

Examiner/Pilcher Email Correspondence 11/15/10-8/3/11

This document constitutes a "belt and suspenders" approach to ensuring that all pertinent documents are entered into the record. The documents should also cover anything that could be construed as an ex parte contact in need of disclosure. The pages below are copies of all email correspondence I could find between myself and Steve Pilcher since Mr. Pilcher first started scheduling a hearing date on the development agreements with me in late 2010. If you submitted an email for consideration and could not find it elsewhere in the exhibit list, it may be posted below.

There is a significant amount of duplication in the email strings. In order to avoid the confusion caused by this duplication, the header for each separate email string is highlighted in yellow. The emails are pasted in reverse chronological order. Attachments are not included.

-- Phil Olbrechts, 8/4/11

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Wednesday, July 20, 2011 2:17 PM
To: 'Brenda Martinez'
Cc: 'Steve Pilcher'
Subject: RE: Exhibit List

Hi Brenda,

Please post this email along with the exhibit list.

As explained at the header of the exhibit list, the list only includes documents admitted into evidence during the verbal portion of the hearing at this point. I decided not to yet add exhibits submitted outside the verbal hearing because it would get too confusing for the public to work with a list that had some documents that were admitted mixed with some that were not. My only other alternative was to set up a separate exhibit list for documents submitted outside the verbal portion of the hearing, which then creates some confusion upon judicial review. Once all documents from the verbal portion of the hearing have been entered the remainder of the list can be devoted to documents submitted outside the verbal portion and I can simply identify all exhibits from Exhibit x on up as those still subject to objection.

-----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.

EXHIBIT

146

Brian Derdowski 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. Derdowski 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.

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

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]
Sent: Wednesday, July 13, 2011 5:06 PM
To: olbrechtslaw@gmail.com
Subject: FW: Development Agreement Objection

Objection received today.

Steve Pilcher

From: Brian Derdowski [mailto:brian@derdowski.com]
Sent: Wednesday, July 13, 2011 4:44 PM
To: Steve Pilcher
Cc: 'Kristen Bryant'
Subject: Development Agreement Objection

Hi Steve!

Attached is our objection.

Same as below:

City of Black Diamond
July 13, 2011
25510 Lawson St.
Black Diamond, Washington

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

-----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&
Nancy Bainbridge Rogers
Attorney
Cairncross & Hempelmann
524 Second Ave., Ste. 500
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nrogers@cairncross.com<mailto:nrogers@cairncross.com>
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Office fax 206-587-2308

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Sent: Tuesday, July 19, 2011 2:31 PM

To: 'Steve Pilcher'

Subject: RE: DA Hearings - YB Response to Proctor/Sperry Objections

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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)
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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&
Nancy Bainbridge Rogers
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Cairncross & Hempelmann
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Seattle, WA 98104-2323
nrogers@cairncross.com<mailto:nrogers@cairncross.com>
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-----Original Message-----

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Tuesday, July 19, 2011 9:02 AM
To: 'Steve Pilcher'
Subject: RE: Objection for the Hearing Examiner

Please hold off on posting my response below. I'm going to combine my response to Ms. Proctor's objection with my response to the objection from Mr. Sperry.

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

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Tuesday, July 19, 2011 8:51 AM
To: 'Steve Pilcher'
Subject: RE: Objection for the Hearing Examiner

Please post.

I will address the objection posted below when the revised language is submitted.

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

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]

Sent: Sunday, July 17, 2011 4:17 PM
To: olbrechtslaw@gmail.com
Subject: FW: Objection for the Hearing Examiner

Please find another message below.

Steve Pilcher

From: Cindy Proctor [proct@msn.com]
Sent: Sunday, July 17, 2011 3:56 PM
To: Steve Pilcher; Brenda Martinez; Stacey Borland
Subject: Objection for the Hearing Examiner

Steve please forward to Mr. Olbrechts.- Cindy Proctor

Mr. Examiner,

I would like to raise an objection to the inclusion of any new language to the Villages and/or Lawson Development Agreement as presented by Mr. Pilcher on Saturday July 16, 2011, specifically regarding the Covington Water Agreement and from a blanket objection standpoint to any and all revised language the City and/or Applicant may propose.

The Applicant and City are certainly in a position to pull their Development Agreements until they have completed them and re-submit for a new public hearing; however adding new language after the close of Public Oral testimony does not serve the public interest. This issue goes to the heart of the public comments regarding one of the fundamental flaws of the Development Agreements; that they are incomplete.

Cindy Proctor

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

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Tuesday, July 19, 2011 8:51 AM
To: 'Steve Pilcher'
Subject: RE: Objection for the Hearing Examiner

Please post.

I will address the objection posted below when the revised language is submitted.

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

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]
Sent: Sunday, July 17, 2011 4:17 PM
To: olbrechtslaw@gmail.com
Subject: FW: Objection for the Hearing Examiner

Please find another message below.

Steve Pilcher

From: Cindy Proctor [proct@msn.com]
Sent: Sunday, July 17, 2011 3:56 PM
To: Steve Pilcher; Brenda Martinez; Stacey Borland
Subject: Objection for the Hearing Examiner

Steve please forward to Mr. Olbrechts.- Cindy Proctor

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The Applicant and City are certainly in a position to pull their Development Agreements until they have completed them and re-submit for a new public hearing; however adding new language after the close of Public Oral testimony does not serve the public interest. This issue goes to the heart of the public comments regarding one of the fundamental flaws of the Development Agreements; that they are incomplete.

Cindy Proctor

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Monday, July 18, 2011 8:18 AM
To: 'Steve Pilcher'
Subject: RE: Save Black Diamond comments

Thanks!

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]
Sent: Monday, July 18, 2011 8:17 AM
To: Phil Olbrechts
Subject: RE: Save Black Diamond comments

We haven't received it yet, but will send as soon as we do. Alternatively, we can scan the printed document and send to you. Probably will do so by mid-day if we haven't received it electronically from Mr. Derdowski.

Steve Pilcher

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Monday, July 18, 2011 8:12 AM
To: Steve Pilcher
Subject: Save Black Diamond comments

Hi Steve,

Has Mr. Dierdowski emailed his presentation to you yet. If so, please forward them to me. Mr. Dierdowski submitted his presentation in writing and I left them with City staff at the request of the Applicant.

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Monday, July 18, 2011 8:12 AM
To: 'Steve Pilcher'
Subject: Save Black Diamond comments

Hi Steve,

Has Mr. Dierdowski emailed his presentation to you yet. If so, please forward them to me. Mr. Dierdowski submitted his presentation in writing and I left them with City staff at the request of the Applicant.

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

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Thursday, July 14, 2011 3:06 PM
To: 'Nancy Rogers'; 'Brenda Martinez'; 'Andy Williamson'
Cc: 'Steve Pilcher'; 'Save Black Diamond'; 'Smith, Lauren'
Subject: RE: DA Hearings - Response regarding Expert Disclosures

Date and bottom caption corrected.

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

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Thursday, July 14, 2011 2:52 PM
To: 'Nancy Rogers'; 'Brenda Martinez'; 'Andy Williamson'
Cc: 'Steve Pilcher'; 'Save Black Diamond'; 'Smith, Lauren'
Subject: RE: DA Hearings - Response regarding Expert Disclosures

Mr. Pilcher,

Unsigned order attached. Please post if still time today. I will give you a signed order this evening for reposting.

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

From: Nancy Rogers [mailto:NRogers@Cairncross.com]
Sent: Thursday, July 14, 2011 11:41 AM
To: 'olbrechtslaw@gmail.com'
Cc: bob@kenyondisend.com; mike@kenyondisend.com; 'Steve Pilcher'; Save Black Diamond (saveblackdiamond@gmail.com); Smith, Lauren (Lauren.Smith@kingcounty.gov)
Subject: RE: DA Hearings - Response regarding Expert Disclosures

Please see attached.

Nancy Bainbridge Rogers
Attorney
Cairncross & Hempelmann
524 Second Ave., Ste. 500
Seattle, WA 98104-2323
nrogers@cairncross.com
Direct phone 206-254-4417
Office fax 206-587-2308

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

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]
Sent: Wednesday, July 13, 2011 9:38 AM
To: Nancy Rogers; Save Black Diamond (saveblackdiamond@gmail.com); Smith, Lauren (Lauren.Smith@kingcounty.gov)
Cc: bob@kenyondisend.com; mike@kenyondisend.com
Subject: FW: DA Hearings - Response regarding Expert Disclosures

Ms. Rogers:

Below is the response of the Hearing Examiner to your inquiry.

Steve Pilcher

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

From: phil olbrechts
Sent: Wednesday, July 13, 2011 9:35 AM
To: Steve Pilcher
Subject: RE: DA Hearings - Response regarding Expert Disclosures

Mr. Pilcher,

In response to the questions below: (1) please have SBD and King County cc their responses to Ms. Rogers (you can just email them this email):
and (2) I will be ruling by 5:00 pm Thursday.

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

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]
Sent: Wednesday, July 13, 2011 9:31 AM
To: Phil Olbrechts
Subject: FW: DA Hearings - Response regarding Expert Disclosures

Please see the attached inquiry on some procedural issues from Ms. Rogers.

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

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

From: Nancy Rogers [mailto:NRogers@Cairncross.com]
Sent: Wednesday, July 13, 2011 9:28 AM
To: Steve Pilcher; Save Black Diamond (saveblackdiamond@gmail.com); Smith, Lauren (Lauren.Smith@kingcounty.gov)
Cc: bob@kenyondisend.com; mike@kenyondisend.com
Subject: RE: DA Hearings - Response regarding Expert Disclosures

Mr. Pilcher -

Could you please respond to, or forward this procedural request to the Examiner? I have two requests:

(1) Given that the Examiner set a 5 p.m. deadline today for SBD and King County, and a Noon deadline for me tomorrow, could the Examiner please direct that any response from SBD and King County also be emailed directly to me? I will do the same with my reply.

(2) I would like confirmation that since the Examiner set a Noon Thursday deadline for my Reply, he actually plans to rule by 5 p.m. on Thursday, not Noon which is stated below.

Thank you.

Nancy Bainbridge Rogers
Attorney
Cairncross & Hempelmann
524 Second Ave., Ste. 500
Seattle, WA 98104-2323
nrogers@cairncross.com
Direct phone 206-254-4417
Office fax 206-587-2308

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

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]
Sent: Tuesday, July 12, 2011 4:53 PM
To: Save Black Diamond (saveblackdiamond@gmail.com); Smith, Lauren (Lauren.Smith@kingcounty.gov)
Cc: Nancy Rogers; bob@kenyondisend.com; mike@kenyondisend.com
Subject: FW: DA Hearings - Response regarding Expert Disclosures

Please see the attached communication from the Hearing Examiner regarding the use of expert testimony.

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

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

From: phil olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Tuesday, July 12, 2011 4:47 PM
To: Steve Pilcher
Subject: RE: DA Hearings - Response regarding Expert Disclosures

Please forward this email and the Applicant's objections to King County, SAVE and the Applicant. I will rule by Noon Thursday and will consider any written response emailed by SAVE or King County by 5:00 pm on Wednesday, 7/13 and any written reply from the Applicant by noon on Thursday. The written responses can be emailed directly to me at olbrechtslaw@gmail.com if it is also cc'd to you (Steve Pilcher). The parties to

this email may find it useful to refer to Pre-Hearing Order II of this case to see my standing ruling on the scope of the development agreement hearings. I am open to the consideration that expert testimony can be held to a higher standard of relevance than citizen testimony. To a certain extent I have liberally applied relevance for the public in order to ensure that the land use process remains accessible and concerned citizens aren't forced to hire an attorney to express their concerns or determine how they can participate.

Expert testimony consumes far more public participation resources than citizen testimony and it is arguably fair to expect persons who can provide expert testimony to have a more detailed understanding of relevancy and how to participate.

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

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]
Sent: Tuesday, July 12, 2011 4:12 PM
To: olbrechtslaw@gmail.com
Subject: FW: DA Hearings - Response regarding Expert Disclosures

Please see the attached, received from Ms. Rogers.

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

From: Nancy Rogers [mailto:NRogers@Cairncross.com]
Sent: Tuesday, July 12, 2011 3:57 PM
To: Steve Pilcher
Cc: Stacey Borland; Brenda Martinez; Andy Williamson
Subject: DA Hearings - Response regarding Expert Disclosures

Please see attached.

CH&
Nancy Bainbridge Rogers
Attorney
Cairncross & Hempelmann
524 Second Ave., Ste. 500
Seattle, WA 98104-2323
nrogers@cairncross.com<mailto:nrogers@cairncross.com>
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cannot be used by you, (a) to avoid any penalties imposed under the Internal Revenue Code or (b) to promote, market, or recommend to another party any transaction or matter addressed herein.

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From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Thursday, July 14, 2011 3:00 PM
To: 'Brenda Martinez'
Cc: 'Steve Pilcher'
Subject: RE: DA Hearings - Response regarding Expert Disclosures

Exhibit list current through last night for posting.

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

From: Brenda Martinez [mailto:BMartinez@ci.blackdiamond.wa.us]
Sent: Tuesday, July 12, 2011 8:13 PM
To: phil olbrechts
Cc: Steve Pilcher
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This will be posted tomorrow to the website.

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7/13 and any written reply from the Applicant by noon on Thursday. The written responses can be emailed directly to me at olbrechtslaw@gmail.com if it is also cc'd to you (Steve Pilcher). The parties to this email may find it useful to refer to Pre-Hearing Order II of this case to see my standing ruling on the scope of the development agreement hearings. I am open to the consideration that expert testimony can be held to a higher standard of relevance than citizen testimony. To a certain extent I have liberally applied relevance for the public in order to ensure that the land use process remains accessible and concerned citizens aren't forced to hire an attorney to express their concerns or determine how they can participate.

Expert testimony consumes far more public participation resources than citizen testimony and it is arguably fair to expect persons who can provide expert testimony to have a more detailed understanding of relevancy and how to participate.

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

From: Steve Pilcher [<mailto:SPilcher@ci.blackdiamond.wa.us>]
Sent: Tuesday, July 12, 2011 4:12 PM
To: olbrechtslaw@gmail.com
Subject: FW: DA Hearings - Response regarding Expert Disclosures

Please see the attached, received from Ms. Rogers.

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

From: Nancy Rogers [<mailto:NRogers@Cairncross.com>]
Sent: Tuesday, July 12, 2011 3:57 PM
To: Steve Pilcher
Cc: Stacey Borland; Brenda Martinez; Andy Williamson
Subject: DA Hearings - Response regarding Expert Disclosures

Please see attached.

CH&
Nancy Bainbridge Rogers
Attorney
Cairncross & Hempelmann
524 Second Ave., Ste. 500
Seattle, WA 98104-2323
nrogers@cairncross.com<<mailto:nrogers@cairncross.com>>
Direct phone 206-254-4417
Office fax 206-587-2308

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

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Thursday, July 14, 2011 2:52 PM
To: 'Nancy Rogers'; 'Brenda Martinez'; Andy Williamson
Cc: 'Steve Pilcher'; 'Save Black Diamond'; 'Smith, Lauren'
Subject: RE: DA Hearings - Response regarding Expert Disclosures

Mr. Pilcher,

Unsigned order attached. Please post if still time today. I will give you a signed order this evening for reposting.

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

From: Nancy Rogers [mailto:NRogers@Cairncross.com]
Sent: Thursday, July 14, 2011 11:41 AM
To: 'olbrechtslaw@gmail.com'
Cc: bob@kenyondisend.com; mike@kenyondisend.com; 'Steve Pilcher'; Save Black Diamond (saveblackdiamond@gmail.com); Smith, Lauren (Lauren.Smith@kingcounty.gov)
Subject: RE: DA Hearings - Response regarding Expert Disclosures

Please see attached.

Nancy Bainbridge Rogers
Attorney
Cairncross & Hempelmann
524 Second Ave., Ste. 500
Seattle, WA 98104-2323
nrogers@cairncross.com
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From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]
Sent: Wednesday, July 13, 2011 9:38 AM
To: Nancy Rogers; Save Black Diamond (saveblackdiamond@gmail.com); Smith, Lauren (Lauren.Smith@kingcounty.gov)
Cc: bob@kenyondisend.com; mike@kenyondisend.com
Subject: FW: DA Hearings - Response regarding Expert Disclosures

Ms. Rogers:

Below is the response of the Hearing Examiner to your inquiry.

Steve Pilcher

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

From: phil olbrechts
Sent: Wednesday, July 13, 2011 9:35 AM
To: Steve Pilcher
Subject: RE: DA Hearings - Response regarding Expert Disclosures

Mr. Pilcher,

In response to the questions below: (1) please have SBD and King County cc their responses to Ms. Rogers (you can just email them this email); and (2) I will be ruling by 5:00 pm Thursday.

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From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]
Sent: Wednesday, July 13, 2011 9:31 AM
To: Phil Olbrechts
Subject: FW: DA Hearings - Response regarding Expert Disclosures

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

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To: Steve Pilcher; Save Black Diamond (saveblackdiamond@gmail.com); Smith, Lauren (Lauren.Smith@kingcounty.gov)

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Subject: RE: DA Hearings - Response regarding Expert Disclosures

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(1) Given that the Examiner set a 5 p.m. deadline today for SBD and King County, and a Noon deadline for me tomorrow, could the Examiner please direct that any response from SBD and King County also be emailed directly to me? I will do the same with my reply.

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Cc: Nancy Rogers; bob@kenyondisend.com; mike@kenyondisend.com

Subject: FW: DA Hearings - Response regarding Expert Disclosures

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

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To: Steve Pilcher
Cc: Stacey Borland; Brenda Martinez; Andy Williamson

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

From: olbrechtslaw@gmail.com [mailto:olbrechtslaw@gmail.com]
Sent: Wednesday, July 13, 2011 9:08 AM
To: Steve Pilcher
Subject: Re: Testimony

Did maple valley reserve any time? I don't recall seeing them on the sign in sheets, which is odd given their written comments that they wanted to be able to reerve time.
Sent from my Verizon Wireless BlackBerry

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

From: Steve Pilcher <SPilcher@ci.blackdiamond.wa.us>
Date: Wed, 13 Jul 2011 08:58:03
To: Mary Hunt<mlhunt555@gmail.com>
Cc: Stacey Borland<SBorland@ci.blackdiamond.wa.us>; Brenda Martinez<BMartinez@ci.blackdiamond.wa.us>
Subject: RE: Testimony

Thank you for letting us know. You may still submit written comments or you could sign up for time on either Thursday or Saturday (right now, there are plenty of available slots).

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

From: Mary Hunt [mailto:mlhunt555@gmail.com]
Sent: Tuesday, July 12, 2011 8:32 PM
To: Steve Pilcher
Subject: Testimony

Good Evening Steve,

My husband Jim and I were scheduled to testify tomorrow evening at the hearings. We have both come down with bad colds and cannot attend. Please take us off the list.

Thank you,

Mary and Jim Hunt

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

From: phil olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Tuesday, July 12, 2011 4:54 PM
To: olbrechtslaw@gmail.com
Subject: FW: Development Agreement hearings

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

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Tuesday, July 12, 2011 2:28 PM
To: 'Steve Pilcher'
Cc: 'Rebecca Olness'; 'Brenda Martinez'; 'Stacey Borland'
Subject: RE: Development Agreement hearings

Please post this email.

It is a little surprising that we appear to be seeing less participation during the hearing than at the prehearing conference. As to why so many people have scheduled their presentations at the end of the week, one plausible reason is that they're simply maximizing the time they have to prepare. The hearings were scheduled just days after the reply briefs on the prehearing motions were due, giving people little time to incorporate the rulings on the motions into their presentation strategy. From the written materials I've received so far (especially those from the technical citizen's committee) and some of the testimony, it's clear that some people are investing a tremendous amount of time in their comments and they need a reasonable amount of time to prepare them. Given the somewhat compressed time frame in which we're working, I am a little reluctant to change the rules in mid-stream on hearing participants. I also recognize that every minute of testimony comes at a tremendous cost to the City and/or Applicant, not just in terms of room rental time but also including the numerous staff and consultants that are necessary to run the meetings.

Here is how I will address the situation:

1. Obviously, if there are any "dead" periods I will ask persons scheduled to speak later that evening to do so earlier. Unfortunately, I can't expect this of people who aren't at the hearing room yet because it's not yet their speaking time. One of the main reasons for the hearing reservations was to enable people to not have to be at the hearing room at an earlier time. We also can't expect hearing participants to be monitoring the City's web site each day to ensure that they're reserved time is still valid. If I change the rules on the sign-in sheets, we will probably end up having people show up for their reserved time with the hearing long over for that day.

2. I would try to remove gaps for future sign ups by filling in the undesirable slots with "reserved until open slots filled". If staff has any available time, and I know that's unlikely, you may want to call up some of the people who signed up and ask if they'd be willing to be rescheduled. From what I recall there was one person signed up for 9:00 pm this evening and that person would be an ideal person to call.

3. The prehearing order states that all persons who wish to speak must sign up by 10:00 am on July 16. In a worst case scenario, that gives sufficient time to hear 45 people if we don't hear the rebuttal from the City and Applicant and that's if each person takes up the full ten minutes. As noted in the prehearing order, people have to be present on Saturday to testify or they are removed from the sign up list. If anyone is left after going through that list, I would be comfortable with finishing the remaining (likely few) participants in the City Council chambers while we do the expert testimony the following week. If the Council Chambers aren't big enough, we fill the room with what's safe and post the audio of the testimony. People will have their two week written response time to comment on

the audio if they weren't able to participate in the hearing room. Given that the Sawyer Woods facility was available for testimony for a week and few people took advantage of it, I doubt that a reviewing court will have any problem with the City's use of a smaller facility to finish off the tail end of the testimony.

