

Color-Coded Black Diamond Testimony Summary

Color Key

Schools - **YELLOW**

Traffic - **PINK**

Green Valley Road - **GREEN**

Water Systems (including stormwater runoff, etc) - **DARK BLUE**

Environment (sensitive areas/open space/parks/etc) - **TURQUOISE**

Funding Agreement/Fiscal Analysis - **RED**

General Provisions and Other - GREY (this section includes general statements and concerns over city council, city restrictions, parcel rezones, detached dwelling units, ADUs, growth paying for growth, small town culture, noise levels, work hours, fire/emergency services, amendment processes, etc)

Monday July 11, 2011

Steve Pilcher, Community Development Director for the City of Black Diamond

Mr. Pilcher began his testimony by noting that both the MPDs were approved last September, and they are still considered to be valid approvals, despite the various legal battles that are ensuing. He noted that the purpose of the hearing is to incorporate the conditions of approval. He testified that the agreements must be signed and approved before any development begins. Mr. Pilcher explained that staff has been working with YarrowBay since last September on these development agreements and they have been treated like land use applications. Staff has negotiated thoroughly with YarrowBay, according to Mr. Pilcher, and there are no areas of dispute.

Mr. Pilcher submitted an errata sheet as EXHIBIT 4 which noted several changes to the development agreements, specifically the V-30 section.

Mr. Pilcher noted that city staff used many outside resources while working on negotiations. These outside sources included R-2 engineers who had previous experience with Issaquah Highlands developments, the financial group of Henderson and Young, and Parametrix for traffic mitigation. Mr. Pilcher said that these outside expertise have really helped city staff be confident in the agreements.

This is a type 4 quasi-judicial practice, according to Mr. Pilcher. He noted that staff has followed required procedures of state law including that notices have been going out since early October, 2010 once the initial applications were received which included mail notices, newspaper postings, and website postings. Staff provided public comment for an initial 30-day timeline (and received comment from around 10 citizens and agencies and met with several. However, Mr. Pilcher noted that these groups were unwilling to meet with the city if YarrowBay was present. Mr. Pilcher testified that YarrowBay refiled their applications in April, 2011 and the same process was followed. On May 23, 2011, the hearing examiner conducted a pre-hearing conference and an open house was held on June 28, 2011 at Black Diamond Elementary School, according to Mr. Pilcher.

Mr. Pilcher remarked that he believes the staff report outlines the major features of the development agreements. Each agreement is around 150 pages and are basically identical, according to Mr. Pilcher. He commented that when he speaks about the agreements he is referencing both The Villages and Lawson Hills. Mr. Pilcher noted that the minimum lot size proposed for both projects is 2,200 sq ft and that detached could include something like a townhouse, and that there is no minimum lot size for commercial (which is typical for this type of project, according to Pilcher). He testified that there is a menu of options for street improvement projects offered by the agreements and further traffic modeling is expected to be done for both external issues and internal city issues (various issues such as 2 vs. 4 lane highways).

Mr. Pilcher also commented on a commitment from YarrowBay to maintain a no-net increase of phosphorus run-off to the Lake Sawyer drainage basin which he described as "above and beyond conditions of approval." He further noted that boundaries of sensitive areas are now considered to be fixed (such as wetland boundaries), according to section 8 of the agreements.

According to Mr. Pilcher, in terms of parks developments, the city will receive payment at the discretion of the city (not YarrowBay) in lieu of the developer creating a park. According to the development agreement, environmental analysis on park development would be limited as long as the number of dwelling units does not increase, Mr. Pilcher noted. Environmental analysis would be limited, and most macro-issues (like traffic) would not be needed to be reviewed because they already have been examined as part of the initial review.

Mr. Pilcher testified that YarrowBay has reached outside street agreements with the cities of Maple Valley and Covington (including as appendices in the development agreement). There is an intended Design Review Committee to monitor future developers and no building permit application would be accepted without committee approval, said Mr. Pilcher.

YarrowBay, the Enumclaw School District, and city of Black Diamond adopted a tri-party school agreement in January, 2011, according to Mr. Pilcher. He noted that it addresses in more detail how schools will be impacted, but it is not actually part of the development agreement.

Mr. Pilcher noted that in regards to fire mitigation issues, the developers agreed to creating a new satellite fire site and paying a fire mitigation fee. Furthermore, he stated that the current dollar amount agreed upon could change depending on if the city changes the fire impact fee. He noted that there is also a city public works mitigation fee that was approved which would be used for works such as a city hall, municipal courts expansion, and police.

On page 8 of the staff report there is a discussion of accessory dwelling units. Mr. Pilcher noted a mistake in this area of the report because the report gave the number of acceptable units as 450, while it is actually 300. According to city policy, ADUs are allowed in any zone district, and do not require larger lot sizes, Mr. Pilcher stated. He remarked that YarrowBay is not asking for anything beyond the “norm” in this policy.

Since Yarrow Bay will be building such huge portions of the water and sewer systems, they will not be paying an addition capital city charge, according to Mr. Pilcher. King County provides Black Diamond’s sewer systems, he noted. King County and Black Diamond are still working on a location for the new sewer unit that will be necessary, but King county is obligated to provide the sewer system, according to Pilcher.

Mr. Pilcher testified that there is concern by property owners over noise created by construction. Yarrow Bay has agreed to limit working hours on Sunday, and the city also required Yarrow Bay to restrict work hours even more than city code generally requires (one hour earlier on Saturday and weekdays), he said.

Mr. Pilcher remarked that fiscal analysis is constantly being rebalanced with the help of Henderson and Young financial group.

City Council will form the 3 committees (noise, water, Green Valley Road), outlined in the MPD approval conditions, once the construction is closer to beginning, according to Pilcher.

Mr. Pilcher noted that Parametrix is working on a new traffic model. It is not yet completed, but it will be done initially for 850 model units.

Mr. Pilcher testified that there is a unique change to the Lawson Hills development agreement regarding open space. He noted the Hammerhead, which had been scheduled, will now be open space. He commented that this leave 9.3 acres of open space that still needs to be provided and that this issue is currently being deal with by the city and YarrowBay (possibly though pocket parks and playground space).

The decision criteria requires that the development agreement be approved before construction and development begins, and Mr. Pilcher noted, that this approval is the final stage in a long process. There are a few tweaks to the compliance matrix being made, according to Mr. Pilcher.

In regards to a question by the hearing examiner regarding sensitive areas boundaries for mine areas, Mr. Pilcher answered that the city’s sensitive area regulations will continue to be in place.

He stated that the intent of establishing the boundaries now was to keep them from shifting considering they were thoroughly analyzed by the EIS report.

He also answered a question by the hearing examiner regarding the Design Review Committee, noting that the developer would have control over who sits on this committee, but council would have to check off on decisions made.

Nancy Rogers, Representative for YarrowBay (applicant)

Ms. Rogers noted two changes that were included in the errata sheet that became EXHIBIT 4 including missing signatures from the Maple Valley agreement which have now been included and also color missing from The Villages site plan.

Ms. Rogers testified that in regards to the sensitive areas boundaries, Lawson Hills 159 and The Villages condition 155 require that once boundaries are agreed upon, they are considered fixed.

Private maintenance will be transferred to Homeowners Association after three years, according to Ms. Rogers (answering a previous question by the hearing examiner).

Ms. Rogers remarked that both development agreements are comprehensive and that YarrowBay supports all staff report conclusions. On behalf of YarrowBay, she asks the hearing examiner to recommend approval to the City Council. She presented maps of the developments (including site plans) as EXHIBIT 7 and pointed out the two areas (Villages and Lawson Hills) on general maps. The site plans now include potential residential and commercial buildings and both maintain previous and have added open space to both areas, according to Ms. Rogers. Echoing Mr. Pilcher, she noted the change of the Hammerhead in Lawson Hills to open space, adding parcels 9 and 10 as open space as well. She noted that the Villages development also has been given increased open space.

Ms. Rogers commented that YarrowBay has been following public concerns greatly and has created a guide to the development agreements which became EXHIBIT 8 (the guide is organized by major topics).

Ms. Rogers said that MPD approvals meet all city standards which require a mix of residential and non-residential uses; additionally, the design has met with all ordinances and thorough planning has been done. The goal of the standards of the MPD is that a wide variety of homes can be established, and the MPDs meet the city's goal and decision to create a sense of community and modernity, according to Ms. Rogers. The MPD ordinance requires compliance with city design guidelines, thus the MPD approval and conditions called for a mix of housing types, determination of project specific setbacks and standards, compliance with the framework of standards, and project specific guidelines., stated Ms. Rogers. Lot sizes and setback standards have been set in accordance with MPD guidelines and provide a wide variety of housing types,

according to Ms. Rogers. She noted that the MPDs meet the city's wish for a continued sense of community.

Ms. Rogers commented on the wide variety of home-styles demonstrated in EXHIBIT 7. There is an attempt to mimic small-town style in the design guidelines which were adopted by the City Council and further guidelines in both development agreements, she noted. There will be a DRC and the city will have an independent review of all designs, according to Ms. Rogers. According to Ms. Rogers, Randall Arendt, author of *Rural by Design*, met with both the City Council and YarrowBay, and he believes the guidelines will allow Black Diamond to maintain its historic nature and rural appeal while doing a better job than other nearby communities.

In regards to commercial use, Ms. Rogers noted municipal code 1898 which requires a balance of commercial and residential use. Commercial uses can be non-contiguous with residential areas according to city code, remarked Ms. Rogers. Sections 4.72 and 5 of the development agreements address these issues. Ms. Rogers remarked upon different types of commercial build-outs that would be done which will encourage walkability and sense of community. All of the commercial development will meet city and project design guidelines, according to Ms. Rogers.

Ms. Rogers testified that according to MPD ordinance, infrastructure must be provided on a phased basis to service new development as that development comes online. She said the development agreements incorporate these issues at section 6.413 (and other sections including 11, 12, and exhibit k, f, and r). The specifics that are provided in the agreement are road/intersection improvements, sewer improvements inside the city, water improvements in Black Diamond (which will be paid for and supported by YarrowBay), according to Ms. Rogers. The city and YarrowBay agreed to work cooperatively to receive county and state funds, but it is up to the MasterDeveloper (currently YarrowBay) to make sure these are funded, she noted.

Road improvements outside of Black Diamond will in some cases will be handled by YarrowBay depending on different agreements with other communities (such as Maple Valley and the city of Covington). She testified that timing for road improvements will be governed by a traffic monitoring plan and will meet the physical need for service. Ms. Rogers remarked that YarrowBay will indeed be making traffic improvements (referencing EXHIBIT 7I) which will include additional traffic lanes, intersection improvements, and new roads. Overall, more than fifty additions/improvements are being made, she said.

Ms. Rogers testified that stormwater and sensitive areas management systems that support sustainable developments, including using infiltration where possible and encouraging the use of large regional detention ponds, are called for in the MPD. The conditions have set a number of parameters for the stormwater system, including compliance with all current stormwater standards, she noted. She stated that there have been protections set up when possible to protect Lake Sawyer phosphorous conditions that go beyond YarrowBay's necessary commitments.

Sections 5.5.7, 7.4.3, 7.4.4, 7.4.5, 8, 9.4, exhibit g, and exhibit o in the development agreements all deal with these stormwater issues, according to Ms. Rogers. The compliance with sensitive areas has been met and the DAs include constraint maps and reference more detailed constraint maps on file with the city, she said. Ms Rogers noted the MPD conditions required YarrowBay to identify the estimated phosphorous runoff, which turned out to be higher than expected. She commented that YarrowBay engineers have designed a standard that will allow no net increase in phosphorous to Lake Sawyer. Additionally, aesthetics of stormwater facilities have also been addressed in the agreements, noted Ms Rogers.

According to Ms. Rogers, there will be documented trigger points that the MPD specifies for the building of parks, open spaces, and trails. Chapters 8 and 9 deal with these conditions in the development agreements, she said. She commented that wetlands across these sites will now be protected permanently (where as before coal and logging had destroyed much of the wetlands). Tree removal and grading will also be incremental, she noted. Furthermore, Ms Rogers remarked that the development agreements limit clearing and grading for each implementing project for a development parcel (and adjacent grading can be done if necessary for clear cut and fill, but no wholesale grading). Thus, Ms. Rogers testified, parks will be developed overtime as levels of service/standard are met. The design agreements ensure this gradual development and the creation of more open spaces, she noted.

Ms. Rogers testified that YarrowBay has committed to fewer work hours than are allowed in the city at large. There will be an incremental and paced build-out of the MPDs (the term has been set at 15 years with a 5-year potential addition), she noted. Each parcel will be going under public processes before build-out begins on them and then vertical construction (building permits) will begin, according to Ms. Rogers.

Ms. Rogers commented that the MPD ordinances call for a very specific school agreement to accommodate the number of children that will reside in the MPDs. She said the DAs incorporate the tri-party school agreement, which was reached January 24, 2011. It provides for 3-4 elementary schools, 2 middle schools, and 1 high school, she noted. Additionally, she remarked that the school district will be processing permits for the development of schools. The agreement also has contingencies for the modification of school sites in case the district cannot obtain permits for the current school sites, she said.

The development agreements ensure protection of the city's bottom line, according to Ms. Rogers. The MPD approval called for detailed fiscal analysis and funding options to protect the city; accordingly, sections 13.4, 13.6, and exhibit N deal with this issue, Ms Rogers noted. She said the goal is that post- MPD build-out the city is fiscally protected and self-sustaining. One protection is that the city will be collecting new taxes from the MPD lands (including increased property taxes), she said. Also, YarrowBay will be constructing more infrastructure and has voluntarily agreed to continue to fund city staff to continue reviewing permits, she noted. Ms. Rogers also remarked that YarrowBay has agreed to several mitigation fees and to build a

satellite fire station. Additionally, YarrowBay has agreed to options to protect private shortfalls, according to Ms. Rogers.

Mike Irrgang (22505 SE 29th St. Black Diamond)

Mr. Irrgang focused on legal liability in regards to the schools in the MPD approval ordinances and development agreements. He testified that he believes there is an unfunded liability within the school agreement and that the taxpayers will be burdened under the current conditions. He voiced concern that state law would be violated if the development agreements were approved because taxpayers would pay for schools, rather than the developer, and gain no benefit. He noted that he believes taxpayers will not likely approve bonds for the funding of the additional schools, and that a condition should be added to the development agreement which would stop the development if citizen approval for schools is not met.

Mr. Irrgang took issue with Ms. Roger's testimony, stating that he believed the city had not done enough traffic mitigation studies. Irrgang testified that he met with Parametrix and studied their models and approaches and concluded himself that they had not properly studied the region. He remarked that Parametrix failed to take into account the demographics of Black Diamond (noting that Parametrix used the current demographics in projecting, while the new, post-build-out demographics would have far more commuters). Irrgang claimed Parametrix agreed that they had not modeled anything in regards to the regional impact. He remarked that he believed the current phasing conditions will not make traffic mitigations in a timely manner, stating that waiting to make traffic mitigations until after 850 units are already built will be too late. Mr. Irrgang added that gridlock will be imminent. Moreover, he noted that he believes there is already some evidence of gridlock at certain intersections that has been ignored in studies (noting an area near Witte Rd.), and this development will result in further horrific traffic conditions. He stated that he has done some tests of his own to determine that 2 hours of solid gridlock is possible if the development is allowed to build-out under the current conditions. Mr. Irrgang called for a hard-stop to construction of the development until a new study of regional impact is conducted by experts that are not employed by the city or YarrowBay. Furthermore, he asked for a hard-stop to the development if the study found that further gridlock would be created.

Deronda Stanley, (34015 135th Ave SE Auburn, WA)

Ms. Stanley spoke on the impact of the development agreement on schools in the Black Diamond area. Ms. Stanley noted concerns that the development agreements do not deal with problems of increased school population. She stated that she has taught for over thirty years in the area and has experience with overcrowded schools. Ms. Stanley stated that the applicant should not believe that just because a site is provided, a school will actually be built. She noted that the school-creation process can take a very long time and claimed that the current proposal does not take into account this long process which includes public votes (on levies or bonds) and school planning.

She commented that over-populated schools will take increased effort by the city to mitigate the problems that come with them (such as portables, traveling teachers, use of gymnasiums for classrooms, shuttling students). Noting her previous experience working in over-populated schools, she described how schools will be continually disrupted due to re-location of students during the construction process and some students could face several relocations.

Matching funds from the state are not guaranteed if overcrowding is not proven, according to Ms. Stanley. She expressed concern that taxes for property owners will go up in order to provide for schools if school levies are not approved quickly by voters and state funding does not come through. She commented on surrounding areas that have failed school levies/bonds recently such as Mason County and the detriment it has caused for the students. Stanley summarized that school quality will be remarkably reduced and taxpayers will end up paying the price if the development agreements are approved.

Jacqueline Taeschner, (3084 229th Place SE Lake Sawyer, WA)

Taeschner commented on the negative impact that abolished trees will have on the eagles in the Black Diamond area (noting that she had previously testified on this issue). She also noted additional environmental concerns such as pollution to the air and the destruction of wildlife habitats, claiming that the people have a responsibility as stewards to the environment and that these developments end that stewardship. Ms. Taeschner claimed that the state laws are not being heeded.

Ms. Taeschner asked that YarrowBay would create a resort town, rather than a residential development, citing Canadian towns Lake Louise and Harrison Hot Springs as examples. She described this resort town as being a way for the environment and people to thrive together where a hotel with offer beautiful views and excellent accommodations. She commented that YarrowBay could build this resort rather than creating a huge master development and still make a profit. She noted that resort lands are a diminishing commodity and that she believed it would be a popular location. She called for the people and YarrowBay to work together to preserve Black Diamond and its surrounding communities.

