines appropriate mitigation and/or impact fees for such facilities.

Additionally the Development Agreement shall specifically define when the various components of permitting and construction must be approved, completed or terminated. For example: when must open space be dedicated, plats recorded, and utility improvements be accepted by the City.

RCW 36.145.060

Approval of petition — Requirements.

(1) The legislative authority may act on the petition to form a community facilities district at the public hearing held under RCW 36.145.050 and in no event may the legislative authority's decision be issued later than thirty days after the day of the public hearing. The applicable legislative authority may approve the petition by resolution if the applicable legislative authority determines, in its sole discretion, that the petitioners will benefit from the proposed district and that the formation of the district will be in the best interest of the county, city or town, as applicable, and that formation of the district is consistent with the requirements of Washington's growth management act.

(2) A community facilities district may not be formed unless each applicable legislative authority makes the finding required under subsection (1) of this section.

(3) All resolutions approving a petition must conform to the terms and conditions contained in the petition, including the maximum amounts of special assessments set forth in the petition, and must designate the name and number of the community facilities district being formed.

Points of Concern:

- What are the revenue sources for the Special Funds?
- Under the current MPD approval conditions the Developer does not appear to have to post *any* guaranty to start the first phase, as it is unclear if the City was basing the "fiscally neutral" on the Applicant's FIA *or* the fact that the applicant indicated they would guaranty any shortfall. If MPD approval was based on determining the FIA fiscally neutral than the Applicant does not need to provide any financial security at this point in time.
 - A new FIA will not be looked at again until (next phase/5 years);
 - Define next phase, is it the PPA submission, approval or the actual permits for construction.
- Security/Guaranty: The City does not have a comprehensive understanding of the Applicants legal structure or financial capacity per se; City Staff themselves have indicated that no documents are in the City's possession in regards to due diligence, no operating agreements are in hand; no financial statements; references; etc. A past

Letter of Credit (due to expire) should not be an indication of the credit and fiscal performance of the Master Developer moving forward.

- The proposed Funding Agreements provide that security be provided as a combination of one or more of the following: a Letter of Credit, a deed of trust to the City on property within the City that is owned by the Master Developer, or another form of lien in favor of the City. It also provides that the form(s) of security be determined in the *Master Developer's sole discretion and may be modified from time to time.*

As the HE pointed out in the TV FEIS the Applicant is a limited partner, and if it were indeed stuck with the bill," there would be little incentive for it to continue its existence," therefore the sole means of security should be an irrevocable Letters of Credit. It is important that the security deposit be liquid and that it not be subject to the vagaries of the real estate market since City expenses cannot be funded with land or liens on land.

Proposed Revision to Condition 156 of The Villages MPD

The proposed project shall have no adverse financial impact upon the city, as determined after each phase of development and at full build-out. The required fiscal analysis shall include the costs to the city for operating, maintaining and replacing public facilities required to be constructed as a condition of MPD approval or any implementing approvals related thereto. The fiscal analysis shall ensure that revenues from the project are sufficient to maintain the project's proportionate share of adopted City staffing levels of service. The fiscal analysis shall be updated to show continued compliance with this criterion, in accordance with the following schedule:

- a. Within five years, a new fiscal analysis shall be completed to determine the longterm fiscal impact to the City. If necessary, additional project conditions may be required.
- b. Prior to commencing a new phase, including the first phase of construction.

The exact terms and process for performing the fiscal analysis and evaluating fiscal impacts shall be outlined in the Development Agreement, and shall include a specific "MPD Funding Agreement," which shall replace the existing City of Black Diamond Staff and Facilities Funding Agreement. The fiscal analysis terms and process shall include the following provisions:

- a. The methodology for use of case study analyses and justification for use shall be defined.
- b. The methodology for determining factors shall be defined and the use of such factors shall be justified.
- c. The amount of taxable sales typically required to justify retail tenants occupying retail properties shall be defined and justified for use in projecting retail sales tax receipts.
- d. The methodology for projecting occupation of retail space shall be defined and justified.
- e. The methodology for calculating indirect sales tax generated by the proposed and existing residents within the Implementing Project shall be defined and justified.
- f. No costs shall be excluded from the analyses. There shall be no consideration of future levy lid lifts or Capital Facility Districts for funding capital improvements.

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The Development Agreement shall include a specific "MPD Funding Agreement," which shall replace the existing City of Black Diamond Staff and Facilities Funding Agreement. The funding agreement shall include the following provisions:

- a. Future dollar amounts beyond one year of signing shall have provisions for adjustment due to inflation.
- b. The amount of the security deposit shall be consistent with the fiscal analysis and shall be adjusted periodically for inflation.
- c. The sole means of security shall be irrevocable Letters of Credit.
- d. The agreement shall provide for continuing obligations for fiscal shortfalls resulting from the MPDs beyond build-out.
- e. Financial obligations shall not be subject to assignment or transfer without the consent of the City of Black Diamond.

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The applicant shall be responsible for addressing any projected city fiscal shortfall that is identified in the fiscal projections required by this condition. This shall include provisions for

interim funding of necessary service and maintenance costs (staff and equipment) between the time of individual project entitlements and off-setting tax revenues; provided, however, that in the event that the fiscal projection prepared prior to the commencement of Phase III indicates a likelihood of significant ongoing deficits in the city's general fund associated with operations or maintenance for properties within the MPD, the applicant must address the projected shortfalls by means other than interim funding.

Fiscal Analysis

Conditions from MPD Permit

Condition 156. The proposed project shall have no adverse financial impact upon the city, as determined after each phase of development and at full build-out. The required fiscal analysis shall include the costs to the city for operating, maintaining and replacing public facilities required to be constructed as a condition of MPD approval or any implementing approvals related thereto. The fiscal analysis shall ensure that revenues from the project are sufficient to maintain the project's proportionate share of adopted City staffing levels of service. The fiscal analysis shall be updated to show continued compliance with this criterion, in accordance with the following schedule:

- a. Within five years, a new fiscal analysis shall be completed to determine the longterm fiscal impact to the City. If necessary, additional project conditions may be required.
- b. Prior to commencing a new phase, including the first phase of construction.

The exact terms and process for performing the fiscal analysis and evaluating fiscal impacts shall be outlined in the Development Agreement, and shall include a specific "MPD Funding Agreement," which shall replace the existing City of Black Diamond Staff and Facilities Funding Agreement. The applicant shall be responsible for addressing any projected city fiscal shortfall that is identified in the fiscal projections required by this condition. This shall include provisions for interim funding of necessary service and maintenance costs (staff and equipment) between the time of individual project entitlements and off-setting tax revenues; provided, however, that in the event that the fiscal projection prepared prior to the commencement of Phase III indicates a likelihood of significant ongoing deficits in the city's general fund associated with operations or maintenance for properties within the MPD, the applicant must address the projected shortfalls by means other than interim funding.

.....

13.6 FISCAL IMPACTS ANALYSIS

The terms and process for performing the fiscal analysis and evaluating fiscal impacts outlined in the MPD and this Agreement are as follows:

Concurrent with submittal of the first preliminary plat within a Phase, the Master Developer shall submit for review and approval a fiscal analysis for that Phase. The fiscal analysis shall be based on the following methodologies and assumptions. **[Note 1]**

1. Costs and revenues should be calculated on a per-persons-served basis (Per Capita) based on the most recent City budget or approved actual City budget for the most recent completed fiscal year.
2. The per-persons-served methodology should only be replaced when case studies are prepared which are specific to Black Diamond and this specific MPD Application. Section 13 – Misc. Additional Standards & Requirements **[Note 2]**

3. The per-persons-served methodology should be defined as dividing the current costs (or revenues) for each budget line item by the current service population of the City. Per Capita amounts are prepared using the following steps:
 - a) Review the budget line item and reduce it by the following items to determine the current cost to provide that service to the City's residents and employees:
 - i) Any amounts which represent one-time capital costs. It is assumed that the Developer will already take responsibility for capital impacts on the City through other portions of the Development Agreement and other development mitigations.
 - ii) Those budget line items which are funded by user fees should have both their costs and revenues reduced to zero.
 - b) Determine the current service population by counting each resident as 1 and each employee counted as 1.
 - c) Divide the modified budget line item by the current service population to determine the current cost or revenue per person served.
 - d) Apply an efficiency factor to account for the relative increase or decrease in costs or revenues associated with expanding the budget line item to provide service to additional City residents and employees. [Note 3]
 - i) This will account for the economies of scale realized by many departments when they grow. For example, when the population is doubled, this does not mean that the current City staff will simply be duplicated. Instead, an administrative level employee may be added which has a lower cost than the existing filled director level position.
 - e) Apply a level of service factor to account for the level of service which will be provided to new City residents and employees. [Note 3]
 - i) For example, if a particular department has hired staff in preparation of new growth in the City, the per-capita costs for that department should reflect the actual ratio of staff to residents and employees intended for project build out. Alternatively, certain Comprehensive Plan policies highlight that staffing level of service may be reduced as population in the City grows (e.g., Police).

Special Fund costs and revenues should be studied assuming the following:

1. Budget line items which are funded via special funds will only be addressed through the case study methodology. Utility taxes imposed by the City to fund sewer, water and stormwater service represent the use of case study methodology. Further cost evaluation of these categories is not envisioned. Case study cost analysis will be investigated for street maintenance.
2. One time revenue categories (e.g., REET revenue) are not considered for operational purposes.

Assumptions to be used in the fiscal analysis shall consist of the following.

1. The value for the residential units shall be based on market studies prepared by the applicant and shall examine the projected sale or rental value of the proposed units.

2. The values for non-residential development shall be based on market studies prepared by the applicant and shall examine the projected market value of the proposed nonresidential development.
3. The retail sales tax per square foot assumed for retail development will be consistent with the amount of taxable sales typically required to justify retail tenants occupying such properties. **[Note 4]**
4. Sales tax will be calculated in three ways:
 - a) Through direct sales tax generated by proposed and existing retail establishments.
 - b) Through indirect sales tax generated by the proposed and existing residents within the Implementing Project. **[Note 5]**
 - c) Through the construction activity generated by the construction of the Implementing Project.
5. Affordable units are assumed to be provided through the diverse mix of product types for the Implementing Projects.
6. Persons per household (pph) shall be averaged at 2.7 pph for single family and 1.85 for multi-family, or, as MPD build-out progress, pph shall be revised to reflect actual MPD household sizes.
7. Square feet per employee shall be 813 sq ft for Retail, 434 sq ft for all other commercial space, per Energy Information Administration (2003 Office Energy Statistics from the US Government, or as recently published).
8. Future levy lid approvals will be factored into the fiscal analysis. If levy lid lifts are not factored into the analysis, other cost categories shall be reduced to realize the reduced revenue. **[Note 6]**
9. Duration of the analysis shall carry two years post build-out.
10. If another preliminary plat for another Phase is submitted during build-out of a previous Phase, the new fiscal analysis shall take into consideration the incomplete portion of the previous Phase and re-analyze that portion. Adjustments to the previous Phase may be necessary, and shall be considered on a case by case basis.

Fiscal analysis results: **[Note 7]**

1. The results of the fiscal analysis should show either revenue neutral results, or a revenue positive result. The analysis shall be considered revenue neutral if projected revenues are within 5% of overall projected costs. **[Note 7 regarding redefinition of revenue neutral]**
2. If the results of the fiscal analysis show a revenue deficit of more than 5% of projected costs, then the Master Developer shall prepare a supplemental analysis proposing how the deficit shall be cured. **[Note 7 regarding 5% allowance]** Possible options for cure may include, but are not limited to
 - a. One-time payment to the City to cover the projected deficit. However, if the deficit is projected as part of the analysis for Phase 3, then a payment shall not be accepted by the City. **[Note 7 regarding actions taken if shortfall]**
 - i. If, at the end of the fiscal year, actual costs are less than projected, the Master Developer may be entitled to a credit or a refund of the difference. However, if actual costs are within 5% of projected costs, no refund shall be made.

- b. The Master Developer may request to privatize certain facilities within the plat. The facilities may include: **[Note 7 regarding privatization]**
- i. Retaining the right-of-way landscape maintenance obligation with the Master Developer or a Homeowners' Association;
 - ii. Not dedicating some Parks to the City or by dedicating the Parks but retaining Park maintenance obligations with the Master Developer or a Homeowners' Association; or
 - iii. Not dedicating some private streets and/or cul-de-sacs serving less than 50 homes to the City or by dedicating the streets but retaining street maintenance obligations with the Master Developer or a Homeowners' Association.

In addition, the Black Diamond Staff and Facilities Funding Agreement is replaced for The Villages MPD with The Villages MPD Funding Agreement included in Exhibit N.

Notes to Fiscal Analysis

1. The MPD conditions require submittal of a fiscal analysis prior to commencing a new phase, not “concurrent”.
 - “The exact terms and process for performing the fiscal analysis and evaluating fiscal impacts shall be outlined in the Development Agreement ...”
 - The fiscal impact analysis submitted with the Phase 1A preliminary plat application should have been submitted prior to the application and after the terms and process had been agreed to in a Development Agreement.
2. The methodology for case study analyses should be defined in detail in the Development Agreements and reasons for resorting to such analyses should be defined.
3. The use of an “efficiency factor” and a “level of service factor” are proposed. These factors and the methodology for determining them must be defined as part of the Development Agreements.
4. This assumption is tantamount to assuming that all retail space will be filled, a very optimistic assumption that must be justified. The “amount of taxable sales typically required to justify retail tenants occupying such properties” must be defined in advance and justified.
5. The methodology for calculating indirect sales tax generated by the proposed and existing residents within the Implementing Project must be defined and justified.
6. No costs should be excluded from the analyses. There should be no consideration of future levy lid lifts whatsoever since there cannot be a valid presumption of approval. No levy lid lift or increase in utility taxes should be considered for funding capital improvements such as sewer, water, and roads that are required to support the MPDs.
7. The entire section on Fiscal Analysis Results should be deleted for several reasons: (1) The hoped for results of an analysis should not be stated as a goal of the analysis; (2) There need not be a redefinition of “revenue neutral” in the analysis. Any consideration for allowances must be in the funding agreement; (3) Actions to be taken in the event of a projected shortfall must be in the funding agreement; and (4) There should be no reference to requesting privatized facilities in the fiscal analysis section.

Funding Agreements

Financial liability

Before entering into a financial arrangement with the developers it is important to consider their financial strength and structure so that the City can be assured that there are sufficient assets to cover future obligations and that the parties can be held financially liable for those obligations in the event of default. The City should perform a due diligence process before entering into any agreement with the developers.

The organizational structure of the developers is complicated by layers of legal entities created to provide financial liability protection. There are two developers that propose to enter into agreements with the City of Black Diamond: BD Village Partners LP and BD Lawson Partners LP. Both are limited partnerships so financial liability of limited partners is only to the extent of their investments. The general partner of both limited partnerships is Yarrow Bay LLC. Although the general partner is liable for the debts of the partnerships it is structured as a limited liability company. As such, Yarrow Bay LLC has similar liability for debts to that of a corporation. In other words, the owner of Yarrow Bay LLC is also only liable for debts to the extent of its investment. The sole owner of Yarrow Bay LLC is BRNW, Inc. As a corporation, it has limited liability also. All in all there is layer upon layer of liability protection and unknown assets. (It is interesting to note that even the limited partners of BD Village Partners and BD Lawson Partners are limited partnerships and limited liability companies.)

The fact that any future promise is dependent upon the financial strength of the partnerships make it incumbent upon the City to require that they submit audited financial statements or that there be substantial security deposits.

Terms of the Funding Agreements

1. The proposed Funding Agreements specify pro rata sharing of certain costs between the two Master Developers. One partnership cannot commit to share with a different partnership without a sharing agreement. That could be accomplished with a separate two party agreement that is incorporated by reference in the Funding Agreements.
2. Future dollar amounts beyond one year of signing should have provisions for adjustment due to inflation.
3. The amount of the security deposit should be justified by analysis and should be adjusted periodically for inflation.
4. The proposed Funding Agreements provide that security be provided as a combination of one or more of the following: a Letter of Credit, a deed of trust to the City on property within the City that is owned by the Master Developer, or another form of lien in favor of the City. It also provides that the form(s) of security be determined in the Master Developer's sole discretion and may be modified from time to time.

The sole means of security should be irrevocable Letters of Credit. It is important that the security deposit be liquid and that it not be subject to the vagaries of the real estate market since City expenses cannot be funded with land or liens on land.

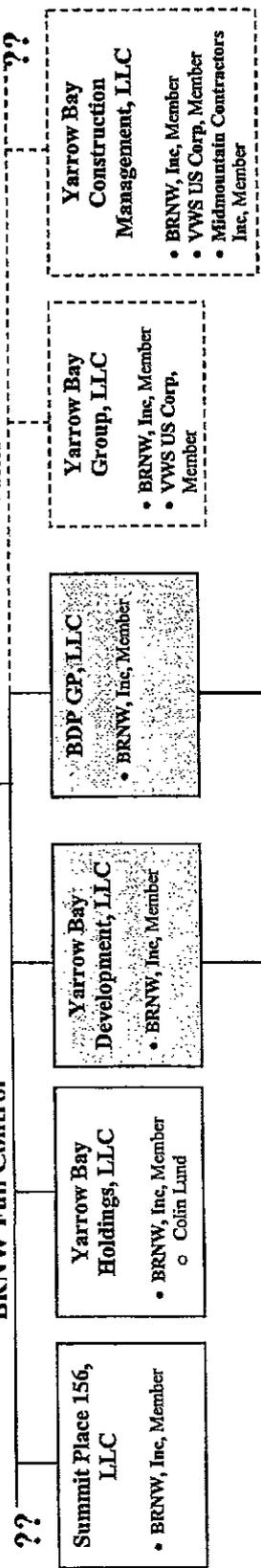
5. The proposed Funding Agreements terminate when MPD build-out is complete. There must be provisions for continuing obligations for fiscal shortfalls resulting from the MPDs beyond build-out.
6. Section 15.4 titled "Assignment" of the proposed Development Agreement gives the Master Developer the right to "assign or transfer all or any portion of its respective interests, rights or obligations under this Agreement or in The Villages MPD to a Master Developer Transferee acquiring an interest or estate in all or a portion of the Villages Property, including a transfer of all interests through foreclosure (judicial or nonjudicial) or by deed in lieu of foreclosure". Consent by the City would not be required. This section is silent on the effect that this would have on the Funding Agreement. In fact, it appears that it would release the Master Developer from its obligations. That is, of course, unacceptable. As in the above comment, there must be provisions for continuing obligations for fiscal shortfalls and those obligations cannot be assigned or transferred.