4. I had planned on asking if the City and Applicant would prefer to finish their rebuttal time at the conclusion of the expert testimony so they could address that in their rebuttal as well. That would have been both for the benefit of staff and applicant (who arguably have a due process right to provide a verbal rebuttal at the conclusion of all verbal testimony) as well as giving me the opportunity to compile some questions. If there is no time on Saturday for rebuttal that would be easy to accommodate, perhaps by even doing it at the end of expert testimony at the same venue. If not held at Sawyer Woods, the audio would be posted and people would be encouraged to submit questions of staff and the applicant in advance in writing in case they could not make the rebuttal time.

The accommodations identified above may be enough to address the City's concerns without necessitating any significant revision to the prehearing order. If that is insufficient I will be happy to discuss it further this evening at the hearing.

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

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]

Sent: Tuesday, July 12, 2011 10:44 AM

To: olbrechtslaw@gmail.com

Cc: Rebecca Olness; Brenda Martinez; Stacey Borland

Subject: Development Agreement hearings

Mr. Olbrechts:

As of this morning, there are 6 ten minute time slots filled for tonight, 7 slots on Wednesday, 10 on Thursday and 3 on Saturday. (The actual number of speakers is less, as some indicate they will be using "ceded" time from others). No new names are on the "rolling" sign-up sheet. (Some of the people who spoke last night had signed up for specific time slots, but took advantage of the available time last evening to testify). We have expected that more individuals would wish to speak than we are seeing so far.

In the interest of both efficiency and avoiding a potential continuation of public testimony beyond Saturday, we suggest:

1. Announcing that, given the hours of open time that remains available for testimony through Saturday, that you rule that Saturday will be the conclusion of open public testimony. (Expert testimony can still occur next week).
2. After opening the hearing each evening, announcing that any individual who signed up to speak that particular evening may be directed to speak earlier than scheduled if no one else from the audience comes forward.

This will avoid "dead time" where everyone sits around waiting (for perhaps half an hour or more) to hear one or two other individuals testify.

We have use of Sawyer Woods Elementary School through Saturday. The Kent School District charges for use of the building for the full duration of scheduled time, regardless of whether the hearings are going on or not, another reason it is our hope that testimony can be concluded this week, as originally planned.

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

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

From: phil olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Tuesday, July 12, 2011 4:53 PM
To: 'Brenda Martinez'
Cc: Steve Pilcher
Subject: FW: DA Hearings - Response regarding Expert Disclosures

Please post.

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Nancy Bainbridge Rogers
Attorney
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524 Second Ave., Ste. 500
Seattle, WA 98104-2323

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2. I would try to remove gaps for future sign ups by filling in the undesirable slots with "reserved until open slots filled". If staff has any available time, and I know that's unlikely, you may want to call up some of the people who signed up and ask if they'd be willing to be rescheduled. From what I recall there was one person signed up for 9:00 pm this evening and that person would be an ideal person to call.

3. The prehearing order states that all persons who wish to speak must sign up by 10:00 am on July 16. In a worst case scenario, that gives sufficient time to hear 45 people if we don't hear the rebuttal from the City and Applicant and that's if each person takes up the full ten minutes. As noted in the prehearing order, people have to be present on Saturday to testify or they are removed from the sign up list. If anyone is left after going through that list, I would be comfortable with finishing the remaining (likely few) participants in the City Council chambers while we do the expert testimony the following week. If the Council Chambers aren't big enough, we fill the room with what's safe and post the audio of the testimony. People will have their two week written response time to comment on the audio if they weren't able to participate in the hearing room. Given that the Sawyer Woods facility was available for testimony for a week and few people took advantage of it, I doubt that a reviewing court will have any problem with the City's use of a smaller facility to finish off the tail end of the testimony.

4. I had planned on asking if the City and Applicant would prefer to finish their rebuttal time at the conclusion of the expert testimony so they could address that in their rebuttal as well. That would have been both for the benefit of staff and applicant (who arguably have a due process right to provide a verbal rebuttal at the conclusion of all verbal testimony) as well as giving me the opportunity to compile some questions. If there is no time on Saturday for rebuttal that would be easy to accommodate, perhaps by even doing it at the end of expert testimony at the same venue. If not held at Sawyer Woods, the audio would be posted and people would be encouraged to submit questions of staff and the applicant in advance in writing in case they could not make the rebuttal time.

The accommodations identified above may be enough to address the City's concerns without necessitating any significant revision to the prehearing order. If that is insufficient I will be happy to discuss it further this evening at the hearing.

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

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]

Sent: Tuesday, July 12, 2011 10:44 AM

To: olbrechtsw@l@gmail.com

Cc: Rebecca Olness; Brenda Martinez; Stacey Borland

Subject: Development Agreement hearings

Mr. Olbrechts:

As of this morning, there are 6 ten minute time slots filled for tonight, 7 slots on Wednesday, 10 on Thursday and 3 on Saturday. (The actual number of speakers is less, as some indicate they will be using "ceded" time from others). No new names are on the "rolling" sign-up sheet. (Some of the people who spoke last night had signed up for specific time slots, but took advantage of the available time last evening to testify). We have expected that more individuals would wish to speak than we are seeing so far.

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

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

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Tuesday, July 12, 2011 1:06 PM
To: 'Steve Pilcher'; 'Brenda Martinez'
Subject: RE: Expert witnesses - (same email just sent to Steve Pilcher)

Thank you. Please post this email.

Paul Reitenbach and Matthew Nolan qualify as expert witnesses. Anyone wishing to present rebuttal testimony should provide dates of availability for their witnesses for the week of July 18 and the other information as outlined on Page 5 of Pre-Hearing Order II. Scheduling a rebuttal expert on the same date as the witness rebutted is preferred.

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Sent: Tuesday, July 12, 2011 10:47 AM
To: olbrechtslaw@gmail.com
Subject: FW: Expert witnesses - (same email just sent to Steve Pilcher)

Below is King County's response to your request for further information regarding their proposed expert witnesses.

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

From: Smith, Lauren [mailto:Lauren.Smith@kingcounty.gov]
Sent: Tuesday, July 12, 2011 10:46 AM
To: Steve Pilcher
Cc: Reitenbach, Paul; Nolan, Matthew
Subject: RE: Expert witnesses - (same email just sent to Steve Pilcher)

Thanks Steve. Please see CVs for Paul Reitenbach and Matthew Nolan:

Paul Reitenbach, Senior Policy Analyst
Mr. Reitenbach has 32 years' experience in land use and community planning for King County. He managed King County's planning efforts for the master planned communities in the Bear Creek and Snoqualmie Ridge areas. His current responsibilities include managing the updates of the King County Comprehensive Plan and working on the update of the Countywide Planning Policies. He has a B.A in Geography (1972) and an M.A. in Urban Studies (1977) from the University of Akron, Ohio.

Matthew Nolan, P.E.
Mr. Nolan currently serves as King County Traffic Engineer and Manager of the King County Traffic Engineering Section, positions he has held for the last five years of his more than 18 years' of service with King County Department of Transportation's Road Services Division. A graduate of Oregon State University with a Bachelors of Science in Civil Engineering, Mr. Nolan has 25 years of engineering and management experience and is a registered Professional Engineer in the State of Washington.

From: Steve Pilcher
[mailto:SPilcher@ci.blackdiamond.wa.us]<mailto:[mailto:SPilcher@ci.blackdiamond.wa.us]>
Sent: Monday, July 11, 2011 11:39 AM
To: Smith, Lauren
Subject: FW: Expert witnesses - (same email just sent to Steve Pilcher)

Please note paragraph #2 in the Examiner's email, below.

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

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To: Brenda Martinez
Cc: Stacey Borland; Steve Pilcher; Andy Williamson

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Sent: Tuesday, July 12, 2011 12:06 PM
To: Steve Pilcher
Subject: Re: Development Agreement hearings

How late do you have the room on Saturday?
Sent from my Verizon Wireless BlackBerry

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Date: Tue, 12 Jul 2011 10:44:08
To: olbrechtsw@gmail.com<olbrechtsw@gmail.com>
Cc: Rebecca Olness<ROlness@ci.blackdiamond.wa.us>; Brenda Martinez<BMartinez@ci.blackdiamond.wa.us>; Stacey Borland<SBorland@ci.blackdiamond.wa.us>
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Sent: Monday, July 11, 2011 2:46 PM
To: 'Brenda Martinez'
Subject: RE: Expert witnesses - (same email just sent to Steve Pilcher)

Ok, sounds good.

From: Brenda Martinez [mailto:BMartinez@ci.blackdiamond.wa.us]
Sent: Monday, July 11, 2011 2:43 PM
To: Phil Olbrechts
Subject: RE: Expert witnesses - (same email just sent to Steve Pilcher)

The only thing we were planning on posting daily was an updated exhibit list, not the exhibits. If we are to post all the exhibits I cannot guarantee when they will be posted. From what I remember during the last open record hearings you kept all the exhibits, provided the city with an updated exhibit list which we posted daily and then upon completion you turned all the exhibits over to the city.

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Sent: Monday, July 11, 2011 12:59 PM
To: Brenda Martinez
Subject: RE: Expert witnesses - (same email just sent to Steve Pilcher)

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To: Phil Olbrechts
Cc: Stacey Borland; Steve Pilcher; Andy Williamson
Subject: RE: Expert witnesses - (same email just sent to Steve Pilcher)

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Cc: 'Stacey Borland'; 'Steve Pilcher'; Andy Williamson (AWilliamson@ci.blackdiamond.wa.us)
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Subject: RE: Pre-hearing motion

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Cc: Brenda Martinez; Steve Pilcher; Andy Williamson
Subject: RE: Pre-hearing motion

Great, we'll need six slots per hour starting the second night of hearing (i.e. 7/12, 7/13, 7/14) from 6:00 pm to 10:00 pm. The slots should identify the time, e.g. 6:10, 6:20, 6:30 etc. The first slot at 6:00 pm should be reserved for "Examiner Comments". We'll also need six slots per hour starting at 9:00 am on 7/16 from 9-12 and 1-3 pm. The sheets (or notice accompanying the sheets) should state as follows:

"Persons who wish to testify may reserve a ten minute slot in advance by reserving a time on the posted sign-up sheets. Each person shall be allowed up to ten minutes to speak. Persons may cede their entire ten minute allocation to another speaker, provided they are present at hearing to cede their time. Persons who have a disability that prevents them from being present at the hearing need not be present to cede their time. The recipients of any ceded time may schedule their additional time on the sign-up sheets, i.e. "John Smith, using ceded time". The maximum time that any speaker may testify during the public comment portion of the hearings is one hour total. The grantor of the ceded time need not be identified on the sign-up sheets, but will have to be identified at the hearing. Any unused time during the hearing will be available to others present at the hearing who have not already spoken or ceded their time"

From: Stacey Borland [mailto:SBorland@ci.blackdiamond.wa.us]
Sent: Thursday, June 30, 2011 1:07 PM
To: Phil Olbrechts
Cc: Brenda Martinez; Steve Pilcher; Andy Williamson
Subject: Pre-hearing motion

We could post sign-up sheets at our Community Development building tomorrow morning. They would be available for people to sign up during business hours 8:30-5:00 Monday-Friday excluding the holiday

and furlough day (July 4 & 5). Unfortunately, the City does not have a secure area to post the sheets for after hour sign ups. We suggest having the sign-up sheets available each night of the hearing for those people who couldn't make it in prior to the start. Please provide us with specifics for the sign-up sheets (i.e. do you want just a list of names or something more specific). Please send your correspondence to these addresses (we've requested that the public do so as well):

spilcher@ci.blackdiamond.wa.us

sborland@ci.blackdiamond.wa.us

awilliamson@ci.blackdiamond.wa.us

bmartinez@ci.blackdiamond.wa.us

Thank you

From: Phil Olbrechts [<mailto:olbrechtslaw@gmail.com>]

Sent: Thursday, June 30, 2011 11:38 AM

To: Stacey Borland

Subject: RE: Omitted pre-hearing motion

Thanks. I'm going to have sign up procedure outlined in the order for public testimony. How soon can you post sign-up sheets and how would you like to make them available to the public? I was thinking you could post them at City Hall or outside Council chambers. Whatever is most accessible and (preferably) available after hours.

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

From: Phil Olbrechts [<mailto:olbrechtslaw@gmail.com>]

Sent: Monday, July 11, 2011 9:33 AM

To: 'Steve Pilcher'

Subject: RE: Notice of intent to submit testimony

Please post this email.

The following witnesses submitted by Save Our Black Diamond qualify as expert witnesses: Llyn Doremus, Sarah Cook and Chris Breeds. Anyone wishing to present rebuttal testimony should provide dates of availability for their witnesses for the week of July 18 and the other information as outlined on Page 5 of Pre-Hearing Order II. Scheduling a rebuttal expert on the same date as the witness rebutted is preferred.

Please advise King County that it has not provided curriculum vitae as required by the prehearing order. King County has until 5:00 pm tomorrow to provide that information. The curriculum vitae can simply be a couple sentences describing the witnesses' education and experience. Anyone who would like to submit rebuttal testimony to the witnesses proposed by King County should consider it likely that the Examiner will find them qualified to testify as experts. The deadline for submitting rebuttal expert witness information will remain July 13, 2011 as outlined on page 5 of Pre-Hearing Order II.

The use of expert witnesses to rebut non-expert testimony was not addressed in the prehearing order. From a scheduling standpoint it would be easiest to incorporate this testimony into the record in writing as part of the two week written comment period that extends beyond the close of verbal testimony.

Persons who wish to comment on this issue should do so by email to Mr. Pilcher, SPilcher@ci.blackdiamond.wa.us, by 5:00 pm tomorrow (July 12, 2011). The Examiner will rule on the issue at the beginning of the hearing tomorrow (July 12, 2011).

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

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]
Sent: Friday, July 08, 2011 4:01 PM
To: olbrechtslaw@gmail.com
Subject: FW: Notice of intent to submit testimony

FYI

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

From: Smith, Lauren [mailto:Lauren.Smith@kingcounty.gov]
Sent: Friday, July 08, 2011 3:59 PM
To: Steve Pilcher
Cc: Reitenbach, Paul; Nolan, Matthew
Subject: Notice of intent to submit testimony

Mr. Pilcher

This email serves as notice of the County's intent to submit oral and written expert witness testimony on the development agreements for the Villages and Lawson Hills Master Planned Communities. The experts who will be testifying are Mr. Paul Reitenbach, Senior Policy Analyst at the Department of Development and Environmental Services, and Mr. Matthew Nolan, County Traffic Engineer at the Department of Transportation. Mr. Reitenbach will testify on areas of the development agreements covering land uses and facilities that may impact the surrounding rural communities (e.g., schools and stormwater facilities). Mr. Nolan will speak more specifically to areas of the development agreements covering planned transportation improvements (or lack thereof) that may impact surrounding rural communities and the County's road infrastructure. Mr. Reitenbach and Mr. Nolan would each appreciate having 15-20 minutes to speak to these issues. Mr. Reitenbach is generally available during the week of July 18, but is most easily scheduled on the afternoon of July 18, or any time on July 21. Mr. Nolan is currently out of the office, so I am not able to comment on his availability but can provide more information next week.

Thank you,
lcs

Lauren Smith
Land Use Policy Advisor
Unincorporated Area Relations Manager
King County Executive Dow Constantine

206-263-9606

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

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]

Sent: Monday, July 11, 2011 8:45 AM

To: 'Steve Pilcher'

Subject: RE: Dev. hearing questions

Your interpretation is correct.

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

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]

Sent: Saturday, July 09, 2011 9:21 PM

To: olbrechtslaw@gmail.com

Subject: FW: Dev. hearing questions

Mr. Olbrechts:

The individuals below requested that I forward their concerns to you. I have advised them that, according to the rules you established for the hearings, an individual must be present at the hearings in order to cede their time to another person. That apparently disagree with that rule. I as somewhat surprised since they appear to be in contact with Mr. Rimbo, who was in attendance at the May 23rd pre-hearing conference where stated your intent to require people to present in order to cede their time.

If I have erred in my understanding of the rules, please let me know and I will advise the Earleys and Mr. Rimbo.

Steve Pilcher

From: Bruce & Julie Earley [brunjul@comcast.net]

Sent: Saturday, July 09, 2011 9:26 AM

To: Steve Pilcher

Cc: Peter Rimbo

Subject: Re: Dev. hearing questions

Mr. Pilcher,

After reviewing section H of the pre-hearing order, I see nothing that addresses a citizen who is out of town but wishes to speak or at least cede his or her time at the hearing. There is a provision for those who are unable to attend based on a disability. The spirit of what is specified here is that if one is unable for reasons beyond his or her control to attend, the time in question can be ceded without attendance.

We are out of town on a long planned vacation, one which we are unable to change based on the limited notice we received from the city on the hearing.
If you are unwilling or unable to allow us to fully utilize our rights as citizens to have some say over our collective futures, then I would like to appeal to the hearing examiner regarding this matter.

Could you please forward this email to him or let us know in what way we can pursue this further.

Sincerely,

Bruce & Julie Earley

On Jul 9, 2011, at 8:52 AM, Steve Pilcher wrote:

> Mr & Mrs Early:

>

> The rules for the hearings established by the Hearing Examiner require anyone ceding time to another individual to be present at the hearing (see Section H of the Pre-hearing Order posted on the City's website) . Of course, you are free to submit any written comments, as is Mr. Rimbo if he believes he requires additional time to communicate his concerns.

>

> Steve Pilcher

> Community Development Director

>

> _____

> From: Bruce & Julie Earley [brunjul@comcast.net]

> Sent: Friday, July 08, 2011 11:52 PM

> To: Steve Pilcher

> Cc: Peter Rimbo

> Subject: Dev. hearing questions

>

> Mr. Pilcher,

>

> We will be out of town throughout the Hearings, but wish to cede our

> two

10-min blocks of time to members of the Public for their oral testimonies.

We have cc'ed Peter Rimbo so that he can match our ceded blocks of time with people needing extra time.

>

> Thank you.

>

> Bruce and Julie Early

> 22963 SE 292nd Pl.

> Black Diamond, WA 98010

> 360-886-8286

>

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Friday, July 08, 2011 9:23 AM
To: 'Steve Pilcher'
Subject: Hearing Summaries

Hi Steve,

Did you want hearing summaries done this time around? I have an Ivy League college intern who can prepare the summaries for \$25 per hour. I can also have her at the hearings preparing the summaries while also marking exhibits, monitoring the sign- up sheets, etc.

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Friday, July 08, 2011 8:40 AM
To: 'Stacey Borland'
Subject: RE: Process question

One more addition, if not too late. That's it.

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Friday, July 08, 2011 8:38 AM
To: 'Stacey Borland'
Cc: 'Steve Pilcher'; 'Brenda Martinez'; 'Andy Williamson'
Subject: RE: Process question

One more addition to the statement below, if it's not too late. No big deal if it can't be included.

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Friday, July 08, 2011 8:13 AM
To: 'Stacey Borland'
Cc: 'Steve Pilcher'; 'Brenda Martinez'; 'Andy Williamson'
Subject: RE: Process question

I added one more sentence to the explanatory statement.

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Friday, July 08, 2011 8:09 AM
To: 'Stacey Borland'
Cc: 'Steve Pilcher'; 'Brenda Martinez'; 'Andy Williamson'
Subject: RE: Process question

Please post the statement below on the running sign up sheet (either as a separate accompanying sheet or on the first page, whatever is easiest). The first "summary" section should be bolded if that doesn't make it through on this email.

Summary: This is a "running" sign-up sheet that allows persons to sign up for unreserved time as it becomes available on a first-come, first served basis.

Specific times to speak have been reserved in advance through other sign-up sheets provided to the public. Unreserved time will likely become available as people do not use their fully allotted time or fail to appear to speak. The purpose of this running sign-up sheet is to provide people with an opportunity to use that unreserved time on a first-come first-served basis. People will be called from this list for the duration of the hearings in order signed when unreserved time becomes available. If you are not present when called your name will be removed from the list, but you are free to sign up again once your name is removed. If you wish to sign-up for unreserved time, including if your name has been removed for failure to appear, you must do so on this sign-up sheet before 10:00 am on June 16, 2011. This sign-up sheet will be posted at the City of Black Diamond Department of Community Development located at 24301 Roberts Drive during regular business hours and at the hearing location itself for the duration of the hearings. Speaking time is limited to a maximum of ten minutes, once per speaker.

If you wish to increase your time by using "ceded" time as identified in the prehearing order, please identify the length of your presentation on this sign-up sheet out of consideration for those speaking after you. Persons using "ceded" time may have to break up their presentation in order to accommodate speakers with reserved time. Ceded time is limited to a total of one hour (including the speaker's time).

You are free to sign up for both the reserved time sheet as well as this sign-up sheet, but will only be allowed to speak when you are first called.

From: Stacey Borland [mailto:SBorland@ci.blackdiamond.wa.us]
Sent: Thursday, July 07, 2011 12:00 PM
To: Phil Olbrechts
Cc: Steve Pilcher; Brenda Martinez; Andy Williamson
Subject: Process question

Mr. Olbrechts,

I have two questions pertaining to the sign-up sheets discussed in your Pre-Hearing Order on pages 6 and 7.

- 1) Is it your direction that the sign-up sheets that are currently available at the Community Development Department continue to be available here during business hours next week also? We just want to clarify in advance if we need to collect the list from you every night, make it available during the day, bring it back to the hearing etc.
- 2) Do you also want city staff to prepare a separate sign-up sheet for the purposes of filling in unused time? If so, please provide specifics. Question #1 also applies to this sign-up sheet.

