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BEFORE THE HEARING EXAMINER OF THE CITY OF BLACK DIAMOND

IN RE DEVELOPMENT AGREEMENTS
RELATED TO MPD PERMIT
ORDINANCES 10-946 (VILLAGES) AND
10-947 (LAWSON HILLS)

NOS. PLN10-0020/11-0013; PLN10-
0021/11-0014

CITY'S RESPONSE TO
PREHEARING MOTIONS

I. INTRODUCTION

The City of Black Diamond submits this response to the pre-hearing motion by applicants BD Villages Partners, LP and BD Lawson Partners, LP (collectively, "Yarrow Bay"). The City also responds below to related prehearing motions submitted by David Bricklin (June 13, 2011 letter, aka "Bricklin Motion"), Bob Edelman (Motion to Revise and Set Prehearing Rules and Procedures ("Edelman Motion")), and the June 13, 2011 e-mail from Cindy Wheeler ("Wheeler Motion").

II. ANALYSIS

A. The Scope of the Hearing on the Development Agreements Must Be Limited to Whether the Development Agreements Comply With Applicable Legal Requirements.

The primary question the Examiner must resolve relates to the scope of the



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1 hearing.¹ Here, as Yarrow Bay understandably points out - given the express direction to
2 the Examiner set forth in the Black Diamond Municipal Code - the scope of the hearing
3 on the development agreements (“DAs”) is limited to whether the DAs comply with
4 applicable legal requirements, as set forth in BDMC Section 18.98.090 and RCW
5 36.70B.170.

6 The basic requirements for a development agreement are set out in RCW
7 36.70B.170(1), which states:

8 A development agreement must set forth the development
9 standards and other provisions that shall apply to and
10 govern and vest the development, use, and mitigation of the
11 development of the real property for the duration specified
12 in the agreement. A development agreement shall be
13 consistent with applicable development regulations adopted
14 by a local government planning under chapter 36.70A
15 RCW.

16 Thus, there are two basic statutory requirements for a development agreement: (1) it
17 must *set forth* the development standards and other provisions that apply to, govern and
18 vest the development, use and mitigation of the MPD properties; and (2) it must be
19 consistent with the applicable City of Black Diamond development regulations.

20 The City of Black Diamond development regulation requirements for a Master
21 Planned Development Permit (“MPD”) development agreement are set out in BDMC
22 Section 18.98.090:

23 The MPD conditions of approval shall be incorporated into
24 a development agreement as authorized by RCW
25 36.70B.170. This agreement shall be binding on all MPD
property owners and their successors, and shall require that
they develop the subject property only in accordance with
the terms of the MPD approval.

¹ This issue should be addressed first, because its resolution will functionally resolve all other issues raised in the Bricklin and Edelman motions.



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1 Given this mandatory language, the BMDC establishes three requirements applicable to
2 an MPD development agreement: (1) the DA must incorporate the MPD Permit
3 conditions of approval; (2) the DA must be binding on all MPD property owners and
4 their successors (i.e., it must “run with the land”); and (3) the DA must require that the
5 MPD property owners develop the property only in accordance with the terms of MPD
6 Permit approval.

7
8 Taken together, there are five legal criteria for the Hearing Examiner to apply in
9 reviewing the proposed DAs. The Examiner must ask:

- 10 1. Do the DAs set forth the development standards and other provisions that
11 apply to, govern and vest the development, use and mitigation of the MPD
12 properties;
- 13 2. Are the DAs consistent with the applicable City of Black Diamond
14 development regulations;
- 15 3. Do the DAs incorporate the conditions of MPD Permit approval;
- 16 4. Are the DAs binding on all MPD property owners, and their successors; and
- 17 5. Do the DAs require that MPD property owners (and their successors) develop
18 the MPD property only in accordance with the conditions of MPD Permit
19 approval?

20 These requirements necessarily render narrow the scope of the Examiner’s inquiry.

21 Project opponents Bricklin and Edelman, however, advocate that the Examiner
22 take a wider view. In an e-mail to the Examiner last week, Mr. Bricklin argued that,
23 “The DAs will be used to establish the functional equivalent of a new zoning code for
24 these new land use districts” and, because the City Council struck some of the
25 Examiner’s proposed conditions of MPD Permit approval, the Examiner “will need to
address those issues anew in the DAs” E-mail from D. Bricklin to Hearing



1 Examiner dated 6/17/2011 at 12:00:58 p.m.

2 Not surprisingly, since Mr. Bricklin is Mr. Edelman's counsel, the Edelman
3 Motion likewise hints at this position, arguing that "The Development Agreement may
4 include optional manners of implementation or location of facilities." Edelman Motion,
5 at 2. This tack appears to be primarily, if not wholly, motivated only by forum-shopping
6 concerns: the project opponents would rather appeal the DAs to the Growth Management
7 Hearings Board (where they can argue for invalidation), rather than to Superior Court
8 under LUPA. Accordingly, opponents hope to make the DAs look more like legislative
9 development regulations rather than project permit decisions. State statute and the City's
10 MPD development regulations control the scope of the Examiner's review, however – not
11 the project opponents' forum-shopping desires.

12
13 Further, the hearing on the DAs is not a time for opponents to re-argue or for the
14 Examiner to reconsider the conditions of the MPD Permit approvals, which have been
15 established by the City Council's unanimously-adopted ordinances. The Examiner is
16 given no jurisdiction to second-guess the wisdom of the City Council's considered
17 choices.

18 Nor is it a time to consider "optional" conditions that might otherwise be
19 considered in a development agreement unrelated to an MPD, as the Examiner
20 recognized in oral comments during the prehearing conference. The hearing on the DAs
21 is necessarily limited to consideration of whether the proposed DAs meet the legal
22 criteria specified in state and local law (RCW 36.70B.170 and BDMC 18.98.090). While
23 Jack Sperry's June 21, 2011 response letter claims that, in the hearing, members of the
24 public should be permitted to point out areas in the Development Agreements where they
25



1 believe detail is lacking and offer suggested revisions, this is essentially a request for
2 proposing “optional” conditions. Unless speakers are pointing to an area where the DAs
3 do not include information or detail required by the MPD Permit conditions of approval
4 or state law, Mr. Sperry’s request (and similar ones made at the hearing) should be
5 denied.

6 Accordingly, the Hearing Examiner should grant Yarrow Bay’s motion, and reject
7 the position advocated in the Edelman Motion and Mr. Bricklin’s 6/17/2011 e-mail. The
8 Hearing Examiner’s pre-hearing order should identify the statutory and city code-based
9 legal criteria (quoted above) against which the DAs are to be measured. To avoid
10 confusion (and possible backtracking by project opponents who prefer a different result),
11 the Examiner’s order should also clarify that the DA hearings will *not* involve
12 reconsideration or re-argument of the issues covered in the MPD Permit or SEPA appeal
13 hearings, nor consideration of “optional” alternative conditions.

14
15 B. The DA Hearings Must be Conducted as Quasi-Judicial Hearings.

