

34.

Email Correspondence between Carol Morris and  
Megan Nelson regarding Welsh Subpoena  
August 5 through August 15, 2014

## Tracey Redd

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**From:** Andy Williamson  
**Sent:** Friday, August 15, 2014 2:01 PM  
**To:** Stacey.Welsh@cityoffederalway.com  
**Subject:** FW: hearing postponed

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**From:** Phil Olbrechts [<mailto:olbrechtslaw@gmail.com>]  
**Sent:** Friday, August 15, 2014 1:59 PM  
**To:** Andy Williamson  
**Cc:** 'Carol Morris'; 'Megan Nelson'  
**Subject:** RE: hearing postponed

Thank you for the update Mr. Williamson. The subpoena is quashed and Ms. Welsh does not need to appear on August 25, 2014. Please forward this email to Ms. Welsh.

---

**From:** Andy Williamson [<mailto:AWilliamson@ci.blackdiamond.wa.us>]  
**Sent:** Friday, August 15, 2014 1:32 PM  
**To:** Phil Olbrechts  
**Cc:** Carol Morris; Megan Nelson ([MNelson@oakpointe.com](mailto:MNelson@oakpointe.com))  
**Subject:** hearing postponed

Good afternoon Mr. Examiner

The city will be postponing the hearing of The Villages MPD PHASE 2 PRELIMINARY PLAT C  
And will be rescheduling a new hearing date.

We will be in contact with you to reschedule a new hearing date in the future.

Please also let me know if you would like the city to notify Ms. Welsh that she doesn't need to appear at the hearing.

We will be posting a notice on the city web site and our normal posting areas along with contacting parties of interest.

Respectfully

*Andrew Williamson*



MDRT/ECONOMIC DEVELOPMENT DIRECTOR  
PHONE: 360-886-5700  
FAX: 360-886-2592  
EMAIL: [AWILLIAMSON@CI.BLACKDIAMOND.WA.US](mailto:AWILLIAMSON@CI.BLACKDIAMOND.WA.US)

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## Tracey Redd

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**From:** Andy Williamson  
**Sent:** Friday, August 15, 2014 1:40 PM  
**To:** Stacey.Welsh@cityoffederalway.com  
**Subject:** FW: Welsh Subpoena

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**From:** Megan Nelson [mailto:MNelson@oakpointe.com]  
**Sent:** Thursday, August 14, 2014 3:21 PM  
**To:** Phil Olbrechts; 'Carol Morris'  
**Cc:** Andy Williamson; Colin Lund - Yarrow Bay Holdings  
**Subject:** RE: Welsh Subpoena

Mr. Examiner: The Applicant hereby notes its objection for the record and asks that this email correspondence regarding the same be made a part thereof.

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**From:** Phil Olbrechts [mailto:olbrechtslaw@gmail.com]  
**Sent:** Thursday, August 14, 2014 2:17 PM  
**To:** 'Carol Morris'; Megan Nelson  
**Cc:** Andy Williamson; Colin Lund - Yarrow Bay Holdings  
**Subject:** RE: Welsh Subpoena

It appears I should rule before too many more of these emails come in. The request to modify the subpoena time is denied. The 1:00 pm appearance time (presumably right after lunch break) was intentionally set to enable Ms. Welsh to testify immediately upon her appearance to minimize disruption of her schedule as well as the order of the hearing. The need for Ms. Welsh to be present for the entire hearing is too speculative at this point to justify a greater time commitment. Should it become apparent during the hearing that Ms. Welsh's input on other testimony is relevant and material, we can make arrangements to have her consider the testimony, in a worst case by listening to the hearing tapes. The applicant is also of course free to ask Ms. Welsh to voluntarily attend the entire hearing.

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**Sent:** Thursday, August 14, 2014 11:21 AM  
**To:** Megan Nelson; Phil Olbrechts  
**Cc:** Andy Williamson; Colin Lund - Yarrow Bay Holdings  
**Subject:** RE: Welsh Subpoena

Good morning again: I am not objecting solely based on the inconvenience to Ms. Welch. I am objecting that Ms. Welch be forced to attend the entire hearing for the reasons stated in Ms. Nelson's e-mail. The reasons for my objections are stated in my last e-mail. I will not re-state them here.

I am not objecting to Ms. Welch's attendance at the hearing. Therefore, I did not object when the request was made earlier.

**Carol Morris, Morris Law, P.C.**

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Gig Harbor, WA 98335

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Website: [carolmorrislaw.com](http://carolmorrislaw.com)

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**From:** [MNelson@oakpointe.com](mailto:MNelson@oakpointe.com)

**To:** [carol\\_a\\_morris@msn.com](mailto:carol_a_morris@msn.com); [olbrechtslaw@gmail.com](mailto:olbrechtslaw@gmail.com)

**CC:** [AWilliamson@ci.blackdiamond.wa.us](mailto:AWilliamson@ci.blackdiamond.wa.us); [clund@yarrowbayholdings.com](mailto:clund@yarrowbayholdings.com)

**Subject:** RE: Welsh Subpoena

**Date:** Thu, 14 Aug 2014 17:56:14 +0000

Mr. Examiner:

In response to Ms. Morris's comments below.

Ms. Morris acknowledges that neither she nor the City has standing to object to YarrowBay's request based on an alleged inconvenience to Ms. Welsh. Any objections to the content of Ms. Welsh's testimony are premature (because she has not yet testified) and should be made at the hearing – not in objection to Applicant's request to modify the timing set forth in a subpoena. To the extent Ms. Morris is objecting to Ms. Welsh's requested attendance at the hearing, such objections are too late. The Applicant requested the subpoena over two weeks ago and included the City Attorney in the correspondence associated with such request. The subpoena has in fact already been issued – such arguments are therefore untimely.

Again, your consideration of YarrowBay's request to modify the subpoena to conform to the start time of the plat hearing is appreciated,

Megan

---

**From:** Carol Morris [[mailto:carol\\_a\\_morris@msn.com](mailto:carol_a_morris@msn.com)]

**Sent:** Thursday, August 14, 2014 10:34 AM

**To:** Megan Nelson; Phil Olbrechts

**Cc:** Andy Williamson; Colin Lund - Yarrow Bay Holdings

**Subject:** RE: Welsh Subpoena

Good morning again: Sorry, but this request makes no sense. The concern is that the former SEPA Responsible Official needs to be present to hear testimony that would cause her to change her mind about the MDNS that she issued when she worked for Black Diamond? Here are my responses to this.

No. 1: The MDNS was not appealed. The MDNS is final. The Hearing Examiner will be holding a hearing on the preliminary plat application.

No. 2: The City has a SEPA Responsible Official, Aaron Nix. Stacey Welch can't withdraw the MDNS she issued when she was the SEPA Responsible Official because she is no longer the SEPA Responsible Official.

No. 3: Just because Yarrow Bay says that it would be prejudiced, doesn't mean that it is so. Yarrow Bay should be required to present authority to support their argument that they will be prejudiced if their witness can't hear the testimony of other witnesses during the hearing. I know of absolutely none. I also know of no authority that would allow the SEPA official to withdraw the MDNS (which was not appealed) after hearing evidence during the hearing on the underlying application. If there is such authority, the developer should be required to provide it. Then, in the unlikely event that this issue arises during the hearing, it will have already been researched and a decision can be made without delay.

No. 4: Stacey Welch is not the staff member charged with the responsibility of determining whether the preliminary plat meets the applicable criteria for approval of a preliminary plat. She doesn't work for Black Diamond. She is not the Black Diamond Community Development Director. There will be a staff report that will be written by someone other than Stacy Welch. The Black Diamond staff will be making a recommendation to the Hearing Examiner on the issue whether the preliminary plat application satisfies the applicable criteria, including this environmental criterion. It is my understanding that these staff members will be available to answer questions on environmental issues.

No. 5: If someone raises the question whether Ms. Welch considered some environmental issue when she issued the MDNS, the answer is that Ms. Welch considered the administrative record that was available at that time. If the particular piece of evidence relating to the environmental issue wasn't included in the administrative record, then Ms. Welch couldn't have considered it. If it was included in the administrative record, then she considered it.

No. 6: If someone alleges that the MDNS should be overturned at this point in time because of some environmental issue that wasn't included in the administrative record, then that is a legal issue that the developer's attorneys will have to address. See above. It will not be resolved by Ms. Welch's opinion.

As to my standing to object to Ms. Welch listening to testimony so -- as the developer assumes -- that her testimony can be informed by the testimony of others, I have standing as the City Attorney for Black Diamond, based on the above. (Yes, it is true, I have no standing to complain that she will be inconvenienced.)

