



CITY OF BLACK DIAMOND  
PLANNING COMMISSION MEETING AGENDA  
January 8, 2013 7:00 PM  
25510 Lawson Street, Black Diamond, Washington

- 1) CALL TO ORDER, ROLL CALL
- 2) ANNUAL ELECTION OF CHAIR & VICE-CHAIR
- 3) APPROVAL OF MINUTES –December 11, 2012
- 4) PUBLIC COMMENTS: Individuals wishing to address the Planning Commission regarding any item not on this meeting's agenda may do so at this time.
- 5) WORKSESSION ON POTENTIAL CODE AMENDMENTS RE: VESTING;  
RESIDENTIAL CLUSTER ZONE; SEPA APPEALS PROCESS
- 6) UNFINISHED BUSINESS
- 7) DEPARTMENT REPORT
- 8) PUBLIC COMMENTS
- 9) ADJOURN



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

**MEMORANDUM**

Date: January 3, 2013  
To: Planning Commission  
From: Steve Pilcher, Community Development Director  
Re: Miscellaneous Code Amendments

Welcome to 2013 and welcome to new Commissioner Jim Kuzaro!

As discussed at the last Commission meeting, there are several potential code amendments staff recommends the Commission consider this year. The Commission's typical process is to review and discuss these first, before arriving at draft amendment language to be presented to the public for its input at a public hearing. At your January meeting next week, staff looks forward to discussing these with the Commission and receiving direction of how to proceed.

There are three potential amendments for consideration at this time:

1. Vesting periods for land use permits
2. Amending the Residential Cluster District (BDMC 18.86) to maintain consistency with a recent amendment to the Comprehensive Plan
3. SEPA appeal procedures

Vesting Periods for Land Use Permits

Last year, the Commission considered a proposed amendment to the Zoning Code that would have extended the "vesting" period for previously-approved land use permits. The particular issue that prompted the code revision was a Site Plan Approval that had been granted for a commercial project along 3<sup>rd</sup> Avenue (SR 169). Based upon those unique circumstances, the City Council later adopted Ordinance 12-978, which provides that any Site Plan Approval granted prior to April 1, 2013 shall expire on April 1, 2015. In other words, their action only affected Site Plan Approvals. Other types of land use permits were not affected by this change.

During its consideration of this issue, the Commission expressed interest in examining approval periods for all types of land use permits, not just Site Plan Approvals. As discussed at your December meeting, preliminary plat approval periods are established in State law (RCW 58.17). Since this is state law, these time periods apply regardless of what our local code states.

The State does not provide approval time periods for lot line adjustments, short plats or binding site plans, leaving this up to local jurisdictions. Currently, our code states that once preliminary approval of a lot line adjustment or binding site plan occurs, final drawings must be submitted within 60 days. (Physical improvements are not required in order to obtain final approval). Short plats are treated similar to preliminary plats: a preliminary short plat approval is valid for 5 years. (City code requires construction of all utility and street frontage improvements in order to obtain final short plat approval, hence, the longer time period).

There are numerous other types of land use approvals that may be authorized per BDMC 18.08.030 (see attached table). Specific approval periods are not established for Type 1, 2 or 3 decisions. By default, these all enjoy a 2-year approval period per BDMC 18.14.050. The Commission's suggestion at its December meeting was for this time period to be extended to 3 years; this is reflected in the attached draft amendment language.

#### Residential Cluster District, BDMC 18.66

This section of code was established upon adoption of the new code in 2009; no property owner has yet sought to use this process. The concept of the RCD was to provide a way for a property owner to cluster the allowable density into a smaller development area, thereby preserving portions of the site. As initially intended, it also could allow a property impacted by sensitive areas and/or their required buffers to be developed at the same density as a non-impacted site of the same size.