16 The City also concurs that the DA hearings must be conducted as quasi-judicial
17 hearings. First, BDMC Section 18.08.030 provides that development agreements are
18 reviewed using a “Type 4 – Quasi-Judicial” process. *See also* BDMC 18.08.070(C)(2)
19 (Development agreements require Type 4 process).

20 Under BDMC 18.08.070(A), a Type 4 - Quasi-Judicial” process is the same as a
21 Type 3 – Quasi-Judicial process, except that in a Type 4 process, the Hearing Examiner
22 makes a recommendation to the City Council rather than making the decision himself. In
23 a Type 4 process, the Hearing Examiner must conduct a hearing, compile a record, issue
24 written findings of fact and conclusions of law, and make recommendations to the City
25



1 Council as to whether the proposed DAs are consistent with applicable regulations and
2 policies and whether they should be approved, approved with modifications or
3 conditions, or denied. BDMC 18.08.060(C); .070(A).

4 State law further confirms that the DAs for the MPD Permits are quasi-judicial.
5 Under RCW 36.70B.200, “[i]f the development agreement relates to a project permit
6 application, the provisions of chapter 36.70C RCW [LUPA] shall apply to the appeal of
7 the decision on the development agreement.” Because LUPA governs review of quasi-
8 judicial project permit decisions (but not review of legislative decisions), a development
9 agreement that “relates to a project permit application” is necessarily quasi-judicial. See
10 also *Mercer Island Citizens for a Fair Process v. Mercer Island*, 156 Wn. App. 393 (Div.
11 I 2010) (temporary use agreement was land use decision subject to LUPA’s 21-day
12 limitations period). Here, as the Examiner can readily observe, the proposed DAs relate
13 to and govern subsequent, implementing project permits, such as subdivisions, binding
14 site plans, building permits, and the like. *See, e.g.*, Villages DA at 4 (Recital H), at 6, §
15 2.1, and at 143, §15.1; Lawson Hills DA at 4 (Recital H), at 6, §2.1, and at 130, § 15.1.
16 These DAs are reviewable under LUPA, and accordingly must be conducted under a
17 quasi-judicial process.
18

19 If the DAs were legislative, as Mr. Bricklin has previously urged, then he and all
20 members of the public would likely argue that they were entitled to contact the Examiner
21 off the record, at home, on the weekends, at the local grocery store, etc.² They would
22

23 ² Mr. Bricklin, TRD, Mr. Edelman, Ms. Wheeler and others have argued in federal court and before the
24 Growth Board that members of the public have a constitutional right and a right under GMA public
25 participation requirements to contact their legislators individually and privately, off-the-record, for one-on-
one and/or small group discussions.



1 likely demand to meet with the Examiner to discuss their views on the proposed DAs,
2 whether the DAs should be approved, rejected, or approved with conditions, and if the
3 latter, what the conditions should be. Merely articulating this possibility highlights its
4 absurdity. The Examiner is a quasi-judicial official, who may not be contacted ex parte
5 by members of the public or parties to a land use decision proceeding.

6 The Examiner's review of the MPD DAs here is no different. The BDMC
7 expressly identifies development agreements as a "Type 4 – Quasi-Judicial" decision.
8 LUPA identifies development agreements as quasi-judicial land use decisions reviewable
9 exclusively under LUPA, RCW Ch. 36.70C, and applicable appellate precedent confirms
10 this identification. The Examiner must conduct the hearings on the DAs as a quasi-
11 judicial process.

12
13 C. The Requested Continuance of the Hearing Date Should be Denied.

14 The June 13 letter from David Bricklin and the Edelman Motion complain that the
15 hearing must occur at least sixty and perhaps ninety days following public release of the
16 final version of the draft DAs. Edelman Motion at 2-3; Bricklin Motion at 1-2. The
17 Bricklin Motion requests that the July 11 hearing be rescheduled. Bricklin Motion at 1.
18 This request, which is tantamount to a request for a continuance, should be denied.

19 Under Hearing Examiner Rule 2.17(a), a scheduled hearing may be continued
20 only upon a showing of good cause, as determined by the Hearing Examiner. In other
21 contexts, courts have construed the term "good cause" to require a showing of some
22 external impediment that did not result from a self-created hardship that would prevent a
23 party from complying with deadline. *State v. Johnson*, 96 Wn.App. 813, 817, 981 P.2d
24 25 (Div. III 1999), citing *State v. Tomal*, 133 Wash.2d 985, 989, 948 P.2d 833 (1997)



1 (regarding motion to dismiss appeal); *State v. Dearborne*, 125 Wash.2d 173, 883 P.2d
2 303 (1994) (regarding notice of intent to seek the death penalty); *State v. Crumpton*, 90
3 Wash.App. 297, 302, 952 P.2d 1100 (regarding inclusion of testimonial affidavits with
4 motion for new trial), review denied, 136 Wash.2d 1016, 966 P.2d 1277 (1998). Further,
5 a motion for a continuance is subject to the exercise of judicial discretion. *Coggle v.*
6 *Snow*, 56 Wn. App. 499, 504-05, 784 P.2d 554 (1990). This means that there must be
7 tenable grounds for granting the requested continuance. *Id.* at 507. In the context of a
8 summary judgment motion, a continuance may be granted only where the party seeking
9 the continuance shows a good reason for delay in having obtained evidence needed to
10 defend against the summary judgment motion, demonstrates what evidence will be
11 obtained through additional discovery, and demonstrates how that evidence will raise a
12 genuine issue of material fact. *Id.*

13
14 Here, good cause for a continuance has not been shown, because the grounds
15 offered in support of the request for the continuance are simply untenable and are flat out
16 wrong in a number of respects. First, both Edelman and Bricklin argue that staff reports
17 were not timely posted on the City's website, given that the Examiner indicated orally at
18 the prehearing conference that the hearing would not commence until at least 30 days
19 after the final draft version of the DAs and the staff report were posted on the City's
20 website. Edelman Motion at 1; Bricklin Motion at 1. This is incorrect. The joint staff
21 report was posted to the website on Friday, June 10, more than 30 days before the
22 scheduled commencement of the hearing, consistent with the Examiner's oral direction.
23 The joint staff report is located on the same webpage as the DAs
24 (<http://www.ci.blackdiamond.wa.us/Depts/CommDev/DA.html>), with a link titled
25



1 “Staff Report” right above the table for the Lawson Hills Agreement.

