Before the City of Black Diamond Hearing Examiner

Scope of the Hearing

Many of the MPD Ordinance Conditions are incomplete and countless concerns were not addressed in detail in the MPD Conditions, but were in-fact deferred to the Development Agreement as the sole implementing document. The Citizens have been waiting months to see the final document. The documents have changed *substantially* from the initial notice that went out to the general public in September 2010. Furthermore, a separate public informational meeting was to be provided to go over the Development Agreement process prior to the public notice, which did not happen.

Given the significant amount of detail and methodology for implementation left to the Development Agreement phase; the substantial changes from the first public notice to now; and the lack of communication by the City on how this very technical piece of the process works; the public informational meeting has only recently been scheduled and doesn't happen until June 28th which only gives the Hearing Examiner 1 day to finalize all motions and response prior to the informational meeting; even the initial pre-hearing conference infers NO public comment and it was only after clarification from you that the public could speak that the City corrected this misunderstanding; and now the ongoing miscommunications on the City webpage, some documents are in the Spotlight section and others you have to click through multiple hyper-links.

I respectfully ask that the Hearing Examiner allow citizens discretion to discuss the merits of the Development, and the methods of how the MPD Conditions are to be implemented.

Timing and Process of the Hearing

Timing

It was disappointing although not surprising that City posted the notice for the Public Hearing on the Development Agreement when the process and procedures are still under review by the Hearing Examiner. When Peter Rimbos a member of a Citizens Tactical Team, stated to Steve Pilcher on June 10, 2011, that he thought the Hearing Examiner's response would come out prior to the Public Hearing Notice, Mr. Pilcher replied that those motions deal with *"rules and procedures, <u>not the dates.</u>"*

This is certainly not the position that was inferred at the pre-hearing conference as one of the key issues/request that repeatedly came up was providing adequate time from the final Development Agreement release to the public hearing date. Contrary to the City's position in the very, limited and hurriedly put together staff report dated as of 4:00 of June 10, 2011, there are material changes from the third version to the Final Public Hearing version of the Development Agreement. This is further exacerbated by the fact that the City itself was never provided a red-lined version of the Final Development Agreement to assist them in comparison of the Final DA **(Exhibit 1)** to the last submitted Development Agreement. The lack of a red-line version, even for the City Staff means that every sentence on every page of the 1300 document must painstakingly be compared line by line to the last version that was provided to the citizens, an "And or an Or" in the wrong spot or ambiguity of one phrase can change the context on an entire component. Additionally, the Development Agreement needs to be viewed against the MPD conditions.

It is clear that the City on behalf of Yarrow Bay is doing everything to push the hearing dates to the point of absurdity and manipulation. These dates are the dates that Yarrow Bay requested of the City as early as April **(Exhibit 2)**; the City staff knew you were going to be out of town for a long vacation with limited email access; you (Mr. Examiner) have not even made the final ruling on the process and procedures; the informational meeting has only recently been scheduled for the 28th of June and leaves a mere 13 days (including the 4th of July weekend) from the informational meeting to the City's *proposed* Public Hearing date. Citizens cannot

possibly review efficiently and prepare to make their comments relevant if they do not know the process; how do the citizens know to go to the webpage and to follow on motions? I guess they will find out on June 28th *after* all the initial deadlines have passed! All this information must be provided and rushing ahead only makes for errors in communication and process. One can certainly anticipate the City Attorney and Yarrow Bay now telling the Hearing Examiner that it is too late to cancel the hearings as the Public Notices have been made and therefore the hearings must go on, thus making a mockery of the pre-hearing conference, the first amendment and due process. Ironically, the City could not somehow pull together a public hearing process required by a 3-0 vote of the GMHB and requested six months to comply. Miraculously it was able to throw together a Public Hearing for the Development Agreement in "Break-neck speed."

I fully expect the City to say that it will cost the City money to move the dates and re-publish, however the entire FEIS/MPD and Development Agreement process has been fully funded by the Applicant under a funding agreement therefore no City funds are getting wasted, *even if* City funds were spent, shame on them for wasting the funds instead of waiting for your recommendations; if the Applicant wants to continue to push the City to move at the speed of light, then the Applicant surely cannot complain about the cost when a step in the process is not properly followed and thus we must go back to that step. Finally, how can we even prepare to review the Development Agreement when the City and Yarrow Bay are preparing multiple motions to attack the public process of which we then requires our valuable time to respond to preserve our rights to the public process.

