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BEFORE THE CITY OF BLACK DIAMOND
HEARING EXAMINER

IN RE: THE MATTER OF DEVELOPMENT AGREEMENT HEARINGS RELATED TO THE VILLAGES MPD APPROVED IN ORD. NO. 10-946 AND LAWSON HILLS MPD APPROVED IN ORD. NO. 10-947

MOTION TO SET HEARING PROCEDURES FOR DEVELOPMENT AGREEMENT HEARINGS (PLN10-0020, PLN10-0021, PLN11-0013, & PLN11-0014)

I. INTRODUCTION

BD Village Partners, LP and BD Lawson Partners, LP (collectively, "Yarrow Bay") bring this motion pursuant to Hearing Examiner's verbal order during the Pre-hearing Conference dated May 23, 2011,¹ requesting that the Examiner issue a Pre-hearing Order that sets the following procedures for the upcoming hearings on the development agreements for The Villages and Lawson Hills Master Planned Developments ("MPDs").

II. DISCUSSION

A. The development agreements must be reviewed in a quasi-judicial hearing.

We have received copies of emails directed to the Examiner, and exchanged between counsel for a neighborhood opponent group called Toward Responsible Development ("TRD")

¹ On May 13, 2011, Yarrow Bay filed a motion titled "Motion to Set Hearing Procedures On May 23, 2011 Pre-Hearing Conference." This was prior to the Pre-Hearing Conference and in conformance with Hearing Examiner Rule 2.13. In response to the Hearing Examiner's verbal order during the Pre-Hearing Conference, Yarrow Bay respectfully requests this Motion supersede and replace our prior motion.

1 and counsel for the City of Black Diamond. The last email was dated May 5, 2012 from TRD's
2 attorney Mr. Bricklin. TRD argues that the Examiner hear this matter as a "legislative" rather
3 than "quasi-judicial" proceeding. However, pursuant to BDMC 18.66.020.E and BDMC
4 18.08.070, the hearing on the development agreements is required to be quasi-judicial.

5 TRD's argument is that because the MPD Approval Ordinances, Ordinance No. 10-946
6 (The Villages) and Ordinance No. 10-947 (Lawson Hills), were deemed by the Growth
7 Management Hearings Board ("GMHB" or "Board") to be development regulations that should
8 have been processed as "legislative" code amendments, the development agreements following
9 the MPD Approvals must also be "legislative." TRD's argument ignores that the Board's
10 determination as to the MPDs is not settled but, rather, has been appealed by Yarrow Bay.
11 TRD's argument also ignores that the Board has not been presented with and has made no
12 decision regarding the nature of these development agreements. Even more importantly, this
13 argument ignores Board and Court precedent consistently concluding that the GMHB has no
14 jurisdiction over development agreements.² And, finally, this argument ignores that the code of
15 the City of Black Diamond plainly requires that these development agreements be reviewed in a
16 quasi-judicial hearing.

17 Specifically, BDMC 18.08.030 provides that development agreements are Type 4 –
18 Quasi-Judicial decisions. BDMC 18.08.070(A) explains and requires that: "Type 4 decisions are
19 made by the city council following a closed record hearing based on a recommendation from the
20 hearing examiner." Thus, contrary to some of the oral and written testimony submitted during
21 the Pre-Hearing Conference, the Hearing Examiner only makes a recommendation to the City
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23
24 ² See e.g., *Sno-King v. Snohomish County* (CPSGMHB 06-3-0005, Order on Motions, May 25, 2006, p. 7-8);
25 *Hanson v. King County* (CPSGMHB 98-3-0015c, Order Granting Dispositive Motions, Sept. 28, 1998); *Petersville*
26 *Road Area Residents v. Kitsap County* (CPSGMHB 00-3-0013, Order on Motions, Oct. 23, 2000); *City of Burien v.*
City of SeaTac (CPSGMHB 98-3-0010, Aug. 10, 1998); *City of Burien v. CPSGMHB*, 113 Wn.App. 375, 386, 53
P.3d 1028 (holding that in contrast to development regulations, development agreements are individual agreements
between cities and property owners regarding the development, use, and mitigation of the development of a specific
piece of property).

