BLACK DIAMOND
PLANNING COMMISSION
MINUTES OF MAY 11, 2010 MEETING

CALL TO ORDER
Chairman Bob Kaye called the meeting to order at 7:08 p.m. with the introduction of the role and duties of the Planning Commission.

ROLL CALL
Present: Commissioners Bob Kaye, Keith Watson, Greg Thesenvitz, Darryl Buss,
Absent: Ron Taylor; Sheri Roth; Pam O'Brien
Staff: Community Development Director Steve Pilcher; Bob Sterbank, Kenyon and Disend

APPROVAL OF MINUTES
Moved by Commissioner Watson, seconded by Commissioner Buss, to approve the minutes of the April 6, 2010 meeting as drafted. Passed4-0.

PUBLIC COMMENTS
None.

PUBLIC HEARING REGARDING POTENTIAL AMENDMENTS TO BLACK DIAMOND MUNICIPAL CODE 18.08 CONCERNING APPLICATION PROCEDURES
Mr. Pilcher noted there are two major areas of changes included in the proposal: 1) making Development Agreements a Type 6 decision, which allows the City Council to conduct an open record hearing; and 2) eliminating all references to the SEPA process, as these are otherwise addressed in BDMC 19.04. He stated that during the MPD process, both members of Council and the public had expressed frustration with the constraints placed upon communications. By taking the Hearing Examiner out of the Development Agreement process, the Council will be able to conduct the required open record hearing, thereby allowing citizens to directly communicate their concerns. Mr. Pilcher further noted that since Chp. 19.04 was amended in January 2010, there is now language that makes it clear that the provisions of that chapter supersede those found in Chp. 18.08.

Mr. Pilcher provided the Commission with a copy of a letter submitted from Yarrow Bay Holdings, received late that afternoon. In the letter, Yarrow Bay states they were not the proponent of the proposed changes and that they are not taking a position regarding their potential adoption.

Chairman Kaye stated that individuals were asked to come forward, state their name and address for their record, and to please limit their comments to three minutes.

Prior to receiving testimony, some Commission members stated their packets were missing page 8 of the proposal. Staff stated that page 8 consisted primarily of the former

Table 18-1, which is proposed to be eliminated in favor of a simplified version found on page 9.

Cindy Proctor, 718 Griffin Ave. Enumclaw, stated she is concerned with a series of code amendments that have occurred over the past 2 years in response to a specific proposal. She stated her satisfaction with the MPD hearing process, noting the Hearing Examiner issued his recommendation on The Villages MPD earlier today, which includes a framework for the future Development Agreement. She stated there was not a need to make a change at this time and doesn't understand the reason behind the recommended change. She felt the Hearing Examiner should be allowed to rule on a proposed Development Agreement.

Mr. Pilcher clarified that under the existing framework, the City Council still has the final authority to enter into a Development Agreement.

Ms. Proctor re-iterated there isn't a need to change from the current process and stated her skepticism of the Council being able to make a good decision without the input of the Examiner.

Vicki Harp, 32508 – 236th Ave. SE Black Diamond, stated that during the long MPD process, everyone has had to follow the process and it is not fair to change the rules at this point in the process.

Peter Rimbos, 19711 241st Ave SE, Maple Valley, Greater Maple Valley Community Council, urged the Commission to reject the staff's recommended change to take the Hearing Examiner out of the Development Agreement process. He stated the MPD closed record hearings process provided plenty of opportunity for public input, which was appreciated. The public wants the Hearing Examiner involved.

Mr. Sterbank clarified that the Hearing Examiner had conducted the open record hearing and it is the City Council will now be conducting the closed record hearing on the MPDs.

Mr. Pilcher clarified that the MPD code requires a Development Agreement be entered into before any implementing permits can be issued. The Development Agreement does not provide the opportunity to alter any conditions of approval of the MPD; instead, it will include greater specificity and address such issues as building setbacks, timing of infrastructure improvements, etc.

Mr. Rimbos stated that it is not necessary to have an open record hearing with the City Council, as all issues were vetted with the Hearing Examiner.

Sheri Miller, 23210 – 312th St. SE Black Diamond, stated that the citizens do not trust the City Council, but trust the Hearing Examiner to make a good decision.

