

**BLACK DIAMOND  
PLANNING COMMISSION  
MINUTES OF NOVEMBER 1, 2011 MEETING**

**CALL TO ORDER**

Chairman Bob Kaye called the meeting to order at 7:01 p.m. with the introduction of the role and duties of the Planning Commission.

**ROLL CALL**

Present: Commissioners Bob Kaye, Ron Taylor, Greg Thesenvitz, Darryl Buss and Keith Watson  
Absent: Pam Thurmond (excused) and Sheri Roth  
Staff: Community Development Director Steve Pilcher and Associate Planner Stacey Welsh

**PUBLIC COMMENTS**

Cindy Proctor asked about appeals of Comprehensive Plan amendments. She spoke about public participation and an e-mail she sent and responses received. She encouraged the Commission to follow city code.

Cindy Wheeler echoed the comments of Ms. Proctor and spoke about public notice.

**CONTINUED PUBLIC HEARING ON PROPOSED 2011 COMPREHENSIVE PLAN AMENDMENTS**

The Commission discussed continuation of the previous meeting and closure of testimony.

**Moved by Commissioner Taylor, seconded by Commissioner Buss, to reopen the public hearing for inclusion of additional public testimony. Passed 4-1.**

Mr. Pilcher discussed public comment letters that were received and distributed to the Commission last week. He stated there is no additional new information from staff.

**CPT-11-01** (Draft a land use category description for "Park" and an implementing "Park" zone district.)

Public Testimony

Cindy Proctor spoke about written comments submitted and public participation, including website notification. She discussed two additional items regarding parks. She proposed a task force to create different designations of parks and a subcategory of what can be allowed there. She stated concerns about a Conditional Use Permit, which requires a public hearing and a SEPA determination. She discussed the history of how these have worked previously. She said the Mayor has changed the designated official for the Sensitive Areas Ordinance from the Natural Resources Director to the Community Development Director. She submitted a document to the Commission and spoke about the public trust doctrine.

Cindy Wheeler spoke about funding requirements being unclear and tabling this until things are made clear. She stated the intensity of Lake Sawyer Regional Park (LSRP) that is being asked to be vested does not reflect the input from citizens and goes beyond what the committee asked for. She stated the Parks Director provided information to a charitable organization regarding lighted

ballfields, but not to the Commission. She said lighted ballfields are not required. She spoke about 350 TDRs (Transfer of Development Rights) that have come out of the LSRP, and that nothing should be able to be built there. She asked the Commission to table anything associated with LSRP and the zoning amendment until next year.

**CPT-11-02** (Amend language throughout the Plan to indicate that residential densities are to be calculated based upon “net” instead of “gross” acreage.)

Commissioner Kaye recused himself from this matter and Vice Chair Thesenvitz presided over this portion of the meeting.

Public Testimony

Craig Goodwin spoke about TDRs and referenced previous testimony from Mr. Kombol and the correct amount of TDRs. He stated the City’s number includes some double counting. He said sending area total TDRs account for 2,800 or so TDRs and the MPDs require 3,025 TDRs to be purchased. He stated within sending areas the City owns 422 TDRs (350 from LSRP). He said sending area TDRs are short of what is required by Yarrow Bay. He discussed the City generated 1,000 TDRs. He said language can be created to have existing landowners vested and not impact them with this amendment.

Cindy Proctor spoke about the support for change and discussed previous testimony on this item. She stated the Sensitive Areas Ordinance is not a city mandated code, it is mandated by the state. She said the community is paying for landowners to benefit from a state mandated code. She spoke about the situation if the Sensitive Areas Ordinance were rescinded and the potential overturn of other environmental laws. She spoke about buying TDRs in a slow economy and vesting of existing TDR holders.

Chairman Kaye returned to the meeting and resumed the role of Chair from Vice Chair Thesenvitz.