2 Next, the motions claim that the DAs are overly long, approximately 1300 pages.
3 Bricklin Motion at 1; Edelman Motion at 2-3. Again, this is incorrect. The two DAs are
4 identical, except for a small number of provisions in the Lawson Hills agreement that are
5 specific to that MPD Permit and site. The two DAs total approximately 150 pages each –
6 not 1,300 as claimed. Additional pages are devoted to exhibits to the Agreements. While
7 Mr. Bricklin has argued that all of the exhibits must be considered, pointing to the
8 amount of detail contained in appendices to the FEIS, those appendices themselves
9 contained newly-prepared, substantive environmental analysis; here, the attachments to
10 the DAs are (with minor exception) pre-existing, stand alone documents such as the site
11 plan, parcel boundaries and legal descriptions, and copies of the MPD Permit ordinances.
12 See Section 15.7 (exhibit list) to Villages and Lawson Hills DAs. The longest exhibit,
13 consisting of several hundred pages by itself, is nothing more than a complete copy of the
14 *existing* City code to which the Development Agreements will be vested. See, e.g.,
15 Villages DA at Exhibit E. This could have been accomplished with a simple cross-
16 reference, but to avoid any future confusion about the content of the applicable provisions
17 of City code to which these MPDs will be vested, the City simply attached them *in toto*.
18 It is unnecessary for Mssrs. Bricklin and Edelman to read these entire codes or other
19 exhibits in order to prepare for the hearing. If they feel otherwise, they could have been
20 reading them over the past many months.
21

22 The Edelman Motion also claims – again, incorrectly -- that the staff report does
23 not contain a matrix indicating where each MPD Permit condition is incorporated within
24 the DAs. Edelman Motion at 3. The compliance matrix is Attachment 6 to the staff
25



1 report, and is easily accessible via an HTML link on page 11 of the staff report. Staff
2 Report at 11, Section VIII.

3 The Bricklin motion claims that certain required information is missing. Bricklin
4 Motion at 2. For example, the Bricklin Motion claims that “mitigation fees are proposed
5 for addressing the developments’ impacts on the city’s fire department, but the city has
6 not yet adopted a fire mitigation fee ordinance, so there is no way to assess the adequacy
7 of this measure.” *Id.*

8 As the Examiner knows, however, there is no requirement to first adopt an
9 ordinance before assessing a mitigation fee; *mitigation* fees are authorized under SEPA
10 and RCW 82.02.020. *See, e.g., Federal Way v. Town & Country Real Estate, LLC*, 161
11 Wn. App. 17, 252 P.3d 382 (Div. II 2011) at *13.³ An ordinance is required only for
12 adopting a citywide *GMA impact fee*, which the City retains the right but not the
13 obligation to later adopt. RCW 82.02.060; see also *Drebick v Olympia*, 156 Wn.2d 289,
14 299-302, 126 P.3d 802 (2006). The draft DAs contain Yarrow Bay’s agreement to pay a
15 specified fire *mitigation* fee (\$1,781 per dwelling unit, and \$2.29 per square foot of
16 nonresidential construction), until such time that the City may adopt a GMA impact fee,
17 at which point Yarrow Bay will pay the adopted impact fee. Villages DA at 116. There
18 is no “gap.”
19

20 Finally, both the Bricklin and Edelman motions claim that 30 days is insufficient
21 time to prepare for the hearing. Bricklin Motion at 1; Edelman Motion at 2-3. This claim
22 stretches credulity widely, as both Mr. Edelman and Mr. Bricklin are part of a larger,
23 self-named “network of volunteers and supporters” that has been working diligently to
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25 ³ Only the Westlaw citation to this decision is currently available.



1 oppose the two MPD projects, since at least September, 2010.⁴ The network of project
2 opponents is well-prepared and ready for the hearings; the claimed need for additional
3 time is merely an attempt to delay the project beyond the upcoming November City
4 Council elections. Such delay is inappropriate for the simple reason that the Hearing
5 Examiner Rule 2.06 requires the Examiner (and all parties) to conduct the hearing
6 expeditiously and avoid delay. Delay is additionally inappropriate, given the project
7 opponents' high degree of organization and preparedness, as illustrated shown by a few
8 key facts and documents discussed below..

9 Immediately after the City Council approved the MPD Permits in Ordinances 10-
10 946 and 10-947, the project opponents organized themselves into a number of groups.
11 First, they incorporated a non-profit corporation, Toward Responsible Development, or
12 TRD. According to records of the Secretary of State, Mr. Edelman is the registered agent
13 and chairman of TRD. See Secretary of State, Corporations Division printout, attached as
14 Exhibit A to the Declaration of Bob C. Sterbank in Support of City's Response to
15 Prehearing Motions ("Sterbank Declaration"). TRD and individuals who (on information
16 and belief) are some of its members (Mr. Edelman, Cindy Wheeler, Peter Rimbo, Cindy
17 Proctor, Joe May, Judith Carrier, and Michael Irrgang) filed a land use petition and
18 complaint for damages challenging the MPD Permit ordinances in Superior Court. The
19 LUPA proceeding and damages complaint were removed to federal court (the portion of
20 the LUPA petition based on state law claims was later remanded to superior court). TRD
21

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23 ⁴ To identify the project opponents' organizations is *not* intended to denigrate them. A great deal of
24 Washington appellate precedents in the areas of land use and environmental law are the outgrowth of
25 disputes between non-profit organizations, on the one hand, and developers or cities and counties, on the other. The well-meshed organization of Black Diamond-area MPD project opponents, however, bears on the credibility of the pending requests for a continuance, unlimited time for public comment, and the like.



1 and its members also filed a petition for review before the Growth Management Hearings
2 Board. Mr. Bricklin represents them in all three proceedings (LUPA petition, federal
3 court litigation, and Growth Board proceedings). According to Mr. Edelman's statements
4 to the Covington/Black Diamond Reporter, TRD itself does not engage in fundraising.
5 Instead, TRD relies upon Save Black Diamond and The Diamond Coalition. *See* October
6 13, 2010 article, attached as Exhibit B to Sterbank Declaration.

7 These are not groups of different individuals, however, but simply differently
8 named "shell" entities with interlocking directors and/or members. The Diamond
9 Coalition, for example, is a nonprofit corporation headed by Cindy and Bill Wheeler, and
10 Joe May. *See* Corporations Division printout, attached as Exhibit C to Sterbank
11 Declaration.

12 The other organization, "Save Black Diamond," has Mr. Irrgang's wife, Linda
13 Irrgang as a "Director," and much of the website materials for the group list Peter Rimbo
14 as the author. *See* Exhibit D to Sterbank Declaration. Save Black Diamond's website
15 identifies it as "a network of volunteers and supporters who are working together to
16 protect the Town of Black Diamond and the surrounding areas from irresponsible land
17 development." *See* Ex. E to Sterbank Declaration. The website underscores the
18 "network" relationship between SBD and TRD indicated by Mr. Edelman's statements to
19 the press; the website states that Save Black Diamond "support[s] the legal and
20 administrative appeals that have been filed" against the Yarrow Bay proposals. *Id.*

21 Of fundamental importance regarding the pending requests for more time before
22 commencement of the DA hearings, the Save Black Diamond website also documents the
23 months of preparation engaged in by project opponents. For example, in a page authored
24
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1 in January, project opponents were already preparing for the hearing by soliciting
2 individuals to provide oral and written testimony. Peter Rimbos wrote:

3 [T]hose Development Agreements will be submitted to the
4 City's Hearing Examiner to conduct Public Hearings *to*
5 *commence sometime in February. People are encouraged*
6 *to provide both Oral Testimony at and Written Statements*
7 *to those Public Hearings. Please contact us for more*
8 *details on testifying.*