Robert Taeschner, (30846 229th Place SE Lake Sawyer, WA)

Dr. Taeschner opened his testimony by noting that he has been a teacher for over 51 years. He expressed his fears of overpopulation in the area schools, agreeing with Ms. Stanley's previous testimony.

He noted that the City Council has followed YarrowBay without hesitation. Dr. Taeschner claimed he met with a city council member at a Covington box store and that, when questioned, the council member admitted to not having read any of the comments from previous testimony to the hearing examiner. He stated fears of the City Council not listening to any of the citizen concerns and only representing the interests of YarrowBay, not the BD citizens. Moreover, he

commented that when questioned at a city council meeting one month ago, Senator Pam Roach stated that Black Diamond could not expect the state to provide funds for widening highway 169. He noted that the traffic on highway 169 could be expected to quadruple and that the current 2-lanes would not be enough.

Dr. Taeschner further commented that traffic problems in the area are already not being addressed and that increased population would cause more serious problems (citing his commute conditions to Issaquah from 2002-2003 as evidence to his argument).

Dr. Taeschner commented that he does not wish Black Diamond to be overrun and its environment destroyed like the ancient city of Ur which he provided two photos of as EXHIBIT 9. He noted that Black Diamond will be forced to have water piped in because of YarrowBay to get around limited development policies, like the city of Ur did after the Euphrates water changed its course. Black Diamond is an ideal area for wildlife and recreational opportunities, but YarrowBay glosses over the environmental concerns, according to Dr. Taeschner. He asked that the hearing examiner not allow Black Diamond to become a “depleted desert” like Ur.

Ron Taylor, (32110 Botts Drive Black Diamond, WA)

Mr. Taylor addressed what he believes is vagueness and many gaps in the development agreements. He commented that the roads and plots within the agreement are too conceptual (stating that the applicant referred to them as “conceptual” in opening testimony). Furthermore, he noted “open blanks” (which he gave specific reference to in his written testimony) within the agreements which could potentially give open leeway to YarrowBay, therefore they need to be removed. Specifically, Mr. Taylor noted the he did not believe the fire mitigation fees had been properly studied (the studied called for in the agreement has not been completed) and could cause potential problems for the city.

Mr. Taylor also noted issues with the school agreement, stating that it did not provide enough detail on how schools would be constructed and where the money would come from to do this.

In particular, Mr. Taylor noted sections of the agreements such as B11.1 and 11.2 (the phasing plans) that are only estimates and subject to change without amendment. He also noted sections that just say “reserved,” and are incomplete without any text. Section B 4.4.4 allows a lot of latitude to open space boundaries without due process, according to Mr. Taylor. He said that roadways and parcels are also allowed to change without due process. He also noted further sections like 4.4.8 allowed too many changes and do not provide enough detail.

He discussed concerns over infrastructure costs that could cause increased taxation. He remarked that expectations by King County may not always be met. Section 7.1.6 of the

development agreement conflicts with 7.1.4 which allows bonds to be dismissed, according to Mr. Taylor.

Mr. Taylor stated that that YarrowBay is obligated to give the citizens a clearer and more reasonable idea of what to expect in the next 15-20 year contract period.

Robin Taylor, (32110 Botts Drive Black Diamond, WA)

Ms. Taylor discussed issues with enforcement of city restrictions. According to her, 5.4.3 of the development agreement states that the Design Review Committee will create the real estate sign program for the developments. She noted that the agreements state that the sign program should meet all requirements of the city's municipal code, specifically BDMC 18.8.2. Ms. Taylor noted BDMC 18.8.2.060B states no sign permits are required for real estate designs. Thus, according to Ms. Taylor, City Staff has no legal authority to enforce any standard outside the BDMC and the master developer has no authority to grant more authority to the city. The developers cannot give more power to the city than is in the municipal code, she noted. The creation of sign standards outside of municipal Black Diamond should fall to the developers and the Homeowners association. According to section of the DA 5.4.3, the city is being given responsibility for the sign standards which is incorrect and illegal, Ms. Taylor stated. Anything stricter than city code should be dealt with by the developer, the homeowners associations, and the design review committee, instead of City Staff.

Moreover, Ms. Taylor noted that section 4.4.3 of the development agreement states that a development parcel designated school may revert to a MPD-M through only an administrative decision. Ms. Taylor stated that this should be considered a major amendment for several reasons. Ms. Taylor noted her first reason as being that MPD conditions approval number 132 sets the number of dwelling units at Lawson Hills at 1250 units, reverting the school parcel L-5 (10.3 acres) site would increase this number by 72-124 units totaling between 1322-1374 units (creating a higher number of dwelling units). This does not meet Black Diamond municipal code 18.98.100 which states that to be considered a minor amendment a parcel change must meet specific criteria outlined in 18.98.100 a-i, Ms. Taylor said. She noted that condition 18.98.100a is not met with this parcel re-designation.

Ms. Taylor further observed material modification as an issue with this parcel re-designation. Section 10.4.2 of the development agreements states that the developer wants any change that does not modify materially the policy of the agreement to be considered a minor amendment, according to Ms. Taylor. Increasing the number of dwelling units is a material change to the development agreement and the MPD approval condition 132, Ms. Taylor said. Section 4.4.1 references the fact that a development parcel can move up or down 1 density level, but more than that requires a major amendment, Ms. Taylor noted. She stated that changing a development parcel from one classification to another should then be considered a major amendment.

Ms. Taylor also stated that she believes the L-5 re-designation minor amendment process allows the developer to skirt a rezone of the parcel. Section 4.4.3 of the DA states that any minor amendment would be considered a type 2 decision as stated in 12.8.14a, according to Ms. Taylor. The developer may decide to revert to MPDM, but still allow parcel L-5 to be designated as school, Ms. Taylor noted. She remarked that this would then require no site-specific rezone (type 4 rezone according to BDMC), and a public hearing would not be required. She stated that MPDM is not the same as school, and should a site revert to MPDM, the developer should be forced to go through a rezone process.

Finally, Ms. Taylor commented that school site L-5 abuts the perimeter of a development parcel and changing the perimeter is a change in density and use, thus it should trigger a rezone process. She cites section 4.4.2 of the development agreements, noting that it states that no parcel abutting the perimeter of another parcel should be allowed to change in density.

MPD permit conditions of approval 132, 137, 167 and BDMC 18.08.070 18.98.100a dictate that any change of L-5 from school to MPDM should be considered a major amendment, according to Ms. Taylor.

Tuesday July 12, 2011

Rich Ostrowski, (31314 293rd Place SE Black Diamond, WA)

Ceded time by his wife Collete Ostrowski.

Mr. Ostrowski's testimony dealt with concerns over schools. He noted that he does not believe enough research has been conducted to ensure that the number of schools planned in the tri-party agreement will be enough to cover the population increase from the development project. He stated that the public is concerned that the information is "woefully inaccurate." He cited conditions 98 of the Villages and 99 of Lawson Hills of the MPD ordinances, stating that these required the tri-party school agreement to provide adequate mitigation for the impacts of the development on school facilities. He claimed that there have not been adequate studies and information provided ensuring this mitigation. The School Board and City Council stated that because it was a voluntary agreement with the developer that the amount of mitigation offered was "the best that could be expected," according to Mr. Ostrowski. He also noted that two city council members voted against the agreement because of the lack of detail. Requests for public hearings about the agreement were denied by the school board and the city, according to Mr. Ostrowski.

Mr. Ostrowski called for the following statements to be added into the development agreements, "1. The city shall request the school district provide written status on adequacy of school facilities during MPD development at frequent periodic intervals as specified by the city council.

2. The city shall request a written confirmation of agreement from the school district prior to making any decisions or statements concerning the adequacy of school facilities. 3. The city shall conditionally approve MPD permits to only allow development to continue when adequate school facilities will be available. If at any time the school district decides provisions for schools have or will become inadequate then all development must stop immediately and be delayed no matter what stage it is until the issue is resolved to the school district's satisfaction."

Mr. Ostrowski asked that development be stopped if it becomes clear that schools cannot adequately handle the rise in child population. He stated that he fears development will continue even if school capacities are reached. The city could deny that additional school capacity is required without the above conditions, according to Mr. Ostrowski.

He further noted that the city will be in violation of Washington state code, specifically RCW58.17.110, if the current tri-party agreement is kept. Section 3.2.1 of the tri-party school agreement is in violation of this state law, according to Mr. Ostrowski, because it allows the city to find that appropriate provisions are made for schools rather than the school districts. The city cannot conclude/ensure that appropriate provisions are made just through the agreement, he noted. He stated that the agreement only meets the minimum mitigation required.

Mr. Ostrowski testified that only 15 percent of total cost for schools (around 300 million dollars in current dollars) will be off-set by the master-developers. The low value of mitigation may result in property tax increases, according to Mr. Ostrowski. He noted that schools bonds will not necessarily be approved (they require a 60% voter approval rate) at the rate needed to build new schools because citizens will not want increased taxes. Even voters who want appropriate schools will not approve the high-cost bonds that will be needed to build the appropriate number of schools, according to Mr. Ostrowski.

He asked that development fees regarding school impact be raised because they are currently only one-third of that recommended by school districts. There is further concern because school impact fees will be recaptured by the Master-developer if full build-out does not occur, leaving a burden on the city, according to Mr. Ostrowski. The school impact fees are vested for 20 years and the maximum fees are set too low, he noted. Section 10.7 of the tri-party agreement allows the developer to receive mitigation fee credits using a deed of trust which is effectively a long-term no interest loan for the developer which lasts until the school site is created, according to Mr. Ostrowski.

Mr. Ostrowski stated that the agreement does not necessarily guarantee all school sites will be built. Three school sites may not necessarily be conveyed if full build-out does not occur, he said. Also, the school site conveyance schedule does not meet the speed of build out, according to Mr. Ostrowski.

Mr. Ostrowski also noted that King County will not necessarily support certain school buildings due to boundary concerns. King County has noted they may not approve middle schools located

outside the urban-growth boundary, according to Ostrowski. He testified that no alternate school sites for middle school A and B (the ones located outside the urban-growth line) have been given by the developer. Furthermore, middle school B's site is located in the Auburn school district and it remains unclear if Auburn will be willing to re-designate their school zone boundaries, according to Mr. Ostrowski.

He further testified that Condition 99 of the Villages MPD ordinance required an updated fiscal analysis to locate a high school in land designated for commercial use. He noted that there are portions of the site area currently planned high school that are designated as commercial/office/retail. He stated that no updated fiscal analysis had been done to see the affect of these areas be rezoned from commercial to school-zone. Moreover, Section 7.4 of the tri-party agreement specifically calls for the developer to add in new commercial areas to adjust their commercial zoned property to make up for the loss of commercial zones to the high school building, he said. Mr. Ostrowski stated his concern that the locations of these school sites impact the overall fiscal analysis and that current fiscal studies are not adequate enough.

He summarized by stating that the tri-party agreement does not meet the needs of the proposed development. He noted that school sites need final and appropriate locations rather than conceptual plans so that the City is not liable.

Finally, Mr. Ostrowski testified that he question where the word "detached" went from previous draft development agreements. He noted that it is missing from all reference to single family dwellings. He said it was included until the MPD ordinances were approved by the city council, but once approved the word "detached" has been removed. He questioned whether it was a secret/deliberate act.

He also noted that the city was allowing accessory dwelling unit, but had never mentioned it before the previous night (Monday, July 11th). He stated that the potential effects of the ADUs were overlooked in the EIS studies.

Dave Ambur, (Lake 12 Neighborhood)

Mr. Ambur testified that he believes that the current development agreements no longer meet the philosophy of "growth paying for growth." He noted that it is unclear if the current inhabitants of the Lawson Hill area will be paying to hook-in to new sewer set-ups like the new inhabitants will. He asserted that it is unacceptable for the costs of the new development to fall on the BD citizens. He stated that he doesn't want to pay for new upgrades that are part of the development and that the developers should pay for everything.

He also commented that the people in Lake Sawyer will not have to pay the same costs that those in the Lawson Hills area will be paying, which he deemed unfair. He remarked that adding six schools to the community will change Black Diamond from a rural city to an urban one. He

finalized his statement by noting that the planned developments have strayed far from the original plans proposed in the 1990s and have become “water-downed.”

Ulla Kemman, (29863 232 Ave SE Black Diamond, WA)

The 1990 Growth Management Act gave cities the ability to require concurrency of infrastructure, roads, etc. when building new developments, according to Ms. Kemman. She noted that it was well adhered to during the recent developments in the Issaquah Highlands where traffic mitigation measures were made before build-out, ensuring they were completed in a timely manner. Ms. Kemman stated that major developments must meet transportation concurrency to meet a city’s comprehensive plan and the state’s RCW 36.7-a.070. Ms. Kemman claimed that the current development agreements fail to establish concurrency for transportation measures.

She noted that development agreement failed to provide detail on how adjustments (in funding, timing, etc) will be made if a particular planned improvement fails the concurrency test, even though these details are required by ordinance condition 17f.

She stated that details of a timeframe for building the developments are not given in the agreements, ensuring that concurrency cannot be met. Without detailed and accurate schedules for design, finance, building, maintenance, and transportation mitigation, these development agreements will result in major problems for Black Diamond and will lack concurrency, according to Ms. Kemman. She further noted that there is no information about how the city will actually test that different transportation measures result in concurrency as build-out occurs.

10-946 and 10-947 of the MPD approval ordinances required that the agreements explain how infrastructure will be provided in a timely manner, but this ordinance is not met, according to Ms. Kemman. Furthermore, she stated that the city council eliminated the hearing examiner’s condition 16 of his MPD decision, leaving the development agreements deficient in traffic mitigation measures.

Chris VanHoof, President of the Enumclaw School District Board, (207 Summer Place Enumclaw, WA)

Mr. VanHoof read a statement by the Enumclaw School District Board from three of the five voting members of the school board. The statement highlighted the open negotiations that were held and noted that the school board engaged the public in their decision-making, according to Mr. VanHoof. He said that the school board is very excited that land has already been secured for the school sites. He remarked that he believes the arrangement reached in the tri-party agreement had been well negotiated over the past 4 years. He stated that he does not believe any better agreement exists between a developer and a school board within the state of Washington.

Jay McElroy

Ceded time by his wife, Kelly McElroy.

Mr. McElroy asserted that there will be undue environmental and cultural impacts due to the massive size of the developments that are being force-fitted onto the small town. He stated that he believed the quick-paced build out will result in decrement to wetlands, small streams, and lakes. He stressed the rapid pace of build-out (15 yrs) which will result in a housing concentration of 9 units per acre. He further noted that the developments do not fit into the small town culture and rural design of Black Diamond. The applicants MPDs are the largest in the history of King County and do not fit within the city's moderate growth policy, according to Mr. McElroy. He suggested that the developers are using a marketing campaign to sway people, but it will not work. He emphasized that the environmental and cultural impacts, that will spillover to other municipalities including Covington, Maple Valley, and Ravensdale, have been either ignored or "brushed over."

Mr. McElroy noted that the Black Diamond Comprehensive Plan (criteria 7) establishes that 50 percent of MPD land must be devoted to open spaces. Furthermore, promoting and integrating open space into development plans is required according to BDMC 18.98.010L, he noted. The development agreement falls short of the 50 percent open space requirement with the Villages only having 42 percent and Lawson Hills having 38.8 percent open space. In regards to open space with billable lands, the Villages development only reaches 10 percent (Lawson Hills 32.8 percent) of the needed 50 percent because the developer has taken the billable land for himself.

In regards to Green Valley Road, Mr. McElroy stated that he believes the rural character of the road is not being protected by the development agreement. MPD approval ordinances 10.946 and 10.947 offer some protection; however, the development agreements fail to give more detail on protection for the road, according to Mr. McElroy. He noted that the Road Review Committee created by the MPD approval ordinances has not yet reviewed the Parametrix study conducted to see what traffic increase would occur upon build-out. He further stated that there is only a minority of people who live on the road on the committee, which he believes makes it a "rigged deal."

In summary, Mr. McElroy said there has been too much secrecy in creating these development agreements. He called on the City Council and Mayor to be more open with the citizens and to address their concerns.

Dan Streiffert, Chair of South King County Sierra Club

Mr. Streiffert spoke on behalf of the Sierra Club, noting the club's fear of adverse impacts to the environment due to the grand scale of the developments. Mr. Streiffert stated that not enough detail is included in the development agreements regarding habitat protection, stormwater retention, air quality, wetlands preservation, and transportation issues. The Sierra Club believes that the development agreements fail to meet Black Diamond Municipal Code because they do

not provide proper environmental issue mitigation inside and outside the development properties, according to Mr. Streiffert.

Specifically, he noted that the development plans do not meet the 50 percent open space quantity that was agreed upon previously. The open space habitat plan does not provide sufficient connectivity for wildlife, according to Mr. Streiffert.

Moreover, Mr. Streiffert asserted that stormwater runoff mitigation has not been properly handled. He stated that more advanced technologies, than currently planned, should be used in order to keep impact low. He also noted that the development agreements lack an overall grading plan which is essential in order to anticipate new impervious soil.

Mr. Streiffert also addressed concerns over air quality. He noted the increase in smog that will occur due to more traffic in the area. He said that the development agreements ignore issues with air quality completely.

He also discussed the failure of the development agreements to meet provision 105 which addresses erosion on stream banks and streambank corridor control. A development plan to protect these streambank corridors is needed, according to Mr. Streiffert.

The City's sensitive area ordinances also need to be met, but the development agreements inadequately provide detail to meet these ordinances, according to Mr. Streiffert. He noted that the development lands are highly susceptible to runoff and construction encroachment onto wetland areas. Additionally, tree inventories have been ignored in the development agreements (though condition 120 of MPD approval called for these inventories to be addressed), according to Mr. Streiffert. Issues with logging periods not being defined should also be addressed in the agreements, along with the tree inventories, he said.

