

**BLACK DIAMOND  
PLANNING COMMISSION  
MINUTES OF OCTOBER 18, 2011 MEETING**

**CALL TO ORDER**

Chairman Bob Kaye called the meeting to order at 7:00 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, Sheri Roth and Keith Watson  
Absent: Pam Thurmond (excused)  
Staff: Community Development Director Steve Pilcher and Associate Planner Stacey Borland

**PUBLIC COMMENTS**

Cindy Proctor spoke about Planning Commission member attendance, the Comprehensive Plan Amendment for the Black Diamond Elementary school parking lot and concerns about the Enumclaw School District.

**APPROVAL OF MINUTES**

**Moved by Commissioner Taylor, seconded by Commissioner Thesenvitz, to approve the minutes of the September 20, 2011 meeting as written. Passed 6-0.**

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

Mr. Pilcher discussed the nature of the public hearing and the order of events for the evening. Commissioner Kaye polled the audience for items of interest to determine the order of items during the hearing.

**CPT-11-01** (Draft a land use category description for "Park" and an implementing "Park" zone district.) Mr. Pilcher discussed the Comprehensive Plan map and zoning map in general and in relation to the proposed amendments. Mr. Pilcher provided an explanation of the Public zone and allowed uses. Staff drafted a Parks zone district at the request of the Commission.

Mr. Pilcher acknowledged concerns related to the Lake Sawyer Regional Park (LSRP) site and distributed an excerpt from the Lake Sawyer Park Development Concept Plan (part of the adopted Parks, Recreation and Open Space Plan). He spoke about the RCO (Recreation Conservation Office) contact at the state and distributed an e-mail that discussed active use of LSRP. Mr. Pilcher explained that the proposed comprehensive plan amendment is not specific to LSRP; it applies to the whole city. Commissioner Taylor asked about the binding effect of the documentation from the State. Mr. Pilcher stated that the City is still waiting for additional information from the state. Mr. Pilcher clarified that the Commission is not holding a public hearing on what can happen in LSRP.

Public Testimony

Cindy Proctor spoke about documentation she has regarding LSRP and funding. She stated that the ICA/RCO application summary references active uses in a portion of the park. She spoke about funding and covenants on the property and facilities for the site. She stated the City has not

done their due diligence on this issue. She encouraged the Commission to send CPT11-01 back to staff to create a public/private task force for next year's comprehensive plan amendment process.

Vicki Harp spoke about active uses and cumulative impacts on the community and the need to learn more about this item. She recommended the item be tabled for additional development and EIS preparation.

Sheila Hoefig spoke about the way CPT11-01 is written and concern about right protections being in place for LSRP since it is different than other parks in the city. She spoke about concerns for eagle protection and ballfield impacts. She noted flaws in item 18.48.010.C as it vests the Parks plan and found item D unclear. She stated the Lake Sawyer park plan has inconsistencies and pointed out areas of concern on the Comprehensive Plan map displayed in the room. She spoke about concerns related to a dancehall shown in a passive area and stated that there is nothing in the document about a dancehall or community center. She said that the community input was for passive recreation and a golf course would be better in another location. She stated her concern about uses that could end up in LSRP.

Cindy Wheeler spoke about concerns on the intent for active use at LSRP and her experience on the parks planning committee. She spoke about her concern related to above ground utilities as a use. She stated perhaps there should be more than one park category and encouraged the Commission to table the item until next year.

Mark Davidson spoke about concerns related to the requirement to have lighted active ballfields. He recommended the item be tabled until next year to have adequate information.

Bill Kombol spoke about the designation shown on the zoning map for parcel #1021069061, 10 acres which are not publicly owned.

Lisa Garvich spoke about comments provided by others and stated that doubt and questions exist on this issue.

Commissioner Taylor stated that it does not appear that people are opposed to a "parks" definition; it just needs to be more thought out.

**CPT-11-02** (Amend language throughout the Plan to indicate that residential densities are to be calculated based upon "net" instead of "gross" acreage.) Mr. Pilcher discussed the amendment, staff recommendation, TDR (Transfer of Development Rights) program, developable land, the MPDs' (Master Planned Developments) use of TDRs, residential cluster zone district, BDUGAA (Black Diamond Urban Growth Area Agreement), BDAOSPA (the Black Diamond Area Open Space Protection Agreement), using gross and not net to calculate density and distributed a letter from Bill Kombol.