1 Council – not a decision. As a result, the Hearing Examiner has no authority to control the City
2 Council’s decision-making and cannot issue an order that extends to City Council procedures.
3 Any procedures set by the Examiner that are contrary to code simply create an argument for
4 reversal on appeal. The Examiner’s Pre-hearing Order should provide that the hearing
5 procedures will be quasi-judicial.

6 **B. The scope of the hearing should be limited to confirming that the**
7 **development agreements appropriately incorporate those matters directed**
8 **and allowed to be incorporated by the MPD Approvals and State law.**

9 The development agreements for The Villages and Lawson Hills are required under
10 BDMC 18.98.090.³ The development agreements are contracts between a landowner and the
11 City of Black Diamond. *See* RCW 36.70B.170. The purpose of the MPD development
12 agreements is to ensure that the “MPD conditions of approval shall be incorporated” into a
13 development agreement that is “binding on all MPD property owners and their successors,” to
14 ensure that the MPD lands are developed “only in accordance with the terms of the MPD
15 approval.” BDMC 18.98.090. Under RCW 36.70B.170, a development agreement “shall be
16 consistent with applicable development regulations,” and “must set forth the development
17 standards and other provisions that shall apply to and govern and vest the development, use, and
18 mitigation of the development of the real property for the duration specified in the agreement.”
19 *See also*, BDMC 18.66.020.

20 Given these statutory and code directives for the content of the MPD development
21 agreements, the only issues that should be reviewed during the hearings on the development
22 agreements⁴ are: (1) whether each development agreement incorporates the conditions of each

23 ³ On June 3, 2011, the City issued a non-appealable Determination of Significance and Notice of Adoption under
24 the State Environmental Policy Act (“SEPA”) for The Villages and Lawson Hills development agreements.

25 ⁴ Contrary to some of the comments and written testimony submitted during the Pre-Hearing Conference, Yarrow
26 Bay’s three preliminary plat applications (PLN11-0001, PLN11-0008, and PLN11-0010) are not currently before the
Hearing Examiner and, as a result, the Hearing Examiner has no authority to issue any recommendation or decision
regarding these plat applications, and should not spend time hearing testimony regarding the compliance of those
plats with the City’s Code.

1 MPD Approval, as adopted in Ord. Nos. 10-946 and 10-947, (2) whether each development
2 agreement is consistent with applicable development regulations, and (3) whether the matters set
3 forth in the development agreements are within the scope of development standards and
4 provisions authorized to be included in a development agreement by RCW 36.70B.170 *et seq.*
5 and BDMC 18.66.020.

6 Accordingly, Yarrow Bay asks that the Examiner's Pre-hearing Order set the scope of
7 matters to be heard to include evidence and testimony regarding only: (1) whether each
8 development agreement incorporates the conditions of each MPD Approval, as adopted in Ord.
9 Nos. 10-946 and 10-947, (2) whether each development agreement is consistent with applicable
10 development regulations, and (3) whether the matters set forth in the development agreements
11 are within the scope of development standards and provisions authorized to be included in a
12 development agreement by RCW 36.70B.170 *et seq.* and BDMC 18.66.020.

13 **C. Procedures for addressing "expert" testimony and evidence, if any, should be**
14 **set by the Examiner.**

15 In light of the scope for a development agreement hearing described above, including the
16 lack of any appealable SEPA determination, Yarrow Bay does not view these development
17 agreement hearings as calling for any "expert" testimony. Accordingly, at this point in time,
18 Yarrow Bay does not intend to provide expert testimony. However, to the extent testimony is
19 presented that drives Yarrow Bay or the City to present experts in rebuttal, the Examiner needs
20 to set rules about how any expert testimony is provided and whether cross-examination is
21 allowed.

