

September 30, 2011

To: Black Diamond City Council, Mayor Olness
cc: Steve Pilcher, Brenda Martinez, Mike Kenyon

Subject: Objection to Development Agreements Closed-Record Hearing Timeline

I object to the timeline discussed by the City Council during the September 29 session last evening. It appears the Council is picking an end date for their Development Agreement Closed-Record Hearing decision--November 1, then working backwards to decree critical due dates. Councilwoman Mulvihill did such a calculation last night and mentioned aloud that the due dates the Council was considering for Closing Statements and Responses would result in "*only three days for deliberation.*" The Council then apparently agreed to such a timeline with little discussion at all.

During the 2010 MPD Application Closed-Record Hearings the Council rightly took many, many weeks to consider the issues before it. Public testimony for those Hearings ended on July 14 and Council deliberation started on August 9--thus providing nearly 4 weeks for the Council to review all the materials in the Record. Those deliberations lasted for many weeks until the Council held its September 20 vote on the MPD Ordinances.

The Development Agreement Closed-Record Hearings should be no different. The Council has very complex issues before it in consideration of the Development Agreements--two long-term contracts that bind the City, future City Councils, and the people for a very long time. The City's Hearing Examiner has provided the Council an excellent "blueprint" to follow its decision process. The Council should ensure it has sufficient time to to its due diligence.

There should be no rush to judgement. there should be careful deliberation. In fact, even the three days for "deliberation" will be *reduced* due to all the new testimony and evidence that will be added to the Record during these Hearings and thus will need to be read, digested, and understood by members of the Council.

I strongly object to the timeline discussed. It has no rationale behind it, it suppresses the Public process, and it leaves in question whether the City Council is serious in its duty to represent the people who elected it.

The City Council should reconsider this timeline and adjust accordingly to provide for real deliberations leading to reasoned decisions. The people expect no less. Thank you.

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EXHIBIT

0-1

September 28, 2011

RE: Closed Record Hearing on Final Development Agreement for the Villages and Lawson Hills MPDs (PLN10-0020, PLN10-0021, PLN11-013 and PLN11-0014)

I want to place an objection on the record to the timeline agreed upon by the City Council. It seems detrimental to the interest of the City of Black Diamond to accelerate an approval process of this magnitude based on the desire for Councilmember Boston to go on his Hawaiian vacation and Councilmember Mulvihill's "busy" season. As Mr. Boston states so often, "City business must go on." You have the option of continuation of the hearings until Mr. Boston's return. The City Staff and Council have know that these hearings were forthcoming for over a year and to disregard their duties and obligations to the City and the public they serve by planning their leaves and vacations during the same period of time is a blatant attempt to manipulate the process and circumvent what is their obligations as a public servant. An expedited process serves no one but Yarrow Bay.

I want to place an objection on the record to the daily hearing time agreed upon by the City Council of 2.5 to 3.00 hours depending on Councilmember Hanson's schedule. Since the City Rules of procedure clearly state that the CRH can be closed once there isn't any one available to speak you cannot randomly have hearing dates of differing times i.e. one evening its until 9:30 and another its 9:00; as the Hearing Examiner stated we cannot have the public making the effort to show up at a scheduled time i.e. 9:05 only to find out on that specific evening Council needed to leave early. They have the option to fix it as 2.5 or 3.00 but not floating.

I want to place a strenuous objection on the record to the Applicants direct proposal to accept all the Hearing Examiner's "Implementing Conditions" in its Development Agreement approval, if no "Supplemental Conditions" are added. This is outrageous and clearly nullifies the entire Development Agreement process and public participation. The Hearing Examiner has already stated:

"The Applicant's position results in a bifurcated review process where the City and the Applicant are free to discuss and negotiate terms that both implement and supplement the MPD conditions of approval while the public can only comment on terms that implement them. As authorized by the state statutes that create them, development agreements are an opportunity for the City and the Applicant to both satisfy the requirements of the Black Diamond Municipal Code and to negotiate the mitigation of any other impacts associated with the development proposal."

I object to the fact that you are systematically changing the rules from previous hearings which is very confusing, intimidating and limits public participation. You even removed the microphone so that the public had no ability to know if they could speak or not. Although you manually brought a microphone up, you had already achieved the desired effect of discouraging comments.

Cindy Proctor 2950 Sun Mountain Dr Enumclaw, WA 98022

EXHIBIT

0-2

Brenda Martinez

From: Cincity63@comcast.net
Sent: Friday, September 30, 2011 4:59 PM
To: Steve Pilcher
Cc: Brenda Martinez; Stacey Borland; NRogers@Cairncross.com; Kristine Hanson; Leih Mulvihill; Leih; Bill Boston
Subject: Objections

To Whom It May Concern-

The following are our objections to the proceedings of Sept 29, 2011 in the matter of the Closed Record Hearings.

#1 The public was not allowed to participate in the setting of the rules or procedures for this process. This is NOT how the same administration conducted the previous Closed Record Hearing. ***We object to the exclusion of the public's input to the is process for consideration by their legislative representatives.***

#2 ***We object to the city not allowing the public to speak at all on Sept 29, 2011.*** In fact no microphone was even in place. This not only kept up from participating as outlined in Objection #1, but did not allow for questions or clarifications. No procedures have been provided to the public at this time regarding objections except for the fact that they are due by 5pm the following day. No city employees were specified and verbal instructions from Mr. Kenyon and Ms. Martinez were in conflict and in fact directed emails to an employee who is leaving on vacation. Citizen who attempted to address any issue were gaveled down and told they were out of order.

#3 We object to any and all rejection of any objections on any basis until the City has provided clear instructions that allow the citizens to participate.

#4 ***We object to Yarrow Bay's proposal that the seated council members exclude any and all supplementary conditions suggested by the public and require only the mandatory conditions detailed by the Hearing Examiner be imposed.*** This is clearly "deal making" between the City and the Applicant with the citizens present only as "gagged" witnesses. This clearly continues what the Hearing Examiner describes as a bifurcated process, that essentially eliminates the participation of the public. Which he points out, ***is legally required.*** His order in response to the applicants AND the City's objection to ALL citizen input addresses this most eloquently than we can and does not require re-reading. It does, however, require re-reading. Link provided below.

#5 We object to the Closed Record Hearing being conducted PRIOR to the execution of the Funding Agreement as required by the Hearing Examiner in Condition W. To leave the Funding Agreement included in the Development Agreement process as Exhibit N creates a financial conflict of interest for the City. This is unwise and best and perhaps illegal. It certainly does not provide the City the level of protection you all swear is your first priority.

EXHIBIT

0-3

<http://www.ci.blackdiamond.wa.us/Depts/CommDev/planning/MPDDevAgreements/august2011/Order%20on%20Yarrow%20Bay%20ObjectionsII.pdf>

We would like to make clear to the City Council members, our elected representatives, that these objections are NOT ex parte communication. They are provided to you, the city and the applicant's representative.

Previous instructions you have received during other quasi judicial proceedings from the Mayor that state you are NOT allowed to read any emails from citizens are simply incorrect and untrue.

Indeed, you MUST read the objections submitted during this process to be educated and informed enough to perform your sworn duties during this process.

Thank you.

Bill and Cindy Wheeler