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From: [MNelson@oakpointe.com](mailto:MNelson@oakpointe.com)

To: [olbrechtslaw@gmail.com](mailto:olbrechtslaw@gmail.com)

CC: [AWilliamson@ci.blackdiamond.wa.us](mailto:AWilliamson@ci.blackdiamond.wa.us); [clund@yarrowbayholdings.com](mailto:clund@yarrowbayholdings.com); [carol\\_a\\_morris@msn.com](mailto:carol_a_morris@msn.com)

Subject: RE: Welsh Subpoena

Date: Thu, 14 Aug 2014 17:01:00 +0000

Mr. Examiner:

The following is a response to Ms. Morris' objection.

As noted in Yarrow Bay's original request for the subpoena, upon which Ms. Morris was cc'd, Ms. Welsh was the City of Black Diamond's SEPA Responsible Official when the City issued the MDNS for The Villages Preliminary Plat 2C on June 17, 2014. One of the requirements for preliminary plat approval, BDMC 17.15.020(A)(6), requires that "[a]ll environmental impacts have been addressed consistent with the public health, safety and welfare and city goals and policies." As the City staff member responsible for the Plat 2C SEPA determination and the environmental mitigation conditions associated therewith, the testimony of Ms. Welsh is relevant to determining the satisfaction of this criteria for preliminary plat approval. Questions may arise at the hearing as to whether an testimony or evidence presented at the hearing would cause Ms. Welsh

to change her decision regarding issuance of the MDNS and associated environmental conditions. Unless Ms. Welsh is present to hearing this testimony or evidence, it is difficult to answer such questions.

Therefore, YarrowBay again requests that the Examiner revise the subpoena to request Ms. Welsh's attendance commencing at 10am. Any potential inconvenience to Ms. Welsh, which Ms. Morris has no standing to assert, is outweighed by the potential prejudice to the Applicant regarding satisfaction of the City's preliminary plat criteria.

Your consideration is appreciated.

Megan

---

**From:** Carol Morris [[mailto:carol\\_a\\_morris@msn.com](mailto:carol_a_morris@msn.com)]  
**Sent:** Thursday, August 14, 2014 9:48 AM  
**To:** Megan Nelson - Yarrow Bay Holdings; Phil Olbrechts  
**Cc:** Andy Williamson; Colin Lund - Yarrow Bay Holdings  
**Subject:** RE: Welsh Subpoena

Good morning: I object to this. First, I have to say that I have worked for a number of cities and have attended a number of hearings like this. In my 25+ years of experience, I have never seen any subpoena issued for a former Community Development Director, simply because this former Director took a new job. The Examiner should also be aware that this Director didn't even draft the staff report that is to be submitted with regard to this application.

Second, the reason -- as I understood it -- for having Ms. Welch at the hearing was so that she could present facts within her knowledge at the hearing. There is absolutely no reason that she needs to listen to everyone else who will be attending the hearing in order to do this.

Is the concern that her testimony will change if she hears what others have to say? I don't understand the basis for this request. It is improper and it also will inconvenience Ms. Welch.

**Carol Morris, Morris Law, P.C.**  
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> From: [mnelson@yarrowbayholdings.com](mailto:mnelson@yarrowbayholdings.com)  
> To: [olbrechtslaw@gmail.com](mailto:olbrechtslaw@gmail.com)  
> CC: [AWilliamson@ci.blackdiamond.wa.us](mailto:AWilliamson@ci.blackdiamond.wa.us); [carol\\_a\\_morris@msn.com](mailto:carol_a_morris@msn.com); [clund@yarrowbayholdings.com](mailto:clund@yarrowbayholdings.com)  
> Subject: RE: Welsh Subpoena  
> Date: Thu, 14 Aug 2014 16:42:11 +0000

>  
> Mr. Examiner:

>  
> Upon review of the subpoena, we realized that the time is noted as 1pm while the hearing starts at 10am. We think it is important that Stacey Welsh hear the presentations of the City as well as the Applicant as well as any potential comments of interested parties regarding The Villages Plat 2C in order to inform her testimony regarding any environmental conditions or alleged impacts. Would it be possible to have you reissue the subpoena with a start time of 10am?

>  
> Your assistance is appreciated.

>  
> Thank you,  
> Megan

>  
> -----Original Message-----  
> From: Phil Olbrechts [<mailto:olbrechtslaw@gmail.com>]  
> Sent: Monday, August 11, 2014 1:37 PM  
> To: Megan Nelson  
> Cc: Andy Williamson; Carol Morris; [olbrechtslaw@gmail.com](mailto:olbrechtslaw@gmail.com)  
> Subject: Welsh Subpoena

>  
>  
> Attached is the subpoena requested by Ms. Nelson. As required by the Hearing Examiner Rules of Procedure, Ms. Nelson is responsible for serving the subpoena upon Ms. Welsh. I emailed an amendment to the Rules of Procedure earlier today that clarifies that subpoenas may be requested for permit applications.

>  
>

## Tracey Redd

---

**From:** Megan Nelson <MNelson@oakpointe.com>  
**Sent:** Thursday, August 14, 2014 3:21 PM  
**To:** Phil Olbrechts; 'Carol Morris'  
**Cc:** Andy Williamson; Colin Lund - Yarrow Bay Holdings  
**Subject:** RE: Welsh Subpoena

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**From:** [MNelson@oakpointe.com](mailto:MNelson@oakpointe.com)  
**To:** [carol a morris@msn.com](mailto:carol_a_morris@msn.com); [olbrechtswlaw@gmail.com](mailto:olbrechtswlaw@gmail.com)  
**CC:** [AWilliamson@ci.blackdiamond.wa.us](mailto:AWilliamson@ci.blackdiamond.wa.us); [clund@yarrowbayholdings.com](mailto:clund@yarrowbayholdings.com)  
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From: [MNelson@oakpointe.com](mailto:MNelson@oakpointe.com)

To: [olbrechtswlaw@gmail.com](mailto:olbrechtswlaw@gmail.com)

CC: [AWilliamson@ci.blackdiamond.wa.us](mailto:AWilliamson@ci.blackdiamond.wa.us); [clund@yarrowbayholdings.com](mailto:clund@yarrowbayholdings.com); [carol\\_a\\_morris@msn.com](mailto:carol_a_morris@msn.com)

Subject: RE: Welsh Subpoena

Date: Thu, 14 Aug 2014 17:01:00 +0000

Mr. Examiner:

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Therefore, YarrowBay again requests that the Examiner revise the subpoena to request Ms. Welsh's attendance commencing at 10am. Any potential inconvenience to Ms. Welsh, which Ms. Morris has no

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> From: [mnelson@yarrowbayholdings.com](mailto:mnelson@yarrowbayholdings.com)  
> To: [olbrechtslaw@gmail.com](mailto:olbrechtslaw@gmail.com)  
> CC: [AWilliamson@ci.blackdiamond.wa.us](mailto:AWilliamson@ci.blackdiamond.wa.us); [carol\\_a\\_morris@msn.com](mailto:carol_a_morris@msn.com); [clund@yarrowbayholdings.com](mailto:clund@yarrowbayholdings.com)  
> Subject: RE: Welsh Subpoena  
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> Mr. Examiner:  
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> Upon review of the subpoena, we realized that the time is noted as 1pm while the hearing starts at 10am. We think it is important that Stacey Welsh hear the presentations of the City as well as the Applicant as well as any potential comments of interested parties regarding The Villages Plat 2C in order to inform her testimony regarding any environmental conditions or alleged impacts. Would it be possible to have you reissue the subpoena with a start time of 10am?  
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> Your assistance is appreciated.  
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> Thank you,  
> Megan  
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> -----Original Message-----  
> From: Phil Olbrechts [<mailto:olbrechtslaw@gmail.com>]  
> Sent: Monday, August 11, 2014 1:37 PM  
> To: Megan Nelson  
> Cc: Andy Williamson; Carol Morris; [olbrechtslaw@gmail.com](mailto:olbrechtslaw@gmail.com)  
> Subject: Welsh Subpoena  
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> Attached is the subpoena requested by Ms. Nelson. As required by the Hearing Examiner Rules of Procedure, Ms. Nelson is responsible for serving the subpoena upon Ms. Welsh. I emailed an amendment to the Rules of Procedure earlier today that clarifies that subpoenas may be requested for permit applications.  
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## Gillian Zacharias

---

**From:** Carol Morris <carol\_a\_morris@msn.com>  
**Sent:** Thursday, August 14, 2014 2:23 PM  
**To:** Gillian Zacharias  
**Subject:** FW: Welsh Subpoena

Gillian: All of the e-mails below need to be exhibits in the Plat 2C file. Call me with questions.