9 Sterbank Declaration, Exhibit E (emphasis added).

10 In addition, Mr. Rimbos heads up a "Citizens Technical Action Team (TAT)."

11 According to the SBD website, the Technical Action Team's "objective" is:

12 *[t]o understand all critical technical issues and develop a*
13 *winning strategy to exploit them. It's [sic] strategy is to*
14 *review and assess all pertinent documents including the . . .*
15 *Development Agreements. . . .*

16 Exhibit E to Sterbank Declaration (emphasis added).

17 In order to implement this strategy, on December 28, 2010, members of the TAT
18 (including Mr. Rimbos, Mr. Edelman, Jack Sperry, Bob Rothschilds and Brian
19 Derdowski) met with City staff. The TAT attended the meeting only on condition that
20 Yarrow Bay representatives not be allowed to attend. On January 3, 2011, Mr. Rimbos
21 forwarded five single-spaced pages of suggested language revisions for the DAs. Staff
22 Report, Ex. 11. Subsequently, according to Mr. Rimbos, beginning in February, 2011,
23 the TAT met with two Black Diamond City Councilmembers, in a series of four meetings
24 each lasting over two hours, covering Transportation, Environment, Stormwater and
25 Flooding, Fiscal Impacts and Schools related to the MPDs. Sterbank Declaration, Ex. 5.
Each meeting resulted in multi-page conditions with supporting rationale drafted by TAT.

Id.



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1 The project opponents are hardly in the dark about the proposed DAs. Instead,
2 they have been working closely as part of a “network” of at least three nonprofit
3 corporations with interlocking directors and/or members, to raise funds, challenge the
4 MPDs administratively and in court, scrutinize the details of all documents – expressly
5 including these development agreements – and prepare and execute strategies “to exploit
6 them.”

7 While project opponents are free to organize themselves as they choose, they
8 cannot then credibly claim that a “gross miscarriage of injustice” would result when they
9 are then provided yet another 30 days to prepare for the hearing. The Examiner likely
10 recalls the Project opponents’ similar protests prior to the earlier hearings on the SEPA
11 appeals and MPD Permits. In numerous e-mails and briefs, the Examiner was told that
12 the matter was proceeding “at a breakneck pace” and that they could not possibly
13 adequately prepare. At the hearings themselves, however, they called not only
14 themselves as witnesses but also multiple expert witnesses on water quality, traffic, noise,
15 and wildlife, along with expert and lay witnesses subpoenaed from King County,
16 WSDOT, and the City of Maple Valley. The SEPA appellants were simply not
17 prejudiced by proceeding with the MPD Permit hearings. Likewise, no project opponents
18 here will be prejudiced by commencing with these hearings on July 11.⁵

19
20 The requested continuance should be denied.

21 D. The Hearing Examiner Should Impose the Customary, Reasonable Limits on
22 When and How the Hearing Will be Conducted.

23 As the City requested at the prehearing conference, the Hearing Examiner should

24
25 ⁵ After all, Mr. Bricklin represents most of the individuals who control the three nonprofits. He represents Mr. Edelman, the Wheelers, Michael (and presumably Linda) Irrgang, Peter Rimbo, and Joe May.

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1 impose customary, reasonable limits on when and how the hearing will be conducted.
2 These include (1) conducting the hearing for reasonable lengths each hearing day,
3 including some times during the day only, some times during the evening only, and some
4 times during a combined day/evening setting; (2) setting reasonable limits on the length
5 any individual may address the Examiner; and (3) allowing submittal of expert testimony
6 and rebuttal testimony in writing. Each of these topics are addressed.

- 7 1. The hearing should be conducted during the day and evenings to
8 ensure completion as scheduled.

9 The scope of the hearing is narrow, as discussed above. A reasonable number of
10 hearing days have been allotted. The Examiner's own rule, Rule 2.06, requires the
11 Examiner to conduct the hearing "expeditiously," and Rule 2.11(d) expressly allows the
12 Examiner to "limit the length of testimony to expedite the proceedings and avoid the
13 necessity to continue the hearing." Accordingly, the Examiner should set times during
14 both the day and evening, to ensure that the hearing will be completed within one week,
15 as the Examiner observed (during the prehearing conference) should occur. Hearing
16 times during the day will accommodate experts, if any, as well as those members of the
17 public who have family, employment, or other evening obligations and cannot attend
18 hearings in the evening. Hearing times during the evening will, correlatively,
19 accommodate those who cannot attend during the day for family, employment, or other
20 reasons. The request to conduct the hearing only at night, and only for two hours at a
21 stretch, is unreasonable for the participants and appears to be intended only to extend the
22 time necessary to complete the hearing.
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2. Public testimony should be limited to 3 minutes per person.

Public testimony should be limited to three minutes per person, with an opportunity to additionally submit written statements of no more than 24 pages in length (not counting exhibits). As noted above, Hearing Examiner Rule 2.11(d) expressly allows the Examiner to “limit the length of testimony to expedite the proceedings and avoid the necessity to continue the hearing.” Three minutes is the customary length of time for testimony during public hearings. It is the customary length of time for testimony before the City Council. As the Examiner may recall from the MPD Permit hearings and his other experience, a great deal of testimony involves repetition of the same point by multiple speakers. Repetition, though, is irrelevant because the quasi-judicial nature of the hearing requires the Examiner to apply legal criteria to the evidence before him, and a contested fact or argument is not made more or less true because it is stated by multiple speakers. In addition, many speakers simply read from prepared letters or arguments, and then submit the written argument *in toto* into the record. A three minute provision, coupled with the ability to submit up to 24 written pages (the King County Superior Court standard for a motion for summary judgment) plus exhibits, provides more than ample ability for any speaker to fully and comprehensively make his or her point.

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3. Expert witnesses should be permitted to testify and provide rebuttal in writing.

As the City has earlier noted, expert testimony at these proceedings is unwarranted. These proceedings are not a replay of the prior SEPA appeals and MPD Permit hearings. Rather, they are designed solely to determine compliance with the



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1 criteria described in Section A of this brief, above. Neither the Examiner nor the City
2 Council will require “expert” assistance in that regard, and expert testimony will not meet
3 the probity, materiality and other standards in the Examiner’s own rules for admissibility.
4 See Rule 2.14.

5 To the extent that expert testimony is offered, however, it should be allowed only
6 if it meets the standards of Rule 2.14, and only if the person and testimony offered meet
7 the standards set forth in ER 702 and 703. Even then, the Examiner should allow experts
8 to testify and to provide rebuttal in writing. This process worked well at the earlier SEPA
9 appeal and MPD Permit hearings, and saves all participants substantial expense.

