Rachel Pitzel

From: Brenda Martinez
Sent: Wednesday, August 17, 2011 11:01 AM
To: Rachel Pitzel
Subject: FW: Response to Exhibit 218 -

-----Original Message-----
From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Wednesday, August 17, 2011 10:51 AM
To: Brenda Martinez
Subject: FW: Response to Exhibit 218 -

Please post.

-----Original Message-----
From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Wednesday, August 17, 2011 10:45 AM
To: 'Stacey Borland'
Cc: 'BOB@kenyondisend.com'; 'BobEdelman@comcast.net'
Subject: RE: Response to Exhibit 218 -

There is no reason to await a response from the City on the Edelman motion as I am overruling the motion except as to one issue in which I will wait to hear from the City. I do not wish to further delay the hearing process to respond to objections when it is not necessary to do so.

Mr. Edelman's motion as it relates to City Attorney comments on the organization and motives of hearing participant is overruled. The comments are of highly marginal relevance to the Examiner. The Examiner is far more interested in the substance of comments made as opposed to who presented them or why. However, as discussed at length in several pre-hearing orders, the Council has a very wide degree of discretion in its decision to pursue supplemental conditions or exercise supplementary SEPA authority.
One factor that may be of importance to the Council in committing time and resources to exercising this discretionary authority is the degree of concern of its constituents. The organizational structure and motives of the organizations presenting evidence in this regard can be of relevance in this regard. The City Attorney may have other reasons for arguing the information is relevant, but the reason cited is sufficient to keep the information in the record.

Mr. Edelman has also objected to a couple attachments that provide comparisons to other development projects. The Examiner recently ruled that SAVE Black Diamond could make comparisons to other developments. The City Attorney has the same right.

One point that is left open for response from the City Attorney is the Page 12, line 20 phrase "perhaps deliberately". As noted by the Examiner during the hearings when he stated that calling the Applicant "greedy" was not appropriate, in order to maintain a level of civility that fosters a constructive hearing process any attacks of a personal nature that are not necessary to argue a point will be stricken. The comment cited by Mr. Edelman appears to be unfounded, inflammatory and unnecessary. The City Attorney may very well have good reason to employ this language and the Hearing Examiner will defer a ruling on the issue until the City Attorney has had an opportunity to respond. The City Attorney will have until 5:00 pm today to respond.

-----Original Message-----
From: Stacey Borland [mailto:SBorland@ci.blackdiamond.wa.us]
Sent: Wednesday, August 17, 2011 10:24 AM
To: Phil Olbrechts
Subject: FW: Response to Exhibit 218 -

Mr. Olbrechts,

Please see the communication below from the City Attorney.

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: BOB STERBANK [mailto:BOB@kenyondisend.com]
Sent: Wednesday, August 17, 2011 10:12 AM
To: Steve Pilcher; MIKE KENYON
Cc: Andy Williamson; Brenda Martinez; Stacey Borland; MARGARET Starkey
Subject: Re: Response to Exhibit 218 -

Steve,

Please communicate to the Hearing Examiner that the City intends to respond to both Mr. Edelman's Motion to Strike and Ms. Wheeler's objection, and that the City respectfully requests that he refrain from ruling on the Wheeler objection or the Edelman motion until the City has had an opportunity to do so.

Best regards,

Bob Sterbank

Bob C. Sterbank
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The Municipal Law Firm
11 Front Street South
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