**Carol Morris, Morris Law, P.C.**

3304 Rosedale Street N.W., Suite 200

Gig Harbor, WA 98335

(253) 851-5090

F: (360) 850-1099

[carol@carolmorrislaw.com](mailto:carol@carolmorrislaw.com)

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**From:** [olbrechtslaw@gmail.com](mailto:olbrechtslaw@gmail.com)  
**To:** [carol\\_a\\_morris@msn.com](mailto:carol_a_morris@msn.com); [mnelson@oakpointe.com](mailto:mnelson@oakpointe.com)  
**CC:** [awilliamson@ci.blackdiamond.wa.us](mailto:awilliamson@ci.blackdiamond.wa.us); [clund@yarrowbayholdings.com](mailto:clund@yarrowbayholdings.com)  
**Subject:** RE: Welsh Subpoena  
**Date:** Thu, 14 Aug 2014 14:16:39 -0700

From: [MNelson@oakpointe.com](mailto:MNelson@oakpointe.com)  
To: [carol\\_a\\_morris@msn.com](mailto:carol_a_morris@msn.com); [olbrechtswlaw@gmail.com](mailto:olbrechtswlaw@gmail.com)  
CC: [AWilliamson@ci.blackdiamond.wa.us](mailto:AWilliamson@ci.blackdiamond.wa.us); [clund@yarrowbayholdings.com](mailto:clund@yarrowbayholdings.com)  
Subject: RE: Welsh Subpoena  
Date: Thu, 14 Aug 2014 17:56:14 +0000  
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**Sent:** Thursday, August 14, 2014 10:34 AM  
**To:** Megan Nelson; Phil Olbrechts  
**Cc:** Andy Williamson; Colin Lund - Yarrow Bay Holdings  
**Subject:** RE: Welsh Subpoena

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To: [olbrechtslaw@gmail.com](mailto:olbrechtslaw@gmail.com)  
CC: [AWilliamson@ci.blackdiamond.wa.us](mailto:AWilliamson@ci.blackdiamond.wa.us); [clund@yarrowbayholdings.com](mailto:clund@yarrowbayholdings.com); [carol\\_a\\_morris@msn.com](mailto:carol_a_morris@msn.com)  
Subject: RE: Welsh Subpoena  
Date: Thu, 14 Aug 2014 17:01:00 +0000  
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**Cc:** Andy Williamson; Colin Lund - Yarrow Bay Holdings  
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## Tracey Redd

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**From:** Andy Williamson  
**Sent:** Thursday, August 14, 2014 2:21 PM  
**To:** Gillian Zacharias; Dan Ervin  
**Subject:** FW: Welsh Subpoena

---

**From:** Phil Olbrechts [mailto:olbrechtslaw@gmail.com]  
**Sent:** Thursday, August 14, 2014 2:17 PM  
**To:** 'Carol Morris'; 'Megan Nelson'  
**Cc:** Andy Williamson; 'Colin Lund - Yarrow Bay Holdings'  
**Subject:** RE: Welsh Subpoena

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To: [carol a morris@msn.com](mailto:carol_a_morris@msn.com); [olbrechtswlaw@gmail.com](mailto:olbrechtswlaw@gmail.com)  
CC: [AWilliamson@ci.blackdiamond.wa.us](mailto:AWilliamson@ci.blackdiamond.wa.us); [clund@yarrowbayholdings.com](mailto:clund@yarrowbayholdings.com)  
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**Cc:** Andy Williamson; Colin Lund - Yarrow Bay Holdings  
**Subject:** RE: Welsh Subpoena

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As to my standing to object to Ms. Welch listening to testimony so -- as the developer assumes -- that her testimony can be informed by the testimony of others, I have standing as the City Attorney for Black Diamond, based on the above. (Yes, it is true, I have no standing to complain that she will be inconvenienced.)

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From: [MNelson@oakpointe.com](mailto:MNelson@oakpointe.com)

To: [olbrechtslaw@gmail.com](mailto:olbrechtslaw@gmail.com)

CC: [AWilliamson@ci.blackdiamond.wa.us](mailto:AWilliamson@ci.blackdiamond.wa.us); [clund@yarrowbayholdings.com](mailto:clund@yarrowbayholdings.com); [carol\\_a\\_morris@msn.com](mailto:carol_a_morris@msn.com)

Subject: RE: Welsh Subpoena

Date: Thu, 14 Aug 2014 17:01:00 +0000

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**Cc:** Andy Williamson; Colin Lund - Yarrow Bay Holdings  
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Second, the reason -- as I understood it -- for having Ms. Welch at the hearing was so that she could present facts within her knowledge at the hearing. There is absolutely no reason that she needs to listen to everyone else who will be attending the hearing in order to do this.

Is the concern that her testimony will change if she hears what others have to say? I don't understand the basis for this request. It is improper and it also will inconvenience Ms. Welch.

**Carol Morris, Morris Law, P.C.**

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Gig Harbor, WA 98335

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> From: [mnelson@yarrowbayholdings.com](mailto:mnelson@yarrowbayholdings.com)  
> To: [olbrechtslaw@gmail.com](mailto:olbrechtslaw@gmail.com)  
> CC: [AWilliamson@ci.blackdiamond.wa.us](mailto:AWilliamson@ci.blackdiamond.wa.us); [carol\\_a\\_morris@msn.com](mailto:carol_a_morris@msn.com); [clund@yarrowbayholdings.com](mailto:clund@yarrowbayholdings.com)  
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## Tracey Redd

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**From:** Andy Williamson  
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**To:** Aaron Nix  
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From: [MNelson@oakpointe.com](mailto:MNelson@oakpointe.com)

To: [olbrechtslaw@gmail.com](mailto:olbrechtslaw@gmail.com)

CC: [AWilliamson@ci.blackdiamond.wa.us](mailto:AWilliamson@ci.blackdiamond.wa.us); [clund@yarrowbayholdings.com](mailto:clund@yarrowbayholdings.com); [carol\\_a\\_morris@msn.com](mailto:carol_a_morris@msn.com)

Subject: RE: Welsh Subpoena

Date: Thu, 14 Aug 2014 17:01:00 +0000

Mr. Examiner:

The following is a response to Ms. Morris' objection.

As noted in Yarrow Bay's original request for the subpoena, upon which Ms. Morris was cc'd, Ms. Welsh was the City of Black Diamond's SEPA Responsible Official when the City issued the MDNS for The Villages Preliminary Plat 2C on June 17, 2014. One of the requirements for preliminary plat approval, BDMC 17.15.020(A)(6), requires that "[a]ll environmental impacts have been addressed consistent with the public health, safety and welfare and city goals and policies." As the City staff member responsible for the Plat 2C SEPA determination and the environmental mitigation conditions associated therewith, the testimony of Ms. Welsh is relevant to determining the satisfaction of this criteria for preliminary plat approval. Questions may arise at the hearing as to whether an testimony or evidence presented at the hearing would cause Ms. Welsh to change her decision regarding issuance of the MDNS and associated environmental conditions. Unless Ms. Welsh is present to hearing this testimony or evidence, it is difficult to answer such questions.

Therefore, YarrowBay again requests that the Examiner revise the subpoena to request Ms. Welsh's attendance commencing at 10am. Any potential inconvenience to Ms. Welsh, which Ms. Morris has no standing to assert, is outweighed by the potential prejudice to the Applicant regarding satisfaction of the City's preliminary plat criteria.

Your consideration is appreciated.

Megan

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**From:** Carol Morris [[mailto:carol\\_a\\_morris@msn.com](mailto:carol_a_morris@msn.com)]  
**Sent:** Thursday, August 14, 2014 9:48 AM  
**To:** Megan Nelson - Yarrow Bay Holdings; Phil Olbrechts  
**Cc:** Andy Williamson; Colin Lund - Yarrow Bay Holdings  
**Subject:** RE: Welsh Subpoena

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Is the concern that her testimony will change if she hears what others have to say? I don't understand the basis for this request. It is improper and it also will inconvenience Ms. Welch.