22 At the pre-hearing conference, a request was made to define the difference between
23 expert and lay witness testimony. The Rules of Evidence applicable in Washington Courts are
24 instructive and at ER 701 and ER 702 provide:
25
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1 Opinion Testimony by Lay Witnesses

2 If the witness is not testifying as an expert, the witness' testimony in the form of
3 opinions or inferences is limited to those opinions or inferences which are (a)
4 rationally based on the perception of the witness, (b) helpful to a clear
5 understanding of the witness' testimony or the determination of a fact in issue,
6 and (c) not based on scientific, technical, or other specialized knowledge within
7 the scope of rule 702.

8 Testimony by Experts

9 If scientific, technical, or other specialized knowledge will assist the trier of fact
10 to understand the evidence or to determine a fact in issue, a witness qualified as
11 an expert by knowledge, skill, experience, training, or education, may testify
12 thereto in the form of an opinion or otherwise.

13 These rules should be used by the Examiner as well to define the difference between lay and
14 expert testimony.

15 If the Hearing Examiner decides to allow experts to testify orally during the development
16 agreement hearings, any expert who testifies would theoretically be subject to cross-examination
17 from the City, from Yarrow Bay, and from every member of the public who had participated in
18 the hearing, except for whatever person or party called the expert witness. Such a process is
19 unfair, inefficient, and not required by law.⁵

20 Given the limited scope of the development agreement hearings, and in order to maintain
21 control over the timing and process of the proceedings, Yarrow Bay respectfully requests that if
22 any interested person – including Yarrow Bay or the City – chooses to present expert testimony,
23 that expert testimony be presented in writing. We note that this process would simply confirm
24 and continue the process the Hearing Examiner allowed in the MPD Permit hearings. Because
25 we also recommend a sur-rebuttal procedure in this motion, there is no issue of unfair advantage
26 to any party or participating interested person. Accordingly, the Examiner's Pre-hearing Order
should indicate that while expert testimony is not anticipated given the limited scope of the
development agreement hearings, if it is delivered, it is to be delivered only in writing.

⁵ In our view, *Chrobuck v. Snohomish County*, 78 Wn.2d 858, 861, 480 P.2d 489 (1971), stands for the much more limited proposition that parties to a proceeding who are represented by counsel may be permitted to cross-examine expert witnesses, not that every unrepresented interested person who testifies at a public hearing has a right to cross-examine expert witnesses.

1 In the alternative, Yarrow Bay requests that if the Hearing Examiner decides to allow oral
2 expert testimony, and oral testimony is provided either in addition to or in lieu of written
3 testimony, cross-examination should be conducted as follows: (i) any party or interested person
4 represented by counsel may have such counsel conduct the cross-examination; and (ii) any party
5 or interested person not represented by counsel who has questions should submit those questions
6 to the Hearing Examiner to ask of the expert. Contrary to protests heard during the Pre-Hearing
7 Conference, the Hearing Examiner is eminently qualified to ask any necessary follow-up
8 questions based on the concerns provided by an interested person to the Hearing Examiner, and
9 this procedure is often used in the land use hearings in this region. Accordingly, if the Examiner
10 decides to go this route, the Pre-hearing Order should indicate the adoption of this process to
11 assure efficiency and fairness.

12 **D. Timing and process for hearing.**

13 In addition to the items outlined above, Yarrow Bay recommends the following matters
14 be addressed in the Examiner's Pre-hearing Order:

15 1. In the interest of efficiency, the hearings on the development agreements for both
16 The Villages and Lawson Hills MPDs should be consolidated. All persons speaking to either
17 project's development agreement should be instructed to state whether their comments extend to
18 one or both projects and, if just one, which project.

19 2. On June 10, 2011, the City issued notice of the opening of the hearings on July
20 11, 2011 at 6 p.m. and continuing on multiple days thereafter. The hearings should be scheduled
21 to continue day to day until completed.

22 3. The hearings should open and proceed in the following order and with the
23 following time limits:

24 a. The City Staff gives an opening oral presentation of their written Staff
25 Report regarding the MPDs' development agreements, limited to 1.5 hours.

