

Rachel Pitzel

From: Steve Pilcher
Sent: Monday, June 20, 2011 12:24 PM
To: WebMaster
Subject: FW: Motion to Olbrechts - Development Agreement Hearing Motions

Please post to the "Email communications with the Examiner" on the D.A. web page.

From: Phil Olbrechts [mailto:olbrechtslaw@gmail.com]
Sent: Monday, June 20, 2011 12:08 PM
To: Cincity63@comcast.net
Cc: Steve Pilcher; Brenda Martinez
Subject: Re: Motion to Olbrechts - Development Agreement Hearing Motions

Thank you. Very helpful comments. My understanding is that staff is able to accept documents by email to Mr. Pilcher, above, or by delivering or mailing documents to him at Black Diamond City Hall. Mr. Pilcher, you may want to post the address if that's not available already. Any documents submitted should be received by the City by the required deadlines, since I will need to issue my prehearing order ASAP after all documents have been submitted. Staff is in a better position to write up a summary of how they can accept documents (and they can offer any reasonable method that works with them), but I am willing to put together a pre-pre hearing order if necessary. It will have to be unsigned, since I'm still on vacation.

On Mon, Jun 20, 2011 at 11:44 AM, <Cincity63@comcast.net> wrote:
Mr. Olbrechts-

Thank you for your response. I appreciate you acknowledging my motion as timely.

I am happy to follow the processes and procedures. I have no desire to veer into the absurd. The City of Black Diamond website did NOT have any procedures for submission of motions posted on their website. Clearly once this date was decided on May 23 there was plenty of time when the submission procedure can and should have been delineated for the public.

While Mr. Pilcher's email to me states that in his "30 years of experience" input is typically submitted to City Staff and then forwarded to the Hearing Examiner, he does not share the benefit of his experience anywhere with the public in such a timeframe that allowed for understanding PRIOR to the deadline for motions of June 13th.

That failure to share did NOT serve any of us well.

In order for any and all to feel they can participate in the next upcoming deadline of June 24th to respond to motions you may need to provide Mr. Pilcher CLEAR instructions to post the process by which those documents should be submitted. His email to me last week indicated he was awaiting instructions from you to be able to act. (See below.)

Cindy:

I'm responding to this email since it was sent to me as the primary recipient.

If you examine the postings on the City's webpage, you will note that in an email from the Examiner to Mr. Bricklin and Mr. Kenyon, dated June 15th, 9:50 a.m., he wishes to minimize ex parte contacts. Therefore, unless we receive direction from him to the contrary, we will not be posting his email address.

In my 30+ years of planning experience, communications with a Hearing Examiner typically are sent to staff, who then forward those items to the Examiner. Usually, the only deviation from this pattern is when written materials are submitted during a public hearing process or if an Examiner specifically invites materials to be sent directly to his/her office.

We have asked the Examiner to clarify some procedural issues and will make any necessary adjustments if he so directs.

Steve Pilcher
Community Development Director
City of Black Diamond
[360-886-2560](tel:360-886-2560)

Clearly I was not the only person who thought the procedures on how to get procedures set were a little unclear.

And while your June 15th email asks citizens to seek assistance from staff before approaching you, and I will continue to do so, the staff has been reluctant at best to provide service or assistance to the general public. His email above also makes it clear he will not be taking any action based on MY request for assistance or clarification, but ONLY at your direction.

Your time and attention to this issue are appreciated. It is unfortunate the City did not provide instructions at the outset to avoid such mess. Hopefully this is rectified before the next "due date".

Perhaps staff will also clarify the difference between a "Final Development Agreement" and a "Public Version of the Development Agreement" are before we go much deeper in this process as well. If staff fails to answer our questions, I will be following the instructions in your June 15th email and return the questions to you to address.

Thank you again.

Cindy Wheeler

----- Original Message -----

From: "Phil Olbrechts" <olbrechtslaw@gmail.com>

To: Cincity63@comcast.net

Cc: "Steve Pilcher" <SPilcher@ci.blackdiamond.wa.us>

Sent: Sunday, June 19, 2011 11:38:58 PM

Subject: Re: Motion to Olbrechts - Development Agreement Hearing Motions

Ms. Wheeler,

Thank you for your comments.