**Carol Morris, Morris Law, P.C.**  
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> CC: [AWilliamson@ci.blackdiamond.wa.us](mailto:AWilliamson@ci.blackdiamond.wa.us); [carol\\_a\\_morris@msn.com](mailto:carol_a_morris@msn.com); [clund@yarrowbayholdings.com](mailto:clund@yarrowbayholdings.com)  
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> From: Phil Olbrechts [<mailto:olbrechtslaw@gmail.com>]  
> Sent: Monday, August 11, 2014 1:37 PM  
> To: Megan Nelson  
> Cc: Andy Williamson; Carol Morris; [olbrechtslaw@gmail.com](mailto:olbrechtslaw@gmail.com)  
> Subject: Welsh Subpoena  
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## Tracey Redd

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**From:** Phil Olbrechts <olbrechtslaw@gmail.com>  
**Sent:** Thursday, August 14, 2014 2:17 PM  
**To:** 'Carol Morris'; 'Megan Nelson'  
**Cc:** Andy Williamson; 'Colin Lund - Yarrow Bay Holdings'  
**Subject:** RE: Welsh Subpoena

It appears I should rule before too many more of these emails come in. The request to modify the subpoena time is denied. The 1:00 pm appearance time (presumably right after lunch break) was intentionally set to enable Ms. Welsh to testify immediately upon her appearance to minimize disruption of her schedule as well as the order of the hearing. The need for Ms. Welsh to be present for the entire hearing is too speculative at this point to justify a greater time commitment. Should it become apparent during the hearing that Ms. Welsh's input on other testimony is relevant and material, we can make arrangements to have her consider the testimony, in a worst case by listening to the hearing tapes. The applicant is also of course free to ask Ms. Welsh to voluntarily attend the entire hearing.

---

**From:** Carol Morris [mailto:carol\_a\_morris@msn.com]  
**Sent:** Thursday, August 14, 2014 11:21 AM  
**To:** Megan Nelson; Phil Olbrechts  
**Cc:** Andy Williamson; Colin Lund - Yarrow Bay Holdings  
**Subject:** RE: Welsh Subpoena

Good morning again: I am not objecting solely based on the inconvenience to Ms. Welch. I am objecting that Ms. Welch be forced to attend the entire hearing for the reasons stated in Ms. Nelson's e-mail. The reasons for my objections are stated in my last e-mail. I will not re-state them here.

I am not objecting to Ms. Welch's attendance at the hearing. Therefore, I did not object when the request was made earlier.

**Carol Morris, Morris Law, P.C.**  
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To: [carol a morris@msn.com](mailto:carol_a_morris@msn.com); [olbrechtslaw@gmail.com](mailto:olbrechtslaw@gmail.com)  
CC: [AWilliamson@ci.blackdiamond.wa.us](mailto:AWilliamson@ci.blackdiamond.wa.us); [clund@yarrowbayholdings.com](mailto:clund@yarrowbayholdings.com)  
Subject: RE: Welsh Subpoena  
Date: Thu, 14 Aug 2014 17:56:14 +0000

Mr. Examiner:

In response to Ms. Morris's comments below.

Ms. Morris acknowledges that neither she nor the City has standing to object to YarrowBay's request based on an alleged inconvenience to Ms. Welsh. Any objections to the content of Ms. Welsh's testimony are premature (because she has not yet testified) and should be made at the hearing – not in objection to Applicant's request to modify the timing set forth in a subpoena. To the extent Ms. Morris is objecting to Ms. Welsh's requested attendance at the hearing, such objections are too late. The Applicant requested the subpoena over two weeks ago and included the City Attorney in the correspondence associated with such request. The subpoena has in fact already been issued – such arguments are therefore untimely.

Again, your consideration of YarrowBay's request to modify the subpoena to conform to the start time of the plat hearing is appreciated,  
Megan

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**From:** Carol Morris [[mailto:carol\\_a\\_morris@msn.com](mailto:carol_a_morris@msn.com)]  
**Sent:** Thursday, August 14, 2014 10:34 AM  
**To:** Megan Nelson; Phil Olbrechts  
**Cc:** Andy Williamson; Colin Lund - Yarrow Bay Holdings  
**Subject:** RE: Welsh Subpoena

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Your consideration is appreciated.  
Megan

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**Sent:** Thursday, August 14, 2014 9:48 AM  
**To:** Megan Nelson - Yarrow Bay Holdings; Phil Olbrechts  
**Cc:** Andy Williamson; Colin Lund - Yarrow Bay Holdings  
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> CC: [AWilliamson@ci.blackdiamond.wa.us](mailto:AWilliamson@ci.blackdiamond.wa.us); [carol\\_a\\_morris@msn.com](mailto:carol_a_morris@msn.com); [clund@yarrowbayholdings.com](mailto:clund@yarrowbayholdings.com)

> Subject: RE: Welsh Subpoena

> Date: Thu, 14 Aug 2014 16:42:11 +0000

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> -----Original Message-----

> From: Phil Olbrechts [<mailto:olbrechtslaw@gmail.com>]

> Sent: Monday, August 11, 2014 1:37 PM

> To: Megan Nelson

> Cc: Andy Williamson; Carol Morris; [olbrechtslaw@gmail.com](mailto:olbrechtslaw@gmail.com)

> Subject: Welsh Subpoena

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## Tracey Redd

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**From:** Andy Williamson  
**Sent:** Thursday, August 14, 2014 11:21 AM  
**To:** Gillian Zacharias; Dan Ervin  
**Subject:** FW: Welsh Subpoena

---

**From:** Megan Nelson [mailto:MNelson@oakpointe.com]  
**Sent:** Thursday, August 14, 2014 10:56 AM  
**To:** Carol Morris; Phil Olbrechts  
**Cc:** Andy Williamson; Colin Lund - Yarrow Bay Holdings  
**Subject:** RE: Welsh Subpoena

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## Tracey Redd

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**From:** Carol Morris <carol\_a\_morris@msn.com>  
**Sent:** Thursday, August 14, 2014 11:21 AM  
**To:** Megan Nelson; Phil Olbrechts  
**Cc:** Andy Williamson; Colin Lund - Yarrow Bay Holdings  
**Subject:** RE: Welsh Subpoena

Good morning again: I am not objecting solely based on the inconvenience to Ms. Welch. I am objecting that Ms. Welch be forced to attend the entire hearing for the reasons stated in Ms. Nelson's e-mail. The reasons for my objections are stated in my last e-mail. I will not re-state them here.

I am not objecting to Ms. Welch's attendance at the hearing. Therefore, I did not object when the request was made earlier.

**Carol Morris, Morris Law, P.C.**  
3304 Rosedale Street N.W., Suite 200  
Gig Harbor, WA 98335  
(253) 851-5090  
F: (360) 850-1099  
[carol@carolmorrislaw.com](mailto:carol@carolmorrislaw.com)  
Website: [carolmorrislaw.com](http://carolmorrislaw.com)

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From: MNelson@oakpointe.com  
To: carol\_a\_morris@msn.com; olbrechtslaw@gmail.com  
CC: AWilliamson@ci.blackdiamond.wa.us; clund@yarrowbayholdings.com  
Subject: RE: Welsh Subpoena  
Date: Thu, 14 Aug 2014 17:56:14 +0000

Mr. Examiner:

In response to Ms. Morris's comments below.

Ms. Morris acknowledges that neither she nor the City has standing to object to YarrowBay's request based on an alleged inconvenience to Ms. Welsh. Any objections to the content of Ms. Welsh's testimony are premature (because she has not yet testified) and should be made at the hearing – not in objection to Applicant's request to modify the timing set forth in a subpoena. To the extent Ms. Morris is objecting to Ms. Welsh's requested attendance at the hearing, such objections are too late. The Applicant requested the subpoena over two weeks ago and included the City Attorney in the correspondence associated with such request. The subpoena has in fact already been issued – such arguments are therefore untimely.

Again, your consideration of YarrowBay's request to modify the subpoena to conform to the start time of the plat hearing is appreciated,  
Megan

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**From:** Carol Morris [mailto:carol\_a\_morris@msn.com]  
**Sent:** Thursday, August 14, 2014 10:34 AM  
**To:** Megan Nelson; Phil Olbrechts  
**Cc:** Andy Williamson; Colin Lund - Yarrow Bay Holdings  
**Subject:** RE: Welsh Subpoena

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To: [olbrechtslaw@gmail.com](mailto:olbrechtslaw@gmail.com)  
CC: [AWilliamson@ci.blackdiamond.wa.us](mailto:AWilliamson@ci.blackdiamond.wa.us); [clund@yarrowbayholdings.com](mailto:clund@yarrowbayholdings.com); [carol a morris@msn.com](mailto:carol_a_morris@msn.com)  
Subject: RE: Welsh Subpoena  
Date: Thu, 14 Aug 2014 17:01:00 +0000  
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Therefore, YarrowBay again requests that the Examiner revise the subpoena to request Ms. Welsh's attendance commencing at 10am. Any potential inconvenience to Ms. Welsh, which Ms. Morris has no standing to assert, is outweighed by the potential prejudice to the Applicant regarding satisfaction of the City's preliminary plat criteria.