MPD developer hierarchy

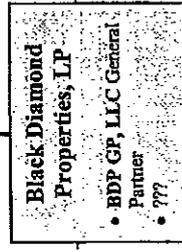
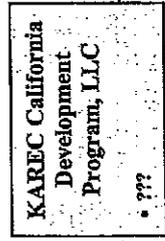
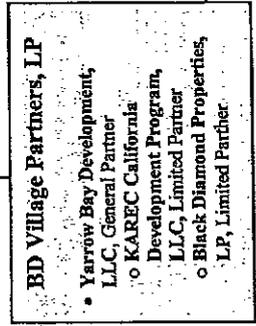
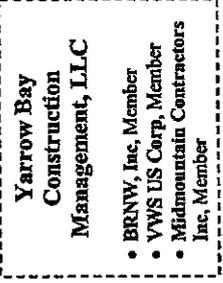
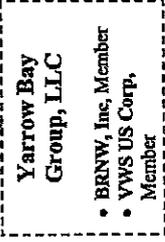
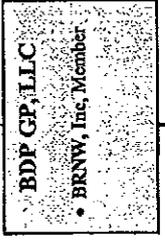
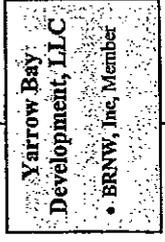
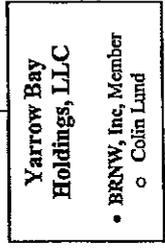
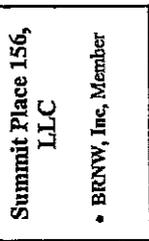
BRNW Full Control

VolkerWessels Control



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44

Craig Goodwin

From: Craig Goodwin
Sent: Thursday, April 07, 2011 11:01 AM
To: 'Jack Sperry'; Bill Saas
Cc: Bob Rothschilds; Peter Rimbos
Subject: RE: Updated Information of Lake Sawyer Flooding Potential

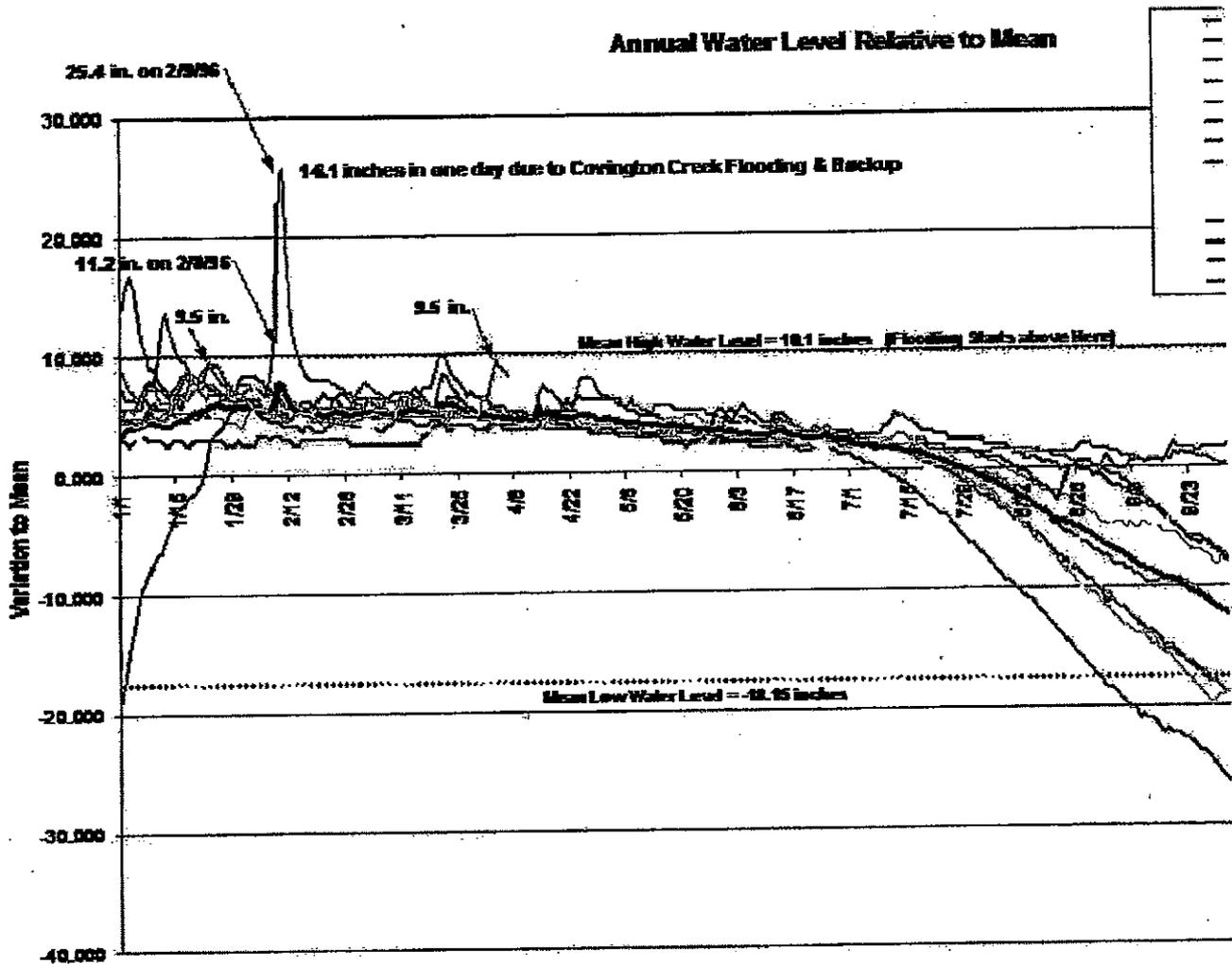
Thanks, Jack. Very well done and quite interesting. Sounds like we should learn more about Covington Creek. Would be happy to meet with you some time and follow the Creek for a ways. I'm pretty familiar with it now once it reaches the Auburn Black Diamond Road. Regards
Craig

From: Jack Sperry [mailto:JackSperry@comcast.net]
Sent: Wednesday, April 06, 2011 7:27 PM
To: Craig Goodwin; Bill Saas
Cc: Bob Rothschilds; Peter Rimbos
Subject: Updated Information of Lake Sawyer Flooding Potential

Craig and Bill,

Hi. Subsequent to my briefing to you on March 18 on the Flooding potential posed by large volumes of stormwater runoff from the MPDs I've had the opportunity to further analyze the effect on Lake Sawyer water level in the December-January period. In my briefing I showed how the data contained in the Triad Associates report to the City regarding Phosphorous Total Load showed runoff to Lake Sawyer to be equivalent to 3.5 inches of vertical water in December and 3.3 inches in January for a total of nearly 7 inches. I suggested that because the lake level already rises on average about 2 ½ inches during each of these months the additional water would be additive and exacerbate already high winter water levels. More recent analysis shows that much of that additional water would be flushed out the outlet because of the rapid, high-volume flow over the weir in December and January. This would be expected to result in a water level rise much less than 7 inches. However, I have recently become aware of another phenomenon at work that impedes water from rapidly exiting the lake's outlet at high water levels where flooding is a threat.

During the last days of March and first few days of April this year we had heavy rains and the Lake Sawyer water level rose to 9.5 inches above the weir. (The City temporarily closed the boat launch and requested that boat use be limited and wakes minimized because of the flooding threat.) At these levels there is some unknown restriction that occurs downstream in Covington Creek that causes the creek to flood and turn into a small lake. This backup raises the water level of the creek and the area of the outlet just below the weir. On Sunday, April 3, the water below the weir had risen to within 4-6 inches below the top of the weir. And at higher lake levels the water level upstream of the weir has been observed to be the same as the water level downstream of the weir. At that point the volume of water exiting the lake becomes constrained by what can pass into what by then has become a flooded Covington Creek mini lake. Once there is no difference in water level above or below the weir, lake level starts to rise more rapidly from the constriction at Covington Creek. I believe this, along with unusually heavy rain, is what explains the extremely rapid lake level rise that occurred in the February, 1996 flood. Between February 8 and 9, 1996 the lake rose 14 inches in one day from 11.2 inches to 25.4 inches as measured and recorded by King County (See burgundy line in graph below). This had to be caused by the "plugging effect" from backup of Covington Creek. Plus the culverts under Lake Sawyer Rd. become fully submerged at levels above 21 inches over the weir.



So in conclusion, while under normal conditions runoff from the MPDs can probably be shown to have a relatively minor effect on lake levels it is at those times when the water level is already at 10-12 inches above the weir that lake level can rise much more rapidly from "plugging" of the outlet. During these infrequent times the additional seven vertical inches of water from the MPDs will exacerbate the flooding problem. (As a side note the water level in the lake has reached 9.5 inches above the weir twice already this year as noted on the above chart. And it reached 10.2 inches on December 15 of last year.) Therefore, I have modified my proposed new MPD Conditions as shown below and on the last page of my attached briefing. I believe it is critical to have a thorough analysis performed by a qualified (an hopefully independent) hydrologist in the first condition and that in the second condition Yarrow Bay should be required to maintain the hydrology for Lake Sawyer by not adding more water to the lake than comes from the pre-developed state."

Proposed NEW conditions:

"Provide an analysis prior to approval of the Development Agreement to show how the design of the stormwater management system will result in no net increase to winter time water levels at Lake Sawyer which could potentially exacerbate periodic flooding conditions."

"Maintain hydrology for Lake Sawyer and associated wetlands by recharging them via surface and ground water with approximately the same volume of stormwater as would occur under pre-developed conditions."

I've attached an update of my *PowerPoint* briefing shown to you on March 18. The following changes were made:

1. Included the latest water level data in the graph on page 4.
2. Annotated the 14-inch water level increase in one day in February, 1996 to the graph on page 8.
3. Added a statement regarding the impact of Covington Creek backing up on page 9.
4. Modified the two proposed conditions on page 9 (also shown above).

Thanks for your continued interest,

Jack

PS Craig: I hope your stay in Maui was relaxing and refreshing.

Craig Goodwin

From: Peter Rimbo [primbos@comcast.net]
Sent: Saturday, April 23, 2011 8:26 AM
To: Craig Goodwin
Cc: wsaas@ci.blackdiamond.wa.us
Subject: Re: Meeting Location On Tuesday April 26

Craig,

Hi. Sorry it took a while to get back to you. Yes, our team can meet with you and Bill this Tuesday evening at 7 PM at your home. Thank you for offering to host the meeting.

Peter Rimbo
Citizens' Technical Team Leader
primbos@comcast.net

"To know and not to do is not to know."-- Chinese proverb

Please consider the environment before printing.

On Apr 22, 2011, at 2:36 PM, Craig Goodwin wrote:

Peter – The Library is booked up on the Tuesday 26th of April and so is the Community Center. The best place to meet then is at our home – address follows. Please confirm that we will be meeting at 7 pm. Councilmember Saas will be joining us. Look forward to getting together. Let me know if people need directions.
Craig

Craig Goodwin
29044 222nd Pl. S.E.
Black Diamond, WA 98010
(360) 886-1847 home
(253) 405-6564 cell

TABLE 2 DOCUMENTS

Executive Board Meeting
11/02/2010

Present: Alan G., Mark D., Alf L., Kurt E., Monica S., Jeff M., Joe M.
Absent: Glenn R., Sue S.

Minutes:

7:05 Meeting called to order and first agenda item was to be the introduction of Sheila Hoefig who had asked for some time to address the executive board. She was unable to make the meeting in person but had gotten a hold of Monica S. and asked to be conference called in. Prior to calling Sheila, Monica advised us that it had to do with another donation from the Community club to the Diamond Coalition.

The conversation turned to discussion about the previous donation of \$5000, how it came about and what it was used for. In considering the possibility of another donation the topic turned to expected project expenses over the next six months, including floor joist repairs, heater annual maintenance and filters, oil delivery, echo deadening, among other items.

7:15 Prior to calling Sheila Hoefig Joe M. recuses himself as he is also on the board of the Diamond Coalition. Call to Sheila made. Though she couldn't be specific, Sheila referenced the existing debt the Diamond Coalition has to the water quality experts used during the EIS appeal of the Villages and Lawson Hills MPDs. She asked that the LSCC hold a special meeting to vote on another donation to help cover that cost suggesting a donation up to the full amount.

Questions to Sheila H. by Jeff M., Alan G., and Kurt E.: specific amount of debt, breakdown of the amount, availability of documentation. Sheila advised she could not speak to specifics but felt that the Diamond Coalition would be able to provide those answers. After other incidental discussion the call ended at 7:22. More discussion of the topic but it was decided to go through the agenda items then return to the donation question.

7:25 Acting on Alf's recommendation of three months ago, Alan made a motion to "Establish a reserve account in the amount of \$20,000." Second by Monica S. Discussion followed with Jeff M. questioning amount, Mark suggesting more info about an accurate amount, Alf added that the \$20,000 was generally equal to the amount the Ballet School pays in rent during the year, and that without the rents, the community club could not meet expenses just on membership dues. Alan asked about available funds for the Diamond Coalition donation. This discussion continued.

7:55 Jeff M. moved to table the motion until a better number could be developed. No second. More discussion about upcoming projects/costs, support for the \$20,000 number by Kurt, and Alan asking if a dues increase was in order.

8:05 Alan call for the question on the motion, and motion passes 6 - 0 (Joe M. recuses himself from discussion and vote due to the mention of the Diamond Coalition donation.)

8:06 Newsletter agenda item: Due to the unexpected death of Alan's mother the newsletter was delayed. The newsletter will be published ASAP and a reminder to include the 2011 Membership forms was offered. The question of a dues increase came up again at that point. More discussion of the increase with pro and con points being made. Jeff M. moves to "Raise the membership dues to \$55." Second by Mark D. Some discussion of dues increase helping with Diamond Coalition donation. (Joe M. recuses himself from discussion and vote) Motion did not pass with a 3 - 3 vote.

8:10 Continued discussion of agenda items resolved as follows:

- Membership list should be complete at 180 members for 2010
- Trevi E. has offered to help with Giving Tree Project, gladly accepted.
- Contact police chief prior to 2011 4th of July activities to understand costs of coverage.
- Cancel the north clubhouse door exterior locks and handles project.
- Schedule the bug spray and floor joist inspection (Jeff)
- Heater Maintenance and filter change , sub-floor HVAC inspection (Alf)
- Santa Boat date set: Sunday, Dec 19th (Kurt)
- Help with clubhouse rentals assigned: 11/6 Joe, 11/13 Monica, 11/20 Monica and Alf, 11/25 Mark, 12/04 Kurt, 12/11&12 Joe.
- Good of the Order Items: Clarify how many votes each membership gets; increase awareness of the shared dock concept for lots that presently do not have a dock.

8:48 Discussion turns back to Sheila Hoefig's request with following outcome:

- Board unanimously affirms that protecting the lake and surrounding environment is not a political activity and aligns with the Club's mission statement
- Hold Special Exec Bd meeting Wed. Nov 17th 7:30pm to discuss "How to get it done".
- Request numbers and documentation from the Diamond Coalition regarding remaining water quality debt
- Review bylaws prior to meeting to understand the provisions therein that relate to calling a special meeting or special vote.
- Establish procedure

9:05 Motion to adjourn.

LSCC Board Meeting 11/17/10

7:30pm @Monica's house

Attendance: Alan Gangl, Alf Ladderud, Mark Davidson, Monica Stewart, Kurt Eby, Jeff Merrill, Sue Sherer. **Absent:** Joe May, Glenn Ross

Alan opened the meeting at the home of Monica Stewart at 7:38 pm.

Minutes: The minutes of the October Board Meeting were approved as published.

Membership/Treasurer's Report:

Report approved unanimously. Available on Request

Old Business:

Dance classes have gone well. Some of the other members present have been participating, and thanked Kurt for doing it.

Clubhouse:

Jeff proposed having a home inspector get under the clubhouse and inspect for structural damage and insect damage. The cost will be less than \$300. After receiving his report, we will decide how to proceed with any needed or recommended repairs. We also discussed insulation of the floor. Kurt made a motion, Sue seconded to go forward with the inspection.

Coming Events:

- Giving Tree - is up in Lake Sawyer Grocery.
- Santa Boat - Kurt will handle it - Sunday before Christmas (Dec 19th)

New Business:

Sheila Hoefig requested at the October board meeting* that the LSCC make a follow-up donation to the Diamond Coalition to help defray the costs of the water quality experts. The LSCC has already donated \$5000 to the Diamond Coalition to help pay for the water quality study which has been used for expert witness testimony in hearings regarding the new developments proposed for Black Diamond. It was mentioned that the LSCC may receive a copy of the water quality report also, which would provide significant historical perspective in the future.

* [excerpted from Oct minutes.] "...Sheila referenced the existing debt the Diamond Coalition has to the water quality experts used during the EIS appeal of the Villages and Lawson Hills MPDs. She asked that the LSCC hold a special meeting to vote on another donation to help cover that cost suggesting a donation up to the full amount."

Alan reviewed the LSCC ByLaws, section II which states the purpose of the organization, to wit: "The purpose of the LSCC is to bring together all Members in good standing to inform and discuss mutual problems, concerns and interests affecting our community, the Lake, and our surrounding environment." It was generally agreed that supporting the Diamond Coalition falls under this broad category, in that their goal includes preserving the water quality of Lake Sawyer.

Alan made a motion to bring a vote to the membership on whether to make an additional contribution to the Diamond Coalition. Mark seconded the motion. There was discussion regarding the amount of donation the club would make and whether to ask for donations with matching funds, or to ask members to make additional donations on their own. Our primary concern as LSCC members is that we maintain the quality of the lake, and the quality of life on the lake, to protect the lake and to protect our investments in waterfront property. Monica used the fairness test to point out that it isn't fair for a few people (in the Diamond Coalition) to bear the cost of preserving the quality of life of so many (lake residents). Alan pointed out that donation to one cause will possibly open us up to requests from other organizations down the road. It was generally agreed that we would do a mail vote. Alf pointed out that the reserve fund of \$20000 may not be adequate to fund multiple repairs or upgrades to the clubhouse that may be needed in the future, but it is equivalent to two years' worth of clubhouse expenses, and approximately equal to one year's worth of revenue from the existing tenant. Kurt added that when we do a mailing, it needs to include specific, clear information and some financial information for LSCC. It was agreed that each household membership gets one vote, one ballot, and there may have been a liberal interpretation of voting members in the past. Alan called for the questions. Motion carried unanimously.

Mark made a motion to send out a ballot to the membership (as of 11/17/10) to approve a donation to the Diamond Coalition of \$5000, and ask for individual contributions that will be matched dollar-for-dollar by the LSCC up to an addition \$5000, subject to a simple majority approval vote of the returned ballots. Motion was seconded by Jeff. Discussion ensued, including a concern that checks for the Diamond Coalition be made out to the Diamond Coalition. Checks will be forwarded to the Diamond Coalition whether or not the vote passes, but no matching funds will be paid if the proposal doesn't pass. Alan called for the question. The motion carried unanimously. Alan asked for volunteers to help prepare the mailing. The consensus was to have the flyer out in the mail to be in members' hands by Dec 1st, and votes/checks must be returned (postmarked) by Dec 15th.

Good of the Order:

It was agreed that at the February general meeting, we would clarify the definition of "member" and voting privileges to be "one membership, one vote," and that there may have been sloppy interpretation of this in the past.

Adjourned: 8:55

Respectfully submitted,

Sue Sherer

Lake Sawyer Community Club (LSCC) Donation Election

November 29, 2010

Lake Sawyer Community Club members,

Your Lake Sawyer Community Club (LSCC) Board of Trustees (Board) has received a request, from a member in good standing, that the LSCC make an additional donation to the Diamond Coalition to help fund the \$25,000+ expense incurred generating water quality analysis, reports, expert testimony and associated legal expenses for use in the Environmental Impact Study appeal of the Villages and Lawson Hills Master Plan Developments.

The LSCC Board, with the exception of Joe May and Glenn Ross who were absent, met on November 17, 2010 to discuss this request. We first reviewed the LSCC Bylaws noting Article II – Purpose: “The purpose of the LSCC is to bring together all Members in good standing to inform and discuss mutual problems, concerns and interests affecting our community, the Lake, and our surrounding environment.” The Board members present believe the water quality of Lake Sawyer and the water flowing into the lake are of vital interest to the LSCC Membership and thus water quality analysis, report and expert testimony meet the LSCC “purpose”.

The LSCC Board recognizes it has a fiduciary responsibility to manage the finances of the Lake Sawyer Community Club. To that end the Board unanimously supported the Treasurer’s recommendation that a “reserve” amount be established equal to two years operating expenses which include insurance, taxes, and utilities. The Board recognizes that the LSCC’s primary revenue source is the rent collected from the Maple alley School of Ballet for the use of the Club House. Recent LSCC Boards have approved expenditures to maintain and improve the Club House. Your current Board has projected expenditures to repair termite and dry rot damage to the floor joists under the Club House in the coming months. After careful consideration of the financial matters of the LSCC the Board has concluded that the LSCC is adequately funded to support a donation of up to \$10,000 to the Diamond Coalition for the water quality expenses it has incurred.

Your LSCC Board is proposing a \$5,000 donation to the Diamond Coalition and encourages members who support this proposal to donate individually to the Diamond Coalition which will be matched dollar-for-dollar by the LSCC up to an additional \$5000.00 for a total of \$10,000.00.

The Board is submitting this proposal to the membership for a vote via a mail in ballot. Each LSCC membership will receive one ballot which you will find enclosed along with a stamped return envelope. The ballots must be post marked on or before Wednesday, December 15, 2010. Per Article XII – Tabulation of Votes: “The President shall appoint a committee of three Members to tabulate all votes, including absentee ballots, which must be in the hands of the Secretary by the specified date.” The specified date will be Saturday, December 18, 2010. Article IX - Expenditures and Assessments Section 3: “Absentee ballots will be used as provided by these Bylaws. When an absentee ballot is used, acceptance or rejection of an issue will be determined by a simple majority of total votes cast.”

Respectfully submitted by your LSCC Board of Trustees,

Alan Gangl, LSCC Vice President
Jeff Ladderud, LSCC Treasurer
Sue Sherer, LSCC Secretary
Jeff Merrill, LSCC Trustee No. 5

Kurt Eby, LSCC Trustee No. 1
Monica Stewart, LSCC Trustee No. 2
Mark Davidson, LSCC Trustee No. 3
Glenn Ross, LSCC Trustee No. 4

LSCC Board Meeting 1/12/11

7:00pm @Alf's house

Attendance: Alan Gangl, Alf Ladderud, Mark Davidson, Monica Stewart, Joe May, Glenn Ross, Jeff Merrill, Sue Sherer. Absent: Kurt Eby

Joe opened the meeting at the home of Alf Ladderrud at 7:05 pm.

Minutes: The minutes of the November Board Meeting were approved as published.

Treasurer's Report: Alf presented the Treasurer's report: Available on request.

Oil delivery on 12/20 was \$584.32; Alf discussed the possibility of getting on an auto-fill program now that we've established a good payment record with the supplier. Reliable Home Inspection on 1/5/11 was \$300

The January rent received from MVSb was \$2,507

Alf didn't take out a new CD - it would be best to wait until after election of new officers so there would not be a need to make signature changes on the CD.

Old Business:

- Donation to the Black Diamond Food Bank was brought back up. Alf sent the \$250 at Thanksgiving, and we all recognize that the need is year-round. We agreed that keeping our focus local serves the lake community best. Mark made a motion to make a \$250 donation to the Black Diamond Food Bank on a quarterly basis. Alf seconded the motion and it passed unanimously. Alf will make the next payment before the annual meeting.
- LSCC donation to Diamond Coalition vote results - There were 89 ballots received, 60 voted to approve, 28 to reject, and there was one unclear ballot. There were several comments on the ballots both in favor and against the donation to the Diamond Coalition. One member sent a note requesting that his recent donation made just before the ballots went out also be matched. Alan made a motion that this donation be included in the funds received to be matched. Monica seconded the motion. Motion passed with Joe recusing himself from the vote. The total donations received totaled \$5,795.00, so the LSCC treasurer will write a check for \$10,000 to the Diamond Coalition. The letter recapping the vote will be sent out to LSCC members by the end of the month.

Clubhouse:

Subfloor inspection report presented by Jeff, complete with photo slides. The inspector created a map and map notes with numbered location points. There are 28 damage points in the floor beams, with quite a bit of dry rot and subterranean termite damage, though no active pest activity except for some rat nest areas. A few of the beams and posts are significantly damaged. The inspection report also shows several areas where the siding is in contact with the ground and suggests that we provide better drainage for the downspouts to direct water away from the foundation. In addition he pointed out that the crawl space access points are allowing access to rodents.

