Rachel Pitzel

From: Steve Pilcher
Sent: Tuesday, July 19, 2011 5:05 PM
To: WebMaster
Subject: FW: Development Agreement Objection
Attachments: EdlemanDerdowskiObjections.pdf

Please post this message together with the attachment.

-----Original Message-----
From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Tuesday, July 19, 2011 4:50 PM
To: Steve Pilcher
Subject: RE: Development Agreement Objection

Please post along with the objections from Mr. Derdowski and Mr. Edelman.

Brian Derdwoski and Robert Edelman have both objected to the entry of Exhibit 8, the "Guide to MPD Design and Build-Out as Envisioned by the Development Agreements", authored by the Applicant. The objections are overruled and Exhibit 8 is admitted into evidence.

One of the concerns of Mr. Derdwoski is that the exhibit was not submitted under oath. Written materials are generally not required to be submitted under oath. None of the numerous letters submitted by the general public have been submitted under oath and there is no rule that would single-out the Applicant for such a requirement. Pre-Hearing Order II was admittedly not very clear on this issue by requiring that "all testimony" shall be taken under oath. It should be understood to apply to all verbal testimony.
To subject all written submissions to an oath requirement would create an unnecessary and undue burden on public participation.

The other concerns raised by Mr. Derdowski and Mr. Edelman relate to disagreements over the content of the exhibit as opposed to issues relating to admissibility. Admissibility is generally limited to issues of relevance and authenticity (i.e. whether the exhibit is what the submitter purports it to be -- for example if the Applicant submitted a document purported to be an ordinance passed by the Black Diamond City Council, that document would not be admitted if it was not in fact an ordinance passed by the City
Council). Of course, Mr. Derdowski and Mr. Edelman are free to submit
their own written comments disputing the accuracy and positions taken in Exhibit 8.

Steve Pilcher

From:	Bob Edelman <BobEdelman@comcast.net>
Sent:	Wednesday, July 13, 2011 3:40 PM
To:	Steve Pilcher
Cc:	Stacey Borland; Andy Williamson; Brenda Martinez
Subject:	Motion to the Examiner

Please forward the following to Mr. Olbrechts.

Before the City of Black Diamond Hearing Examiner

I object to entry of the *Guide to MPD Design and Build-Out as Envisioned by the Development Agreements* ("Guide") into the record as presented by the applicant.

The Guide was characterized as a summary of the MPDs. A cursory examination shows that there is a considerable amount of speculative and unsupported data that was not contained in the MPD ordinances. There are also erroneous statements. Some of those may be addressed in later testimony as the document is reviewed. However, it should not be necessary to refute as evidence. The following are a few of the problems with the document if it is to be considered a summary of the MPDs.

1. The Guide states on page 38 that the projects are 64% Open Space. This does not agree with information in the MPD approval ordinances. Further, the applicant stated in opening comments that the 50% open space requirement was not being met.

2. The Guide states on page 49:

   > In the new funding agreement, the building permit surcharge would only apply to building permits issued for new constructions within The Villages and Lawson Hills MPDs only and, most importantly, <u>if and only if the City Council adopts another resolution</u> (after the Development Agreements are approved) authorizing such a surcharge. [Emphasis added.]

   This statement is incorrect and misleading. The actual condition is "only to the extent permitted by law or other agreement between Developer and its purchasers and only then if the City Council adopts a resolution".

3. There are numerous illustrations and photographs that are not in the MPD ordinances. They cannot be considered to be a summary of MPD information by any stretch.

4. Information is provided as factual which is purely speculative. For example, on page 47 there are tables which purport to show what the annual surplus to the City will be at buildout.

5. Information is provided that is not contained in the MPD ordinances and may or may not be factual. For example, page 27 contains information purporting to describe why roundabouts work but may or may not be applicable to roundabouts contemplated for the MPDs.

Respectfully submitted,

Robert Edelman
29871 232nd Ave SE
Black Diamond, WA 98010

City of Black Diamond
25510 Lawson St.
Black Diamond, Washington

July 13, 2011

Mr. Phil Olbrechts, Hearing Examiner

C/o Mr. Steve Pilcher

Re: Development Agreement Hearing

We wish to enter our objection to the inclusion of the exhibit entitled:
"The Villages and Lawson Hills
Guide to MPD Design and Build-Out as Envisioned by the Development Agreements."

This document was entered into the record as evidence at the hearing by the Applicant's counsel. The Applicant's counsel was not under oath when the document was submitted on July 11, but after we entered our objection on July 12, the Applicant's attorney was sworn in and affirmed that her comments on the previous day were also under oath. However, it is not clear that the document that was submitted is also covered in its entirety by that affirmation.

The Applicant's Guide purports to describe the development "as envisioned" by the Development Agreement. "As envisioned" is an interesting and troubling choice of words. Does this Guide detail the Applicant's *understanding* as to the terms of the Development Agreement? Is this document a *codicil* to the Development Agreement Contract? Is this document part of the Applicant's application?

The public and Council need to know whether this Guide and its representations are contractual in nature. At some future point, may the parties to the Agreement refer to the Guide and enforce its content?

If the Guide is not a contractual representation, and if it does not describe the Applicant's understanding as to its rights and obligations under the contract, then its purpose may simply be to "spin" the Applicant's intentions. The danger to the public interest here is that the Council may well rely on the Guide for its decision making rather than the actual

Development Agreement. At the very least, the Guide should be accompanied with a clear statement from the Applicant whether the Guide is a contractual commitment or merely a puff piece that may contain inaccuracies and misrepresentations.

Additional basis for our objection is that portions of the document are, in fact, misleading or inaccurate as follows:

The stated housing unit count differs significantly from that which is included in the Development Agreement.

The estimate of jobs has no foundation in the MPD approval or the Development Agreement.

The various photographs of housing examples are not related to the design criteria in the MPD approval or the Development Agreement, and in some cases actually conflict with that criteria.

The site plans, "bird's eye views", and graphics are speculative in nature, are not addressed in the MPD approval or Development Agreement, and in some cases actually conflict with that criteria. Park and open space areas are exaggerated well beyond the requirements of the MPD approval or Development Agreement. Hedge words such as "the drawing is less precise" and "represents possible development areas", "representative", "conceptual", are found throughout the document.

The reference to the Applicant's web site on its Transportation Map should be deleted since the website will be changed over time and may include information that is not part of the record. Also, the list of projects does not track directly with the MPD approval and Development Agreement.

The estimate of wetland alteration, and speculative avoidance 'promises' are not consistent with the terms of the MPD approval and Development Agreement.

The statement regarding the Lake Sawyer weir is not accurate or consistent with the terms of the MPD approval and Development Agreement.

The open space acres and percentages are not consistent with the terms of the MPD approval and Development Agreement.

Thank you for considering my comments, and for your service to the Public.

Sincerely,

Brian Derdowski
70 E. Sunset Way #254
Issaquah, Washington 98027

On behalf of "Save Black Diamond", "The Sensible Growth Alliance" and several individuals who reside in and around the City of Black Diamond