10 Requests by the Edelman Motion for cross-examination by members of the public
11 should be denied. Under the Hearing Examiner’s Rules, cross-examination is permitted
12 only by “parties,” who are specifically defined to include only the permit applicant and
13 property owners in this context. See Rule 2.11(a) (witnesses “subject to cross-
14 examination by the other party(s)”); 2.02(q) (“party” defined as entity that submits permit
15 application and owners of property that is subject of the permit application);⁶ 4.02
16 (“party” has the right to ask questions of those testifying at the hearing). In contrast,
17 Mssrs. Edelman, Bricklin, Sperry and others are “interested persons” as defined by
18 Hearing Examiner Rule 2.02(n); as such, they are not entitled to cross-examine expert or
19 other witnesses. If project opponents wanted the ability to cross-examine witnesses, they
20 could have sought intervention via TRD, SBD and The Diamond Coalition, which would
21 then qualify them as a “party” within the meaning of Examiner Rule 2.02(q) (“party”
22 includes “the person(s), group, organization, corporation, or other entity granted party
23
24

25 ⁶ The definitions in Section 2 of the Examiner’s rules apply to “to all matters where the Hearing Examiner



Kenyon Disend, PLLC
The Municipal Law Firm
11 Front Street South
Issaquah, WA 98027-3820
Tel: (425) 392-7090
Fax: (425) 392-7071

1 status through intervention . . .”). Instead, they chose to try to proceed as individual
2 “interested persons,” so as to try to claim the need to continue the hearing date and/or
3 gain additional time for public presentation, but by doing so they forfeited the ability to
4 cross-examine. They cannot have it both ways.

5 4. Any ceding of time should be regulated.

6 If individuals wish to “cede” their time to another speaker, the Examiner should
7 order that (a) any person wishing to cede time must actually be present when the speaker
8 to whom time is ceded will actually speak; (b) any person ceding time thereafter may not
9 testify or submit written material into the record; (c) no speaker may have time ceded
10 from more than six other speakers, which provides for a total of 21 minutes to speak if
11 the Examiner establishes a three minute limit (or, more than twice the time afforded for
12 argument in the Court of Appeals or Supreme Court).

13 5. Any advance sign-up should be regulated.

14 The City recommends the use of advance sign-up in the manner utilized by the
15 City Council during its deliberations regarding the MPD Permit ordinances. Allowing a
16 person to sign up for a specific day and time causes substantial inefficiency and “dead
17 time” when one or more preceding speakers either fail to show or fail to use their full
18 allotment of time. Rather than that approach, the City Council provided for a sign-up
19 sheet on which speakers could sign up in advance on a first come/first served basis. The
20 Mayor then called those names in order. If a person was not present, his or her name was
21 put to the bottom of the list. When the Mayor had completed the entire list once, she then
22 went through the list of those who had not spoken one more time only. Those who were
23
24

25 has authority to decide or recommend the outcome.” See Rule 2.01



1 present then spoke. If a person missed his or her second opportunity to speak, he or she
2 nonetheless retained the ability to submit written comments.

3 6. Directions to City staff regarding posting to City website.

4 At the prehearing conference, the Examiner commented orally that exhibits
5 introduced at the hearing may be posted to the City website the next day. Yarrow Bay's
6 motion seeks direction that exhibits be posted within 48 hours. The City staff is small,
7 and has many, many duties to fulfill in addition to the staffing and logistics for the DA
8 hearings. Especially when hearings go well into the evening, the staff cannot commit to
9 posting exhibits the next day, or even within 48 hours, but will commit to doing so in a
10 reasonably prompt manner, taking into consideration the myriad of other municipal
11 matters requiring attention.

12 Assuming that the Examiner provides an updated Exhibit List at the conclusion of
13 each day's hearing, the staff can commit to posting that list on the City website by noon
14 of the following day.

15 7. No precondition regarding hearing venue is necessary.

16 The Edelman Motion asks the Examiner to order that attendance may not be
17 restricted by the size of the facility, and that if more members of the public attend than
18 can be accommodated, the hearing must be suspended until an alternate location can be
19 arranged. Edelman Motion at 3. Like the request for unlimited public speaking time, this
20 request appears primarily designed to unnecessarily extend these proceedings by
21 "packing the room" beyond the room's rated fire capacity.

22 The Edelman Motion offers no legal authority in support of this demand. The
23 City has made arrangements for a reasonably-sized facility in which to hold the hearing,
24
25



1 after considering the size of facilities available in the region, the convenience to the
2 public of holding the hearing in or near the City of Black Diamond itself (where facilities
3 are smaller) as compared to elsewhere, facility cost, and similar factors. If more
4 members of the public turn out than can be accommodated, the City can make alternative
5 arrangements (e.g., broadcast audio outside the hearing room; members of the public can
6 leave the hearing after testifying to make room for individuals outside who wish to speak,
7 as commonly occurs in other hearing and/or public meeting contexts when attendance
8 temporarily exceeds facility capacity; seek another facility).

9 8. The Examiner should impose reasonable rules regarding group and
10 attorney representation.

11 Ms. Wheeler's e-mail questions comments made by the City asking the Examiner
12 to clarify which individuals or groups are represented by which attorneys. The motions
13 made to date, and Ms. Wheeler's e-mail, highlight the need for the Examiner to impose
14 reasonable rules related to participation of those represented by attorneys.

15 A simple example illustrates the need for the Examiner's guidance on this point.
16 The Examiner's proposed hearing format will grant a certain block of time for the
17 applicant, Yarrow Bay, to make its presentation. If there are no limitations, Yarrow Bay
18 could present its case through Ms. Rogers and, thereafter, Ms. Rogers could claim the
19 ability to address the Examiner as an individual. After Ms. Roger's hypothetical
20 participation as an individual, additional individual Yarrow Bay principals such as Brian
21 Ross, Colin Lund, Ryan Kulhman and others would each have a turn. Each of those
22 individuals could, in turn, locate other members of the public to "cede" time to them,
23 which would provide Yarrow Bay with a potentially unlimited number of "bites at the
24
25



1 apple” to make its presentation. Needless to say, such an approach would also
2 exponentially multiply the length of the hearing.

3 To cure this problem, the Examiner should impose reasonable limits. Attorneys
4 or individuals speaking at the hearing on behalf of others should be required to identify
5 the client(s), group(s) or person(s) on behalf of whom they are speaking. Their individual
6 or group beneficiaries of such representation should not then be accorded additional time.

7 Alternatively, the Examiner could simply identify a block of time to be allocated
8 to project opponents, to be divided amongst themselves however they choose. This latter
9 approach is frequently utilized by Hearing Examiners, and helps to avoid needless
10 repetition of information. As noted above, if project opponents chose to seek to intervene
11 under their umbrella organizations, the need for Examiner guidance could be avoided
12 (again, so long as there is no attempt to “have it both ways”).

13
14 9. The Hearing format should follow Examiner Rule 4.03.

15 The Edelman Motion asks the Examiner to set a hearing format that allows the
16 “interested person” project opponents the right to what Mr. Edelman labels “reply,”
17 which is actually “sur-rebuttal.” This request should be rejected as inconsistent with the
18 Examiner’s rules.

19 Hearing Examiner Rule 4.03 states the format employed by the Examiner “shall
20 include” the following:

- 21 1. Examiner's introductory statement;
- 22 2. Report by the Director (including introduction of the official file,
23 reference to exhibits, and a summary of the recommendation of the
24 Department);
- 25 3. Testimony by the applicant or appellant;
4. Public comment in support of or in opposition to the application or
appeal;



5. Opportunity for parties and Examiner to ask questions;
6. Opportunity for presentation of additional information as rebuttal.

