



CITY OF BLACK DIAMOND
PLANNING COMMISSION MEETING AGENDA
June 7, 2011 7:00 PM
25510 Lawson Street, Black Diamond, Washington

- 1) CALL TO ORDER, ROLL CALL
- 2) PUBLIC COMMENTS: Individuals wishing to address the Planning Commission regarding any item not on this meeting's agenda may do so at this time.
- 3) APPROVAL OF MINUTES – April 12, 2011
- 4) CONTINUED PUBLIC HEARING ON MISCELLANEOUS MINOR AMENDMENTS TO TITLES 17 AND 18, BLACK DIAMOND MUNICIPAL CODE
(Testimony closed)
 - a) Title 17: preliminary plat appeals
 - b) Title 18: temporary signs
- 5) REVIEW OF POTENTIAL 2011 COMPREHENSIVE PLAN AMENDMENTS
- 6) DEPARTMENT REPORT
- 7) ADJOURN



CITY OF BLACK DIAMOND
PLANNING COMMISSION
25510 Lawson Street, Black Diamond, Washington

M E M O R A N D U M

Date: June 1, 2011

To: Planning Commission

From: Steve Pilcher, Community Development Director

Re: Continued Public Hearing on Preliminary Plat appeal procedures, Temporary Signs

At your April meeting, the Commission conducted a public hearing regarding a potential amendment to Title 17 (Subdivision Code) regarding preliminary plat appeal procedures. It also conducted a hearing on potential amendments to the Sign Code (Chapter 18.82 of the Zoning Code) regarding the use of banners and sandwich board signs. After receiving public testimony on both issues, the Commission individually tabled each matter to its next meeting.

The regularly-scheduled May meeting was canceled due to a lack of a quorum. Therefore, these items are being brought forth at the June 7th meeting for your consideration and action.

Preliminary Plat appeal procedures

Various sections of Title 17 (Subdivision Code) indicate that the Hearing Examiner is granted authority to conduct public hearings and make rulings on preliminary plat applications. However, these sections indicate that an individual dissatisfied with the Examiner's decision may appeal that decision to the City Council. Given this scenario, it is questionable whether the Council should review materials and/or discuss with constituents a proposed preliminary plat which could potentially wind up in front of the Council on appeal.

BDMC 18.08 states that appeals of the Examiner's decision on a preliminary plat would go directly to Superior Court. This is consistent with all other types of quasi-judicial actions. (Except for Master Planned Developments and Development Agreements, for which the Examiner actually makes a *recommendation* – not a decision – to the Council).

The proposed amendments to Title 17 would make it consistent with BDMC 18.08. The City Attorney has noted that since Chapter 18.08 was more recently amended, in the event of any dispute regarding process, it most likely would be deemed to prevail. The proposed code amendment is simply meant to eliminate an apparent conflict.

Several individuals indicated their opposition to the proposed change, some wishing to avoid the need to appeal an Examiner's decision to court, others expressing basic opposition to incremental amendments to the City's code. The Commission left the written record open for

two days following the hearing; one written comment was received via email and forwarded on to the Commission (copy attached).

Staff has also previously passed on an opinion from the City Attorney's office (copy attached).

Recommendation: Forward the proposed code amendment on to Council as presented by staff.

Temporary Sign amendments

The City Council had previously made a "time sensitive" amendment to the Code to allow more extensive use of temporary signs (banners, sandwich boards) once the Kummer Bridge was reopened in 2009. These provisions had a built-in expiration date at the end of 2010. The Planning Commission worked with staff to draft proposed code amendment language.

These revisions to certain sections of the Sign Code (BDMC 18.82) will accomplish the following:

- The definition of "banner" is modified to indicate it refers to a temporary sign only.
- "Portable signs" are proposed for elimination in favor of the use of sandwich board signs.
- The definition of "special sales" etc. signs is revised to eliminate the use of wind-driven accent devices.
- Standards for sandwich board signs are clarified to provide a minimum clear zone on a sidewalk and to note that a permit is not required.
- The use of banners is capped at 180 days total per calendar year, with specific time limits for individual times of use. The need to obtain a permit is noted.
- All allowances for use of pennants, wind-driven accents, etc. are eliminated.