Richard Ostrowski, 31314 293rd Pl. SE Black Diamond, stated he is opposed to the proposed change regarding the Development Agreement process. He favors keeping the Hearing Examiner in the process.

Cynthia Wheeler, 30221 – 234th Ave. SE Black Diamond, noted that the Development Agreement is the 3rd phase of the MPD process. She stated the whole process has been very complicated and that the City Council lacks the expertise of the Hearing Examiner. She doesn't see the need to remove the Examiner, who has lots of experience in land use matters, from the Development Agreement process.

Erika Morgan, 33624 Abrams Rd. Black Diamond, noted she attended all the MPD hearings and that the Hearing Examiner has great expertise. He should be allowed to remain a part of the Development Agreement.

Judith Carrier, 24305 SE Green Valley Rd. Auburn, stated she did not understand the proposed changes. She noted all the technical data is hard to understand and the expertise of the Hearing Examiner would be useful in the Development Agreement process.

Melanie Gauthier, 25565 Baker St. Black Diamond, stated she thought it is odd to propose a change to the MPD process at this point. She feels the Hearing Examiner needs to remain involved due to his technical background on the issues.

Mr. Rimbos stated some technical issues of concern in the Hearing Examiner's recommendation.

Ms. Wheeler stated that the Examiner's decision provides a framework for the Development Agreement, not a draft of an agreement.

Tim Nickson, 25565 Baker St. Black Diamond, stated he is opposed to the change to remove the Hearing Examiner from the Development Agreement process. He indicated that making a change may leave the city open to a potential lawsuit.

Ms. Proctor stated that the City has not demonstrated a benefit that would result from the proposed change.

Jack Sperry, 29051 – 229th Ave. SE Black Diamond, stated he felt the Hearing Examiner did a good job in receiving testimony during the MPD and FEIS process and should remain in the Development Agreement process.

Joe May, 29611 – 236th Ave. SE Black Diamond, stated the Hearing Examiner should be allowed to participate in the Development Agreement process. He urged the Commission to read pages 208-267 of his recommendation concerning The Villages MPD.

Dennis Boxx, 32517 – 2nd Ave Black Diamond, said that he concurs with keeping the Hearing Examiner in the process.

Commissioner Thesenvitz asked the public if their only concerns were with the Development Agreement process.

Ms. Proctor stated she also had concerns regarding the proposed deletions of all references to the SEPA process. She asked if this would apply retroactively to the MPD EISes.

Mr. Sterbank stated that yes, the changes would apply retroactively.

Ms. Wheeler stated that she felt by retaining the language in 18.08.020 Supersedence, which would resolve any potential conflicts with Chp. 19.04.

Ms. Harp stated that the City Council is still learning about land use processes and noted that a lot of good people were involved in the FEIS appeals/MPD process.

Ryan Kohlmann, Yarrow Bay Holdings 10220 NE Points Dr. Kirkland, stated that the SEPA process is best located in Chp. 19.04 and described the proposed changes as being "housekeeping" in nature. He stated that Yarrow Bay did not ask for or is an advocate of the proposed changes.

Mr. Rimbos reiterated his concern to keep the Hearing Examiner in the Development Agreement process.

At 8:35 p.m., Chairman Kaye closed the hearing to further public testimony.

Commissioner Watson stated he felt it best for the Commission to table the matter, which would give them the opportunity to review the MPD process.

Commissioner Thesenvitz noted the proposal includes other housekeeping items besides the Development Agreement.

Chairman Kaye noted that the SEPA changes would be consistent with Chp. 19.04.

Commissioner Buss indicated that the issue deserves more time and thought.

The Commission indicated it would like additional information regarding the retroactivity issue. Mr. Pilcher indicated staff could provide a copy of a legal analysis done by interim City Attorney Yvonne Ward concerning the relationship of Chp. 19.04 to 18.08.

Chairman Kaye suggested the Commission may wish to consider a special meeting prior to its next regularly scheduled meeting of June 8. However, the remainder of the Commission did not support this concept and agreed the matter can be considered at its June 8 meeting.

ADJOURNMENT
Moved by Watson, seconded by Thesenvitz, to adjourn. Passed 4-0.

The meeting adjourned at 8:47 p.m.

Bob Kaye, Chairman

ATTEST:

Planning Commission Secretary