1 b. Yarrow Bay gives an opening presentation introducing the development
2 agreements, limited to 1.5 hours, and presenting any initial written statements in support
3 of the development agreements.

4 c. Public testimony shall be taken, with each person speaking provided 3
5 minutes to a maximum of 10 minutes to testify orally, and unlimited written arguments
6 and evidence. The Hearing Examiner should retain the right to limit such testimony to
7 relevant arguments and evidence. Written and oral public testimony will be closed at a
8 date and time certain, except for possible sur-rebuttal described below.

9 d. Members of the public wishing to testify may cede their time to any
10 person; provided, however, that any person ceding time must be present when the person
11 they are ceding their time to testifies. For the limited purposes of ceding time, a
12 maximum of one (1) hour is allowed for any one person testifying.

13 e. At least 48 hours (or in the event public testimony closes on the evening of
14 a weeknight, and closings can be scheduled for the morning of the following Saturday,
15 approximately 36 hours) after written and oral public testimony has closed, the City,
16 followed by Yarrow Bay, will provide their own presentations of whatever length is
17 necessary to respond to questions asked and issues raised in the public testimony. Given
18 the limited scope of the hearing, it is estimated this oral presentation will be no more than
19 three hours combined between the City and Yarrow Bay. Written rebuttal of any length
20 from Yarrow Bay and the City will also be allowed.

21 f. After the rebuttal presentations of the City and Yarrow Bay have been
22 completed, the Examiner shall allow 48 hours for any interested person who has testified
23 or submitted evidence in the hearing to submit written testimony as sur-rebuttal on a
24 specific topic. After the submittal of that sur-rebuttal, Yarrow Bay and the City shall
25 then be provided 48 hours to respond to any sur-rebuttal testimony filed. No additional
26 rounds of sur-rebuttal shall be allowed by the Hearing Examiner.

1 g. The hearing examiner may ask questions of any person presenting or
2 testifying.

3 4. An audio recording of the hearings shall be made by the City of Black Diamond.
4 In addition, Yarrow Bay shall pay the appearance fee for a court reporter to transcribe the
5 hearings. Any person desiring a copy of the court reporter's transcription is required to order the
6 transcript from the court reporter.

7 5. The City clerk shall post all exhibits on the City's website within 48 hours of
8 submittal.

9 6. On June 3, 2011, the City issued a Determination of Significance and Notice of
10 Adoption under the State Environmental Policy Act ("SEPA") for The Villages and Lawson
11 Hills development agreements. The City posted on its website, the final development agreements
12 of both The Villages and Lawson Hills MPDs on June 9, 2011. The City's Staff Report on the
13 development agreements was posted on the City's website on June 10, 2011. Notice of the public
14 hearings for the development agreements was published by the City on June 10, 2011 – more
15 than thirty (30) days prior to the start date of the scheduled hearings.⁶

16 7. Hearing Examiner Rule 2.12 regarding Expected Conduct of all persons shall be
17 quoted in full in the Prehearing Order as follows:

18 **2.12 EXPECTED CONDUCT**

19 (a) All persons appearing before the Hearing Examiner shall conduct
20 themselves with civility and courtesy to all persons involved in the hearing.

21 (b) No party or other person shall communicate with an Examiner presiding
22 over a matter or with any employee of the Hearing Examiner's Office in an
attempt to influence the outcome or to discuss the merits of that matter.

23 (c) No party or other person, other than staff when not acting as a party, shall
24 make or attempt ex parte communication with the Examiner regarding any matter
25 under pending review by the Examiner. Procedural matters may be addressed by

26 ⁶ Pursuant to BDMC 18.08.180, only fourteen days of notice are required prior to the commencement of a public hearing.

1 written correspondence, copied to all known parties. In all matters involving an
2 open record hearing, prior to and during the hearing, the Examiner may ask
County staff to submit additional information into the record.