Several citizens testified at the public hearing in April, generally speaking in favor of allowing the use of temporary signs with little restrictions. The Washington State Department of Transportation had also provided comments, which they subsequently elaborated upon in an email received after the hearing had closed (copy attached). The Commission indicated it wished to act upon this matter at its May meeting (which was canceled due to lack of a quorum).

Recommendation: Forward the proposed code amendment on to Council as drafted.



Michael R. Kenyon
Bruce L. Disend
Shelley M. Kerslake

Kari L. Sand
Chris D. Bacha
Margaret J. King
Bob C. Sterbank
Rachel B. Turpin
Ann Marie J. Soto

TO: Steve Pilcher, Community Development Director

FROM: Chris Bacha, City Attorney

DATE: May 4, 2011

RE: Appeal Procedures – Amendment to Title 17

On April 12, 2011, the Planning Commission conducted a public hearing regarding a proposed ordinance amending BDMC Title 17. The purpose of the proposed ordinance, as explained in the recital clauses of the ordinance, was to remove provisions in BDMC Title 17 that are inconsistent with more recently enacted provisions of BDMC Chapter 18.08. However, it appears that the comments made during the public hearing have raised questions regarding a different issue, i.e., whether or not the City Council should hear appeals of decisions on preliminary plat applications. You have asked me provide a memo to assist the Planning Commission in addressing these comments.

DISCUSSION:

On June 18, 2009 the City Council adopted Ordinance No. 09-909 repealing and re-enacting Title 18 (Zoning). The City adopted this ordinance to bring the zoning code into compliance with the City's comprehensive plan and the Growth Management Act. The majority of Title 18 had not been amended since 1980. This ordinance included a new Chapter 18.08 as part of the zoning code. This chapter was enacted to, among other things, establish standard procedures, eliminate redundancy in appeals processes and ensure consistency in land use decisions, such as divisions of property. It provides uniform procedures and standards for all decision types and appeals from those decisions, including preliminary plat approval.

Ordinance No. 09-909 made approval of a preliminary plat a type-3 decision made by a hearing examiner and provided that the hearing examiner's decision may only be appealed to the Superior Court. BDMC 17.16.040, 17.15.010 and 17.24.010, all of which pre-existed the adoption of Ordinance No. 09-909, had provided for a closed record appeal before the City Council. These provisions were superseded by the new procedural requirements set forth in BDMC Chapter 18.08; however, they were never amended to reflect those changes when Ordinance No. 09-909 was adopted. Thus, if a person looks only at the provisions for appeal set forth in BDMC 17.16.040, 17.15.010 and 17.24.010, confusion could be created as to the proper

procedures for an appeal. Thus, the proposed ordinance amending Title 17 was drafted solely to remove any such confusion.

The comments from the citizens are generally focused upon the merits of having an appeal before the City Council. Although this is an important subject matter, this is not the subject of the proposed ordinance before the Planning Commission. The issue raised in the citizen comments was resolved in 2009 when the City Council adopted Ordinance No. 09-909. That ordinance eliminated the right to appeal a preliminary plat decision to the City Council and created uniform standards and procedures for appeals of all land use decisions. Thus, even if the proposed ordinance is not adopted by the City Council, the appeal procedures set forth in BDMC Chapter 18.08 will control for any plat application filed after the effective date of Ordinance No. 09-909.

The only issue before the Planning Commission relative to this proposed ordinance is whether or not BDMC Title 17 should be amended as proposed to eliminate the possibility of confusion regarding the process for appeal. This is the sole purpose of the proposed ordinance. Whether or not BDMC Chapter 18.08 should be amended to allow an appeal to the City Council is an entirely separate subject matter that is not currently before the Planning Commission and was not part of the notice for the public hearing. Thus, the focus of the Planning Commission should be limited to the issue that was the subject of the hearing.

I hope that the foregoing responds to your question.