The City Council amended the Comprehensive Plan in December so that residential densities are now to be based upon "net" acres, not "gross" acres. In other words, any sensitive areas and their required buffers may not be used to calculate the allowable density of a site. Due to this policy change, the current RCD zone is not consistent with the Comprehensive Plan and therefore, needs to be amended.

Attached are proposed revisions to the RCD zone to implement this change in policy.

#### SEPA Appeals process

The City recently completed a combined SEPA appeal/preliminary plat hearing process concerning the first preliminary plat proposed within The Villages MPD. The hearing was conducted by the City's Hearing Examiner, since Black Diamond's code provides for an administrative appeal process of SEPA determinations. The Examiner's bill for the month of December has not yet been received; it is estimated the appeal portion of the hearing will have cost approx. \$40,000 or more. This represents the Examiner's costs only, not those incurred by staff and the City Attorney (which are reimbursable from the applicant by virtue of the Yarrow Bay Funding Agreement).

The SEPA chapter of code stipulates the cost for filing an appeal is \$250.00. There are no provisions that address how the City is to receive compensation for the costs of processing and considering an appeal, once filed. The City's Fee Schedule (adopted by Council resolution) is also silent in this regard. At this time, these costs must be borne by the City, out of its General Fund. Obviously, this is a significant expense to the City, particularly given current budget constraints.

As noted above, the City has chosen to provide for an administrative appeal process for SEPA actions. State law does not require such a process; local jurisdictions may opt to have SEPA

appeals to proceed directly to Superior Court. This would most likely be more costly to potential appellants, but also could result in reduced savings to the City. In the case of any actions occurring within or associated with the MPDs, the Funding Agreement provides that City Attorney costs will be paid by the Master Developer (Yarrow Bay) as is the case with all other contracted consultants.

Another option would be to amend the code and fee resolution to provide that appellants must bear the full cost of processing an appeal. However, it may be difficult to secure payment from an appellant other than the actual applicant for a land use approval.

This is fundamental policy issue for the Commission to consider. The Growth Management Act and other laws encourage public participation; anything that makes an appeal process very expensive could be interpreted by the public as imposing a barrier to their participation. On the other hand, it is also difficult to argue that the General Fund of the City should bear the burden of paying for an appeal process brought forward by either a single individual or a small group of citizens, who are not required to be residents and taxpayers.

## Chapter 18.14 - VESTING

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### Sections:

18.14.010 - Definitions.

18.14.020 - Period for review of permit applications—Lapsing of applications.

18.14.030 - Vesting of project permits.

18.14.040 - Amendments to permit—Effect on vesting.

18.14.050 - Duration of approvals—Effect of permit expiration.

18.14.060 - Suspension or revocation of permit—Effect on vesting.

18.14.070 - Lapsing of existing approvals—Notice required.

### **18.14.010 - Definitions.**

For purposes of this chapter, the following definitions shall apply:

"Complete project permit application" means a project permit application that meets the procedural submission requirements required for such a permit by the Black Diamond Municipal Code and the city's administrative regulations, and includes payment of all applicable fees and provision of all information needed under the city's municipal code and administrative regulations to make an application sufficient for continued processing.

"Lapse" means that any rights or potential rights created by the filing of any project permit application, whether the application is complete or incomplete, shall cease, and the application shall be deemed void.

"Project action" means a specific activity, located in a defined geographic area, relating to construction or development of such area.

"Project permit" means any land use or environmental permit or license required from the city for a project action, including but not limited to building permits, subdivisions, binding site plans, ~~planned unit developments~~, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by sensitive area ~~or critical area~~ ordinances, master planned developments, and site-specific rezones authorized by a comprehensive plan or subarea plan, but excluding the adoption or amendment of a comprehensive plan, subarea plan, master planned development regulations or other development regulations.

"Vesting" means the establishment of a date that is used to determine which zoning and other land use control ordinances will apply to the review by the city of a complete project permit application.