Your consideration is appreciated.  
Megan

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**From:** Carol Morris [[mailto:carol\\_a\\_morris@msn.com](mailto:carol_a_morris@msn.com)]  
**Sent:** Thursday, August 14, 2014 9:48 AM  
**To:** Megan Nelson - Yarrow Bay Holdings; Phil Olbrechts  
**Cc:** Andy Williamson; Colin Lund - Yarrow Bay Holdings  
**Subject:** RE: Welsh Subpoena

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> From: [mnelson@yarrowbayholdings.com](mailto:mnelson@yarrowbayholdings.com)  
> To: [olbrechtshaw@gmail.com](mailto:olbrechtshaw@gmail.com)  
> CC: [AWilliamson@ci.blackdiamond.wa.us](mailto:AWilliamson@ci.blackdiamond.wa.us); [carol a morris@msn.com](mailto:carol_a_morris@msn.com); [clund@yarrowbayholdings.com](mailto:clund@yarrowbayholdings.com)  
> Subject: RE: Welsh Subpoena  
> Date: Thu, 14 Aug 2014 16:42:11 +0000  
>  
> Mr. Examiner:

>  
> Upon review of the subpoena, we realized that the time is noted as 1pm while the hearing starts at 10am. We think it is important that Stacey Welsh hear the presentations of the City as well as the Applicant as well as any potential comments of interested parties regarding The Villages Plat 2C in order to inform her testimony regarding any environmental conditions or alleged impacts. Would it be possible to have you reissue the subpoena with a start time of 10am?

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> Your assistance is appreciated.

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> Thank you,  
> Megan

>  
> -----Original Message-----  
> From: Phil Olbrechts [<mailto:olbrechtslaw@gmail.com>]  
> Sent: Monday, August 11, 2014 1:37 PM  
> To: Megan Nelson  
> Cc: Andy Williamson; Carol Morris; [olbrechtslaw@gmail.com](mailto:olbrechtslaw@gmail.com)  
> Subject: Welsh Subpoena

>  
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## Tracey Redd

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**From:** Megan Nelson <MNelson@oakpointe.com>  
**Sent:** Thursday, August 14, 2014 10:56 AM  
**To:** Carol Morris; Phil Olbrechts  
**Cc:** Andy Williamson; Colin Lund - Yarrow Bay Holdings  
**Subject:** RE: Welsh Subpoena

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## Tracey Redd

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**From:** Andy Williamson  
**Sent:** Thursday, August 14, 2014 10:45 AM  
**To:** Gillian Zacharias; Dan Ervin  
**Subject:** FW: Welsh Subpoena

---

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**Sent:** Thursday, August 14, 2014 10:34 AM  
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CC: [AWilliamson@ci.blackdiamond.wa.us](mailto:AWilliamson@ci.blackdiamond.wa.us); [clund@yarrowbayholdings.com](mailto:clund@yarrowbayholdings.com); [carol\\_a\\_morris@msn.com](mailto:carol_a_morris@msn.com)

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**Sent:** Thursday, August 14, 2014 9:48 AM

**To:** Megan Nelson - Yarrow Bay Holdings; Phil Olbrechts

**Cc:** Andy Williamson; Colin Lund - Yarrow Bay Holdings

**Subject:** RE: Welsh Subpoena

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> From: Phil Olbrechts [<mailto:olbrechtslaw@gmail.com>]

> Sent: Monday, August 11, 2014 1:37 PM

> To: Megan Nelson

> Cc: Andy Williamson; Carol Morris; [olbrechtslaw@gmail.com](mailto:olbrechtslaw@gmail.com)

> Subject: Welsh Subpoena

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## Tracey Redd

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**From:** Andy Williamson  
**Sent:** Thursday, August 14, 2014 10:45 AM  
**To:** Gillian Zacharias; Dan Ervin  
**Subject:** FW: Welsh Subpoena

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**From:** Megan Nelson [mailto:MNelson@oakpointe.com]  
**Sent:** Thursday, August 14, 2014 10:01 AM  
**To:** Phil Olbrechts  
**Cc:** Andy Williamson; Colin Lund - Yarrow Bay Holdings; Carol Morris  
**Subject:** RE: Welsh Subpoena

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The following is a response to Ms. Morris' objection.

As noted in Yarrow Bay's original request for the subpoena, upon which Ms. Morris was cc'd, Ms. Welsh was the City of Black Diamond's SEPA Responsible Official when the City issued the MDNS for The Villages Preliminary Plat 2C on June 17, 2014. One of the requirements for preliminary plat approval, BDMC 17.15.020(A)(6), requires that "[a]ll environmental impacts have been addressed consistent with the public health, safety and welfare and city goals and policies." As the City staff member responsible for the Plat 2C SEPA determination and the environmental mitigation conditions associated therewith, the testimony of Ms. Welsh is relevant to determining the satisfaction of this criteria for preliminary plat approval. Questions may arise at the hearing as to whether an testimony or evidence presented at the hearing would cause Ms. Welsh to change her decision regarding issuance of the MDNS and associated environmental conditions. Unless Ms. Welsh is present to hearing this testimony or evidence, it is difficult to answer such questions.

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**Sent:** Thursday, August 14, 2014 9:48 AM  
**To:** Megan Nelson - Yarrow Bay Holdings; Phil Olbrechts  
**Cc:** Andy Williamson; Colin Lund - Yarrow Bay Holdings  
**Subject:** RE: Welsh Subpoena

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> From: [mnelson@yarrowbayholdings.com](mailto:mnelson@yarrowbayholdings.com)

> To: [olbrechtshaw@gmail.com](mailto:olbrechtshaw@gmail.com)

> CC: [AWilliamson@ci.blackdiamond.wa.us](mailto:AWilliamson@ci.blackdiamond.wa.us); [carol\\_a\\_morris@msn.com](mailto:carol_a_morris@msn.com); [clund@yarrowbayholdings.com](mailto:clund@yarrowbayholdings.com)

> Subject: RE: Welsh Subpoena

> Date: Thu, 14 Aug 2014 16:42:11 +0000

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**To:** Gillian Zacharias; Dan Ervin  
**Subject:** FW: Welsh Subpoena

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> To: [olbrechtslaw@gmail.com](mailto:olbrechtslaw@gmail.com)  
> CC: [AWilliamson@ci.blackdiamond.wa.us](mailto:AWilliamson@ci.blackdiamond.wa.us); [carol a morris@msn.com](mailto:carol_a_morris@msn.com); [clund@yarrowbayholdings.com](mailto:clund@yarrowbayholdings.com)  
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**Sent:** Thursday, August 14, 2014 10:34 AM  
**To:** Megan Nelson; Phil Olbrechts  
**Cc:** Andy Williamson; Colin Lund - Yarrow Bay Holdings  
**Subject:** RE: Welsh Subpoena

Good morning again: Sorry, but this request makes no sense. The concern is that the former SEPA Responsible Official needs to be present to hear testimony that would cause her to change her mind about the MDNS that she issued when she worked for Black Diamond? Here are my responses to this.

No. 1: The MDNS was not appealed. The MDNS is final. The Hearing Examiner will be holding a hearing on the preliminary plat application.

No. 2: The City has a SEPA Responsible Official, Aaron Nix. Stacey Welch can't withdraw the MDNS she issued when she was the SEPA Responsible Official because she is no longer the SEPA Responsible Official.

No. 3: Just because Yarrow Bay says that it would be prejudiced, doesn't mean that it is so. Yarrow Bay should be required to present authority to support their argument that they will be prejudiced if their witness can't hear the testimony of other witnesses during the hearing. I know of absolutely none. I also know of no authority that would allow the SEPA official to withdraw the MDNS (which was not appealed) after hearing evidence during the hearing on the underlying application. If there is such authority, the developer should be required to provide it. Then, in the unlikely event that this issue arises during the hearing, it will have already been researched and a decision can be made without delay.

No. 4: Stacey Welch is not the staff member charged with the responsibility of determining whether the preliminary plat meets the applicable criteria for approval of a preliminary plat. She doesn't work for Black Diamond. She is not the Black Diamond Community Development Director. There will be a staff report that will be written by someone other than Stacy Welch. The Black Diamond staff will be making a recommendation to the Hearing Examiner on the issue whether the preliminary plat application satisfies the applicable criteria, including this environmental criterion. It is my understanding that these staff members will be available to answer questions on environmental issues.