**CPT11-03** (Amend the text concerning Master Planned Developments to eliminate the need for a residential component.)

Public Testimony: None

**CPT11-04** (Revise discussion of Primary & Secondary Open Space)

Public Testimony: None

**CPT11-05** (Add language to Capital Facilities Plan (Chapter 8))

Public Testimony: None

**CPT11-06** (Revised language relating to private utilities)

Public Testimony: None

**CPT11-07** (Adoption of a Trails element to the Comprehensive Parks Plan)

Public Testimony

Cindy Wheeler said the trails plan is linked to the LSRP plan. She stated until we have all the information on how the items fit together it is premature to consider them at this time.

Cindy Proctor spoke about her previous request for a matrix of the trails system comparing the original trail plan and the revised trail plan. She asked about the changes between the amounts of trails. She also referenced comments made by Councilmember Mulvihill regarding walkable schools.

**CPT11-08** (Transportation concurrency standard for SR-169)

Public Testimony: None

**CPT11-09** (Various revisions suggested by Save Black Diamond, 1.5.1 King County Countywide Planning Policies)

Public Testimony: None

**CPT11-10** (Various revisions suggested by Save Black Diamond, 2.3 UGA Policies)

Public Testimony: None

**CPT11-11** (Various revisions suggested by Save Black Diamond, 4.3.2 Water Quality Concepts, Objectives, and Policies)

Public Testimony: None

**CPM11-01** (In-City Forest; change from Low Density Residential/MPD overlay to Park; concurrent change in zoning from R4 to new Park zone)

Public Testimony: None

**CPM11-02** (Correct MPD overlay boundary to conform to the approved Lawson Hills MPD property boundaries)

Public Testimony: None

**CPM11-03** (Change the water tower site within the Lawson Hills MPD from Public to Low Density Residential/MPD Overlay)

Public Testimony: None

**CPM11-04** (Black Diamond Historical Museum site: change from Town Center to Public; concurrent change in zoning from Town Center to Public)

Public Testimony: None

**CPM11-05** (Eagle Creek Park: change from Low Density Residential to Park; concurrent change in zoning from R6 to new Park zone)

Public Testimony

Cindy Wheeler asked that the proposed language and all things park be relegated until there are proper documentation and facts.

**CPM11-06** (Update all maps throughout the Plan to reflect the current city limits)

Public Testimony: None

CPM11-07 (Amend Figures 4-3 & 5.2 to ensure consistency with SAO maps and update as needed)

Public Testimony: None

Chairman Kaye closed the public hearing and directed the Commission to begin deliberation.

**CPT-11-01** (Draft a land use category description for “Park” and an implementing “Park” zone district.)

Commissioner Thesenvitz asked staff if parks are currently zoned Public. Mr. Pilcher responded affirmatively and also explained the history of the amendment. He said there is no description in the Comprehensive Plan for what the “Park” land use designation means, and that the Planning Commission requested staff draft a definition. Commissioner Thesenvitz stated he heard community concern on the new Park zone related to new uses. Mr. Pilcher stated there is a broader range of uses permitted in the Public zone than what there would be in the Parks zone. Commissioner Taylor stated no input was received about not wanting a Park zone; the public is concerned that it hasn’t been worked on enough. He discussed letting the public be involved and pushing the amendment off for a year. Mr. Pilcher stated that nothing in the current zoning would not let parks that are zoned Public to be used for parks.

Commissioner Buss stated they heard concerns on what is/is not in the Parks Plan. He asked what the next steps would be if the Plan were to be amended. Mr. Pilcher responded the City Council or the Planning Commission could initiate a change next year to review the 2008 Parks Plan to address the issue of what should be allowed in the Lake Sawyer Regional Park. Commissioner Watson suggested tabling this matter and working to see if we should have a Park zone or not. Commissioner Kaye discussed adding qualifications and definitions to the zone. Commissioner Thesenvitz discussed elimination of a portion of Section 18.48.010.C, “at the time of acquisition by the City”. Commissioner Taylor discussed recommending Council not approve or table the amendment. There was further discussion amongst the Commission on this item.

Commissioner Thesenvitz made a motion to not recommend the amendment as various issues need to be refined regarding required uses and Lake Sawyer Regional Park. Commissioner Thesenvitz then modified his motion to not move the amendment forward to Council, pending additional information, better definition and public input. The motion was seconded by Commissioner Watson. Mr. Pilcher referenced Black Diamond Municipal Code section 16.30.070.E, which states the Commission shall make and forward a recommendation on each amendment to the City Council.