I can see why you would be concerned that I'm engaged in email discussions with a select few. I want to make it clear that no one has been authorized or invited to send emails directly to me other than staff. Through a variety of means people have found my email and sent me comments on their own initiative. For the most part I have not responded to these emails. In a prior email I requested that parties not send me emails and that if they had questions to send them to staff and that staff was to forward them to me if staff was unable to answer questions to the satisfaction of the inquirer. The reason for this is based upon the concerns that you raised in your email, as follows:

1) If I am engaged in daily communication with the dozens of concerned citizens in Black Diamond, I'm essentially holding an on-going hearing with rules and policies developing and changing on a daily basis. I think this would be very confusing to people and it would be asking a lot of Black Diamond residents to have to monitor dozens or even hundreds of emails of an on-going dialogue between myself and Black Diamond residents. At this stage we are only in the process of setting up the ground rules for the hearing. Once all parties have had their opportunity to file motions and air their concerns, I will be putting together a prehearing order that will (hopefully) clearly lay out the rules of engagement so that citizens can know how to participate.

2) Even if this process is legislative rather than quasi-judicial, I am not comfortable engaging in on-going communications with parties outside of hearing process. I don't think you would find it acceptable if I spent considerable time discussing the project with the applicant over the next few weeks and I'm sure the converse is true as well. My responsibility is to objectively apply law to facts and provide the public with a level playing field for public participation. I do not believe I can effectively carry out this responsibility if I am engaged in extensive "behind the scenes" communications with hearing participants. Even if all my communications are done by email, as referenced in my last point it would be asking a lot of the public to require them to sift through hundreds of pages of email communications to find out what information I've acquired from these communications. The one exception to this rule has always been procedural discussions with staff, since it's difficult to get around this from a practical standpoint. As you know, I still recorded my procedural meeting with staff as well.

Your letter expresses the concern that the process needs to be clear so that citizens know how to participate. That is clearly a very important consideration. Keep in mind that we are putting together the rules that will create a clear process. So what I'm understanding you to say is that we need a clear process to set up a clear process to run the hearing. If we wanted to get absurd about this we could keep going back several levels, asserting that we need to set up a clear process to set up a clear process to set up a clear process etc.

I thought that the results of the pre-hearing conference were fairly straight forward, but it was probably best to put my rulings in writing. I simply ruled that staff could set a hearing date 30 days from the posting of the final development agreements and staff report and also set a prehearing motion schedule. The prehearing motions give anyone who wishes an opportunity to make additional comment on the hearing rules. Once all the motions and responses come in I will put together a prehearing order that sets out the hearing rules.

For all the reasons above I will not be responding to emails that are sent to me unless they relate to questions of procedure that can't be deferred to the prehearing order (such as what I'm addressing in

this email). All comments that are sent to me will be made into exhibits and, of course, will be accessible to the public and will be considered by myself as part of the record.

If the prehearing motions include arguments that I should be engaged in on-going email or other discussions with Black Diamond residents I will certainly keep an open mind on those issues and may change my position. As I've stated in previous emails, unless and until I rule otherwise I will treat my role as quasi-judicial. The view of my role as quasi-judicial has no bearing on the Council role, since their responsibility as elected officials is distinguishable from my own.

As to your motion specifically, staff has posted an email where I stated that your motion is timely. To further clarify, I do not have any problems with the format of your motion. I ruled that the hearing could not start until 30 days after the posting of a complete development agreement and one of your main points is that the development agreement is not complete. I'm sure that those and other points will be addressed by other parties in the response briefs.

On Fri, Jun 17, 2011 at 4:30 PM, <Cincity63@comcast.net> wrote:
Mr. Olbrechts-

Upon inquiry to the City regarding the failure to post my motion to you I was told that the email I used was out of date. The City has not provided any other contact information for you and in fact Steve Pilcher refuses to provide any contact information to the public for you.

Please accept my motion as timely. I forward Monday's email to you below.

I have not yet read the "rebuttal" from Mr. Sterbanks on my motion, but object to its existence period.

My motion asks for two things:

That the Development Agreement and all its elements be COMPLETE with no items or elements "TBD" and that the process be workable for the public, not done in such a fashion that "legal" advice is necessary to understand or participate in the process.

Bob Sterbanks email, as much as I have read, only underscores the need for this.

No "required format" was published or provided to be used as a template for motions and I greatly resent Mr. Sterbanks attacking me for participating in this process.

Please confirm for me that you will accept my motion that was written and sent in a timely fashion and certainly does express two elements in the process that are important to me. Thank you.