There are lots of branches down on the north side of the clubhouse. We discussed having a work party and possibly people going there on their own to clean it up.

Monica has taken over as clubhouse manager. She brought up the struggles in developing a sound-deadening system and talked about the deep cleaning she's been working on.

Membership:

Newsletters - should we send it to all lake residents or just to LSCC members? There was some discussion on the point. It was decided that the first newsletter of the year will go out to all lake residents along with a membership application. The rest of the newsletters for the year will only go out to members. In addition, Joe will put together a mass email to all lake residents whose email addresses we have.

The letter with vote results will also get mailed out this month with a thank-you letter from the Diamond Coalition, only sent to 2010 club members.

Sue made a motion that the term of membership will be from annual meeting to annual meeting. Mark seconded the motion and it passed unanimously.

Coming Events:

Annual Meeting will be at 7:00pm on February 9, 2011 at the clubhouse. The meeting will have a full agenda, including a continuing slide show of lake events from the year. Joe will invite a couple of city staff members to speak at the meeting, including the city mayor. We will also set aside some time to recognize the individuals who have given their time and skills to the community events, such as Kurt with the Santa Boat, Ted (of the Lake Sawyer Grocery) for all the stuff he does, Trevi with the giving tree, Holly as clubhouse manager, Sheila Hoefig and the Easter Egg Hunt, the weed-watchers, etc. We may bring up the weir.

We will work on the The Easter Egg Hunt at a later point.

New Business:

There are several missing orange marker bouys from the boat launch to the point. Alan made a motion to donate \$500 to the City of Black Diamond to replace the bouys and tell them where to place them. Motion was seconded by Jeff and passed unanimously. Alf will take a check with a letter into the city office.

Alan made a suggestion to purchase a fire-safe filing cabinet to store the historical records of the community club. We've had a difficult time locating old documents that relate to prior happenings around the lake, such as the weir history and club business, Alan will research prices and get back to the group.

Good of the Order:

LSCC Officer/Trustee positions that will be open at the annual meeting are:

President

Vice President

Secretary

Treasurer

Trustee position 1 (Kurt)

Trustee position 3 (Mark)

Trustee position 4 (Glenn)

Trustee position 5 traditionally is filled by the outgoing President.

Next Meeting:

Feb 2, 2011 at 7:00

Adjourned: 9:36

Respectfully submitted,

Sue Sherer



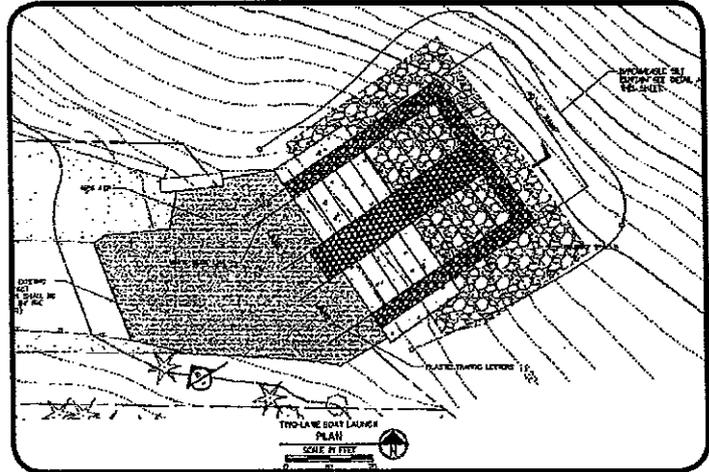
NEWSLETTER

Lake Sawyer Boat Ramp Closure

The Lake Sawyer boat ramp will be closed for repairs for up to 30 days sometime between August 8th and September 15th. During the closure, you will not be able to launch your boats or pull them out of Lake Sawyer.

The City will be updating the City of Black Diamond Public Works Capital Projects web page regularly as closure dates become more certain.

The page address is:
www.ci.blackdiamond.wa.us/Depts/PubWorks/capital_projects.html



Truck in the Lake!

Renee Brealey, LSCC Board Member, was at the boat ramp when the truck accident happened.

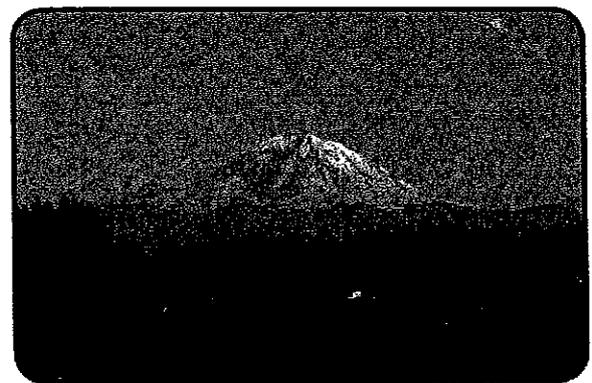


She spoke with the King County Sheriff Diving Team regarding the other vehicle they found while pulling the truck out. They all agreed including the diver himself that it looked to be there for a very long time and it would cause much more damage to our lake if they tried to remove it rather than leaving it there. The diver told her that he sees this all the time and that he would be surprised if he didn't see an old car in the lake. He stated that almost every lake has a few old cars in them and it is not unusual. Think of it as a habitat for our fish, it is not harming anything by just leaving it there but it will cause harm by trying to pull it out.

Andy Williamson with the City of Black Diamond confirmed "There is still one car in the lake a very old car that I believe went in the lake during the fifties. We have contacted Fish and Wildlife and they said if it had sunk too far into the lake bed we would need a H.P.A permit from them. At this time we have no plans to remove the car."

Ahhh....The Quiet Time

We are so privileged to have such a serene place to live. A resident on the lake once explained that the fast boating hours were really for noise abatement. Enjoy the weekend mornings on your dock with a cup of coffee, a newspaper or a book. Take a kayak, canoe, or paddle boat ride. Wave to your neighbors. Let the mowing and pressure washing wait a bit. Enjoy the moment.



Fireworks Display

Wow! What a great fireworks display we enjoyed this year. We requested this year's display be higher to allow more residents to view the show and they delivered. The July 4th Fireworks display was organized by your Lake Sawyer Community Club but it was paid for by your donations, Thank You! We also want to thank Don and Deborah Minklein for allowing us to use their floating dock to accommodate the larger show.

SILVER \$100-\$199 Contribution

	Dock #	Member
Joel & Cindy Sutherland	11	Yes
Cindy & Bill Wheeler	13	Yes
Rick & Laura Bingle	28	Yes
Charles & Ulla Kemman	32	Yes
Steve & Paula Moergeli	33	Yes
Doug Geiger	35	Yes
Bart & Christy Selz	46	Yes
Kevin & Marcelle Anderson	51	Yes
Glenn & Kay Ross	61	Yes
Gary & Patty Chastain	69	Yes
Jeff & Elaine Lovre	72	Yes
Tim & Kim Rector	80	Yes
Jerry Sailer	86	Yes
Shari Jackson	92	Yes
Lisa Caruthers & Raymond Stetson	95	Yes
Jim & Mary Jo Hawk	104	Yes
Craig & Judy Goodwin	117	Yes
George & Martha McPherson	120	Yes
Fred & Patty Weston	121	Yes
James & Denise Hunsaker	158	Yes
Bob & Vicki Gramann	173	Yes
Rick McCaslin	187	
Jay & KC Yanamura	195	Yes
Weston Butt	200	Yes
Leah Grant & Mike Royston	202	Yes
Gary & Anita Babick	242	Yes
Dick & Monica Stewart	246	Yes
Ray & Marta Peters	248	Yes
Michael & Pat Raine	274	Yes
George & Lee Sanchez	291	
Alan & Joan Gangl	294	Yes
Jon Reiners	296	Yes
Dan & Peggy Stivers	303	Yes
Harold & Sue Masar	307	Yes
Vicki Turcott	311	
Wendel and Karina Draeger	318	
Brian & Shella Hoefig	319	Yes

PLATINUM

\$500+ Contribution!

	Dock #	Member
David & Maryanne Jones	102	Yes
Don & Karen Berg	316	Yes

GOLD \$200-\$499 Contribution!

	Dock #	Member
Lisa & Tim Eble	12	Yes
Gary Farmer & Carol Benson	29	Yes
Mark & Susie Davidson	65	Yes
John & Penny Blair	168	Yes
Bert & Kathy Evans	243	Yes



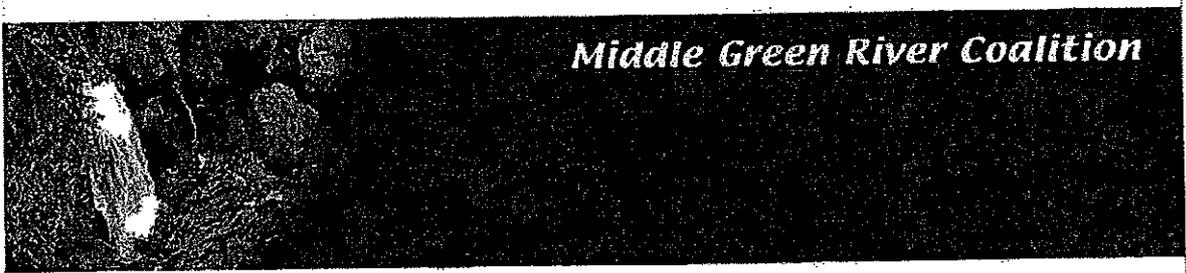
BRONZE \$1-\$99 Contribution

	Dock #	Member
Bill & Jennifer Kombol	1	Yes
Alan & Kathy Peterson	2	Yes
Brett Morris	5	
Gary Baker	7	Yes
Aaron & Michelle Wellborn	8	
Sharon Veldhuis	9	Yes
Val & Shane Brazier	10	Yes
Lyla Brown	11	
Susan & Michael Wagner	17	Yes
Clara Anderson	19	
Bill & Peggy Ellis	21	Yes
Peter & Marcia Wahlman	24	Yes
Howard & Jenny Stanford	27	Yes
Bob & Janie Edelman	30	Yes
Chuck & Laurel Graves	36	
Donna & Jack Gucker	38	Yes
Fred & Polly Rohrbach	40	Yes
Peter Shirley	41	
Annette Thompson	42	Yes
Curtis & Michelle Lang	43	Yes
Lou & Brooke Owen	44	Yes
Jean & Donald Manson	47	Yes

BRONZE \$1-\$99 Contribution (cont.)

	Dock #	Member
Rod Meader	52	Yes
Bob & Laura Rothschilds	58	Yes
Barb & Dale Rasmussen	59	Yes
Dave Schindeldecker	66	Yes
Bruce & Julie Earley	67	Yes
David Rodes	68	
Greg & Sarah Thesenvitz	70	Yes
Eric & Debbie Stone	71	Yes
Jack Gannon	73	Yes
Frederic & Margaret Hawkins	76	
Lou & Stell Wohlman	78	Yes
Tom & Patty Hardebeck	79	Yes
Will & Carolyn Calhoun	81	Yes
Kent & Heather Rasmussen	83	Yes
Robin & Dave Borchelt	84	Yes
Joyce Van Der Haar	85	Yes
Pamela & Richard Kale	89	Yes
Jack & Peggy Sperry	91	Yes
Philip & Paula Acosta	98	Yes
Richard & Sharon Pasko	99	Yes
Gary & Linda Patterson	100	Yes
Leslie & Melvina Axling	103	Yes
James & Carol Noddings	108	Yes
Tom and Lisa Potts	111	Yes
George Calborn	114	Yes
Bo McCain & Pam Burrige	118	
Dean & Beverly Duncan	123	Yes
Betty Clark	124	
Mark & Sally Bergman	126	Yes
Patty & Pat Coogan	127	Yes
Daniel & Bonnie Hucke	128	
Lois & Nils Ladderud	129	Yes
Cameron & Michelle McCleery	130	
Tom & Sue Hallgren	134	
Connie & Jerry Clark	136	Yes
Karl & Nancy Seehom	137	
Mary & Tom Czaplinski	138	Yes
Brad Ewing	140	
Rhonda & Nick Kurka	143	Yes
Arthur Gourlay	144	
Bret Arneveck	145	
Scott & Mischa Swanson	154	Yes
Dan & Kim Gerarden	160	Yes
Mike & Wendy Ward	162	Yes
Ben Blair	167	Yes
Bill & Jean Boston	169	
Anneliese & Kevin Southall	172	Yes
Dan & Randie Rynning	181	Yes
Angrid K. Henning	184	Yes
Gary & Joni Beckwith	186	Yes
Nanette & Rick Stocks	188	Yes

	Dock #	Member
Ted & Nani Sipila	190	Yes
Brad Covey	193	Yes
Peter & Theresa Garrett	194	Yes
Duane Baum	198	Yes
Ken & Cindy Smith	203	
Carolyn & Henry Lee	204	
Doug & Janet Neer	205	Yes
Robert & Susan Fish	212	Yes
Gary & Gerri Mitts	216	Yes
Jack & Michelle Franich	221	Yes
Holly & Dave Nichols	233	Yes
Scott & Susan Sherer	234	Yes
Leroy & Margaret Irons	250	Yes
Monty Clark	257	Yes
Duane Gillis	260	Yes
Julie & Steve Frank	261	Yes
Henry & Kathleen Heeb	263	Yes
Frank & Jean Gardiner	265	
Mamie & Greg Thiel	266	Yes
Kurt & Karen Eby	268	Yes
Mike & Merrilyn Johnston	269	Yes
Wayne & Mary Ann Monts	270	Yes
Jeff & Kathy McCloskey	272	
Don & Deborah Minklein	273	Yes
Jim & Tiffany King	275	
Bob & Joyce Greenwood	276	Yes
Cindy & Sam Kerley	279	Yes
Dave & Noreen Peters	280	Yes
Bob & Mary Smith	283	
Brett Chandler	285	
Jason & Renee Brealey	286	Yes
Rick & Terry Ryerse	287	Yes
Gary & Sharon Henrich	288	Yes
Kurt & Annie Kulesza	290	Yes
Jeff & Cheri Merrill	293	Yes
Ron & Pam Tomich	298	Yes
Helen Jacobson	299	Yes
Brian & Barbara Odell	305	Yes
Susie Ball	306	Yes
Betty Wheeler	308	Yes
Dawn Johnston	310	Yes
Jeff & Robin Forgey	313	
Jeff & Gail Ganzer	315	Yes
Brent & Sheri Miller	320	Yes
Edna & Richard Pedersen	322	
Jan & Lee Beriault	Island	Yes



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Discussion Board

About Us



Wolf Bauer : Honorary Board Member

Wolf Bauer's legacy to the northwest is far reaching. He was the pioneer of mountaineering and kayaking education in the northwest, the founder of the Washington Kayak Club, the founder of the Washington Environmental Council, and the initial developer of much of the Puget Shoreline Act of 1971. He was also one of the co-founders of Mountain Search and Rescue along with Ome Daiber and Dr. Otto Trott. On a more personal level he has climbed many northwest peaks, skied the snowy slopes of the cascades, and kayaked many NW rivers. He was the first person to kayak the Green River Gorge with Tom Steinburn in the 60s.

As a result of his exploration of the Green River Gorge he turned his love of the area into action by lobbying to protect the Green River Gorge. His legacy was the development of the Green River Gorge Conservation Plan which is still the guiding document for the Green River Gorge today. He worked with State Parks and the Washington State legislature to have the Green River Gorge recognized in state statute.

Today at age 97 Wolf continues to support Green River Gorge conservation and agreed to be an honorary board member of MGRC.



Greg Wingard: President

Greg Wingard is a Seattle native, and life-long environmental advocate, having worked on issues such as uranium mining and milling, toxics, Clean Water Act litigation, environmental restoration, and purchase of lands for open space, habitat and

passive recreation. Current work includes restoration and protection of the Green/Duwamish River from the Cascades to the Puget Sound (with a focus on the Green River Gorge between Black Diamond and Enumclaw), Clean Water Act litigation, and assisting local communities to deal with problems related to toxics and government bureaucracy. A long time resident of rural SE King County, Greg's preferred mode of transportation is by bike.



Bernie McKinney — Vice President & Restoration Committee Director & Fund Raising Committee Chairman

Long time resident of the Enumclaw Plateau, Bernie McKinney became involved in MGRC because of his passion in forest stewardship. He became a King County Park Ambassador for the Bass / Beaver / Dandy Lake Complex. He is also one of the principal organizers of the "Rock the Green Clean" event which raises money to support the Cleanup events for the Green River Gorge. He is also a grant writer, musician, producer, photographer & native plant enthusiast .

The opportunity to return thousands of acres of land back to its natural condition is exciting to me. This all seems like a dream come true...



Craig Goodwin — treasurer Craig grew up in Sumner and received both undergraduate and graduate degrees from WSU, where he also played football for the Cougs. Prior to his recent transition to semi-retirement, Craig was co-founder and general manager of NCS Wastewater Solutions, a Division of Northwest Cascade Inc. headquartered in Puyallup. NCS designs, builds and operates water and wastewater facilities for small communities and commercial development across the country. "It's been nice to get off the airplane and enjoy exploring all of the natural beauty our area has to offer". Water quality and natural resource preservation remain his real passion. Craig is currently a member of the Black Diamond City Council and also a member of the Regional Water Quality Committee for King County. If you are interested in history and happenings in our local area, try visiting his blog at www.blackdiamondnow.org.

Courtney Feeney — Secretary

Lisa Parsons: Executive Director

Lisa Parsons has been working on land conservation in southeast King County for the past 12 years. She is the Executive Director and works very hard, for free, on land conservation. Through her love of the outdoors and exploring she has discovered and worked to preserve some of the last wild places in southeast King County that have value due to their uniqueness as well as their recreational, habitat, and aquatic resources. She is also a conservation photographer who uses her medium as outreach to conserve key areas and bring them to the public's attention. When she isn't working as the Executive Director of MGRC and working as a paramedic she travels internationally and enjoys frequent backyard adventures here at home.



Fran Troje — Member-at-Large

Fran Troje is the Chair of the Foothills branch of The Mountaineers and a tireless advocate for conservation and the outdoors.



Kacie McKinney — Member-at-Large & Communications Director

Kacie McKinney grew up on the Enumclaw Plateau and joined MGRC to protect the area that taught her the ways of an outdoor enthusiast. Kacie leads MGRC's communications efforts and helps coordinate events such as "Rock the Green Clean." When she's not working for MGRC you can find her on the trails, running the Tacoma waterfront or at a local music venue.

Sam Eide — Member-at-Large



Max Prinsen — Advisory Board

Max and his wife Erin Wojewodzki Prinsen founded Save Habitat And Diversity Of Wetlands in 1996 in order to preserve a rare, sensitive wetland on the West shore of Shadow Lake. The organization has continued to grow, and now serves thousands of local residents and visitors through their education, recreation and restoration programs. Max has been on the King Conservation District Board for 9 years, and is currently an

associate supervisor. He represents SHADOW on the WRIA 9 Council, Middle Green River Coalition and Cedar River Council. For now, he keeps his day job with Ofis Elevator Company.



John Ernster — Advisory Board

John is the head ranger at Flaming Geyser State Parks. He came to the Green River Gorge from Beacon Rock State park on the Columbia Gorge. He brings a new energy, advocacy, initiative, and enthusiasm to his job as a ranger. He is also an avid outdoor enthusiast who loves all that the Green River Gorge has to offer and is a tireless advocate for making the State Park the best it can be.



Diana Dupuis — Advisory Board

Diana is a Park Ranger with Washington State Parks serving the Green River Gorge Conservation Area and an adjunct Professor of Anthropology at Green River Community College. Diana has lived in both the back woods of rural Michigan and the urban corridors of Los Angeles, California and is a student of the delicate relationship between humans and their environment – the lessons of the past, the needs of the present and the planning of the future.



Pat Sumption — Advisory Board

Founder of Friends of the Green and tireless advocate for protection of in-stream flows in the Green River. She is the cofounder of the long running "Green River Cleanup". She is also a member of the Sierra Club and has been active in conservation and advocacy in the northwest for years. She has served on many committees such as the League of Conservation Voters, Green Duwamish Watershed Alliance as well as others.

Green River Gorge Greenway Council Documents

Meta information for this post:

Black Diamond NOW

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06/18/2010

Middle Green River Coalition - Preserving Our Community's Future

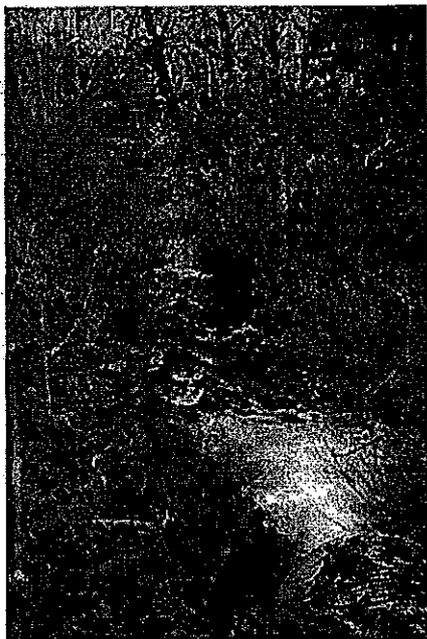


Preserving our Community's future depends not just on what we do within our City limits, but is also heavily impacted by what is going on around us. In previous posts, I have focused on the beauty of Green Valley Road and the pleasure of "Moseying" along.