No. 5: If someone raises the question whether Ms. Welch considered some environmental issue when she issued the MDNS, the answer is that Ms. Welch considered the administrative record that was available at that time. If the particular piece of

evidence relating to the environmental issue wasn't included in the administrative record, then Ms. Welch couldn't have considered it. If it was included in the administrative record, then she considered it.

No. 6: If someone alleges that the MDNS should be overturned at this point in time because of some environmental issue that wasn't included in the administrative record, then that is a legal issue that the developer's attorneys will have to address. See above. It will not be resolved by Ms. Welch's opinion.

As to my standing to object to Ms. Welch listening to testimony so -- as the developer assumes -- that her testimony can be informed by the testimony of others, I have standing as the City Attorney for Black Diamond, based on the above. (Yes, it is true, I have no standing to complain that she will be inconvenienced.)

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CC: AWilliamson@ci.blackdiamond.wa.us; clund@yarrowbayholdings.com; carol\_a\_morris@msn.com  
Subject: RE: Welsh Subpoena  
Date: Thu, 14 Aug 2014 17:01:00 +0000

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**Subject:** RE: Welsh Subpoena

Mr. Examiner:

Upon review of the subpoena, we realized that the time is noted as 1pm while the hearing starts at 10am. We think it is important that Stacey Welsh hear the presentations of the City as well as the Applicant as well as any potential comments of interested parties regarding The Villages Plat 2C in order to inform her testimony regarding any environmental conditions or alleged impacts. Would it be possible to have you reissue the subpoena with a start time of 10am?

Your assistance is appreciated.

Thank you,  
Megan

-----Original Message-----

**From:** Phil Olbrechts [mailto:olbrechtslaw@gmail.com]  
**Sent:** Monday, August 11, 2014 1:37 PM  
**To:** Megan Nelson  
**Cc:** Andy Williamson; Carol Morris; olbrechtslaw@gmail.com  
**Subject:** Welsh Subpoena

Attached is the subpoena requested by Ms. Nelson. As required by the Hearing Examiner Rules of Procedure, Ms. Nelson is responsible for serving the subpoena upon Ms. Welsh. I emailed an amendment to the Rules of Procedure earlier today that clarifies that subpoenas may be requested for permit applications.

## Tracey Redd

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**From:** Megan Nelson <MNelson@oakpointe.com>  
**Sent:** Tuesday, August 12, 2014 2:31 PM  
**To:** Phil Olbrechts  
**Cc:** Andy Williamson; Carol Morris  
**Subject:** RE: Welsh Subpoena

Thank you, Mr. Olbrechts. The subpoena was mailed and emailed to Ms. Welsh today. Appreciate your assistance.

Megan

-----Original Message-----

**From:** Phil Olbrechts [<mailto:olbrechtslaw@gmail.com>]  
**Sent:** Monday, August 11, 2014 1:37 PM  
**To:** Megan Nelson  
**Cc:** Andy Williamson; Carol Morris; [olbrechtslaw@gmail.com](mailto:olbrechtslaw@gmail.com)  
**Subject:** Welsh Subpoena

Attached is the subpoena requested by Ms. Nelson. As required by the Hearing Examiner Rules of Procedure, Ms. Nelson is responsible for serving the subpoena upon Ms. Welsh. I emailed an amendment to the Rules of Procedure earlier today that clarifies that subpoenas may be requested for permit applications.

## Tracey Redd

---

**From:** Phil Olbrechts <olbrechtslaw@gmail.com>  
**Sent:** Thursday, August 07, 2014 12:03 PM  
**To:** Andy Williamson  
**Cc:** Carol Morris; Megan Nelson (MNelson@oakpointe.com)  
**Subject:** Re: Public Hearing Notice - Request for Subpoena in advance of Preliminary Plat Hearing

No problem. I'll get that done when I get back.

Sent from my iPhone

On Aug 7, 2014, at 11:20 AM, Andy Williamson <[AWilliamson@ci.blackdiamond.wa.us](mailto:AWilliamson@ci.blackdiamond.wa.us)> wrote:

Good Morning Mr. Examiner  
I would feel better if you made the changes.  
Respectfully  
Andy Williamson

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**From:** Phil Olbrechts [<mailto:olbrechtslaw@gmail.com>]  
**Sent:** Wednesday, August 06, 2014 6:45 PM  
**To:** Andy Williamson  
**Cc:** Megan Nelson; [carol@carolmorrislaw.com](mailto:carol@carolmorrislaw.com)  
**Subject:** Re: Public Hearing Notice - Request for Subpoena in advance of Preliminary Plat Hearing

Thank you Mr. Williamson. I've prepared the subpoena and it's ready to go. However, before issuing it we do need to take care of a minor housekeeping issue. The Examiner rule authorizing subpoenas (3.15) is in the code enforcement section of the rules and could be construed as only authorizing subpoenas for code enforcement actions. The BDMC authorizes me to adopt rules of procedure but doesn't prescribe any adoption process. At the least, I would think that any amendments to the rules would not go into effect until they are posted on the City's website, since the current rules have been posted. I'm amending Rule 3.15 to be renumbered as Rule 2.31. Could you make that change to the rules posted on the City's website? I'm on vacation in Louisiana and don't know if I have the word file of the rules saved on my office computer. If you have a file of the rules on your end that you can alter, the most expeditious course of action would be to simply renumber and relocate 3.15 to 2.31. Then add the following note in italics under the document title "Note: By email order dated August 6, 2014, the Hearing Examiner has amended these rules to renumber Rule 3.15 as Rule 2.31". If you're uncomfortable doing this, I should be able to send you a new set of rules early next week and then I will email the subpoena to Ms. Nelson forthwith.

On Aug 5, 2014, at 11:51 AM, Andy Williamson <[AWilliamson@ci.blackdiamond.wa.us](mailto:AWilliamson@ci.blackdiamond.wa.us)> wrote:

Mr. Examiner:

The City of Federal Way has asked for you to issue the subpoena and they will make Ms. Welsh available for the hearing .

They have also asked for the time expectations that will be required of Ms. Welsh.

Respectfully

Andy Williamson

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**From:** Andy Williamson

**Sent:** Tuesday, July 29, 2014 5:24 PM

**To:** 'phil olbrechts'; 'Megan Nelson'

**Cc:** 'Colin Lund'; [carol@carolmorrislaw.com](mailto:carol@carolmorrislaw.com)

**Subject:** RE: Public Hearing Notice - Request for Subpoena in advance of Preliminary Plat Hearing

Thank you for the clarification

I will make contact with the City of Federal Way and update you

Andy Williamson

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**From:** phil olbrechts [<mailto:olbrechtslaw@gmail.com>]

**Sent:** Tuesday, July 29, 2014 5:01 PM

**To:** Andy Williamson; 'Megan Nelson'

**Cc:** 'Colin Lund'; [carol@carolmorrislaw.com](mailto:carol@carolmorrislaw.com)

**Subject:** RE: Public Hearing Notice - Request for Subpoena in advance of Preliminary Plat Hearing

I don't think I have any authority to order City staff to do anything in regards to the applicant's subpoena request. I was just anticipating that the subpoena could create some friction between Federal Way and BD and wanted to give staff an opportunity to diffuse it by approaching Federal Way proactively. If there are any "political" problems caused by the subpoena, staff will probably get stuck with dealing with the brunt of them and I'm trying to avoid putting staff in that position. It could very well be this is no big deal whatsoever, but I'm too far removed to appreciate whether that's the case or not.

If you would find it beneficial to talk to Ms. Welsh/Federal Way, my suggestion would be to say that the applicant has requested the subpoena and I suggested that you confer with Ms. Welsh and/or FW to make sure this would not cause them any problems for them before I issue it. If you would prefer that I contact them, or that I just go ahead and issue the subpoena, that's fine. I'm looking at this from the standpoint of interjurisdictional relations, which is why it appeared to me that staff would be the more appropriate City representatives. Also, even though subpoena can be handled ex parte, I do believe it best that I limit my ex parte contact with hearing participants as much as I can.

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**From:** Andy Williamson [<mailto:AWilliamson@ci.blackdiamond.wa.us>]

**Sent:** Tuesday, July 29, 2014 4:34 PM

**To:** 'phil olbrechts'; 'Megan Nelson'

**Cc:** 'Colin Lund'; [carol@carolmorrislaw.com](mailto:carol@carolmorrislaw.com)

**Subject:** RE: Public Hearing Notice - Request for Subpoena in advance of Preliminary Plat Hearing

Mr. Examiner:

The city is willing to reach out to Ms. Welsh and the City of Federal Way before you issue a subpoena.