PRELIMINARY PLAT APPEAL PROCESS AMENDMENTS

17.15.010 Substantive standards.

The requirements set forth in this chapter are substantive standards that must be met in order for a preliminary plat to be approved. The hearing examiner, in making its decision whether the plat should be approved, approved with conditions, or denied, shall make findings as to each of the approval criteria set forth in this chapter. The hearing examiner's decision shall be final action, unless an appeal is timely filed ~~to the city council.~~ in accordance with BDMC 18.08 (Administration: Procedures, Notice and Appeals).

17.16.040 - Appeal from hearings examiner decision.

~~A. The hearings examiner's decision on a preliminary plat application shall be final city action unless within fourteen days of the date of his or her decision an appeal is filed in accordance with BDMC 18.08 (Administration: Procedures, Notice and Appeals) with the city clerk, appealing the decision to the city council. The appeal shall not be deemed timely unless a complete application for appeal, on the city's appeal form, is filed with the clerk, and the appropriate filing fee paid, by five p.m. on the fourteenth day after the examiner's decision. An appeal may be filed by the city administrator, the applicant, or any person of record before the hearings examiner.~~

~~B. The hearing before the city council shall be a closed record appeal. The council shall not receive new evidence, but shall only receive legal argument, either orally or in writing, and shall allow the applicant and the appellant thirty minutes to present their oral argument. If the applicant is the appellant, then the city shall have thirty minutes to present its response to the appeal.~~

~~C. The decision of the city council may be appealed by a party withstanding to the King County superior court pursuant to Chapter 36.70C RCW. A petition for a judicial appeal must be filed within twenty one days of the issuance of a decision.~~

17.24.010 Review.

Any decision approving or disapproving any plat shall be reviewable ~~pursuant to Chapter 36.70C RCW.~~ in accordance with BDMC 18.08 (Administration: Procedures, Notice and Appeals).

Steve Pilcher

From: Bolotin, Leah <BolotiL@wsdot.wa.gov>
Sent: Thursday, May 05, 2011 10:06 AM
To: Steve Pilcher; COM GMU Review Team
Cc: O'Leary, Pat; Hunter, Carol; Warren, Richard; Klockenteger, Katherine; rpiro@psrc.org; Jeff Storrar
Subject: RE: Black Diamond Expedited Review, COM Tracking #16746
Attachments: Highway Advertising Control, WSDOT, Mar 2011.pdf

Steve,

I had a chance to look at this again and would like to clarify further:

1. TEMPORARY SIGN AMENDMENTS, p 2: Please amend the text which reads "signs may be located in the public right-of-way..." to prohibit placement of any signs within the SR 169 right-of-way itself.
2. Contrary to my email below, signage which can be viewed from SR 169 is not prohibited, it is regulated. See [RCW Chapter 47.42](#), [WAC Chapter 468-66](#), and/or our [Highway Advertising Control webpage](#). I am also attaching above a newly-updated version of the *WSDOT Highway Advertising Control booklet* which nicely reprints and links you to these two statutes.

I realize that a month has gone by but if you could stick this in your file and take care of it next time we'd appreciate it. Sorry for the time lag.

Please let me or Pat know if you have any questions.

Thank you Steve,
Leah

From: Bolotin, Leah
Sent: Friday, April 01, 2011 2:57 PM
To: 'Steve Pilcher'; COM GMU Review Team
Cc: O'Leary, Pat; Hunter, Carol; Warren, Richard; Klockenteger, Katherine
Subject: Black Diamond Expedited Review, COM Tracking #16746

Hi Steve,

I had some input from our signage folks regarding the language on page 6, #2, under Temporary Sign Amendments:

"Signs may be located in the public right-of-way directly adjacent to the property upon which the advertised business is located, provided that ..."

The proposed minor edits are fine and we have no comment or issue with the expedited review. However, next time you have an opportunity, WSDOT requests that you add a prohibition to signage being placed in view of SR 169, in compliance with [RCW 47.42.080](#).

Please direct any questions regarding signage reg minutiae to WSDOT Highway Advertising Control Program Manager, Pat O'Leary. He can be reached at 360-705-7296 or pat.oleary@wsdot.wa.gov.