Accordingly, I respectfully ask the Hearing Examiner to allow additional time for review of the Development Agreement and its attachments of not less than 60 days from the June 10, 2011 notice date, resulting in a new Public Hearing date no earlier than August 10, 2011 (which is only 43 days from the June 28th informational meeting).

Process

Venue: It was disappointing to see that the City of Black Diamond has chosen to move the public hearing venue site from the centrally located and sufficiently sized Black Diamond Elementary school to the Sawyer Woods Elementary school. Per the Enumclaw School District, the City did not even apply to the district office with a request for the Black Diamond Elementary school. Sawyer Woods is located approximately 2.8 miles from the ideally located BD Elementary and is within the Kent School District rather than the Enumclaw School District. (**Exhibit 3**) This is clearly a strategic plan to once again limit public participation under the guise of a large enough venue. In the audio tape of the meeting between the Hearing Examiner and City Staff, it is clear that the staff was actively trying to keep the crowds small; keep the retired seniors away; and the public in general from taking up space by actually proposing to have the hearings at the Council Chambers and piping the hearing to those standing outside; additionally, the staff complained about the incredible burden of having to break down the audio equipment and pack it to the school, and of course the staff cost. Holding the hearing at Sawyer Woods instead of Black Diamond Elementary does not resolve the City's audio or staffing issues (although the audio equipment is closer to BD Elm. than Sawyer Woods) but it does serve several strategic goals of the City and Yarrow Bay:

1. It limits the participation of the many citizens who walked to the hearings last year, especially the seniors;

2. It limits the participation of those who live in central Black Diamond and Enumclaw School District who are not familiar with where Sawyer Woods is even located; or those who race home from work stop by the post office (right next to the BD Elementary) and then pop into the conveniently located hearings. In all my years public hearings/community information have been at Council Chambers or the BD Elementary School

3. It is not as easily accessible off of HWY 169 for expert witness and those participants not familiar with the rural back road location of Sawyer Woods;
4. It allows the City to run the hearing until 11:00 at night if they want to; again this is to rush the process and declare the hearing closed if citizens waiting to speak cannot stay until 10 or 11 due to work and family.
5. It creates an additional burden regarding the ceding of time (see below); not only does Yarrow Bay want those who cede time to be on-site for every minute until their slot is called, they want them to do it 2.8 miles further away.

Therefore I respectfully ask that the Public Hearings take place at the same venue that worked for the FEIS and MPD public Hearings; the same venue that has sufficient capacity; the same venue that is centrally and conveniently located to and most easily identified; the same venue that allowed for many to walk to the hearings; that venue is the Black Diamond Elementary school.

Allowable time and Ceding of time: Yarrow Bay request that a range of time be provided from 3-10 minutes, and the ceding of time may *only* be allowed if the person ceding the time is present at the exact moment that the person they are ceding the time to is ready to speak. The time limit needs to be consistent at 10 minutes per person per project, with ceding of time allowing up to 60 minutes total per person. However, the process for the ceding of time is onerous, and clearly meant to limit public participation. Mr. Examiner, no matter how engaged the citizens are to the public process, forcing them to be in attendance every night, all night, during the summer, is clearly an attempt to make the process burdensome to even the most civic minded of the people. The ceding of time via email worked perfectly at the MPD Closed Record Hearings…there wasn't mass confusion. Ceding of time is even more imperative due to the fact the Development Agreements are very technical and the process very unclear. Yarrow Bay and City complain that some in the community are trying to stack the hearings with hundreds of citizens, each taking their 10 minutes; then Yarrow Bay and the City complain and try to restrict the ceding of time, to a person or group that they feel may articulate their concerns more efficiently and

effectively. What Yarrow Bay and the City really want is to burden the public process; they want to force the public to a unknown venue; they want to force the public to stay seated for hours, while sitting on their hands every night in the hopes that one person may not be there on the exact time another person is using their time.