I also highly recommend that you consider supporting/joining the [Middle Green River Coalition \(MGRC\)](#). The MGRC's mission is protecting and enhancing open space in the Middle Green River watershed to insure long-term habitat health and passive recreation opportunities. They do this by:

- Acquiring land and conservation easements and other conservation tools
- Working with willing land owners and other partners
- Informing and engaging a broad range of people and the community
- Promoting environmentally sustainable forest practices

Visit their website and learn more about the many projects being worked on by MGRC, including the Green River Gorge Mountain to Valley Greenway. Take a look at their photo gallery for some spectacular pictures. Once again, I am amazed at the sheer beauty of our community.



For additional information, maps, and supporting documents

visit their website at: www.mgrc.org

or contact Lisa Parsons

Middle Green River Coalition

mgrc@mgrc.org

206-902-8305

Posted at 12:55 PM | [Permalink](#)

TrackBack

TrackBack URL for this entry:

<http://www.typepad.com/services/trackback/6a00e5513924e688330134849c97ba970c>

Listed below are links to weblogs that reference [Middle Green River Coalition - Preserving Our Community's Future](#):

Comments

 You can follow this conversation by subscribing to the [comment feed](#) for this post.

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Previewing your Comment

Posted by: |

This is only a preview. Your comment has not yet been posted.



Your comment could not be posted. Error type:

Your comment has been posted. [Post another comment](#)

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As a final step before posting your comment, enter the letters and numbers you see in the image below. This prevents automated programs from posting comments.

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Middle Green River Coalition
Meeting Minutes: May 2nd, 2011
6:00- 8:00 at the Maple Valley Library

Board Members

present Greg Wingard, Samuel Eide, Craig Goodwin, Bernie McKinney, Fran Troje,
Courtney Feeney
others Pat Pritchard

Meeting minutes for April approved, one note - date for Green Clean missing
Board Member contact details reviewed
Introductions to the visitor

Fundraising Committee Report

- New grant received, old grant cancelled
- C.J. Davis, director of CPG - Community Participation Grant - originally matched the REI grant of \$5,000 but the money got delayed because of insurance paperwork
- As a result, C.J. has decided to triple the grant to \$15,000, which will require modification to the existing budget
- Through an email chain, MGRC insurance has been approved at a cost of \$1,300
- As of now, Phase 1 - excavation and trail construction - is complete

Motion to accept new grant with the condition that a subcommittee be formed to create and authorize a clear Phase 2 plan for the project at Bass/Beaver/Dandy Lake and other restoration projects in the area, seconded with open discussion:

- Grant good for two years, if money is not spent within that time frame, extension can be filed and money can roll over to the next project
- Need to designate project manager to work with an existing committee to determine MGRC scope of involvement based on the conditions of the grant
- Fran wants to see Appendix D
- Insurance certificate - 3 copies - needs to be sent with grant documentation to King County

Motion approved.

Finance Committee Report

- 501c3 paperwork ready with one exception: conflict of interest policy

Motion to allow the President to review and authorize conflict of interest policy, seconded, and approved.

- With that, treasurer will sign and submit application, expedite

Public Affairs Committee Report

- Pacific Raceways wants to expand its operation on the Soos Creek Basin, west and south
- Soos Creek Area Response - SCAR- to do a habitat study from Kent Kanglely to the mouth of the Soos Creek, needs support of MGRC
- The goal is get the whole basin habitat typed to determine its functions and values, currently only the north half has been studied

Motion to support SCAR habitat study of Soos Creek Basin, seconded, with one recusal, and approved.

- Yarrow Bay development in Black Diamond delayed, Growth Management Hearing Board found that the city council should have followed a legislative process - not a quasi-judicial one - with city residents
- It is now a race to the courthouse - Will Yarrow Bay developments get vested?

Rock the Green Clean

- Organizers need clarity on non-profit status to ensure sponsors get tax deduction for donations and for a special event alcohol permit, \$60
- Treasurer says give the EIN number, our application is pending and should be approved by the end of the year...it should all work out, if not, the sponsors will be reimbursed by MGRC
- Sam is working out the details of a beer garden, needs to meet specific requirements of alcohol permit for non-profits which include amounts, location, and times

Education Committee Report

- First Teacher deadline, May 2nd, not met. Still working on getting volunteers to help with the work
- Hikes with Black Diamond Elementary School students and families a success, although turn out is small, going to schedule another series of hikes in the fall
- Trivia night has been rescheduled for May 11th at the Swinging Arm

Misc.

- An AOL newsletter organization - Pea Patch - wants MGRC to blog on their page, details are fuzzy though
- Unsuccessful volunteer list at Clean the Green
- Rain Gardens program online

Meeting Adjourned at 8:00

Meeting Notes submitted by Secretary Courtney Feeney

11
Craig Goodwin

From: Craig Goodwin
Sent: Wednesday, May 11, 2011 3:44 PM
To: Cindy Proctor; Bob Edelman; JackSperry@comcast.net; 'Peter Rimbo'; Gil Bortelson; Bob Rothschilds
Subject: FW: Black Diamond Yarrow Bay

FYI - As you can see, we are working this from a number of angles. I still believe that working directly with Yarrow Bay is our best hope.
Craig

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

From: Greg Wingard [mailto:gwingard@earthlink.net]
Sent: Wednesday, May 11, 2011 12:58 PM
To: Smith, Lauren
Subject: Re:Black Diamond Yarrow Bay

Lauren:

I wanted to briefly follow up with you on the Black Diamond/Yarrow Bay developments, in view of recent events.

It appears at this point that the Mayor and City Staff in Black Diamond intend on moving forward with vesting Yarrow Bay, as they have determined the applications submitted by YB are complete and are moving to adopt Development Agreements, which apparently will set up special zoning and development standard considerations for YB's two projects.

While that is a matter internal to Black Diamond as a municipality, my questions for King County are this:

Apparently the applications being deemed "complete", and the related development agreements are being moved forward with the assumption that both schools and a stormwater facility are going to be located in the rural area, outside both the city limits and Urban Growth Boundary. My question is, how is it possible for Black Diamond to do that without an underlying agreement with King County to allow this proposed development in the rural area?

As you are aware, Middle Green River Coalition is very much opposed to the idea of urban infrastructure, to essentially benefit, and increase the profits of what ought to be solely urban developments, slopping over into the rural area. There are a number of reasons for this, I will only mention a few. Such a proposal, if allowed, decreases costs to the developer, but shifts costs to the citizens in rural King County. This additional economic pressure only tends to lead to additional conversion pressure, additional bad outcomes for rural King County, and the additional economic stress on rural residents is by definition unjust.

Requiring rural residents to pay the school related costs for large scale urban development is just plain bad policy.

In addition, stormwater infrastructure for housing or commercial development in the urban area, must be limited to the urban area. Huge considerations were, and continue to be granted to this developer, to facilitate one of the largest scale developments in King County, for them to come back at this point for another bite at the rural apple is simply not acceptable.

I appreciate your work in scoping and working on rural related issues, in the Executives Office, and for Executive Constantine's commitment to addressing concerns in the rural area. I am interested in how King County intends on addressing this issue, and to the extent you or others in King County know this, how Black Diamond can move forward with vesting projects, which presuppose these types and level of rural impacts, outside their jurisdiction, in rural King County, which should be under the sole jurisdiction of King County, not Black Diamond?

Regards,

Greg

Craig Goodwin

From: Greg Wingard [gwingard@earthlink.net]
Sent: Wednesday, July 20, 2011 4:42 PM
To: Craig Goodwin
Subject: Re: Inclusion

Craig:

Did take you out for just that reason, Fran stuck you back in, I took you back out. You shouldn't be getting anything more on this unless some one clones an old message to send something out.

Regards,

Greg

On 7/20/11 4:26 PM, Craig Goodwin wrote:
Greg --I cannot be part of this conversation given my quasi-judicial role. Please keep me out of this.
Craig

From: Judy & Craig Goodwin [mailto:judycraig@comcast.net]
Sent: Tuesday, July 19, 2011 5:23 PM
To: Craig Goodwin
Subject: Fwd: MGRC/Yarrow Bay hearings

Begin forwarded message:

From: Greg Wingard <gwingard@earthlink.net>
Date: July 14, 2011 10:32:54 PM PDT
To: Courtney Feeney <cjenefeeney@gmail.com>
Cc: Fran Troje <frantroje@gmail.com>, Bernie McKinney <b.mckinney@comcast.net>, Craig Goodwin <judycraig@comcast.net>, Kacie McKinney <kaciedianne@gmail.com>, Lisa Parsons <mgrc@mgrc.org>, Sam Elede <twp_crow12@hotmail.com>
Subject: Re: MGRC/Yarrow Bay hearings

Courtney:

Our long time friend and supporter, Peter Rimbo (Greater Maple Valley Unincorporated Area Council, South King County Chapter Sierra Club), has offered to draft something up for us, which we can use as we see fit. If any body is interested, Peter has sent me a copy of the technical committee's white paper book on the YB issues, and the upcoming hearings process. I would just ask that you not send it along further, as they want to limit it to their allies.

So in any case, if we are in agreement, I can have him send us the draft of the letter, which we could take a look at and see if and how we want to make any changes to it, prior to sending it off.

Had a great time today on the tour with the US Forest Service, and the Rural Forest Commission. Bunch of great folks, and MGRC is making some great in roads. Thanks to Bernie for investing the time in building this relationship.

Regards,

Greg

On 7/14/11 11:45 AM, Courtney Feeney wrote:

I support a statement by the MGRC. Who will write it? What will it say?

I am a bit busy but I want to support this in whatever way I can.

On Thu, Jul 14, 2011 at 9:36 AM, Fran Troje <frantraje@gmail.com> wrote:

Greg, et al,

I will vote in favor of a statement. Please route for review.

However, at the same time I feel strongly that our comments should only address the obvious "impacts" while avoiding being too accusatory of destroying the lifestyle of the current citizens ... the reason is

Should this development actually become a "fact", then MGRC needs to be collaborative and cooperate with those managing that proposed project and be well received in the community it will create.

By the way, Greg, you, as president can neither make proposals nor vote for them, unless the vote is tied, then you can cast a deciding vote. When you want a proposal made, you can get a board director to make it, another to second it, discussion (?), then call for the vote.

A detail, but our Minutes and all resolutions, as a (c)(3) are now "records", and should (highly unlikely) the IRS want an audit ... those minutes are part of the packet.

Fran

On 7/13/2011 2:20 PM, Greg Wingard wrote:

Two in favor counting me, I imagine that Craig would sit this one out.

Regards,

Greg

On 7/13/11 2:02 PM, Bernie McKinney wrote:

I am all for a statement from MGRC. Much stronger from a group!

Personally, I am deeply concerned about much of what I hear....schools, traffic, environmental impact...

This proposed development should not become a financial or environmental burden to the established citizens.

I am willing to help either way...

Bernie

On Jul 13, 2011, at 11:47 AM, Greg Wingard wrote:

All:

This just in from our friend and neighbor, Peter Rimbo.

What is the pleasure of the board regarding the issue he raises. Do we want to submit something as MGRC, by the first of August, as a place holder should we want to testify before Council?

Would we want Peter to draft up something for us to consider if we do want to do that?

Should we stay out of this as an organization, and if so, do any board members as individuals want to submit something?

I am sending this out for immediate consideration, as the matter is time sensitive and the deadline is prior to our next board meeting.

See email thread pasted in below.

Regards,

Greg

Greg,

Hi. Thanks. I fully understand everyone's time constraints, so no need to apologize. Since we have until ~8/1 to submit Written Statements, maybe the MGRC could submit something brief (I could draft it if you wish for your review). In that way MGRC gets on the record and then can participate when this goes to the City Council in September? The more organizations, the better. Does that sound reasonable to you? Please let me know. Thank you.

Peter Rimbo
primbos@comcast.net

"To know and not to do is not to know."-- Chinese proverb

Please consider the environment before printing.

On Jul 13, 2011, at 12:25 AM, Greg Wingard wrote:

Peter:

I am not aware of whether any of our board members plan on testifying as individuals. MGRC as an organization has not planned on doing so. I have tried to provide some incremental support along the way, but don't really have the time to commit to this myself. Between the King County Conservation Voters endorsement process, MGRC projects and work (including the upcoming hearing on the Pacific Raceways matter), it would not unduly shock me to meet myself coming down the hall.

I did get the White Paper Book, and did take a quick look at it. Impressive work.

If you want, I could send a note out to the board tomorrow and see if anybody is planning on testifying, and see about either routing them the information, or putting them in touch with you, if that would help?

Regards,

Greg

--

Courtney Feeney

"Believe in yourself and you can achieve anything"

Lisa Simpson

TABLE 3 DOCUMENTS

Jeff Read

From: Craig Goodwin [craig@nwcascade.com]
Sent: Monday, July 11, 2011 2:52 PM
To: Brenda Martinez
Subject: FW: Resolution
Attachments: RESOLUTION.doc

Item no. 1 of YB PDR dated June 7. They wanted electronic version.

From: Bob Edelman [mailto:BobEdelman@comcast.net]
Sent: Monday, April 11, 2011 12:23 PM
To: Craig Goodwin
Subject: Resolution

Craig,

Here is a draft of a potential resolution to defer MPD activity. If you use this I suggest that you copy it into your own document rather than revise it since I'm identified in the metadata.

Bob

RESOLUTION NO. 11-____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, DIRECTING THE CITY ADMINISTRATION TO DEFER FURTHER ACTIVITY ON THE YARROW BAY DEVELOPMENT AGREEMENTS UNTIL THE CITY COMPLIES WITH THE HEARINGS BOARD RULING OR THE RULING IS REVERSED ON APPEAL.

WHEREAS, on September 20, 2010, the City Council approved two master planned development (MPD) ordinances submitted by BD Village Partners, LP and BD Lawson Hill Partners, LP (Yarrow Bay); and

WHEREAS, the Growth Management Hearings Board has determined that the ordinances approving the MPDs were legislation, not quasi-judicial actions, and that, therefore, the City had employed the wrong procedures for adopting the ordinances; and

WHEREAS, Yarrow Bay has filed an appeal of the Hearings Board decision, but resolution of that appeal is not expected for several months at the earliest; and

WHEREAS, the City intends to comply with the Hearings Board ruling unless it is reversed on appeal; and

WHEREAS, the challenged ordinances approving the MPDs provide that the next step in the approval process will be the drafting and approval of "development agreements" between the City and Yarrow Bay; and

WHEREAS, there are no mandatory deadlines by which the City must act on Yarrow Bay's request for approval of the development agreements; and

WHEREAS, the City should not devote further resources or require the public to address issues concerning the development agreements until the uncertainty regarding the MPD approval ordinances is resolved.

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

Section 1. All activity on the proposed development agreements for the Yarrow Bay MPDs shall be deferred until the City has complied with the Hearings Board order and reconsidered the MPD ordinances utilizing a legislative approval process.

Section 2. This resolution shall automatically be rescinded and of no effect if the Hearings Board decision is reversed on appeal and no further appeals of that ruling remain.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON AT A REGULAR MEETING THEREOF, THIS ____ DAY OF
APRIL, 2011.**

CITY OF BLACK DIAMOND

Rebecca Olness, Mayor

Attest:

Brenda L. Martinez, City Clerk

8

Craig Goodwin

From: Bob Edelman [BobEdelman@comcast.net]
Sent: Tuesday, April 12, 2011 1:14 PM
To: Craig Goodwin
Subject: RE: The stay was granted

Thanks. I will be available.

From: Craig Goodwin [mailto:craig@nwcascade.com]
Sent: Tuesday, April 12, 2011 1:08 PM
To: Bob Edelman
Subject: RE: The stay was granted

I'll call tomorrow if you are available.

From: Bob Edelman [mailto:BobEdelman@comcast.net]
Sent: Tuesday, April 12, 2011 12:26 PM
To: Craig Goodwin
Subject: The stay was granted

This adds urgency to a resolution to suspend action on the development agreements. Another "whereas" is in order.

6



Craig Goodwin

From: Bob Edelman [BobEdelman@comcast.net]
Sent: Thursday, April 21, 2011 9:19 AM
To: Craig Goodwin
Subject: Please call

Craig,

There are some recent court decisions that will probably have a big impact on Yarrow Bay attempts to vest. I am checking out some of the details with David Bricklin right now and should have an answer this morning. I would like to get together ASAP to discuss with you – this is very significant.

Bob



Craig Goodwin

From: Bob Edelman [BobEdelman@comcast.net]
Sent: Thursday, April 21, 2011 10:49 AM
To: Craig Goodwin
Subject: New court decisions

Craig,

These decisions have raised quite a stir in the land-use community. In effect they chip away at vesting laws. I've written the following for general consumption but I would like to discuss next actions with you before I go any further.

Bob

.....
I wish to bring to your attention some recent court decisions that should be carefully considered before further implementation of the MPDs. These decisions strongly suggest that the city should put in abeyance any further action on the development agreements, pending completion of the judicial appeal process.

On April 13, the Court of Appeals ruled that where a UGA is being challenged, cities cannot rely on the UGA to annex land. See *Karpinski v Clark County*, No. 39546-1-II, slip op. In its decision the court stated the general principle that "city governments may not rely on county GMA planning decisions that are pending review". The same would hold for Black Diamond relying on a Black Diamond planning decision that is pending review.

On April 20 in another GMA case, the Court of Appeals cited *Karpinski*.

Based on RCW 36.70A.300(3)(b), counties could preserve the record *and issues* for review by requesting that the Growth Board stay compliance hearings pending a final decision on appeal. Importantly, counties and cities would also be prohibited from continuing with their development plans in reliance on the challenged Plan because the issues would be pending on appeal. See *Karpinski*, No. 39546-1-II, slip op. at 14-15 (holding that city government cannot rely on county GMA planning decisions while they are under review by the Growth Board or an appellate court). [underline emphasis added]

See *Dry Creek Coalition v Clallam County*, No. 39601-7-II, slip op.

In our case, the Growth Management Hearings Board decided that the process used to arrive at the MPD permitting ordinances was improper and ordered the City to redo the ordinances using the proper public participation process. They left the ordinances in force under the assumption that the City would comply quickly and revise the ordinances accordingly. However, Yarrow Bay appealed the order and was granted a stay on the Board's order until the appeal is decided. There is also a LUPA appeal pending and will be heard if the Board's decision on jurisdiction and its order are reversed.

City staff plans to proceed with the development agreements even though there are three appeals pending in court: the LUPA appeal pending on the underlying ordinances; the appeal pending on the Hearings Board's order to revise the ordinances; and the appeal pending on the order of invalidity. Given the recent court of appeals decisions, it would be very risky for the city to enter into a development agreement with these appeals pending. With the appeals and stay in place, cities are "prohibited" from taking action based on the disputed

ordinances. In all likelihood, any actions taken while the ordinances and Board's order are under appeal will be reversed if the City and Yarrow Bay receive adverse decisions.

The risks of proceeding far outweigh any conceivable benefit that the city might gain by jumping the gun on the appeals.

12

Craig Goodwin

From: Craig Goodwin
Sent: Friday, April 22, 2011 2:17 PM
To: 'Bob Edelman'
Subject: RE: New court decisions

Thanks, will review.

From: Bob Edelman [mailto:BobEdelman@comcast.net]
Sent: Thursday, April 21, 2011 10:49 AM
To: Craig Goodwin
Subject: New court decisions

Craig,

These decisions have raised quite a stir in the land-use community. In effect they chip away at vesting laws. I've written the following for general consumption but I would like to discuss next actions with you before I go any further.

Bob

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I wish to bring to your attention some recent court decisions that should be carefully considered before further implementation of the MPDs. These decisions strongly suggest that the city should put in abeyance any further action on the development agreements, pending completion of the judicial appeal process.

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On April 20 in another GMA case, the Court of Appeals cited *Karpinski*.

Based on RCW 36.70A.300(3)(b), counties could preserve the record *and issues* for review by requesting that the Growth Board stay compliance hearings pending a final decision on appeal. Importantly, counties and cities would also be prohibited from continuing with their development plans in reliance on the challenged Plan because the issues would be pending on appeal. See *Karpinski*, No. 39546-1-II, slip op. at 14-15 (holding that city government cannot rely on county GMA planning decisions while they are under review by the Growth Board or an appellate court). [underline emphasis added]

See *Dry Creek Coalition v Clallam County*, No. 39601-7-II, slip op.

In our case, the Growth Management Hearings Board decided that the process used to arrive at the MPD permitting ordinances was improper and ordered the City to redo the ordinances using the proper public participation process. They left the ordinances in force under the assumption that the City would comply quickly and revise the ordinances accordingly. However, Yarrow Bay appealed the order and was granted a stay on the Board's order until the appeal is decided. There is also a LUPA appeal pending and will be heard if the Board's decision on jurisdiction and its order are reversed.

City staff plans to proceed with the development agreements even though there are three appeals pending in court: the LUPA appeal pending on the underlying ordinances; the appeal pending on the Hearings Board's order to revise the ordinances; and the appeal pending on the order of invalidity. Given the recent court of appeals decisions, it would be very risky for the city to enter into a development agreement with these appeals pending. With the appeals and stay in place, cities are "prohibited" from taking action based on the disputed ordinances. In all likelihood, any actions taken while the ordinances and Board's order are under appeal will be reversed if the City and Yarrow Bay receive adverse decisions.

The risks of proceeding far outweigh any conceivable benefit that the city might gain by jumping the gun on the appeals.

4

Craig Goodwin

From: Bob Edelman [BobEdelman@comcast.net]
Sent: Thursday, May 05, 2011 3:47 AM
To: Craig Goodwin
Cc: 'Jack Sperry'
Subject: Introduction of ordinances and resolutions
Attachments: Council Reles and Reg - p7 & 8.pdf

Craig,

Attached are pages 7 and 8 of the Council Rules and Regulations. The full document is online at <http://www.ci.blackdiamond.wa.us/Depts/Council/Docs/Council%20Rules%20and%20Regs.pdf>.