The opportunity for rebuttal is the opportunity for the *parties* to rebut information provided during public comment. This is obvious from the Rule's order of presentation. Public comment follows testimony by the applicant, so the public can address the applicant's testimony. Rebuttal by the parties (the applicant) then follows public comment, so that the applicant may rebut statements during public comment. There is no provision under this rule for the public "sur-rebuttal" of the applicant's rebuttal. That understanding was confirmed by the Examiner's oral indication during the prehearing conference of the hearing format he intended to follow.

Rule 4.03(b) does provide that "The Examiner may alter or modify the order of hearing if and as necessary to best provide for the presentation and understanding of information." The Edelman Motion makes no showing that alteration of this format is "necessary to provide for the presentation and understanding of information." Instead, the Edelman Motion simply seeks "the last word" for project opponents, which is something to which they are not entitled. *Rybachek v. U.S. E.P.A.*, 904 F.2d 1276, 1286 (9th Cir. 1990) (addition of materials to record after public comment period closed was no unlawful; public's *unviolated right was to comment on the proposed regulations, not to comment in a never-ending way*" on agency's responses to their comments). Alteration of the hearing format prescribed by the Examiner's rule is unwarranted, as requested by both the Edelman Motion and Yarrow Bay, should be rejected. To the extent that any hearing format changes are to be granted, Yarrow Bay's proposed limited approach, whereby interested persons are provided sur-rebuttal, with the applicant and the City



1 provided the opportunity for a final sur-rebuttal, is a reasonable approach.

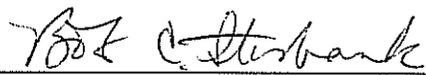
2 III. CONCLUSION

3 As is obvious from the prehearing conference and pending motions, the
4 proceeding before the Hearing Examiner will likely be contentious. Project opponents
5 have made clear their dislike for the MPD projects' size and number of units. Project
6 opponents have (incorrectly) characterized the hearing on the DAs as their "last" chance
7 to address the MPD projects, and appear poised to "pull out all stops" in their opposition.
8 As provided by the City's code, however, the hearing on the DAs is a quasi-judicial
9 hearing with a limited focus, subject to certain legal criteria, and must be conducted
10 accordingly. Consistent with adopted Hearing Examiner rules as outlined above, the
11 Examiner should impose reasonable limitations on hearing format and testimony length
12 to expedite the hearing, set hearing times to ensure hearing completion without
13 continuances, avoid unnecessary repetition and delay, and ensure fairness to all
14 participants.
15

16 Accordingly, for the reasons set forth in detail above, the City respectfully
17 requests that the Examiner deny the Bricklin, Edelman, and Wheeler Motions.

18 DATED this 23rd day of June, 2011.

19 KENYON DISEND, PLLC

20
21 By 
22 Michael R. Kenyon
23 WSBA No. 15802
24 Bob C. Sterbank
25 WSBA No. 19514
Attorneys for City of Black Diamond



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BEFORE THE HEARING EXAMINER OF THE CITY OF BLACK DIAMOND

IN RE DEVELOPMENT AGREEMENTS
RELATED TO MPD PERMIT
ORDINANCES 10-946 (VILLAGES) AND
10-947 (LAWSON HILLS)

NOS. PLN10-0020/11-0013; PLN10-
0021/11-0014

DECLARATION OF BOB C.
STERBANK IN SUPPORT OF
CITY'S RESPONSE TO
PREHEARING MOTIONS

BOB C. STERBANK declares and states as follows:

1. I am counsel to the City of Black Diamond in this matter. I am over the age of eighteen years, competent to testify herein, and make this declaration on personal knowledge of the facts stated.

2. Attached hereto as Exhibit A is a true and correct copy of a Secretary of State, Corporations Division printout identifying Toward Responsible Development as a non-profit corporation and Mr. Edelman as its registered agent and chairman.

3. Attached hereto as Exhibit B is a true and correct copy of an article from the Covington/Black Diamond Reporter dated October 13, 2010.



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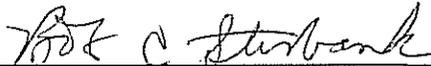
4. Attached hereto as Exhibit C is a true and correct copy of a Secretary of State, Corporations Division printout identifying The Diamond Coalition as a non-profit corporation with its officers as Cynthia and William Wheeler, and Joe May.

5. Attached hereto as Exhibit D is a true and correct copy of a Secretary of State, Corporations Division printout identifying Save Black Diamond as a non-profit corporation and identifying Linda Irrgang as one of its Directors.

6. Attached hereto as Exhibit E are true and correct copies of printouts from Save Black Diamond's website, www.saveblackdiamond.org.

I declare that the foregoing is true and correct subject to the penalty of perjury under the laws of the State of Washington.

DATED this 23rd day of June, 2011, at Issaquah, Washington.



Bob C. Sterbank

Corporations Division

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TOWARD RESPONSIBLE DEVELOPMENT

UBI Number 603052737

Category REG

Profit/Nonprofit Nonprofit

Active/Inactive Active

State Of Incorporation WA

WA Filing Date 09/30/2010

Expiration Date 09/30/2011

Inactive Date

Registered Agent Information

Agent Name Robert Edelman

Address 29871 232nd Ave SE

City Black Diamond

State WA

ZIP 98010

Special Address Information

Address

City

State

Zip

Governing Persons

Title	Name	Address
Chairman	Edelman, Robert	29871 232nd Ave SE Black Diamond, WA
Director	Edelman, Mary	29871 232nd Ave SE Black Diamond, WA

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REPORTER

COVINGTON | MAPLE VALLEY | BLACK DIAMOND

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EXHIBIT B

5 COMMENTS EMAIL LETTER PRINT FOLLOW SHARE

Toward Responsible Development files appeal against YarrowBay developments in Black Diamond | Read Document

By DENNIS BOX
Covington Reporter Regional Editor
Oct 13 2010

Toward Responsible Development filed a land use petition act or LUPA appeal in King County Superior Court against the two YarrowBay master planned developments in Black Diamond, Lawson Hills and The Villages.

Superior court Judge Cheryl Carey has been assigned to the case. The court date for the appeal is March 21, 2011. The attorney who filed the document for the petitioners was David Bricklin of the Seattle firm Bricklin and Newman.

The petition asks for the court to invalidate the ordinances passed by the Black Diamond City Council approving the projects and remand the issue back to the city for further consideration. The appeal is also asking for the court to award "petitioners their damages and actual attorneys' fees and cost for violation of their constitutional rights pursuant to 42 U.S.C. (section) 1988."

The appeal listed a series of errors in the process the petitioners believe led to the council approving the projects. Included in the list was the city used the wrong process, quasi judicial, which "deprived the petitioners of their opportunity to communicate with their elected officials." The document also noted the ordinances violate the city's comprehensive plan calling for preserving Black Diamond's small town character.