Cindy WHeeler

----- Forwarded Message -----
From: Cincity63@comcast.net

To: "P Olbrechts" <polbrechts@omwlaw.com>

Sent: Monday, June 13, 2011 5:02:03 PM

Subject: Motion to Olbrechts - Development Agreement Hearing Motions

Mr. Olbrechts -

I did speak and provide written input at the Pre-Hearing Conference for these upcoming hearings. I did not expect to submitting motions per your deadline, but the recent production of several documents on the City's behalf prompt some additional input and emphasize the need for some other input, previously offered, to be repeated.

In both my written and verbal comments I had stated that NO PORTIONS OF THE DEVELOPMENT AGREEMENT SHALL CONTAIN INCOMPLETE AGREEMENTS, UNDERSTANDINGS OR ITEMS THAT ARE "TBD".

Clearly it is impossible to judge the impact and effect of the development unless everything is decided, agreed upon / permitted and finalized. This is true whether it is road locations, school locations, storm water detention facilities, sewer facilities or any other required infrastructure or improvement element.

If we can not determine from the Development Agreement what the effects and impacts are, we can NOT possibly enter into a comprehensive agreement with a duration of some two decades. So **no elements should be left up in the air** and the "casualties" un-gauged, un-weighed and unknown for the citizens. After all this is our one and only chance to have made public comment on documents that have consequences for us for decades to come.

The simple fact that the situation is un-described and unknown to us will **not** keep the City from saying we have had a public process and they all got their say. Last year has proved that point already. The City and the developer frequently brag about the "vigorous public process" where the public got to testify loud and long last year.....but only on the impacts, infrastructure and expenses identified as of that time.....and that certainly left out an awful lot.

Please know that such elements DO exist in the hurriedly produced "Public Version" of the Development Agreement and Staff Report posted late Friday afternoon. (** By the way this was well after the Public Notice of a Hearing Date for the Development Agreement was published in the official paper.)

I provide you an example from the documents provided for public review below.

G. Section 7.3: King County responsibility for sewer. Although the City of Black

Diamond operates its own sanitary sewer collection system, its contract with King

County assigns to the County the responsibility for accepting sewage flows from

the City and sending those flows on to regional treatment facilities. This will

require the construction by King County of a storage facility to accommodate

peak sewage flows. The location of this facility is still under discussion between

the City and King County.

This is NOT acceptable for inclusion in the FINAL Development Agreement. Such "blind acceptance" would be absurd.

The people of Lake Sawyer are still actively implementing practices to assist recovery from the LAST King County Sewer "major implementation" out here....and that fiasco was an experimental design too. You will note that the letter from King County to Steve Pilcher in August of last year lists MAJOR concerns with both the design and implementation of the "experimental design" sewer collection system proposed by the City and NO agreement has been reached between King Co and Black Diamond on this topic, even though a joint task force was created 4-5 months ago!!! Clearly, we are a long way from the answer on this topic alone.

** Perhaps at some point you could hold some kind of public briefing or "explanation" meeting to help the taxpayers here who attended the Pre-Hearing Conference why and how we were issued public notice of this hearing by our City prior to you reporting the date for the hearing to commence through the schedule established by you? That would be greatly appreciated by many. Confusion reigns here.

This leads to one of my other previously established requests. This process is intended to be for the public. For the public to get the full benefit of the process they must be able to understand the rules and procedures governing this process and then engage.

When the rules keep changing or when they are presented with tons of legalese and only through public notice, with no two way interaction, the public is effectively stifled.

Many people here also **do not** understand why the City has accepted TWO versions of the Development Agreements for each proposed project. This is not what the process outline indicates is standard at all. Many of us are confused to have the City post the Development Agreement with the first ever seen "Public Version" identifier placed before it. Does this indicate there is a different version for people other than the public? Is this what the letter of June 9, 2011 from Colin Lund, Yarrow Bay, to Steve Pilcher, Community Development Director Black Diamond, means when it refers to "two identical development agreement applications for each MPD"? So will the public be speaking on all **four** Development Agreements when we make our comments?

Again, much confusion has been generated by the change in action and direction by the City on these Hearings from what was explained at the Pre-Hearing Conference. This does **not** serve the Public Good.

We look to you for clarification and equality. We know you will seek to serve the true purpose of these hearings and not leave tax paying citizens with absurd commitments to unknown clauses.

Cindy Wheeler