

October 20, 2011

Ms. Brenda Martinez, City Clerk
City of Black Diamond
24301 Roberts Drive
PO Box 599
Black Diamond, WA 98010

Re: Extra Record Objections Brought by the Applicants for the Villages and Lawson
Hills Development Agreements

Dear Ms. Martinez:

Pursuant to amended Exhibit A of Black Diamond Resolution No. 11-766 dated September 29, 2011, please find the Applicants' objections to various Parties of Record responses posted on the City's website on October 19, 2011, that we believe to be outside the evidentiary record created by Hearing Examiner in this matter.

The Black Diamond Municipal Code prohibits parties of record in closed record hearings from basing their testimony upon anything other than the factual record established by the City's Hearing Examiner. Under the City's Zoning Code, development agreements are Type 4 – Quasi-Judicial actions. See BDMC 18.08.030. Per BDMC 18.08.070, Type 4 decisions are made by the City Council following a closed record hearing based on a recommendation from the hearing examiner. In a closed record hearing, "testimony is limited to discussion about the recommendation from the hearing examiner" and "[a]ll argument and discussion must be based on the factual record developed at the hearing examiner hearing." BDMC 18.08.070(A)(2).

[see table of objections on next page]

EXHIBIT

0-7

Objections to Parties of Record responses to the City Council posted on the City of Black Diamond's website on October 19, 2011, are found in the table below.

Exhibit	Party of Record	Objection
47	Angela Taeschner	<p>This objection is to Ms. Taeschner's inclusion of a certain document entitled "Bald Eagle Protection in Washington State" with her written response to City Council.</p> <p>YarrowBay is not aware of this document in the record before the Hearing Examiner.</p>
45,58	Erika Morgan	<p>This objection is to references made in Ms. Morgan's response emails to: (1) a wetland walk with Dr. Cooke; (2) chicken water; (3) sections 22 & 32 being "whole section wetland"; (4) the sprucing up of certain notice boards; (5) characterizations regarding background related to a certain State Supreme Court decision; (6) a question a regarding earth scanning to detect various levels of geology as seen on 60 Minutes; (7) three year-round streams with culverts at southeast shore of Black Diamond Lake; (8) the alleged removal of certain red-capped rebar; (9) Abrams Ave. and a certain 500-foot bridge over Rock Creek; (10) the main circle at the Villages being "very wet"; and (11) a "tree cutting" incident.</p> <p>YarrowBay is not aware of this information in the record before the Hearing Examiner.</p>

49	Les Dawson	<p>This objection is to references made on page 4 of Mr. Dawson's written response regarding the Suburban Cities Association, a certain June 2011 vote, the GMPC, and Countywide Planning Policies. In fact, on page 4, Mr. Dawson admits that this information is "not part of the Closed Record."</p> <p>Like Mr. Dawson, YarrowBay is not aware of this information in the record before the Hearing Examiner.</p>
59	Kristen Bryant	<p>YarrowBay objects to Ms. Bryant's inclusion of quotations in her written response from an alleged personal communication on 10/19/2011 with Erik Stockdale, Washington State Department of Ecology. Because the record before the Hearing Examiner closed on Monday, August 30, 2011, a personal communication on 10/19/2011 cannot by definition be part of the record. In addition, the quotations are hearsay and not provided by Ms. Bryant or Mr. Stockdale via sworn testimony or under oath.</p> <p>YarrowBay also objects to references in Ms. Bryant's written response to statements made by Charlie Newling and Lisa Palazzi. Such statements are not in the record before the Hearing Examiner.</p>
61	Judith Carrier	<p>This objection is to reference made in Ms. Carrier's written response regarding a January 2008 YarrowBay development brochure.</p> <p>YarrowBay is not aware of this brochure in the record before the Hearing Examiner.</p>

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Thank you for your attention to these matters.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Megan Nelson".

Megan Nelson
Director of Legal Affairs

cc: Nancy Bainbridge Rogers, Legal Counsel to YarrowBay