3 (d) If a substantial prohibited ex parte communication is made, such
4 communication shall be publicly disclosed by the Examiner: any written
5 communications, and memorandums summarizing the substance and participants
of all oral communications, shall promptly be made available to the parties for
6 review and an opportunity to rebut those communications.

7 8. The Hearing Examiner shall begin each hearing session with an announcement of
8 these hearing procedures.

9 III. CONCLUSION

10 Yarrow Bay respectfully requests that the Hearing Examiner enter a Pre-hearing Order
11 implementing the procedures described above.

12 DATED this 13th day of June, 2011.

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14 CAIRNCROSS & HEMPELMANN, P.S.

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17 Nancy Bainbridge Rogers, WSBA No. 26662
18 Andrew S. Lane, WSBA No. 26514
19 Randall P. Olsen, WSBA No. 38488
20 Attorneys for Applicants BD Lawson Partners, LP
21 and BD Village Partners, LP
22
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Certificate of Service

1
2 I, Kristi Beckham, certify under penalty of perjury of the laws of the State of Washington
3 that on June 13, 2011, I caused a copy of the document to which this is attached to be served on
4 the following individual(s) via email:

5 Phil A. Olbrechts
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9 Black Diamond, WA 98010
10 Email: olbrechtslaw@gmail.com

11 Steve Pilcher
12 Community Development Director, City of Black Diamond
13 24301 Roberts Drive
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16 Email: spilcher@ci.blackdiamond.wa.us

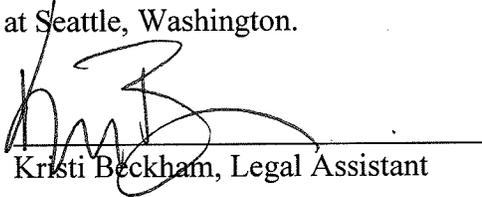
17 Brenda Martinez
18 Clerk, City of Black Diamond
19 24301 Roberts Drive
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21 Black Diamond, WA 98010
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23 Bob Sterbank
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1 Courtesy copy provided via email to:

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4 1001 Fourth Ave., Ste. 3303
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6 Email: bricklin@bnd-law.com

7 DATED this 13th day of June, 2011, at Seattle, Washington.

8 
9 Kristi Beckham, Legal Assistant

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BEFORE THE CITY OF BLACK DIAMOND

HEARING EXAMINER

IN RE: THE MATTER OF DEVELOPMENT AGREEMENT HEARINGS RELATED TO THE VILLAGES MPD APPROVED IN ORD. NO. 10-946 AND LAWSON HILLS MPD APPROVED IN ORD. NO. 10-947

[PROPOSED] ORDER GRANTING MOTION TO SET HEARING PROCEDURES FOR DEVELOPMENT AGREEMENT HEARINGS (PLN10-0020, PLN10-0021, PLN11-0013, & PLN11-0014)

The Black Diamond Hearing Examiner has reviewed Petitioners BD Lawson Partners, LP and BD Village Partners, LP's (collectively, "Yarrow Bay's") Motion to Set Hearing Procedures for Development Agreements (PLN10-0020, PLN10-0021, PLN11-0013, & PLN11-0014), and the response and reply briefs of the City of Black Diamond and other interested persons. The Hearing Examiner, having reviewed the file and records in this matter and considered the arguments of counsel and interested persons, deems itself fully advised.

NOW THEREFORE, the Examiner hereby ORDERS as follows:

1. The Motion to Set Hearing Procedures for Development Agreements (PLN10-0020, PLN10-0021, PLN11-0013, & PLN11-0014) is hereby GRANTED as follows:

[PROPOSED] ORDER GRANTING MOTION TO SET HEARING PROCEDURES FOR DEVELOPMENT AGREEMENT HEARINGS (PLN10-0020, PLN10-0021, PLN11-0013, & PLN11-0014) - 1

CAIRNCROSS&HEMPELMANN
ATTORNEYS AT LAW
524 2nd Ave, Suite 500
Seattle, WA 98104
office 206 587 0700 fax 206 587 2308