*(Ord. No. 942, § 2, 5-17-2010)*

**18.14.020 - Period for review of permit applications—Lapsing of applications.**

A.(1) Timeframe for Initial Review. Within twenty-eight days of receipt of any type of project permit application, the City shall mail or provide in person to the applicant a written determination stating either: (a) that the application is complete, or (b) that the application is incomplete, and stating what is necessary to make the application complete. To the extent known to the city, the city shall identify other agencies of local, state, or federal government that may have jurisdiction over some aspect of the application.

(2) Timeframe for Review After Additional Information Provided to City. Within fourteen days after the applicant has submitted additional information requested by the city as necessary for a complete application, the city shall notify the applicant whether the application is complete or what additional information is necessary.

(3) Timeframe for Review of a Complete Application. Once an application is deemed complete, the review process should take no longer than one hundred twenty days to issue a determination or take other action unless the city issues written findings that a specified amount of additional time is needed to process specific complete project permit applications or project types.

B. In order to remain valid, project permit applications must be complete and all applicable fees paid within one hundred eighty days of filing. Project permit applications failing to satisfy these requirements are void. However, in the case of construction permits issued in accordance with the International Building Code, the building official is authorized to grant one or more extensions for additional periods of no more than ninety days each, but only where such extensions are requested in writing and justifiable cause is shown. The one hundred eighty days shall be tolled during any period in which the permit application is the subject of an appeal that has been properly and timely filed pursuant to the Black Diamond Municipal Code.

C. Except as prohibited by law, any of the terms and conditions of this section may in writing be waived or amended for a specific permit application for good cause shown, as determined in the sole discretion of the city.

*(Ord. No. 942, § 3, 5-17-2010)*

**18.14.030 - Vesting of project permits.**

A. All project permit applications shall be considered under the zoning and other land use control ordinances in effect on the date a complete application for such permit is filed.

B. Vesting of a complete project permit application does not vest any subsequently required permits, nor does it affect the requirements for vesting of subsequent permits or approvals, provided: (1) a complete application for a subdivision or short subdivision shall be vested pursuant to the terms

of RCW 58.17.033, as currently enacted or hereafter amended; (2) the specific use and density identified in an approved final subdivision shall be vested for the period of time allowed under RCW 58.17.170, as currently enacted or hereafter amended; (3) short subdivisions shall be vested for the specific use and density identified in the approved final short subdivision for a period of five years from the date of final plat approval; (4) vesting of subsequent permits and approvals as part of a master planned development shall be governed by this chapter unless expressly amended by the terms of a development agreement executed pursuant to Chapter 18.98

C. A complete application for a grading or filling permit vests only to the grading and filling on the property and does not vest any subsequent development or construction activities, including but not limited to water, sewer, storm water, plumbing, electrical, or other mechanical work. However, a project shall vest as to storm water management regulations if a complete storm water drainage permit application is submitted concurrently. Pursuant to BDMC 18.98, vesting of storm water permits for a Master Planned Development shall be on a phase-by-phase basis, unless otherwise provided by the terms of the approved Master Planned Development development agreement.

D. Submittal of pre-application materials does not, by itself, vest a project. However, SEPA checklists and other SEPA submittals may be considered in determining whether the underlying project permit application is complete.

E. Notwithstanding any other provisions of this chapter, the city may amend, alter, or suspend any vested rights created by the filing of a complete permit application and/or preliminary or final plat approval where the city's legislative body finds that a change in conditions creates a serious threat to public health or safety in the permitted area if development were to proceed under the vested rights.

*(Ord. No. 942, § 4, 5-17-2010)*

#### **18.14.040 - Amendments to permit—Effect on vesting.**

A. "Minor" Amendments. An applicant may be granted an amendment to any of the conditions or requirements of a permit: (1) upon a showing of changed circumstances and a determination by the mayor, or his or her designee, that (a) the requested amendments constitute "minor" adjustments that can be sufficiently mitigated through new actions that may be required as part of the permit amendment approval, and (b) each of the proposed amended conditions is not otherwise prohibited under the municipal code and would not require additional environmental review under BDMC Title 19, and (2) the proposed amendments would not (a) increase gross building area by more than ten percent, (b) increase the number of dwelling units, (c) increase total impervious surface area, (d) change the number of ingress or egress points, or (e) increase the area of site disturbance by more than ten percent. Modifications to a permit required by the city shall be deemed "minor" amendments.