I request clear direction from you under your authority as the Hearing Examiner for me to take that action.

Andy Williamson

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**From:** phil olbrechts [<mailto:olbrechtslaw@gmail.com>]  
**Sent:** Tuesday, July 29, 2014 3:57 PM  
**To:** 'Megan Nelson'  
**Cc:** 'Colin Lund'; Andy Williamson; [carol@carolmorrisslaw.com](mailto:carol@carolmorrisslaw.com)  
**Subject:** RE: Public Hearing Notice - Request for Subpoena in advance of Preliminary Plat Hearing

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---

**From:** Megan Nelson [<mailto:MNelson@oakpointe.com>]  
**Sent:** Tuesday, July 29, 2014 10:27 AM  
**To:** Phil Olbrechts ([olbrechtslaw@gmail.com](mailto:olbrechtslaw@gmail.com))  
**Cc:** Colin Lund; Andy Williamson; [carol@carolmorrisslaw.com](mailto:carol@carolmorrisslaw.com)  
**Subject:** FW: Public Hearing Notice - Request for Subpoena in advance of Preliminary Plat Hearing

Mr. Examiner:

Yarrow Bay received the below notice from Mr. Andy Williamson of a hearing date (August 25) for its Preliminary Plat 2C located within the Villages MPD. Pursuant to that email notice and so as not to delay the hearing date, Yarrow Bay is requesting that the Examiner issue a subpoena to require Stacey Welsh to appear and potentially testify at the plat hearing under the City of Black Diamond Hearing Examiner Rules of Practice & Procedure (BDHERPP) Section 3.15(a).

Stacey Welsh was the City of Black Diamond's SEPA Responsible Official when the City issued the MDNS for The Villages Preliminary Plat 2C on June 17, 2014. Subsequent to this issuance, Stacey Welsh has left the City of Black Diamond's employ and is now working as an Associate Planner for the City of Federal Way.

One of the requirements for preliminary plat approval, BDMC 17.15.020(A)(6), requires that "[a]ll environmental impacts have been addressed consistent with the public health, safety and welfare and city goals and policies." As the City staff member responsible for the Plat 2C SEPA determination and the environmental mitigation conditions associated therewith, the testimony of Ms. Welsh is relevant to determining the satisfaction of this criteria for preliminary plat approval. Therefore, we ask the Examiner to issue a subpoena requesting Ms. Welsh's presence at the hearing on August 25, 2014.

Per BDHERPP 3.15(d) subpoenas must be served no less than seven (7) days prior to the appearance ordered; therefore, Yarrow Bay cannot wait until issuance of the staff report (only 5 business days prior

to the hearing date under BDMC 2.30.090) or until questions are raised in public testimony to determine the relevancy of Ms. Welsh's testimony without significantly delaying the close of hearing.

The contact information for Stacey Welsh is: Stacey Welsh, Associate Planner, City of Federal Way, Planning Division, Community & Economic Development, 33325 8<sup>th</sup> Ave South, Federal Way, WA 98003.

Please note that while requests for subpoenas may be made ex parte (see BDHERPP 3.15(g)), as a courtesy we have included City staff member Andy Williamson and City Attorney Carol Morris as cc's on this email request.

Your consideration of our request is appreciated. If you have any questions regarding Yarrow Bay's request, please contact me using the information below.

Sincerely,  
Megan Nelson

Director of Legal Affairs  
Yarrow Bay  
425-898-2104  
[mnelson@yarrowbayholdings.com](mailto:mnelson@yarrowbayholdings.com)

---

**From:** Andy Williamson [<mailto:AWilliamson@ci.blackdiamond.wa.us>]  
**Sent:** Friday, July 25, 2014 11:55 AM  
**To:** Colin Lund; Justin Wortman; Megan Nelson  
**Subject:** FW: Public Hearing Notice

Attached you will find our official notice for the phase 2 plat c hearings  
Please post the site per city code  
Andy Williamson

## Tracey Redd

---

**From:** Andy Williamson  
**Sent:** Thursday, August 07, 2014 9:21 AM  
**To:** 'Phil Olbrechts'; Carol Morris; Megan Nelson (MNelson@oakpointe.com)  
**Subject:** RE: Public Hearing Notice - Request for Subpoena in advance of Preliminary Plat Hearing

Good Morning Mr. Examiner  
I would feel better if you made the changes.  
Respectfully  
Andy Williamson

---

**From:** Phil Olbrechts [mailto:olbrechtslaw@gmail.com]  
**Sent:** Wednesday, August 06, 2014 6:45 PM  
**To:** Andy Williamson  
**Cc:** Megan Nelson; carol@carolmorrislaw.com  
**Subject:** Re: Public Hearing Notice - Request for Subpoena in advance of Preliminary Plat Hearing

Thank you Mr. Williamson. I've prepared the subpoena and it's ready to go. However, before issuing it we do need to take care of a minor housekeeping issue. The Examiner rule authorizing subpoenas (3.15) is in the code enforcement section of the rules and could be construed as only authorizing subpoenas for code enforcement actions. The BDMC authorizes me to adopt rules of procedure but doesn't prescribe any adoption process. At the least, I would think that any amendments to the rules would not go into effect until they are posted on the City's website, since the current rules have been posted. I'm amending Rule 3.15 to be renumbered as Rule 2.31. Could you make that change to the rules posted on the City's website? I'm on vacation in Louisiana and don't know if I have the word file of the rules saved on my office computer. If you have a file of the rules on your end that you can alter, the most expeditious course of action would be to simply renumber and relocate 3.15 to 2.31. Then add the following note in italics under the document title "Note: By email order dated August 6, 2014, the Hearing Examiner has amended these rules to renumber Rule 3.15 as Rule 2.31". If you're uncomfortable doing this, I should be able to send you a new set of rules early next week and then I will email the subpoena to Ms. Nelson forthwith.

On Aug 5, 2014, at 11:51 AM, Andy Williamson <[AWilliamson@ci.blackdiamond.wa.us](mailto:AWilliamson@ci.blackdiamond.wa.us)> wrote:

Mr. Examiner:  
The City of Federal Way has asked for you to issue the subpoena and they will make Ms. Welsh available for the hearing.  
They have also asked for the time expectations that will be required of Ms. Welsh.  
Respectfully  
Andy Williamson

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**From:** Andy Williamson  
**Sent:** Tuesday, July 29, 2014 5:24 PM

**To:** 'phil olbrechts'; 'Megan Nelson'  
**Cc:** 'Colin Lund'; [carol@carolmorrislaw.com](mailto:carol@carolmorrislaw.com)  
**Subject:** RE: Public Hearing Notice - Request for Subpoena in advance of Preliminary Plat Hearing

Thank you for the clarification  
I will make contact with the City of Federal Way and update you  
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**Sent:** Tuesday, July 29, 2014 5:01 PM  
**To:** Andy Williamson; 'Megan Nelson'  
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**From:** Andy Williamson [<mailto:AWilliamson@ci.blackdiamond.wa.us>]  
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**To:** 'phil olbrechts'; 'Megan Nelson'  
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Mr. Examiner:  
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**Sent:** Tuesday, July 29, 2014 10:27 AM  
**To:** Phil Olbrechts ([olbrechtslaw@gmail.com](mailto:olbrechtslaw@gmail.com))  
**Cc:** Colin Lund; Andy Williamson; [carol@carolmorrislaw.com](mailto:carol@carolmorrislaw.com)  
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Sincerely,  
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Director of Legal Affairs  
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**From:** Andy Williamson [<mailto:AWilliamson@ci.blackdiamond.wa.us>]  
**Sent:** Friday, July 25, 2014 11:55 AM  
**To:** Colin Lund; Justin Wortman; Megan Nelson  
**Subject:** FW: Public Hearing Notice

Attached you will find our official notice for the phase 2 plat c hearings  
Please post the site per city code  
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## Tracey Redd

---

**From:** Andy Williamson  
**Sent:** Thursday, August 07, 2014 8:48 AM  
**To:** Brenda Martinez  
**Subject:** FW: Public Hearing Notice - Request for Subpoena in advance of Preliminary Plat Hearing