Ordinances and resolutions can be prepared by two Council Members.

Bob

134

Craig Goodwin

From: Craig Goodwin
Sent: Friday, May 20, 2011 1:55 PM
To: Bob Edelman
Subject: Your Input Appreciated
Attachments: RESOLUTION.doc

RESOLUTION NO. 11-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, DIRECTING THAT ANY FURTHER ACTIVITY ON THE YARROW BAY DEVELOPMENT AGREEMENTS NOT VEST YARROW BAY TO MPD DEVELOPMENT BEYOND THE THREE PRELIMINARY PLATS CURRENTLY SUBMITTED UNTIL THE CITY COMPLIES WITH THE HEARINGS BOARD RULING OR THE RULING IS REVERSED ON APPEAL.

WHEREAS, on September 20, 2010, the City Council approved two master planned development (MPD) ordinances submitted by BD Village Partners, LP and BD Lawson Hill Partners, LP (Yarrow Bay); and

WHEREAS, the Growth Management Hearings Board has determined that the ordinances approving the MPDs were legislation, not quasi-judicial actions, and that, therefore, the City had employed the wrong procedures for adopting the ordinances; and

WHEREAS, Yarrow Bay has filed an appeal of the Hearings Board decision, but resolution of that appeal is not expected for several months at the earliest; and

WHEREAS, the City intends to comply with the Hearings Board ruling unless it is reversed on appeal; and

WHEREAS, the challenged ordinances approving the MPDs provide that the next step in the approval process will be the drafting and approval of "development agreements" between the City and Yarrow Bay; and

WHEREAS, Yarrow Bay has submitted three preliminary plats to the City for approval to achieve "vesting" for these plats despite the fact that no development agreements are in place and a final resolution of the Hearings Board ruling remains some months away; and

WHEREAS, the City does not wish to see Yarrow Bay "vested" to the MPDs until a final resolution of the Hearings Board ruling is determined; and

WHEREAS, Yarrow Bay has submitted draft development agreements to the City and has requested that the City schedule hearings and process these agreements for approval; and

WHEREAS, the City, in the interest of avoiding inordinate delay and inconvenience to Yarrow Bay while still respecting the Growth Management Hearings Board ruling and appeal process, wishes to continue to work with Yarrow Bay on the details of potential development agreements including the scheduling of public hearings; and

WHEREAS, the City wishes to ensure that any potential development agreements so processed do not serve to "vest" Yarrow Bay to the MPDs beyond the three preliminary plats currently submitted until final resolution of the Hearings Board ruling and the validity of the MPD ordinances are determined and compliance steps taken as appropriate.

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

Section 1. All activity on the proposed development agreements for the Yarrow Bay MPDs shall be allowed to proceed but with the explicit understanding that any development agreement approvals so obtained do not vest Yarrow Bay to the MPDs beyond the 3 preliminary plat applications currently submitted.

Section 2. Validity of the two MPD ordinances previously approved on September 20, 2010 will be frozen, meaning that there will be no vesting of MPDs until the Growth Management Hearings Board ruling is finally affirmed or reversed and appropriate steps taken to comply as appropriate.

Section 3. This resolution shall automatically be rescinded and of no effect if the Hearings Board decision is reversed on appeal and no further appeals of that ruling remain.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON AT A REGULAR MEETING THEREOF, THIS ____ DAY OF JUNE, 2011.

CITY OF BLACK DIAMOND

Rebecca Olness, Mayor

Attest:

Brenda L. Martinez, City Clerk

Craig Goodwin

From: Bob Edelman [BobEdelman@comcast.net]
Sent: Friday, May 20, 2011 5:08 PM
To: Craig Goodwin
Subject: RE: Your Input Appreciated
Attachments: Yarrow Bay's Reply in Support of Motion to Stay Compliance Schedule (01591971).PDF

I believe that your intent was to halt any further implementation of the MPDs until the appeal is decided. If I understand correctly, the development agreement hearings would be allowed to proceed but the agreements wouldn't go into effect unless the HB is reversed. If the HB order is sustained then there could well be changes to the MPDs resulting in changes to the development agreements. One way of handling that would be to include in the agreements a provision that they will be void if the HB order is sustained. Otherwise the City would be faced with having signed a 20 year agreement.

The limitation of vesting to the three preliminary plats would actually have negative results. Yarrow Bay has already committed in court documents to not make anymore residential subdivision applications beyond the three until the appeal is decided. (See attached, page 4, line 15 and footnote 13.) The wording in the resolution would add a restriction on commercial subdivision. However, the resolution would accept vesting in the subdivisions even though the applications were faulty and incomplete. Once the development agreements were signed they could proceed.

Let me know if I misunderstood what was intended. I will be happy to suggest revisions.

Thanks, Bob

From: Craig Goodwin [mailto:craig@nwcascade.com]
Sent: Friday, May 20, 2011 1:55 PM
To: Bob Edelman
Subject: Your Input Appreciated

HONORABLE CHERYL CAREY
Noting Date: April 7, 2011
Without Oral Argument

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

BD LAWSON PARTNERS, LP AND BD
VILLAGE PARTNERS, LP,

NO. 11-2-07352-1 KNT

Petitioners,

v.

YARROW BAY'S REPLY BRIEF IN
SUPPORT OF MOTION TO STAY
COMPLIANCE SCHEDULE SET BY THE
GROWTH MANAGEMENT HEARINGS
BOARD

CENTRAL PUGET SOUND GROWTH
MANAGEMENT HEARINGS BOARD,
et al.,

Respondents.

I. RELIEF REQUESTED

Yarrow Bay and the City of Black Diamond agree this Court should stay the Growth Management Hearings Board ("GMHB" or "Board") "compliance schedule" until resolution of this appeal, to avoid a lengthy procedure with potentially inconsistent and moot results.

II. STATEMENT OF FACTS

TRD spends several pages characterizing Yarrow Bay's Master Planned Developments ("MPDs").¹ Yarrow Bay disagrees with many of TRD's statements but lacks space in this reply to respond. We point instead to the key element that TRD omits: urban growth has been planned for these lands for many years, combined with environment protections. One example of that history is the 1996 Black Diamond Urban Growth Area Agreement between the City, King County, and prior property owners, which combines the annexation of urban lands with permanent

¹ The MPD approvals were issued by the City of Black Diamond ("City") in Ordinance Nos. 10-946 and 10-947.

YARROW BAY'S REPLY BRIEF IN SUPPORT OF MOTION
TO STAY COMPLIANCE SCHEDULE SET BY THE
GROWTH MANAGEMENT HEARINGS BOARD - 1

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Seattle, WA 98104
office 206 587 0700 fax 206 587 2308

{01590883.DOC;4 }

1 protection of vast tracts of open space lands.²

2 III. AUTHORITY

3 The parties do not contest that this stay is properly sought pursuant to RCW
4 34.05.550(2),³ which provides that “[a]fter a petition for judicial review has been filed, a party
5 may file a motion in the reviewing court seeking a stay or other temporary remedy.” There are
6 no statutory criteria for this stay, so Yarrow Bay turned to case law. *See e.g. Shamley v. City of*
7 *Olympia*, 47 Wn.2d 124, 286 P.2d 702 (1955); *Kennett v. Levine*, 49 Wn.2d 605, 305 P.2d 682
8 (1956) (whether a stay should be granted depends on whether the issue is debatable and a stay is
9 necessary to preserve the fruits of a successful appeal, considering the equities of the situation).

10 TRD argues that the issue on appeal is not “debatable.” The standard for establishing a
11 debatable issue, however, is extremely low. Without expressly stating such, courts seem to
12 accord “debatable” with “non-frivolous,” which similarly requires a finding that the matter
13 presents a debatable issue.⁴ Even somewhat dubious appeals have met the debatable standard.⁵
14 TRD’s argument that the issue in this appeal is not debatable is surprising. Certainly TRD
15 thought the issue debatable when TRD filed two separate appeals in jurisdictionally distinct
16 tribunals. Now, despite the Board’s decision on jurisdiction, TRD has not withdrawn its LUPA
17 appeal, presumably because reversal of the Board’s decision is possible, and without its LUPA
18 appeal, TRD would be left without a forum for its substantive arguments.

19 ² Declaration of Nancy Bainbridge Rogers (hereinafter “Decl. of Rogers on Reply”), Ex. A.

20 ³ Yarrow Bay’s motion argued in the alternative for a stay under RCW 34.05.550(3). Neither TRD nor the City
21 presented any argument supporting RCW 34.05.550(3), and both focus on RCW 34.05.550(2). TRD did state in its
22 introduction, that one of the criteria of RCW 34.05.550(3) is that a stay should not be granted upon a showing of
23 substantial harm to other parties. However, that criterion is essentially identical to the factor for a judicial stay under
24 RCW 34.05.550(2) that the equities favor a stay. This reply brief focuses on RCW 34.05.550(2), and we rely on our
25 motion in favor of a stay under RCW 34.05.550(3), should the Court deem that section applicable.

26 ⁴ *See e.g., Mahoney v. Shinpoch*, 107 Wn.2d 679, 691, 732 P.2d 510, 516 (1987) (explaining that “[a]n appeal is
frivolous when there are no debatable issues upon which reasonable minds could differ and when the appeal is so
totally devoid of merit that there was no reasonable possibility of reversal.”) (Emphasis added).

⁵ *See e.g., Northwestern Improvement Co. v. McNeil*, 98 Wn. 1, 167 P. 115 (1917) (where company holding coal
lands argued that county should not be allowed to contract with geologist to discover location of coal lands in county
for tax assessment purposes).

1 Further, while the Board determined for itself that it had jurisdiction, the Board's
2 decision is a maverick ruling that is a departure from established law. Yarrow Bay cannot
3 possibly brief its appeal in this 5-page reply. We do, however, offer one short illuminating
4 example of the Board's error. The Board first reached its conclusion that the MPDs were
5 "regulatory" and not "permits" by relying on language from The Villages MPD Application that
6 the Board believed stated that the MPD Application would "prevail" over any conflicting City
7 regulations.⁶ However, the ordinance approving The Villages MPD plainly shows that Yarrow
8 Bay withdrew from its MPD Application all of Chapter 13, except for limited parts that did not
9 conflict with the City's code.⁷ Thus, the foundation of the Board's decision is wrong: the
10 approved MPDs simply do not "supersede and replace city code provisions."⁸

11 The second factor related to a stay is whether the stay is necessary to preserve the fruits
12 of the appeal. The City supports Yarrow Bay's argument. TRD presented no argument on this
13 criterion and, therefore, it is assumed that TRD agrees that standard is met.

14 The third factor is whether equity favors the grant of a stay. Courts tend to determine the
15 question of equity based upon the relative harm to the parties that will occur if the stay is or is
16 not granted.⁹ As anticipated by Yarrow Bay,¹⁰ TRD argues that a stay of the compliance
17

18 ⁶ See The Board's Order on Motions to Dismiss, p. 15, lines 18 -- 25 and note 62, citing page 13-35 of the Villages
19 MPD Application, part of Chapter 13. The Board's decision is attached as Exhibit A to the Petition for Review of
Agency Action, filed herein on February 18, 2011. TRD also attached a duplicate copy to its Opposition Brief.

20 ⁷ Specifically, Yarrow Bay asked for and the City did approve the sensible allowance to reduce impervious surfaces
21 by sharing parking spaces between business and residential uses in the "Town Center" portion of the Villages
property, as well leaving room for Yarrow Bay to seek administrative deviations to engineering standards for street
and utility designs using the already adopted, existing deviation procedures. Decl. of Rogers on Reply, Ex. B.

22 ⁸ See The Board's Order on Motions to Dismiss, p. 15, lines 18 -- 25 and note 62.

23 ⁹ See *Kennett v. Levine*, 49 Wn.2d 605, 304 P.2d 682 (1956) (finding that without stay of council's action on
Mayor's request for removal of council member, council member could be wrongfully deprived of office, which
harm outweighed that of the council in retaining the member during the the appeal); *Northwestern Improvement Co.*
24 *v. McNeil*, 98 Wn. 1, 167 P. 115 (1917) (finding that without a stay of the contract between the county and a
geologist, taxpayer money could be expended improperly, which harm outweighed the harm to the county from
25 delaying the contract and consequently the receipt of the geologist's property tax assessment information).

26 ¹⁰ Yarrow Bay's Motion to Stay Compliance Schedule Set by the Growth Management Hearings Board at 7:4-8:4.

YARROW BAY'S REPLY BRIEF IN SUPPORT OF MOTION
TO STAY COMPLIANCE SCHEDULE SET BY THE
GROWTH MANAGEMENT HEARINGS BOARD - 3

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1 schedule is harmful because Yarrow Bay will be able to continue filing and processing
2 development applications under existing regulations, with the result that TRD receives only a
3 pyrrhic victory should they prevail in defense of the Board's erroneous decision.

4 TRD confuses the issue by asserting that submittal of additional applications is somehow
5 inequitable to them. Throughout its response, TRD lavished praise upon the Board's decision.
6 Yet TRD barely references the fact that the same Board, knowing that Yarrow Bay could
7 continue to vest development applications, also affirmatively chose not to "invalidate" the MPDs
8 which would have cut off the filing of new applications. If there was some violation of the
9 substance of the Growth Management Act associated with the filing of additional development
10 applications, the Board would have chosen to impose invalidity, but it did not.¹¹ Thus, the
11 continuing submittal of development applications is in no way inequitable to TRD.

12 Moreover, TRD's real complaint is that Yarrow Bay will continue to file subdivision
13 applications until it has filed applications across each entire MPD site. This is not the case.
14 Yarrow Bay will continue processing its already-filed development agreements and pending
15 subdivision applications with the City,¹² however, Yarrow Bay does not plan to file any more
16 residential subdivision applications¹³ until this appeal is resolved. The three pending residential
17 subdivision applications include 1,129 dwelling units of the total 6,050 dwelling units planned in
18 both MPDs.¹⁴ Thus, in the event that the Court grants Yarrow Bay's requested stay of the
19

20 ¹¹ By not finding "invalidity," the Board determined the MPDs do not "substantially interfere with the fulfillment of
21 the goals of the [GMA]." See RCW 36.70A.302.

22 ¹² TRD's allegation that Yarrow Bay is threatening the City with a damages action is hearsay and assumption. The
23 reality of the situation is that Yarrow Bay has vested applications pending, and the City Attorney's email, Ex. D to
24 the Bricklin declaration, states the view that the City is obligated by law to continue processing those applications.

25 ¹³ Other types of applications are allowed under City Code even without an MPD Approval, such as commercial
26 development on certain properties pursuant to BDMC 18.98.030(A)(4). See Ex. C to Decl. of Rogers on Reply.
Yarrow Bay's commitment to no further applications is expressly limited to applications for residential subdivisions.
Since residential subdivisions create most of the stormwater and traffic impacts, and all of the school impacts that
appear to be of greatest concern to TRD, this should alleviate the vesting concern.

¹⁴ Decl. of Rogers on Reply, ¶¶ 5 - 7 and Ex. D.

YARROW BAY'S REPLY BRIEF IN SUPPORT OF MOTION
TO STAY COMPLIANCE SCHEDULE SET BY THE
GROWTH MANAGEMENT HEARINGS BOARD - 4

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ATTORNEYS AT LAW
524 2nd Ave, Suite 500
Seattle, WA 98104
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1 compliance proceeding, TRD prevails in this appeal, and a compliance schedule results in a
2 different MPD approval, that MPD approval will apply to the majority of the MPD development.

3 Next, the inequities alleged by TRD cannot exist for their also alleged "indefinite period
4 of time." The GMHB appeal will be resolved. In fact, if TRD wanted to advance resolution of
5 this appeal, they need only ask Yarrow Bay to stipulate to an early hearing date; but TRD instead
6 has delayed the process by choosing to seek direct review. That TRD apparently finds itself in a
7 catch-22 where its prior strategy to delay is now colliding with its interests in a speedy resolution
8 is not an inequity created by a stay of the Board's compliance schedule.

9 Finally, TRD argues the alleged inequity of this Court granting Yarrow Bay's request to
10 stay the GMHB compliance schedule justifies the Court also imposing a stay of the City's
11 processing of Yarrow Bay's previously filed and pending applications. The Court must reject
12 TRD's argument for two reasons. First, TRD's argument is, in effect, an affirmative motion
13 made outside the Civil Rule requirements to note a motion for hearing and provide an
14 opportunity for briefing. Second and, most importantly, there is no basis for this Court to
15 affirmatively eliminate the critical protections of Washington's vesting doctrine. The ability of a
16 property owner to obtain development rights pursuant to the vested rights doctrine has been
17 characterized by the Washington Supreme Court as a basic property right, supported by notions
18 of fundamental fairness.¹⁵ An attempt to obstruct or frustrate that right may be deemed a denial
19 of due process.¹⁶ The Court should decline TRD's invitation to render a decision contrary to
20 Washington's strong vested rights policy.

21 Pursuant to RCW 34.05.550, and in order to preserve the fruits of Yarrow Bay's appeal
22 and to avoid a burdensome and prejudicial process for all parties, the Court should grant a stay of
23 the Board's compliance schedule until resolution of this appeal.

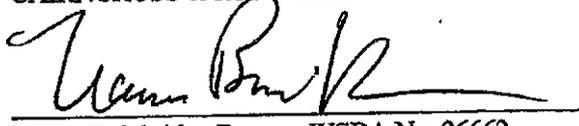
24
25 ¹⁵ *West Main Assocs. v. City of Bellevue*, 106 Wn.2d 47, 51, 720 P.2d 782, 785 (1986).

26 ¹⁶ *Id.*; *Valley View Indus. Park v. City of Redmond*, 107 Wn.2d 621, 733 P.2d 182 (1987).

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DATED this 6th day of April, 2011.

CAIRNCROSS & HEMPELMANN



Nancy Bainbridge Rogers, WSBA No. 26662
Andrew S. Lane, WSBA No. 26514
Randall P. Olsen, WSBA No. 38488
Attorneys for BD Lawson Partners, LP and BD
Village Partners, LP

YARROW BAY'S REPLY BRIEF IN SUPPORT OF MOTION
TO STAY COMPLIANCE SCHEDULE SET BY THE
GROWTH MANAGEMENT HEARINGS BOARD - 6

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Certificate of Service

I, Kristi Beckham, certify under penalty of perjury of the laws of the State of Washington that on April 6, 2011, I caused a copy of the document to which this is attached to be served on the following individual(s) via email:

Attorneys for Central Puget Sound Growth Management Hearings Board

Attorney General of Washington
Attn: Marc Worthy
Licensing and Administrative Law Division
1125 Washington Street SE
PO Box 40110
Olympia, WA 98504-0110
Email: marcw@atg.wa.gov
shirlel@atg.wa.gov
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Attorneys for City of Black Diamond

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The Municipal Law Firm
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Issaquah, WA 98027-3820
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mike@kenyondisend.com
margaret@kenyondisend.com

DATED this 6th day of March, 2011, at Seattle, Washington.



Kristi Beckham, Legal Assistant

YARROW BAY'S REPLY BRIEF IN SUPPORT OF MOTION
TO STAY COMPLIANCE SCHEDULE SET BY THE
GROWTH MANAGEMENT HEARINGS BOARD - 7

CAIRNCROSS&HEMPMANN
ATTORNEYS AT LAW
524 2nd Ave, Suite 500
Seattle, WA 98104
office 206 587 0700 fax 206 587 2308

From: "Bob Edelman" <BobEdelman@comcast.net>
To: "Craig Goodwin" <CGoodwin@ci.blackdiamond.wa.us>; "William Saas" <WSaas@ci.blackdiamond.wa.us>
Sent: Sunday, May 29, 2011 2:25 PM
Attach: AB11-0351 markup.pdf, Yarrow Bay's Reply in Support of Motion to Stay Compliance Schedule (01591971).PDF
Subject: Resolution AB11-0351

Dear Councilmember Goodwin and Councilmember Saas,

I am writing regarding the subject resolution that you plan to introduce at the June 2nd Council meeting. I believe that the resolution, as written, could have negative consequences in that it would implicitly give Council approval to vesting Yarrow Bay in the three subdivision applications that they have submitted. As you are aware, I believe that there are serious deficiencies in the applications and they should never have been deemed complete. The resolution could be interpreted to allow the applications to be processed after the development agreements are complete thus leading to further development of the properties. Also the resolution contemplates approval of the development agreements even though there is a distinct possibility that the underlying MPDs will change if the Hearings Board's order is affirmed. The better course of action would be to suspend all activity beyond the development agreement hearings until the court appeal of the GMHB order is decided.

Regarding limiting Yarrow Bay to the three pending subdivision applications, they already committed in court documents to not make anymore residential subdivision applications until the appeal is decided. (See attached, page 4, line 15 and footnote 13.) The wording in the resolution would add a restriction on commercial subdivision. However, the resolution would accept vesting in the subdivisions even though the applications are faulty and incomplete. Once the development agreements were approved the City might be forced to conduct Preliminary Plat Application hearings followed by further permitting actions. If the GMHB order is sustained this could result in developments inconsistent with eventual revisions to the MPDs.

I have attached a recommended revision to the proposed resolution. The revision deletes all references to the three subdivision applications and suspends execution of the development agreements until the Hearings Board appeal is decided.

Thank you for your consideration of the above.