B. "Major" Amendments. An applicant shall not be granted an amendment to any condition or requirement of a permit if the mayor, or his or her designee, determines that the proposed amendment constitutes a "major" amendment. Any proposed amendment to the conditions and requirements of a permit that does not meet the requirements of subsection A shall be considered a "major" amendment. Approval to implement a "major" amendment shall require a new permit application to be filed and approved by the city, provided, any work or use covered by the existing permit that would be unaffected by the requested "major" amendment shall continue to be vested under the terms of the existing permit.

C. Effect on Vesting.

1. Unless otherwise agreed to in writing by the city, approval of "minor" amendments to permit conditions and requirements shall terminate any vested right to the original permit conditions insofar as those conditions are inconsistent with the approved amendments, and, unless also otherwise agreed, approval does not toll or otherwise change the date upon which the amended permit lapses under this chapter.

2. Any new permit application filed as part of seeking a "major" amendment to the conditions and requirements of the original permit shall not be vested to any of the conditions of the original permit and shall be subject to the current codes and regulations in effect at the time the complete new application is filed.

D. City's Decision is Final. The city's determination that a requested amendment is "minor" or "major" shall be final and not subject to appeal.

E. Amending MPD Permits. Amending of a master planned development approval is controlled by the provisions of Chapter 18.98, provided, amending of subsequent permits and approvals required as part of a master planned development shall be governed by this chapter unless expressly amended by the terms of a development agreement executed pursuant to Chapter 18.98 Chapter 18.66.

*(Ord. No. 942, § 5, 5-17-2010)*

#### **18.14.050 - Duration of approvals—Effect of permit expiration.**

A. Except where a different duration is established elsewhere in the Black Diamond Municipal Code, or by executed development agreement, administrative ruling or judicial order, or by state or federal law, all project permits shall expire ~~two~~ three years after the date of issuance if construction of the project has not ~~been substantially completed~~ commenced; provided, an extension of the permit may be granted as allowed under subsection B, and a building permit may become void after one hundred eighty days of inactivity, as detailed in subsection D; and provided further, permits that authorize an activity or use, rather than construction of a building or structure, shall expire as of the date indicated on the permit.



B. For project permits subject to the ~~two~~three-year duration set forth in subsection A, above, the City may extend the date of permit expiration up to two years for good cause, upon written request by the applicant at least thirty days prior to expiration of the permit. Requests for extensions shall be submitted in writing, together with payment of a fee equal to one-half of the permit application fee in effect at the time the request for extension is filed, and shall ~~set~~-describe good cause necessary for an extension. Good cause shall mean the applicant was unable to ~~substantially complete~~commence construction due to circumstances beyond the applicant's control and not foreseeable at the time of permit issuance, and the applicant demonstrates the ability to complete the project within the extended time period.

C. Unless a project permit has been extended pursuant to subsection B of this section, or as otherwise provided by an executed development agreement, any vested rights to particular regulations or conditions of issuance associated with a project permit shall cease upon expiration of the permit, except as RCW 58.17.170 or other applicable law may apply. An individual or entity seeking to replace an expired permit shall be subject to each fee, regulation, or condition of issuance in effect at the time a new complete permit application is filed and to which no specific exemption applies.

D. Any otherwise valid building permit shall be deemed to have expired and become void if the work authorized by the permit has not been substantially commenced within one hundred eighty days after its issuance, or the work authorized by the permit is suspended or abandoned for a period of one hundred eighty days after the work has commenced.