**Moved by Commissioner Thesenvitz, seconded by Commissioner Watson, to recommend City Council not move CPT11-01 forward as it is written. Passed 5-0.**

**CPT-11-02** (Amend language throughout the Plan to indicate that residential densities are to be calculated based upon “net” instead of “gross” acreage.)

Commissioner Taylor asked the Commission if they understood the differences between “net” and “gross”. Commissioner Buss asked staff about the Yarrow Bay letter regarding the code limits on review of amendments within 3 years from the last change. Mr. Pilcher said staff does not agree with Yarrow Bay and believes it is acceptable to review the amendment. He clarified that if it was a specific issue that had been considered in the last three years, then the limitation applies. Commissioner Taylor said they heard a lot of concern over TDRs. Commissioner Thesenvitz said there has been an understanding of population using “gross” and the change to “net” limits growth to what was originally intended. He stated the TDR program will still be there

and there will still be a market for Yarrow Bay for TDRs. Commissioner Buss agreed and stated Yarrow Bay is already taken care of, the amendment applies to future development.

Commissioner Watson said to be careful to not put something forth that would hurt TDR holders. He asked how the Commission could get clarification on the Yarrow Bay letter. Mr. Pilcher said that right now they are only making a change to the Comprehensive Plan; any further change would have to be brought forward as a later action. Commissioner Kaye asked if this change would be retroactive. Mr. Pilcher said staff does not have a legal opinion right now. There was further discussion by the Planning Commission on the amendment and getting a legal opinion.

**Moved by Commissioner Taylor, seconded by Commissioner Thesenvitz, to forward CPT11-02 to City Council with a recommendation of approval. Passed 4-0, 1 abstention (Kaye).**

**CPT11-03** (Amend the text concerning Master Planned Developments to eliminate the need for a residential component.)

There was discussion by the Commission in favor of the amendment.

**Moved by Commissioner Buss, seconded by Commissioner Watson, to recommend CPT11-03 to City Council with a recommendation of approval. Passed 5-0.**

**CPT11-04** (Revise discussion of Primary & Secondary Open Space)

It was determined that this amendment was combined with CPT11-01.

**CPT11-05** (Add language to Capital Facilities Plan (Chapter 8))

Commissioner Taylor asked about text to be added or changed. Mr. Pilcher said if the Commission wants changes, staff needs to hear what those would be. Commissioner Taylor discussed combining Policy CF-20 with CF-17 since they are redundant. He said there needs to be a level of service definition tied to NFPA (National Fire Protection Association). He discussed page 8-23, that other stations cannot be considered first response stations. He said on page 8-24 a level of service (LOS) definition needs a staffing level of firefighters/1,000 population. He said that on page 8-26 it is not just new development that drives the need for additional stations.

Mr. Pilcher said the Capital Facilities Plan applies only to facilities; staffing is dealt with elsewhere through budget or adoption of a fire services plan document. He stated impact fees cannot be used to pay for staff. Mr. Pilcher said the Fire Chiefs did review the language and the text regarding other stations was brought forth by the Chiefs. He said the Commission could table this until the next meeting, however there needs to be language in the Comprehensive Plan before the City can adopt a fire impact fee. Commissioner Taylor said the main suggestion was adding a reference to NFPA standards in the LOS definition. There was further discussion by the Commission on this item. Commissioner Taylor requested additional time to propose some revised language; this item was then tabled until later in the meeting.

**CPT11-06** (Revised language relating to private utilities)

There was discussion by the Commission in favor of the amendment.

**Moved by Commissioner Taylor, seconded by Commissioner Watson, to recommend CPT11-06 to City Council with a recommendation of approval. Passed 5-0.**

**CPT11-07** (Adoption of a Trails element to the Comprehensive Parks Plan)

Commissioner Kaye asked about the reason for the reduction in the amount of trails in the plan. Mr. Pilcher said the original plan had a \$20 million price tag, and the feedback from Council was that the plan was too ambitious. Staff was directed to pare it down, resulting in the reduced

version with \$3 million in improvements. He explained that with a plan, the City can compete for grant money; without a plan it is difficult to compete for funds.