Thanks,

Leah Bolotin, AICP
Senior Transportation Planner
Urban Planning Office
Washington State Department of Transportation
401 - 2nd Avenue S., #300
Seattle, WA 98104-3850
p. 206-464-1264
f. 206-464-1286
leah.bolotin@wsdot.wa.gov

From: Steve Pilcher [<mailto:SPilcher@ci.blackdiamond.wa.us>]
Sent: Friday, March 18, 2011 1:52 PM
To: COM GMU Review Team
Subject: Proposed Development Regulations amendments

Please find attached a request for expedited review of three sets of minor code amendments to the City of Black Diamond's Subdivision and Zoning Codes.

If you have any questions, please feel free to contact me.

Steve Pilcher
Community Development Director
City of Black Diamond
360-886-2560

*** eSafe2 scanned this email for malicious content ***
*** IMPORTANT: Do not open attachments from unrecognized senders ***

TEMPORARY SIGN AMENDMENTS

Chapter 18.82 SIGNS

18.82.020 Definitions.

"Banner" means ~~any a temporary~~ sign of lightweight fabric, vinyl or similar material that is mounted to a building ~~or pole~~ by any means. National flags, state or municipal flags, seasonal flags, or the official flag of any institution or business shall not be considered as banners.

~~"Portable sign" means a sign made of any material, which by its design is readily movable and is not permanently affixed to the ground, structures or buildings.~~

"Sandwich board sign" means a temporary sign set upon the ground, consisting of two sign faces hinged at the top and separated at the bottom to make it self-standing upon the ground.

"Special sale/promotional/business opening/~~closing~~ sign" means a temporary sign such as a banner, flags, ~~pennants~~, and similar devices, ~~or wind-driven sign accents (such as spinners) attached to a sign to attract the attention of the public,~~ used for short durations of time as specified in this code.

"Temporary sign" means any sign or advertising display, intended to be displayed for a limited time only and not permanently attached to a building or site.

18.82.050 Sign standards and conditions.

A. General Regulations.

1. No sign or any part of a sign shall be designed or constructed to be moving by any means, and shall not contain items such as banners, ribbons, ~~and~~ streamers ~~and spinners~~, except as authorized for temporary signs.

~~9. Portable signs shall not exceed twelve square feet in sign area and no more than one such sign may be displayed per business. Portable signs must be located on the premise to which they relate, except real estate directional signs.~~

10. Abandoned signs shall be removed by the owner or lessee of the premises upon which the sign is located within ninety days after the business or service advertised is no longer conducted on the premises.

H. Sandwich Board. In non-residential zones, one ~~sidewalk or~~ sandwich board sign per business shall be permitted subject to the following:

TEMPORARY SIGN AMENDMENTS

1. Signs may be located on private property provided they do not interfere with the opening of car doors, bus stops, loading zones or pedestrian traffic, or create a traffic safety hazard by interfering with the vision of drivers entering or leaving the premises.
2. Signs may be located in the public right-of-way directly adjacent to the property upon which the advertising business is located, provided that no sign shall: ~~block-reduce the travel way of~~ a sidewalk ~~to less than 42 inches~~; encroach into any portion of a required handicapped ramp; be located closer than two feet from the face of curb to the nearest sign edge; or, along roadways with no curbs, be located six feet from the edge of ~~payment-pavement~~ to the nearest sign edge.
3. Owners of such signs shall assume liability for damage resulting from their use.
4. Maximum allowable sign area shall be six square feet per side. Maximum allowable sign height shall be thirty-six inches.
5. Signs shall only be displayed during the hours the premises or business is open to the general public.
6. There shall be no more than one sign per premises in non-residential zones and no more than three signs per premises in residential zones.

~~7. The provisions of this subsection shall expire on December 31, 2010.~~

~~7. A permit is not required.~~

18.82.060 Temporary signs.

~~No permit is required for.~~ The following standards shall apply to all temporary signs:

A. Special sale/promotional or business opening signs shall be permitted in all non-residential zones.

1. Maximum duration shall be :

~~a) 180 days total per calendar year;~~

~~b) sixty (60) days for a business opening/closing event;~~

~~c) one month or upon termination of the special sale or other event that they advertise, whichever is less.~~

2. Maximum area, per site, shall not exceed fifty percent of the size of the permitted wall/façade sign; this area shall not count towards the total allowable sign area.