*(Ord. No. 942, § 6, 5-17-2010)*

#### **18.14.060 - Suspension or revocation of permit—Effect on vesting.**

A. The community development director, or his or her designee, is authorized to suspend or revoke any project or other permit issued by the city whenever the permit is issued in error or was issued on the basis of materially incorrect, inaccurate or incomplete information, or in violation of any ordinance or regulation or any of the provisions of the municipal code.

B. When the suspension or revocation of a permit is based on no fault of the applicant, a replacement permit issued for the same project within one hundred twenty days of the suspension or revocation shall be vested to the regulations and requirements in effect as of the date the original complete application was filed and no additional application fee shall be required, provided, the project must still fully comply with the regulations and requirements in effect at the time the original complete application was filed.

*(Ord. No. 942, § 7, 5-17-2010)*

**18.14.070 - Lapsing of existing approvals—Notice required.**

Any project permit issued by the city prior to the enactment of this chapter, if such approval or permit is not already subject to a definite expiration date under the provisions of the city's municipal code, shall hereby lapse and become void on April 1, 2012; provided, the city shall take reasonable steps to notify persons who may possess such approval or permits of this deadline. Reasonable steps may include putting notice on the city's website or mailing written notice to any person whom the city is aware would be affected and for whom the city is able, through reasonable effort, to determine a current mailing address. Extension of such an approval or permit, or issuance of a new approval or permit, shall be subject to the provisions of this chapter.

## **Chapter 18.86 - RESIDENTIAL CLUSTER DEVELOPMENT (RCD)**

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### **Sections:**

18.86.010. - Intent.

18.86.020 - Applicability.

18.86.030 - Procedures and criteria.

18.86.040 - Development standards.

### **18.86.010. - Intent.**

The intent of the residential cluster development (RCD) provisions is to accommodate the overall density of the underlying zoning district while allowing residential development to utilize less land area. The RCD standards are intended to allow for innovative design, and promote the city's vision of a "Rural by Design" development pattern.

*(Ord. No. 909, § 2 (Exh. A), 6-18-2009)*

### **18.86.020 - Applicability.**

- A. All residential zoning districts are eligible to apply for approval of residential cluster development.
- B. Cluster development may be applied to both multi-family and attached/detached single-family residential developments of three or more dwelling units.

*(Ord. No. 909, § 2 (Exh. A), 6-18-2009)*

### **18.86.030 - Procedures and criteria.**

- A. Review Procedures. RCD applications are processed as a Type 3 Hearing Examiner decision pursuant to the provisions set forth in Chapter 18.08. Proposals for clustering shall be subject to and consolidated with the provisions for preliminary plat approval, if individual lot ownership is proposed.
- B. Criteria for Approval. The hearing examiner may approve a RCD only if it is found that:
  - 1. The location, design, and uses are consistent with the goals and policies of the comprehensive plan, the city's development codes and other city plans and ordinances;
  - 2. The residential development integrates with its surroundings and is designed to harmonize with existing or proposed development in the neighborhood, including the project's response to BDMC 18.86.040(F);
  - 3. The traffic generated by the development can be accommodated safely and within adopted level of service for affected streets;
  - 4. All development will be served by existing or planned facilities and services; and

5. The development makes provision for the preservation of the natural environment and/or identified open space or trails per the comprehensive plan.

C. Scope of Approval.

1. Through a RCD, modifications to the setbacks, height, lot area, building coverage and development coverage standards of the underlying zone district may be granted.

~~2. Approval of an RCD shall constitute a deviation of standards on the design of the site for only those designs and standards that are specifically included. Such revision of standards shall remain in effect until the residential development is constructed, or until its approval expires, at which time the underlying zoning standards automatically return to effect.~~

*(Ord. No. 909, § 2 (Exh. A), 6-18-2009; Ord. No. 948, § 57, 10-7-2010)*

### 18.86.040 - Development standards.

A. The following standards are applicable to an RCD application:

1. Density. The maximum density of the underlying zone shall apply. Maximum density is determined by multiplying the allowable maximum density of the underlying zone district by the gross acreage of the site, less any area containing sensitive areas and buffers required pursuant to BDMC 19.10. prior to development.