Commissioner Taylor discussed public comment about concerns on the differences between the plans. Commissioner Thesenvitz said the Commission talked about it in a workshop session earlier this year. Commissioner Taylor said it can always be modified next year. Mr. Pilcher affirmed that is correct, as the code only prohibits hearing items again that come from the docket, those that are initiated by Planning Commission resolution.

**Moved by Commissioner Watson, seconded by Commissioner Thesenvitz, to recommend CPT11-07 to City Council with a recommendation of approval. Passed 5-0.**

**CPT11-08** (Transportation concurrency standard for SR-169)

Commissioner Watson recommended leaving it the way it is at LOS (level of service) D. He said 3<sup>rd</sup> Ave would be jeopardized if the change is enacted. Commissioner Thesenvitz said that the road doesn't have to be changed, just don't allow more traffic on it. Commissioner Taylor said the amendment doesn't mandate anything; it gives them the option to look at it. Commissioner Watson asked about what would be the advantage to the City to go from LOS D to C.

Commissioner Thesenvitz said the City would have to consider more growth before allowing it with the LOS change. Commissioner Taylor said the City doesn't really have authority because it is a state highway. He said the amendment allows some say within the city limits over what happens. Commissioner Watson said he doesn't want to give the state more leverage. Commissioner Thesenvitz said it gives the city discretion in decision making.

Commissioner Watson asked staff for the reason behind their recommendation. Mr. Pilcher referenced the letter from Mr. Rimbo, use of the word "shall" and that the LOS in the rest of City is C. He stated Council addressed this issue previously and adopted a LOS of "D" for SR 169. He said this amendment will set up a framework for pressure to change the LOS on 3<sup>rd</sup> Ave. He referenced a letter from Mr. Lund that discussed state law and the appropriateness of the amendment.

Commissioner Thesenvitz spoke about possible solutions. Mr. Pilcher discussed other communities and how they deal with LOS. Commissioner Watson said he doesn't see the advantage to the City of the proposal. Commissioner Buss discussed concerns about access to SR 169. Commissioner Kaye spoke about the success of roundabouts in other communities. The Commission had further discussion about concurrency testing on SR 169, the merits of the amendment and legal implications.

**Moved by Commissioner Watson, seconded by Commissioner Buss, to forward CPT11-08 to City Council with a recommendation of denial. Vote 2-2. Chairman Kaye as the tie breaker indicated he was opposed to the motion, so the motion failed.**

**Moved by Commissioner Thesenvitz, seconded by Commissioner Taylor, to forward CPT11-08 to City Council with a recommendation of approval because it gives more flexibility in the future. Passed 3-2.**

**CPT11-09** (Various revisions suggested by Save Black Diamond, 1.5.1 King County Countywide Planning Policies)

Commissioner Thesenvitz discussed reasons why he was opposed to the amendment. The Commission continued discussion on the merits of the amendment. Commissioner Buss said purpose and intent is up to interpretation.

**Moved by Commissioner Thesenvitz, seconded by Commissioner Taylor, to forward CPT11-09 to City Council with a recommendation of denial. Passed 5-0.**

**CPT11-10** (Various revisions suggested by Save Black Diamond, 2.3 UGA Policies)  
Commissioner Taylor spoke in favor of the amendment because of eminent domain abuses. Commissioner Thesenvitz asked for clarification on the Commission's flexibility in dealing with this amendment. Mr. Pilcher said the Commission can strike words if so desired. Commissioner Taylor said the City needs to strengthen their stance against abuses of eminent domain. Commissioner Thesenvitz asked a question about tax authority and the effect on CFDs. Mr. Pilcher said CFDs are new legislation and provided a brief overview.

