

## Rachel Pitzel

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**From:** Steve Pilcher  
**Sent:** Tuesday, July 19, 2011 4:25 PM  
**To:** WebMaster  
**Subject:** FW: DA Hearings - YB Response to Proctor/Sperry Objections

Please post.

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

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]  
Sent: Tuesday, July 19, 2011 4:23 PM  
To: Steve Pilcher  
Subject: RE: DA Hearings - YB Response to Proctor/Sperry Objections

Thank you. Please post this email along with the objections from Mr. Sperry and Ms. Proctor.

The Covington Water District revision specifically identified in Mr. Sperry's objection will be allowed so long as it is submitted prior to the close of the initial two week comment period. No revisions will be accepted after the close of the initial two week written comment period.

Development Agreement revisions in response to public comment are encouraged. However, the public must also have an opportunity to respond to those revisions. This right arises from the inherent meaning of local and state requirements for the public hearing in this proceeding (similar to the origins of the appearance of fairness doctrine in *Smith v. Skagit County*) as well as due process. To maximize the utility of this hearing in light of potential rulings from the various appeals under review (as well as additional appeals to the agreements themselves), it is also prudent to subject this hearing process to RCW 36.70A.035, which requires additional public comments to any revisions to development standards that are outside the range of alternatives that have already been subject to public comment.

Of course, the Examiner may very well recommend some revisions that are beyond those discussed during the hearing. As to those revisions, the City Council can determine whether additional public testimony is necessary.

Given the considerations in the previous paragraph, the City and Applicant will generally be allowed to present revisions in response to comments made at the hearing. Those revisions must be submitted prior to the close of the initial two week comment period, so that the public can use the one week response period to respond. If a proposed revision is significant, the Examiner may extend the response period exclusively for the revision to provide a reasonable opportunity to respond. If a proposed revision substantially alters the development agreement, the revision will not be accepted.

The written comment periods referenced in this order are those set by Pre-Hearing Order II. The "initial two week comment period" is the written comment period that commences upon the close of verbal testimony.

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

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]  
Sent: Tuesday, July 19, 2011 2:50 PM  
To: Phil Olbrechts  
Subject: RE: DA Hearings - YB Response to Proctor/Sperry Objections

No, we do not, as we share the concern as outlined by Ms. Rogers. Please proceed with making your ruling.

Steve Pilcher  
Community Development Director  
City of Black Diamond  
360-886-2560

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

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]  
Sent: Tuesday, July 19, 2011 2:31 PM  
To: Steve Pilcher  
Subject: RE: DA Hearings - YB Response to Proctor/Sperry Objections

Does the City wish to respond to the objections addressed below? If not I can rule on them today.

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

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]  
Sent: Tuesday, July 19, 2011 1:13 PM  
To: olbrechtslaw@gmail.com  
Subject: FW: DA Hearings - YB Response to Proctor/Sperry Objections

See below.

Steve Pilcher

From: Nancy Rogers [mailto:NRogers@Cairncross.com]  
Sent: Tuesday, July 19, 2011 1:05 PM  
To: Steve Pilcher  
Cc: Andy Williamson; Brenda Martinez; Stacey Borland; Michael R. Kenyon (Mike@KenyonDisend.com); Bob Sterbank (Bob@kenyondisend.com)  
Subject: DA Hearings - YB Response to Proctor/Sperry Objections

Mr. Pilcher,

Please forward this response to Examiner Olbrechts. Since these objections also extended to the City, I have included Mr. Kenyon and Mr. Sterbank on this email.

Yarrow Bay has been notified of two objections/clarifying questions raised by Ms. Proctor and Mr. Sperry. Ms. Proctor and Mr. Sperry object and/or ask about a procedure in which Yarrow Bay or the City offer any revisions to the proposed Development Agreement text in response to public comment, specifically regarding the comments raised by Covington Water District. We assume their objection/clarifying question also extends to any other proposed revisions.

As the Examiner knows, this is a public hearing regarding a negotiated agreement. As the Examiner has stated several times, the Examiner has allowed public testimony regarding how the Development Agreements implement the MPD Approval conditions, as well as testimony that extended to the public's desired "supplemental conditions" which go beyond implementing the MPD Approval Conditions. That testimony has expressly and implicitly requested revisions to the Development Agreement text. As the Examiner's Pre-hearing Order makes clear, there remains an extensive written testimony, rebuttal and reply period prior to the record being closed.

There is no basis in the law or common sense to preclude Yarrow Bay or the City from proposing revised Agreement language during this hearing process.

Such revisions can be proposed during the written testimony portion of the Examiner's open-record hearing. In addition, such revisions can also be proposed in response to legal arguments raised in the Council's later closed-record hearings. The only matter that is precluded by law in the closed-record hearing is the submittal of new factual evidence (e.g., a new traffic report).

Finally, we note that public hearings would essentially be useless if the subject of the hearing could NOT be changed based on information and comments provided during those hearings, and that the public should welcome changes that are proposed to address and alleviate the very concerns they have raised.

CH&  
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