Another example of who this harms is the elderly and infirmed, there are some seniors of infirmed that cannot physically attend or certainly cannot attend every night. I personally can speak for my own Mother, Vicki Harp, who is currently in a skilled nursing rehabilitation facility recovery from a traumatic car accident. Vicki Harp has been a FEIS appellant, as her home is directly impacted by the Villages noise, and is also listed on the appeal of the MPD Ordinances. Under Yarrow Bay's rule's my Mrs. Harp would not be able to cede her time via email and would lose her opportunity to participate in a public process that directly impacts her and in which she has invested significant time and money to make better. I am sure there are others such as my Mother.

There may be others who simply want to do their civic duty but due to the summer-time vacation schedule they will be unable to attend. The City certainly can understand this as documented in the declaration of Steve Pilcher, dated March 2, 2011 to the GMHB in regards to a motion to extend the compliance schedule of the GMHB decision for a public hearing in front of the Black Diamond Planning Commission. The City's reason for requesting an extension ranged from the time needed to ensure that the public had adequate notice; the need for adequate venue; and conflicts of the Planning Commissioners schedule. Whew! If the City can make these extraordinary exceptions to the public process of delaying a GMHB Public Hearing for mandated for Compliance, they certainly could allow the ceding of time of its citizens via email?! (**Exhibit 4**)

Transcripts

Yarrow Bay states that they shall pay the appearance fee for a court reporter to transcribe the hearing and any person requesting a copy must pay the court reporter. It is understood that Yarrow Bay and the City <u>are not required</u> to have professional transcriptions made. ***However, if Yarrow Bay wishes to use <u>a transcript</u> to support and defend their position and rebut the expert and public testimony at either <u>the Open or</u> the Closed Record Hearing they must make <u>that transcript</u> part of the administrative public***

record. If the transcripts are part of the public record they shall be made available to the public like all other documents that are part of the public record. Again, no one is requiring Yarrow Bay to purchase the transcripts but failure to make the transcripts part of the administrative record would clearly result in the exclusion of the transcripts for the rebuttal at the open hearing and the CRH.

Additionally, it should be noted that the City should not claim that this is too big of an expense as the City is not paying for any of these expenses; Yarrow Bay is paying for 100% of the cost related to the Development Agreement hearings. If Yarrow Bay then uses cost containment as a tool to force the City to avoid requesting or ordering a transcript or the selection of another venue to contain the hearing cost such as overtime to staff, then Yarrow Bay is in essence influencing the legal process with their funding agreement. They are in an unfair advantage to use money to force the City into what is best for Yarrow Bay not what is best for the City and the public.

Expected Conduct

It should be stated at the beginning of the hearing and reminded throughout the hearing:

1. The City Attorney cannot and will not be able to, interrupt, cross-examine, rebut during or directly after public testimony any of the general public. You stated this at the FEIS/MPD hearing, but the City Attorney ignored this and rudely interrupted and rebutted citizens. This in not to be allowed and is *intimidating*;
2. Yarrow Bay Attorney cannot cross examine or rebut public testimony during the public hearing testimony; the rules and procedures will allow them to submit formal written rebuttals at the appropriate time.

We are placing utmost hope for a clear, fair, public process, for what is essence the creation of a new city of unprecedented size in King County, into your hands Mr. Examiner.

Respectfully,
Cindy Proctor

Exhibit 1

- **RE: Public Hearing Version of the Development Agreement-Red-line?**

6/15

Steve Pilcher
To Cindy Proctor

From: **Steve Pilcher** (SPilcher@ci.blackdiamond.wa.us)
Sent: Wed 6/15/11 8:56 AM
To: Cindy Proctor (proct@msn.com)

Cindy,

As I indicated in my previous email, a redline version of the final Development Agreement draft is not available, as we do not have the document in that format.

Steve Pilcher

Community Development Director

City of Black Diamond

360-886-2560

From: Cindy Proctor [mailto:proct@msn.com]
Sent: Tuesday, June 14, 2011 7:24 PM
To: Steve Pilcher
Subject: RE: Public Hearing Version of the Development Agreement-Red-line?

Steve,

Is it possible to get a copy of the red-lined version on a CD ROM? I am sure you have a red-line and a clean version. I can come pick it up on Friday.