**Moved by Commissioner Buss, seconded by Commissioner Taylor, to forward CPT11-10 to City Council with a recommendation of approval, with a change in the spelling of "imminent" to "eminent". Passed 5-0.**

**CPT11-11** (Various revisions suggested by Save Black Diamond, 4.3.2 Water Quality Concepts, Objectives, and Policies)

**Moved by Commissioner Watson to forward CPT11-11 to City Council with a recommendation of approval. Motion died for lack of a second. Commissioner Watson withdrew the motion.**

**Moved by Commissioner Taylor, seconded by Commissioner Watson, to forward CPT11-11 to City Council with a recommendation of denial. Passed 5-0.**

**CPM11-01** (In-City Forest; change from Low Density Residential/MPD overlay to Park; concurrent change in zoning from R4 to new Park zone)  
**CPM11-05** (Eagle Creek Park: change from Low Density Residential to Park; concurrent change in zoning from R6 to new Park zone)

**Moved by Commissioner Watson, seconded by Commissioner Thesenvitz, to forward CPM11-01 and CPM11-05 to City Council with a recommendation that they not be approved, pending resolution of the Park zone. Passed 5-0.**

**CPM11-02** (Correct MPD overlay boundary to conform to the approved Lawson Hills MPD property boundaries)  
**CPM11-03** (Change the water tower site within the Lawson Hills MPD from Public to Low Density Residential/MPD Overlay)  
**CPM11-04** (Black Diamond Historical Museum site: change from Town Center to Public; concurrent change in zoning from Town Center to Public)  
**CPM11-06** (Update all maps throughout the Plan to reflect the current city limits)  
**CPM11-07** (Amend Figures 4-3 & 5.2 to ensure consistency with SAO maps and update as needed)

**Moved by Commissioner Watson, seconded by Commissioner Thesenvitz, to forward CPM11-02, CPM11-03, CPM11-04, CPM11-06 and CPM11-07 to City Council with a recommendation of approval. Passed 5-0.**

**CPT11-05** (Add language to Capital Facilities Plan (Chapter 8))

The Commission resumed discussion on this amendment. Commissioner Buss asked staff about fire impact fees. Mr. Pilcher said the fee is assessed at the time of building permit for each dwelling unit and on a square foot basis for commercial/industrial. Commissioner Buss asked if it would affect replacement dwellings. Mr. Pilcher said it depends on the code structure but those probably would be exempted. Commissioner Taylor suggested several changes including on page 8-22 policy CF-20 left in place, insert after "that" "targets NFPA standards and provides", on page 8-26 in the second line insert after "existing" "and therefore new development creates the need".

**Moved by Commissioner Taylor, seconded by Commissioner Watson, to forward CPT11-05, to City Council with a recommendation of approval with noted changes to Policy CF-20 and additional wording on page 8-26. Passed 5-0.**

#### **APPROVAL OF MINUTES**

The Commission discussed the benefits of the Tri-City Planning Commission meeting held in Covington. They recalled discussing holding the meeting one time each year and that Commissioners asked for their Planning Directors to meet and bring items to the Tri-City meeting. Commissioner Buss said he liked the way Covington sets up a work agenda for the whole year. Commissioner Kaye stated there was discussion about the growth in Black Diamond. He said the MPD is an efficient way of dealing with it rather than haphazard growth.

**Moved by Commissioner Watson, seconded by Commissioner Buss, to approve the minutes of the Tri-City Planning Commission meeting (October 6, 2011) as written. Passed 3-0, 2 abstained (Commissioners Thesenvitz and Taylor).**

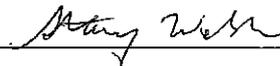
The Commission discussed their schedule and decided to cancel their regular November meeting (November 8<sup>th</sup>) and meet again on their regular date in December.

**Moved by Commissioner Watson, seconded by Commissioner Buss, to cancel the November 8<sup>th</sup> meeting and meet next on December 6th. Passed 5-0.**

#### **ADJOURNMENT**

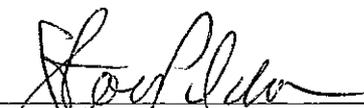
Moved by Commissioner Watson, seconded by Commissioner Taylor, to adjourn. Passed 5-0.  
**The meeting adjourned at 9:35 p.m.**

Minutes prepared by: Stacey Welsh, Associate Planner

  
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~~Bob Kaye, Chairman~~  
KEITH WATSON

ATTEST:

  
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Planning Commission Secretary