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

#### Public Testimony

Peter Rimbo spoke on behalf of the Citizens Technical Team and stated that he is not familiar with Black Diamond regulations on this. He said he does not understand how the TDR program is predicated on lands that are not developable and believes the TDR program has flaws in it. He stated his support for the amendment and that the TDR program should be modified later.

Bill Kombol, owner of Palmer Coking Coal, spoke about involvement with the TDR program creation and purpose of the program. He said lands were annexed under the BDUGAA with a

requirement to protect open space and it provided a check on development in the annexed area. He stated he was unsure how the proposed amendment came to be, but believed it to be an attack on the TDR program. He said the staff recommendation dealt with theoretical building analysis, not the analysis that was done in 2004 for the TDR program. He spoke about the argument made by others that only developable land should be part of the program being the exact opposite of the purpose of the program. He spoke about the city's bank of TDRs that could be removed to improve the program.

Sheila Hoefig distributed a comment letter to the Commission prepared by Councilmember Craig Goodwin. She spoke about Councilmember Goodwin's requested changes. She spoke to items contained in the letter including a list of question from Councilmember Goodwin and a table of data.

Cindy Proctor spoke about her support for the amendment. She spoke about large MPDs, future growth, how using net acres is consistent with GMA regulations and the Cascade Land Conservancy. She stated she believes city staff is incorrect on this matter. She said the amendment does not decimate the TDR program; there are sufficient TDRs to meet demand. She spoke about farmers on Green Valley Road giving up their rights to development. She spoke about how the TDR program benefits a few landowners, this amendment will not stop growth and will not impose unfair costs on property owners.

Mario Sorci spoke about the establishment of the TDR program. He spoke about the history of what King County was doing with sensitive areas and taking peoples' property. He said Black Diamond did not want to take peoples' property. He stated they wanted to transfer development elsewhere and compensate people for voluntarily protecting their property for everyone. He stated that going to net acres is wrong.

George McPherson spoke about the establishment of the TDR program. He spoke about his attendance at a meeting held by Mr. Goodwin and population projections. He stated the Commission should look at the figures submitted by Mr. Goodwin and what it means for population growth in this area.

Vicki Harp spoke about the history of growth projections and net acres vs. gross acres is how the MPD size became more than what everyone thought it would be. She made reference to Mr. Goodwin's proposal. She stated growth will move ahead but consideration needs to be given.

Geoff Bowie spoke about how the amendment would strip the TDR program of what it is trying to do. He spoke about Mr. Sorci's testimony and stated that not every sensitive area is a sending site or a receiving site. He said that the program cannot transfer in density from King County. He spoke about how the program can function. He stated if the amendment goes forward it would affect the residential cluster program. He stated the need to talk about something else that would do good for the town, such as a ban on septic systems.

Cindy Wheeler said the amendment should be approved. She spoke about not having clarity of information on this; spoke about Mr. Goodwin's public meeting and items discussed there and the need for facts from Mr. Goodwin.

Colin Lund spoke on behalf of Yarrow Bay. He stated it seems inappropriate to be considering this due to the Comprehensive Plan code, since this was adopted by Council within the last three years. He stated he does not believe circumstances have changed to warrant consideration of it (BDMC 16.30.100.C.6). He referenced a letter from Growth Management Services and its discussion of gross vs. net. He stated the TDR program needs gross densities to be used, not net; the whole foundation of the city is built on this. He said over 150 property owners have TDRs in

the city, and they do not want to see that right taken away. He stated the cluster provision in the zoning code would be undermined as well.

Robbin Taylor spoke about the TDR program and saw no reason why the amendment would affect the TDR program. She sees a problem with developers' use of the program. She stated concern about what the developer calculates for gross vs. net. She said the amendment addresses large developers and MPDs, not landowners who own TDR rights. She recommended the Commission forward the amendment to the Council.

Commissioner 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.) Mr. Pilcher presented the item, staff recommendation and what the code currently states on the residential component.