1 a) On June 3, 2011, the City issued a Determination of Significance and
2 Notice of Adoption under the State Environmental Policy Act ("SEPA") for The Villages and
3 Lawson Hills development agreements. The City posted on its website, the final development
4 agreements of both The Villages and Lawson Hills MPDs on June 9, 2011. The City's Staff
5 Report on the development agreements was posted on the City's website on June 10, 2011.
6 Notice of the public hearings for the development agreements was published by the City on June
7 10, 2011 – more than thirty (30) days prior to the start date of the scheduled hearings. The
8 Villages MPD Development Agreement and Lawson Hills MPD Development Agreement
9 hearings shall commence on July 11, 2011 as provided in the City's notices of public hearing.
10

11 b) The hearings on the development agreements for both The Villages and
12 Lawson Hills MPDs shall be consolidated.

13 c) Pursuant to BDMC 18.08.030, the hearing procedures for The Villages
14 MPD and Lawson Hills MPD Development Agreements shall be quasi-judicial.

15 d) The scope of the development agreement hearings shall be limited to
16 evidence and testimony regarding only the following : (1) whether each development agreement
17 incorporates the conditions of each MPD Approval, as adopted in Black Diamond Ord. Nos. 10-
18 946 and 10-947; (2) whether each development agreement is consistent with applicable
19 development regulations; and (3) whether the matters set forth in the development agreements
20 are within the scope of development standards and provisions authorized to be included in a
21 development agreement by RCW 36.70B.170 *et seq.* and BDMC 18.66.020.
22

23 e) While expert witness presentations are not anticipated given the limited
24 scope of The Villages MPD and Lawson Hills MPD Development Agreement hearings, if it is
25 delivered, the following distinction will be used to determine who is an expert:
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i. Opinion Testimony by Lay Witnesses

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of rule 702.

Testimony by Experts

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

f) If expert witness presentations are made, they shall be delivered only in writing.

[OR, IN THE ALTERNATIVE:

While expert testimony is not anticipated given the limited scope of The Villages MPD and Lawson Hills MPD Development Agreement hearings, if oral testimony is provided either in addition to or in lieu of written testimony, cross-examination shall be conducted as follows: (i) any party or interested person represented by counsel may have such counsel conduct the cross-examination; and (ii) any party or interested person not represented by counsel who has questions should submit those questions to the Hearing Examiner to ask of the expert.]

g) On June 10, 2011, the City issued notice of the opening of the hearings on July 11, 2011 at 6 p.m. and continuing on multiple days thereafter. The hearings shall continue day-to-day until completed.

h) The hearings shall open and proceed in the following order and with the following time limits:

i. The City Staff gives an opening oral presentation of their written Staff Report regarding the MPDs' development agreements, limited to 1.5 hours.

1 ii. Yarrow Bay gives an opening presentation introducing the
2 development agreements, limited to 1.5 hours, and presenting any initial written statements in
3 support of the development agreements.

4 iii. Public testimony shall be taken, with each person speaking
5 provided 3 minutes to a maximum of 10 minutes to testify orally, and unlimited written
6 arguments and evidence. All persons speaking to either MPDs development agreement shall state
7 whether their comments extend to one or both MPDs and, if just one, which MPD. The Hearing
8 Examiner retains the right to limit such testimony to relevant arguments and evidence. Written
9 and oral public testimony will be closed at a date and time certain, except for possible sur-
10 rebuttal described below.

11 iv. Members of the public wishing to testify may cede their time to
12 any person; provided, however, that any person ceding time must be present when the person
13 they are ceding their time to testifies. For the limited purposes of ceding time, a maximum of one
14 (1) hour is allowed for any one person testifying.

15 v. At least 48 hours (or in the event public testimony closes on the
16 evening of a weeknight, and closings can be scheduled for the morning of the following
17 Saturday, approximately 36 hours) after written and oral public testimony has closed, the City,
18 followed by Yarrow Bay, shall provide their own presentations of whatever length is necessary
19 to respond to questions asked and issues raised in the public testimony. Given the limited scope
20 of the hearing, this oral presentation shall be limited to 3 hours combined between the City and
21 Yarrow Bay. Written rebuttal of any length from Yarrow Bay and the City shall also be allowed.

