BEFORE THE HEARING EXAMINER FOR
THE CITY OF BLACK DIAMOND

Development Agreements Lawson Hills PLN10-0021; PLN11-0014 Villages PLN10-0020; PLN11-0013	PRE-HEARING ORDER I

This is a partial prehearing order addressing some of the major procedural issues for the hearing on the development agreements for the Villages and Lawson Hills Master Planned Developments. This prehearing order is being issued in two parts in order to maximize advance notice to the parties. A second prehearing order will be issued Wednesday morning (when City Hall is again staffed), 7/6/11, to address the remaining issues raised in prehearing motions.

A. Hearing Date. The development agreements will commence on July 11, 2011 pursuant to the public notice issued by City staff. The hearing was scheduled as ordered by the Examiner at the prehearing conference, which was 30 days from the posting at the City's website of a final development agreement and staff report. Written comments will be accepted for two weeks following the close of the verbal testimony portion of the hearings, including expert testimony, which will give the parties at least seven weeks to review and comment upon the final documents. Although voluminous, the exhibits have remained substantially the same since they were released to the public in April, 2011. The development agreements themselves are "only" about 150 pages each. These are lengthy documents, but by the end of the hearing process the parties will have had almost two months or longer to review them.

B. Expert Witnesses. When the Examiner issued his order on the hearing date at the prehearing conference, he did not anticipate that the issue would be revisited in the prehearing motions. He had intended to issue an order for the scheduling of expert witnesses as the prehearing motions came in. When it became evident that parties were still going to address the hearing date in the prehearing motions, the Examiner had to wait until all arguments had been submitted prior to addressing scheduling. Now that the motions have all been submitted, it is too late to require the

submission of expert witness information in advance of the hearing. Consequently, expert testimony will be scheduled for the week commencing July 18, 2011. Parties wishing to submit verbal expert testimony shall supply written notice of this testimony to City staff by 5:00 pm July 8, 2011. Any parties wishing to provide rebuttal expert testimony shall provide notice of the testimony by 5:00 pm July 13, 2011. The notices must be received by the City by the dates specified above at the City address identified at Section D of this order or at the email address of Steve Pilcher at SPilcher@ci.blackdiamond.wa.us. The notices shall provide the following information:

a. Dates and times of availability to testify the week of July 18, 2011.
b. Curriculum vitae of the expert.
c. A summary of the issues that will be addressed in the expert testimony. The summary should be specific enough to identify what portions of the development agreements are addressed and what deficiencies the expert believes exist or don't exist with those provisions.
d. The amount of time the expert will need to testify (excluding cross-examination).

The Examiner will schedule proposed expert witnesses if they in fact qualify as expert witnesses and the notices identified above have been provided as directed. An expert witness is a person that is qualified by knowledge, skill, experience, training or education to provide opinions on scientific, technical or other specialized issues. A person does not qualify as an expert witness due to his or her residency alone in the Black Diamond Community. Persons who do not qualify as expert witnesses will be allowed to testify as members of the public.

Expert witnesses shall not be subject to any time limit. Expert witnesses will be subject to cross examination. The method of cross-examination will be addressed in the second prehearing order.

C. Time Limits. The general public will be subject to a time limit of ten minutes per speaker. A more detailed rule on time limits is quoted from the sign-up sheet notice the Examiner provided to staff as follows:

> *Persons who wish to testify may reserve time in advance on the posted sign-up sheets. Each person shall be allowed up to ten minutes to speak. Up to six persons shall be assigned to each hour of hearing and those persons will speak in the order in which they have signed up. Persons may cede their entire ten minute allocation to another speaker, provided they are present at hearing to cede their time. Persons who have a disability that prevents them from being present at the hearing need not be present to cede their time. The recipients of any ceded time may schedule their additional time on the sign-up sheets, i.e. "John Smith, using ceded time". One additional sign up slot must be filled in for each ten minutes of time ceded, e.g. if a person will use their time and ceded time from four others to speak, they should fill in five speaking slots. The maximum time that any speaker may testify during the public comment portion of the hearings is one hour total. The grantor of the ceded time need not be identified on the sign-up sheets, but will have to be identified at the*

hearing. Any unused time during the hearing will be available to others present at the hearing who have not already spoken or ceded their time.

The Applicant and staff will each have 1.5 hours each to make initial presentations and one hour each to make rebuttal/closing presentations. This extra time acknowledges the fact that they must explain the project to the public and respond to all public concerns.

Sign-up sheets will be posted at the Black Diamond Community Development Department, 24301 Roberts Drive, Black Diamond, commencing July 1, 2011 during regular business hours. The Community Development Department will be closed July 4 and 5, 2011 due to the holiday and a furlough day. The sign-up sheets will also be present at the hearings themselves and people will be able to sign up any time up until the public testimony portion of the hearing is completed, which is anticipated to be July 16, 2011.

Members of the general public (defined as those speakers other than City staff, the Applicant and expert witnesses) will only be allowed to speak once and cannot reserve time for an additional speaking time, unless they are cut-off due to the close of a hearing day.

D. Hearing Format. The hearings will commence with a presentation from the Applicant and then City staff on July 11, 2011, starting at 6:00 pm after opening comments from the Hearing Examiner. All testimony at evening hearings will be taken until 9:20 pm. If the Applicant and staff are finished prior to 9:20 pm on July 11, members of the public will be allowed to commence their testimony. A sign-up sheet will be provided and members of the public will testify in order of signing up.

General public testimony for the hearings scheduled for July 12, 13 and 14 will all commence at 6:10 pm after opening comments from the Hearing Examiner. All persons signed up to speak should be present at the hour they are scheduled to speak. Any unused time will be made available to others who have not spoken or ceded their time. Sign-up sheets will be available at the hearings for people who wish to speak during the unused time.

General public testimony on July 16, 2011 will commence at 9:10 am after opening comments from the Hearing Examiner. General public testimony will be taken until 12:10 pm and from 1:10 pm to 2:10 pm. City staff and then the Applicant will then have one hour each to provide rebuttal and closing comments. City staff and the Applicant may begin their testimony earlier than 2:10 pm if there are no remaining general public comments. Additional hearing dates will be scheduled if there is insufficient time to accommodate all members of the public who wish to speak.

Expert testimony will be scheduled once the expert witness notices required by this order have been submitted. The hearings will be continued to specified dates for expert testimony, if any.

All testimony will be taken under oath.

E. Written Testimony. Written comments will be accepted for a period of two weeks after the close of the verbal testimony portion of the hearing, which will include verbal expert testimony. The Applicant and City shall be given one week to provide a written response to the written comments.

ORDERED this 30th day of June, 2011.

Phil A. Olbrechts
Hearing Examiner for Black Diamond