Bob Edelman

7/18/2011

Part of 3.A

HONORABLE CHERYL CAREY
Noting Date: April 7, 2011
Without Oral Argument

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

BD LAWSON PARTNERS, LP AND BD
VILLAGE PARTNERS, LP,

NO. 11-2-07352-1 KNT

Petitioners,

YARROW BAY'S REPLY BRIEF IN
SUPPORT OF MOTION TO STAY
COMPLIANCE SCHEDULE SET BY THE
GROWTH MANAGEMENT HEARINGS
BOARD

v.

CENTRAL PUGET SOUND GROWTH
MANAGEMENT HEARINGS BOARD,
et al.,

Respondents.

I. RELIEF REQUESTED

Yarrow Bay and the City of Black Diamond agree this Court should stay the Growth Management Hearings Board ("GMHB" or "Board") "compliance schedule" until resolution of this appeal, to avoid a lengthy procedure with potentially inconsistent and moot results.

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YARROW BAY'S REPLY BRIEF IN SUPPORT OF MOTION
TO STAY COMPLIANCE SCHEDULE SET BY THE
GROWTH MANAGEMENT HEARINGS BOARD - I

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1 protection of vast tracts of open space lands.²

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3 The parties do not contest that this stay is properly sought pursuant to RCW
4 34.05.550(2),³ which provides that “[a]fter a petition for judicial review has been filed, a party
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Yarrow Bay's commitment to no further applications is expressly limited to applications for residential subdivisions.
Since residential subdivisions create most of the stormwater and traffic impacts, and all of the school impacts that
appear to be of greatest concern to TRD, this should alleviate the vesting concern.

¹⁴ Decl. of Rogers on Reply, ¶¶ 5 - 7 and Ex. D.

YARROW BAY'S REPLY BRIEF IN SUPPORT OF MOTION
TO STAY COMPLIANCE SCHEDULE SET BY THE
GROWTH MANAGEMENT HEARINGS BOARD - 4

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1 compliance proceeding, TRD prevails in this appeal, and a compliance schedule results in a
2 different MPD approval, that MPD approval will apply to the majority of the MPD development.

3 Next, the inequities alleged by TRD cannot exist for their also alleged "indefinite period
4 of time." The GMHB appeal will be resolved. In fact, if TRD wanted to advance resolution of
5 this appeal, they need only ask Yarrow Bay to stipulate to an early hearing date; but TRD instead
6 has delayed the process by choosing to seek direct review. That TRD apparently finds itself in a
7 catch-22 where its prior strategy to delay is now colliding with its interests in a speedy resolution
8 is not an inequity created by a stay of the Board's compliance schedule.

9 Finally, TRD argues the alleged inequity of this Court granting Yarrow Bay's request to
10 stay the GMHB compliance schedule justifies the Court also imposing a stay of the City's
11 processing of Yarrow Bay's previously filed and pending applications. The Court must reject
12 TRD's argument for two reasons. First, TRD's argument is, in effect, an affirmative motion
13 made outside the Civil Rule requirements to note a motion for hearing and provide an
14 opportunity for briefing. Second and, most importantly, there is no basis for this Court to
15 affirmatively eliminate the critical protections of Washington's vesting doctrine. The ability of a
16 property owner to obtain development rights pursuant to the vested rights doctrine has been
17 characterized by the Washington Supreme Court as a basic property right, supported by notions
18 of fundamental fairness.¹⁵ An attempt to obstruct or frustrate that right may be deemed a denial
19 of due process.¹⁶ The Court should decline TRD's invitation to render a decision contrary to
20 Washington's strong vested rights policy.

21 Pursuant to RCW 34.05.550, and in order to preserve the fruits of Yarrow Bay's appeal
22 and to avoid a burdensome and prejudicial process for all parties, the Court should grant a stay of
23 the Board's compliance schedule until resolution of this appeal.

24
25 ¹⁵ *West Main Assocs. v. City of Bellevue*, 106 Wn.2d 47, 51, 720 P.2d 782, 785 (1986).

26 ¹⁶ *Id.*; *Valley View Indus. Park v. City of Redmond*, 107 Wn.2d 621, 733 P.2d 182 (1987).

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DATED this 6th day of April, 2011.

CAIRNCROSS & HEMPELMANN



Nancy Bainbridge Rogers, WSBA No. 26662
Andrew S. Lane, WSBA No. 26514
Randall P. Olsen, WSBA No. 38488
Attorneys for BD Lawson Partners, LP and BD
Village Partners, LP

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Certificate of Service

I, Kristi Beckham, certify under penalty of perjury of the laws of the State of Washington that on April 6, 2011, I caused a copy of the document to which this is attached to be served on the following individual(s) via email:

Attorneys for Central Puget Sound Growth Management Hearings Board

Attorney General of Washington
Attn: Marc Worthy
Licensing and Administrative Law Division
1125 Washington Street SE
PO Box 40110
Olympia, WA 98504-0110
Email: marcw@atg.wa.gov
shirlel@atg.wa.gov
lalseacf@atg.wa.gov

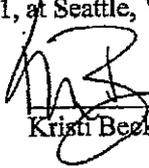
Attorneys for Toward Responsible Development

David A. Bricklin
Bricklin & Newman, LLP
1001 Fourth Ave., Ste. 3303
Seattle, WA 98154
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Attorneys for City of Black Diamond

Bob Sterbank
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The Municipal Law Firm
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Issaquah, WA 98027-3820
Email: bob@kenyondisend.com
mike@kenyondisend.com
margaret@kenyondisend.com

DATED this 6th day of March, 2011, at Seattle, Washington.



Kristi Beckham, Legal Assistant

YARROW BAY'S REPLY BRIEF IN SUPPORT OF MOTION
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GROWTH MANAGEMENT HEARINGS BOARD - 7

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RESOLUTION NO. 11-753

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, DIRECTING THAT ANY FURTHER ACTIVITY ON THE YARROW BAY DEVELOPMENT AGREEMENTS NOT VEST YARROW BAY TO MPD DEVELOPMENT ~~BEYOND THE THREE PRELIMINARY PLATS CURRENTLY SUBMITTED~~ UNTIL THE CITY COMPLIES WITH THE HEARINGS BOARD RULING OR THE RULING IS REVERSED ON APPEAL

WHEREAS, on September 20, 2010, the City Council approved two master planned development (MPD) ordinances submitted by BD Village Partners, LP and BD Lawson Hill Partners, LP (Yarrow Bay); and

WHEREAS, the Growth Management Hearings Board has determined that the ordinances approving the MPDs were legislation, not quasi-judicial actions, and that, therefore, the City had employed the wrong procedures for adopting the ordinances; and

WHEREAS, Yarrow Bay has filed an appeal of the Hearings Board decision, but resolution of that appeal is not expected for several months at the earliest; and

WHEREAS, the City intends to comply with the Hearings Board ruling unless it is reversed on appeal; and

WHEREAS, the challenged ordinances approving the MPDs provide that the next step in the approval process will be the drafting and approval of "development agreements" between the City and Yarrow Bay; and

~~WHEREAS, Yarrow Bay has submitted three preliminary plats to the City for approval to achieve "vesting" for these plats despite the fact that no development agreements are in place and a final resolution of the Hearings Board ruling remains some months away; and~~

WHEREAS, the City does not wish to see Yarrow Bay "vested" to the MPDs until a final resolution of the Hearings Board ruling is determined; and

WHEREAS, Yarrow Bay has submitted draft development agreements to the City and has requested that the City schedule hearings and process these agreements for approval; and

WHEREAS, the City, in the interest of avoiding inordinate delay and inconvenience to Yarrow Bay while still respecting the Growth Management Hearings Board ruling and appeal process, wishes to continue to work with Yarrow Bay on the details of potential development agreements including the scheduling of public hearings; and

WHEREAS, the City wishes to ensure that any potential development agreements so processed do not serve to "vest" Yarrow Bay to the MPDs ~~beyond the three preliminary plats currently submitted~~ until final resolution of the Hearings Board ruling and the validity of the MPD ordinances are determined and compliance steps taken as appropriate.

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

Section 1. All activity on the proposed development agreements for the Yarrow Bay MPDs shall be allowed to proceed but the final agreements will not be executed until after the final ruling on the Growth Management Hearings Board appeal. If said appeal is denied then the development agreement hearing process will be reopened to incorporate changes to the MPDs that result from compliance with the Board's order. ~~with the explicit understanding that any development agreement approvals so obtained do not vest Yarrow Bay to the MPDs beyond the 3 preliminary plat applications currently submitted.~~

Section 2. Validity of the two MPD ordinances previously approved on September 20, 2010 will be frozen, meaning that there will be no vesting of MPDs until the Growth Management Hearings Board ruling is finally affirmed or reversed and appropriate steps taken to comply as appropriate.

Section 3. This resolution shall automatically be rescinded and of no effect if the Hearings Board decision is reversed on appeal and no further appeals of that ruling remain.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON AT A REGULAR MEETING THEREOF, THIS 2ND DAY OF JUNE, 2011.

CITY OF BLACK DIAMOND

Brenda Martinez

From: William Saas
Sent: Tuesday, July 26, 2011 7:17 PM
To: Brenda Martinez
Subject: FW: Resolution AB11-0351
Attachments: Yarrow Bay's Reply in Support of Motion to Stay Compliance Schedule (01591971).PDF; AB11-0351 markup.pdf

From: William Saas
Sent: Tuesday, May 31, 2011 9:13 AM
To: williamsaas@comcast.net
Subject: FW: Resolution AB11-0351

Conversation on the phone with Bob Edelman on Sunday 5/29/11

From: Bob Edelman [BobEdelman@comcast.net]
Sent: Sunday, May 29, 2011 2:25 PM
To: Craig Goodwin; William Saas
Subject: Resolution AB11-0351

Dear Councilmember Goodwin and Councilmember Saas,

I am writing regarding the subject resolution that you plan to introduce at the June 2nd Council meeting. I believe that the resolution, as written, could have negative consequences in that it would implicitly give Council approval to vesting Yarrow Bay in the three subdivision applications that they have submitted. As you are aware, I believe that there are serious deficiencies in the applications and they should never have been deemed complete. The resolution could be interpreted to allow the applications to be processed after the development agreements are complete thus leading to further development of the properties. Also the resolution contemplates approval of the development agreements even though there is a distinct possibility that the underlying MPDs will change if the Hearings Board's order is affirmed. The better course of action would be to suspend all activity beyond the development agreement hearings until the court appeal of the GMHB order is decided.

Regarding limiting Yarrow Bay to the three pending subdivision applications, they already committed in court documents to not make anymore residential subdivision applications until the appeal is decided. (See attached, page 4, line 15 and footnote 13.) The wording in the resolution would add a restriction on commercial subdivision. However, the resolution would accept vesting in the subdivisions even though the applications are faulty and incomplete. Once the development agreements were approved the City might be forced to conduct Preliminary Plat Application hearings followed by further permitting actions. If the GMHB order is sustained this could result in developments inconsistent with eventual revisions to the MPDs.

I have attached a recommended revision to the proposed resolution. The revision deletes all references to the three subdivision applications and suspends execution of the development agreements until the Hearings Board appeal is decided.

Thank you for your consideration of the above.

Bob Edelman

HONORABLE CHERYL CAREY
Noting Date: April 7, 2011
Without Oral Argument

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

BD LAWSON PARTNERS, LP AND BD
VILLAGE PARTNERS, LP,

Petitioners,

v.

CENTRAL PUGET SOUND GROWTH
MANAGEMENT HEARINGS BOARD,
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NO. 11-2-07352-1 KNT

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25 ¹³ Other types of applications are allowed under City Code even without an MPD Approval, such as commercial
26 development on certain properties pursuant to BDMC 18.98.030(A)(4). See Ex. C to Decl. of Rogers on Reply.
Yarrow Bay's commitment to no further applications is expressly limited to applications for residential subdivisions.
Since residential subdivisions create most of the stormwater and traffic impacts, and all of the school impacts that
appear to be of greatest concern to TRD, this should alleviate the vesting concern.

¹⁴ Decl. of Rogers on Reply, ¶¶ 5 - 7 and Ex. D.

1 compliance proceeding, TRD prevails in this appeal, and a compliance schedule results in a
2 different MPD approval, that MPD approval will apply to the majority of the MPD development.

3 Next, the inequities alleged by TRD cannot exist for their also alleged "indefinite period
4 of time." The GMHB appeal will be resolved. In fact, if TRD wanted to advance resolution of
5 this appeal, they need only ask Yarrow Bay to stipulate to an early hearing date; but TRD instead
6 has delayed the process by choosing to seek direct review. That TRD apparently finds itself in a
7 catch-22 where its prior strategy to delay is now colliding with its interests in a speedy resolution
8 is not an inequity created by a stay of the Board's compliance schedule.

9 Finally, TRD argues the alleged inequity of this Court granting Yarrow Bay's request to
10 stay the GMHB compliance schedule justifies the Court also imposing a stay of the City's
11 processing of Yarrow Bay's previously filed and pending applications. The Court must reject
12 TRD's argument for two reasons. First, TRD's argument is, in effect, an affirmative motion
13 made outside the Civil Rule requirements to note a motion for hearing and provide an
14 opportunity for briefing. Second and, most importantly, there is no basis for this Court to
15 affirmatively eliminate the critical protections of Washington's vesting doctrine. The ability of a
16 property owner to obtain development rights pursuant to the vested rights doctrine has been
17 characterized by the Washington Supreme Court as a basic property right, supported by notions
18 of fundamental fairness.¹⁵ An attempt to obstruct or frustrate that right may be deemed a denial
19 of due process.¹⁶ The Court should decline TRD's invitation to render a decision contrary to
20 Washington's strong vested rights policy.

21 Pursuant to RCW 34.05.550, and in order to preserve the fruits of Yarrow Bay's appeal
22 and to avoid a burdensome and prejudicial process for all parties, the Court should grant a stay of
23 the Board's compliance schedule until resolution of this appeal.

24
25 ¹⁵ *West Main Assocs. v. City of Bellevue*, 106 Wn.2d 47, 51, 720 P.2d 782, 785 (1986).

26 ¹⁶ *Id.*; *Valley View Indus. Park v. City of Redmond*, 107 Wn.2d 621, 733 P.2d 182 (1987).

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DATED this 6th day of April, 2011.

CAIRNCROSS & HEMPELMANN



Nancy Bainbridge Rogers, WSBA No. 26662
Andrew S. Lane, WSBA No. 26514
Randall P. Olsen, WSBA No. 38488
Attorneys for BD Lawson Partners, LP and BD
Village Partners, LP

YARROW BAY'S REPLY BRIEF IN SUPPORT OF MOTION
TO STAY COMPLIANCE SCHEDULE SET BY THE
GROWTH MANAGEMENT HEARINGS BOARD - 6

{01590883.DOC;4 }

CAIRNCROSS&HEMPELMANN
ATTORNEYS AT LAW
524 2nd Ave, Suite 500
Seattle, WA 98104
office 206 587 0700 fax 206 587 2308

Certificate of Service

I, Kristi Beckham, certify under penalty of perjury of the laws of the State of Washington that on April 6, 2011, I caused a copy of the document to which this is attached to be served on the following individual(s) via email:

Attorneys for Central Puget Sound Growth Management Hearings Board

Attorney General of Washington
Attn: Marc Worthy
Licensing and Administrative Law Division
1125 Washington Street SE
PO Box 40110
Olympia, WA 98504-0110
Email: marcw@atg.wa.gov
shirlel@atg.wa.gov
lalseaef@atg.wa.gov

Attorneys for Toward Responsible Development

David A. Bricklin
Bricklin & Newman, LLP
1001 Fourth Ave., Ste. 3303
Seattle, WA 98154
Email: bricklin@bnd-law.com

Attorneys for City of Black Diamond

Bob Sterbank
Michael R. Kenyon
Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Email: bob@kenyondisend.com
mike@kenyondisend.com
margaret@kenyondisend.com

DATED this 6th day of March, 2011, at Seattle, Washington.



Kristi Beckham, Legal Assistant

YARROW BAY'S REPLY BRIEF IN SUPPORT OF MOTION
TO STAY COMPLIANCE SCHEDULE SET BY THE
GROWTH MANAGEMENT HEARINGS BOARD - 7

CAIRNCROSS&HEMPFELMANN
ATTORNEYS AT LAW
524 2nd Ave, Suite 500
Seattle, WA 98104
office 206 587 0700 fax 206 587 2308

RESOLUTION NO. 11-753

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, DIRECTING THAT ANY FURTHER ACTIVITY ON THE YARROW BAY DEVELOPMENT AGREEMENTS NOT VEST YARROW BAY TO MPD DEVELOPMENT ~~BEYOND THE THREE PRELIMINARY PLATS CURRENTLY SUBMITTED~~ UNTIL THE CITY COMPLIES WITH THE HEARINGS BOARD RULING OR THE RULING IS REVERSED ON APPEAL

WHEREAS, on September 20, 2010, the City Council approved two master planned development (MPD) ordinances submitted by BD Village Partners, LP and BD Lawson Hill Partners, LP (Yarrow Bay); and

WHEREAS, the Growth Management Hearings Board has determined that the ordinances approving the MPDs were legislation, not quasi-judicial actions, and that, therefore, the City had employed the wrong procedures for adopting the ordinances; and

WHEREAS, Yarrow Bay has filed an appeal of the Hearings Board decision, but resolution of that appeal is not expected for several months at the earliest; and

WHEREAS, the City intends to comply with the Hearings Board ruling unless it is reversed on appeal; and

WHEREAS, the challenged ordinances approving the MPDs provide that the next step in the approval process will be the drafting and approval of "development agreements" between the City and Yarrow Bay; and

~~WHEREAS, Yarrow Bay has submitted three preliminary plats to the City for approval to achieve "vesting" for these plats despite the fact that no development agreements are in place and a final resolution of the Hearings Board ruling remains some months away; and~~

WHEREAS, the City does not wish to see Yarrow Bay "vested" to the MPDs until a final resolution of the Hearings Board ruling is determined; and

WHEREAS, Yarrow Bay has submitted draft development agreements to the City and has requested that the City schedule hearings and process these agreements for approval; and

WHEREAS, the City, in the interest of avoiding inordinate delay and inconvenience to Yarrow Bay while still respecting the Growth Management Hearings Board ruling and appeal process, wishes to continue to work with Yarrow Bay on the details of potential development agreements including the scheduling of public hearings; and

WHEREAS, the City wishes to ensure that any potential development agreements so processed do not serve to "vest" Yarrow Bay to the MPDs ~~beyond the three preliminary plats currently submitted~~ until final resolution of the Hearings Board ruling and the validity of the MPD ordinances are determined and compliance steps taken as appropriate.

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

Section 1. All activity on the proposed development agreements for the Yarrow Bay MPDs shall be allowed to proceed but the final agreements will not be executed until after the final ruling on the Growth Management Hearings Board appeal. If said appeal is denied then the development agreement hearing process will be reopened to incorporate changes to the MPDs that result from compliance with the Board's order. with the explicit understanding that any development agreement approvals so obtained do not vest Yarrow Bay to the MPDs beyond the 3 preliminary plat applications currently submitted.

Section 2. Validity of the two MPD ordinances previously approved on September 20, 2010 will be frozen, meaning that there will be no vesting of MPDs until the Growth Management Hearings Board ruling is finally affirmed or reversed and appropriate steps taken to comply as appropriate.

Section 3. This resolution shall automatically be rescinded and of no effect if the Hearings Board decision is reversed on appeal and no further appeals of that ruling remain.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON AT A REGULAR MEETING THEREOF, THIS 2ND DAY OF JUNE, 2011.

CITY OF BLACK DIAMOND

DIAGRAM OF PROPERTY OWNERSHIP, *BUELL V. BREMERTON*

1360 Wash.

495 PACIFIC REPORTER, 2d SERIES

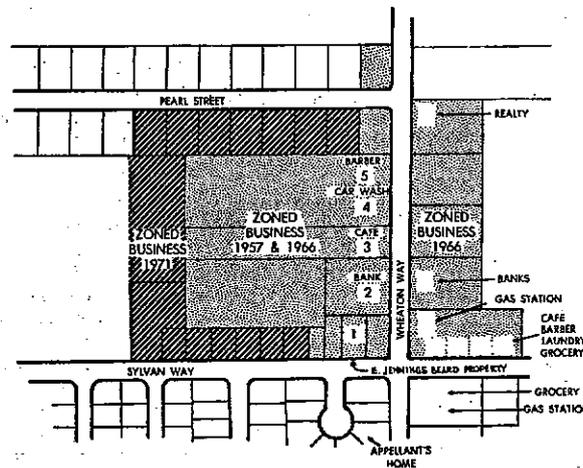
is void inasmuch as the appearance of fairness is not maintained by virtue of a potential benefit to one of the planning commission members; and that the 1971 rezone, if otherwise valid, would not have constituted illegal spot zoning.

The Buell home, which they purchased in 1954, is located approximately 400 feet from the rezoned property. The trial court found that, in 1957, 10 of the disputed 15 acres were zoned for commercial purposes by Kitsap County, and a number of small buildings were constructed on the site. On July 21, 1965, the property was annexed to Bremerton. A zoning ordinance was then adopted, zoning all annexed land as residential. On March 30, 1966, Bremerton created a planning commission and planning ordinances were passed. The city, at that time, elected to exercise their zoning power under article

11, sections 10 and 11 of the Washington State Constitution.

On April 21, 1966, a comprehensive plan was adopted for the city showing that an area on the subject property, approximately two or three acres in size, was planned for neighborhood business. On September 26, 1966, after publication of notice of a hearing, the city council rezoned the property to commercial zoning and subsequently published the ordinance in full after its adoption. In 1967 and 1968, building permits for a car wash and an addition to the office building on the property zoned commercial in 1966 were granted.