Finally, Mr. Streiffert questioned whether transportation concurrency (as dictated by the 1990 Growth Management Act) would be properly met by the development agreements. He stated that he does not believe timely traffic mitigation will occur and that the agreements should be more proactive, rather than reactive. He declared that BDMC 18.98.020 calls for traffic mitigation to be proactive, and the reactive model proposed will be in violation of this code.

Wednesday July 13, 2011

Clarissa Cross, (19102 SE Green Valley Rd. Auburn, WA)

Ceded time by her sister Harriet Dallas

Ms. Cross discussed the lack of protection for Green Valley Rd. in the development agreements. She noted that she has owned a farm on the road since 1954 and has seen firsthand how dangerous the road can be with harsh terrain and sharp turns. Ms. Cross said that the road is also damp, twisting, and only 2-lane, creating dangerous conditions. Additionally, farmland

protection areas border approximately 9 miles of the road, and it is the longest designated heritage corridor in King County, according to Ms. Cross. She stated that many of the MPD properties are located adjacent to Green Valley Rd. Conditions of approval 33A and B offer some protection, but the development agreements do not elaborate on protection enough, according to Ms. Cross.

Ms. Cross asked that more traffic mitigation and protections for Green Valley Rd. be added to the development agreements. Ms. Cross stated that she believes the volume of traffic on the road will be greater than the developer and City anticipate. Citing previous FEIS testimony by Matthew Nolan of King County transportation, Ms. Cross claimed that there will be a 300-400 percent increase on peak hour trips on the Green Valley Road. The volume of traffic would exceed traffic counts on the Issaquah-Holbart Rd and the Kent-Kangley Rd., according to Ms. Cross. She said that she believes traffic to the west (towards Auburn) has been ignored in the development agreement.

Ms. Cross noted that she believes the traffic study the applicant had done was too basic. She said that the Green Valley Road review committee which was created by the agreements has not been utilized. She further noted that the committee is not balanced because it consists of 2 YarrowBay officials, 1 Black Diamond Resident, and only 2 Green Valley Road residents, while she believes Green Valley Road residents should represent the majority. She stated that residents felt the committee was skewed. The applicant does not wish to limit traffic on the Green Valley Rd, which is unacceptable, according to Ms. Cross.

Ms. Cross also asked that the density of the development be minimized in order to preserve Green Valley Road. She noted that the large population increase will lead to Green Valley Road becoming an alternate route to Highway 18, which is unacceptable for the current residents. She stated that Green Valley Road is restricted to agricultural purposes and open space use, and no more than 5 percent of the land may be covered by structures which include surfaced roads and parkways for traffic mitigation, according to King County ordinance 33.41. The current mitigation measures do not meet county law and transportation concurrency will not be met, she further stated.

Ms. Cross ended her testimony by stating that the development agreements lack substance, and build-out should be denied until traffic concurrency can ensure that traffic spill-over will not occur on Green Valley Road.

Peter Rimbos, (19711 241st SE Maple Valley, WA)

Ceded time by Larry Baird.

Mr. Rimbos described 6 overall issues with the MPDs that have not been mitigated by the development agreements: 1. Quintupling the population of a rural town, 2. Adding over 2,000 commuters on windy, narrow roads creating nightmare commutes 3. Clear-cutting acres of forest

displacing wildlife 4. Massive cutting and grading of the land creating erosion issues 5. Physical impacts which are largely unknown and far too dependent on assumptions and future agreements 6. Blatant misuse of designated rural area by placing urban infrastructures outside the urban growth area in order to save money.

Mr. Rimbos asked that a more specific, detailed plan be completed before approval of the development agreements. In many areas of the development agreements the 7 w's (who, what, when, where, why, how, which) are not answered, according to Mr. Rimbos. Furthermore, many of the agreements are not complete and are only based on demand models. He also noted that the master developers and City Council ignored several of the hearing examiner's previous recommendations, which was a huge mistake.

Mr. Rimbos further commented on issues with the tri-party school agreement, stating that it was "unacceptable."

He said that he does not believe development agreements ensure the city will benefit from the MPDs, and more cost-benefit risk analysis should be done in order to protect the citizens of Black Diamond. The 15-20 year plan is a major contract between the city and developer, thus the agreements need to ensure that the people are completely protected based on the MPD conditions and all city, county, and state codes, according to Mr. Rimbos. Moreover, he asked that the City take into account the impacts on the greater region (SE King County) in finalizing its agreements.

Noting that he believes transportation to be the most critical issue with the developments, he stated that not enough detail is given within the proposed agreements and that only minimal information is provided.

Mr. Rimbos stated that he believed the applicant removed conditions from the MPD conditions approval after the closed hearings were ending, citing conditions 16 and 17. He entered in an email exhibit (EXHIBIT 13) which was between the applicant and city attorney, Mike Kenyan, noting these condition changes were made secretly and after open public hearings.

The development agreements include no new traffic demand models and no new traffic mitigations, according to Mr. Rimbos. He noted that a new traffic demand model is under development, according to the agreements, but it is not stated when this model will be finished. He remarked that the model should be substantiated and verified now, before the agreements are allowed. Additionally, he said, a complete set of mitigation measures should be created prior to the approval of the development agreements. After these changes to the agreements are made, the public should be given the opportunity to thoroughly critique these findings in some public way, according to Mr. Rimbos.

In closing, Mr. Rimbos stated that no one believes the traffic issues with the MPD have been properly mitigated and that a real transportation plan needs to be developed with very specific

details. The public needs to be protected from inadequate plans within these contracts, according to Mr. Rimbos.

Cindy Proctor, (2905 Sun Mountain Drive)

Ceded time Mittlestaet, Parkin, Gauthier, and Vicki Harp.

Ms. Proctor asked the hearing examiner to ensure that the City Council members know they have an obligation to read all submitted evidence and not just the city staff and hearing examiners' reports.

Ms. Proctor began her testimony by noting her concerns with noise-levels during the build-out process. She stated that she believes the noise review committee (set-up in MPD condition 45) should be set-up before (the now planned) 2-weeks after construction begins. She asked that the development agreement have trigger points for each section of construction in order to set up these noise review procedures in a timely manner. She noted that clearing, grading, and hauling will create loud noises, and she fears that noise control for these factors will not be dealt with in a timely manner. She stated that the EIS was inadequate in regards to the clearing, grading, and hauling noise levels.

Ms. Proctor asked that the development agreements call for a noise-study to be completed before clear-cutting begins and another study after partial build-out. She requested that this noise-study take into account that multiple construction projects will be occurring at once during the process.

She noted her concerns with MPD approval condition 43 which limited work hours. BDMC 8.12.30 allows for a special noise requirement for noise levels anticipated in large developments, stating that she believes BDMC allows variance for larger projects,.

Ms. Proctor also asked that the development agreements better define property boundaries and delineate what artificial buffers will need to be constructed in section 13.7. She called for the development agreement to clearly limit arbitrary interpretations of where buffers should begin.

The mitigation measures should not be mutually exclusive and allow multiple efforts to protecting families that will be affected by the build-out, according to Ms. Proctor. Furthermore, she noted that the applicant should not have sole authority over adequacy of mitigation measures.

Referring to section 13.3 of the development agreement, Ms. Proctor stated that the tri-party school agreement was reached after the MPD hearing and MPD ordinance was enacted so it could not be included in the MPD permit. This is in direct violation of BDMC 18.98.080(A)(14), according to Ms. Proctor. She asserted that condition 98 of the MPD approval plan states that if a tri-party agreement is reached, it should be referenced in the development agreement, thus allowing it to be commented on by the public as to whether it meets mitigation measures.

She commented that the tri-party agreement should be deemed invalid because no public hearing for comments occurred and no public notice was issued in regards to the agreement to the taxpayers in the Enumclaw school district. The tri-party agreement is inconsistent with city code and the City's comprehensive plan for a number of reasons, according to Ms. Proctor.

She further noted that there is no guarantee that schools will be within walking distance of residential areas (.5 mile within city limits according to previous inference by the hearing examiner) which violates BDMC 18.98.80A14. This means that they cannot be considered neighborhood schools as described in the agreements, according to Ms. Proctor.

Moreover, she stated, the trail plans have not been planned in a manner that allows walkability as dictated by Black Diamond's comprehensive plan. The trail networks are being developed by city staff, but have not been adopted yet, she noted.

Ms. Proctor also noted that only one school is guaranteed based on the agreements and the rest will be based on public vote (with primarily citizens of Enumclaw voting).

Chapter 18.58BDMC, in regards to essential public facilities, states that the city will review and site public schools. Ms. Proctor noted. The process must be consistent with King County planning facilities, but this code is not being adhered to, according to Ms. Proctor. Ms. Proctor commented that the city has failed to meet King County code requirements about school-placement in rural areas. Placement of schools outside the urban-growth area is not allowed based on King County code and city municipal school codes, she stated. Ms. Proctor asserted that these city code violations would prevent sewers being run to rural school locations.

Public hearings to review the tri-party school agreement were canceled on three separate occasions, according to Ms. Proctor, and citizens in the Enumclaw school district are questioning the legitimacy of the school board approval of the agreement. The Black Diamond voting representative was not present during the vote and another member had biases towards YarrowBay, according to Ms. Proctor. She stated that she does not believe the school board has demonstrated how the tri-party agreement is adequate.

Ms. Proctor called into question whether the school district would be able to guarantee quality education for students during the first 3-years of build-out because there will not be enough school room. Furthermore, she noted that if school bonds are not approved quickly, the schools (and students) would suffer in long-term, poor conditions. No interim mitigation has been included in the tri-party agreement, Ms. Proctor said.

With school bonds already failing across the state, Ms. Proctor described the need to "incentivize" YarrowBay to commit to meeting home numbers in order to ensure enough voter support for the necessary bonds.

In summary, Ms. Proctor said that the tri-party agreement will not meet impact fees in a timely manner, schools in walkable distances are not guaranteed, it does not meet Black Diamond's comprehensive plan, and does not provide interim mitigation measures.

Gomer Evans, (25331 Lawson Street Black Diamond, WA)

Mr. Evans has served previously as mayor of Black Diamond and was on the city council. He stated that he believes YarrowBay has created a development with a "rural feel" while providing a gateway for much needed service within the city, such as long-needed schools. Mr. Evans said he is satisfied with the agreements and believes they give due consideration to wetlands, streets and sidewalks, trails, parks and playgrounds, retail store availability, mixed housing, underground utility, and more.

Mr. Evans commented that the city council, city staff, and mayor have been considerate of all citizens in negotiating the agreements and have properly reviewed their decisions. Evans summarized by saying the development agreements are sound and Black Diamond needs this opportunity for growth. He concluded that the citizens need to work together to further the development of the city.

Geoff Bowie, (2605 Lawson St Black Diamond, WA)

Mr. Bowie stated that he believes the development agreements are extremely thorough in consideration of various issues including traffic, water system improvements, and fire department services. The growth in the city will help the school systems to grow and expand. He testified that the development agreements will provide Black Diamond with infrastructure improvements that it desperately needs.

Elaine Packard, Chair of Water and Salmon Division of Sierra Club, (2230 1st Ave Seattle, WA)

Ms. Packard testified that the Sierra Club believes this MPD is unprecedented in size and growth. She noted that water issues have not been properly addressed including wetland erosion, stormwater runoff, soil retention, and potential flood zones. She finished her testimony by noting that the MPD is on the radar of the Sierra Club.

Tim Gould, Chair of the Sierra Club, Transportation and Land Use Committee

Mr. Gould is the chair of the Transportation and Land Use Committee of the Sierra Club. He stated that climate change has increased due to heavy traffic in the state of Washington (half of greenhouse gases come from the transportation sector). The state is facing the challenge of people driving too long of distances to access services and jobs, according to Mr. Gould. He noted that the MPD would result in an increase in driving because of commuters. He testified that the developments will overload the existing transportation system with increased greenhouse gases and vehicle miles traveled.

He urged the hearing examiner to look over transportation impacts closely and asked that the agreements give more detail in regards to mitigation measures. He ended his summary by noting that increased miles travelled will lead to higher oil prices.

Susan Dawson, (17855 West Springlake Dr. SE Renton, WA)

Ms. Dawson noted that she is concerned with the impact of the development on wildlife, plants, and trees. She testified that the designated wildlife corridors are insufficient to make up for the destruction of 750 acres of habitats for wildlife. Ultimately wildlife will be reduced in numbers, according to Ms. Dawson and she called for less development and more land left for wildlife.

Les Dawson, (17855 West Springlake Dr. SE Renton, WA)

Mr. Dawson stated that he believes the developments will create problems for the parks in the SE King County area. Citing Maple Valley Park as an example, Mr. Dawson commented on the impact increased population can have on parks and trails. As a member of Maple Valley's Greater Unincorporated Council, he saw firsthand the issue of population increase in SE King County 4-years ago with the Ravensdale Park. There was an attempt to expand that park, but the citizens feared the park would suffer if built-out because the city would not be able to maintain it and continually offer new services, according to Mr. Dawson. He testified that he fears Black Diamond could face the same issues with their park systems if they grow at a rapid rate.

Mr. Dawson asked that the development agreements be more specific and detailed about parks, open space, and trails. He also asked that the agreements specify exact locations for recreational areas because currently only pocket parks and small areas are designated for open spaces. BDMC 18.98.150A states that the city needs to provide coordinated system of pedestrian linkages, according to Mr. Dawson. He finished his testimony by noting that parks are good for the community and that it is important they are established and well taken care of by the city and developer.

Max Beers, (22134 SE Green Valley Rd)

Mr. Beers testified that there are possible water issues with the proposed infrastructure build-out. In 1996, logging near his home resulted in issues with his water supply. He said that he fears the MPD will result in further damage to his water system. He stated that he wants to ensure the water systems are protected, specifically the water flow and water quality, by the development agreements. He noted that the current agreements do not directly address the water issues as far as he has read.

Peggy Sperry, (29051 229th Ave SE Black Diamond, WA)

Ms. Sperry testified that she is concerned with the water systems portion of the master development agreements. She stated that she believes this portion lacks detail and does not adhere to current laws and regulations.

She noted that BDMC 18.98.190 requires that the water system be designed to eliminate, to the greatest degree possible, the reliance upon pumps, lift stations, mechanical devices, and their associated cost to provide service to the MPD. However, according to Ms. Sperry, the development agreements do not detail how the new water systems will meet this requirement. She asked for more clarity on how the water system will be laid out before the development agreements are approved.

Ms. Sperry also noted her concern over water conservation. Lawson Hills condition 55 and Villages 53 approve the water conservation plan and ask for details regarding the approach to conservation to ensure that 10% less than average water use in the city by residential users in the MPD is achieved, she said. This would force the average daily water usage of MPD residents 207 gallons per day or less (since the city water standard is 230 gallons), according to Ms. Sperry, and she further noted that Black Diamond code 18.98.190 requires that this measure be met at all phases of the development.

Ms. Sperry stated she is concerned that the development agreements only call for water reduction mitigation plans for future development if the 10% average is not met. She testified that water usage reduction should be made in a way to offset the excess usage from prior phases that have not met the requirement, not just future phases (she once again noted BDMC 18.98.190 which required the 10% reduction at all phases).

She also discussed her concerns that the development agreements (condition no. 54) call for water measures to occur after 500 units are constructed, instead of 500 units occupied which will create inaccurate results.

Ms. Sperry further stated that the city of Covington's water boundary encompasses 98 acres within Black Diamond city limits (in part of the Villages main property). This water boundary was established in 1989 and has not been modified, according to Ms. Sperry. The water system planned will violate this boundary, she noted, and will cause the Covington water district to lose significant revenue. Ms. Sperry testified that Covington and Black Diamond have not resolved the conflict, thus the development agreements should not be approved until a resolution is reached.

Lisa Garvich, (29625 232nd Ave SE Black Diamond, WA)

Ms. Garvich discussed fire services in her testimony. She testified that staffing the new fire facilities set-up in the development agreements could be a financial burden for Black Diamond. The development agreements do not detail how staff will be paid for, according to Ms. Garvich. She noted that Black Diamond is already struggling to pay for fire facilities and personnel.

She further noted that if there is an increase in traffic, fire and emergency services response times would take longer, creating a dangerous situation. She asked that more detail and

specificity be given to these portions of the agreement in order to ensure the people of Black Diamond are protected.

Ms. Garvich ended her testimony by drawing attention to the lack of adequate public transportation such as buses and rails to the Black Diamond area. She noted that this should be considered in the development agreements as well.

Michael Fettig, (25423 Kanasket Dr. Black Diamond WA)

Mr. Fettig noted his concern with traffic during and after the MPD build-out. He testified that he does not believe the current 2-lane road systems can handle the increased population and more mitigation measures are necessary. He asked that road improvements be more detailed and thoughtful than they currently are in the agreements. He offered an example of a well-planned master-development in Gold River, CA as a better thought-out traffic model. In this CA master-development there were multiple lane roads and turn lanes provided for most the development which made traffic flow with ease and provided multiple connections to the nearest highway, according to Mr. Fettig.

He noted that there are only three outlets from the proposed Black Diamond developments which are not well developed roads and cannot support the heavy traffic without widening and other modifications.

Jack Sperry, (29051 229th Ave SE Black Diamond, WA)

Ceded time by Erika Morgan.

Mr. Sperry expressed concerns over increased flooding in the Lake Sawyer area due to increase run-off from the development build-outs.