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TEMPORARY SIGN AMENDMENTS

3. All banners shall be attached to the façade, wall or window of the building which includes the business which they advertise; ~~provided that, until December 31, 2010, banners may be attached to other site features such as fences, poles, etc.~~

~~4. Pennants may be anchored on lighting poles or similar features on private property.~~

~~5. The use of pennants, wind-driven accents and other attention-attracting devices attached to a sign shall be prohibited after December 31, 2010.~~

4. No banner shall be erected without first obtaining a temporary sign permit.

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Steve Pilcher

From: Peter Rimbo <primbos@comcast.net>
Sent: Wednesday, April 13, 2011 7:42 AM
To: Steve Pilcher
Subject: PUBLIC COMMENTS & TESTIMONY FOR PLANNING COMMISSION
Attachments: 4-12-11_PC_Mtg__TAT_Intro_Public_Comments.doc; ATT00001..htm; 4-12-11_PC_Mtg__Title_17_&_18_PPA_Testimony.doc; ATT00002..htm

Steve,

Good morning. Attached please find our Citizens' Technical Team's (1) **Public Comments** and (2) **Title 17/18 Testimony** given by me at last night's Planning Commission meeting. We thank you in advance for passing these on to the Planning Commission members.

Peter Rimbo
Citizens' Technical Team Leader
primbos@comcast.net

"To know and not to do is not to know."-- Chinese proverb

Please consider the environment before printing.

Planning Commission Meeting--4-12-11: Opening Public Comments

My name is Peter Rimbos, 19711 241st Ave SE. I lead a **Citizens' Technical Team** formed after the MPD Ordinances were passed last September.

Our **Objective** is: To understand all critical technical issues related to the proposed MPDs and provide the Public with information necessary to understand ramifications.

Our **Approach** is to:

1. Review the MPD Ordinances and Development Agreements;
2. Write technical "White Papers" to prepare for DA Hearings;
3. Meet with City Staff;
4. Meet with Yarrow Bay and Consultants;
5. Meet with City Council members; and
6. Meet with Planning Commission members.

The first DRAFTs of the DAs were released in September. We thoroughly reviewed these DRAFTs and provided 28 pp of detailed technical comments to City Staff by the November 5 deadline. In December we met with City Staff to discuss our detailed technical comments. The second DRAFTs of the DAs were released shortly after that December meeting. We once again, thoroughly reviewed these DRAFTs. Currently, the City awaits the third DRAFT of the DAs. When available, we again will thoroughly review them and work with City Staff accordingly.

In March we requested meetings with City Council members to discuss specific recommendations to improve the MPD Conditions of Approval. Initially, only two members agreed to meet--Councilmen Goodwin and Saas. However, meetings with some of the other three Council members are being planned. We held four 2+ hr in-depth discussions with Councilmen Goodwin & Saas on **Transportation, Environment, Stormwater & Flooding, and Fiscal Impacts & Schools**. We believe everyone benefited from such a two-way dialogue with Council members, which has been denied citizens for the past 18+ months.

We respectfully request meetings with members of the Planning Commission to discuss our recommendations to improve the MPD Conditions of Approval. Specifically, we wish to discuss the following:

1. **Transportation:** Traffic Modeling & Assumptions, Sensitivity Analyses, Cost/Benefit/Risk Analyses, Internal Capture Rates, Queuing, and Funding Sources.
2. **Environment:** Habitat Preservation, Wildlife Corridors, Stream-Lake-Wetland Complexes, Groundwater Flow, Stormwater Infiltration, Mine & Geologic Hazards, Open Space, and Parks & Recreation.
3. **Stormwater & Flooding:** Phosphorous Loading, Stormwater Runoff & Infiltration, and Stormwater Monitoring.
4. **Fiscal Impacts & Schools:** Fiscal Impact Analyses, Community Facilities Districts, City Solvency, Letters of Credit, Schools, Bonding, and Vesting.

Given the recent Court decision, we now have sufficient time to discuss these issues and recommendations with you. We look forward to scheduling such meetings at your convenience.

On behalf of the Public we thank you.