Thank you,

Stacey Borland, AICP
Associate Planner
City of Black Diamond
P.O. Box 599
Black Diamond, WA 98010
360-886-2560 ext. 222

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Friday, July 08, 2011 8:38 AM
To: 'Stacey Borland'
Cc: 'Steve Pilcher'; 'Brenda Martinez'; 'Andy Williamson'
Subject: RE: Process question

One more addition to the statement below, if it's not too late. No big deal if it can't be included.

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Friday, July 08, 2011 8:13 AM
To: 'Stacey Borland'
Cc: 'Steve Pilcher'; 'Brenda Martinez'; 'Andy Williamson'
Subject: RE: Process question

I added one more sentence to the explanatory statement.

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Friday, July 08, 2011 8:09 AM
To: 'Stacey Borland'
Cc: 'Steve Pilcher'; 'Brenda Martinez'; 'Andy Williamson'
Subject: RE: Process question

Please post the statement below on the running sign up sheet (either as a separate accompanying sheet or on the first page, whatever is easiest). The first "summary" section should be bolded if that doesn't make it through on this email.

Summary: This is a "running" sign-up sheet that allows persons to sign up for unreserved time as it becomes available on a first-come, first served basis.

Specific times to speak have been reserved in advance through other sign-up sheets provided to the public. Unreserved time will likely become available as people do not use their fully allotted time or fail to appear to speak. The purpose of this running sign-up sheet is to provide people with an opportunity to use that unreserved time on a first-come first-served basis. People will be called from this list for the duration of the hearings in order signed when unreserved time becomes available. If you are not present when called your name will be removed from the list, but you are free to sign up again once your name is removed. If you wish to sign-up for unreserved time, including if your name has been removed for failure to appear, you must do so on this sign-up sheet before 10:00 am on June 16, 2011. This sign-up sheet will be posted at the City of Black Diamond Department of Community Development located at 24301 Roberts Drive during regular business hours and at the hearing location itself for the duration of the hearings. Speaking time is limited to a maximum of ten minutes, once per speaker. If you wish to increase your time by using "ceded" time as identified in the prehearing order, please identify the length of your presentation on this sign-up sheet out of consideration for those speaking after you. Persons using "ceded" time may have to break up their presentation in order to accommodate speakers with reserved time. You are free to sign up for both the reserved time sheet as well as this sign-up sheet, but will only be allowed to speak when you are first called.

From: Stacey Borland [mailto:SBorland@ci.blackdiamond.wa.us]
Sent: Thursday, July 07, 2011 12:00 PM
To: Phil Olbrechts

Cc: Steve Pilcher; Brenda Martinez; Andy Williamson
Subject: Process question

Mr. Olbrechts,

I have two questions pertaining to the sign-up sheets discussed in your Pre-Hearing Order on pages 6 and 7.

- 3) Is it your direction that the sign-up sheets that are currently available at the Community Development Department continue to be available here during business hours next week also? We just want to clarify in advance if we need to collect the list from you every night, make it available during the day, bring it back to the hearing etc.
- 4) Do you also want city staff to prepare a separate sign-up sheet for the purposes of filling in unused time? If so, please provide specifics. Question #1 also applies to this sign-up sheet.

Thank you,

Stacey Borland, AICP
Associate Planner
City of Black Diamond
P.O. Box 599
Black Diamond, WA 98010
360-886-2560 ext. 222

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

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Friday, July 08, 2011 8:22 AM
To: 'Steve Pilcher'; 'Bob Edelman'
Subject: RE: Sign-up procedure

The sign-up sheets for reserved and unreserved time will be available for signature throughout the duration of the hearings until 10:00 am on June 16, 2010. If someone would like to speak on a specific hearing date they should use the reserved time sign-up sheets. I've just completed an explanatory statement for the running sign-up sheet for unreserved time below.

Summary: This is a "running" sign-up sheet that allows persons to sign up for unreserved time as it becomes available on a first-come, first served basis.

Specific times to speak have been reserved in advance through other sign-up sheets provided to the public. Unreserved time will likely become available as people do not use their fully allotted time or fail to appear to speak. The purpose of this running sign-up sheet is to provide people with an opportunity to use that unreserved time on a first-come first-served basis. People will be called from this list for the duration of the hearings in order signed when unreserved time becomes available. If you are not

present when called your name will be removed from the list, but you are free to sign up again once your name is removed. If you wish to sign-up for unreserved time, including if your name has been removed for failure to appear, you must do so on this sign-up sheet before 10:00 am on June 16, 2011. This sign-up sheet will be posted at the City of Black Diamond Department of Community Development located at 24301 Roberts Drive during regular business hours and at the hearing location itself for the duration of the hearings. Speaking time is limited to a maximum of ten minutes, once per speaker. If you wish to increase your time by using "ceded" time as identified in the prehearing order, please identify the length of your presentation on this sign-up sheet out of consideration for those speaking after you. You are free to sign up for both the reserved time sheet as well as this sign-up sheet, but will only be allowed to speak when you are first called.

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

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]
Sent: Thursday, July 07, 2011 9:01 AM
To: Bob Edelman
Subject: RE: Sign-up procedure

Good morning!

I am forwarding your concerns to the Hearing Examiner so he can provide clarification.

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

From: Bob Edelman [mailto:BobEdelman@comcast.net]
Sent: Wednesday, July 06, 2011 5:50 PM
To: Steve Pilcher
Subject: Sign-up procedure

Please clarify the sign-up procedure. The Examiner's order was somewhat confusing to me.

Will people be able to sign-up each day at any time? Also, when people sign-up can they specify which day?

I got an email from a neighbor who in Chelan now and won't be returning until mid-week. She can't sign-up in advance in person.

Thanks,

Bob

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

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Friday, July 08, 2011 8:16 AM
To: 'Steve Pilcher'
Subject: RE: HRG QUESTIONS

Steve,

Stacey advised me that staff did not have the resources to schedule by email or phone, per the emails pasted below:

From: Stacey Borland [mailto:SBorland@ci.blackdiamond.wa.us]
Sent: Thursday, June 30, 2011 2:40 PM
To: Phil Olbrechts
Cc: Brenda Martinez; Steve Pilcher; Andy Williamson
Subject: RE: Pre-hearing motion

Unfortunately no; we already have a small staff which will be reduced next week due to the holiday and pre-scheduled vacations. We would not be able to manage the in-person sign-ups, over the phone sign-ups and our regular work load.

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Thursday, June 30, 2011 2:27 PM
To: Stacey Borland
Cc: Brenda Martinez; Steve Pilcher; Andy Williamson
Subject: RE: Pre-hearing motion

Also, would you like staff to make speaking appointments by phone? I'm thinking of the public agencies who might have to travel a long distance to sign up. If phone appointments are ok, let me know the number and who they should call. Email would work too I suppose.

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

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]
Sent: Thursday, July 07, 2011 10:54 AM
To: olbrechtslaw@gmail.com
Subject: FW: HRG QUESTIONS

Another question below.

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

From: Peter Rimbos [mailto:primbos@comcast.net]
Sent: Thursday, July 07, 2011 9:45 AM
To: Steve Pilcher

Subject: Re: HRG QUESTIONS

Steve,

Hi. Now that the Hearing Examiner's Rules have been released and posted, could you please forward my first question to him (note: I've rephrased it to be directed to the Hearing Examiner and not to you):

"Can people signup to give Oral Testimony via e-mail (to the City), as was done during last year's Hearings? In this way people would not have to go to the Community Development office to signup, nor attend a session of the Hearings only to find the signup sheets already are filled for that session."

I believe he did answer my second question. Thank you.

Peter Rimbos
primbos@comcast.net<mailto:primbos@comcast.net>

"To know and not to do is not to know."-- Chinese proverb

Please consider the environment before printing.

On Jul 6, 2011, at 2:17 PM, Steve Pilcher wrote:

Peter:

The Hearing Examiner has issued an updated version of the Rules and Procedures for the upcoming hearings; they are now posted on the City's website. Please refer to them concerning any questions you may have. If you don't find an answer there, perhaps the Examiner will address some of these issues at the start of the hearing. Otherwise, staff is following the process as set forth by the Examiner.

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

From: Peter Rimbos [mailto:primbos@comcast.net]
Sent: Wednesday, July 06, 2011 10:27 AM

To: Steve Pilcher
Subject: HRG QUESTIONS

Steve,

Hi. Good morning. I've received several questions from people on signing up to give Oral Testimony and about Written Statements for NeXT's week's Hearings.

1. Can people signup to give Oral Testimony via e-mail (to you or your office), as was done during last year's Hearings? In this way people would not have to go to your office to signup, nor attend a session of the Hearings only to find the signup sheets already are filled for that session.

2. Can people cede their time due to time commitments/constraints, but still submit a Written Statement?

I hope you can clarify. Thank you.

Peter Rimbos
primbos@comcast.net<mailto:primbos@comcast.net>

"To know and not to do is not to know."-- Chinese proverb

Please consider the environment before printing.

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Friday, July 08, 2011 8:13 AM
To: 'Stacey Borland'
Cc: 'Steve Pilcher'; 'Brenda Martinez'; 'Andy Williamson'
Subject: RE: Process question

I added one more sentence to the explanatory statement.

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Friday, July 08, 2011 8:09 AM
To: 'Stacey Borland'
Cc: 'Steve Pilcher'; 'Brenda Martinez'; 'Andy Williamson'
Subject: RE: Process question

Please post the statement below on the running sign up sheet (either as a separate accompanying sheet or on the first page, whatever is easiest). The first "summary" section should be bolded if that doesn't make it through on this email.

Summary: This is a "running" sign-up sheet that allows persons to sign up for unreserved time as it becomes available on a first-come, first served basis.

Specific times to speak have been reserved in advance through other sign-up sheets provided to the public. Unreserved time will likely become available as people do not use their fully allotted time or fail to appear to speak. The purpose of this running sign-up sheet is to provide people with an opportunity to use that unreserved time on a first-come first-served basis. People will be called from this list for the duration of the hearings in order signed when unreserved time becomes available. If you are not present when called your name will be removed from the list, but you are free to sign up again once your name is removed. If you wish to sign-up for unreserved time, including if your name has been removed for failure to appear, you must do so on this sign-up sheet before 10:00 am on June 16, 2011. This sign-up sheet will be posted at the City of Black Diamond Department of Community Development located at 24301 Roberts Drive during regular business hours and at the hearing location itself for the duration of the hearings. Speaking time is limited to a maximum of ten minutes, once per speaker. If you wish to increase your time by using "ceded" time as identified in the prehearing order, please identify the length of your presentation on this sign-up sheet out of consideration for those speaking after you. You are free to sign up for both the reserved time sheet as well as this sign-up sheet, but will only be allowed to speak when you are first called.

From: Stacey Borland [mailto:SBorland@ci.blackdiamond.wa.us]
Sent: Thursday, July 07, 2011 12:00 PM
To: Phil Olbrechts
Cc: Steve Pilcher; Brenda Martinez; Andy Williamson
Subject: Process question

Mr. Olbrechts,

I have two questions pertaining to the sign-up sheets discussed in your Pre-Hearing Order on pages 6 and 7.

- 5) Is it your direction that the sign-up sheets that are currently available at the Community Development Department continue to be available here during business hours next week also? We just want to clarify in advance if we need to collect the list from you every night, make it available during the day, bring it back to the hearing etc.
- 6) Do you also want city staff to prepare a separate sign-up sheet for the purposes of filling in unused time? If so, please provide specifics. Question #1 also applies to this sign-up sheet.

Thank you,

Stacey Borland, AICP
Associate Planner
City of Black Diamond
P.O. Box 599
Black Diamond, WA 98010
360-886-2560 ext. 222

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Friday, July 08, 2011 8:09 AM
To: 'Stacey Borland'
Cc: 'Steve Pilcher'; 'Brenda Martinez'; 'Andy Williamson'
Subject: RE: Process question

Please post the statement below on the running sign up sheet (either as a separate accompanying sheet or on the first page, whatever is easiest). The first "summary" section should be bolded if that doesn't make it through on this email.

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From: Stacey Borland [mailto:SBorland@ci.blackdiamond.wa.us]
Sent: Thursday, July 07, 2011 12:00 PM
To: Phil Olbrechts
Cc: Steve Pilcher; Brenda Martinez; Andy Williamson
Subject: Process question

Mr. Olbrechts,

I have two questions pertaining to the sign-up sheets discussed in your Pre-Hearing Order on pages 6 and 7.

- 7) Is it your direction that the sign-up sheets that are currently available at the Community Development Department continue to be available here during business hours next week also? We just want to clarify in advance if we need to collect the list from you every night, make it available during the day, bring it back to the hearing etc.
- 8) Do you also want city staff to prepare a separate sign-up sheet for the purposes of filling in unused time? If so, please provide specifics. Question #1 also applies to this sign-up sheet.

Thank you,

Stacey Borland, AICP
Associate Planner
City of Black Diamond
P.O. Box 599
Black Diamond, WA 98010
360-886-2560 ext. 222

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Thursday, July 07, 2011 9:40 PM
To: 'Stacey Borland'
Cc: 'Steve Pilcher'; 'Brenda Martinez'; 'Andy Williamson'
Subject: RE: Process question

Yes, please continue to post the sign-up sheets at City Hall until the hearings are over. The prehearing order did not mention they would be taken down during the hearings so I don't want to thwart any expectations on that issue. Also, the more people who sign up in advance the better. Of course, if a sign-up sheet is full there's no need to post it at City Hall.

I'll get back to you on the sign-up sheet for unreserved time.
From: Stacey Borland [mailto:SBorland@ci.blackdiamond.wa.us]
Sent: Thursday, July 07, 2011 12:00 PM
To: Phil Olbrechts
Cc: Steve Pilcher; Brenda Martinez; Andy Williamson
Subject: Process question

Mr. Olbrechts,

I have two questions pertaining to the sign-up sheets discussed in your Pre-Hearing Order on pages 6 and 7.

- 9) Is it your direction that the sign-up sheets that are currently available at the Community Development Department continue to be available here during business hours next week also? We just want to clarify in advance if we need to collect the list from you every night, make it available during the day, bring it back to the hearing etc.
- 10) Do you also want city staff to prepare a separate sign-up sheet for the purposes of filling in unused time? If so, please provide specifics. Question #1 also applies to this sign-up sheet.

Thank you,

Stacey Borland, AICP
Associate Planner
City of Black Diamond
P.O. Box 599
Black Diamond, WA 98010
360-886-2560 ext. 222

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Wednesday, July 06, 2011 3:22 PM

To: 'Brenda Martinez'
Subject: FW: Pre-Hearing Order PDF, ready for posting

Hi Brenda,

Sounds like you got the attached this morning. If not, both should be posted along with the pdf signed version of the order I just emailed.

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Wednesday, July 06, 2011 9:24 AM
To: 'Stacey Borland'
Cc: 'Brenda Martinez'; 'Steve Pilcher'; 'Andy Williamson'
Subject: RE: Pre-Hearing Order PDF, ready for posting

Attached is the mark up for the Prehearing Order II as well as the procedural rules. Please post both. I will be sending over a final draft signed Prehearing Order II as well. As I noted in the Order, Pre-Hearing Order II is merged with Pre-Hearing Order I for ease of reference. The mark up identifies the changes made to Pre-Hearing Order I to make Pre-Hearing Order II.

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Thursday, June 30, 2011 3:52 PM
To: 'Stacey Borland'
Cc: 'Brenda Martinez'; 'Steve Pilcher'; 'Andy Williamson'
Subject: Pre-Hearing Order PDF, ready for posting

Attached.

From: Stacey Borland [mailto:SBorland@ci.blackdiamond.wa.us]
Sent: Thursday, June 30, 2011 1:50 PM
To: Phil Olbrechts
Cc: Brenda Martinez; Steve Pilcher; Andy Williamson
Subject: RE: Pre-hearing motion

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Sent: Thursday, June 30, 2011 11:38 AM
To: Stacey Borland
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From: Phil Olbrechts [<mailto:olbrechtslaw@gmail.com>]
Sent: Wednesday, July 06, 2011 3:13 PM
To: 'Brenda Martinez'
Subject: FW: Pre-Hearing Order II pdf

Hi Brenda,

The attached was sent at 10:14 and 2:21. You should also have received a copy of the Rules of Procedure earlier today.

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Wednesday, July 06, 2011 2:21 PM
To: 'Brenda Martinez' (BMartinez@ci.blackdiamond.wa.us)
Cc: 'Stacey Borland'; 'Steve Pilcher'; Andy Williamson (AWilliamson@ci.blackdiamond.wa.us)
Subject: FW: Pre-Hearing Order II pdf

Got a message that this didn't get through. Hopefully it will this time.

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To: 'Brenda Martinez'; 'Steve Pilcher'; 'Andy Williamson'; 'Stacey Borland'
Subject: RE: Pre-Hearing Order PDF, ready for posting

I keep getting messages that my emails are not making it to Black Diamond. I've sent out emails to several other cities today with no problem. Could you let me know if my emails have gone through? I've sent rules of procedure, a marked up version of prehearing order II and a pdf signed version of prehearing order II.

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From: Phil Olbrechts [<mailto:olbrechtslaw@gmail.com>]
Sent: Thursday, June 30, 2011 11:38 AM
To: Stacey Borland
Subject: RE: Omitted pre-hearing motion

Thanks. I'm going to have sign up procedure outlined in the order for public testimony. How soon can you post sign-up sheets and how would you like to make them available to the public? I was thinking you could post them at City Hall or outside Council chambers. Whatever is most accessible and (preferably) available after hours.

From: Phil Olbrechts [<mailto:olbrechtslaw@gmail.com>]
Sent: Thursday, June 30, 2011 3:52 PM
To: 'Stacey Borland'
Cc: 'Brenda Martinez'; 'Steve Pilcher'; 'Andy Williamson'
Subject: Pre-Hearing Order PDF, ready for posting

Attached.

From: Stacey Borland [<mailto:SBorland@ci.blackdiamond.wa.us>]
Sent: Thursday, June 30, 2011 1:50 PM
To: Phil Olbrechts
Cc: Brenda Martinez; Steve Pilcher; Andy Williamson
Subject: RE: Pre-hearing motion

We have to be out of the school by 10:00 during the week nights. Is it acceptable if we have the last speaker sign-up at 9:20pm, then schedule Hearing Examiner nightly closing comments at 9:30? This would then give everyone 15-20 minutes to vacate the building so we are all out by 10:00pm.

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Sent: Thursday, June 30, 2011 1:31 PM
To: Stacey Borland

Cc: Brenda Martinez; Steve Pilcher; Andy Williamson
Subject: RE: Pre-hearing motion

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Sent: Thursday, June 30, 2011 1:07 PM
To: Phil Olbrechts
Cc: Brenda Martinez; Steve Pilcher; Andy Williamson
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We could post sign-up sheets at our Community Development building tomorrow morning. They would be available for people to sign up during business hours 8:30-5:00 Monday-Friday excluding the holiday and furlough day (July 4 & 5). Unfortunately, the City does not have a secure area to post the sheets for after hour sign ups. We suggest having the sign-up sheets available each night of the hearing for those people who couldn't make it in prior to the start. Please provide us with specifics for the sign-up sheets (i.e. do you want just a list of names or something more specific). Please send your correspondence to these addresses (we've requested that the public do so as well):

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Cc: 'Brenda Martinez'; 'Steve Pilcher'; 'Andy Williamson'
Subject: RE: Pre-hearing motion

I'm going to send you a signed pdf, but in the meantime here's the word file.

From: Stacey Borland [mailto:SBorland@ci.blackdiamond.wa.us]
Sent: Thursday, June 30, 2011 1:50 PM
To: Phil Olbrechts
Cc: Brenda Martinez; Steve Pilcher; Andy Williamson
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From: Phil Olbrechts [<mailto:olbrechtslaw@gmail.com>]

Sent: Thursday, June 30, 2011 3:00 PM

To: 'Stacey Borland'

Subject: RE: Pre-hearing motion

I've revised the sign up sheet explanation as outlined below, so we don't have dead spaces between speakers. The sign up sheets shouldn't have six slots for each hour as opposed to a time assigned to each ten minutes, e.g. you would have six slots for 6:10 to 7:10, six slots for 7:10 to 8:10 and six slots for 8:10 to 9:10 for the evening hearings on July 12, 13 and 14 and the same type of slots for 9:10 am to 10:10, 10:10 to 11:10 and 11:10 to 12:10 pm, then 1:10 pm to 2:10 pm on July 16 with the remaining time on that date for City and Applicant rebuttal.

"Persons who wish to testify may reserve time in advance on the posted sign-up sheets. Each person shall be allowed up to ten minutes to speak. Up to six persons shall be assigned to each hour of hearing and those persons will speak in the order in which they have signed up. Persons may cede their entire ten minute allocation to another speaker, provided they are present at hearing to cede their time. Persons who have a disability that prevents them from being present at the hearing need not be present to cede their time. The recipients of any ceded time may schedule their additional time on the sign-up sheets, i.e. "John Smith, using ceded time". One additional sign up slot must be filled in for each ten minutes of time ceded, e.g. if a person will use their time and ceded time from four others to speak, they should fill in five speaking slots. The maximum time that any speaker may testify during the public comment portion of the hearings is one hour total. The grantor of the ceded time need not be identified on the sign-up sheets, but will have to be identified at the hearing. Any unused time during

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From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Thursday, June 30, 2011 2:44 PM
To: 'Stacey Borland'
Subject: RE: Pre-hearing motion

I'd like to add a sentence to the sign up notice I emailed you. Is that still possible. No big deal if not.

From: Stacey Borland [mailto:SBorland@ci.blackdiamond.wa.us]
Sent: Thursday, June 30, 2011 2:40 PM
To: Phil Olbrechts
Cc: Brenda Martinez; Steve Pilcher; Andy Williamson
Subject: RE: Pre-hearing motion

Unfortunately no; we already have a small staff which will be reduced next week due to the holiday and pre-scheduled vacations. We would not be able to manage the in-person sign-ups, over the phone sign-ups and our regular work load.