A public hearing was held in August of 1971 before the planning commission to consider a reclassification of an adjacent five acres from residential to commercial. A map is included to illustrate the area in dispute. The commission reported favor-



Chronology of Commercial Zoning

- ALL PROPERTIES ZONED R-1 URM ANNEXATION ORDINANCE 2657, JULY 21, 1965
- ZONED B-3, ORDINANCE 2705, SEPT 28, 1966
- ZONED B-3, ORDINANCE 3166, AUG 11, 1971

[A55653]

DIAGRAM OF SAAS PROPERTY IN RELATION TO LAWSON HILLS

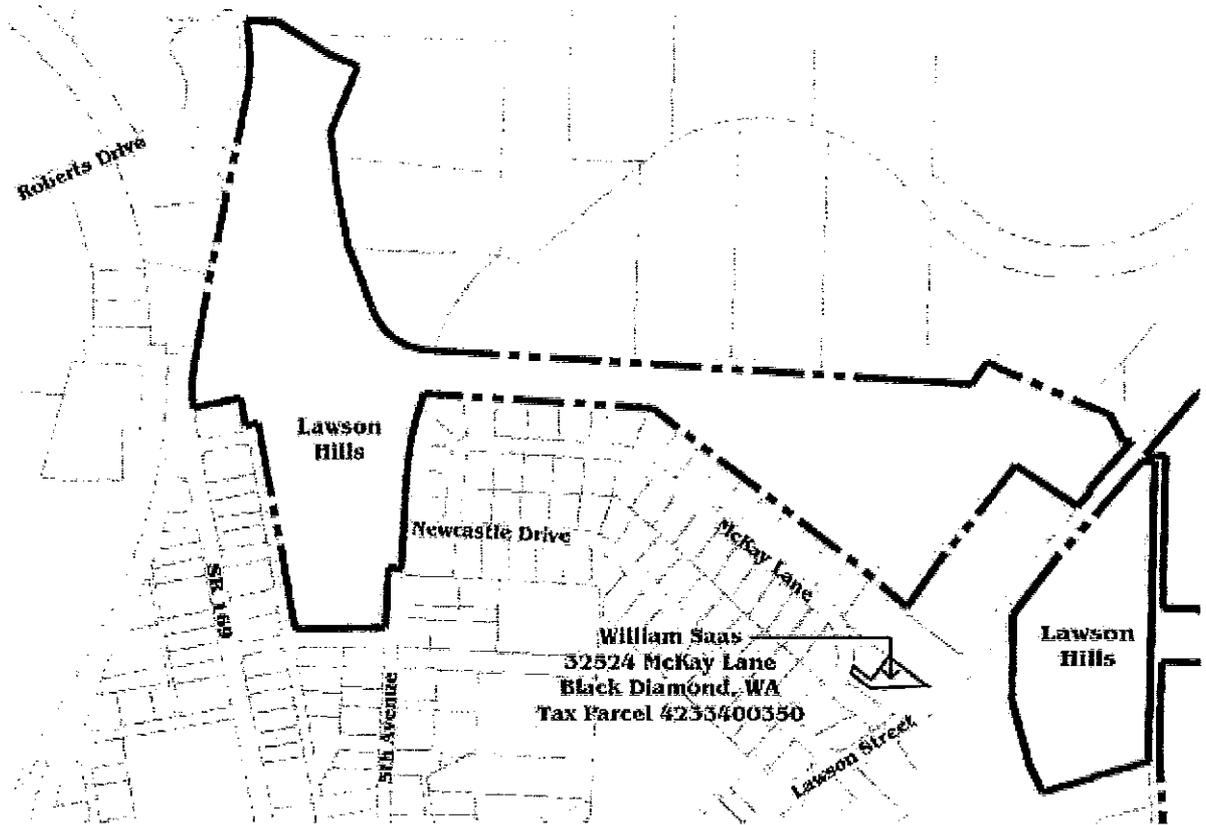


DIAGRAM OF MULVIHILL PROPERTY IN RELATION TO LAWSON HILLS

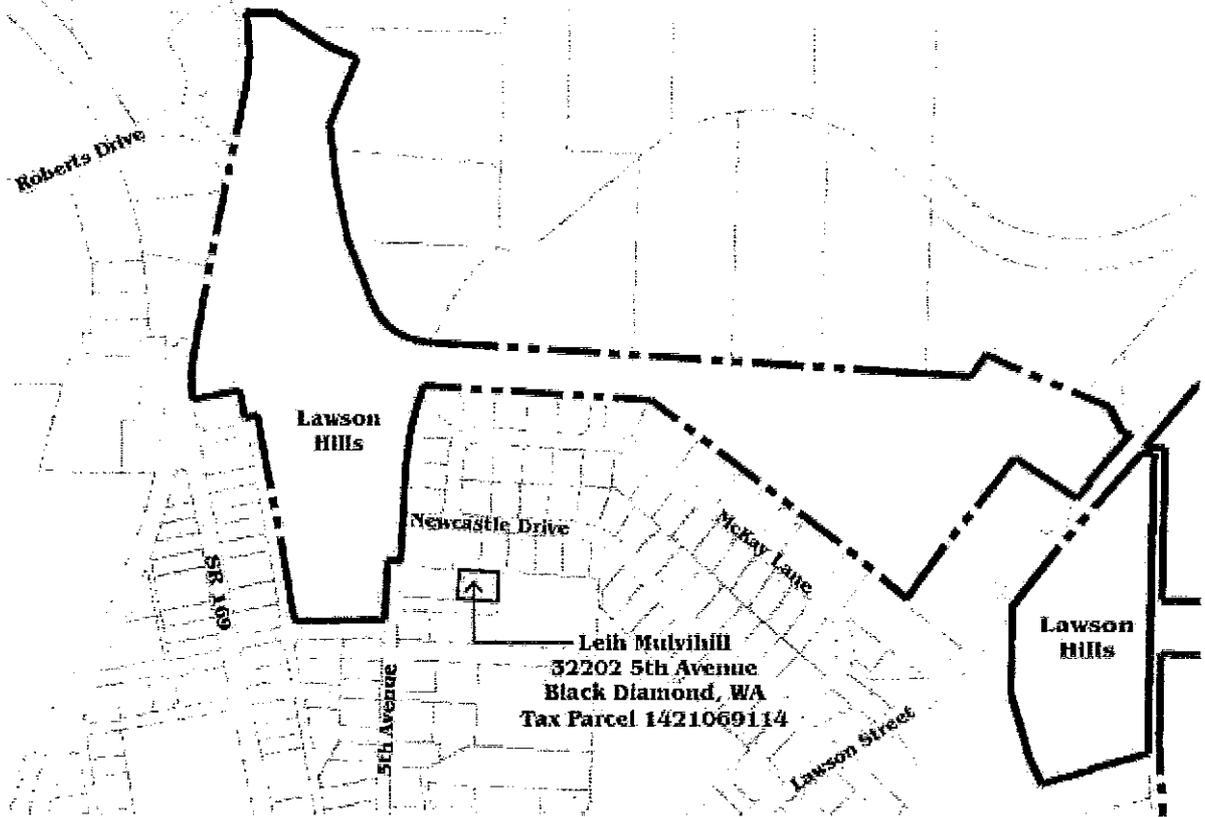
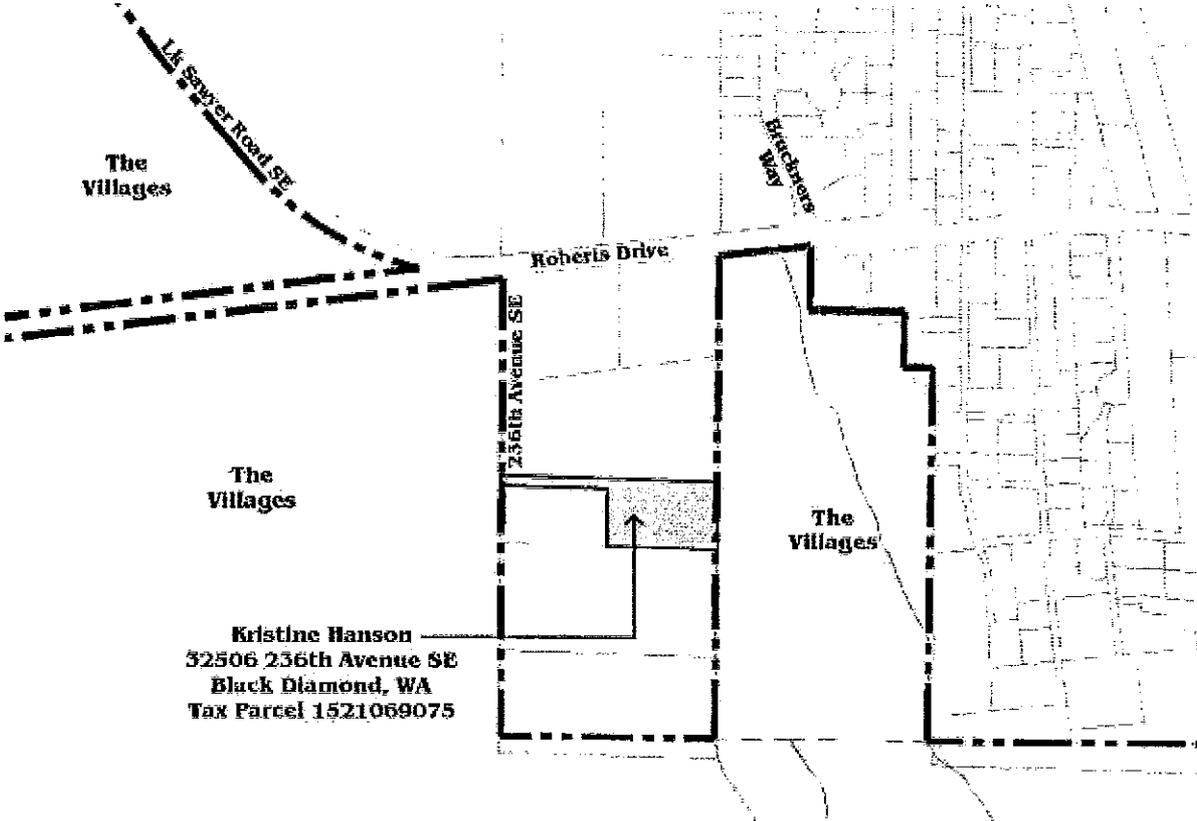


DIAGRAM OF HANSON PROPERTY IN RELATION TO THE VILLAGES



September 26, 2011

City of Black Diamond

Re: Appearance of Fairness Issues for City Council Closed Record Hearing on Final Development Agreements for The Villages and Lawson Hills MPDs (PLN10-0020, PLN10-0021, PLN11-0013, and PLN11-0014)

Fair Hearings Have Precedence

RCW 42.36.110: Nothing in this chapter prohibits challenges to local land use decisions where actual violations of an individual's right to a fair hearing can be demonstrated.

Even though some conduct might be subject to or violate the statutory provisions of the appearance of fairness doctrine, a challenge can still be made if an unfair hearing actually results. I believe the attached documents clearly reflect undue influence by Mayor Rebecca Olness on the Development Agreement hearings. Specifically, the document shows clear attempts to influence Councilmen Hanson and/or instructions to staff to influence Councilman Hanson regarding topics such as ADU/Vesting/the Development Agreement

The documents demonstrate Mayor Olness goal to further the Yarrow Bay project through the King County Wide Planning Policies due to the material weakness of Yarrow Bay's schools proposal; the use of City Council Chambers for Yarrow Bay paid consultant Randall Arendt clearly directed at influencing all the Council regarding Rural by Design issues all the while denying use of the City Chambers for Councilmembers to meet with a citizens group; the documents demonstrate perceived retaliation on Councilmembers Goodwin and Saas for their outreach regarding MPD conditions with both Yarrow Bay and Citizen's group.

Please submit for the record.

Cindy Proctor

2950 Sun Mountain Dr
Enumclaw, WA 98022

Exhibit 2

43

Andy Williamson

From: Rebecca Olness
Sent: Monday, April 11, 2011 5:24 PM
To: Craig Goodwin; Steve Pilcher; Andy Williamson
Subject: Re: Rural By Design Workstudy

Dr. Arendt is under contract with Yarrow Bay as a consultant on their projects in Black Diamond. We feel it is important to get his perspective on how his ideas directly relate to Black Diamond.

Becky

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

From: Craig Goodwin
To: Rebecca Olness
To: Steve Pilcher
To: Andy Williamson
Subject: Rural By Design Workstudy
Sent: Apr 11, 2011 3:45 PM

I look forward to our work study on Thursday. But a couple of questions - where is the funding coming from that will be paying for Mr. Arendt's time? I don't recall seeing this in the budget or authorized by the Council. If it is Yarrow Bay sponsored, then why does this qualify as a City sponsored Council Work Study? Please understand, Mr. Arendt no doubt has much to offer our community and Council with his experience. I am just a bit confused by the process. Thanks for your help.

Craig

from my Verizon Wireless BlackBerry

31

Rebecca Olness

From: Andy Williamson
Sent: Wednesday, April 06, 2011 9:03 AM
To: Seth Boettcher; Dan Dalsanto; Kevin Esping; Ken Blakely; Jason Pittam; Scott Hanis
Cc: Rebecca Olness; Steve Pilcher

You will all be attending a meeting at city hall on the 14th of April at 4:00
The meeting starts at 4 so I want you there cleaned up at 3:50.
This meeting is a work shop of the city council with Guest speaker Randal Arendt , he is the author of the book Rural BY Design
We have built a lot of our guide lines by this book and it is important that we all understand and have a concept of what Rural By Design really means.
Work with your supervisor to either adjust your schedule or comp time.
This meeting should last about 2 hours.
Any Problems see me directly

Andrew Williamson
Director
Engineering services/Economic Development
City of Black Diamond
(360)886-2560
awilliamson@ci.blackdiamond.wa.us

23

Rebecca Olness

From: Rebecca Olness
Sent: Wednesday, March 02, 2011 11:02 AM
To: Steve Pilcher; Brenda Martinez; Andy Williamson
Cc: Mike Kenyon; Bob@KenyonDisend.com
Subject: FW: ORDIN COND DISCUSSION MTGS--PLAN

Importance: High

According to Luzville and Rachel, Council Chambers has not been reserved and it is not our policy to hold non-City meetings/events there.

Becky

From: Kristine Hanson
Sent: Wednesday, March 02, 2011 10:55 AM
To: Rebecca Olness; Andy Williamson
Subject: FW: ORDIN COND DISCUSSION MTGS--PLAN
Importance: High

*Kristine A. Hanson
Black Diamond City Council
P.O. Box 599
Black Diamond, WA 98010
253-347-1561*

From: Peter Rimbos [mailto:primbos@comcast.net]
Sent: Wednesday, March 02, 2011 8:17 AM
To: Kristine Hanson; Craig Goodwin; Bill Boston; William Saas
Cc: Leih Mulvihill
Subject: ORDIN COND DISCUSSION MTGS--PLAN
Importance: High

Council Members,

Good morning. Thank you for agreeing to meet with us. Our Citizens' Technical Team has developed a plan for a set of meetings between members of our team and City Council members to discuss the MPD Approval Ordinance Conditions. Once again, our intent is to have an open two-way discussion regarding the Conditions.

We propose covering the following major Topics each week for four consecutive weeks: Transportation: Week of 3/7; Environment: Week of 3/14; Stormwater: Week of 3/21; and Fiscal (+ Schools): Week of 3/28.

To make meeting times more structured and predictable, we propose meeting with each pair of Council members on either Tuesday at 7 PM or Wednesday at 7 PM. There are potentially two pairs, as Ms. Mulvihill has stated she will be unable to meet with us. If pairing does not work for some Council members, we can add additional meeting times. In general, if we follow this suggested schedule, during the first week we would meet with a Council member pair on one day to discuss Transportation Conditions, then meet with another Council pair another day to discuss Transportation Conditions. The following week on the same days of the week and at the same times we would meet with each Council pair to discuss Environment Conditions and so on through the four weeks. Here is a tentative schedule assuming pairing (please note there is one exception to this plan due to the unavailability of rooms):

Wednesday, March 9, 7 - 9 PM, Council Chambers: **Transportation**

Personal & Confidential

Suggested Agenda Items for Meeting on 6/9/11 at 10:00 am

1. **Clear the air** – The mayor, city staff and several council members are not happy with the course of action taken by councilmember Saas and myself in talking directly with Yarrow Bay. Let's talk our way through this. How would you all have liked to see the issues of Traffic and Development Agreement vesting dealt with differently? I will also be happy to share with you all what our objectives were (a) getting Yarrow Bay and the citizens technical group together to talk about where there is common ground and consider a *voluntary* effort to run and validate the traffic model now and (b) getting Yarrow Bay to *voluntarily* agree to limit vesting, which they have now done at least to my satisfaction, and why we ended up pursuing the course of action we did. Hopefully, we can agree on future courses of action that satisfy all of our needs.
2. **Expansion areas** – Following my first meeting with Brian Ross nearly 3 months ago (requested by him), I talked with Mr. Williamson and asked that he follow-up with Yarrow Bay regarding two issues – expansion areas being the first. As explained to me by Mr. Ross, there is no way that Yarrow Bay can achieve the 6,050 unit count included in their MPD application within their existing MPD acreage. They will need to acquire the expansion areas in order to enable them to achieve full build out per their current plans. If that is indeed their plan and need, then let's get an agreement so that the MPD's and DA don't vest Yarrow Bay (or THEIR SUCCESSORS) to substantially more density than already is the case. In the interim, I have heard nothing from staff until raising the issue at our last meeting. Since staff, based on our discussion at the time, sees no way to do this and don't think that we even should find a way to accomplish the objective, I am again faced with the same issue as we faced with Traffic and Vesting – with no staff support, why shouldn't I pursue this independently and directly seeking a voluntary agreement with Yarrow Bay? I personally view this as a critical issue and will be happy to discuss more when we meet. Hopefully, we can agree on a mutually acceptable course of action.
No support for this from Yarrow Bay
3. **CFD financing for initial schools** – This is the second issue that I asked Mr. Williamson to follow-up on. Again, no follow-up to my knowledge. The CFD work study provided an excellent education foundation re this financing vehicle. But the issue remains, what if the first one or two schools cannot get built because voters don't approve the levies?
No they will not use the CFD for the 7th grade
4. **WFFA Water Agreements** – The current draft DA simply says that Yarrow Bay will pay no water capital facilities charges. Since Palmer is also a party to the WFFA agreements and since there is a provision in this agreement that Yarrow Bay and Palmer be repaid for their investment even for benefiting non-contributing users, this could virtually eliminate any city capital facility charges that can be collected by the city net-net with any new development (residential or commercial) outside of the MPD's. What is the status of doing the rate study needed to set new capital facility charges and establish how much of that goes back to Yarrow Bay and Palmer? Mr. Boetcher's recent presentation that increases the capital budget for improving the Green River crossing budget by \$2,000,000 particularly caught my attention. If there was limited capital facility charges that the city could collect before, this could eliminate it all. And the only

way to pay for past investment in water meters and the 500,000 gpd extra purchased from the City of Tacoma will end up being through even higher rate increases paid by everyday Joe.

5. **Committees** – I am not aware of any of the committees functioning as required by the MPD ordinance. Perhaps they are, but would just like an update. As expressed in one of our prior meetings, I would prefer that the City lead the effort of putting these committees together and managing them.
6. **Phasing** - Yarrow Bay wants the ability to develop multiple phases at the same time. What provisions are being made in the DA to allow for this (e.g., new fiscal analyses etc.). Should we change this totally to a unit count, rather than phasing, criteria for triggering the next analysis like we now do with traffic?
7. **Repayment of YB past and future funding agreement \$** - This requirement is still included in the current DA funding agreement? According to legal counsel, this is not allowed. We want no liability for this. What is staff's perspective and next steps?
8. **Other?**

SEPA

Thanks, Layne

Councilmember Layne Barnes
City of Maple Valley
425.413.8800

layne.barnes@maplevalleywa.gov<<https://webmail.maplevalleywa.gov/owa/redir.aspx?C=8f3fc89bdc3742da94cd8dfce3a984bc&URL=mailto%3alayne.barnes%40maplevalleywa.gov>>

From: Doreen Booth [doreenb@suburbancities.org]

Sent: Monday, June 06, 2011 10:18 PM

To: amy.ockerlander@duvallwa.gov; bob@sternoffinc.com; ceggen@shorelinewa.gov; doreen@suburbancities.org; eshields@ci.kirkland.wa.us; karen@suburbancities.org; kallen@redmond.gov; kristy@suburbancities.org; Layne Barnes; lucyk@burienwa.gov; mcross@ci.sammamish.wa.us; mhubner@ci.kent.wa.us; rolness@ci.blackdiamond.wa.us; rodle@redmond.gov; tbriere@rentonwa.gov

Subject: GMPC Caucus Question

Dear GMPC Caucus Members:

There were two comments on the Rural Area - Schools and Sewers policy. Please note that Mark Cross of Sammamish did withdraw Sammamish's recommendation and the substitute recommendation is below (without the highlights). The recommendation below includes the two suggested changes in yellow:

SCA supports countywide planning policies that protect the rural and resource lands in the county by focusing urban growth and land uses within the UGA. Further, SCA supports, more specifically, strict limits on locating urban public facilities and infrastructure outside the UGA, and would support amending the CPPs to prohibit the extension of sewer lines into the rural area, including to schools, on the condition that such prohibition not extend to rural area properties currently owned by public school districts or addressed in any mitigation agreement and intended to be developed as schools within a reasonable future time period.

Rebecca Olness of Black Diamond suggested adding "or addressed in any mitigation agreement" and Rob Odle suggested taking out "within a reasonable future time period".