Thanks,

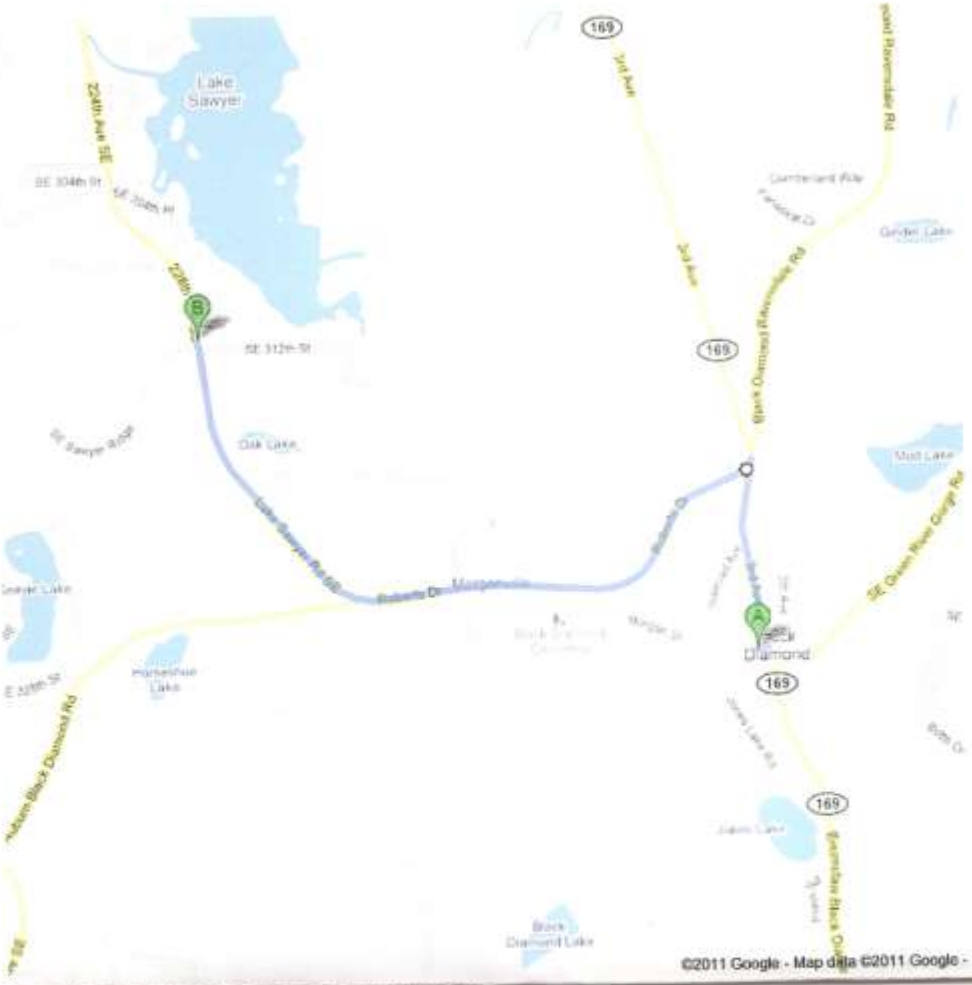
Cindy Proctor

Exhibit 2

Google maps

Directions to Sawyer Woods Elementary School
31135 228th Avenue Southeast, Black Diamond, WA 98010-1708 - (253) 373-7750
2.8 mi – about 7 mins

Save trees. Go green!
Download Google Maps on your phone at **google.com/gmm**



A 25314 Baker St, Black Diamond, WA 98010

1. Head **east** on **Baker St** toward **3rd Ave**	go 213 ft total 213 ft
2. Turn left onto **3rd Ave** About 2 mins	go 0.6 mi total 0.8 mi
3. Sharp left onto **Roberts Dr** About 3 mins	go 1.3 mi total 1.9 mi
4. Slight right onto **Lake Sawyer Rd SE** About 2 mins	go 0.9 mi total 2.8 mi
5. Continue onto **228th Ave SE** Destination will be on the left	go 151 ft total 2.8 mi

B **Sawyer Woods Elementary School**
31135 228th Avenue Southeast, Black Diamond, WA 98010-1708 - (253)

Exhibit 3

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Steve Pilcher

From:	Steve Pilcher
Sent:	Tuesday, April 19, 2011 1:36 PM
To:	clund@yarrowbayholdings.com; Ryan Kohlmann
Cc:	awilliamson@ci.blackdiamond.wa.us; Stacey Borland; Brenda Martinez; Rebecca Olness
Subject:	D.A. timing