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Sent: Thursday, June 30, 2011 2:24 PM
To: 'Stacey Borland'
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Could you give me the address of the community development building for the prehearing order?

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Sent: Thursday, June 30, 2011 11:38 AM
To: Stacey Borland
Subject: RE: Omitted pre-hearing motion

Thanks. I'm going to have sign up procedure outlined in the order for public testimony. How soon can you post sign-up sheets and how would you like to make them available to the public? I was thinking you could post them at City Hall or outside Council chambers. Whatever is most accessible and (preferably) available after hours.

From: olbrechtslaw@gmail.com [mailto:olbrechtslaw@gmail.com]
Sent: Thursday, June 30, 2011 9:47 AM
To: Stacey Borland
Subject: Re: Omitted pre-hearing motion

Received.

Sent from my Verizon Wireless BlackBerry

From: Stacey Borland <SBorland@ci.blackdiamond.wa.us>
Date: Thu, 30 Jun 2011 09:42:15 -0700
To: Phil Olbrechts<olbrechtslaw@gmail.com>
Cc: Brenda Martinez<BMartinez@ci.blackdiamond.wa.us>
Subject: RE: Omitted pre-hearing motion

Ok, thank you for the clarification. Here are the file numbers:

THE VILLAGES MPD-FILE NOs.: PLN10-0020/PLN11-0013
LAWSON HILLS MPD-FILE NOs.: PLN10-0021/PLN11-0014

I also wanted to confirm that you received the box from the city with your hearing packet.

Stacey Borland, AICP
Associate Planner
City of Black Diamond
P.O. Box 599
Black Diamond, WA 98010
360-886-2560 ext. 222
From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Thursday, June 30, 2011 9:27 AM
To: Stacey Borland; Brenda Martinez
Subject: RE: Omitted pre-hearing motion

Stacey,

Leave the Derdowski email where it is. The City's supplemental evidence is untimely and won't be considered in the prehearing motions (I haven't and won't look at it until after my prehearing order is completed), but of course it can be submitted into the record for later consideration. To avoid confusion I wouldn't post it.

Do you have file numbers for the development agreements? I noticed that Yarrow Bay and the City included several file numbers in their motions, but I couldn't tell which number applied to which mpd.

From: Stacey Borland [<mailto:SBorland@ci.blackdiamond.wa.us>]
Sent: Thursday, June 30, 2011 9:07 AM
To: Phil Olbrechts; Brenda Martinez
Subject: RE: Omitted pre-hearing motion

Mr. Olbrechts,

The item referenced below is on the website under the "E-mail communication among the Hearing Examiner and Parties" section. It has always been on the website at the link below:

<http://www.ci.blackdiamond.wa.us/Depts/CommDev/planning/MPDDevAgreements/June2011/Motions/Letter%20to%20Olbrechts%20061311.pdf>

Do you want us to classify it as a pre-hearing motion? If so we will re-post it as such. It is also my understanding that Steve sent you an e-mail last week seeking clarification regarding a submittal by the City from Bob Sterbank (City's Supplemental Evidence in Support of Response to Prehearing Motions) dated Friday, 6/24/11. We are awaiting instruction from you before posting that item to the website.

Thank you,

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City of Black Diamond
P.O. Box 599
Black Diamond, WA 98010
360-886-2560 ext. 222
From: Phil Olbrechts [<mailto:olbrechtslaw@gmail.com>]
Sent: Thursday, June 30, 2011 8:04 AM
To: Brenda Martinez; Stacey Borland
Subject: FW: Omitted pre-hearing motion

Hi Brenda,

Steve is out today. Could you or Stacey answer my question below? Note the email from Kristen Bryant below, cc'd to you and Steve. Thank you.

From: Phil Olbrechts [<mailto:olbrechtslaw@gmail.com>]
Sent: Thursday, June 30, 2011 7:41 AM
To: 'Steve Pilcher'
Subject: FW: Omitted pre-hearing motion

Hi Steve,

I noticed that the attached hasn't been posted on the City's website as a prehearing motion. Could you tell me what's going on with this one?

From: Save Black Diamond [mailto:saveblackdiamond@gmail.com]
Sent: Tuesday, June 21, 2011 12:04 AM
To: spilcher@ci.blackdiamond.wa.us
Cc: olbrechtslaw@gmail.com; sborland@ci.blackdiamond.wa.us; awilliamson@ci.blackdiamond.wa.us; bmartinez@ci.blackdiamond.wa.us; brian@derdowski.com
Subject: Omitted pre-hearing motion

Dear City of Black Diamond,

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We must emphasize that the letter sent by Mr. Derdowski on June 13 should be entered into the record and listed as a pre-hearing motion with the others, as it met all the guidelines set at the time, and is similar in format to some of the other messages that are posted as pre-hearing motions. There is no reason for the omission.

Thank you,
Kristen Bryant
of Save Black Diamond

Attachment: original letter from Mr. Derdowski on June 13.
CC: Brian Derdowski

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Thursday, June 30, 2011 9:40 AM
To: 'Stacey Borland'; 'Brenda Martinez'
Subject: RE: Omitted pre-hearing motion

Stacey/Brenda,

I will be issuing a partial prehearing order today to maximize notice to the parties of some of the procedural requirements. Would it be possible to post that today? What would be the latest time I could email that document to you?

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Thursday, June 30, 2011 9:27 AM
To: 'Stacey Borland'; 'Brenda Martinez'
Subject: RE: Omitted pre-hearing motion

Stacey,

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Kristen Bryant
of Save Black Diamond

Attachment: original letter from Mr. Derdowski on June 13.
CC: Brian Derdowski

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Monday, June 20, 2011 12:08 PM
To: Cincity63@comcast.net
Cc: Steve Pilcher; BMartinez@ci.blackdiamond.wa.us
Subject: Re: Motion to Olbrechts - Development Agreement Hearing Motions

Thank you. Very helpful comments. My understanding is that staff is able to accept documents by email to Mr. Pilcher, above, or by delivering or mailing documents to him at Black Diamond City Hall. Mr. Pilcher, you may want to post the address if that's not available already. Any documents submitted should be received by the City by the required deadlines, since I will need to issue my prehearing order ASAP after all documents have been submitted. Staff is in a better position to write up a summary of how they can accept documents (and they can offer any reasonable method that works with them), but I am willing to put together a pre-pre hearing order if necessary. It will have to be unsigned, since I'm still on vacation.

On Mon, Jun 20, 2011 at 11:44 AM, <Cincity63@comcast.net> wrote:
Mr. Olbrechts-

Thank you for your response. I appreciate you acknowledging my motion as timely.

I am happy to follow the processes and procedures. I have no desire to veer into the absurd. The City of Black Diamond website did NOT have any procedures for submission of motions posted on their website. Clearly once this date was decided on

May 23 there was plenty of time when the submission procedure can and should have been delineated for the public.

While Mr. Pilcher's email to me states that in his "30 years of experience" input is typically submitted to City Staff and then forwarded to the Hearing Examiner, he does not share the benefit of his experience anywhere with the public in such a timeframe that allowed for understanding PRIOR to the deadline for motions of June 13th.

That failure to share did NOT serve any of us well.

In order for any and all to feel they can participate in the next upcoming deadline of June 24th to respond to motions you may need to provide Mr. Pilcher CLEAR instructions to post the process by which those documents should be submitted. His email to me last week indicated he was awaiting instructions from you to be able to act. (See below.)

Cindy:

I'm responding to this email since it was sent to me as the primary recipient.

If you examine the postings on the City's webpage, you will note that in an email from the Examiner to Mr. Bricklin and Mr. Kenyon, dated June 15th, 9:50 a.m., he wishes to minimize ex parte contacts. Therefore, unless we receive direction from him to the contrary, we will not be posting his email address.

In my 30+ years of planning experience, communications with a Hearing Examiner typically are sent to staff, who then forward those items to the Examiner. Usually, the only deviation from this pattern is when written materials are submitted during a public hearing process or if an Examiner specifically invites materials to be sent directly to his/her office.

We have asked the Examiner to clarify some procedural issues and will make any necessary adjustments if he so directs.

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

Clearly I was not the only person who thought the procedures on how to get procedures set were a little unclear.

And while your June 15th email asks citizens to seek assistance from staff before approaching you, and I will continue to do so, the staff has been reluctant at best to provide service or assistance to the general public. His email above also makes it clear

he will not be taking any action based on MY request for assistance or clarification, but ONLY at your direction.

Your time and attention to this issue are appreciated. It is unfortunate the City did not provide instructions at the outset to avoid such mess. Hopefully this is rectified before the next "due date".

Perhaps staff will also clarify the difference between a "Final Development Agreement" and a "Public Version of the Development Agreement" are before we go much deeper in this process as well. If staff fails to answer our questions, I will be following the instructions in your June 15th email and return the questions to you to address.

Thank you again.

Cindy Wheeler

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

From: "Phil Olbrechts" <olbrechtslaw@gmail.com>

To: Cincity63@comcast.net

Cc: "Steve Pilcher" <SPilcher@ci.blackdiamond.wa.us>

Sent: Sunday, June 19, 2011 11:38:58 PM

Subject: Re: Motion to Olbrechts - Development Agreement Hearing Motions

Ms. Wheeler,

Thank you for your comments.

I can see why you would be concerned that I'm engaged in email discussions with a select few. I want to make it clear that no one has been authorized or invited to send emails directly to me other than staff. Through a variety of means people have found my email and sent me comments on their own initiative. For the most part I have not responded to these emails. In a prior email I requested that parties not send me emails and that if they had questions to send them to staff and that staff was to forward them to me if staff was unable to answer questions to the satisfaction of the inquirer. The reason for this is used upon the concerns that you raised in your email, as follows:

- 1) If I am engaged in daily communication with the dozens of concerned citizens in Black Diamond, I'm essentially holding an on-going hearing with rules and policies developing and changing on a daily basis. I think this would be very confusing to people and it would be asking a lot of Black Diamond residents to have to monitor

dozens or even hundreds of emails of an on-going dialogue between myself and Black Diamond residents. At this stage we are only in the process of setting up the ground rules for the hearing. Once all parties have had their opportunity to file motions and air their concerns, I will be putting together a prehearing order that will (hopefully) clearly lay out the rules of engagement so that citizens can know how to participate.

2) Even if this process is legislative rather than quasi-judicial, I am not comfortable engaging in on-going communications with parties outside of hearing process. I don't think you would find it acceptable if I spent considerable time discussing the project with the applicant over the next few weeks and I'm sure the converse is true as well. My responsibility is to objectively apply law to facts and provide the public with a level playing field for public participation. I do not believe I can effectively carry out this responsibility if I am engaged in extensive "behind the scenes" communications with hearing participants. Even if all my communications are done by email, as referenced in my last point it would be asking a lot of the public to require them to sift through hundreds of pages of email communications to find out what information I've acquired from these communications. The one exception to this rule has always been procedural discussions with staff, since it's difficult to get around this from a practical standpoint. As you know, I still recorded my procedural meeting with staff as well.

Your letter expresses the concern that the process needs to be clear so that citizens know how to participate. That is clearly an very important consideration. Keep in mind that were are putting together the rules that will create a clear process. So what I'm understanding you to say is that we need a clear process to set up a clear process to run the hearing. If we wanted to get absurd about this we could keep going back several levels, asserting that we need to set up a clear process to set up a clear process to set up a clear process etc.

I thought that the results of the pre-hearing conference were fairly straight forward, but it was probably best to put my rulings in writing. I simply ruled that staff could set a hearing date 30 days from the posting of the final development agreements and staff report and also set a prehearing motion schedule. The prehearing motions give anyone who wishes an opportunity to make additional comment on the hearing rules. Once all the motions and responses come in I will put together a prehearing order that sets out the hearing rules.

For all the reasons above I will not be responding to emails that are sent to me unless they relate to questions of procedure that can't be deferred to the prehearing order (such as what I'm addressing in this email). All comments that are sent to me will be made into exhibits and, of course, will be accessible to the public and will be considered by myself as part of the record.

If the prehearing motions include arguments that I should be engaged in on-going email or other discussions with Black Diamond residents I will certainly keep an open mind on those issues and and may change my position. As I've stated in previous emails, unless and until I rule otherwise I will treat my role as quasi-judicial. The view of my role

as quasi-judicial has no bearing on the Council role, since their responsibility as elected officials is distinguishable from my own.

As to your motion specifically, staff has posted an email where I stated that your motion is timely. To further clarify, I do not have any problems with the format of your motion. I ruled that the hearing could not start until 30 days after the posting of a complete development agreement and one of your main points is that the development agreement is not complete. I'm sure that those and other points will be addressed by other parties in the response briefs.

On Fri, Jun 17, 2011 at 4:30 PM, <Cincity63@comcast.net> wrote:
Mr. Olbrechts-

Upon inquiry to the City regarding the failure to post my motion to you I was told that the email I used was out of date. The City has not provided any other contact information for you and in fact Steve Pilcher refuses to provide any contact information to the public for you.

Please accept my motion as timely. I forward Monday's email to you below.

I have not yet read the "rebuttal" from Mr. Sterbanks on my motion, but object to its existence period.

My motion asks for two things:

That the Development Agreement and all its elements be COMPLETE with no items or elements "TBD" and that the process be workable for the public, not done in such a fashion that "legal" advice is necessary to understand or participate in the process.

Bob Sterbanks email, as much as I have read, only underscores the need for this.

No "required format" was published or provided to be used as a template for motions and I greatly resent Mr. Sterbanks attacking me for participating in this process.

Please confirm for me that you will accept my motion that was written and sent in a timely fashion and certainly does express two elements in the process that are important to me. Thank you.

Cindy Wheeler

----- Forwarded Message -----

From: Cincity63@comcast.net

To: "P Olbrechts" <polbrechts@omwlaw.com>

Sent: Monday, June 13, 2011 5:02:03 PM

Subject: Motion to Olbrechts - Development Agreement Hearing Motions

Mr. Olbrechts -

I did speak and provide written input at the Pre-Hearing Conference for these upcoming hearings. I did not expect to submitting motions per your deadline, but the recent production of several documents on the City's behalf prompt some additional input and emphasize the need for some other input, previously offered, to be repeated.

In both my written and verbal comments I had stated that **NO PORTIONS OF THE DEVELOPMENT AGREEMENT SHALL CONTAIN INCOMPLETE AGREEMENTS, UNDERSTANDINGS OR ITEMS THAT ARE "TBD"**.

Clearly it is impossible to judge the impact and effect of the development unless everything is decided, agreed upon / permitted and finalized. This is true whether it is road locations, school locations, storm water detention facilities, sewer facilities or any other required infrastructure or improvement element.

If we can not determine from the Development Agreement what the effects and impacts are, we can NOT possibly enter into a comprehensive agreement with a duration of some two decades. So **no elements should be left up in the air** and the "casualties" un-gauged, un-weighed and unknown for the citizens. After all this is our one and only chance to have made public comment on documents that have consequences for us for decades to come.

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Cindy Wheeler

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Monday, June 20, 2011 11:09 AM
To: Steve Pilcher
Subject: Fwd: Motion to Olbrechts - Development Agreement Hearing Motions

Steve,

I forwarded the email below to Brenda, but don't know if I sent one to you as well.

----- Forwarded message -----

From: **Phil Olbrechts** <olbrechtslaw@gmail.com>
Date: Sun, Jun 19, 2011 at 11:47 PM
Subject: Fwd: Motion to Olbrechts - Development Agreement Hearing Motions
To: BMartinez@ci.blackdiamond.wa.us

----- Forwarded message -----

From: **Phil Olbrechts** <olbrechtslaw@gmail.com>
Date: Sun, Jun 19, 2011 at 11:46 PM
Subject: Re: Motion to Olbrechts - Development Agreement Hearing Motions
To: Cincity63@comcast.net
Cc: Steve Pilcher <SPilcher@ci.blackdiamond.wa.us>

To answer a couple of your other questions:

1. All documents need to be filed with City staff, either by email or by hard copy. All those documents are public records and the City has a legal responsibility to retain them and disclose

them upon demand. For that reason all documents must go through City staff before going to me.

2. As to the what is the "public" version of the development agreement I will leave that to staff to answer. I have no more information on that issue than yourself.

On Fri, Jun 17, 2011 at 4:30 PM, <Cincity63@comcast.net> wrote:
Mr. Olbrechts-

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Please accept my motion as timely. I forward Monday's email to you below.

I have not yet read the "rebuttal" from Mr. Sterbanks on my motion, but object to its existence period.

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Cindy Wheeler

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From: Cincity63@comcast.net

To: "P Olbrechts" <polbrechts@omwlaw.com>

Sent: Monday, June 13, 2011 5:02:03 PM

Subject: Motion to Olbrechts - Development Agreement Hearing Motions

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Cindy Wheeler

From: olbrechtslaw@gmail.com [mailto:olbrechtslaw@gmail.com]
Sent: Monday, June 20, 2011 9:08 AM
To: Steve Pilcher
Subject: Re: Motion to Olbrechts - Development Agreement Hearing Motions

I was antucipating that it would be posted. Go ahead and post and I would appreciate the advisory. Thanks.

Sent from my Verizon Wireless BlackBerry

From: Steve Pilcher <SPilcher@ci.blackdiamond.wa.us>
Date: Mon, 20 Jun 2011 08:40:34 -0700
To: Phil Olbrechts<olbrechtslaw@gmail.com>
Subject: RE: Motion to Olbrechts - Development Agreement Hearing Motions

Would you like this message to be posted to our website? It provides some good clarification; unfortunately, it also contains your email address. We could post an advisory note on the Development Agreement page that individuals have been directed to send all comments to staff, not the Examiner.

Steve Pilcher

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Sunday, June 19, 2011 11:39 PM
To: Cincity63@comcast.net
Cc: Steve Pilcher
Subject: Re: Motion to Olbrechts - Development Agreement Hearing Motions

Ms. Wheeler,

Thank you for your comments.

I can see why you would be concerned that I'm engaged in email discussions with a select few. I want to make it clear that no one has been authorized or invited to send emails directly to me other than staff. Through a variety of means people have found my email and sent me comments on their own initiative. For the most part I have not responded to these emails. In a prior email I requested that parties not send me emails and that if they had questions to send them to staff

and that staff was to forward them to me if staff was unable to answer questions to the satisfaction of the inquirer. The reason for this is based upon the concerns that you raised in your email, as follows:

1) If I am engaged in daily communication with the dozens of concerned citizens in Black Diamond, I'm essentially holding an on-going hearing with rules and policies developing and changing on a daily basis. I think this would be very confusing to people and it would be asking a lot of Black Diamond residents to have to monitor dozens or even hundreds of emails of an on-going dialogue between myself and Black Diamond residents. At this stage we are only in the process of setting up the ground rules for the hearing. Once all parties have had their opportunity to file motions and air their concerns, I will be putting together a prehearing order that will (hopefully) clearly lay out the rules of engagement so that citizens can know how to participate.

2) Even if this process is legislative rather than quasi-judicial, I am not comfortable engaging in on-going communications with parties outside of hearing process. I don't think you would find it acceptable if I spent considerable time discussing the project with the applicant over the next few weeks and I'm sure the converse is true as well. My responsibility is to objectively apply law to facts and provide the public with a level playing field for public participation. I do not believe I can effectively carry out this responsibility if I am engaged in extensive "behind the scenes" communications with hearing participants. Even if all my communications are done by email, as referenced in my last point it would be asking a lot of the public to require them to sift through hundreds of pages of email communications to find out what information I've acquired from these communications. The one exception to this rule has always been procedural discussions with staff, since it's difficult to get around this from a practical standpoint. As you know, I still recorded my procedural meeting with staff as well.

Your letter expresses the concern that the process needs to be clear so that citizens know how to participate. That is clearly a very important consideration. Keep in mind that we are putting together the rules that will create a clear process. So what I'm understanding you to say is that we need a clear process to set up a clear process to run the hearing. If we wanted to get absurd about this we could keep going back several levels, asserting that we need to set up a clear process to set up a clear process to set up a clear process etc.

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For all the reasons above I will not be responding to emails that are sent to me unless they relate to questions of procedure that can't be deferred to the prehearing order (such as what I'm addressing in this email). All comments that are sent to me will be made into exhibits and, of course, will be accessible to the public and will be considered by myself as part of the record.

If the prehearing motions include arguments that I should be engaged in on-going email or other discussions with Black Diamond residents I will certainly keep an open mind on those issues and may change my position. As I've stated in previous emails, unless and until I rule otherwise I will treat my role as quasi-judicial. The view of my role as quasi-judicial has no bearing on the Council role, since their responsibility as elected officials is distinguishable from my own.

As to your motion specifically, staff has posted an email where I stated that your motion is timely. To further clarify, I do not have any problems with the format of your motion. I ruled that the hearing could not start until 30 days after the posting of a complete development agreement and one of your main points is that the development agreement is not complete. I'm sure that those and other points will be addressed by other parties in the response briefs.

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Sent: Sunday, June 19, 2011 11:51 PM
To: BMartinez@ci.blackdiamond.wa.us
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Date: Sun, Jun 19, 2011 at 11:38 PM
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Cindy Wheeler

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Sunday, June 19, 2011 11:48 PM
To: BMartinez@ci.blackdiamond.wa.us
Subject: Fwd: Motion to Olbrechts - Development Agreement Hearing Motions

----- Forwarded message -----

From: **Phil Olbrechts** <olbrechtslaw@gmail.com>
Date: Sun, Jun 19, 2011 at 11:46 PM
Subject: Re: Motion to Olbrechts - Development Agreement Hearing Motions
To: Cincity63@comcast.net
Cc: Steve Pilcher <SPilcher@ci.blackdiamond.wa.us>

To answer a couple of your other questions:

1. All documents need to be filed with City staff, either by email or by hard copy. All those documents are public records and the City has a legal responsibility to retain them and disclose them upon demand. For that reason all documents must go through City staff before going to me.