Increased flooding of low-lying properties around Lake Sawyer due to the MPDs stormwater runoff serves as a potential danger to the citizens living there, violating RCW 36.70b.170 which prevents a development agreement from having authority when it infringes upon public health and safety, according to Mr. Sperry.

Mr. Sperry noted that testimony was presented regarding the potential for increased flooding due to increased stormwater runoff due to impervious surfaces from the MPD build-out in the previous MPD approval hearings. The applicant provided rebuttal during these hearings (from Alan Fure of Triad Associates), stating that detention ponds would control run-off and protect against increased flooding; however, Mr. Sperry stated, the Triad Associates study was focused on large storm events. Storms are not the only cause for flooding of Lake Sawyer, according to Mr. Sperry. He testified the winter months see the water rising at high levels because the watershed comes in faster than it is able to leave through Lake Covington, and the increased impervious surfaces will result in eventual increased water levels of the lake that cannot flow out at an appropriate rate.

When the water level is greater than 10 inches above the damn/weir at Covington Creek, Lake Sawyer is known to cause flooding to low-lying properties, according to Mr. Sperry. On average, Lake Sawyer has seen flooding of low-lying properties twice per decade in Mr. Sperry's experience, he said. He stated that 1996-2006 studies show this 10-inch level was exceeded in 1996, 1997, 1998, 2004, and 2006 and in each instance there was some degree of flooding to properties (the worst in 1996). During this past winter (2010-2011), the lake rose in Dec 2010 and twice in Jan 2011, he said. On average the current lake level just begins to reach flooding level, around 10.01 inches he testified. At any higher water level, more properties will be affected so peak water levels are already at a threshold that cannot afford to be exceeded, according to Mr. Sperry.

Mr. Sperry commented that Alan Fure and Triad Associates submitted a report calculating that the annual expected run-off be 424 acre ft before, 1039 acre ft (615 acre addition) will be added to Lake Sawyer by the MPDs (2.5x the amount of run-off). More than a quarter of this additional run-off will be generated during the December time-frame (a peak water level period). This will result in 7 inch increase to Lake Sawyer from Dec-Jan, a level that will result in flooding due to limited water leaving through Covington Creek at this time, according to Mr. Sperry. YarrowBay has not considered this during their projections on Lake Sawyer run-off effect, he said.

In sum, Mr. Sperry testified that the detention ponds proposed will slow run-off to Lake Sawyer, but it still will eventually reach Lake Sawyer and threaten the homes around the lake; therefore, the MPDs need to limit the run-off to that what exists in its current condition. He proposed the following provision be included in the development agreements, "require that the post-development storm-water runoff from the MPD basins that are tributary to Lake Sawyer do not exceed the pre-development state and increase the threat to public safety." This is the only way to protect public safety in-line with RCW36.70b.170, according to Mr. Sperry.

Thursday July 14, 2011

Gwenn Maxfield, General Manager of Covington Water District, (18631 SE 300th Place Covington, WA)

Ms. Maxfield submitted a document with 12 attachments in regards to the Covington water boundary. (EXHIBIT 25)

Tim Lombardo

Mr. Lombardo requested that the hearing examiner approve the development agreements. He noted that there has been a lot of thought put into the agreements and the city has not taken the task lightly. The development agreements assure that MPD permit approval conditions have been met, according to Mr. Lombardo. He stated that the city staff has been very thorough in their negotiations concerning the development agreements.

He testified that Black Diamond will benefit by new jobs created and will receive new services. Moreover, YarrowBay cannot be expected to anticipate every issue with their future developments, according to Mr. Lombardo.

Alice Baird, (25214 SE 357th St. Auburn, WA)

Ms. Baird stated that she lives off of Green Valley Road and is concerned new citizens living in the Villages development will use Green Valley Rd. as an access point to Highway 169. Green Valley Road cannot handle this increased traffic because it is narrow and windy. The intersection that would serve as the access point to the highway off the road falls at the end of a downward hill with a curve that blocks driver's views, according to Ms. Baird.

Ms. Baird referenced the FEIS report that stated Green Valley Rd. could experience 300-400 percent increase in traffic, noting that this will cause damage to the road that the county cannot afford to repair. She also stated that landslides have been known to occur on the sides of the road, and YarrowBay should be sure to note these sensitive areas when developing traffic mitigation measures.

Ms. Baird testified that she feels the Parametrix study was worthless because it was done in the winter, a slow traffic period, and the suggestion of using roundabouts to mitigate traffic is not practical because of the large farm vehicles that travel the road.

Furthermore, she noted that the presence of bikers and large farm equipment traveling the road causes dangerous conditions because of vehicles choosing to pass on both sides. The shoulders of the road have not been well maintained by the county, and cars often park along the sides of the road, creating even more hazardous conditions, according to Ms. Baird.

She suggested the build-out be downsized and no access point be given from the Villages to Green Valley Road in order to reduce traffic increase on the historic road.

Johna Thomson, (30513 290th Ave SE Black Diamond)

Ms. Thomson testified in favor of the developments. She noted that YarrowBay has spent a long time studying the interests of the community in creating its development plan. She cited a July 17, 2006 meeting that was held by YarrowBay to discuss citizen concerns with masterdevelopment in the area as evidence of the developer's commitment to protecting the interests of Black Diamond. Ms. Thomson stated that the developer has studied the area and different issues such as mines thoroughly over a number of years.

She commented that she is involved in the Enumclaw School District and considers the Black Diamond school to be a large part of her personal community. She noted that she serves on the Enumclaw Schools Foundation Board, and this position, along with other volunteer capacities, has allowed her to witness first-hand the school district's dedication to providing quality education to students. She described several public meetings where the superintendent has

explained the tri-party school agreement. She stated that recent letters to the city that suggested Enumclaw residents were unaware of the tri-party agreement are inaccurate. Ms. Thomson testified that the Enumclaw school district website did indeed have information about the public hearings held on Nov 12, 2009 and Nov 5, 2009 at Enumclaw and Black Diamond, respectively.

Ms. Thomson further noted that the Enumclaw school district has been suffering from a decline in population. An influx in population due to the MPDs would allow an increase in tax space and help the school district provide better amenities for schools, according to Ms. Thomson. She stated that overall the school district is in need of new tax-payers and will support both Enumclaw and Black Diamond schools.

Ms. Thomson discussed the repercussions of the developments not happening. If YarrowBay pulled out of the developments, Black Diamond could end up like the city of Half Moon in the Bay area, she noted. A developer was blocked from developing in Half Moon by the city, and the developer sued the city and won, costing the city millions of dollars, according to Ms. Thomson. She testified that she does not want to see this happen to Black Diamond.

Ms. Thomson also noted that new taxpayers will help pay for services from the city like police and fire. During the Spring of 2010, a levy was passed to maintain police and fire services within Black Diamond, instead of outsourcing to the county, she testified. New taxpayers would help ensure that more levies will not be necessary to maintain these services, according to Ms. Thomson.

Finally, Ms. Thomson noted her excitement about the development of open space and parks in the area such as Lake Sawyer Park. She ended by saying that YarrowBay has made generous gifts to non-profits in the area demonstrating its social responsibility and interest in Black Diamond as a community.

Susan Harvey, (30308 SE Lake Retreat South Drive, Ravensdale WA)

Ceded time by Linda Irrgang.

Ms. Harvey expressed concerns with the general framework of the development agreements, primarily section 15.0 "General Provisions." She noted that they are long-lasting agreements that may see several successions of people in city office, staff, and developers. Noting the longevity and huge amount of money and people involved with the agreements, Ms. Harvey stated that the agreements must be clearly written to avoid misinterpretation and not give any party undue power.

Ms. Harvey commented that she had a number of years working with contracts at Boeing Commercial and is experienced in the need for thoroughness and clarity in agreements involving high-dollar amounts.

Many facets of sections 15.0 need to be clarified, according to Ms. Harvey. First, section 15.1 does not clearly define the terms vesting or build-out and their relationship, she stated. The section indicates that vesting times can change depending on the subject and build-out period and vesting are seemingly used interchangeably, according to Ms. Harvey. It becomes unclear how long YarrowBay is “vested” with the MPDs and gives no clear understanding of what this means, she noted. She added that the definition of build-out period needs to be clarified in order to define how many 5-year extension periods will be permitted (this question was asked by an earlier citizen on July 11th and no answer was given, she stated). Ms. Harvey proposed several revisions to this section: define vesting and build-out period more clearly and state explicitly the time-lines of each in order to close the loop-hole of extending the contract for continuous 5-year periods.

Second, Ms. Harvey stated that section 15.2’s opening sentence should be rephrased to make it clear there is only one master developer at a time (there can be a succession of master-developers, as long as there is only one master-developer for both Villages and Lawson Hills at a time).

Ms. Harvey addressed issues with 15.3’s “Assignment” clause, stating that currently the agreements do not require consent of the city for the master-developer to sell/transfer all or portions of the developments to other developers. It is only required that the city be notified 30 days in advance, she said. The clause would leave the city no say in who it is partnered with in business and liable to any subcontracts with the third party, according to Ms. Harvey. The master-developer transferee would now be held to the contractual obligations, and any amount of the developments could be transferred (up to 100%), she noted. She asked that 15.3 be changed to state that consent from the city “shall” be required for any assignment or transfer of rights rather than “shall not.” She also asked that the city create a set of written requirements to be followed by developers on all levels of subcontracting to protect the city from technical and business issues.

Ms. Harvey stated that section 15.8 needs to be more detailed. An explanation for the “time is of the essence clause” should be given within the section, detailing the contractual obligations of the agreement, she said.

Ms. Harvey testified that although section 15.9 claims the development agreements have been made at “arm’s length negotiations,” she does not believe this is true. She stated her reasoning for this is that both YarrowBay representatives and city staff were compensated from YarrowBay funds. She proposed the city create a liaison team made up of Black Diamond citizens to work with existing city staff. The liaison team would not participate in the funding agreement with YarrowBay, thus they would remain at “arm’s length,” according to Ms. Harvey.

Finally, Ms. Harvey commented on the major/minor amendments process set up in section 12.0 of the development agreements. She noted that the process of deciding whether changes are

minor or major is put into the hands of one individual (the “designated official” appointed by the mayor), and the agreements provide no way for public notification or input in regards to minor amendments. She further noted that all minor amendments would be handled by the mayor, and the city council would have no input. Ms. Harvey suggested the minor amendment process be changed to include public notification and asked that it be made clear if the mayor would need city council consultation before making decisions on minor amendments.

In sum, Ms. Harvey stated that the development agreements lack concise definitions of key terms and words, clear contract end dates/explanations of how they are to be determined, processes that ensure Black Diamond citizens have access to and knowledge of city business at all appropriate levels, safeguards protecting citizens of Black Diamond from undue influence within City business from the Master-developer, checks and balances relating to legal and contractual issues that ensure an “arms’s length” relationship between city staff and the master-developer, and a set of terms and conditions to which any third-tier subcontractor to the city must comply.

She ended by stating the agreements are not ready yet, and the City Council and Mayor need to thoroughly review them.

Monica Stewart, (22516 SE 300th St Black Diamond, WA)

Ms. Stewart testified that she has lived in the area for 11 years and loves living in a small town. She noted that she is a member of Save Black Diamond and believes that although many of Black Diamond’s citizens are not outspoken, they are against the developments. She stated that those for the development are in the minority based on what she has experienced working with Save Black Diamond.

Ms. Stewart commented that Arendt’s concept of “rural by design” only sounds good, and Arendt’s idea of “rural” is vastly different from what one sees in Black Diamond. Moreover, she noted that although 50 percent open space sounds good, open space for YarrowBay does not mean untouched space. She stated “undeveloped land protected by legislation,” as the definition of open space, sounds good, but a pocket park is considered open space and that doesn’t seem like protected space to her. Additionally, she noted that it is unclear where this “protected” land would be located. In order to protect her “sense of place,” she asked that YarrowBay not place a city on top of her small town.

Ms. Stewart added that there are multiple vesting agreements, and it needs to be made clear (the MPD version, development agreement version, or subdivision agreements) which version would be used during build-out.

Ms. Stewart suggested that YarrowBay create a retirement community in Black Diamond, rather than a master development. She noted that Baby Boomers will be looking for places to retire to soon and Black Diamond would be the perfect place. This would keep Black Diamond from becoming a busy city and still provide financial gain for YarrowBay, according to Ms. Stewart.

She concluded that she does not believe YarrowBay will be creating something special or different in Black Diamond and that it will just be like all other MPDs.

Kristen Bryant, (1006 139th Place NE Bellevue, WA)

Ceded time by Trudy Coffey.

Ms. Bryant began her testimony by discussing stormwater and ecology impacts of the developments. She used Issaquah Highlands as a comparable example, stating that the Highlands development faced several unforeseen stormwater impacts that had to be mitigated during the project. Luckily, Issaquah's development agreement ensured constant review of these impacts so they were able to be mitigated quickly and efficiently without undue harm, she noted. In Black Diamond, the citizens want strong review standards and the agreements should be clear stormwater reviews should be done at each stage, according to Ms. Bryant.

She pointed out Black Diamond's Catholic Church at 6th and Baker Street (as another example) which when constructed generated stormwater impacts for Lawson Hills. Originally they had created two storm detention ponds, but eventually they were formed into one larger pond because they were not sufficient, according to Ms. Bryant. If the Lawson properties are further put at risk from run-off, their values may be decreased and citizens could hold the city responsible, she noted. Accordingly, she said, the developers need to be held responsible for any consequences due to their developments in order to protect the citizens.

Ginder Creek, which runs through town has a section near Roberts Dr. and Highway 169 (upper-left hand corner of exhibit 7B), has winter-time floods which are downstream from the proposed traffic circle on highway 169, according to Ms. Bryant. She noted concerns over increased floods of the creek because already there are problems which occasionally result in the road being closed. Furthermore, she said, in the creek there are salmon which could be polluted by water run-off. She stated that the development agreements should have conditions which halt construction if increased storm-water impacts are discovered.

In general, she stated that "success" criteria should be required as each phase is completed before continuing to the next project phase. The criteria should be in the fields of environmental, traffic, and school impact, and success in each one should be founded before the next build-out phase.

Next, she discussed school and school bond issues. Ms. Bryant cited examples of other area school districts that have failed to pass school bonds recently (Tahoma and Snoqualmie Districts), leaving their schools overcrowded. Ms. Bryant suggested that the development agreements should add language preventing construction of additional residential units if a school is needed but a school bond fails to pass. She also asked that language be added that keeps school population from being more than "one school behind," meaning that if there are enough children to warrant a new school, the school would be built before increased school

population. She stated that the answer for getting school bonds to pass is not to build more single-family homes to create more taxpayers with families. Instead, the city should create protections for the school system if the school bonds are not passed, for example restricting build-out, according to Ms. Bryant.

The development agreement states that it takes precedence if there is a conflict with a prior agreement in section 3.1, she said. Ms. Bryant objected to the idea that an agreement between King County and Black Diamond could be superseded by the new development agreements, and she also object to agreements between the Cascade Land Conservancy and Black Diamond being superseded.

The South-Connector Road was not fully evaluated in the environmental impact statement, according to Ms. Bryant, because it was moved during the MPD approval process. She stated that the new road goes through an area with forests and wetlands in order to reach highway 169 and, thus, a supplemental environmental impact statement should be done for this road. She added that the impact statement should be completed before the agreements are approved.

In section 8.2.2, it is stated, according to Ms. Bryant, that fish and wildlife conservation areas are final as shown on the constraint maps surveyed in 2009. Condition 159 of approval also stated that the mapped boundary shall prevail, she said. Ms. Bryant stated that this seems incorrect and the map boundaries should be reviewed at each project level.

Finally, she stated concerns with increased, future development along highway 169 outside Black Diamond because of the new developments.

Carol Benson, (30005 232nd Ave SE Black Diamond, WA)

Ms. Benson served as CFO for several development and construction companies for over 25 years. Her statement dealt with fiscal impact and the funding agreement.

Ms. Benson noted discrepancies in section 13.6 of the Villages development agreement. She stated that 13.6.1 allows for fiscal analysis to be prepared in different formats for phases that do not have to be in line with the city budget's format; however, using multiple formats will not allow for comparative analysis. In section 13.6.6.a, annual review of fiscal results is called for to compare projections of the fiscal analysis and the city's budget; however, she noted, once again no comparison can be made if results are in different formats. Ms. Benson suggested that a single format be required for budget analysis within the agreement.

Ms. Benson noted further concerns with 13.6 and its comparable city methodology for fiscal analysis. She testified that the development agreements mark comparable cities as cities within Washington that have similar characteristics to Black Diamond once the Phase is complete (for example the population after a certain Phase is complete could be the determining characteristic, and the comparable city would be expected to have a population moderately less or more than

the new BD population size). Ms. Benson stated that finding cities with comparable characteristics like population will not guarantee they are fiscally comparable. She cited the example of the city of Chelan which has a similar population size to Black Diamond, but vastly different amenities and a smaller budget. Chelan has multiple grocery stores, a Wal-mart, and building supply stores, all of which Black Diamond does not have, according to Ms. Benson. Moreover, Chelan has a growing economy stimulated by tourism and agriculture in contrast to Black Diamond's stagnant economy, she said. However, Ms. Benson commented, Chelan has an annual budget of less than 3 million, while Black Diamond's budget is around 9 million (largely subsidized by YarrowBay). Fiscal analysis based on comparable cities will be difficult to do without having any cities that have the same characterization as Black Diamond, Ms. Benson summarized.