Planning Commission Meeting--4-12-11: BDMC TITLES 17 and 18 Testimony

My name is Peter Rimbos, 19711 241st Ave SE. I am speaking on behalf of the **Citizens' Technical Team**.

There currently is a conflict regarding how appeals of **Type 3 Hearing Examiner decisions for Preliminary Plats** are to be handled between **18.08.060** and **17.16.040**. **18.08.060** says appeals are filed in Superior Court. **17.16.040** says appeals will be to a City Council closed-record hearing. (A further appeal can then be filed within 21 days to Superior Court.)

The Ordinance in question tonight proposes to "fix" this conflict by changing **17.16.040** to eliminate the opportunity to first appeal to the City Council prior to being forced to go to Superior Court. This would be an unfair burden on citizens, due to prohibitive costs to appeal to Superior Court. It would deny citizens the opportunity to review land-use changes of importance with elected representatives before being required to bring suit against the City.

However, the conflict can be fixed. Simply add a line to **18.08.060** that states, in the case of an appeal of a Type 3 Preliminary Plat decision, the appeal may be to the City Council. This would preserve that intermediate appeal step and save citizens from having to immediately go to Superior Court, should they find fault with a Hearing Examiner decision.

This would be similar to an exception already contained in **TITLE 18** in the case of Type 3 Shoreline Application appeals of Hearing Examiner decisions. **18.08.060** currently says "A Type 3 decision may be appealed to Superior Court, except that a Type 3 decision on a shoreline application may be appealed only to the State Shorelines Hearings Board".

Consequently, we recommend **18.08.060** be amended by adding another exception to that sentence as follows: "...except that a Type 3 decision on a Preliminary Plat application may be appealed to the City Council per BDMC 17.16.040." (There would have to be some minor bookkeeping changes elsewhere.)

We consider this change very important. Consequently, we request our proposed small changes be considered and adopted to eliminate the conflict. This would ensure citizens continue to have an opportunity to review their grievances regarding Preliminary Plat decisions before the City Council at minimum time and expense. We encourage you to put the citizens concerns first in this decision.

Thank you.



CITY OF BLACK DIAMOND
PLANNING COMMISSION
25510 Lawson Street, Black Diamond, Washington

M E M O R A N D U M

Date: June 1, 2011
To: Planning Commission
From: Steve Pilcher, Community Development Director
Re: Potential 2011 Comprehensive Plan Amendments

Title 16 of the Black Diamond Municipal Code addresses the City's Comprehensive Plan and the annual amendment process. Chapter 16.30 specifically deals with the amendment process; both sections 16.30.070 and .100 grant the Planning Commission the authority to initiate amendments. The other way amendments may proceed forward is by individual applications from private property owners, other agencies, etc. As of the date of this memorandum, we have not received any amendment requests, nor has any party suggested an item for the docket. The deadline for both potential actions this year is July 1st.

Staff has prepared a potential list of amendments (attached) for the Commission's consideration. If there is basic consensus to move forward with these proposals, we will prepare a more descriptive list for Commission action at your July meeting, at which time staff will be requesting formal initiation.

I look forward to reviewing this list with you at your meeting next week.

POTENTIAL 2011 COMPREHENSIVE PLAN AMENDMENTS

Future Land Use Plan Map amendments

- In-City Forest lands: change from Low Density Residential/MPD overlay to Public
- Correct MPD overlay boundary to conform with Lawson Hills MPD property boundaries
- Change water tower site with Lawson Hills from Public to Low Density Residential/MPD Overlay
- Museum site: change from Town Center to Public
- Post Office: change from Town Center to Public
- Elementary school parking lot: change from Town Center to Public
- Eagle Creek Park: change from Low Density Residential to Public
- Change all lands designated "Park" to Public

Other map amendments

- Update all maps to current city limits
- Figure 4-3: ensure coal mine hazard areas coincide with SAO maps
- Figure 5-2: ensure consistency with SAO maps and update as needed

Text amendments

- Revise discussion of Primary & Secondary Open Space
- Addition to Capital Facilities Plan relating to fire impact fees
- Revised language relating to private utilities
- Adoption of a Trails element