Looking ahead to continued discussions and eventual hearings on the Development Agreement, I want to highlight what some of the critical benchmarks and timelines would be:

- A final draft of the negotiated D.A.s will be needed in both electronic and paper form to the City prior to scheduling a public hearing
- 15-days advertised notice is required; our deadline for sending notice to the newspaper is by 10:00 Tuesday prior to publication on Friday
- On the Friday of publication, mailed, posted and web notification will also be required. The staff report should also be completed by this date.
- An "open house" presentation to the public should occur during this required public notification period
- Assume the Hearing Examiner will take one week for oral testimony (hearings on four days)
- Assume 3 weeks after the close of oral testimony to receive the Examiner's recommendation (this also accounts for the possibility of the Examiner leaving the written record open for one week after the hearing)
- Once we receive the Examiner's recommendation, the same public notice requirements apply (i.e., approx. 3 weeks until any Council process could begin)

Also, note that City offices will be closed on both Monday July 4th (holiday) and the 5th (furlough day). That could also affect timelines, depending where things sit at that time.

In summary, it will be challenging to get the D.A. in the Council's hands during the month of July, which Colin mentioned as a desired target in our meeting yesterday.

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

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Andy Williamson

From: Steve Pilcher
Sent: Monday, April 25, 2011 11:55 AM
To: Rebecca Olness; Brenda Martinez; Andy Williamson; Stacey Borland
Subject: Hearing Examiner

I contacted Mr. Olbrechts regarding his availability for hearings. Between his schedule and the short 4th of July week, there is a one-month period that won't work. The earliest start date appears to be July 20th.

Steve

Exhibit 4

scheduling of hearings, preparation and presentation of staff reports, and similar functions.

2. After receiving the Board's Order on Motions, I began investigating whether the City would be physically able to conduct the proceedings necessary to comply with the Board's remand by the deadline set for compliance. I contacted individual Planning Commission members to determine their availability to conduct a public hearing as directed by the Board's Order. The Planning Commission typically only meets once each month. Several Planning Commission members advised me of schedule conflicts over the next several weeks that would prevent them from promptly convening a public hearing. Several members indicated that they are not available for Saturday hearings.

3. I also looked into the availability of the Black Diamond Elementary School gymnasium, which is the only venue within the city limits that is large enough to accommodate the number of members of the public who participated in the previous Hearing Examiner and City Council public hearings related to Ordinance Nos. 10-946 and 10-947. As the Board is aware, those hearings lasted for several weeks before the Examiner, and for several more weeks before the City Council. The City has no reason to believe that the hearings conducted as a result of the Board's Order will be less extensive. I was advised that the gymnasium is not always available for public use on Saturdays, and I know from scheduling previous hearings that there are limitations on the length of time the City may use the gym in the evenings during the work week. While the facility might be available during the school district's spring break, that does not occur until the first week in April.

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4. Further complicating scheduling are my own and Associate Planner Stacy Borland's personal schedules. As the City's Planner, Ms. Borland has been fully involved in assisting me on various matters related to the MPDs at issue in Ordinance Nos. 10-946 and 10-947, and I will need her assistance in the Planning Commission hearing. Ms. Borland will be out of the office due to medical reasons beginning on March 14. We do not expect her to return to full time status until early April. I likewise will be unavailable during the last week in March.

5. In addition, a certain amount of lead time is required to provide public notice in advance of any scheduled hearing, both to meet code-required advance notice and the additional pre-publication lead time required by the City's official newspaper, which is only published on a weekly basis. For example, a hearing scheduled to commence on Saturday, March 12 would have required delivery of a public hearing notice to the official paper not later than Tuesday, February 22.

6. These scheduling challenges relate initially only to the Planning Commission's conduct of a public hearing as required by the Board's order. These same challenges are likely to repeat themselves when the City Council takes up the Planning Commission's recommendation.

7. Taken together, the scheduling difficulties outlined above prevent the City from being able to comply with the Board's 75-day compliance schedule. By Resolution No. 11-737 (a true copy of which is attached hereto as Exhibit A), the City Council has directed that the City request the Board to extend the compliance schedule in order to allow the City sufficient time to schedule and conduct any required proceedings.

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