Exhibit C of the conditions of approval states that the proposed project should have no adverse financial impact upon the city (as determined after each phase of development), but, Ms. Benson noted, Black Diamond is already facing adverse impacts due to the developments. The city has seen no industry, business, or retail development even with the increased, YarrowBay subsidized budget, according to Ms. Benson. Instead, she said, the city has a 6 million dollar liability to the city of Tacoma for water (which was purchased to benefit the new development, Ms. Benson assumed). Additionally, although Exhibit N of the funding agreement has the developer commit to funding 100 percent of 13 staff positions, if the most recent fiscal analysis projects a fiscal benefit to the city, Black Diamond will then have to renegotiate and end up paying for one or more of these new staff positions, Ms. Benson said.

She described further concerns with Exhibit N of the funding agreement due to the handling of its Master Development Review Team (MDRT) compensation. The MDRT will function to review and implement the development permits and agreements and will be comprised of existing staff, new staff, and necessary consultants, she said. She testified that, according to the funding agreement, the developer will fund 100 percent of the costs involved with the MDRT and purchase 3 vehicles for \$125,000; however, the developer can elect to reduce or eliminate MDRT costs for a given calendar year based on market demands, and any permit review not related to the MPDs and costing over 500 dollars must be credited back to the developers. The problem with this, according to Ms. Benson, is that the city will have no use of discretionary revenues until the MPD's are built out and the developer is paid.

Ms. Benson also addressed issues concerning the development agreements handling of developer revenue deficiencies. She stated that the agreements have the master-developer prepare supplemental analysis proposing how projected city fiscal shortfall could be addressed. Ms. Benson commented that one of the possible options the developer has would be placing street maintenance obligations with the Homeowners' Associations. According to Ms. Benson, at hearings last year a citizen asked the applicant's attorney, Nancy Rogers, if placing this responsibility in the hands of Homeowners' Associations was common, and Ms. Rogers responded "yes." Ms. Benson contested this answer, stating that, in her experience working with

developers, this is not the case. She noted that she believes YarrowBay is attempting to deny financial responsibility for the development costs (stating that she believes the company has done this previously on transportation and school issues). Ms. Benson reiterated that development should pay for development, and this section of the development agreement does not fit that description.

Ms. Benson ended her testimony by testifying that she does not believe businesses will be attracted to the new developments. There are already services like Wal-marts, restaurants, gas stations, and grocery stores in the nearby towns of Covington and Maple Valley that meet the needs of citizens in the area, according to Ms. Benson. Businesses will not like that highway access is limited to Black Diamond, she added. She finished her testimony by saying that the development is too big for the city.

Bob Edelman

Mr. Edelman began his testimony by citing, in his words, a minor problem: Exhibit E has a city zoning map that is out of date and doesn't include the East and South annex areas in Black Diamond. He noted that city staff needs to be more thorough in checking the agreements (and exhibits) for other errors and omissions.

He next stated that allowing the current high density residential area in the Villages north property would violate BDMC 18.98.030c (the contiguity requirement). This violation is because BDMC only allows commercial property to be non-contiguous with the rest of the MPD, not residential, according to Mr. Edelman.

Mr. Edelman discussed several concerns with the funding agreement. He stated the major problem with the funding agreement is that it allows YarrowBay to takeover a significant portion of Black Diamond's government. The Master Development Review Team (MDRT) created by the agreement consists of city staff paid for and devoted to serving YarrowBay, according to Mr. Edelman. He noted that the control YarrowBay will establish over city government through this agreement will be vested for 15-20 years.

Citing state law RCW 35A.11.020, Mr. Edelman testified that certain powers are vested to cities by state law and cannot be done away with by current City Council members. He noted that future City Councils must have the ability to change the city's organization, according to state law, and personnel duties and that the current funding agreement does not allow this power.

Mr. Edelman noted the extent of the power the developer would have over city government by citing different parts of the funding agreement including: city employees on the MDRT being funded by YarrowBay and their function as support staff to the MPDs permits and reviews, YarrowBay is given control over the organizational structure of the MDRT and allows the developer to identify additional city staff, YarrowBay is given veto power over changes to the organization of the MDRT because of the requirement of mutual agreement for composition

changes, and YarrowBay is able to reduce staff unilaterally during annual reviews without city approval.

Mr. Edelman commented that there is a conflict of interest for city staff on the MDRT that will be devoted to YarrowBay but still have an obligation to serving the citizens of Black Diamond. Because their salaries would be paid for by YarrowBay, staff's livelihood would depend on the developer, creating a conflict of interest, according to Mr. Edelman.

Next, Mr. Edelman addressed his concern that the funding agreement is not written to be included within the fiscal analysis, thus conflicting with the language in the development agreements. Conditions 156 (Villages) and 160 (Lawson Hills) of the MPD approval permits require that the fiscal analysis should include a MPD funding agreement that will replace Black Diamond's existing facilities funding agreement, according to Mr. Edelman. He stated that the funding agreement is not part of the fiscal analysis, thus it does not meet these approval conditions. Currently, he stated, the funding agreement is Exhibit N to the development agreements and is a stand-alone agreement structured to be executed around the same time as the development agreements, but not actually part of the fiscal analysis section of the development agreement.

He noted further issues with lack of consistency between the funding agreement and the fiscal analysis section of the development agreements. First, he stated, the funding agreement and development agreement differ on how to handle amendments. The funding agreement calls for amendments made by mutual agreement, while the development agreement requires amendments be classified as either major or minor, he stated. He also noted that the development agreement has a different assignment clause than the funding agreement. Additionally, the term of the funding agreement begins with its execution, not the execution of the development agreement. Finally, he noted that the funding agreement specifically refers to itself as a separate agreement than the development agreement.

Mr. Edelman stated that he believes a total re-write of the funding agreement is necessary to correct these inconsistencies. He commented that, even if the funding agreement is able to be a stand-alone document (incorporated by reference into the development agreement), it still must meet the terms and conditions of the development agreement. Moreover, it would need to be executed in advance of approval of the development agreements because its passage would require legislative action that couldn't be part of the quasi-judicial action (which limits public interaction with City Council members), according to Mr. Edelman.

Mr. Edelman testified that an additional issue within the funding agreement is the potential surcharge agreement outlined. He stated that the potential surcharge legislation (that would need to be passed by the City Council) would impose a surcharge on future building permits within the MPDs to recover YarrowBay costs expended under the current BD Facilities Funding Agreement. According to Mr. Edelman, the purpose of this potential surcharge agreement is to

make Black Diamond an agent of YarrowBay and follow the reimbursement clause within the current funding agreement. Mr. Edelman contended that this was illegal under RCW 82.02.020 which allows that no city can impose any tax, fee, or charge on the construction of residential buildings, commercial buildings, industrial buildings, etc. The surcharge agreement would violate this law by allowing a surcharge on building permits, he said.

Mr. Edelman finalized his statement by saying these are just a few of the many problems with the funding agreement. He noted that Yarrowbay has no reason to use these mechanisms to recover costs because they could just recover costs through direct charges to purchasers of MPD property.

Judith Carrier, (24305 SE Green Valley Rd. Auburn, WA)

Ceded time by Glen Carrier.

Ms. Carrier's testimony dealt with citizen concern for the MPD impacts on Green Valley Road. She noted that despite recommendations by the hearing examiner after the previous hearings, there have been no changes to safe-guarding Green Valley Road from the negative impacts of the MPDs. Recommendations for a traffic calming study and a Green Valley Rd. Review Committee were entered into the MPD ordinances, according to Ms. Carrier. Parametrix and the City did the traffic calming study, she noted. Ms. Carrier stated that she did not understand that the Green Valley Road Committee would be created after development construction begins to monitor the road. Ms. Carrier asked what happened to analyzing the needs of the roads and proposing mitigation based on the traffic calming study, as outlined in the previous studies.

The review committee consists of 1 city representative, 2 YarrowBay representatives, and 2 Green Valley Rd. residents, according to Ms. Carrier this is an uneven number. Ms. Carrier stated that so far no meeting of the review committee has ever been convened, despite Green Valley Road residents preparing one. She stated that she wishes the City Council to consider a new condition for the development agreements: dissolve the Green Valley Road Review Committee and create a Green Valley Road Protection Committee. The proposed Protection Committee would serve to resolve any issues affecting the road that are brought forward by residents, the City, King County, or the developer, she said. She asked that the composition of voting members for the new Protection Committee be 2 developer representatives, 1 city representative, 1 King County representative, and 2 Green Valley Rd. residents. The new committee would allow any residents, city representative, YarrowBay representative, or King County representative to call meetings and any of the above people would be allowed to provide input, she noted. Ms. Carrier further requested that proper public notice of meeting dated be given to residents through public postings and regularly delivered newspapers, noting that the adopted city paper (Covington Reporter) does not deliver to Green Valley Rd. area and is not an acceptable form of public notice.

According to Ms. Carrier, the Parametrix study done, “SE Green Valley Road-Traffic Calming Strategies,” assumed that traffic would not impact Green Valley Road. It limited any improvements to the right-of-way and concluded that drivers would use Auburn Highway and Lake Holm Road, instead of Green Valley, she said. Ms Carrier stated that initially these findings may be true, but when gridlock occurs, traffic will turn to Green Valley Rd. Based on the current traffic information collected, it is unclear what traffic impacts will happen and what mitigations will be needed, she stated. Ms. Carrier testified that she thought the new Parametrix study would help envision traffic problems and mitigation solutions beyond the previous ordinances, but it ended up providing nothing of consequence.

Ms. Carrier laid out three conditions for the development agreements she believes are necessary to ensure traffic impacts are thoroughly investigated and proper mitigation for these impacts are planned:

Part A. Add the needed current validation of the new transportation demand model, make certain it is regional, but localized and includes Green Valley Rd. and Lake Holm Road. Confirm that it is well researched and proper. Use it now before construction begins to determine impacts for comparison in future phases. Then verify the chances for funding sources for mitigations that does not involve Black Diamond citizens paying higher taxes.

Part B. Issue a study for Lake Holm Rd. to see if it will be impacted by traffic adjustments because of the developments. Then have monitoring and mitigation measures ascertained, if necessary.

Part C. Offer the residents on Auburn Rd. and Lake Holm Rd. the same option for a Protection Committee like the one previously proposed for Green Valley Rd.

In closing, she asked that the City Council consider her proposed conditions for the new Protection Committee and also consider her conditions for new traffic demand models (for Green Valley Rd, Lake Holm, and Auburn Rd.) that will not burden taxpayers.

Pat Pepper, (28934 229th Place SE Black Diamond, WA)

Ms. Pepper testified that the citizens of Black Diamond have not been given the opportunity to have their voices heard. She stated that she feels the development is being imposed on the citizens of Black diamond.

Ms. Pepper discussed her concerns over noise violations that will occur during build-out. She asked that an additional noise study be required and that the development agreements should not have sole authority over noise mitigation measures.

Ms. Pepper stated that the school district should have controlling authority over decisions concerning schools. State law takes precedent over the tri-party agreement, according to Ms. Pepper, in that it does not comply with RCW 58.17.110 which mandates that appropriate

provisions must be made for schools before approving any subdivisions. She stated that the school district has not agreed that appropriate provisions have been made, thus breaking state code. King County will discourage and not fund schools located outside the urban growth line, she noted, which will require more taxpayer funding through bond levies.

The development agreement falls short of the required 50 percent open space stated in Black Diamond city code, according to Ms. Pepper. She stated that the development agreements should reclassify the mine codes in section 82.3. Ms. Pepper asked that the agreements reclassify a moderate mine hazard area to a severe mine hazard area, according to BDMC 19.10.430.

The development agreements fail to provide off-set trails from the Villages to the city's historic district as envisioned by the city's comprehensive plan, according to Ms. Pepper. She noted that a wildlife habitat protection plan is needed for both non-wetland and wetland habitats.

Ms. Pepper finalized her statement by noting that the MPDs do not suit Black Diamond's character.

Steve Hiester, (20428 SE 222nd St Maple Valley, WA) Chair of the Greater Maple Valley Unincorporated Area Council

Mr. Hiester is chair of the Greater Maple Valley Unincorporated Area Council and spoke on behalf of the council. The Council is an all volunteer, locally elected advisory body to the King County Council with members from the unincorporated portion of Tahoma School District #409, he said. The area Council represents and advocates with King County for their citizens interests, according to Mr. Hiester. He stated the Council's main goals are to facilitate strong local ties/communication between the public and government, support quality education, protect the environment and maintain landowners' rights, promote well-planned growth, ensure rural interests are represented, support health and safety of the community, and promote locally owned business.

The Council has deep reservations regarding the adverse impacts on its constituents because of the large scale of the MPDs, he said. Mr. Hiester noted that the developments are proposed on the fringe of the urban growth boundary (UGB) where there are already transportation issues, especially around SR 169.

Mr. Hiester outlined the Council's three major concerns with the development agreements as being: 1. The additions of 10,000-plus vehicles on two-lane roads in SE King County, 2. Major impacts to the rural area outside the Urban Growth Area (UGA) by siting of up to four new schools that serve urban developments, 3. Exploitation of the rural area by siting a large stormwater detention facility outside the UGA.

In regards to the transportation issues, he stated the overloading of rural area roads like the Green Valley Road is unacceptable as it damages the historic road, damages the agricultural production districts along the road, and serves as a danger to current residents. King County dept of transportation is on record stating that up to a 400% increase in traffic on the road can be expected. This will not be helped by proposed traffic calming devices like speed bumps. Furthermore, the FEIS, DEIS, MPD applications, and development agreements ignored the Issaquah-Hobart-Ravensdale-Black Diamond Road. Despite it being the most direct way SE King County commuters take to Issaquah, Bellevue, and Seattle, according to Mr. Hiester. He remarked that it was probably ignored because traffic mitigation would be expensive and possibly not geographically feasible.

King County Code 14.70.205 requires that county service standards are achieved concurrently with development based on the Growth Management Act, and the concurrency program directly reflects the financial commitments of the adopted CIP currently in effect, according to Mr. Hiester. He stated that the development agreements do not discuss how this required transportation concurrency will be addressed and met.

Mr. Hiester remarked that the adverse impacts on SR-169 (the backbone of transportation infrastructure in SE King County) have been ignored, despite being mentioned in multiple hearings. He added that recommendations by the hearing examiner for a new traffic model were not implemented in the development agreements.

According to Mr. Hiester, MPD 10-946 approval ordinances, Exhibit C, conditions 11-34 detail stipulations on transportation infrastructure, but the development agreements do not give service to the need for a new transportation model, subsequent analysis, and then final mitigation measures. The development agreements also provide no detail on how mitigations will be handled once found inadequate, he said.

A program that is not pro-active is deemed to fail due to inadequate timing and will result in further congestion as transportation mitigation construction is put in place. Rural citizens will be directly impacted by what and when action takes place.

King County Code 14.70 calls for concurrency mandated by the Growth Management Act and MPD ordinances Exhibit B also provides for concurrency at full build-out, but, Mr. Hiester stated, the development agreements fail to address the concurrency measures that will be taken. SR169 will become a parking lot, and the rural roads will become the alternate routes, he said. Black Diamond cannot be irresponsible and burden their rural neighbors with this issue, according to Mr. Hiester.

In regards to school issues, Mr. Hiester testified that schools in rural areas should not be used primarily to serve urban needs. He noted that the Village development agreement (in Exhibit A) shows 4 schools sites within the UGA, but fails to provide the other 2 school locations. He remarked that section 13.3 references the tri-party agreement which shows six school sites with

three outside the UGA (two of which would be on Green Valley Road). He further noted that the tri-party school agreement gives YarrowBay latitude in what school sites will be conveyed to the Enumclaw School District. These schools located outside of the UGA will require unwanted/unneeded infrastructure in the rural areas surrounding Black Diamond such as roads and sewer lines, according to Mr. Hiester. He commented that YarrowBay is clearly placing these schools in rural areas in order to make more money off their land inside the UGA which is available for development. Eventually, he stated, three of the schools in the rural area will require direct connections to Green Valley Road which will further negatively impact this historic route.

Mr. Hiester testified that King County code 14.70.285 requires that minor developments and educational facilities be subject to the concurrency test, and any school facilities must prepare and implement a transportation demand management plan which provides measures to reduce single occupant vehicle travel and demonstrate how monitoring of the implementation of these new traffic measures will be done, before the issuance of a building permit. Mr. Hiester asked how the development agreements will ensure this concurrency is met.

MPD ordinance 98 in the conditions of approval states that all school sites will be located within the MPDs or within 1 mile of the MPDs, according to Mr. Hiester. He asked what guidelines suggest that 1-mile is a walkable criteria for school children. He summarized, saying schools should be placed where the students live, not in the rural area just because the land is cheaper.

In regards to rural areas enabling urban development, Mr. Hiester commented that rural areas should not be used for urban facilities. He stated that the planned stormwater detention lake should not be placed west of the UGA just so the developer can save space within the MPD. MPD condition 74 asks for a stormwater plan that should discharge rates and redirect stormwater overflows, but, Mr. Hiester asked, where is this stormwater plan and how does it justify an off-site detention lake? Mr. Hiester said that on January 5, 2011, King County provided comments stating that a detention pond placed over the UGA would be in violation of designated open space area (as per the 1996 Black Diamond Urban Growth Area Agreement) and would not be accepted by the County. Mr. Hiester noted that his council agrees with the County and will lobby to deny any permits to place this detention pond in this designated rural area.

In conclusion, the MPDs directly exploit the rural area and the development agreements must be rejected, re-planned, and re-written, according to Mr. Hiester.

Gwynllyn Vukich, (15626 SE 352nd St Auburn, WA)

Ms. Vukich's testimony dealt with her concerns over traffic mitigation plans within the development agreement.