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From: Cincity63@comcast.net

To: "P Olbrechts" <polbrechts@omwlaw.com>

Sent: Monday, June 13, 2011 5:02:03 PM

Subject: Motion to Olbrechts - Development Agreement Hearing Motions

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Sent: Sunday, June 19, 2011 11:47 PM
To: Cincity63@comcast.net
Cc: Steve Pilcher
Subject: Re: Motion to Olbrechts - Development Agreement Hearing Motions

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To: "P Olbrechts" <polbrechts@omwlaw.com>

Sent: Monday, June 13, 2011 5:02:03 PM

Subject: Motion to Olbrechts - Development Agreement Hearing Motions

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From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Sunday, June 19, 2011 11:39 PM
To: Cincity63@comcast.net
Cc: Steve Pilcher
Subject: Re: Motion to Olbrechts - Development Agreement Hearing Motions

Ms. Wheeler,

Thank you for your comments.

I can see why you would be concerned that I'm engaged in email discussions with a select few. I want to make it clear that no one has been authorized or invited to send emails directly to me other than staff. Through a variety of means people have found my email and sent me comments on their own initiative. For the most part I have not responded to these emails. In a prior email I requested that parties not send me emails and that if they had questions to send them to staff and that staff was to forward them to me if staff was unable to answer questions to the satisfaction of the inquirer. The reason for this is based upon the concerns that you raised in your email, as follows:

- 1) If I am engaged in daily communication with the dozens of concerned citizens in Black Diamond, I'm essentially holding an on-going hearing with rules and policies developing and changing on a daily basis. I think this would be very confusing to people and it would be asking a lot of Black Diamond residents to have to monitor dozens or even hundreds of emails of an on-going dialogue between myself and Black Diamond residents. At this stage we are only in the process of setting up the ground rules for the hearing. Once all parties have had their opportunity to file motions and air their concerns, I will be putting together a prehearing order that will (hopefully) clearly lay out the rules of engagement so that citizens can know how to participate.

2) Even if this process is legislative rather than quasi-judicial, I am not comfortable engaging in on-going communications with parties outside of hearing process. I don't think you would find it acceptable if I spent considerable time discussing the project with the applicant over the next few weeks and I'm sure the converse is true as well. My responsibility is to objectively apply law to facts and provide the public with a level playing field for public participation. I do not believe I can effectively carry out this responsibility if I am engaged in extensive "behind the scenes" communications with hearing participants. Even if all my communications are done by email, as referenced in my last point it would be asking a lot of the public to require them to sift through hundreds of pages of email communications to find out what information I've acquired from these communications. The one exception to this rule has always been procedural discussions with staff, since it's difficult to get around this from a practical standpoint. As you know, I still recorded my procedural meeting with staff as well.

Your letter expresses the concern that the process needs to be clear so that citizens know how to participate. That is clearly an very important consideration. Keep in mind that were are putting together the rules that will create a clear process. So what I'm understanding you to say is that we need a clear process to set up a clear process to run the hearing. If we wanted to get absurd about this we could keep going back several levels, asserting that we need to set up a clear process to set up a clear process to set up a clear process etc.

I thought that the results of the pre-hearing conference were fairly straight forward, but it was probably best to put my rulings in writing. I simply ruled that staff could set a hearing date 30 days from the posting of the final development agreements and staff report and also set a prehearing motion schedule. The prehearing motions give anyone who wishes an opportunity to make additional comment on the hearing rules. Once all the motions and responses come in I will put together a prehearing order that sets out the hearing rules.

For all the reasons above I will not be responding to emails that are sent to me unless they relate to questions of procedure that can't be deferred to the prehearing order (such as what I'm addressing in this email). All comments that are sent to me will be made into exhibits and, of course, will be accessible to the public and will be considered by myself as part of the record.

If the prehearing motions include arguments that I should be engaged in on-going email or other discussions with Black Diamond residents I will certainly keep an open mind on those issues and may change my position. As I've stated in previous emails, unless and until I rule otherwise I will treat my role as quasi-judicial. The view of my role as quasi-judicial has no bearing on the Council role, since their responsibility as elected officials is distinguishable from my own.

As to your motion specifically, staff has posted an email where I stated that your motion is timely. To further clarify, I do not have any problems with the format of your motion. I ruled that the hearing could not start until 30 days after the posting of a complete development agreement and one of your main points is that the development agreement is not complete. I'm sure that those and other points will be addressed by other parties in the response briefs.

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To: "P Olbrechts" <polbrechts@omwlaw.com>

Sent: Monday, June 13, 2011 5:02:03 PM

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From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Sunday, June 19, 2011 7:41 PM
To: Steve Pilcher
Subject: May Examiner Invoice

May invoice attached. I'm guessing the invoice for July will be a little more.

From: olbrechtslaw@gmail.com [mailto:olbrechtslaw@gmail.com]
Sent: Friday, June 17, 2011 4:36 PM
To: Steve Pilcher
Subject: Fw: Fwd: Motion to Olbrechts - Development Agreement Hearing Motions

Sent from my Verizon Wireless BlackBerry

From: Cincity63@comcast.net
Date: Fri, 17 Jun 2011 23:30:39 +0000 (UTC)
To: <olbrechtslaw@gmail.com>
Subject: Fwd: Motion to Olbrechts - Development Agreement Hearing Motions

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From: olbrechtslaw@gmail.com [mailto:olbrechtslaw@gmail.com]
Sent: Friday, June 17, 2011 2:13 PM
To: Steve Pilcher
Subject: Re: You guidance needed - high priority

If you would like to post all emails, that's fine with me. Otherwise I've been identifying what needs to be posted with comments like "please post this email". I will double check this weekend to see if I missed identifying an email that should be posted. All emails sent to me will be made part of the record.

One idea you may want to consider is developing an email list you can send notice to whenever you update the website. Just an idea, but would be helpful to those who have asked to be parties of record.

Sent from my Verizon Wireless BlackBerry

From: Steve Pilcher <SPilcher@ci.blackdiamond.wa.us>
Date: Fri, 17 Jun 2011 11:31:32 -0700
To: olbrechtslaw@gmail.com<olbrechtslaw@gmail.com>
Cc: Brenda Martinez<BMartinez@ci.blackdiamond.wa.us>;
bob@kenyondisend.com<bob@kenyondisend.com>;
mike@kenyondisend.com<mike@kenyondisend.com>
Subject: You guidance needed - high priority

Mr. Olbrechts:

City staff could use some guidance regarding the posting of materials to our website. At this time, it appears that three motions were filed: from Yarrow Bay, Mr. Bricklin and Mr. Edelman. The remaining communications appear to be simply that: email communications with the Hearing Examiner. We believe it is proper to make that distinction when posting materials, so that there will be two categories: 1) motions and 2) email communications between the Examiner and parties.

We have been contacted by individuals regarding the posting of materials, so we could really benefit from having this issue clarified.

Also, as you may know from earlier communications, not all emails sent by you are reaching all intended recipients. Mike Kenyon, Bob Sterbank and Brenda Martinez have all been listed as either primary or "copied" recipients, but have not received emails. Please make sure to include all of us on your communications.

Thank you.

Steve Pilcher
Community Development Director

City of Black Diamond
360-886-2560

From: olbrechtsw@gmail.com [mailto:olbrechtsw@gmail.com]
Sent: Friday, June 17, 2011 8:05 AM
To: Steve Pilcher
Subject: Re: Motion to Olbrechts - Development Agreement Hearing Motions

I didn't receive it, but will consider it timely.
Sent from my Verizon Wireless BlackBerry

From: Steve Pilcher <SPilcher@ci.blackdiamond.wa.us>
Date: Fri, 17 Jun 2011 08:01:03 -0700
To: olbrechtsw@gmail.com<olbrechtsw@gmail.com>
Subject: FW: Motion to Olbrechts - Development Agreement Hearing Motions

Mr. Olbrechts:

See the email chain below; it appears Ms. Wheeler submitted a motion on Monday, but to your old email address at Ogden Murphy Wallace.

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

From: Steve Pilcher
Sent: Thursday, June 16, 2011 5:46 PM
To: 'Cincity63@comcast.net'
Cc: Brenda Martinez
Subject: RE: Motion to Olbrechts - Development Agreement Hearing Motions

Ms. Wheeler:

I noted your motion was sent to Mr. Olbrechts at the law firm where he formerly worked. Since last year's MPD hearings, Mr. Olbrechts left Ogden, Murphy, Wallace and opened his own practice. Hopefully, the staff at OMW forwarded your email to him. I don't know if they did, as Mr. Olbrechts has not forwarded your motion to us (if he did receive it). It also appears that no one here at the City was copied, so until you sent your message late today, we were not aware you had made a motion.

We should be able to post this to the website tomorrow.

Steve Pilcher
Community Development Director
City of Black Diamond

360-886-2560

From: Cincity63@comcast.net [mailto:Cincity63@comcast.net]
Sent: Thursday, June 16, 2011 4:59 PM
To: Steve Pilcher
Cc: Brenda Martinez
Subject: Fwd: Motion to Olbrechts - Development Agreement Hearing Motions

Steve-

I see that you have posted SOME of the motions to the Hearing Examiner on the City website.....My motion to Olbrecht's is currently not included. Please post this with the rest of the motions.

Cindy Wheeler

----- Forwarded Message -----

From: Cincity63@comcast.net
To: "P Olbrechts" <polbrechts@omwlaw.com>
Sent: Monday, June 13, 2011 5:02:03 PM
Subject: Motion to Olbrechts - Development Agreement Hearing Motions

Mr. Olbrechts -

I did speak and provide written input at the Pre-Hearing Conference for these upcoming hearings. I did not expect to submitting motions per your deadline, but the recent production of several documents on the City's behalf prompt some additional input and emphasize the need for some other input, previously offered, to be repeated.

In both my written and verbal comments I had stated that NO PORTIONS OF THE DEVELOPMENT AGREEMENT SHALL CONTAIN INCOMPLETE AGREEMENTS, UNDERSTANDINGS OR ITEMS THAT ARE "TBD".

Clearly it is impossible to judge the impact and effect of the development unless everything is decided, agreed upon / permitted and finalized. This is true whether it is road locations, school locations, storm water detention facilities, sewer facilities or any other required infrastructure or improvement element.

If we can not determine from the Development Agreement what the effects and impacts are, we can NOT possibly enter into a comprehensive agreement with a duration of some two decades. So **no elements should be left up in the air** and the "casualties" un-gauged, un-weighted and unknown for the citizens. After all this is our one and only chance to have made public comment on documents that have consequences for us for decades to come.

The simple fact that the situation is un-described and unknown to us will **not** keep the City from saying we have had a public process and they all got their say. Last year has proved that point already. The City and the developer frequently brag about the "vigorous public process" where the public got to testify loud and long last year.....but only on the impacts, infrastructure and expenses identified as of that time.....and that certainly left out an awful lot.

Please know that such elements DO exist in the hurriedly produced "Public Version" of the Development Agreement and Staff Report posted late Friday afternoon. (** By the way this was well after the Public Notice of a Hearing Date for the Development Agreement was published in the official paper.)

I provide you an example from the documents provided for public review below.

G. Section 7.3: King County responsibility for sewer. Although the City of Black Diamond operates its own sanitary sewer collection system, its contract with King County assigns to the County the responsibility for accepting sewage flows from the City and sending those flows on to regional treatment facilities. This will require the construction by King County of a storage facility to accommodate peak sewage flows. The location of this facility is still under discussion between the City and King County.

This is NOT acceptable for inclusion in the FINAL Development Agreement. Such "blind acceptance" would be absurd.

The people of Lake Sawyer are still actively implementing practices to assist recovery from the LAST King County Sewer "major implementation" out here....and that fiasco was an experimental design too. You will note that the letter from King County to Steve Pilcher in August of last year lists MAJOR concerns with both the design and implementation of the "experimental design" sewer collection system proposed by the City and NO agreement has been reached between King Co and Black Diamond on this

topic, even though a joint task force was created 4-5 months ago!!! Clearly, we are a long way from the answer on this topic alone.

** Perhaps at some point you could hold some kind of public briefing or "explanation" meeting to help the taxpayers here who attended the Pre-Hearing Conference why and how we were issued public notice of this hearing by our City prior to you reporting the date for the hearing to commence through the schedule established by you? That would be greatly appreciated by many. Confusion reigns here.

This leads to one of my other previously established requests. This process is intended to be for the public. For the public to get the full benefit of the process they must be able to understand the rules and procedures governing this process and then engage.

When the rules keep changing or when they are presented with tons of legalese and only through public notice, with no two way interaction, the public is effectively stifled.

Many people here also **do not** understand why the City has accepted TWO versions of the Development Agreements for each proposed project. This is not what the process outline indicates is standard at all. Many of us are confused to have the City post the Development Agreement with the first ever seen "Public Version" identifier placed before it. Does this indicate there is a different version for people other than the public? Is this what the letter of June 9, 2011 from Colin Lund, Yarrow Bay, to Steve Pilcher, Community Development Director Black Diamond, means when it refers to "two identical development agreement applications for each MPD"? So will the public be speaking on all **four** Development Agreements when we make our comments?

Again, much confusion has been generated by the change in action and direction by the City on these Hearings from what was explained at the Pre-Hearing Conference. This does **not** serve the Public Good.

We look to you for clarification and equality. We know you will seek to serve the true purpose of these hearings and not leave tax paying citizens with absurd commitments to unknown clauses.

Cindy Wheeler

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Thursday, June 16, 2011 9:48 AM
To: Bob Edelman
Cc: Steve Pilcher
Subject: Re: FW: Motions, etc.

I was expecting this request. Since I'm out of state on vacation I'll respond by informal email. The response deadline for prehearing motions is extended to June 23, 2011 from June 20, 2011. The reply date is extended to June 27, 2011 from June 23, 2011.

Steve,

Please post this to the website with a link to the effect of "Examiner Order Extending Response and Reply Dates for Prehearing Motions".

On Wed, Jun 15, 2011 at 1:40 PM, Bob Edelman <BobEdelman@comcast.net> wrote:

Mr. Olbrechts,

I request that the response and reply dates be adjusted to reflect the delay in posting motions.

Thank you for your consideration.

Bob Edelman

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]
Sent: Wednesday, June 15, 2011 12:43 PM
To: Bob Edelman
Subject: Motions, etc.

Mr. Edelman:

Consistent with the message from the Hearing Examiner (below), we will be posting materials to the City's webpage. We will do our best to get those posted by the end of the day tomorrow.

Steve Pilcher

Community Development Director

City of Black Diamond

360-886-2560

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]

Sent: Wednesday, June 15, 2011 9:50 AM

To: 'Dave Bricklin'; mike@kenyondisend.com

Cc: 'Nancy Rogers'; 'Kristi Beckham'; 'MARGARET Starkey'; 'Bob Edelman'; Steve Pilcher; bob@kenyondisend.com; bmartinez@ci.blackdiamond.wa.us

Subject: RE: In re: The Matter of Development Agreement Hearings related to The Villages and Lawson Hills

I have been receiving several emails from some of the parties to this case and I have attempted to include all of those persons in this email response. As I mentioned at the prehearing conference, I will treat the development agreement hearings as quasi-judicial unless and until I rule otherwise. To this end I will be doing what I can to avoid ex parte contacts. Unlike the SEPA appeal hearing of this case that had a limited number of parties, it is not possible to involve all the parties to the development agreement proceeding in these email communications. To answer one of Mr. Edelman's questions, as discussed at the prehearing conference, all prehearing motions and responses and replies thereto will be posted at the City's website. If someone does not have access to the internet, they were to contact staff to make alternative arrangements for receiving those documents. Mr. Bricklin's emails expressing concerns over the hearing date and the like will be treated as a prehearing motion and subject to the June 13 response and June 20 reply deadlines. In order to avoid any further ex parte communications I do ask that all parties attempt to get any information they need from staff first. If that doesn't work, they can email me and my response will be posted on the City's website. I also ask staff to post this email on its website. Thank you.

From: Dave Bricklin [mailto:bricklin@bnd-law.com]
Sent: Tuesday, June 14, 2011 7:45 AM
To: 'olbrechtslaw@gmail.com'; 'mike@kenyondisend.com'
Cc: Nancy Rogers; Kristi Beckham; 'MARGARET Starkey'
Subject: RE: In re: The Matter of Development Agreement Hearings related to The Villages and Lawson Hills

Mr. Olbrechts and Mr. Kenyon,

As the city's representatives in this process, I want to remind you that I don't represent the public at large in the DA process. I have a specific client which certainly has a large base of support, but we don't pretend to represent every other interest. (Moreover, it's not clear whether I will be appearing on behalf of TRD for any or all of the upcoming DA hearings.) I appreciate YB and the city providing me with copies of motions and other papers and request that they continue to do the same. But the city must recognize that serving me with those papers is not the same as providing notice to the public generally. I recommend you post all pertinent materials (e.g., everything submitted by YB) on the city's website promptly and continue to use that medium and others throughout this process to insure full and timely transmission of information to the public generally. Thank you.

David Bricklin

Bricklin & Newman, LLP

1001 Fourth Avenue, Suite 3303

Seattle, WA 98154

1-206-264-8600

1-206-264-9300 (fax)

bricklin@bnd-law.com

<http://www.bnd-law.com>

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From: Kristi Beckham [mailto:KBeckham@Cairncross.com]
Sent: Monday, June 13, 2011 3:07 PM
To: 'olbrechtslaw@gmail.com'; 'Steve Pilcher'; 'bmartinez@ci.blackdiamond.wa.us';
'bob@kenyondisend.com'; 'mike@kenyondisend.com'; 'MARGARET Starkey'; Dave Bricklin; Peggy Cahill
Cc: Nancy Rogers
Subject: In re: The Matter of Development Agreement Hearings related to The Villages and Lawson Hills

In connection with the above-referenced matter, attached please find Yarrow Bay's Motion to Set Hearing Procedures for Development Agreement Hearings and a [Proposed] Order Granting Motion to Set Hearing Procedures for Development Agreement Hearings.

If you have trouble opening either of the attached documents, please let me know.

Thank you.

CH&

Kristi Beckham

Legal Assistant

Cairncross & Hempelmann

524 Second Ave., Ste. 500

Seattle, WA 98104-2323

kbeckham@cairncross.com

Direct phone 206-254-4494

Direct fax 206-254-4594

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From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Wednesday, June 15, 2011 1:21 PM
To: 'Steve Pilcher'
Subject: RE: In re: The Matter of Development Agreement Hearings related to The Villages and Lawson Hills

Paper copies would be useful so I can mark them up. Thanks.

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]
Sent: Wednesday, June 15, 2011 1:15 PM
To: Phil Olbrechts
Subject: RE: In re: The Matter of Development Agreement Hearings related to The Villages and Lawson Hills

Mr. Olbrechts:

City staff can post materials within 48 hours. Due to the small size of our staff and with summer vacations approaching, that is the quickest turnaround we can commit to achieving both now and throughout the hearing process.

We have received hard copies of the Development Agreements that have been posted to the City's website since last Friday. Do you wish us to send those up to you or do you prefer to work with the electronic versions that are available on-line? As you know, there will be a lot of a paper materials associated with this process and the City will be the eventual repository of the official record. Some people prefer working with electronic materials, while others like paper. Just let us know if you want one or the other (or both).

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

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Wednesday, June 15, 2011 9:50 AM
To: 'Dave Bricklin'; mike@kenyondisend.com
Cc: 'Nancy Rogers'; 'Kristi Beckham'; 'MARGARET Starkey'; 'Bob Edelman'; Steve Pilcher; 'bob@kenyondisend.com'; 'bmartinez@ci.blackdiamond.wa.us'
Subject: RE: In re: The Matter of Development Agreement Hearings related to The Villages and Lawson Hills

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end I will be doing what I can to avoid ex parte contacts. Unlike the SEPA appeal hearing of this case that had a limited number of parties, it is not possible to involve all the parties to the development agreement proceeding in these email communications. To answer one of Mr. Edelman's questions, as discussed at the prehearing conference, all prehearing motions and responses and replies thereto will be posted at the City's website. If someone does not have access to the internet, they were to contact staff to make alternative arrangements for receiving those documents. Mr. Bricklin's emails expressing concerns over the hearing date and the like will be treated as a prehearing motion and subject to the June 13 response and June 20 reply deadlines. In order to avoid any further ex parte communications I do ask that all parties attempt to get any information they need from staff first. If that doesn't work, they can email me and my response will be posted on the City's website. I also ask staff to post this email on its website. Thank you.

From: Dave Bricklin [mailto:bricklin@bnd-law.com]

Sent: Tuesday, June 14, 2011 7:45 AM

To: 'olbrechtslaw@gmail.com'; 'mike@kenyondisend.com'

Cc: Nancy Rogers; Kristi Beckham; 'MARGARET Starkey'

Subject: RE: In re: The Matter of Development Agreement Hearings related to The Villages and Lawson Hills

Mr. Olbrechts and Mr. Kenyon,

As the city's representatives in this process, I want to remind you that I don't represent the public at large in the DA process. I have a specific client which certainly has a large base of support, but we don't pretend to represent every other interest. (Moreover, it's not clear whether I will be appearing on behalf of TRD for any or all of the upcoming DA hearings.) I appreciate YB and the city providing me with copies of motions and other papers and request that they continue to do the same. But the city must recognize that serving me with those papers is not the same as providing notice to the public generally. I recommend you post all pertinent materials (e.g., everything submitted by YB) on the city's website promptly and continue to use that medium and others throughout this process to insure full and timely transmission of information to the public generally. Thank you.

