

**Before the City of Black Diamond Hearing Examiner**

**Motion to Revise and Set Hearing Rules and Procedures for the Yarrow Bay Development Agreement Hearings**

I. Background and Introduction

The Hearing Examiner set the schedule for submittal of motions regarding rules and procedures at the pre-hearing conference of May 23, 2011. On June 10 the City posted a public announcement that hearing would begin on July 11 and posted draft development agreements, each identified as “Public Hearing Version”. Presumably these are the final draft agreements to be considered by the Hearing Examiner. No staff reports were posted.

This motion is to revise procedures set by the Hearing Examiner at the pre-hearing conference and request additional rules and procedures.

II. Proposed rules and procedures

- a. **The final draft development agreement must be complete in all respects before being submitted to the public for review and comment. The Development Agreements must not have anything yet to be determined. All agreements with other agencies must be agreed to by all parties and available for review as part of the Development Agreements. There must not be any dependence on anticipated ordinances. Any provision for options such as location of facilities must be fully developed to include the effect on all other provisions of the Development Agreement for each option.**

Comprehensive review and comments on the draft development agreements cannot take place and information will be inadequate for the Hearing Examiner to make decisions if the agreements are incomplete. There should be no aspect left for future determination or passage of future legislation.

The City and the developers cannot commit to actions of other agencies without their concurrence in written agreements. The public should have the opportunity to review and analyze any such agreement referenced in the Development Agreements. For example, hearings were held on the MPDs before the tri-party agreement was completed with the Enumclaw School District. Also, Maple Valley and Covington traffic agreements were not available until after public testimony was concluded. These actions precluded public comment.

The developers and the City cannot commit to passage of future ordinances. Any dependence on future legislative action cannot be analyzed for the hearings since the form and content of that legislation will be unknown.

The Development Agreements may include optional manners of implementation or location of facilities. If the options impact other provisions of the agreements then all such impact must be included so that there will be sufficient information to assess the agreements. For example, no decision has been made at this time as to whether or not schools will be located within the MPD or outside of the Urban Growth Area. Each option has significant impact of water and sewer availability, traffic mitigation, etc. and those impacts should be detailed.

**b. The final Development Agreements and staff reports shall be available for review 90 days before hearings commence.**

The hearings should not be conducted until the public has had ample opportunity to review and analyze the final drafts of the development agreements. The City Staff has taken eight months to review draft agreements and discuss the drafts with Yarrow Bay.

It was originally thought that 60 days would be adequate for review. However the recent posting of the development agreement drafts is massive. There are over 1300

pages excluding reference documents. These must be weighed against the municipal code and over 160 MPD conditions. (Some of the information is the same for the two agreements but it needs to be reviewed regardless to determine if it is redundant.) It is unreasonable to expect the public to review and assess this much information in less than 90 days. It should also be noted that the review period in the public notice now encompasses a major holiday (Independence Day) during which many people take vacations and attend public events. Further, the City consistently said that there would be public meetings to introduce the development agreements after the drafts were finalized and before public notice of the open record hearings. That plan is still posted on the City's web-site at <http://www.ci.blackdiamond.wa.us/Depts/CommDev/planning/DevAgmntFlowChart.pdf>.

As of this time there are no published staff reports as required by the Hearing Examiner so it is difficult to estimate the amount of time required to evaluate those documents once they are provided. The City has also failed to include a compliance matrix as committed. The compliance matrix is expected to be part of the staff report. Lack of the matrix further complicates review.

- c. The venue must have sufficient seating capacity to accommodate all members of the public wishing to attend and may not be at a remote location.**

Attendance by the public cannot be restricted by the size of the facility or by a remote location. If more members of the public wish to attend a hearing then are permitted by seating capacity for the facility then the hearing should be suspended until a location of sufficient capacity is located and the public is notified of the change in venue.

- d. All hearings will be in the evening from 7:00 pm to 9:00 pm with the exception that daytime hearings may be scheduled for expert testimony and testimony by outside agencies.**

Black Diamond City Council meeting and Planning Commission meetings are generally scheduled to begin at 7:00 pm to accommodate officials and attendance by the public. This allows commuters enough time to return from work and eat dinner before attending the hearings. Scheduling public hearings for an earlier hour will unnecessarily restrict public attendance. Hearings held beyond 9:00 pm will interfere with attendance by those persons who must retire at a reasonable hour before a following workday.

- e. There will be no time limit on individual public testimony or page limit on written testimony.**

Development agreement issues are extremely complex – much more so than the underlying MPDs – because the development agreements flesh out the detail and implement the MPDs. There should be no limits placed on testimony, written or oral. It is important that testimony not be curtailed and that adequate time be allowed to give detailed and clear statements. The Hearing Examiner has the discretion to rule testimony irrelevant or redundant if required.

- f. Cross examination of expert witnesses shall be through the Hearing Examiner with the opportunity for additional questions if responses are deemed inadequate.**

The public should be allowed to question expert witnesses regarding their testimony. To maintain order, questions can be submitted through the Hearing Examiner. There should be the opportunity for follow-up questions by both the Hearing Examiner and the public if the witness is non-responsive to the questions.

- g. All objections to testimony must be submitted in writing to the Hearing Examiner before the record is closed. A date will be set by the Hearing Examiner for final submittal of objections and the record will be held open for one week after that date to allow parties to respond.**

Verbal objections to testimony can be disruptive and intimidating. The Hearing Examiner should use his discretion to interrupt testimony if necessary. Further, there must be adequate time to respond to objections prior to the record being closed.

- h. The sequence for public testimony will be testimony – rebuttal – reply. Rebuttal to public testimony by the City or Yarrow Bay must be submitted and published before the record is closed. Parties shall have one week to reply before the record is closed.**

In the prior hearings, rebuttal testimony was submitted immediately prior to the record being closed. Parties were not provided any opportunity or time to reply,

- i. No change or supplement to the record is permitted after it is closed.**

This should go without saying. However, the rules apparently need to be clarified. The developers submitted land use map changes after the MPD record was closed and those changes were accepted by the City and incorporated prior to the closed record hearings. The changes were made without public knowledge.

Thank you for your consideration of this motion.

Dated June 13, 2011



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