Ms. Vukich stated that she lives on SE Green Valley Road, 2 miles from the intersection with Auburn-Black Diamond Road, noting this area is the heart of the King County agricultural

district formed in 1985 as part of the County's Comprehensive Plan. Within the upper green Agricultural Production District there are 3,500 acres and 904 acres are part of the Farmland Preservation Program, according to Ms. Vukich. She further noted that in the mid-1980s King County spent \$3,282,528 purchasing the development rights to these 904 acres (with additional property donations valued at \$40,966 for a total value of \$3,323,494). With inflation, the value of these properties would be much more, she said.

Ms. Vukich asked who will be paying for the proposed traffic mitigation plans for Highway 169. She noted that there seems to be a lot of work and expressed concern because the mitigation efforts would not begin until after the first 850 dwelling units are built.

Ms. Vukich stated additional concerns over the lack of concrete projects planned for traffic mitigation on Green Valley Rd. The Parametrix study for the road identified it as a collector arterial within King County jurisdiction, according to Ms. Vukich. This classification of a road is intended to emphasize property access over mobility to a greater degree compared to the principal and minor arterial classifications associated with other roads, including Auburn-Black diamond and Lake Holm Rds., she said. Ms. Vukich commented that Green Valley Rd. will not be able to handle the projected traffic increase of 300-400 percent. Citing King County Comprehensive Plan Policy, Ms. Vukich contended that traffic increase on Green Valley Rd. would be in conflict with section R-150 because it would result in a negative impact upon farming activities that depend on the road for various activities including moving equipment, marketing products, and moving animals. R-150 states that the county should work with cities to protect surrounding rural land from development impacts and is violated by the huge traffic increase, according to Ms. Vukich. She additionally noted that increased car emissions could pollute the crops growing along the road.

Ms. Vukich stated that she does not believe reducing the speed limit along the road will have any traffic calming affects because vehicles, including motorcycles, already ignore the speed limits. She noted an article entitled "Motorcycles Roads North West" which describes the windy, narrow, sharp turns of Green Valley Road, but still encourages motorcyclists to go on the scenic route and to take the curves "near the recommended speed."

Citing ordinance MPD approval condition 33, Ms. Vukich stated that she called and emailed YarrowBay and asked to be part of the Green Valley Road Review Committee, but never heard back from them. She asked when the MPD traffic studies would begin and who would be part of the review committee that is supposed to be established. She further stated that she believes, even if the Review Committee had met, YarrowBay would have an unfair advantage because of the limited number of Green Valley Rd. residents allowed on the committee. She requested that the ratio of committee members be corrected before the committee actually meets.

Finally, Ms. Vukich stated her concern that no additional fire, aid, and police are covered for Green Valley Rd. in the development agreements. She testified that the road already has a high

number of accidents, and a 300-400 percent increase in traffic will put a heavy tax-burden on the residents to provide the additional emergency services that would be needed. An additional fire station in Black Diamond is not enough, she stated.

In sum, Ms. Vukich testified that the only mitigation that will solve the problems noted above is to decrease the number of dwelling and commercial units allowed in the development.

Saturday July 16, 2011

Robert Rothschilds, (29411 292nd Ave Black Diamond, WA)

Ceded time by Sally Neary

Mr. Rothschilds stated that he has concerns with several areas of the development agreements, but focused his testimony on issues of storm water. Mr. Rothschilds notes that one of the key issues involving storm water concerns phosphorus loading in the watershed. Rothschilds stated that the MPD would create large amounts of run-off water, and that although the City Council has put in a pretty strong condition to keep the run-off from polluting the water-shed, the fact is that the run-off water would still cause pollution.

Mr. Rothschilds pointed out conditions 81 and 85 in the development agreements, where the applicant is required to estimate the amount of annual loading of phosphorus (Exhibit O contains this estimate). Mr. Rothschilds noted that estimates are inherently imprecise. Mr. Rothschilds stated he believes that the agreements only contain policy, such as low-impact development and complying with other previous regulations, and no real measurement or calculation based on numbers. Mr. Rothschilds alleged that there is no analysis to show that the additional phosphorous estimated doesn't kick over the TMDL and that the applicant realizes it would be very expensive to test this. Mr. Rothschilds stated that the condition of no-net increase is not "above and beyond" the conditions, but is fundamental to the conditions.

Mr. Rothschilds noted that while he is not an expert, he knows a lot about storm water. He requested that the Hearing Examiner use his vast knowledge to make sure the "no-net increase" is adequately documented to make sure it continues both during building and after the build-out. Mr. Rothschilds remarked that the no-net increase would have to be structured to work during both building and habitation. Mr. Rothschilds stated that the community must rely on the commitment and they want to ensure it is stable. He also noted that the staff report does not address these conditions fully.

Gil Bortleson, (23831 SE Green Valley Rd. Auburn, WA)

Ceded time by Marlene Bortleson

Mr. Bortleson testified that rural communities are alarmed by the massive development in this area of King County, and there is concern regarding the force-fit of large development in an area

not set up to deal with issues that come with it, such as traffic. Mr. Bortleson noted that there are other areas, besides Black Diamond, that may be affected by spillover.

Mr. Bortleson stated that he did not feel that some of the issues of the development agreements had been adequately addressed. Mr. Bortleson noted his belief that open space is critical for the new communities for a number of reasons. He noted the 50% open space requirement is very important, and connected that to Mr. Arendt's discussion with the city council. Mr. Bortleson stated that the development agreement provides for less than 50% of the required open space for the total project area. He pointed out that, based on Figure 4.3-1, that the 42.2 % of open space for the Village and the 38.8% for Lawson Hills did not meet the 50% standard. Mr. Bortleson referred to Arendt's argument that larger amounts of open space in developments create benefits for homeowners, business and for the developer. He referenced Black Diamond Municipal Code 1898020a, which discusses the public benefits created by open spaces. Mr. Bortleson noted that the lack of sufficient open space will cause the public to lose the benefit of protected vegetation.

He cited a statement from the prior Hearing Examiner Decision which stated that, "The agreements presumably do not place a cap on the amount of open space..."(p.239) He stated that the lack of 50% of open space is a violation of Black Diamond Municipal Code. Mr. Bortleson claimed that the applicants have not met the open space agreed upon guidelines noted in condition 151 of the development agreement. He referenced condition 68 of the Villages which requires a tabular list of the acreage of passive and active open space.

Additionally, Mr. Bortleson testified that the development agreements need to be modified to protect areas susceptible to groundwater contamination. Rural residents should not have to worry about water supply because they rely on wells, he said. A risk assessment report for off-site wells and springs should be completed to protect and inform well owners, he added.

Gordon Moorman, (26221 Lansberg Rd. SE Ravensdale, WA)

Mr. Moorman noted that he is a citizen of Ravensdale and a member of the greater Maple Valley Unincorporated Council and chairs the transportation committee; however, he is purely testifying as a citizen of Ravensdale. He commented that he has been a developer in the area for 25 years. Mr. Moorman stated that he recognized the right of developers to build in a responsible way, but he believes the traffic study done by the applicant left out a major corridor that will be affected by the master development. Moorman focused his concerns on the road going through Maple Valley onto Highway 18 heading to I-90, stating that the intersection of Kent Kangley Road and Lansburg Road has already been identified by King County as needing traffic mitigation. He claimed that this has been a major truck route for the past several years and it is anticipated that the increase in traffic will continue. He stated that there are many safety concerns on this road due to drive-ways that have limited view access, with a number of accidents occurring in recent years.

In addition, Mr. Moorman expressed his concerns with the many wildlife accidents that occur on the road, and a large amount of traffic backup at the Kent-Kangle/Lansburg intersection. He noted that citizens of Ravensdale have seen the increase in traffic here already, prior to the new development. Mr. Moorman stated that accidents occur often on Lansburg Road and that he believes that it is foolish to think people will not take the route through Maple Valley; he stated that a more detailed and a wider-scope traffic study needs to be done. Mr. Moorman pointed out that the local people of the Maple Valley and Black Diamond area have petitioned (Exhibit 35) about their concern over the route between Black Diamond and Issaquah that they felt had been left off the table in early analysis of traffic models.

Karen Meador, (32404 169th Ave SE Auburn, WA)

Ms. Meador stated that she is on the board the Association of King County Historical Organizations. Ms. Meador stated that she takes issue with the term “rural by design” and believes that the developments have been ill considered.

Ms. Meador noted that she is concerned with traffic situation between Black Diamond and Auburn. She stated that the narrow, winding rural roads in the area were not intended to handle large amounts of traffic, and she remarked that expanding many of these rural roads would be extremely costly and that King County is unlikely to subsidize these road costs. She referred to some specific dangers of winding roads including blind driveways, and heavy traffic. Ms. Meador feels that the impact of the building projects will impede traffic.

Ms. Meador stated that gridlock is not pro-business and that she believed that businesses will be less likely to choose the new development due to the traffic and other issues. She also claimed that she believed the chances of recruiting family-wage employers are low due to the traffic issues, as well as due to the presence of coal mine hazard areas. She stated that it is possible that there are mines that the city is unaware of, and these could prove to be potentially dangerous.

Ms. Meador noted out that the Green Valley area is part of the King County Heritage Corridors Project, and that Green Valley Road, which will be impacted by this development, is a designated historical road. Meador testified that she is concerned that the historical sites will be decimated by the creation of this development, and that the development will make access to historical and recreational sites more difficult. She noted that, in addition, the area is a designated Agricultural Production District, and this would also be negatively impacted by the MPD.

Harvey Senecal, (24306 Roberts Drive, Black Diamond WA)

Mr. Senecal identified himself as a local business owner.

Mr. Senecal requested that a decision be made to move forward with YarrowBay developments so that Black Diamond can grow. Mr. Senecal stated the development plans will be beneficial

for the city and that the plans are detailed and include full consideration. He also noted that he believes that the development plan will provide new jobs and service opportunities to the city. Mr. Senecal stated that YarrowBay has already responded to citizen concerns and expert advice. He declared that growth will enhance tax space and bring more patrons to the community, and that business owners welcome the growth.

Patricia Sumption, (10510 11th Ave NE Seattle, WA)

Ms. Sumption identified herself as a representative of the Friends of the Green River. Their mission is to protect environmental and recreation values around the Green River, she said.

Ms. Sumption focused her testimony on the issues of storm water retention and run-off. She noted that the developments will mean replacement of natural surfaces with impervious surfaces. Of primary concern for Ms. Sumption, in her testimony, was the large amount of impervious soil replacements which she claimed will result in trouble and contamination for the Green River by causing run-off of potential pollutants into the ground and into bodies of water. She argues that development in the area should be done with "lowest impact technologies."

Ms. Sumption called for limited development, the use of lowest-impact technologies, more open space, and wider buffers & wildlife corridors, stating that keeping as much the way it is as possible is the best thing for the watershed. She also noted that grading practices should be changed to protect against increased impervious surfaces. Ms. Sumption remarked that development should be focused in already developed areas in order to protect rural areas, and Ms. Sumption argued that the development agreements must be made to keep the functions of the current water system the same - as natural as possible - allowing native species to be healthy and abundant.

She stated that water quality and quantity will also be impaired for the Green River and other parts of the watershed as a result of development, and that this will impact both humans and wildlife.

Angela Jennings, (21223 SE 351st St Auburn, WA)

Ms. Jennings identified herself as the Secretary-Treasurer of the Diamond Springs Water Association and requested receipt of future notices for the Diamond Springs Water Association.

Ms. Jennings stated that the Diamond Springs Water Association believes that the projects are a potential hazard to their current water supply and that the Association has expressed concern to the State of Washington Department of Health, who has jurisdiction over their water compliance. She noted that the Association would be sending a letter within the designated time period.

As a resident of Green Valley, Ms. Jennings stated her belief that the pollution created from run-off due to the development will have a negative effect on the residents of Green Valley, since water runs downhill. She noted that the water quality, wildlife, and fisheries will all be affected

negatively. She also noted as concern for the water supply and discussed issues with construction traffic, noting problems with gravel trucks during the Sea-Tac runway project.

Ms. Jennings also expressed concern for the increase in traffic on Green Valley Road, and expressed her belief that the developments will cause a further increase in an already large number of accidents that occur on the road. She feels that the development is simply too big, and is hopeful that the developers will consider the lives of the people in the community of Green Valley.

Joe May

Mr. May noted that many concerns have been addressed in the development agreements and that he believed that they are very thorough for the most part. He expressed his appreciation that the mayor attended all of the hearings. He noted that the developer has been looking for certainty throughout the process. Mr. May emphasized that the residents are also seeking certainty that the rural and historical character of their city will not be erased, that gridlock will not occur, that wetlands will not be degraded, that taxes will not rise to the level of burdensome. He stated that the citizens want same certainty and respect that has been given to the developer.

Mr. May is concerned with the general lack of clarity in some conditions, and cited as examples MPD condition 134 (10.5.3, 10.5.2), which states the addition of one or more more expansion parcels should have no effect on agreement. May stated that there have been additions of homes that add up to a total home at build out of 152% gain on the comp plan. He commented that the expansion parcels should have to go through the same process as any other development plan, but this condition (134) doesn't require this. He said is looking for certainty of just how many homes will be built and stated that there are many other inadequate conditions in the MPD.

He provided the example of Condition 193, that provides for a fee in lieu of constructing offsite recreation facilities that is unclear. He also cited other conditions (87 & 13.2, 120) dealing with logged parcels and tree inventories, the funding agreement (Exhibit N), noting that they were further examples of the lack of clarity in the development agreements. Mr. May stated that he wants the same certainty that the developer wants.

Mr. May testified that he sees the hearing process as the last chance of the citizens to gain clarity during the process. Mr. May concluded by stating that the citizens needed certainty in the development agreements, and that the hearings must provide clarity, confidence, and certainty.

Cindy Wheeler, (30221 244th Ave SE Black Diamond, WA)

Ms. Wheeler requested that the hearing examiner make clear to the city council their powers and abilities in addressing the recommendation, wanting them to have informed and impartial information as to their role in the process, and she sought assurance that everything submitted during this hearing make it to the city council, stating that the council had previously removed

items submitted by citizens during the MPD process and added changes made by the applicant after the completion of the process. She requested liberty and justice for all.

Ms. Wheeler then referenced condition 85, which addresses the creation of a Water Quality Review Committee, which was called to be created under the condition (along with two others which are called for, the Green Valley Road Review and the Noise Review Committee) and noted that this is an actual requirement prior to MPD approval. She noted that the applicant states that the committees will participate in the process with sharing of ideas, issues and concerns. Wheeler stated that the obvious issue is the failure of the applicant to create any of these committees to date even though conditions requiring formation of committees are from September 2010. She stated that due to the lack of creating the committees, no input from these committees was included in planning the present proceedings, and she is concerned that the process reflects the concerns of the staff and the applicants only. Ms. Wheeler remarked that the groups required by the ordinances cannot have any impact if they are formed after the approval of the agreement.

Ms. Wheeler expressed her concern regarding the use of mine hazard release forms. She noted that the use of these forms by future home owners, which release the city of any liability, demonstrate the applicants understanding of the inherent dangers without having to accept responsibility for the possible outcome; she noted that this seems to her to go against State Law. She cites Washington State Code on development agreements, RCW36.70b.104, which she claimed indicates that there is no attempt by the applicant to address, the issue a serious threat to public health and safety as required.

Regarding open space, Ms. Wheeler stated that the development agreements, MPD ordinances, and MPD guide from applicant all provide different calculations of the total amount of open space. She testified that the staff had been requested in writing to provide a detailed accounting with the measurements of open space; citizens were told that no such accounting was available. Ms. Wheeler claimed that open space reporting is too vague, and requested the Hearing Examiner to direct the creation of a calculation of open space that is detailed and more parcel-specific. She commented that all parties should be clear on this data.

Ms. Wheeler then addressed the issue of the funding agreement, and stated that the funding agreement established a master development review team, who she identified as paid by and devoted to serving YarrowBay. She claimed that it doesn't simply reimburse the city for expenses, but gives an unprecedented level of control over key functions of government by the applicant. She testified that this is a violation of state law and contrary to common sense.

Joe Lombardo, (27661 236 Ct. SE Maple Valley, WA)

Mr. Lombardo requested approval of the proposed development agreement. He remarked that the agreements were thoughtful and well-planned, and will allow Black Diamond to grow in a smart way. He stated that Black Diamond will benefit in new jobs created by construction,

employment, and many new services, and commented that is impossible to think that Yarrow Bay can anticipate every issue that may come up. These MPDs will set example for further growth and have undergone a very long, detailed, and thought out process.

Brian Derdowski

Ceded time by Sharon Meece, Howard Meece, Blake Snyder, Dorothy Snyder, Bill Mcdermot

Mr. Derdowski began by noting that he believed that, regarding the development, revenue had been over-forecasted and environmental impacts under-forecasted. He remarked about his prior vote against project due to the number of defects that he perceived in the plan.

Mr. Derdowski also characterized the judicial proceedings of the city council regarding the development as “quasi-judicial” and illegal, referring to the Development Agreement Law as the “Immunity from Democracy Law.” He claimed that vested rights law, combined with regulatory reform legislation from 1995, called the Development Reform Statute, cut councils out, and freezes science and democracy. Mr. Derdowski stated that the agreements are voluntary contracts and should not be subject to quasi-judicial rules; he noted that what went on in the city council meetings “would make you sick.” Mr. Derdowski testified that he believes that the city council was given bad legal advice, and that they were unaware that they could impose regulations under SEPA. Mr. Derdowski calls upon the Hearing Examiner to show the city council what they have the jurisdiction to do.

The following is a summary of Mr. Derdowski’s comments on his own written testimony that he submitted for examination:

Development is a “voluntary” legislative contract, and the city cannot be compelled to adopt an agreement. The applicant has no fundamental right to a contract. The city council has the authority to amend the development agreement based on its own judicial power. The council has the authority to amend the agreement based on its judgment, as it is fundamentally legislative. Also, it is subject to the public participation requirements.