David Bricklin

Bricklin & Newman, LLP

1001 Fourth Avenue, Suite 3303

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From: Kristi Beckham [mailto:KBeckham@Cairncross.com]

Sent: Monday, June 13, 2011 3:07 PM

To: 'olbrechtslaw@gmail.com'; 'Steve Pilcher'; 'bmartinez@ci.blackdiamond.wa.us';
'bob@kenyondisend.com'; 'mike@kenyondisend.com'; 'MARGARET Starkey'; Dave Bricklin; Peggy Cahill
Cc: Nancy Rogers
Subject: In re: The Matter of Development Agreement Hearings related to The Villages and Lawson Hills

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If you have trouble opening either of the attached documents, please let me know.

Thank you.

CH&

Kristi Beckham

Legal Assistant

Cairncross & Hempelmann

524 Second Ave., Ste. 500

Seattle, WA 98104-2323

kbeckham@cairncross.com

Direct phone 206-254-4494

Direct fax 206-254-4594

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From: Phil Olbrechts [<mailto:olbrechtslaw@gmail.com>]

Sent: Wednesday, June 15, 2011 9:50 AM

To: 'Dave Bricklin'; 'mike@kenyondisend.com'

Cc: 'Nancy Rogers'; 'Kristi Beckham'; 'MARGARET Starkey'; 'Bob Edelman'; 'Steve Pilcher';
'bob@kenyondisend.com'; 'bmartinez@ci.blackdiamond.wa.us'

Subject: RE: In re: The Matter of Development Agreement Hearings related to The Villages and Lawson Hills

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To: 'olbrechtslaw@gmail.com'; 'mike@kenyondisend.com'

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Subject: RE: In re: The Matter of Development Agreement Hearings related to The Villages and Lawson Hills

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David Bricklin

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From: Kristi Beckham [mailto:KBeckham@Cairncross.com]

Sent: Monday, June 13, 2011 3:07 PM

To: 'olbrechtslaw@gmail.com'; 'Steve Pilcher'; 'bmartinez@ci.blackdiamond.wa.us';

'bob@kenyondisend.com'; 'mike@kenyondisend.com'; 'MARGARET Starkey'; Dave Bricklin; Peggy Cahill

Cc: Nancy Rogers

Subject: In re: The Matter of Development Agreement Hearings related to The Villages and Lawson Hills

In connection with the above-referenced matter, attached please find Yarrow Bay's Motion to Set Hearing Procedures for Development Agreement Hearings and a [Proposed] Order Granting Motion to Set Hearing Procedures for Development Agreement Hearings.

If you have trouble opening either of the attached documents, please let me know.

Thank you.

CH&

Kristi Beckham

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From: olbrechtslaw@gmail.com [mailto:olbrechtslaw@gmail.com]

Sent: Monday, June 13, 2011 7:10 AM

To: Steve Pilcher

Subject: Re: Hearings

Hi steve,

I'm leaving town for a few days wednesday night. Could you overnight a recording of the prehearing conference? thanks.

Sent from my Verizon Wireless BlackBerry

From: Steve Pilcher <SPilcher@ci.blackdiamond.wa.us>

Date: Wed, 8 Jun 2011 08:26:48 -0700

To: Phil Olbrechts<olbrechtslaw@gmail.com>

Subject: RE: Hearings

Good morning, Phil:

Yes, I did receive your emails, but haven't had a chance to respond. We're advertising the hearings to begin on July 11; notice has been sent to the newspaper and will appear in Friday's edition. All other forms of notice will also occur on Friday (site posting, web posting, mailed).

I've attached copies of the notices. You'll note that we did not include any of the language you had suggested. We were not comfortable in doing so, absent your issuance of any rules of procedures.

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

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Wednesday, June 08, 2011 3:40 AM
To: Steve Pilcher
Subject: Hearings

Hi Steve,

Did you get my emails confirming availability for the July hearings? I haven't seen any notices on-line etc so want to make sure, since it appears you didn't get my messages from last week.

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Wednesday, June 08, 2011 3:40 AM
To: 'Steve Pilcher'
Subject: Hearings

Hi Steve,

Did you get my emails confirming availability for the July hearings? I haven't seen any notices on-line etc so want to make sure, since it appears you didn't get my messages from last week.

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Monday, June 06, 2011 9:08 PM
To: 'Dawn Findlay Reitan'
Cc: 'Steve Pilcher'
Subject: RE: Procedural questions regarding development agreements

Hi Dawn,

Steve will be issuing a notice of the hearing I believe tomorrow. The hearings will be held the week of July 11 and the public will be allowed to testify. I haven't yet issued a prehearing order. The parties are in the process of submitting prehearing motions. I've cc'd Steve so he can make you a party of record.

From: Dawn Findlay Reitan [mailto:DReitan@insleebest.com]
Sent: Monday, June 06, 2011 4:41 PM
To: 'Phil Olbrechts'
Subject: RE: Procedural gestions regarding development agreements

Phil,

Thank you for the email, and the opportunity to ask you a few procedural questions.

I read the article in The Reporter about the pre-hearing conference that was held on the proposed Black Diamond Development Agreements. The article was a bit vague about the upcoming events, and I was hoping you could clarify the following:

1. Where are you in the process, i.e., have you issued a pre-hearing order on the matter? If yes, can I receive a copy of it?
2. Has the public hearing on the Development Agreements been scheduled, and if yes, when?
3. Can the public come to the hearing and speak on the Development Agreements and also submit written comments?
4. Can you list me as a party of record in order to receive future notices/decisions relating to the Development Agreements?

Again, thank you for your assistance on these procedural questions.

Dawn Findlay Reitan |

INSLEE BEST DOEZIE & RYDER, P.S.
777 - 108th Avenue N.E., Suite 1900 | P.O. Box 90016 | Bellevue, WA 98009-9016
Tel + 425.450.4257 | Fax + 425.635.7720 | www.insleebest.com

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From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Monday, June 06, 2011 4:11 PM
To: Dawn Findlay Reitan
Cc: 'Steve Pilcher'
Subject: RE: Hi Phil

Hi Dawn,

Nice to hear from you. Hope all is well.

Until and unless I rule that the development agreements are not quasi-judicial, I am limiting ex parte contacts with any party except for minor procedural matters with the City. For everyone else I communicate by email and then make the email part of the record (which is why I've cc'd Steve Pilcher, cd director for Black Diamond). Feel free to email me questions. Thanks!

From: Dawn Findlay Reitan [mailto:DReitan@insleebest.com]
Sent: Monday, June 06, 2011 2:58 PM
To: 'olbrechtslaw@gmail.com'
Subject: Hi Phil

Phil,

I just recently read in a news article from the Reporter (Covington/Maple Valley/Black Diamond) that you left OMW to head up your own firm. Good for you!! I hope you are taking time to enjoy your own practice.

I could not locate your phone number on the web, so if you have a chance, can you give me a call? I have a quick question about the prehearing conference you presided over for the City of Black Diamond on the Development Agreement for The Villages.

Thank you, and congratulations again!

Dawn Findlay Reitan |

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Tel + 425.450.4257 | Fax + 425.635.7720 | www.insleebest.com

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From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Monday, June 06, 2011 4:11 PM
To: 'Dawn Findlay Reitan'
Cc: 'Steve Pilcher'
Subject: RE: Hi Phil

Hi Dawn,

Nice to hear from you. Hope all is well.

Until and unless I rule that the development agreements are not quasi-judicial, I am limiting ex parte contacts with any party except for minor procedural matters with the City. For everyone else I communicate by email and then make the email part of the record (which is why I've cc'd Steve Pilcher, cd director for Black Diamond). Feel free to email me questions. Thanks!

From: Dawn Findlay Reitan [mailto:DReitan@insleebest.com]
Sent: Monday, June 06, 2011 2:58 PM
To: 'olbrechtshaw@gmail.com'
Subject: Hi Phil

Phil,

I just recently read in a news article from the Reporter (Covington/Maple Valley/Black Diamond) that you left OMW to head up your own firm. Good for you!! I hope you are taking time to enjoy your own practice.

I could not locate your phone number on the web, so if you have a chance, can you give me a call? I have a quick question about the prehearing conference you presided over for the City of Black Diamond on the Development Agreement for The Villages.

Thank you, and congratulations again!

Dawn Findlay Reitan |

INSLEE BEST DOEZIE & RYDER, P.S.
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From: Phil Olbrechts [mailto:olbrechtshaw@gmail.com]
Sent: Monday, June 06, 2011 1:44 PM
To: 'Steve Pilcher'
Subject: RE: Hearing Schedule

Hi Steve,

I had sent you an email before saying that week worked, but now can't find it in my sent box. You'll probably get that message a month or so from now. My email works in mysterious ways. Will your hearing notice state that people can sign up in advance for a specified hour? Do you want to coordinate something like that? If so, you could just post sign up sheets at City Hall or, if you're really ambitious, you could field requests by phone and email, which would mean having to confirm what times are available etc. The notice could go something like this:

The City of Black Diamond will be holding hearings on....

The hearings will be held at _____ between the hours of 6:00 and 9:30 pm July 11 – 13 and continued to 6:30 pm to 9:30 pm on July 14 and July 16 from 9:00 am through 5:00 pm as needed. Sign-up sheets will be available in the police department lobby, located at _____, for people who wish to reserve a specific time in which to speak. Speakers will be given up to ten minutes to speak. A maximum of six people will be assigned to every hour of hearing and other members of the public present at the hearing will be allowed to speak for any unused time. Persons may cede their time to another speaker if they are present at the hearing to do so.

Expert testimony, if any, will be heard commencing July 14, 2011 at 10:00 am at the City of Black Diamond City Council Meeting Chambers located at _____. The names of expert witnesses and other information will need to be submitted to the City in advance as outlined in a prehearing order that will be posted on the City's website at _____. The order will also be available at the Black Diamond Dept of Community Development located at...The order will be posted and become available starting _____. [Steve: I just got back from out of town and can't find my notes on when the prehearing motions are due. I'd like to say my order will be available a week after the final submissions are due]. An expert witness is a person that is qualified by knowledge, skill, experience, training or education to provide opinions on scientific, technical or other specialized issues. A person does not qualify as an expert witness due to his or her residency alone in the Black Diamond Community. Expert witnesses shall be subject to cross examination and shall not be subject to the time limits that will be imposed for general public testimony.

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]
Sent: Monday, June 06, 2011 8:49 AM
To: olbrechtslaw@gmail.com
Subject: Hearing Schedule

Phil:

We will need to send public notice to the newspaper by mid-morning tomorrow in order to publish this Friday. Please confirm your availability for July 11, 12, 13, 14 & 16th, as I outlined last week. If there is some reason this will not work, we need to start planning alternate dates as soon as possible.

Thanks; hope you had a great, summer-like weekend!

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

From: phil olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Thursday, June 02, 2011 7:45 AM
To: 'Steve Pilcher'
Subject: RE: Possible start date for DA Hearings

The dates sound good. I would prefer to be able to use two Saturdays to minimize the days of hearings. What about starting July 13 with staff and applicant presentations (with public testimony if time permits), then a 9-5 day on Saturday July 16 and as long as it takes Saturday July 23 with hearings in between the two Saturdays as necessary? We would do expert testimony during the weekdays, if any, and public testimony at night from 7-11. We could use sign-up sheets to determine how much hearing time will be necessary for weekday hearings with the qualification that if you don't sign up in advance you can testify if any gaps open up during the public testimony hearings or speak on Saturday July 23 with the understanding that testimony will end that day at 7:00 pm and if you didn't sign up in advance and there's no more time there's no more opportunity to testify.

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]
Sent: Wednesday, June 01, 2011 7:56 AM
To: phil olbrechts
Subject: RE: Possible start date for DA Hearings

By the end of the week, please. We need to lock down the school and prepare for sending out notices if we're a go for 7/11. Thanks.

From: phil olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Wednesday, June 01, 2011 5:33 AM
To: Steve Pilcher
Subject: RE: Possible start date for DA Hearings

I can probably do that. How soon do you need me to let you know?

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]
Sent: Tuesday, May 31, 2011 1:34 PM
To: olbrechtslaw@gmail.com
Subject: Possible start date for DA Hearings

Phil:

Would you be available the week of July 11-16th? Unfortunately, Saturday July 9th is the date of a community event here in Black Diamond (Miners' Day), so starting on that Saturday is not feasible. However, the 16th is a Saturday, which provides a full day for wrapping things up.

We're arranging to have the hearing at Sawyer Woods Elementary School, which is located directly across the street from the city on the west side of Lake Sawyer Road, about 1.5 miles from our offices. There apparently is seating for up to 300 in their multipurpose room. (BD Elementary School is unavailable the first 3 weeks in July due to yearly maintenance in the gymnasium).

If July 11th is a go, we will be advertising on Friday June 10th, which will provide 30 days notice.

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

From: phil olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Wednesday, June 01, 2011 5:33 AM
To: 'Steve Pilcher'
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If July 11th is a go, we will be advertising on Friday June 10th, which will provide 30 days notice.

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

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Monday, May 16, 2011 3:50 PM
To: 'Bob Edelman'
Cc: 'Dave Bricklin'; 'Nancy Rogers'; Steve Pilcher <SPilcher@ci.blackdiamond.wa.us> (SPilcher@ci.blackdiamond.wa.us); 'BOB STERBANK'
Subject: RE: Yarrow Bay motion to set hearing procedures

All members of the public may participate and testify at the prehearing conference. A schedule for filing and responding to motions, including the motion filed by Yarrow Bay, will be set at the prehearing conference. No response to the Yarrow Bay motion, or any other motion, will be due prior to the prehearing conference. The actual hearing on the development agreement will not occur until approximately a month after the prehearing conference so there will be sufficient time to provide all parties with an opportunity to file motions, respond and reply.

From: Bob Edelman [mailto:BobEdelman@comcast.net]
Sent: Monday, May 16, 2011 3:07 PM
To: olbrechtswlaw@gmail.com
Cc: 'Dave Bricklin'
Subject: Yarrow Bay motion to set hearing procedures

Dear Mr. Olbrechts;

The following is in reference to Yarrow Bay's *Motion to Set Hearing Procedures at the May 23, 2011 Pre-hearing Conference* dated May 13, 2011. David Bricklin received a courtesy copy of the motion which he forwarded to me. (I am an appellant in the ongoing MPD appeals.) Mr. Bricklin is currently on vacation and won't be returning until May 22.

The motion cited Hearing Examiner Rule 2.13 and requested the Hearing Examiner to issue a Pre-Hearing order to set the motion's procedures for the upcoming development agreement hearings. This raised questions and concerns regarding rules and procedures for the pre-hearing conference and the applicability of Rule 2.13 to Yarrow Bay's motion.

To my knowledge, Hearing Examiner Rules have not been published by the City. I was able to obtain a copy by broadcasting a request to interested persons, one of whom had been provided a copy as an FEIS appellant. Rule 2.13 requires that every motion be served on each party representative on the day that it is filed and that other parties must file written answers within seven days. It further states that failure of a party to file a timely response may be considered by the Hearing Examiner as evidence of that party's consent to the motion. But by the definition of "party" in section 2.02, there are no parties to the hearing at this time other than Yarrow Bay.

It is my understanding that the public will be allowed to participate in the pre-hearing conference. However, Yarrow Bay's motion under Rule 2.13 would seem to preclude all public input since Yarrow Bay is the only party at this time. For purposes of the pre-hearing conference it is requested that members of the public be considered "parties" to the proceedings.

It would help greatly to clarify the issues if you would respond to the following:

1. What rules will be in effect for the pre-hearing conference and will these rules be published in advance?
2. Will the public be considered to be parties to the pre-hearing conference proceedings?
3. Will the seven day response time to motions in Rule 2.13 be waived for the pre-hearing conference?

Thank you for your consideration of the above.

Sincerely,

Bob Edelman
29871 232nd Ave SE
Black Diamond, WA 98010
360-886-7166

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Monday, May 02, 2011 4:44 PM
To: 'Steve Pilcher'
Subject: Hearing Examiner Invoice

Hi Steve,

Attached is my invoice for the last five months. I've let them accumulate because I didn't think you'd want to review invoices and process checks for monthly totals of 0.2 hours. We've had many more emails than those billed – I don't bill for my time in scheduling hearings. I'm also just emailing you the invoice. If you'd prefer a paper copy mailed or would like the invoice cc'd to someone else in City Hall, let me know.

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]
Sent: Monday, May 02, 2011 3:42 PM
To: olbrechtslaw@gmail.com
Subject: Pre-Hearing Conference

Phil:

Please let me know your availability for a prehearing conference the week of May 23rd – May 27th. This should be a daytime hearing. We will need to advertise in the newspaper tomorrow.

Thanks!

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

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Monday, May 02, 2011 4:22 PM
To: 'Steve Pilcher'
Subject: RE: Pre-Hearing Conference

Any day other than Tuesday, May 24, 2011. Monday would be a preferred date to provide as much time as possible for prehearing briefing, if any.

I would add something like the following to the notice:

"The purpose of the prehearing conference shall be to discuss procedural and scheduling issues for the public hearings on the development agreements of the master plan developments approved by Ordinance No. _____ and Ordinance No. _____. Subsequent to the prehearing conference the Hearing Examiner will issue a prehearing order specifying procedures and deadlines that will apply to all participants in the development agreement hearings."

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]
Sent: Monday, May 02, 2011 3:42 PM
To: olbrechtsw@gmail.com
Subject: Pre-Hearing Conference

Phil:

Please let me know your availability for a prehearing conference the week of May 23rd – May 27th. This should be a daytime hearing. We will need to advertise in the newspaper tomorrow.

Thanks!

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

From: phil olbrechts [mailto:olbrechtsw@gmail.com]
Sent: Friday, April 29, 2011 12:08 PM
To: 'Steve Pilcher'
Subject: RE: Availability

The week of 6/27 sounds best for me. Sorry for having so many conflicts!

Any preference on the prehearing conference date? I'd like to do it ASAP. If I set up a briefing schedule, ideally the first briefs would be due a month before the hearing, so that response brief, reply brief and prehearing rulings can be all finished with sufficient time before the hearing. The prehearing conference would have to be held before the briefing to identify whether briefing is necessary etc. With enough lead time in a prehearing conference we could also set up deadlines for submitting expert witness lists and schedule hearing dates accordingly. As you can see, with sufficient lead time between the prehearing conference and the hearing we will be able to reduce hearing time up front by eliminating irrelevant legal/factual issues through the prehearing motions and we'll also know what experts are coming (if any) and even how much hearing time each expert will take.

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]
Sent: Monday, April 25, 2011 11:06 AM

To: olbrechtslaw@gmail.com
Subject: Availability

Good morning, Phil:

What with the recent GMHB reconsideration decision to not invalidate the two approving MPD ordinances, staff is re-engaging with Yarrow Bay on development agreement discussions. What would be your availability for conducting public hearings during the last two weeks in June? (assuming we can meet that schedule). Since school would be out, I'm hoping we could have easy access to the gymnasium, perhaps doing afternoon/evening sessions as many as four days in a row.

Also, we have a 10-lot subdivision that is not part of the MPDs that may be ready for hearing in late May or June. We'll contact you about firming up a date when that application appears ready to go.

See you at the Law Conference tomorrow?

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

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

From: olbrechtslaw@gmail.com [mailto:olbrechtslaw@gmail.com]
Sent: Friday, April 29, 2011 9:18 AM
To: Dave Bricklin
Subject: Fw: Question

Dave,

See below for the latest in Black Diamond.
Sent from my Verizon Wireless BlackBerry

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

From: Steve Pilcher <SPilcher@ci.blackdiamond.wa.us>
Date: Fri, 29 Apr 2011 09:14:18
To: phil olbrechts<olbrechtslaw@gmail.com>
Subject: RE: Question

Good morning!

The City certainly supports the concept of having a prehearing conference as you discuss below. We believe that would work in all parties favor.

In terms of scheduling, I'm still seeking some clarification based upon our email exchange from earlier this week. I understand you have some conflicts during the period of mid-June to mid-July, but can also

have some flexibility. Could you commit to either the week of June 27th or July 11th? Is there one or the other which you prefer? This still assumes we would be able to meet four days each week, both afternoon and evening sessions.

Thanks for working with us on this.

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

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

From: phil.olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Thursday, April 28, 2011 11:36 PM
To: Steve Pilcher
Subject: RE: Question

Given that people like Bricklin (or maybe just Bricklin) want to work out procedural issues, do you still have reservations about a prehearing conference? Even though the development agreements may or may not be quasi-judicial, I don't think they're subject to the one hearing rule (I'd have to double check on that, but I'm pretty sure that's the case). So as staff and the Applicant are working out the final details on the development agreement, you could advertise a prehearing conference hearing now and we could work out procedural issues way up front so there are no surprises or last minute scrambling later. I'd rather work this stuff out a month or two in advance as opposed to getting hit with procedural arguments a week before the hearing. Also, I could revise the Examiner rules to provide that procedural objections must be lodged at the prehearing conference or they're waived.

For the record (in case there's an appearance I'm not maintaining independence here), I'm soliciting your opinion on the need for a conference because I view the issue as an efficiency and administrative measure that won't ultimately affect the merits or the rights of the parties. If I don't have a conference, I'll still be entertaining procedural objections and concerns at the primary hearing and I will be ensuring that people have a reasonable amount of time to present those issues. Since the City is stuck paying the bill for a prehearing conference, scheduling the hearing and providing the notice, etc., I believe it appropriate and necessary to work this out with staff.

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

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]
Sent: Wednesday, April 27, 2011 10:59 AM
To: Phil Olbrechts
Subject: RE: Question

Yes, it's still a legal issue to be resolved. The GMHB ruled the City should have used a legislative process, but their decision has been appealed to Superior Court (and requested by all parties to move directly to

Court of Appeals). Also, there is still an active LUPA action in court, which was predicated upon the MPD process being quasi-judicial.