Listed as petitioners on the court document are Cynthia and William Wheeler, Bob Edelman, Peter Rimbo, Mike Irgang, Judith Carrier, Eugene May, Vicki Harp, Cindy Proctor, and the estate of William Harp.

The Black Diamond City Council unanimously passed the ordinances approving the master planned developments Sept. 20

YarrowBay, a Kirkland development company, plans to build 4,800 residences or dwelling units on The Villages property and 1,250 in the Lawson Hills project.

Open hearings on the projects before city's hearing examiner, Phil Olbrechts, began in March and lasted more than two weeks. Olbrechts ruled the final environmental impact statements for the two projects adequate and recommended approval of the projects with conditions.

Closed record hearings before the City Council began in June and continued through September when the projects were approved.

The next step, unless court action halts the process, is the development agreements, which YarrowBay has filed with the city. Once the city approves the applications, they will be scheduled to go before the hearing examiner who will make a recommendation to the City Council on approval.

Edelman said Toward Responsible Development is a state not-for-profit corporation with about 50 members. Edelman described it as a loosely formed group that was started about two weeks ago.

He stated through the hearing process that has lasted nearly seven months he has "made friends that will last for life. There are really intelligent people involved in this."

Edelman said the only requirement to join the group is to "support what we are doing."

He stated the appeal is relying on considerable amount of volunteer efforts and funds raised by other groups. According to Edelman, Toward Responsible Development does no fundraising activities.

Edelman said groups like The Diamond Coalition and Save Black Diamond are raising funds for the effort.

Brian Ross, YarrowBay CEO, said by e-mail Wednesday, "We are still very happy with the city's approval and the progress on these projects. This appeal is a normal and typical part of the process of permitting a MPD or any large project, and YarrowBay will work through the appeal in due course."

LUPA

RELATED STORIES

- Covington & Maple Valley Reporter
 - Maple Valley appeals YarrowBay developments in Black Diamond over to the city | Read Document
 - Black Diamond rejects Maple Valley appeal as untimely | Read Document
 - Growth Management Hearing Board ruling on YarrowBay developments in Black Diamond may jump a step in court of appeals | Read Document
 - YarrowBay files appeal in superior court of hearing board ruling on The Villages and Lawson Hills in Black Diamond | Read Document
 - YarrowBay commits to no increase in phosphorus from Black Diamond developments The Villages and Lawson Hills

South King County
None at this time.

NEWS BLOGS

- Lights & Sirens
Police and fire news from around Covington, Maple Valley, and beyond
- News Notes
The news and notes from around Covington, Maple Valley, and beyond.

Most Read Stories

This week | Last week

Covington Reporter

- Kent Police arrest ex-University of Washington player Vency Overton for allegedly promoting prostitution
- A lone shoplifter and a pair working together caught at Covington Safeway | Police Blotter



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THE DIAMOND COALITION

UBI Number	602987012
Category	REG
Profit/Nonprofit	Nonprofit
Active/Inactive	Active
State Of Incorporation	WA
WA Filing Date	01/21/2010
Expiration Date	01/31/2012
Inactive Date	
Registered Agent Information	
Agent Name	William Wheeler
Address	30221 234TH Ave SE
City	Black Diamond
State	WA
ZIP	98010
Special Address Information	
Address	
City	
State	
Zip	

Governing Persons

Title	Name	Address
President	Wheeler, William	30221 234TH AVE SE 30221 234th Ave SE BLACK DIAMOND, WA
Vice President	May, Joe	29611 232nd Ave SE Black Diamond, WA
Secretary	Wheeler, Cynthia	30221 234th Ave SE Black Diamond, WA
Treasurer	Wheeler, Cynthia	30221 234th Ave SE Black Diamond, WA

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EXHIBIT C



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SAVE BLACK DIAMOND

UBI Number	603086038
Category	REG
Profit/Nonprofit	Nonprofit
Active/Inactive	Active
State Of Incorporation	WA
WA Filing Date	02/09/2011
Expiration Date	02/29/2012
Inactive Date	
Registered Agent Information	
Agent Name	Vernon Gibson
Address	32800 1st Ave
City	BLACK DIAMOND
State	WA
ZIP	98010
Special Address Information	
Address	PO Box 581
City	BLACK DIAMOND
State	WA
Zip	98010

Governing Persons

Title	Name	Address
Director	Irrgang, Linda	22505 SE 329th St BLACK DIAMOND, WA
Director	Stewart, Monica	22516 SE 300th ST BLACK DIAMOND, WA
Director	Gibson, Vernon	P.O. Box 581 BLACK DIAMOND, WA
Director	Bryant, Kristen	1006 139th PI NE Apt C-4 BELLEVUE, WA

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EXHIBIT D

Save Black Diamond



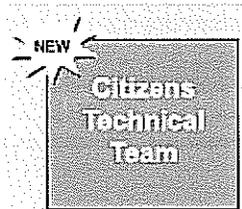
Read Letter to the Editor (from the Seattle Times)

Read November 4 article by Jean Williams from the Seattle *Examiner*.



Save Black Diamond is a network of volunteers and supporters who are working together to protect the Town of Black Diamond and the surrounding areas from irresponsible land development.

We are opposed to the massive development proposed by the Yarrow Bay Corporation. This development has been debated for many years, but only recently has the developer lobbied to get a long-term "entitlement" to build over 6,000 housing units and commercial development equivalent to ten Wal-Marts.



We support the legal and administrative appeals that have been filed against this development proposal. We are also working to monitor and hold accountable the City of Black Diamond and other government entities.

You are invited to learn more about these issues and join us in our various projects. We welcome your ideas and stand ready to assist you on the issues that are important to you.

The Yarrow Bay development proposal will have huge negative regional impacts.



What Will the New Development Look Like?

Background and Literature

A Special Message to the People of Black Diamond

Protecting Black Diamond's Historical Heritage

EXHIBIT E

State Hearings Board Rules In Our Favor February 15

Standing Room Only at City Council February 17

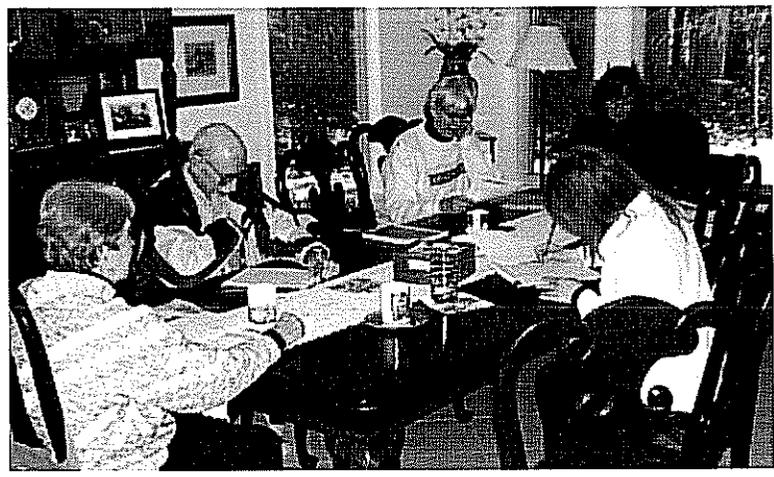
Development Agreement Testimony Needed

QUILT RAFFLE



State Senator Pam Roach testified at the Black Diamond City Council Meeting on February 17, describing the enormous regional impacts of the Yarrow Bay development. Senator Roach pointed out that there was no transportation funding to support this development until 2040!