The development agreement is a “stand alone” document, with authority established in state law. It must be consistent with the Black Diamond municipal code which is independent of whether MPD approval is consistent with code. The development agreement must prove that it is consistent with the code.

The development agreement can have its own conditions based on the code or FEIS. If the MPD approval is silent on an issue in the Black Diamond code, a condition may be added as long as it conforms to the code. Recommendations based on conditions from FEIS, are open to discussion since there is an unmitigated environmental condition. Regulations made by the Hearing Examiner that were deleted by the City Council are open to discussion because by definition there is an adverse environmental impact that cannot be mitigated. The FEIS is the underlying

document on which the development agreement is based. The development agreements environmental impacts are different than the MPD. Site plans and documents for the project have changed over the past two years and design criteria now go beyond what was in the MPD permit approval. New provisions regarding accessory buildings and attached buildings were not included in the MPD approval as numbers have gone up based on annexation and accessory dwellings. The development agreement has maps and provisions that were not evaluated and includes as provision that allow changes to be made by minor amendment.

The development agreement is subject to SEPA, as a separate review. The SEPA official claims prior documents are sufficient, but his findings have not been published. Public hearings are the best and possibly only chance to address problems of this nature, and citizens should be allowed to speak on issues of SEPA.

The City's approval of the MPD included at condition said that a development agreement had to be made before any permit was received. Three applications were approved as complete, but this is contrary to the master plan MPD. This violates the code and approval.

The following are a summary of verbal comments made by Mr. Derdowski on his written section by section review of the development agreement:

2.3.1

This provision says the site plan is too small to be meaningful, and the scale of the constraints map is not sufficient to show appropriate environmental boundaries. Where is the detailed map? Is the map being changed?

3.0

This provision says the development agreement supersedes all previous agreements. Doesn't consider code and law.

4.1

This provision amends the land-use plan map. MPD approval was for a current map, and did not allow for the amendment of the map. The details of 4.1 rise to the level of project level review but the EIS it is based upon is a "programmatic" one. The impacts haven't been adopted but must be.

4.2

This provision allows for single family attached units.

4.4.8

This provision allows amendments to the design concept and land use plan without amendment process.

4.4.9

Amendments to roadway alignments are allowed without amendments.

4.7

Allows any development parcel to be converted to school use with minor amendments. This is a problem because commercial to residential would possibly be in violation of GMA & zoning code.

4.5

This should be extended so that if the city knows there is a pending development, there should be some sort of way for mitigation and allow people to create buffers for their building zone.

4.6

Allows for concurrent development for all expansion parcels. This is before even regular development could start without planning or rezone process.

4.7.1

There is no definition of size or other characteristics for field offices.

4.7.2

Commercial development allowed within neighborhoods by minor amendment and administrative review, but there is no limit in terms of size.

4.7.3

Accessory dwellings allowed.

4.8

“Target” unit counts by phase. This is not detailed enough; the use of “target” is too vague.

4.10

The life of the MPD will assume to have been fully mitigated, requiring no change or amendment. The city is undermining the framework and process of regional planning.

5.2

Setbacks are too small, allowing encroachments, and other inconsistent design standards. (Enters Gig Harbor design standards)

5.4

Weak sign standards and regulations.

5.5.1

Exempts schools and utility structure from design standard. No landscaping would be required.

5.5.2

There are no standards for mass producing.

5.5.5

Weak street tree provision. Every 30 feet for a tree; also allows the trees can be grouped.

5.5.7

Allows applicant to delay design standards by three years by bonding. They have three years before they even have to plant landscaping. Creates and aesthetically unpleasing project.

6.4.2

Design and location of offsite connection roads to be determined by collaborative process which is undefined (referenced exhibit 7E) and violates municipal code, SEPA, permit approval.

6.4.3

Threshold dwelling number for the pipeline road is too high.

7.1.5

Requires the city to inspect all improvements within one day, provide report in 7 days. It doesn't delineate between complex or simple projects. Need provision for holdback during a certain period of time; they shouldn't have to release bonds within 14-day limit.

7.1.9

Need for a hybrid in this agreement. Capital facilities can be charged and paid directly to facility

7.2.1

Accepts applicant's rights that they own certain amount of water a day. The source from where these numbers came from is unclear. Water rights may be in doubt, especially because there may be less water than anticipated. Includes a provision that water certificates wouldn't be needed, which is a violation of health code and other codes.

7.3.1

Guarantees sewer availability for the entire build-out and eliminates requirement for sewer availability.

7.4.3

Provision sets forth storm water management "GOALS." Goals are meaningless; there are no details regarding this management process.

7.4.4

Vesting based on phases, while it ought to be based on implementation. Could be dealt with by using SEPA.

8.2

This freezes sensitive area review during the life of the project. There is fear of violations occurring based on this. This will cut SEPA out of building process.

There should be required barriers such as silt fences during build-out rather than just markings. Allows alteration of sensitive areas.

9.2

Delays construction of parks until certificates of occupancy for 60-40%. Delays the construction, not the completion.

9.3

Allows trails, crossings and encroachments in sensitive areas.

9.4

Allows for storm water facilities to be considered open space, even if underwater 6 months out of year.

9.5

Location of recreation facilities offsite. The level of service for recreational sites is based on population, which is not suitable.

9.7.3

Trail and amenities (such as restrooms) are subject to veto by applicant. Trails are created through implementing project approach.

9.9.1

Sensitive areas should be dedicated as conservation easements.

10.3

Dispute resolution process cuts out the public and the councils. Need a provision for appeal to the Council, not just be done by the mayor.

10.4

Determination of “major” and “minor” are vague, cuts out the council for review of land use actions.

10.5

Expansion parcels just a minor amendment

11.1

Allows timing of development and infrastructure to be changed without amendment to MPD approval and development agreement.

11.3B

The applicant can come in and build public facilities, and then the public that follows would have to pay a percentage of it.

11.3.1

Table of onsite regional facilities, but no applicability of the table is noted.

11.4

Provision allows the development to be occupied before regional facilities are complete. The growth will occur before the facilities are constructed.

12.3

Creates a design review committee that is totally under the control of the applicant.

12.5

Establishes the procedure for reviewing projects. “The city shall take a collaborative approach...” to addressing any issues. Is intimidating to staffers who may fear losing their job.

12.8.2

Attempts to vest certain applications that don't vest.

12.8.5

Links together the development review process and MPD. One is a legislative action while the other is a permit review. These shouldn't be combined.

12.9.1

Allows applicant to defer any required improvement if bonded. Appears to be inconsistent with procedure.

12.10.2

City will not issue a permit if another city sues for not meeting an agreement.

12.13.3

Allows amendments to the school mitigation agreement to be processed as a minor amendment.

13.4

Public Safety level of service is weakened.

13.6

Establishes municipal finance based on population only. Many factors affect municipal finance, and population is only one. There is no appropriate allowance for inflation. There is no third-party review by experts in finance. No documentation that finances were looked over by anyone with expertise.

13.7

Inadequate provision for enacting noise standards and requirements from county and state. No criteria for determining measurement, performance standards, enforcement plan, etc.

13.9

Fees for general government are unclear.

15.1

Permanent applications are vested from 2009.

15.3

Deals with assignment. City must release applicant of liability, and then must try to determine who is responsible. The city should be able to deny the assignment.

15.7

Exhibit list only includes summary of prior agreements included, but not all of language. Amendments to some exhibits can be done by minor amendment.

15.11

Excludes third party beneficiaries. What if the city were to dissolve? Who will defend the people and their contractual interests?

15.12

This should specifically exclude any instruments and documents that require legislative action.

In conclusion, Mr. Derdowski stated that he is shocked by the agreement, and noted that he will be providing more exhibits at a later date. He noted that he understands the difficulties faced by staff, the mayor, council, and the Hearing Examiner.

Carol Lynn Harp

Ms. Harp testified that the developments have swollen to a too large size and cannot provide growth at reasonable rates and commented that the traffic model has not been updated and the model is flawed. She stated that development must pay for development because there is no regional or state funding. Ms. Harp noted that the development agreements do not provide the proper amounts of funding for the problems that could be faced. She stated that public transit services are already being cut, but the developments would create a greater demand that would not be provided.

Ms. Harp stated that school locations need to be looked at in order to ensure that they are within the development area and do not go into the agricultural areas, which she suggested might not be an appropriate use of land. She noted in addition that school bonds are not guaranteed, and she feels that provisions should be entered in the agreement that could halt construction until adequate schools are built.

With regard to the issue of sensitive areas, Ms Harp noted that mine areas are not necessarily all marked on present maps. Natural disasters could pose problems to the agreements. Wildlife habitats will be impacted by development as well.

In terms of the financial impact, Ms. Harp noted that concerns are based on assumption that these homes will be built, sold and occupied, but she is concerned with the present real estate market. Ms. Harp is concerned that the distance from employment and services, commuting issues, and environmental issues will cause problems in finding homeowners and businesses for the new developments.

Tim Nickson, (25565 Baker St. Black Diamond, WA)

Mr. Nickson noted that he is a Director on Enumclaw School Board, but stated his comments are independent and personal.

He stated that there have been concerns over the decisions made by the city government throughout this process. Nickson asked for the creation of a comparative analysis pertaining to proposed legislation that would provide clarity for citizens in order to provide perspective on the decisions being made.

Melanie Gauthier, (25565 Baker St. Black Diamond, WA)

Ms. Gauthier stated she is the current director of contracts for the Boeing company which gives her some background in contract issues.

Ms. Gauthier first commented on the issue of schools. She stated that the school districts cannot legislate. Public hearings should have been held by the city in regards to the tri-party agreement, since the school district didn't have the authority to do so, but they weren't, she commented.

Ms. Gauthier then referenced several sections of the development agreement which she feels need clarification (numbers reference Villages, but also apply to Lawson).

She noted that in 7.1.4, which concerns bonding, the sections needs to also specify developers, transferees, or assignors to make it clear that the bonding will continue on throughout the project.

Ms. Gauthier remarked that in 7.1.5 (12.9.2) , which states that there should be a reasonable effort to inspect within 1 business day, 1 day is not reasonable for any business and more time is needed. She said she could possibly make the deadline five days.

She noted than in 7.1.6 (12.9.3), she feels that the release of bonds should change to after completion of the occupancy limits because it is unknown how long it will take for full occupancy of the subdivisions.

Ms. Gauthier commented that in 7.1.7 , which deals with water, sewer and storm water, privately owned easements should be shown as part of the plat and the actual plat submittal should be the responsibility of the developer, instead of those who have the easements.

She referred to a 7.1.9 statement that the master developer will not use current infrastructure but build their own, arguing that this may not be true and that the developer may have to eventually be hooked into the city lines.

She stated that in 7.2.3, the water connection agreement is misleading, citing a WSFFA agreement, but not giving specifics; more information is necessary.

Ms. Gauthier remarked that she wished the sewer design and construction standards, noted in 7.3.2, would be expanded to include standards of King County facilities.

Ms. Gauthier requested clarification of 15.6, stating the need for a full disclosure statement for all authorized parties since “limited liability partners” may potentially cause problems.

With regard to the funding agreement, Ms. Gauthier claimed that it is a clear conflict of interest for both parties. She stated that city staff should have been excluded from creating the funding agreement because they received financial gain. She testified that the new funding agreement was unprofessional and not up to standards; the funding agreement should be considered a separate agreement, and the current city code states that permits and fees are supposed to compensate city staff. She stated that a great concern comes from what she notes as the high salaries of city staff, and claims that over-inflated salaries could cause YarrowBay to say they are over-paying for staff and seek recourse from the city. Ms. Gauthier asked that the city set baseline salaries and more realistic fee schedule.

Brock Deady, (322424 1st Ave Black Diamond, WA)

Mr. Deady noted his concern regarding taxes, fearing that home sales will be weak and that the projected growth may not be reached. He questioned who will support the Black Diamond capital improvement plan if the development properties do not sell.

Mr. Deady also noted his concern that the proposed development will not make acceptable habitation for wildlife.

Regarding the issue of traffic, Mr. Deady testified that the increase of the houses in the city of Black Diamond will eventually increase the traffic and stated that if the traffic growth is over 400%, peace and relaxation will be lost from the town. Mr. Deady stated that recent traffic accidents (due to increased numbers of cars on the road) have created miles of back-up on the current roads; he noted that there is no funding available to improve roads and stated his belief that the developer should provide road improvement to deal with new traffic issues.

Mr. Deady stated that he believed that the developments should happen in small phases and at a slower pace, so the project could be consistently re-evaluated as it went along; this would make it more comfortable for many citizens.

Sheila Hoefig, (23204 SE 312th St. Black Diamond, WA)

Ms. Hoefig stated that she is a resident and active member of the community. She testified that she is a survey engineer and worked for the state of CA in transportation and utilities. She remarked that she moved to Black Diamond for her children to raise them in a small town. She stated that she feels that the YarrowBay developments do not fit the rural community and its surroundings. She noted the lack of funding for new roads & schools, and need for environmental preservation.

Ms. Hoefig noted the lack of open space in the project does not meet the BD municipal code. She stated that section 4.46 must be changed in the development agreements. Ms. Hoefig testified that open space is a primary component of justifying the MPD of this size, but the needed amount of open space is not fully guaranteed.

She noted that walkable parks should be part of the community, but the development agreements do not necessarily guarantee these parks and do not specify a time for building said parks. Section 9.5.1, calls for .25 mile walking distance to park, but allows for offsite replacement which lacks clarity, she said.

Ms. Hoefig noted her concern over DA section 9.5.2, and 9.5.3, which deal with the joint-use of school sites, allowing them to be used for open-space credit. Ms. Hoefig stated that there shouldn't be joint-use of elementary school parks and open space included in calculated credit by the developer. In addition, she stated that the developer shouldn't be given open space credit for the Lake Sawyer Park. She commented that Lake Sawyer Regional Park is a passive park that is under the control of the city; park development is the city's responsibility, and shouldn't be connected with YarrowBay. In the deed for the park she claimed that the park property does not have to become an active piece of property and it is up to the citizens to decide how it will be used.

Erika Morgan, (33624 Abrams Ave Black Diamond, WA)

Ms. Morgan testified that everyone in this process wants the best quality project to move forward. She noted there are small and large places where there are places of betterment in the plan proposed by YarrowBay and the city and that these hearings are a place for all parties to provide their insight.

Ms. Morgan discussed a previous failed sewage treatment plant where citizens objections were ignored during the planning process. The BD citizens want to protect the city and its reputation by having all considerations addressed by responsible third parties, according to Ms. Morgan.

Ms. Morgan testified that as a child she wanted to live in Black Diamond because of the special type of community where everyone interacted. She said she liked that sanity and common sense prevail in Black Diamond, and everyone works toward common goals. Black Diamond's special character comes from its beginnings as a company town with a commonality of purpose, she

stated. As a mining town, the city was self-sufficient with high-quality services provided, Ms. Morgan noted.

Ms. Morgan remarked that when creating the Black Diamond Comprehensive Plan, the people wanted to create an integrated whole town plan that integrated the new town with a sense of purpose to the old town. The city wanted to protect wetlands, create self-sufficiency again, and make growth incremental (slow-paced), and, according to Ms. Morgan, it wanted to abandon commuter areas, out-sourced schools, get rid of the driving community and have a walking community, and wanted less dependence on private amenities.

Additionally, Ms Morgan testified that the sign on Lake Sawyer Road that declares the development is in a deplorable condition. Ms. Morgan stated that she believes the city should not be in the business of policing signs, but instead let the sign be a direct reflection upon the company responsible for the sign. The sign on Lake Sawyer road is in awful condition, a poor reflection on YarrowBay.

Aaron Scott, (33524 Abrams Ave Black Diamond, WA)

Mr. Scott testified that he wishes to be on record to testify in front of the city council. He stated his main concern is with the 18 homes per acre and losing the wildlife corridor within Black Diamond.

Staff Rebuttal

Steve Pilcher, Community Development Director, City of Black Diamond

Mr. Pilcher testified that the city of Black Diamond is designated as an urban growth area, thus growth is expected. Four dwellings per acre is considered to be urban growth (baseline, really). He noted that “rural by design” is a term created by Randall Arendt and the Comprehensive Plan uses his findings. Mr. Arendt found the YarrowBay findings to be consistent with his coined term, according to Mr. Pilcher.

Mr. Pilcher stated that the FEIS has been determined to be adequate already (both by the city council and hearing examiner) and that is not what these hearings were about. Impact statements did address impact mitigation, he said. Similarly, Mr. Pilcher remarked the MPDs have been approved and the ordinances cannot be changed, except by a separate action by the city council. The Growth Management Hearings Board has not declined the ordinances currently, either, he said.

Mr. Pilcher commented that the MPD approval ordinances hearings ensured that Black Diamond Municipal Code was met at every level. He stated that the development agreements outline how BDMC was met. **The development agreements do explain how the open space commitment is met, Mr. Pilcher testified. The amount of open space per parcel is sometimes less than the standard 50 percent and that is not necessarily clear to the citizens, he said.**

In regards to the lack of detail in the agreements, Mr. Pilcher noted that these agreements do not authorize build-out to begin immediately; instead, they just allow the city to start implementing projects to begin development in the future. There will be preliminary plat applications, site applications, and many other agreements still to come for specific details, he said.

In regards to the tri-party school agreement, Mr. Pilcher remarked that the agreement was approved in January, and the city cannot change the agreement without the consensus of YarrowBay and the Enumclaw School District. Furthermore, he noted, the school district provides school services, not the city.