Is this recommendation acceptable with the proposed changes? Please email me before Tuesday at 4pm. You can also call me on my cell phone at 425-275-7323.

Thank you for your prompt attention to this pressing matter.

Doreen Booth
Policy Analyst, Suburban Cities Association doreen@suburbancities.org<<mailto:doreen@suburbancities.org>>
206-433-7147 - office
425-275-7323 - cell

Please be aware that email communication with Council Members or City staff is a public record and is subject to disclosure upon request.

65

Rebecca Olness

From: Rebecca Olness
Sent: Wednesday, April 20, 2011 4:58 PM
To: Steve Pilcher
Subject: Re: Dates in June

Thank you! See you tomorrow.

Becky

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

From: Steve Pilcher
To: Rebecca Olness
Subject: RE: Dates in June
Sent: Apr 20, 2011 4:45 PM

No, I didn't include any Saturdays. I'm hoping that with the school year being done on 6/17, we will be able to use the facility during the week from late afternoon, providing more time. Say, 4:00 or 5:00 each day until 9:00 or so, four consecutive days. That's 16-20 hours, total, which should be plenty. Of course, this assume the availability of the Examiner.



By the way, word is at least 3 council members want to expeditiously proceed with the DA process.



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

From: Rebecca Olness
Sent: Wednesday, April 20, 2011 4:44 PM
To: Steve Pilcher
Subject: Dates in June

Hi Steve,

When you showed me that calendar yesterday was J Saturday, June 25 a possible date for the hearings? I've been asked to hold a function at my house on that date. I'm thinking I should steer them towards a Sunday to be safe.

Becky

from my Verizon Wireless BlackBerry

from my Verizon Wireless BlackBerry

56

Rebecca Olness

From: Rebecca Olness
Sent: Tuesday, March 22, 2011 8:47 AM
To: Chris Bacha
Cc: Steve Pilcher; Andy Williamson
Subject: Fw: Yarrow Bay Article in Seattle Time

Hi Chris,
Kristine is coming in at noon. I think it might be a good idea for you to sit in when I discuss this with her.
Thanks,
Becky
from my Verizon Wireless BlackBerry

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

From: Kristine Hanson <khanson@ci.blackdiamond.wa.us>
Date: Tue, 22 Mar 2011 08:30:10
To: Rebecca Olness<ROlness@ci.blackdiamond.wa.us>
Subject: RE: Yarrow Bay Article in Seattle Time

I can come in at noon.

Kristine A. Hanson
city council
Black Diamond, WA 98010
360-886-2560

From: Rebecca Olness
Sent: Tuesday, March 22, 2011 8:26 AM
To: Kristine Hanson
Subject: Re: Yarrow Bay Article in Seattle Time

Hi Kristine. We need to talk. I won't be in until around 11 and have a meeting then. I have Management at 1:00 but am free at noon or after around 2:30. Can you call or come by?

Becky
from my Verizon Wireless BlackBerry

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

From: Kristine Hanson <khanson@ci.blackdiamond.wa.us>
Date: Tue, 22 Mar 2011 08:06:32
To: Cindy Proctor<proct@msn.com>; Craig Goodwin<CGoodwin@ci.blackdiamond.wa.us>; William Saas<WSaas@ci.blackdiamond.wa.us>
Subject: RE: Yarrow Bay Article in Seattle Time

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SOURCE Henley

55

Rebecca Olness

From: Rebecca Olness
Sent: Tuesday, March 22, 2011 8:44 AM
To: Steve Pilcher; Andy Williamson; Chris Bacha
Subject: Fw: Yarrow Bay Article in Seattle Time

from my Verizon Wireless BlackBerry

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

From: Kristine Hanson <khanson@ci.blackdiamond.wa.us>
Date: Tue, 22 Mar 2011 08:06:32
To: Cindy Proctor<proct@msn.com>; Craig Goodwin<CGoodwin@ci.blackdiamond.wa.us>; William Saas<WSaas@ci.blackdiamond.wa.us>
Subject: RE: Yarrow Bay Article in Seattle Time

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SOURCE Henley

Supported by international investment giant Sumitomo, Henley announces intention to invest heavily in Puget Sound region

SEATTLE, March 21, 2011 /PRNewswire/ -- Backed by Sumitomo Forestry Group, a member of the 320 year old Japanese conglomerate family of companies, Australia's leading home builder, Henley, has announced that it is entering the U.S. residential home market in Seattle. Henley/Sumitomo began purchasing land in the Seattle area in advance of construction this summer.

Henley/Sumitomo is a leading international homebuilder, with operations in Asia and Australia, construction in Washington state marks its first activity in the U.S. market. The group has taken over the existing Sumitomo operations of Bennett Homes, an established Seattle home building company.

Backed by more than \$100 million in investment, the company owns property in King, Pierce and Sammamish Counties and continues to aggressively acquire land throughout the Puget Sound region. Henley/Sumitomo plans initial construction of 500 homes in 2011/2012 within the region, with a projected economic impact of 1,600 jobs. Seattle's low unemployment rate, large population of highly paid workers, and presence of major companies make it an attractive target for the international builder.

Current construction rates indicate strong demand for new construction and, according to the Northwest Multiple Listing Service, the median price of King County houses sold in February was \$334,000, well above the January national median price of \$158,800, reported by the National Association of Realtors. Despite an increase of more than 18 percent in 2010, Washington State home construction rates remain at less than half that seen in 2005.

"Seattle is the ideal place for a U.S. market entry. The region is projected to grow by half a million people over the next ten years and our global experience will give us an edge over local homebuilders competing to build new homes," said Henley Managing Director Peter Hayes. "Washington state weathered the housing collapse better than other major U.S. cities and Henley is making a bet the region is poised for recovery. Our business model is based on innovative design and

Rebecca Olness

54

From: Rebecca Olness
Sent: Tuesday, March 22, 2011 8:44 AM
To: Steve Pilcher; Andy Williamson; Chris Bacha
Subject: Fw: Yarrow Bay Article in Seattle Time

from my Verizon Wireless BlackBerry

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

From: Kristine Hanson <khanson@ci.blackdiamond.wa.us>
Date: Tue, 22 Mar 2011 07:56:03
To: rkohlman@yarrowbayholdings.com<rkohlman@yarrowbayholdings.com>
CC: Rebecca Olness<ROlness@ci.blackdiamond.wa.us>
Subject: FW: Yarrow Bay Article in Seattle Time

Kristine A. Hanson
city council
Black Diamond, WA 98010
360-886-2560

From: Cindy Proctor [proct@msn.com]
Sent: Monday, March 21, 2011 10:06 PM
To: williamsaas@comcast.net; Kristine Hanson; Craig Goodwin
Subject: FW: Yarrow Bay Article in Seattle Time

FYI-Does this mean that Yarrow Bay sold a phase of the bridges? Curious if this is for financial reasons or planned? Again, it is important to understand that Yarrow Bay is NOT going to be around in 5 years and all our land is being sold to overseas or out of state investors! Scroll down.

Australian builder plans 500 houses in Seattle market
One of Australia's largest homebuilders is entering the U.S. market with a bet on King, Snohomish and Pierce counties.

By Eric Pryne<<http://search.nwsourc.com/search?searchtype=cq&sort=date&from=ST&byline=Eric%20Pryne>>

Seattle Times business reporter

Related

One of Australia's largest homebuilders is jumping into the Seattle market. Henley Properties said Monday it plans to build 500 houses in King, Snohomish and Pierce counties by the end of 2012. That would make it one of the area's largest builders. This is the firm's first U.S. venture. "Henley is making a bet the region is poised for recovery," said Peter Hayes, the company's managing director. Local real-estate observers said Henley's arrival is a vote of confidence in the Seattle market, where new-home construction fell sharply during the recession and is just beginning to recover. "All the fundamentals are strong here, even though we're still working our way through the recovery," said Allison Butcher, spokeswoman for the Master Builders Association of King and Snohomish Counties.

upgraded inclusions with efficiencies gained from the Japanese and Australian operations enabling highly competitive pricing to the homebuyer."

Internationally known for a commitment to sustainable design, Henley developed Australia's first zero emission home for the everyday family. Unlike many homebuilders, the company has a sustained research and development effort focused on its design and construction approach. The end result is a quality, sustainably built home that reduces environmental impact and delivers long-term cost savings to the customer.

"Henley builds the type of home that is attractive to the Seattle homebuyer," said Hayes. "We've continually pushed the boundaries in sustainable design and construction, our company is committed to international philanthropy efforts, and the quality of our homes is unmatched."

About Henley

The partnership between the Japanese Sumimoto Forestry Group and Australia-based Henley builds over 10,000 homes annually. Working on three continents, Henley/Sumitomo is a leader in quality and design, crafting homes with local character and international style. A pioneer in sustainable design, Henley was the first major Australian builder to introduce 5-star energy rated homes and the first to build a zero emission home designed for the everyday family. Henley/Sumitomo's headquarters in Seattle will be used as a springboard into the United States' west coast housing market.

Media Contacts: Kyle Mahoney, Nyhus Communications for Henley Homes; 206.323.3733; kyle@nyhus.com

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Kristine A. Hanson
city council
Black Diamond, WA 98010
360-886-2560

From: Cindy Proctor [proct@msn.com]
Sent: Monday, March 21, 2011 10:06 PM
To: williamsaas@comcast.net; Kristine Hanson; Craig Goodwin
Subject: FW: Yarrow Bay Article in Seattle Time

FYI-Does this mean that Yarrow Bay sold a phase of the bridges? Curious if this is for financial reasons or planned? Again, it is important to understand that Yarrow Bay is NOT going to be around in 5 years and all our land is being sold to overseas or out of state Investors! Scroll down.

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By Eric Pryne<<http://search.nwsourc.com/search?searchtype=cq&sort=date&from=ST&byline=Eric%20Pryne>>

Seattle Times business reporter

Related

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Rebecca Olness

5

From: Steve Pilcher
Sent: Wednesday, March 02, 2011 2:46 PM
To: Kristine Hanson
Cc: Rebecca Olness
Subject: RE: Permitting Inquiry

See the following excerpt from 18.08.030:

If a proposal requires multiple permits with decisions of different types (e.g., site plan approval and conditional use permit, Type 2 and Type 3), the higher type process applies to the entire proposal. Refer to Section 18.08.130.

As Ms. Phillips noted, this is fairly standard. The intent is to avoid having a lower level decision made prior to action occurring on the larger, overriding permit. For example, the Community Development Director approving an administrative adjustment to reduce a yard setback requirement even though a public hearing may be required for, say, a conditional use permit.

Steve Pilcher
Community Development Director
City of Black Diamond
360-886-2560

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

From: Kristine Hanson
Sent: Tuesday, March 01, 2011 12:47 PM
To: Rebecca Olness; Steve Pilcher
Subject: FW: Permitting Inquiry

This might be helpful, I am trying to understand more of the GMA for my own knowledge. Look at paragraph 5. She does state that quasi judicial would be correct if I am reading this right.

Kristine A. Hanson
city council
Black Diamond, WA 98010
360-886-2560

From: Phillips, Joyce (COM) [joyce.phillips@commerce.wa.gov]
Sent: Tuesday, March 01, 2011 10:20 AM
To: Kristine Hanson
Cc: Nwankwo, Ike (COM)
Subject: Permitting Inquiry

Hi, Kristine.

Thank you for your call this morning. I did check in to which staff person is your main contact person here at Commerce Growth Management. It is Ike Nwankwo, who you have already talked with and who is looking into information for you. (You can reach Ike at 360-725-3056 or Ike.Nwankwo@commerce.wa.gov or Ike.Nwankwo@commerce.wa.gov) I

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

From: Kristine Hanson

Sent: Friday, March 04, 2011 12:40 PM

1

To: Rebecca Olness; Bill Boston; Craig Goodwin; Leih Mulvihill; William Saas
Subject: RE: Phase 1A Preliminary Plat

So can you put in laymen terms what the process is? It is deemed complete. Then what happens and does that give them any vesting. I appreciate the email but we are not as good at interpreting codes.

thanks

Kristine A. Hanson

city council

Black Diamond, WA 98010

360-886-2560

From: Rebecca Olness

Sent: Friday, March 04, 2011 11:22 AM

To: Bill Boston; Craig Goodwin; Kristine Hanson; Leih Mulvihill; William Saas

Subject: FW: Phase 1A Preliminary Plat

FYI

Have a great weekend!

Becky

From: Steve Pilcher

Sent: Friday, March 04, 2011 10:48 AM

To: Rebecca Olness; Brenda Martinez; Andy Williamson

Subject: Phase 1A Preliminary Plat

A statement was made at last night's meeting by Ms. Proctor, questioning how/who had authorized the simultaneous processing of the preliminary plat application for The Villages Phase 1A. BDMC 17.12.010 states (in part) as follows:

"A preliminary plat application will not be accepted for property within an MPD zone unless there is a previously approved MPD permit. A preliminary plat application will not be accepted for property that is part of a master planned development (MPD) permit application unless the city, pursuant to Section 18.98.050(C) of this code, authorizes the simultaneous processing of the subdivision application. (emphasis added)

As we know, the GMHB did not invalidate the MPD Ordinances, so therefore, there is an approved MPD permit. The "simultaneous" provision applies to an MPD application that is being processed, but does not apply once an MPD is approved. Therefore, there was no need for "authorization."

It might be helpful to share this with Council members.

Steve

2

have copied Ike on this email so he is aware of the information I am providing. I am certain that Ike can provide more specific information and that he is more aware of issues the City of Black Diamond is dealing with in this case.

When we spoke on the phone about Master Planned Developments, I was thinking of Master Planned Resorts, a specific section of the Growth Management Act. However, when we hung up and I looked up the RCW, I realize that cannot have been what you were referring to because this section applies to counties (Here is the RCW link to that section: <http://apps.leg.wa.gov/rcw/default.aspx?cite=36.70A.360>)

I did tell you about a section in the GMA that pertains to local actions (adopting plans or development regulations to implement those plans) being presumed valid upon adoption unless appealed. Here is the RCW link to that section: <http://apps.leg.wa.gov/rcw/default.aspx?cite=36.70A.320>

Planned Development: I assume you are referring to a Planned Development within in the urban growth area or the existing city limits of Black Diamond. Something along the lines of a major subdivision, which likely includes multiple uses (residential, open space/parks, perhaps public spaces (school, fire station, etc.), retail/commercial, mixed use perhaps, etc.). This planned development/master plan may have included a comprehensive plan amendment, comprehensive plan future land use map amendment, and/or a rezone. Based on your description of the growth management hearings board's decision, there must have been some part of the application that they believed to be a legislative action, some part of the proposal beyond the scope of verifying compliance of a proposal with the existing comprehensive plan and development regulations.

You may want to check your permitting procedures, including looking to see if there is a statement along the lines of if a project contains multiple types of approvals and permits, the project will be processed using the highest degree of review (so quasi-judicial review components of a project would be included in a legislative review process if one was needed for any portion of the project; or the administratively reviewed portions of a proposal would be included in a quasi-judicial review process if one was needed for any process of the project). Those kinds of clauses are often included in permitting procedure ordinances. The permit processing regulations were probably developed in response to RCW 36.70B<<http://apps.leg.wa.gov/rcw/default.aspx?cite=36.70B>> as well as in relationship to other city plans and regulations.

I hope the information above is helpful. I can't really provide additional specificity without knowing more details regarding the situation. I wish you and the City of Black Diamond success in resolving these issues. And I am sure Ike will provide you with the more detailed information soon.

Sincerely,

Joyce

Joyce Phillips, AICP | Energy Planner
Washington State Department of Commerce
Growth Management Services

PO Box 42525 | 1011 Plum Street SE

Olympia, WA 98504-2525

phone: (360) 725-3045 | fax: 360-586-8440

www.commerce.wa.gov/growth

www.commerce.wa.gov/energy

Commerce's Olympia office hours are Monday - Thursday, 7 am - 6 pm

Rebecca Olness

163

From: Rebecca Olness
Sent: Wednesday, February 09, 2011 9:29 AM
To: Andy Williamson; Steve Pilcher; Brenda Martinez
Subject: Kristine

I spoke with Kristine this morning and I think she is reassured. She is making a list of her concerns and will drop it off at City Hall today.

I am anxious to hear about your meeting this morning.

Becky
from my Verizon Wireless BlackBerry

Rebecca Olness

35

From: Steve Pilcher
Sent: Wednesday, February 09, 2011 8:05 AM
To: Rebecca Olness
Cc: Brenda Martinez; Andy Williamson
Subject: RE: calendar

Mayor, it would be great if Kristine could let us know her concerns and then Andy and/or I could at least respond via a quick email. All Council members have a copy of version 2.0 of the DA (submitted at the end of December), so she may be raising concerns about something that's still in there.

Steve

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

From: Rebecca Olness
Sent: Wednesday, February 09, 2011 7:48 AM
To: Kristine Hanson
Cc: Brenda Martinez; Andy Williamson; Steve Pilcher
Subject: Re: calendar

Yes. Sorry, but they will not be available.

Please remember that the DA you have seen is the first draft. There have already been many changes and we will be working on more.

Becky

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

From: Kristine Hanson
To: Rebecca Olness
Subject: RE: calendar
Sent: Feb 9, 2011 7:37 AM

So does that mean no regular scheduled meeting with them. I can tell you from reading the DA there are a lot of things YB is asking for that I do NOT agree with.

Kristine A. Hanson
city council
Black Diamond, WA 98010
360-886-2560

From: Rebecca Olness
Sent: Tuesday, February 08, 2011 3:56 PM
To: Bill Boston; Craig Goodwin; Kristine Hanson; Leih Mulvihill; William Saas
Cc: Brenda Martinez; Andy Williamson; Steve Pilcher
Subject: calendar

Dear Council,

Since we are embarking on intensive meetings on the Development Agreement, I have asked Andy and Steve to clear their calendars for the next few days. Unfortunately, they will not be available for anything else. If you have set meetings with them they will probably be available starting on February 18th.

162

Rebecca Olness

From: Rebecca Olness
Sent: Wednesday, February 09, 2011 8:58 AM
To: Kristine Hanson
Cc: Andy Williamson; Steve Pilcher
Subject: Re: calendar

Kristine,
Please make a list of your concerns and get them to Andy or Steve ASAP so we can make sure they are addressed.

Becky
-----Original Message-----
From: Kristine Hanson
To: Rebecca Olness
Cc: Andy Williamson
Cc: Steve Pilcher
Subject: RE: calendar
Sent: Feb 9, 2011 8:37 AM

i can't say i am happy about this decision, we have been talking with Andy and Steve about the DA. I am really upset reading all the deviations that YB is asking for and taking things the council agreed to and then manipulating them to there advantage. I am making a list and i am sure that Andy and Steve are concerned as well. YB asking for 350 accessory DU and not having that count to the total # of homes is BS. I am leaving for Hawaii on the 19th which means I get to sit on this and stew about it. This DA needs council input because this is our last chance to make it as tight as we can.

Kristine A. Hanson
city council
Black Diamond, WA 98010
360-886-2560

From: Rebecca Olness
Sent: Wednesday, February 09, 2011 7:48 AM
To: Kristine Hanson
Cc: Brenda Martinez; Andy Williamson; Steve Pilcher
Subject: Re: calendar

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From: Kristine Hanson
To: Rebecca Olness
Subject: RE: calendar
Sent: Feb 9, 2011 7:37 AM

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133
Andy Williamson

From: Steve Pilcher
Sent: Monday, April 11, 2011 4:29 PM
To: Andy Williamson
Subject: RE: adu

On Wednesday at her regular time?

From: Andy Williamson
Sent: Monday, April 11, 2011 4:18 PM
To: Steve Pilcher
Subject: adu

Krissy wants to talk about ADU and the 350 allowed

Andrew Williamson
Director
Engineering services/Economic Development City of Black Diamond
(360)886-2560
awilliamson@ci.blackdiamond.wa.us

BZ

Andy Williamson

From: Andy Williamson
Sent: Monday, April 11, 2011 4:38 PM
To: Steve Pilcher
Subject: RE: adu

yep

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

From: Steve Pilcher
Sent: Monday, April 11, 2011 4:29 PM
To: Andy Williamson
Subject: RE: adu

On Wednesday at her regular time?

From: Andy Williamson
Sent: Monday, April 11, 2011 4:18 PM
To: Steve Pilcher
Subject: adu

Krissy wants to talk about ADU and the 350 allowed

Andrew Williamson
Director
Engineering services/Economic Development City of Black Diamond
(360)886-2560
awilliamson@ci.blackdiamond.wa.us

Rebecca Sullivan, Attorney at Law
24321 Morgan St.
Black Diamond, WA 98010
206-300-2802

Sept. 26, 2011

To: Black Diamond City Council
RE: City of Black Diamond Closed Record Hearing
Proposed Development Agreement for the "Lawson Hills" and "The Villages" Master
Planned Development
Appearance of Fairness Doctrine Issues

To the City Council and others it may concern:

At the September 21st meeting commencing the Closed Record Hearing, the applicant, YarrowBay, submitted a document regarding the Appearance of Fairness of city council members. At that meeting, the document was not made publicly available. Since that time, the document has not been posted on the city's website and we have not had the chance to view the document.

We request a copy of this document be made available to the public and provided to Save Black Diamond. Additionally, we request until the close of business on Wednesday, September 28, to review the document and provide additional information on Appearance of Fairness. There may be a need for additional comments to be submitted by Save Black Diamond in light of this document.

Thank you for your time and attention to this matter.

Rebecca Sullivan, Esq.
for Save Black Diamond

Contact information: saveblackdiamond@gmail.com

Monica Stewart
Ex. 3