Steve Pilcher

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Tuesday, April 26, 2011 11:18 PM
To: Steve Pilcher
Subject: Question

Is the issue of whether the MPD approval is a legislative act still a live appeal issue? The reason I ask is that Bricklin wants to talk to me about the hearing, claiming that since it's no longer quasi-judicial he can do that. If that issue is still live on appeal, though, it's possible that the City could prevail and all of a sudden the hearing quasi-judicial again and I shouldn't have spoken to Bricklin.

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Steve Pilcher

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From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Monday, April 25, 2011 2:45 PM
To: 'Steve Pilcher'
Subject: RE: Scheduling

The six week period of June through mid-July was the only time I had availability problems for this entire year. In twenty years of practice I've never taken more than two weeks off and that was just once. So of course the development agreement hearings end up hitting that tiny little window of unavailability! I'm only out of state for sure on 6/16 to 6/23, so if could just avoid that time period that would be most helpful.

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]
Sent: Monday, April 25, 2011 1:00 PM
To: olbrechtslaw@gmail.com
Subject: Scheduling

Thanks for the information, Phil. If you aren't available, is there a particular alternate you would assign? I imagine that might be different for the 10-lot plat vs. the two development agreements. Since the week of July 4th is a short one for us (July 5th is a furlough day), I'm concerned that there now appears to be over a one month period when it may not be possible to schedule hearings on the development agreements. At this time, given the various court rulings and action of the GMHB, it looks like that same month may be when it would be possible to begin the hearing process.

I'm assuming you would want to handle those hearings rather than assign to someone else, so if you could clarify the July 10-19 time period, that would be great. I understand it is difficult to make plans that far in advance, particularly since we can't guarantee being ready to proceed at that point.

Steve Pilcher

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

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Monday, April 25, 2011 11:41 AM
To: 'Steve Pilcher'
Subject: RE: Availability

Ok, one last modification on availability – I'd like to avoid 7/10-19 and the rest of the month is fine, but not a huge problem if that's not possible.

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]
Sent: Monday, April 25, 2011 11:06 AM
To: olbrechtslaw@gmail.com
Subject: Availability

Good morning, Phil:

What with the recent GMHB reconsideration decision to not invalidate the two approving MPD ordinances, staff is re-engaging with Yarrow Bay on development agreement discussions. What would be your availability for conducting public hearings during the last two weeks in June? (assuming we can meet that schedule). Since school would be out, I'm hoping we could have easy access to the gymnasium, perhaps doing afternoon/evening sessions as many as four days in a row.

Also, we have a 10-lot subdivision that is not part of the MPDs that may be ready for hearing in late May or June. We'll contact you about firming up a date when that application appears ready to go.

See you at the Law Conference tomorrow?

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

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Monday, April 25, 2011 11:38 AM
To: 'Steve Pilcher'
Subject: RE: Availability

Meant shoot for July? Later the better works for me that month.

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]
Sent: Monday, April 25, 2011 11:06 AM

To: olbrechtslaw@gmail.com
Subject: Availability

Good morning, Phil:

What with the recent GMHB reconsideration decision to not invalidate the two approving MPD ordinances, staff is re-engaging with Yarrow Bay on development agreement discussions. What would be your availability for conducting public hearings during the last two weeks in June? (assuming we can meet that schedule). Since school would be out, I'm hoping we could have easy access to the gymnasium, perhaps doing afternoon/evening sessions as many as four days in a row.

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

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Monday, April 25, 2011 11:35 AM
To: 'Steve Pilcher'
Subject: RE: Availability

I'm out of town the last two weeks in June for a wedding in which I'm best man and vacation. Could we shoot for August?

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]
Sent: Monday, April 25, 2011 11:06 AM
To: olbrechtslaw@gmail.com
Subject: Availability

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

From: olbrechtslaw@gmail.com [mailto:olbrechtslaw@gmail.com]
Sent: Thursday, April 14, 2011 10:03 AM
To: Steve Pilcher
Subject: Fw: Black Diamond

Fyi

Sent from my Verizon Wireless BlackBerry

From: Dave Bricklin <bricklin@bnd-law.com>
Date: Thu, 14 Apr 2011 15:15:22 +0000
To: Phil Olbrechts<olbrechtslaw@gmail.com>
Subject: RE: Black Diamond

Yes, that's fine, as long as no decisions are made in the meantime. Thank you.

David Bricklin

Bricklin & Newman, LLP
1001 Fourth Avenue, Suite 3303
Seattle, WA 98154
1-206-264-8600
1-206-264-9300 (fax)
bricklin@bnd-law.com
<http://www.bnd-law.com>

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From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Wednesday, April 13, 2011 6:51 PM
To: Dave Bricklin
Subject: Black Diamond

Hi Dave,

Sorry I haven't returned your call yet. I've been buried with some big decisions this week that extend into next week, one that has your former client (Durland) as a participant. I haven't heard anything from Black Diamond on how they plan on proceeding, except that they don't know what they're going to do yet. I'll have to find out what they plan on doing (if they know yet) and then from there figure out what limitations, if any, apply to my contacts with other parties. I will try to get back to you mid-next week. Does that work for you?

From: Dave Bricklin [mailto:bricklin@bnd-law.com]
Sent: Thursday, February 17, 2011 11:19 AM
To: Kathy Burrows
Cc: Millie Judge; Jessica Ferrell; Phil Olbrechts
Subject: RE: WSBA Environmental Law Group Retreat 4/27-4/30 : accommodation question

Thank you. Will do.

David Bricklin

Bricklin & Newman, LLP
1001 Fourth Avenue, Suite 3303
Seattle, WA 98154
1-206-264-8600
1-206-264-9300 (fax)
bricklin@bnd-law.com
<http://www.bnd-law.com>

Confidentiality Notice: This e-mail may contain confidential and privileged information. If you have received this message by mistake, please notify me immediately by replying to this message or telephoning me, and do not review, disclose, copy or distribute it. Thank you.

From: Kathy Burrows [mailto:kathyb@wsba.org]
Sent: Thursday, February 17, 2011 11:14 AM
To: Dave Bricklin
Cc: Millie Judge; Jessica Ferrell; Phil Olbrechts
Subject: RE: WSBA Environmental Law Group Retreat 4/27-4/30 : accommodation question

Hello Dave – What I didn't mention below is that the Environmental & Land Use Law Section will cover the following expenses as a seminar speaker:

- Complimentary admission to the seminar
- 2 nights lodging
- Meals at the federal government per diem rate for Mason County (\$46/day: Breakfast \$7, Lunch \$11, Dinner \$23, \$5 Incidentals)
- Mileage at \$.51/mile

Please remember to confirm your reservation with Alderbrook at 360.898.2200 to be sure your reservations were made correctly. If there is a question about this special room rate for 4/30, ask for Jackie Bea.

Thank you.

Kathy Burrows
Section Seminar Development Specialist
Continuing Legal Education Dept.
Washington State Bar Association
1325 Fourth Ave., Suite 600
Seattle, WA 98101-2539
(206) 727- 8225 phone
(206) 727-8324 fax
kathyb@wsba.org
For the latest CLE seminars and products, go to www.wsba.org

From: Kathy Burrows [mailto:kathyb@wsba.org]
Sent: Wednesday, February 16, 2011 2:58 PM
To: bricklin@bnd-law.com
Cc: Millie Judge; Jessica Ferrell; Phil Olbrechts
Subject: FW: WSBA Environmental Law Group Retreat 4/27-4/30 : accommodation question

Hello Dave – Alderbrook Resort and Spa has agreed to extend the \$149 group rate to you for the night of 4/30.

Your confirmation number is: 4081FO.

Please confirm your reservation with Alderbrook at 360.898.2200 to be sure your reservations were made correctly. If there is a question about this special room rate for 4/30, ask for Jackie Bea.

I look forward to meeting you in person at the seminar.

Kathy Burrows
Section Seminar Development Specialist
Continuing Legal Education Dept.
Washington State Bar Association
1325 Fourth Ave., Suite 600
Seattle, WA 98101-2539
(206) 727- 8225 phone
(206) 727-8324 fax
kathyb@wsba.org
For the latest CLE seminars and products, go to www.wsba.org

From: olbrechtslaw@gmail.com [mailto:olbrechtslaw@gmail.com]
Sent: Wednesday, March 23, 2011 7:13 PM
To: 'Steve Pilcher'
Subject: Re: Your availability during April

Still think we're going in april?

Sent from my Verizon Wireless BlackBerry

From: "Phil Olbrechts" <olbrechtslaw@gmail.com>
Date: Wed, 9 Mar 2011 00:09:34 -0800
To: 'Steve Pilcher' <SPilcher@ci.blackdiamond.wa.us>
Subject: RE: Your availability during April

Ok, this time I simply couldn't get to you earlier. Here are my conflict dates: 4/5, 4/7, 4/13, 4/14, 4/12, 4/26, 4/21. I can have people sub for me if necessary. 4/13 and 4/21 are still tentative hearings. The last week in April would be the easiest for me to do.

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]
Sent: Thursday, March 03, 2011 8:30 AM
To: olbrechtslaw@gmail.com
Subject: Your availability during April

Phil:

Please let me know your availability for conducting potential Development Agreement hearings during the month of April. Bear in mind that at this time, I can't state for certain whether these hearings will proceed or not. Last Friday, Mr. Bricklin filed a request that the GMHB reconsider its decision and invalidate the two MPD ordinances. Should the Board concur, that will alter the course of things. On another front, Yarrow Bay has filed an appeal of the GMHB's decision to Superior Court and requested it be consolidated with the LUPA action. Lots of balls in the air.

Thanks!

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

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Wednesday, March 09, 2011 12:10 AM
To: 'Steve Pilcher'
Subject: RE: Your availability during April

Ok, this time I simply couldn't get to you earlier. Here are my conflict dates: 4/5, 4/7, 4/13, 4/14, 4/12, 4/26, 4/21. I can have people sub for me if necessary. 4/13 and 4/21 are still tentative hearings. The last week in April would be the easiest for me to do.

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]
Sent: Thursday, March 03, 2011 8:30 AM
To: olbrechtslaw@gmail.com
Subject: Your availability during April

Phil:

Please let me know your availability for conducting potential Development Agreement hearings during the month of April. Bear in mind that at this time, I can't state for certain whether these hearings will proceed or not. Last Friday, Mr. Bricklin filed a request that the GMHB reconsider its decision and invalidate the two MPD ordinances. Should the Board concur, that will alter the course of things. On another front, Yarrow Bay has filed an appeal of the GMHB's decision to Superior Court and requested it be consolidated with the LUPA action. Lots of balls in the air.

Thanks!

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

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Tuesday, February 15, 2011 6:21 PM
To: 'Steve Pilcher'
Subject: RE: ~\$der on Motion to Dismiss Black Diamond (2).pdf - Adobe Reader

Hi Steve,

Thanks for the info. I was in the dentist chair getting drilled when you called. Looks like you've had your own root canal of sorts today. Glad this issue was beyond my jurisdiction!

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]
Sent: Tuesday, February 15, 2011 1:46 PM
To: Phil Olbrechts
Subject: ~\$der on Motion to Dismiss Black Diamond (2).pdf - Adobe Reader

2nd try to send this.

Steve Pilcher

From: olbrechtslaw@gmail.com [mailto:olbrechtslaw@gmail.com]
Sent: Monday, February 14, 2011 7:01 PM
To: Steve Pilcher
Subject: Re: Hearing dates

The 15th and 17th are both tentative hearing dates as well as the evening of the 16th. It's very unlikely I would have hhearings on all three dates. I'll try to get some clarification from a couple of the cities by end of day tomorrow.

Sent from my Verizon Wireless BlackBerry

From: Steve Pilcher <SPilcher@ci.blackdiamond.wa.us>
Date: Mon, 14 Feb 2011 17:27:16 -0800
To: Phil Olbrechts<olbrechtslaw@gmail.com>
Subject: Hearing dates

Phil:

If the D.A. hearings have to move up one week (i.e., beginning on March 12 and then carrying through the following week), would you be available?

Please let me know if there are any days that week you will not be available.

Steve Pilcher
Community Development Director
City of Black Diamond
P.O. Box 599
Black Diamond, WA 98010
360-886-2560 ext. 216

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Thursday, February 10, 2011 8:30 AM
To: SPilcher@ci.blackdiamond.wa.us
Subject: Hearing Notice

Steve,

Below is some proposed language. Up to you if you want to schedule hearing testimony (see second paragraph below). If you do try that route, you should take ten names per hour, starting at 11:00 am. I'm assuming that the 10 to 11 slot will be devoted to the staff and applicant presentations and discussion of procedural issues. If we happen to get done before 11, we can take the testimony of people who didn't schedule their testimony for a specific time or just ask for anyone who wants to testify. If you think the staff/applicant presentations will total more than an hour you can just start assigning blocks of time at 11:30 or 12. I imposed a 5:00 pm instead of midnight deadline to cover those people who don't have email and would have to submit their requests to you in writing:

The hearing will commence on March 5, 2011 at 10:00 am at the _____ School and will end that day by 9:00 pm or when all testimony is presented, whichever is earlier. The hearing will be continued day to day as necessary to accommodate lay (general public) and expert testimony.

Persons wishing to provide lay (general public) testimony have the option of scheduling their testimony for a specific block of time with Steve Pilcher at _____, or with any available staff during the hearing. Mr. Pilcher will assign a time for March 5, 2011 that would be the earliest time that someone would be called to testify.

Expert testimony, if any, will be heard commencing on March 7, 2011 at 10:00 am at the City of Black Diamond City Council Meeting Chambers located at _____. Anyone wishing to present expert testimony shall provide the name of the expert and general summary of the testimony to Steve Pilcher by 5:00 pm on February 25, 2011, either submitted in writing at _____ or by email at _____. This information will be posted on the City's website at _____. Anyone wishing to provide rebuttal expert testimony or to challenge proposed expert testimony should present their position/request in writing to Steve Pilcher by 5:00 pm on 3/3/11. The names of experts who are not submitted within these timeframes shall not be permitted to testify.

An expert witness is a person that is qualified by knowledge, skill, experience, training or education to provide opinions on scientific, technical or other specialized issues. A person does not qualify as an expert witness due to their residency alone in the Black Diamond Community. Expert witnesses shall be subject to cross examination and shall not be subject to the time limits that will be imposed for general public testimony.

A prehearing order outlining more procedural rules for the hearing will be posted at the City's website a week in advance of the hearing.

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Monday, February 07, 2011 1:03 PM
To: 'Steve Pilcher'
Subject: RE: Upcoming hearings on Development Agreements

I like that time even more! See you then.

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]
Sent: Monday, February 07, 2011 12:55 PM
To: Phil Olbrechts
Subject: RE: Upcoming hearings on Development Agreements

Phil:

After discussing with our attorneys, the Mayor has decided not to attend this meeting. Hate to do this, but could we put it back to 10:30? That would work better for some of us.

Steve Pilcher
Community Development Director
City of Black Diamond
P.O. Box 599
Black Diamond, WA 98010
360-886-2560 ext. 216

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Friday, February 04, 2011 6:49 PM
To: Steve Pilcher
Subject: RE: Upcoming hearings on Development Agreements

11:00 is fine. Meeting with the Mayor about an upcoming hearing is a little dangerous from a legal standpoint. If she hasn't already done so, she should probably confer with the City Attorney on whether it's in her best interest to participate and what topics to avoid. Of course, I too will advise the Mayor if it appears we're headed into prohibited discussions. Our meeting should be limited to coordinating administrative support and other City resources with the hearing process. We have to avoid discussing anything that could potentially influence a hearing ruling on substantive or procedural issues. Beyond this, if you want to get into how the hearing is run the safest way to handle that issue would be to simply have the City Council adopt hearing examiner rules of procedure. The rules could include time limits, mandatory prehearing conference, just about anything you want.

Of course, in the normal course there's nothing wrong about discussing performance and style in a general context or in relation to prior cases. Our situation is different because any comments on how to run a hearing will be construed as related to how to handle a specific hearing, i.e. the development agreement hearing. You and the Mayor are probably already aware of these issues, and if so just ignore my comments. However, these issues can be so damaging from both a legal and political standpoint that I would be remiss in not pointing them out "just in case".

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]
Sent: Friday, February 04, 2011 4:55 PM
To: Phil Olbrechts
Subject: RE: Upcoming hearings on Development Agreements

Phil:

The Mayor has requested the meeting begin at 11:00; hope that will still work for you.

Have a good weekend.

Steve Pilcher
Community Development Director
City of Black Diamond
P.O. Box 599
Black Diamond, WA 98010
360-886-2560 ext. 216

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Friday, February 04, 2011 2:29 PM
To: Steve Pilcher
Subject: RE: Upcoming hearings on Development Agreements

I'll be there.

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]
Sent: Friday, February 04, 2011 12:51 PM
To: Phil Olbrechts
Subject: RE: Upcoming hearings on Development Agreements

How would Wednesday morning, around 10:30 work for you? (Glad to see I'm no longer spam!)

Steve Pilcher
Community Development Director
City of Black Diamond
P.O. Box 599
Black Diamond, WA 98010
360-886-2560 ext. 216

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Thursday, February 03, 2011 12:07 PM
To: Steve Pilcher
Subject: Re: Upcoming hearings on Development Agreements

Steve,

I could come down tomorrow or any day next week except for Tuesday. I'd suggest that we record our meeting and put it into the record so there are no issues with ex parte communications. That's probably not required, but it seems like an easy way to avoid dealing with another procedural issue.

On Thu, Feb 3, 2011 at 11:42 AM, Steve Pilcher <SPilcher@ci.blackdiamond.wa.us> wrote:

Phil:

We have targeted March 1st as a beginning date for the public hearings on The Villages and Lawson Hills Development Agreements. These will likely occur over the span of multiple days, with potential breaks for both your schedule and for Black Diamond Municipal Court. As we discussed on the phone last week, we would like to have a meeting with you in the next week or so to review procedures, etc. Some of our thoughts include:

- Using the Council Chambers for all of the proceedings;
- Conducting primarily daytime, but some evening sessions;
- Trying to establish a definitive schedule at the outset of the hearing;
- Either have a pre-hearing order regarding rules of procedure or resolve at the initial session.

Let me know what time might work for you to discuss these items. If it works better, we could always do a conference call.

Steve Pilcher

Community Development Director

City of Black Diamond

P.O. Box 599

Black Diamond, WA 98010

360-886-2560 ext. 216

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]

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To: 'Steve Pilcher'

Subject: RE: Upcoming hearings on Development Agreements

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To: Phil Olbrechts

Subject: RE: Upcoming hearings on Development Agreements

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Community Development Director
City of Black Diamond
P.O. Box 599
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360-886-2560 ext. 216

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Let me know what time might work for you to discuss these items. If it works better, we could always do a conference call.

Steve Pilcher

Community Development Director

City of Black Diamond

P.O. Box 599

Black Diamond, WA 98010

360-886-2560 ext. 216

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City of Black Diamond
P.O. Box 599
Black Diamond, WA 98010
360-886-2560 ext. 216

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Steve Pilcher

Community Development Director

City of Black Diamond

P.O. Box 599

Black Diamond, WA 98010

360-886-2560 ext. 216

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Steve Pilcher

Community Development Director

City of Black Diamond

P.O. Box 599

Black Diamond, WA 98010

360-886-2560 ext. 216

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

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Thursday, January 06, 2011 10:01 PM
To: 'Steve Pilcher'
Subject: Couple Things

Hi Steve,

Hope you enjoyed the holidays. I was curious about a couple items:

1. What's the latest on the Vanderford code enforcement hearing? I set a date in December for some progress on settlement. Has anything happened?
2. Do we have a date yet for the development agreement hearings?

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

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]
Sent: Monday, November 15, 2010 1:38 PM
To: Phil Olbrechts
Subject: RE: Doc's for hearing

No problem; will have everything there.

Steve Pilcher
Community Development Director
City of Black Diamond
P.O. Box 599
Black Diamond, WA 98010
360-886-2560 ext. 216

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Monday, November 15, 2010 1:36 PM
To: Steve Pilcher
Subject: FW: Doc's for hearing

Hi Steve,

I can't find the Rules of Procedure I adopted for Black Diamond. If you have a copy handy, could you have them at the hearing room? Also, it would be useful to have a copy of the municipal code. Thanks.

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

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Thursday, December 16, 2010 12:23 PM
To: 'Steve Pilcher'
Subject: RE: Development Agreement Hearing

For some reason your emails have been going to my spam folder. You're the only person it does that to for some reason! That's why I didn't have the materials you emailed me for the last code enforcement action. I think I've figured out how to take you off the junk list so should be ok now.

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

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]
Sent: Wednesday, December 15, 2010 10:39 AM
To: Phil Olbrechts
Subject: Development Agreement Hearing

Phil:

Still waiting to hear if the week of February 14th, 2011 will work for you.

Steve Pilcher
Community Development Director
City of Black Diamond
P.O. Box 599

Black Diamond, WA 98010
360-886-2560 ext. 216

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

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Thursday, December 16, 2010 12:16 PM
To: 'Steve Pilcher'
Subject: Hearing Date

Hi Steve,

I didn't receive any of your emails, which is odd. My new email address is olbrechtslaw@gmail.com in case you don't have it.

The week of 2/14 works pretty well for me. My only conflict is potentially the Wednesday evening for Auburn hearings.

One way you may want to advertise the hearing is for any expert testimony to be held during the day and public testimony at night. You could also ask that anyone who will be submitting expert testimony provide advance notice to the city as to how much time will be necessary so we can schedule them accordingly. Ideally we could do expert testimony from 10 to 5 every day and public testimony from 6 to 10 and finish it all within a week. Obviously, if you don't think there will be any expert testimony we don't need to do it that way. I don't know what people are planning to do on this one.