Whether you live in Enumclaw, Kent, Maple Valley, Covington, Issaquah, Renton, or unincorporated King County this project will affect you!



Above: One of our groups of concerned citizens at a recent work session.

Press Room

LUPA Court Appeal

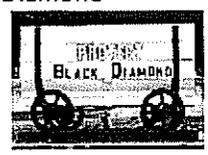
Growth Management Board Appeal

A Traffic Tutorial

Legal Update March 7

facebook

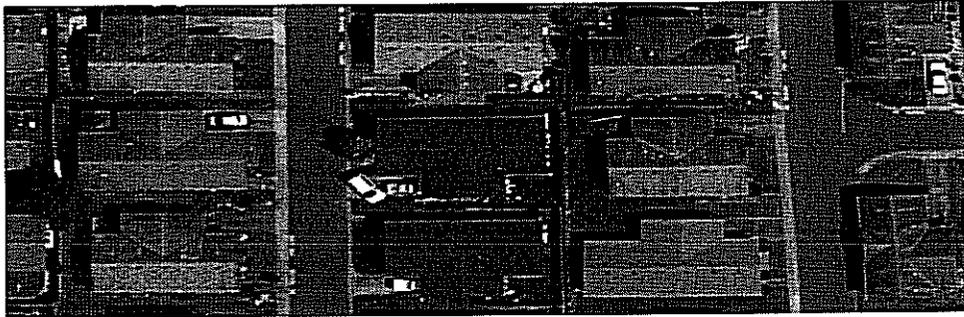
Name: Protect Black Diamond



Save Black Diamond

Outsized Master Planned Developments

by Peter Rimbos



Yarrow Bay, a major land developer in Western WA, has proposed two major MPDs comprising over 6,000 homes and over 1.1 million sq ft of commercial/business space in the City of Black Diamond. This would quintuple (not a misprint!) the current population of 4,000. These are the largest MPDs in King County history!

These MPDs would: (1) despoil 750 ac of forest and wildlife habitat, (2) add an additional 10,000 vehicles on two-lane roads throughout southeast King County, (3) impact the Rural Area outside the Urban Growth Boundary to enable urban development, and (4) set a dangerous precedent throughout the State of WA—if you can build these monstrosities in small Black Diamond, you can build them anywhere (and they will)!

Where are we in the process? FEISs were released a year ago. Hundreds of comments were received from citizens, adjacent cities, King County, and WSDOT—99+% negative! Citizens banded together to appeal those FEISs. In March 2010, those appeals were heard by the City's Hearing Examiner, who found the FEISs met the very low threshold of SEPA adequacy, but imposed over 150 conditions on the MPDs. Concurrently, the Hearing Examiner held public hearings on the MPD Applications submitted to the City by Yarrow Bay. He recommended approval of those applications, but imposed the same FEIS conditions plus more.

In the summer the City Council received the Hearing Examiner's recommendations and held Public Hearings. Hundreds of citizens attended and testified orally or in writing. Once again, adjacent cities and King County testified —99+% negative, again! When Council deliberations ended on September 20, it decided to approve the MPD Applications, but once again with over 150 conditions.

On September 21 (yes, the very next day!) Yarrow Bay submitted to the City DRAFT Development Agreements that provide the plan over the next 15 - 20 years for the design, development, and build-out of the MPDs. City Staff currently is "negotiating" with Yarrow Bay to "finalize" the Development Agreements. Once ready, those Development Agreements will be submitted to the City's Hearing Examiner to conduct Public Hearings to commence sometime in February. People are encouraged to provide both Oral Testimony at and Written Statements to those Public Hearings. **Please contact us** for more details on testifying.

Background
and
Literature

What Will
the New
Development
Look Like?

What's
the
Solution?

Impact
Summary

King
County
Historical
Organizations

Home

Save Black Diamond

CITIZENS' TECHNICAL ACTION TEAM (TAT) UPDATE by Peter Rimbos, TAT Leader

A Citizens' Technical Action Team (TAT) formed shortly after the Black Diamond City Council passed the MPD Approval Ordinances in September 2010. The TAT's objective is to understand all critical technical issues and develop a winning strategy to exploit them. It's strategy is to review and assess all pertinent documents including the MPD Ordinances, Development Agreements, Preliminary Plat Agreements, etc.

In February 2011 the TAT requested meetings with BD City Council members to discuss the MPD Approval Ordinances and specific recommendations to improve the Conditions of Approval. Two members of the City Council agreed to meet with the TAT--Councilmen Goodwin and Saas. At that time the other three Council members stated they could not meet with the TAT based on what we believe is a mistaken rationale--they could not engage in dialogue with citizens involved in the Legal Appeals.

Between March 10 and 21, 2011, members of the TAT held a series of four meetings (a total of 11 hr) with Councilmen Goodwin and Saas on Transportation, Environment, Stormwater & Flooding, and Fiscal Impacts & Schools. Each meeting consisted of 2+ hour, in-depth, two-on-two discussions. The focus of these discussions were specific Ordinance Conditions the TAT recommended be revised, eliminated, or added. We believe everyone benefited from such a two-way dialogue denied citizens for the past 18+ months.

In our Transportation Conditions discussion; the following areas were addressed: Traffic Modeling, Assumptions for the Models, Sensitivity Analyses of Critical Parameters, Cost/Benefit/Risk Analyses, Internal Capture Rates, Green Valley Road, Funding Sources, etc. The result was a 21-page comprehensive set Conditions, supporting rationale, and a detailed treatise on Traffic Modeling and Validation.

In our Environment Conditions discussion, the following areas were addressed: Wildlife Habitat Preservation, Wildlife Corridors, Stream-Lake-Wetland Complexes, Groundwater Flow, Stormwater Infiltration Techniques, Mine Hazards, Geologic Hazards, Open Space, Parks & Recreation Facilities, etc. An array of detailed maps were used to augment the discussion. The result was a 6-page comprehensive set Conditions and supporting rationale.

In our Stormwater & Flooding Conditions discussion, the following areas

[Background and Literature](#)

[What Will the New Development Look Like?](#)

[What's the Solution?](#)

[King County Historical Organizations](#)

[Home](#)

were addressed: Phosphorus Loading, Stormwater Runoff, Infiltration, Monitoring, etc. The result was a set of targeted Conditions and supporting rationale.

In our Fiscal Impacts & Schools Conditions discussion, the following areas were addressed: Fiscal Impact Analyses, Community Facilities Districts (CFDs), City Solvency, Letters of Credit, Yarrow Bay Organizational Structure, Schools, Bonding, Vesting, etc. The result was a set of targeted Conditions and supporting rationale.

The TAT is exploring meetings with the other three BD City Council members. At this time none are scheduled.