2. Minimum Site ~~Size~~Area Required. Three times the minimum lot size as required in the underlying zone district.

3. Minimum Lot Size. The minimum lot size by underlying zone district is:

- a. R4 Zone: six thousand square feet.
- b. R6 Zone: four thousand square feet.
- c. MR8 Zone: two thousand eight hundred square feet.

4. Height. The maximum building height of the underlying zone may be increased, provided the height of buildings is compatible with the scale of the surrounding neighborhood, does not adversely affect existing scenic views, and ensures a reasonable balance of light and shadow on adjacent properties. Increased setbacks and location of structures may be used to mitigate effects of increased height and to insure compatibility.

5. Other Lot Standards. Deviations may be granted to the underlying zone development standards including setbacks, lot area, building coverage, and development coverage, except as limited herein.

B. Perimeter Setbacks. At a minimum, structures shall comply with the setbacks of the underlying zone along all perimeter lot lines of the overall site.

C. Circulation.

1. All public or private streets within the development and adjacent rights-of-way shall be designed and constructed in accordance with city street standards. Private driveways may provide different design alternatives.

2. Provision shall be made for a functional pedestrian circulation system that assures the safe movement of pedestrians both on the site and between nearby properties and activities.

3. All streets and parking areas shall contribute to the overall aesthetic design of the project while minimizing traffic congestion and the amount of impervious surface area.

4. The provision for adequate parking, loading, access and circulation facilities within the RCD shall be those contained in the parking requirements as set forth in Chapter 18.80. The hearing examiner may modify these standards to best meet the needs and objectives of the project, provided project parking will not spill over into nearby neighborhoods.

D. Screening. All utility facilities, loading areas, trash containers, and outdoor storage areas shall be screened from surrounding properties. Solid fences, walls, and blank walls of buildings shall be softened through the use of trees and/or other landscaping materials if their impact cannot be minimized through architectural design or orientation.

E. Open Space.

1. Open Space Designation. The remaining land not developed for a permitted use shall be maintained as common open space. If an RCD is being subdivided, open space areas shall be located on a separate tract or tracts and shall be developed for recreational uses or set aside to preserve environmentally sensitive areas. Open space shall not include land for streets, driveways, parking or other infrastructure improvements, unless such facilities are integral to providing public accessibility to an open space amenity.

2. Development. Facilities and other improvements that enhance recreational use may be located in an open space.

3. Open Space Plan. An open space plan is required to identify all improvements, including trails and other active and passive recreational facilities and areas, environmentally sensitive areas, significant trees pursuant to Chapter 19.30, other vegetation to be preserved, and designation of areas for general public access. A management plan outlining maintenance responsibility shall be included as part of the plan.

4. Guarantees. A legal instrument approved by the city and recorded with King County, which shall include a notice on the title referencing the legal instrument, shall be executed by the property owner. The legal instrument shall include the following types of guarantees:

- a. Retention of the open space per the open space plan prescribed in subsection (E)(3) of this section;
- b. Provision for perpetual maintenance of the open space and commonly owned facilities;
- c. Grant to or reservation for the use of property owners of all open space and commonly owned facilities within the development;
- d. Conveyance to a property owners' association or corporation;
- e. Execution of a conservation easement in favor of the city; and
- f. Conveyance by deed or easement for public use.

F. Site Design Elements Reflecting the Setting and Community Heritage. An RCD application shall indicate how the RCD proposal responds to the following community interests:

1. Maintaining, enhancing, or replacing existing native vegetation along arterial and collector streets;
2. Integration of local cultural or historical features into site design; and
3. Integration of local architectural components as identified in the design guidelines adopted pursuant to Chapter 18.74.