#### Public Testimony

Bill Kombol stated support for the amendment and the residential component should have never been required.

Cindy Proctor stated support for the amendment, which gives the city flexibility to place commercial growth and will make for better development.

Cindy Wheeler stated support for the amendment, which gives flexibility in planning. She commented on the rules of procedure, asked the Commission to extend the written comment period and continue the hearing to a future date to consider additional public testimony not available tonight.

Colin Lund stated Yarrow Bay does not support the amendment because of timing and referenced BDMC 16.30.100.C.6. He stated the three year period has not been exhausted yet. He said if the housing requirement is removed then a commercial only MPD couldn't meet the finding of providing a variety of housing types required in an MPD (BDMC 18.98.080.A.6), which creates an internal conflict in the code.

Cindy Wheeler spoke about the testimony of Mr. Lund. She stated this amendment wouldn't violate because it was never before the Planning Commission or public for comment the first time.

**CPT11-07** (Adoption of a Trails element to the Comprehensive Parks Plan) Mr. Pilcher presented the item and the history of development of the plan.

#### Public Testimony

Cindy Proctor said it seems the MPDs were submitted earlier than they should have been. She spoke about how the staff report states the scope has been reduced, but there is no comparison matrix on the trail mileage. She said it seems the high standard of trails is being reduced and can't tell if there are MPD trail reductions. She recommended the Commission not support the amendment and ask staff to provide a trail matrix and narrative regarding the MPD approvals.

Colin Lund stated the MPDs are approved and their trail planning is not subject to any changes related to the trail plan. He said the MPDs are vested to plans in effect at the time they were approved.

Cindy Proctor discussed Mr. Lund's comments and the status of the MPDs.

Sheila Hoefig stated the MPDs have been approved by an illegal process.

**CPT11-08** (Transportation concurrency standard for SR-169) Mr. Pilcher spoke about the previous presentation by Mr. Rimbo and the staff recommendation. Mr. Pilcher spoke about the previous Council work on LOS (level of service) and the choice Council made at that time to reduce impacts on neighboring property owners.

Public Testimony

Colin Lund stated Yarrow Bay does not support the amendment. He said they looked at RCW 36.70A.070.6A.ii.c and GMA concurrency requirements do not apply to transportation facilities of statewide significance. He spoke about how King County handles this situation and submitted a packet for the Commission.

Peter Rimbo thanked the Commission for the opportunity to discuss this item with them at their last meeting. He spoke about information presented by Mr. Lund. He said SR-169 is a highway of statewide significance, which affects funding and is exempt from transportation concurrency testing. He stated state law doesn't say you can't do it, only that you don't have to. He stated the Citizen's Team believes the Comprehensive Plan should be changed to give the city more control; it would give the city flexibility, although it doesn't have to use it. He spoke about staff's recommendation not being true. He encouraged the Commission to read the RCW and the King County Comprehensive Plan. He stated the amendment does not require a certain level of service, it just provides flexibility.

**CPT11-05** (Add language to Capital Facilities Plan (Chapter 8) relating to fire impact fees) Mr. Pilcher spoke about the amendment and the City's use of Randy Young to prepare the proposed language, which provides a policy basis-it does not actually establish the fire impact fee at this time.

Public Testimony

Cindy Proctor stated she was unsure if a fee was being established or if the amendment was specifying how a fee can be established. She said she was supportive of the amendment. She spoke about the need to make sure whether land is being donated at the MPD sites and any adjustments that need to be made when the fee is being established.

**CPT11-06** (Revised language relating to private utilities) Mr. Pilcher spoke about the amendment and the proposed language from Puget Sound Energy-just narrative, not any policy. The amendment acknowledges there are other utility providers in the city.

Public Testimony

None

**CPT11-10** (Various revisions suggested by Save Black Diamond, 2.3 UGA Policies) Mr. Pilcher spoke about the amendment and noted that although staff understands the concern, staff does not support the amendment. He stated state law may not even allow use of eminent domain to support private utility providers. He said this could add confusing language to the plan.