22 vi. After the rebuttal presentations of the City and Yarrow Bay have
23 been completed, any interested person who has testified or submitted evidence in the hearing
24 shall have 48 hours to submit written testimony as sur-rebuttal on a specific topic. After the
25 submittal of that sur-rebuttal, Yarrow Bay and the City shall have 48 hours to respond, in
26 writing, to any sur-rebuttal testimony filed. No additional rounds of sur-rebuttal shall be allowed.

1 vii. The Hearing Examiner may ask questions of any person presenting
2 or testifying.

3 i) An audio recording of the development agreement hearings shall be made
4 by the City of Black Diamond. In addition, Yarrow Bay shall pay the appearance fee for a court
5 reporter to transcribe the hearings. Any person desiring a copy of the court reporter's
6 transcription must order the transcript from the court reporter.

7 j) The Black Diamond City Clerk shall post all exhibits on the City's website
8 within 48 hours of submittal; provided however, that to accommodate the timeframes for the sur-
9 rebuttal procedure described in this Order, the City Clerk shall create a process to provide
10 promptly any written materials related to the sur-rebuttal process to the parties and any interested
11 person who has testified.

12 k) During the development agreement hearings, the City, Yarrow Bay, and
13 all interested persons are specifically instructed to follow Hearing Examiner Rule 2.12:

14 **2.12 EXPECTED CONDUCT**

15 (a) All persons appearing before the Hearing Examiner shall conduct
16 themselves with civility and courtesy to all persons involved in the hearing.

17 (b) No party or other person shall communicate with an Examiner presiding
18 over a matter or with any employee of the Hearing Examiner's Office in an
attempt to influence the outcome or to discuss the merits of that matter.

19 (c) No party or other person, other than staff when not acting as a party, shall
20 make or attempt ex parte communication with the Examiner regarding any matter
21 under pending review by the Examiner. Procedural matters may be addressed by
22 written correspondence, copied to all known parties. In all matters involving an
open record hearing, prior to and during the hearing, the Examiner may ask
County staff to submit additional information into the record.

23 (d) If a substantial prohibited ex parte communication is made, such
24 communication shall be publicly disclosed by the Examiner: any written
25 communications, and memorandums summarizing the substance and participants
26 of all oral communications, shall promptly be made available to the parties for
review and an opportunity to rebut those communications.

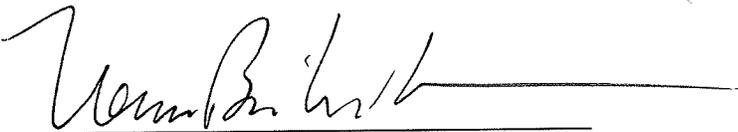
1) Each development agreement hearing session shall begin with an announcement of these hearing procedures by the Hearing Examiner.

DATED this ____ day of June, 2011.

PHIL OLBRECHTS
CITY OF BLACK DIAMOND HEARING
EXAMINER

Presented by:

CAIRNCROSS & HEMPELMANN, P.S.



Nancy Bainbridge Rogers, WSBA No. 26662
Andrew S. Lane, WSBA No. 26514
Randall P. Olsen, WSBA No. 38488
Attorneys for Respondents BD Lawson Partners,
LP and BD Village Partners, LP

Certificate of Service

I, Kristi Beckham, certify under penalty of perjury of the laws of the State of Washington that on June 13, 2011, I caused a copy of the document to which this is attached to be served on the following individual(s) via email:

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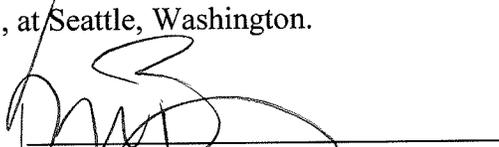
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1 Courtesy copy provided via email to:

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