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

From: Steve Pilcher [mailto:SPilcher@ci.blackdiamond.wa.us]
Sent: Monday, November 15, 2010 1:38 PM
To: Phil Olbrechts
Subject: RE: Doc's for hearing

No problem; will have everything there.

Steve Pilcher
Community Development Director
City of Black Diamond
P.O. Box 599
Black Diamond, WA 98010
360-886-2560 ext. 216

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Hi Steve,

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Steve Pilcher

From: Dorothy Schmidt <dot3452000@yahoo.com>
Sent: Thursday, August 04, 2011 1:41 PM
To: Steve Pilcher
Subject: Development Agreement for The Villages

August 4, 2011

Dear Mr. Pilcher:

I am opposed to the approval of the Development Agreement for The Villages. The Agreement is not consistent with prior approvals.

Sincerely,

Dorothy Schmidt

EXHIBIT

Steve Pilcher

From: Kathy Green <kathgree225@gmail.com>
Sent: Thursday, August 04, 2011 4:45 PM
To: Steve Pilcher
Subject: Development Agreement

Dear Mr. Pilcher;

The Development Agreement proposed to the City of Black Diamond for The Villages do not meet the city ordinances and are therefore not acceptable.

Sincerely,

Anna K. Green

EXHIBIT

148



King County

**Department of Development
and Environmental Services**

900 Oakesdale Avenue Southwest
Renton, WA 98057-5212

206-296-6600

www.kingcounty.gov

August 4, 2011

Phil Olbrechts, Hearing Examiner
City of Black Diamond
24301 Roberts Drive
P.O. Box 599
Black Diamond, WA 98101

Dear Hearing Examiner Olbrechts:

Thank you for the opportunity to provide additional, written testimony on the proposed development agreements. King County has asked the Prosecuting Attorney's Office to conduct a legal review of the proposed development agreements, and it has done so.

King County is concerned about Section 3.1 of each of the proposed development agreements. This section provides, in part, that where there is a conflict between the substantive requirements of the development agreement and prior agreements (e.g., the BDUGAA), the development agreement will control. This section contemplates that the proposed development agreement conflicts with requirements imposed through prior agreements, but it does not specifically identify what conflicts it is addressing. We have both policy and legal concerns about this provision.

At a minimum, this provision would constitute questionable policy because it lacks transparency. If the development agreement is intended to amend existing requirements, it should set forth those amendments with specificity. That sort of clarity would benefit all interested individuals and entities. As currently written, it risks creating confusion and dispute in the future.

Beyond the policy issue, the provision is legally ineffective. A development agreement is not a tool to amend existing legal requirements and instead is required to be consistent with already adopted regulations. *See* RCW 36.70B.170(1). Additionally, the prior agreements have multiple parties, including King County. The City and the Master Developer cannot amend the requirements of those agreements, and the development agreement cannot relieve the City and the Master Developer of obligations under the prior agreements.

EXHIBIT

149

Phil Olbrechts, Hearing Examiner
City of Black Diamond
August 4, 2011
Page 2

We suggest removing the language regarding conflict with prior agreements. As an alternative, the development agreement should explicitly provide that it does not affect the obligations of the City and the Master Developer to other parties to the prior agreements. Even in that case, if the City and the Master Developer believe the proposed development agreement conflicts with existing requirements set forth in any of the prior agreements, those conflicts should be specifically identified in the development agreement.

Thank you again for the opportunity to submit this written testimony.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Reitenbach", written over a faint, larger version of the same name.

Paul Reitenbach
Senior Policy Analyst

cc: John Starbard, Director, Department of Development and Environmental Services
Sung Yang, Director of External Affairs and Government Relations
Lauren Smith, Land Use Policy Advisor, King County Executive's Office
Darren Camell, Senior Deputy Prosecuting Attorney, King County Prosecuting
Attorney's Office



COOKE SCIENTIFIC

4231 NE 110TH ST, SEATTLE, WA 98125

PHONE: (206) 695-2267 FAX: 206-368-5430

COOKESS@COMCAST.NET WWW.COOKESCIENTIFIC.COM

August 4, 2011

Steve Pilcher
City of Black Diamond, Community Development Director
PO Box 599
Black Diamond, WA 98010

**RE: Comments on the Lawson Hills and The Villages Development
Agreements between the City of Black Diamond and BD Lawson Partners**

Dear Mr. Pilcher:

I have reviewed the documents listed below at the request of the citizens group "Save Black Diamond" in preparation for generating comments relating to critical areas and the potential for impacts from implementing the Lawson Hills and The Villages Development Agreements. My comments are as follows:

References Reviewed:

- City of Black Diamond. Staff report Lawson Hills MPD. File # PLN09-0016.
- City of Black Diamond. Staff report The Villages MPD. File # PLN09-0017.
- City of Black Diamond. June 2009. City of Black Diamond Comprehensive Plan.
- City of Black Diamond. December 2009. Lawson Hills MPD Final Environmental Impact Statement.
- City of Black Diamond. December 2009. The Villages MPD Final Environmental Impact Statement.
- City of Issaquah & Sougar Mountain East Village Partnership. 1999. Cougar Mountain East Village Development Agreement
- Otak, Inc. August 2010. Shoreline Analysis Report, Including Shoreline Inventory and Characterization for City of Black Diamond's Shoreline: Lake Sawyer. Prepared for the City of Black Diamond
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EXHIBIT

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Wetland Resources. July 17, 2008. The Villages Wetland Assessment- Draft EIS Report.

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Wetland Resources. July 21, 2009. The Villages Sensitive Areas Study.

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General Comments

1. The EIS contains statements that plans to prevent erosion, protect trees, provide mitigation for wetland and buffer impacts "will be developed and be in compliance with the City of Black Diamond Sensitive Areas Ordinance" but lacks any details about exactly what will be done. The development agreement also does not outline how this will be done, just that it will be. If the City is planning on locking into a development agreement that provides no details from a sensitive areas perspective despite the fact that the stormwater provisions set the precedence that the stormwater standards and NPDES standards will be set by whatever are the current standards approved by the City at the beginning of a new phase (Section 7.4.4), then this gives the developers carte blanche to do what they please in the future because there promises to be no oversight as the permits has effectively already been granted.
2. I do not have the opportunity to go out and verify the wetland boundaries, but apparently the city staff have not done so either, other than a cursory site visit and the ultimate jurisdiction over wetland boundaries, the US Army Corps of Engineers has not done a verification for this project either. Acceptance of wetland boundaries by the City does not constitute approval by the Corps, and what's more, the Corps statute of limitations on wetland boundaries determinations is only 5 years so it is wholly inappropriate for the City to approve agreements for the Villages and Lawson Hills MPDs where the wetland delineation boundaries are grandfathered for 15 or 20 years.
3. Prior notification to the Corps is required before approval of wetland impacts. There is a Federal nexus needs to be addressed.
4. Wetland ratings for both MPD's have been established without examination of offsite wetlands, which appear to possibly be much higher wetland categories, and which also appear to be contiguous with wetlands on all parcels (A, B-G and

BDA). If this is correct, the ratings would be higher and the subsequent required buffers wider. No one has raised this issue in their review at either the city or 3rd party reviews, but it is certain that the Department of Ecology and Army Corps of Engineers would. An example of this is found in the Parametrix report where *"With regard to wetland buffers, wetlands K and F on the Main Property are designated as headwater wetlands in the City' SAO. The MPD application submitted in support of Alternative 2 does not characterize these wetlands as headwater wetlands, and instead utilized the Washington State Rating System for Western Washington to calculate required buffers for these wetlands. As designated headwater wetlands, under City codes these wetlands require 225 foot wide buffers. The application materials assign a 110 foot buffer to wetland F and a 60 foot buffer to wetland K.*

5. Cumulative Impacts as identified in both the Lawson Hills and The Villages EIS documents do not cover the indirect effects of having these massive wetlands systems that are completely surrounded by development, some of it high density residential and industrial. Also Qualitative and quantitative descriptions of the impacts associated with each alternative need to be provided.
6. Additional studies need to be done before a decision is made. Wetland Boundaries and ratings have to be verified by the State (Washington State Department of Ecology) and Federal (US Army Corps of Engineers, US Environmental Protection Agency) agencies. The City can't approve these projects without these studies and review by the salient agencies. *As stated in the Parametrix peer review memorandum, "we will still need to confirm that the proposed wetland creation sites adjacent to Wetlands MM, J, and O, and offsite wetlands, have adequate buffers under alternative 2."*
7. The villages and Lawson Hills MPD land use plan shows that there is a very large amount of wetland and stream throughout the site (for some of the parcels as much as 50%). These wetlands are surrounded by development, sometimes moderate (V27, V28, V31, V34) and high density (V3, V13) residential, and even some light industrial (V7, V9). The massive wetland crosses from east to west across the development and will be completely surrounded by development.
8. Little to no work has been done on groundwater systems, especially as they feed the massive wetlands systems in the area. There has been no discussion of what happens when you completely surround these wetlands with development on the base flow of the wetland systems. This is not discussed in either of the EIS documents. For example there are four separate aquifer layers, with different water sources as well as runoff patterns. Although that reference is to "The Villages," there are even more mines on the Lawson site which is on a hill. How will these developments effect the wetlands that are fed by these aquifer
9. IN the words of Parametrix *"In addition, measures taken to avoid impacts or a quantitative assessment of impacts to the bog adjacent to Black Diamond Lake within the Villages MPD area needs to be discussed. According to the preliminary management guidelines for Sphagnum dominated peatlands, as attached to the Plants and Animals 'existing conditions' for The Villages (also prepared by Wetland Resources, Inc.), hydrology is one of the most important physical factors that can be altered by human activities in the watershed of a sphagnum dominated peatland. Avoiding conditions that increase water level fluctuations*

into or within a peatland is important in avoiding impacts. A more sophisticated hydrologic analysis/analysis of impacts from developed conditions of the bog needs to be completed to accurately determine/address impacts and determine appropriate mitigation, if necessary.”

Peer reviews

1. There has been no peer review by either the Washington State Department of Ecology nor the US Army Corps of Engineers. Neither agency has heard of this project (pers. Comm. Muff Walker, head regulatory section, Seattle District, US Army Corps of Engineers, Matt Bennett, SE King County lead, Regulatory Section, Seattle District, US Army Corps of Engineers). Patrick McGainer at the Department of Ecology who reviews projects in south King County, received the Draft EIS in December of 2009 but was unable to perform much of a review because there was not sufficient information in the Draft EIS to do that, especially with respect to mitigation offered, and he told me he was waiting until a permit was submitted for the two MPD's (Pers. Comm. July 8, 2011). Erik Stockdale senior technical advisor for the DEO's Bellevue office stated that no wetland boundaries should be approved prior to the Crops verifying the boundaries.
2. The City of Black Diamond Staff review reports make no mention of performing a site verification for the wetlands boundaries nor do they discuss any details about review in the wetland reports. They simply state that the wetland boundaries are approved as shown in the Wetland resources Reports (. However, “Even though an FEIS was issued for the Lawson Hills MPD project, and whether or not a Planned Action Ordinance is ultimately implemented, staff is recommending that all subsequent implementing city permits be subject to applicable SEPA requirements. At this time, given the conceptual nature of the proposal, **staff is not supportive of a Planned Action Ordinance action**”. (Pg 9 staff report). Unfortunately staff reviewed the mitigation concepts in the EIS and “The recommended MPD conditions of approval include a majority of the mitigation measures identified in the FEIS. Therefore, significant adverse environmental impacts can be appropriately mitigated.”
3. Parametrix provided a third party review of the wetlands work. This is the statement on their review *“technical report and brief field inspections of The Villages wetlands on June 9 and 10, 2008, I conclude that the Wetlands Report generally provides accurate mapping and description of wetlands on the Villages parcels. Two biologists visited most of the accessible wetlands on the property. And “No discussion of impacts was included in the document. Without addressing impacts, the document lacks sufficient information to identify mitigation. Qualitative and quantitative descriptions of the impacts associated with each alternative need to be provided. The area of identified wetlands needs to replace the placeholders (xxx) in various sections of the report.”*

Development Agreement and EIS Deficiencies

The development agreements for both The Villages and Lawson Hills state the MPD's are consistent with and implements Washington State's Growth management Act (GMA). From a perspective of sensitive areas this is not true. There is no evidence there has been:

- 1. A comprehensive review process for the development impacts on wetlands and streams.** When a detailed wetlands boundary verification has not been done by the city or it's 3rd party reviewers (Parametricx November 2009 peer review) and certainly not by the Corps or the Washington State Department of Ecology, then a platted development cannot be finalized and buffers cannot be set. The Development agreement states that this has been done (Section 8.1) but a JD can only be done by the Army Corps of Engineers and the lead and regional staff have no knowledge of this project Ecology (Pers. Comm., Matt Bennett, Seattle District Army Corps of Engineers, July 8, 2011). Staff at the City states they have only taken a cursory glance at wetland boundaries. How can staff be sure there will be no changes to the wetlands over time or even that the current boundaries are accurate? How can the development agreement state "The wetland delineations and types outlined in the Constraints Map are deemed final and complete. (Section 8.2.1)?"
- 2. An Identification) of significant environmental impacts and ensure appropriate mitigation,** when it is not known if the wetland boundaries are correct, and no mitigation plan has been offered at this time. "Master Planning concepts" are not provided in sufficient detail to make informed decisions. How do we know that "Implementing the project does not propose any changes or alterations to sensitive areas or their buffers as shown in the reports described in Subsection 8.2 is exempt from the requirements of BDMC 19.10.120(C) Sensitive Area Jurisdiction Decision, and the reports required by BDMC 19.10.130, BDMC 19.10.337, BDMC". There could be many more wetlands and therefore more wetland impacts than are identified in the report.
- 3. Protection of wetlands and other sensitive areas and their associated buffers,** when it would be impossible to state this is being met with statements like "Sensitive areas and their buffers may be modified through updated wetland reports, buffer averaging, grading to eliminate steep slopes, and/or filling of wetlands or as otherwise allowed by and in compliance with the City's Sensitive Areas Ordinance (SAO). Further, steep slope Setbacks and coal mine hazard areas may be reduced as stated in The Villages Master Planned Development (Draft Development Agreement, The Villages 9/19/2010).
- 4. Protection of wetlands and other sensitive areas and their associated buffers** that depends heavily on the effectiveness of the SAO and implementing the intent of the ordinance. The City of Black Diamond Comprehensive Plan Policy NE-9 states, "Protect sensitive areas from inappropriate land uses, activities, or development through continued application of periodic updates to the CAO [Critical Area Ordinance referred to by the City as the Sensitive Area Ordinance] and development regulations. The City [of the City] will monitor the effectiveness of its CAO and will modify this ordinance as necessary, based upon the information gathered during monitoring." (City of Black Diamond Comprehensive Plan, Chapter 4-26, June, 2009). As a Condition of approval it is

recommended the Development Agreement make provisions to monitor the effectiveness of the SAO during buildout. The SAO should not be diluted by variances and changes in standards that would result in adverse impacts to wetlands and sensitive areas.

5. **The development agreement states “The Villages MPD Land Use Map satisfies the avoidance criteria of BDMC 19.10.050 because it avoids impacting wetland, streams and associated buffers to the maximum extent possible, and any proposed alterations are the minimum necessary to allow for access and extension of utilities across the Project Site. BUT** Mitigation Sequencing can only be determined by the Army Corps of engineers and I have already established they have not reviewed this project. An actual impact and mitigation report would have to be submitted to the Corps for review and approval for this to occur. The City can approve this but the final approval must come from the Corps, DOEs and US EPA.
6. **Provision of environmentally sustainable development** are not being met since we have no idea what mitigation will be provided and we do not know if in the future the wetlands and streams will change and if they do, they would be impacted because the City is proposing to lock into the wetland boundaries and buffers for all future development as of the 2009 delineation. Neither the State nor the Feds who have ultimate jurisdiction over wetlands would agree to this.
7. **The Development Agreement does not include plans for the preservation and enhancement of wetlands and on mitigation measures to be implemented for the loss or alterations to wetlands caused by utility and road crossings and other encroachments.** BDMC 18.98.020 (A) states, “A specific objective of the MPD permit process and standards is to provide public benefits not typically available through conventional development. These public benefits shall include but not limited to: A. preservation and enhancement of the physical characteristics (topography, drainage, vegetation, environmentally sensitive areas, etc) of the site”. One purpose of the Sensitive Area Ordinance is “To limit development and alteration of sensitive areas to achieve the goal of no net loss of sensitive areas or their functions and values.” (City of Black Diamond, SAO no. 08-875, p.5). Avoidance of adverse impacts is the action of preference according to BDMC 19.10.050 in order to achieve no net loss wetlands or their functions and values. It is recommended a Wetland Preservation Plan be incorporated in the Development Agreement to provide goals and implementation guidelines to protect all wetlands, especially the core stream-lake-wetland complexes on- and off-site. Goals for core stream-lake-wetland preservation may include:
 - **Protect plant and animal species and biological habitat of stream-lake-wetland complexes** associated with Rock Creek, Jones Lake, Jones Creek, Black Diamond Lake, Black Diamond Creek. This has been recommended by Parametrix in their BAS document “The Rock Creek/Jones Lake/Jones Creek corridor and the Black Diamond Lake/Stream corridors and the associated wetland complexes should be recognized as a core area that provides a variety of water supply, water quality, and habitat functions. These functions are essential to the preservation of water quality in Lake Sawyer, and to continue to

provide the rich ecological functions of these systems. To function as wildlife corridors, they should extend to Ravensdale Creek to the north and the UGA boundaries to the east and west. They should be preserved with a minimum buffer width of 225 feet and requirements for adjacent uses to incorporate measures to reduce proximity impacts from noise, light and glare, stormwater and predation from pets. These corridors also should extend to the boundaries of adjacent steep slopes and may be widened where possible through a transfer of a portion of the buffer area from lower priority stream complexes.”

- **Prevent Degradation and Loss of Vegetation Condition 65.** “Where point discharges to streams must occur, design the outfall to minimize impacts to stream channel and avoid areas of significant vegetation.” [FEIS Mitigation]. The Development Agreement fails to address Condition 65. The Development Agreement needs to indicate explicitly, as a project goal, that no net loss of sensitive areas is to occur on-site. Mitigation sequencing provisions of BDMC 19.10.050 in the SAO requires that development avoid sensitive areas as the first goal and where all practical and feasible avoidance measures have been employed. The Development Agreement needs to describe at least general mitigation guidelines if stream and buffer alterations should occur in sensitive area buffers. For example, a stormwater pond is proposed to be located in the Rock Creek wetland buffer (Development Agreement, Conceptual Stormwater Plan, figure 7.4, June, 2011s).
- **Condition 118.** “Implementing projects shall provide “on the ground” protection measures such as wetland buffers or root protection zones for significant trees.” [FEIS Mitigation Measure] The Development Agreement fails to address Condition 118 or “on the ground” protection measures for significant trees. Randall Arendt stressed the importance of field visits (“on the ground”) to identify and conserve significant trees or stands of trees to incorporate in creative open space and city landscaping compared to conventional or “cookbook” development procedures.
- **Condition 120.** “A tree inventory shall be required prior to the development of implementing projects so that other opportunities to preserve trees may be realized.” The Development Agreement fails to address Condition 120. Tree inventories are consistent with rural- by-design principles and need to be done in the early planning design in order conserve significant trees for city landscaping as opposed to conventional practices of clear-cutting a site (Randall Arendt, Black Diamond City Council work session, April 14, 2011). Promoting rural-by-design principles into new development is required by BDMC:18.98.010(L): “Promote and achieve the city’s vision of incorporating and/or as adapting the planning and design principles regarding mix of uses, compact form, coordinated open space, opportunities for...; as well as such additional design principles as may be appropriate for a particular MPD, all as identified in book ‘Rural by Design’ by Randall Arendt and in the City’s Design Standards.” Data from the tree inventory must used for creative open space and

landscape design opportunities. Contrary to a key principle in Rural-by-Design, clearing cutting the site is indicated according to the Hearing Examiner's discussion: "Given the proposed densities, it is anticipated that the development areas shown on Figure 3-1 Land Use Plan will be cleared of all vegetation and graded to facilitate development" (The Villages, Findings, Conclusions and Decision, 2010, p. 214).

8. **Aquifer recharge areas are greatly underestimated as are the potential impacts the project might have on these areas.** Parametrix in their Best Available Science review document for the City have stated that "Data already compiled and described above appear sufficient to support determination of aquifer susceptibility and vulnerability in the City of Black Diamond. Aquifer recharge areas may be identified largely by surficial soils and categorized for sensitivity based on "DRASTIC - A Standardized System for Evaluated Groundwater Pollution Potential Using Hydrogeologic Settings" (Aller et al. June 1987, US Environmental Protection Agency, Publication Number 600287035).

Wellhead protection areas (WHPAs) designated by water purveyors (as required by WAC 246-290-145) and mapped by Ecology (2006) should be added to the City's aquifer recharge area map, showing the 10-year ground-water travel-time area to each well or well field. Superposition of all designated WHPAs illustrates where aquifers are currently used for water supply. The mapping should be updated periodically to allow for additions and deletions of specific water wells. These data should be checked with State of Washington Department of Health and King County Health Department records." A review of the development agreement and EIS for the two projects barely grazes the topic of aquifer recharge. This is of concern for many reasons. A) maintenance of streams, wetlands and lakes in the area are certainly dependent on maintenance of aquifers and b) many citizens within the city limits are dependent on wells and would certainly be concerned if the aquifers that feed those wells was impacted. Further investigation is needed to determine if the State's Department of Natural resources aquifer recharge areas maps have been incorporated into the City's inventory and certainly more research on the location and dept of the aquifers is necessary before any platting is done for development as construction is not allowed in aquifer recharge areas by State law.

Please contact me if you have additional questions.



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