Public Testimony

Colin Lund stated Yarrow Bay is not supportive of the amendment, which adds unnecessary language to the plan. He said "eminent" is misspelled in the amendment and there are already protections in place for use of eminent domain. He spoke about concerns related to tax authority and CFDs (Community Facilities Districts); this seems to be an attempt to not allow it for public infrastructure. He stated a tax authority could be used for affordable housing, so the amendment

could result in other impacts not anticipated. He said the Commission should consider the implications before acting.

Cindy Proctor submitted written comments and stated a CFD is a special assessment. She stated the Master Developer intends to have special assessments and eminent domain can be done through an interlocal agreement with the city. She encouraged the Commission to listen to the Council CFD workshop. She said the amendment language was too ambiguous and needed to be sent to a task force for better understanding of the intent and come back next year.

Robbin Taylor said she was confused why eminent domain is in with a taxing authority; they should be broken out into two different amendments to the Council. She spoke about how the City should protect citizens so that property is not taken by the City for use by a developer.

Cindy Wheeler spoke about the obligation to protect citizens against interlocal agreements and eminent domain, given the economy and property values being at their lowest.

**CPM11-01** (In-City Forest; change from Low Density Residential/MPD overlay to Park; concurrent change in zoning from R4 to new Park zone) Mr. Pilcher spoke about the amendment.

Public Testimony

Geoff Bowie asked how this is being considered if the City does not own it yet. He said for the Commission to not waste their time if the City does not own it yet.

Cindy Proctor said the item is predicated on things that have not happened yet and asked the Commission to not move this forward.

Melanie Gauthier stated there are quite a few errors on the map and spoke about the need for more information.

**CPM11-02** (Correct MPD overlay boundary to conform to the approved Lawson Hills MPD property boundaries) Mr. Pilcher introduced the amendment.

Public Testimony

None

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

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) Mr. Pilcher introduced the amendment.

Public Testimony

Geoff Bowie stated the need to keep the Museum and spoke about the Black Diamond Townsite from 1939. He stated the Commission needed to check with the City Attorney for any covenants concerning the property and submitted a copy of the plat.

**CPM11-06** (Update all maps throughout the Plan to reflect the current city limits) and **CPM11-07** (Amend Figures 4-3 & 5.2 to ensure consistency with SAO maps and update as needed) Mr. Pilcher introduced the amendments.

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) Mr. Pilcher introduced the amendment.

Public Testimony

None

**CPT11-04** (Revise discussion of Primary & Secondary Open Space) This item was addressed earlier in the evening.

**CPT11-09** (Various revisions suggested by Save Black Diamond, 1.5.1 King County Countywide Planning Policies) Mr. Pilcher introduced the amendment and stated staff recommended approval.

Public Testimony

None

**CPT11-11** (Various revisions suggested by Save Black Diamond, 4.3.2 Water Quality Concepts, Objectives, and Policies) Mr. Pilcher introduced the amendment and stated the city has no authority to designate this.

Public Testimony

None

Commissioner Kaye closed the public hearing at 9:21 p.m. He stated it may be reopened by motion. Commissioner Taylor stated they should hold the record open at least. Mr. Pilcher stated the Commission needed to continue the hearing to a specific time/date. He spoke about the schedule; the 11/8 regular meeting date is also election night. He spoke about the ability to amend the Comprehensive Plan one time a year and the need to get the amendments to Council before the end of the year. The Commission and staff continued the discussion about meeting date possibilities.

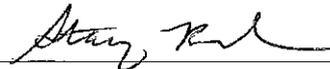
**Moved by Commissioner Taylor, seconded by Commissioner Thesenvitz, to continue the public hearing to November 1<sup>st</sup> and maintain the written record open for two weeks from today (10/25/11). Passed 6-0.**

Geoff Bowie stated the City should notify all TDR holders on the gross vs. net amendment. He spoke about the need to talk to the City Attorney regarding consequences.

**ADJOURNMENT**

Moved by Commissioner Watson, seconded by Commissioner Buss, to adjourn. Passed 6-0. **The meeting adjourned at 9:33 p.m.**

Minutes prepared by: Stacey Borland, Associate Planner

  
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Bob Kaye, Chairman KEITH WATSON

ATTEST:  
  
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Planning Commission Secretary