In regards to concerns over the funding agreement, Mr. Pilcher testified that the funding agreement is the basis for growth paying for growth. There is a need to have increased staff to review the large developments, according to Mr. Pilcher. He recommended that individuals review Chapter 11 of the agreements (to see more information about financing improvements) and see that the developer is paying for almost all of the regional services. He noted that there was a third-party who helped city staff review the fiscal analysis, and it was additionally revised by a city consultant to ensure it was meeting concerns of the city.

He stated that the noise and water quality committees have not convened yet because they are not obligated by MPD ordinances to convene until after build-out has begun. The make-up of the committees was established in the MPD ordinances, and he noted that any individual is allowed to attend the meetings of the committees.

Finally, he noted that an agreement with Covington over the disputed water area is being negotiated currently and alternate wording is expected before the end of the review process.

In sum, Mr. Pilcher stated that if city staff was strictly in-line with YarrowBay, these proceedings would not have taken as long as they have. The city has been thorough in their review, he stated.

Bob Sterbank, City Attorney

Mr. Sterbank clarified the open space standards city code provisions, noting that the open space standard is the amount required in agreement with the property or 50 percent, so 50 percent is not the final standard for open space.

Applicant Rebuttal

Nancy Rogers, YarrowBay Representative

Ms. Rogers noted the support of YarrowBay to the city's rebuttal presentation.

Ms. Rogers reiterated the purpose of the hearings as being to ensure the MPD conditions of approval are incorporated into the development agreements, to ensure the development

agreements are binding on all MPD property owners, and to ensure the MPD lands are developed only in accordance with the conditions. She noted that the validity of the MPD approval conditions is not the topic of these hearings. She requested that the examiner recommend approval of the development agreements. She stated that the examiner allowed broad leeway in testimony given which she believes he did so to provide the city council with information for possible supplemental agreements. She testified that she wanted it to be clear that city staff and YarrowBay have spent over nine months “horse-trading” to reach the development agreements and all areas have been thoroughly studied and negotiated to create the current agreements.

Ms. Rogers noted that many of the components of the agreements were voluntary on the part of YarrowBay and go above and beyond what was called for in the MPD ordinances (such as the no-net increase in phosphorus, the general mitigation fee paid to the city for funding improvements, a fire mitigation fee and satellite fire station, and a new funding agreement to ensure that growth pays for growth). Much of the public testimony was attempts to change the conditions of MPD approval, which is not the purpose of these hearings, she remarked. However, she testified that YarrowBay is reviewing all requests made in testimony.

Ms. Rogers addressed issues with design standards in the developments by referencing exhibit 7E-H which is an illustrative site plan of the Villages project. She noted the multiple home types and designs (front-loaded homes, multi-family homes) YarrowBay plans for the developments. The development agreements set-forth design guideline standards in exhibit H, she said. Ms. Rogers stated that example homes show clearly how YarrowBay will meet the design standards (such as having multiple design features such as distinctive roof forms/planes and porches, multiple colors, and multiple surfaces). The example homes demonstrated how garages would be set-back in-line with the standards set in the guidelines, she further noted. Ms. Rogers discussed how design standards are met in front-loaded homes, multi-family homes, and parks/open spaces. Parks will be integrated into the neighborhoods they serve and have paths connecting them throughout, she noted.

In regards to questions by Susan Harvey and the Hearing Examiner about the development agreement terms, Ms. Rogers stated that the language chosen in this section mirrors exactly Black Diamond MC 18.98.195e. She testified that YarrowBay has agreed to add clarification (if the city agrees) to this section because of the confusion it has caused so that it would state “in no event, shall the build-out period for all development and construction exceed 20 years”. This is meant to ensure that the build-out period cannot continually be renewed for additional 5-year periods, according to Ms. Rogers.

In regards to concern over sections of the development agreements marked “reserved” by Ron Taylor, Ms. Rogers clarified that the term “reserved” shows up in contractual documents over areas that were deleted or changed during the drafting period.

In regards to questions about the Design Review Committee (DRC), Ms. Rogers commented that the DRC is established in section 12.3 and is a private committee created by the developer. She stated that the committee is there to ensure conformity to the design standards and guidelines. Every implementing process application to the city must be accompanied by some form of assurance that the DRC has reviewed the project, she said. She stated that the DRC does not take over the city's independent review of all designs. According to Ms. Rogers, the DRC is meant to give the master-developer control over other builders who may work on the developments, ensuring conformity to design standards on all levels by all participants.

In regards to landscape maintenance obligation concerns, Ms. Rogers testified that section 5.5.7 of the development agreements require that the master-developer maintain landscape maintenance obligations for three years. After that period, she stated, the master-developer may transfer that obligation to the pertinent homeowners association.

In regards to concern over fire mitigation fees lacking basis by Ron Taylor, Ms. Rogers remarked that the fees established in section 13.4 of the development agreement were set forth based on a study done on January 13, 2001 that was prepared by a consultant to the city, for the city.

In regards to concern over expansion parcels increasing the overall dwelling unit count, Ms. Rogers stated that the development agreements ensure that if an expansion parcel is added with a lower amendment process, the dwelling unit count may not go up. In order to add dwelling units, YarrowBay must go through a permit process, according to Ms. Rogers.

In regards to concerns over large numbers of accessory dwelling units (ADUs), Ms. Rogers testified that city code allows every single-family unit to have an ADU. She added that YarrowBay has voluntarily limited their ADUs to 300 for the Villages project and 180 for the Lawson Projects.

Ms. Rogers stated that the June 21, 2010 email from her to the city attorney did not contain language that was created outside the public eye. She stated that the email was an attempt to present possible changes to the hearing examiner's conditions to the city in order to negotiate. The proposed revised conditions were submitted to the city council during the closed record hearing, nothing was done in secret, she noted. She stated that the possible changes noted in the email were made a formal exhibit.

She stated that the rest of their rebuttal would be put in written testimony.

Thursday July 21, 2011 Expert Testimony

Dr. Chris Breeds (expert witness)

(on direct examination by Brian Derdowski, Save Black Diamond) Dr. Breeds has thirty-five-years experience studying abandoned and active coal mines. He stated that he received his Bachelors and PHD from University of Nottingham in coal mining. He added that he has taught coal-mining engineering at the college-level and in the mid-90s he helped document King County's abandoned coal mine zones and write the coal-mining hazard standards. He has worked in the Black Diamond area for over 15-years, he said, and he has done around 20 different coal-mine hazard evaluations in the area. Recently, he worked on the close-by Issaquah Highlands development studying abandoned coal mine hazards and the EIS for that area, as a member of the Issaquah Design Review Committee, giving him expertise in the area of coal mine hazard mitigation for the area.

He stated that he studied the 2005 coal mining hazard assessment by Golder Associates, the 2008 review by Brian Leeman of the draft 2008 EIS, the 2009 follow-up review, and Golder Associates final comments in Sept 2009. Dr. Breeds stated that he has created a report that compiles the suggestions of these engineers into supplemental conditions for the development agreements. Through the process of reviewing the previous reports, he testified, the common theme he found was additional exploration is needed to test/reclassify coal mine hazards. He stated that the various reports state that studies are not adequate and more information is needed to establish secure guidelines, referencing page 2 of his report for specific examples (EXHIBIT 45).

Dr Breeds testified that Section 8.2.3 of the development agreement states that all further mine exploration will be done in-line with Black Diamond's sensitive area ordinances, but Dr. Breeds stated that the BD's ordinances are not specific enough. He noted he has not read the most current sensitive ordinances, but what he has read (an undated coal mine hazards sensitive data sheet) was non-definitive.

In his proposed supplemental conditions, Dr. Breeds suggested 1. Additional studies in line with the 2005 report by Golder Associates, 2. Using King County 13319 guidelines for mine hazard evaluation, 3. Black Diamond should make a more definitive statement about whether the city will review the study reports and confirm the data collected is appropriate.

Additionally, Dr. Breeds testified that he was impressed with the method the recent Issaquah Highlands development mine-review process was handled. Issaquah reviewed each parcel separately, he said, ensuring adequate studies were completed and no mine-hazards were missed. Dr. Breeds suggested that Black Diamond follow a similar process.

(on direct examination by Brian Derdowski) Dr. Breeds noted that he believes, since Black Diamond does not have its own guidelines for mine-hazard review, King County conditions 13319 is a suitable model for any studies done. He stated that he does not believe the information and data gathered so far is sufficient enough to decide where to build in sensitive area. In response to Mr. Sterbank and Ms. Rogers, he noted that he has not read the most current

sensitive area ordinance, but only an undated Black Diamond coal mine hazards sensitive data sheet found online. (OBJECTION NOTED)

(on direct examination by Brian Derdowski) In response to his thoughts on the condition in the development agreement 8.2.3, which states that if mine hazards are found beyond the mapped boundaries during construction, the mapped boundaries shall prevail, Dr. Breeds noted this could be a potential issue. He testified that he believes some of the mapped mine boundaries could change based on what he found reviewing the previous studies. The previous studies note some site movement, and the 2008 report by Icicle Creek suggests mine hazard areas can still change, according to Dr. Breeds.

(on direct examination by Brian Derdowski) Dr. Breeds stated that during the great depression illegal mining was done in coal seams that would not have been mapped or recorded. There is some potential for areas of this nature to be found in Black Diamond; however, no previous unmapped mine workings have been located, according to Dr. Breeds.

Dr. Breed, basing testimony on coal-mine reports (which were created several years prior to the city's current sensitive area ordinances), stated that low-hazard mine areas have been adequately defined in previous reports, specifically the 2005 Golder Associates report. Thus, in regards to condition 114 of the MPD approval conditions, Dr Breeds testified that low hazard areas will not need more mitigation because they appear to be sufficiently marked.

Dr. Breeds summarized by reinforcing that he believes Black Diamond should use a similar process to the one Issaquah used for its recent MPD.

(on cross-examination by Nancy Rogers) Dr. Breeds stated that he has not read the current sensitive area ordinances for Black Diamond.

He further testified that he has not reviewed the final site plan for the Lawson Hills development and does not know the uses planned for the mine 12 area of the Lawson Hills MPD. He commented that open space could possibly be an adequate mitigation measure for the mine 12 area; however, the area should not be used as open space without some form of protection for the public because of the potential danger with moderate/high hazard areas.

(on cross-examination by Bob Sterbank) Dr. Breeds stated he is not familiar with the city's ordinances for professional investigative report requirements. He also noted that he is not familiar with the city's sensitive area ordinances mitigation requirements.

(on re-direct by Brian Derdowski) Dr. Breeds testified that grading the surface creates the potential for sinkholes in mine areas; however, he is not aware if YarrowBay plans on grading these surfaces. He commented that danger from moderate/high coal mine hazard areas is possible even for undisturbed sites, but it really depends on the specific site and what is built around it.

Dr. Sarah Cooke (expert witness)

(on direct examination by Brian Derdowski) Dr. Cooke stated that she has 25-years experience in Wetlands in Washington State. She testified that she preformed the King County Wetlands Inventory (which included Black Diamond). She added that she was responsible for the bog inventory in King County (including bogs found in Black Diamond) and served as a co-developer of the wetlands rating programs for the department of ecology (as well as teaching the protocol for the inter-agency staff for the department). Additionally, she noted that she has served as the third-party reviewer for the recent Issaquah Highlands development (which is similar to the planned YarrowBay MPDs in terms of critical areas and mine hazards).

Dr. Cooke testified that she has reviewed the constraint maps provided in the development agreements in 8.2.1 (with previous knowledge of the wetlands stream system in this area). She stated that she believes the maps do not provide sufficient detail for the development agreements to be approved. For such a long build-out period (15-20 years), there needs to be more specificity. She noted that previous projects (Issaquah Highlands) she has worked on had far more detailed maps, and, furthermore, required new constraint maps to be developed at each phase of development. Dr. Cooke added that she believes if a new assessment was required at each stage, the protection of wetlands would be better handled.

Dr. Cooke, when reviewing the wetland determination in 8.2.1 which establishes the constraint boundaries, noted the broadness of the Black Diamond wetlands. The wetlands in the city are groundwater contiguous and there is not sufficient information in the maps and reports in the agreements on groundwater effects, she said.

Dr. Cooke testified that the current constraint map in the development agreement includes buffer widths assigned based on wetlands rating that were not done according to protocol. The protocol for assigning a rating to a wetland requires that an entire wetland system be examined (not just the section within development boundaries), according to Dr. Cooke. Moreover, she stated that the ratings are not consistent with Black Diamond's sensitive area maps, referencing figure 114 Black Diamond UGA which shows the large wetlands system which goes from Jones Lake to Black Diamond Lake. Black Diamond's code requires a 250 ft buffer in this wetland system, but the development agreements only assign a 110 ft or 60 ft buffer to the area, according to Dr. Cooke. The constraint maps are not consistent with the sensitive ordinances figures, despite this being called for in section 8.2.1, she said.

In sum, Dr. Cooke stated that the constraint map is not detailed enough and the map is not consistent with Black Diamond ordinances.

(on cross-examination by Nancy Rogers) Dr. Cooke testified that she would have to see a detailed, larger-scaled map set to see if it was sufficient for the development agreements.

(on cross-examination by Bob Sterbank) Dr. Cooke stated she would be looking for details on wetlands ratings, buffers, and site plans for adjacent lots to buffers on a detailed map. Figure 114 from the city's sensitive ordinances shows the city's limits, water boundaries, wetland buffer widths, etc was first delineated in 2008, while the constraint map in the development agreements was created in 2009, according to Dr. Cooke.

Paul Reitenbach, King County Senior Policy Analyst, Manages Updates to King County Comprehensive Plan

Mr. Reitenbach noted that the county has been following this review process for a number of years now. Noting the complexity of the draft agreements, he asked for more clarity in three areas.

His first suggestion addressed MPD condition 33 which deals with the protection of Green Valley Road from increased traffic. 6.4.1 of the development agreements notes that no connection to the Green Valley Rd. is proposed, according to Mr. Reitenbach. King County thanks the parties for that condition, but wish for it to be raised in prominence in the development agreement to ensure it is explicit, he said.

Mr. Reitenbach next suggestion dealt with MPD condition 63. Condition 63 calls for stormwater facilities within project limits, on expansion parcels, or for an agreement with King County for facilities not within in city limits (in rural area) to be provided, he said. Mr. Reitenbach asked that the development agreements focus on the first two options in condition 63 to ensure stormwater facilities are not constructed in the rural area.

Finally, Mr. Reitenbach commented on MPD condition 98 which calls for all new schools to be within the MPDs or within 1 mile of the MPDS. For clarity, the county recommends the city and applicant voluntary agree to serve the community with schools within the urban growth area without allowing the possibility of rural-area school building, according to Mr. Reitenbach.

He noted that these three suggestions could greatly reduce future problems in this area.

(on direct examination by Bob Sterbank) Mr. Reitenbach stated that, in the past, the county has not objected to schools in the rural area that serve both students from the rural and urban areas.

Matthew Nolan, Manager of King County Traffic Engineering Section

Mr. Nolan asked the city to increase clarity in regards to the Green Valley Rd. and the South-Connector Roadway within the development agreements. He recommended two additions in order to reach this clarity in the agreements.

First, he stated, Condition of approval 33A, creates a committee to complete a traffic mitigation study for Green Valley Road to limit MPD traffic on the road. Based on the December 2010 review, the city and applicant believe Green Valley Road will not be the roadway of choice and

no diversion is expected to occur from other routes (Auburn-Black Diamond Rd) to the road, he noted. He stated that the study suggested the road is already traffic calmed. Mr. Nolan suggested a condition to the agreement in sections 13.8, adding “the applicant shall monitor traffic volumes at two locations along SE Green Valley Rd. every three months (quarterly) throughout the life of the proposed MPDs. The applicant shall provide a current baseline count at locations to be determined by King County, against which future traffic increases may be measured and compared. If the traffic volumes along SE Green Valley Road exceed a 50% increase from the current (2011-2012) traffic volumes, no additional lots may be recorded until identifying additional mitigation that can be shown to decrease traffic volumes along SE Green Valley Road to below the threshold values. If mitigation requires construction of road improvements, no additional lots may be recorded until the design for these improvements is approved by the local jurisdiction, the improvements are bonded, and a construction schedule is established. Once construction is substantially complete on the identified improvement, recording of lots may begin,” in order to ensure traffic increases are properly measured and mitigated. This condition is consistent with the MPD approval plan, according to Mr. Nolan.

Next, Mr. Nolan noted that MPD condition 28 calls for no implementing projects to be approved prior to the completion of the south-connector roadway. He stated that the Lawson Hills agreement (6.4.1.a) states that no implementing project located east of the site plan shall be approved prior to the completion of the south-connector roadway with intersection to highway 169. Mr. Nolan asked for a modification that would add clarity and ensure that this condition meet King County code. Mr. Nolan noted that King County will not approve any highway road built in rural areas (even if road is only partially in rural area). He suggested that the following changed be made to 6.4.1.a, adding “as required by condition of approval no.28 of the MPD Permit Approval, no implementing projected located east of the MPD site Plan Development parcel V48 shall be approved prior to the completion of the South Connector Roadway along an alignment entirely within the urban growth boundary, to its intersection with SR 169, provided single point of access street standards are met” and then removing “or alternative secondary access is provided” from the end of the section.

(on cross-examination by Bob Sterbank) Mr. Nolan testified that he is proposing the south-connector roadway be located entirely within the Urban Growth Line. If the UG-line was modified to incorporate the cross-over of the roadway, it would meet King County requirements, according to Mr. Nolan. Mr. Nolan stated that the south-connector roadway is an arterial road that would allow for more traffic volume in the rural area and access to Green Valley Rd. There is no direct access from the proposed South-Connector Roadway to Green Valley Rd., according to Mr. Nolan.