---

**From:** Phil Olbrechts [mailto:olbrechtslaw@gmail.com]  
**Sent:** Wednesday, August 06, 2014 6:45 PM  
**To:** Andy Williamson  
**Cc:** Megan Nelson; carol@carolmorrisslaw.com  
**Subject:** Re: Public Hearing Notice - Request for Subpoena in advance of Preliminary Plat Hearing

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**Sent:** Tuesday, July 29, 2014 10:27 AM  
**To:** Phil Olbrechts ([olbrechtslaw@gmail.com](mailto:olbrechtslaw@gmail.com))  
**Cc:** Colin Lund; Andy Williamson; [carol@carolmorrislaw.com](mailto:carol@carolmorrislaw.com)  
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**Sent:** Friday, July 25, 2014 11:55 AM

**To:** Colin Lund; Justin Wortman; Megan Nelson

**Subject:** FW: Public Hearing Notice

Attached you will find our official notice for the phase 2 plat c hearings

Please post the site per city code

Andy Williamson

## Tracey Redd

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**From:** Phil Olbrechts <olbrechtslaw@gmail.com>  
**Sent:** Wednesday, August 06, 2014 6:45 PM  
**To:** Andy Williamson  
**Cc:** Megan Nelson; carol@carolmorrislaw.com  
**Subject:** Re: Public Hearing Notice - Request for Subpoena in advance of Preliminary Plat Hearing

Thank you Mr. Williamson. I've prepared the subpoena and it's ready to go. However, before issuing it we do need to take care of a minor housekeeping issue. The Examiner rule authorizing subpoenas (3.15) is in the code enforcement section of the rules and could be construed as only authorizing subpoenas for code enforcement actions. The BDMC authorizes me to adopt rules of procedure but doesn't prescribe any adoption process. At the least, I would think that any amendments to the rules would not go into effect until they are posted on the City's website, since the current rules have been posted. I'm amending Rule 3.15 to be renumbered as Rule 2.31. Could you make that change to the rules posted on the City's website? I'm on vacation in Louisiana and don't know if I have the word file of the rules saved on my office computer. If you have a file of the rules on your end that you can alter, the most expeditious course of action would be to simply renumber and relocate 3.15 to 2.31. Then add the following note in italics under the document title "Note: By email order dated August 6, 2014, the Hearing Examiner has amended these rules to renumber Rule 3.15 as Rule 2.31". If you're uncomfortable doing this, I should be able to send you a new set of rules early next week and then I will email the subpoena to Ms. Nelson forthwith.

On Aug 5, 2014, at 11:51 AM, Andy Williamson <[AWilliamson@ci.blackdiamond.wa.us](mailto:AWilliamson@ci.blackdiamond.wa.us)> wrote:

Mr. Examiner:

The City of Federal Way has asked for you to issue the subpoena and they will make Ms. Welsh available for the hearing

They have also asked for the time expectations that will be required of Ms. Welsh.

Respectfully

Andy Williamson

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**From:** Andy Williamson  
**Sent:** Tuesday, July 29, 2014 5:24 PM  
**To:** 'phil olbrechts'; 'Megan Nelson'  
**Cc:** 'Colin Lund'; [carol@carolmorrislaw.com](mailto:carol@carolmorrislaw.com)  
**Subject:** RE: Public Hearing Notice - Request for Subpoena in advance of Preliminary Plat Hearing

Thank you for the clarification

I will make contact with the City of Federal Way and update you

Andy Williamson

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**From:** phil olbrechts [<mailto:olbrechtslaw@gmail.com>]  
**Sent:** Tuesday, July 29, 2014 5:01 PM

**To:** Andy Williamson; 'Megan Nelson'

**Cc:** 'Colin Lund'; [carol@carolmorrislaw.com](mailto:carol@carolmorrislaw.com)

**Subject:** RE: Public Hearing Notice - Request for Subpoena in advance of Preliminary Plat Hearing

I don't think I have any authority to order City staff to do anything in regards to the applicant's subpoena request. I was just anticipating that the subpoena could create some friction between Federal Way and BD and wanted to give staff an opportunity to diffuse it by approaching Federal Way proactively. If there are any "political" problems caused by the subpoena, staff will probably get stuck with dealing with the brunt of them and I'm trying to avoid putting staff in that position. It could very well be this is no big deal whatsoever, but I'm too far removed to appreciate whether that's the case or not.

If you would find it beneficial to talk to Ms. Welsh/Federal Way, my suggestion would be to say that the applicant has requested the subpoena and I suggested that you confer with Ms. Welsh and/or FW to make sure this would not cause them any problems for them before I issue it. If you would prefer that I contact them, or that I just go ahead and issue the subpoena, that's fine. I'm looking at this from the standpoint of interjurisdictional relations, which is why it appeared to me that staff would be the more appropriate City representatives. Also, even though subpoena can be handled ex parte, I do believe it best that I limit my ex parte contact with hearing participants as much as I can.

---

**From:** Andy Williamson [<mailto:AWilliamson@ci.blackdiamond.wa.us>]

**Sent:** Tuesday, July 29, 2014 4:34 PM

**To:** 'phil olbrechts'; 'Megan Nelson'

**Cc:** 'Colin Lund'; [carol@carolmorrislaw.com](mailto:carol@carolmorrislaw.com)

**Subject:** RE: Public Hearing Notice - Request for Subpoena in advance of Preliminary Plat Hearing

Mr. Examiner:

The city is willing to reach out to Ms. Welsh and the City of Federal Way before you issue a subpoena.

I request clear direction from you under your authority as the Hearing Examiner for me to take that action.

Andy Williamson

---

**From:** phil olbrechts [<mailto:olbrechtslaw@gmail.com>]

**Sent:** Tuesday, July 29, 2014 3:57 PM

**To:** 'Megan Nelson'

**Cc:** 'Colin Lund'; Andy Williamson; [carol@carolmorrislaw.com](mailto:carol@carolmorrislaw.com)

**Subject:** RE: Public Hearing Notice - Request for Subpoena in advance of Preliminary Plat Hearing

The subpoena request appears to be reasonable and will likely be granted. However, I do want to make sure this is handled as diplomatically as possible. When Mr. Bricklin was granted subpoenas to compel King County employees to testify at the FEIS appeal, my recollection is he represented that King County and the employees were happy to participate in the hearings and the employees wanted the subpoenas to facilitate the authorization of time off to testify. This inquiry is more directed at Mr. Williamson, but I'm wondering if it would be prudent for him or some BD representative to talk to Ms. Welsh and/or her employer (Federal Way) to smooth things over before hitting Ms. Welsh with a subpoena out of the blue. If we can get her agreement up front to participate, it would be fair to tell her that a subpoena would still issue to protect the applicant's interests should she for whatever reason miss the hearing. In addition to maintaining good relations with Federal Way, such advance work may prevent a dispute over BD's authority to enforce subpoenas for people outside city limits. BDMC 2.30.070(B) authorizes examiner rules for the attendance of witnesses, but I would be interested to see if the City really has the authority to enforce such a subpoena against someone outside its jurisdiction.

---

**From:** Megan Nelson [<mailto:MNelson@oakpointe.com>]

**Sent:** Tuesday, July 29, 2014 10:27 AM

**To:** Phil Olbrechts ([olbrechtslaw@gmail.com](mailto:olbrechtslaw@gmail.com))  
**Cc:** Colin Lund; Andy Williamson; [carol@carolmorrisslaw.com](mailto:carol@carolmorrisslaw.com)  
**Subject:** FW: Public Hearing Notice - Request for Subpoena in advance of Preliminary Plat Hearing

Mr. Examiner:

Yarrow Bay received the below notice from Mr. Andy Williamson of a hearing date (August 25) for its Preliminary Plat 2C located within the Villages MPD. Pursuant to that email notice and so as not to delay the hearing date, Yarrow Bay is requesting that the Examiner issue a subpoena to require Stacey Welsh to appear and potentially testify at the plat hearing under the City of Black Diamond Hearing Examiner Rules of Practice & Procedure (BDHERPP) Section 3.15(a).

Stacey Welsh was the City of Black Diamond's SEPA Responsible Official when the City issued the MDNS for The Villages Preliminary Plat 2C on June 17, 2014. Subsequent to this issuance, Stacey Welsh has left the City of Black Diamond's employ and is now working as an Associate Planner for the City of Federal Way.

One of the requirements for preliminary plat approval, BDMC 17.15.020(A)(6), requires that "[a]ll environmental impacts have been addressed consistent with the public health, safety and welfare and city goals and policies." As the City staff member responsible for the Plat 2C SEPA determination and the environmental mitigation conditions associated therewith, the testimony of Ms. Welsh is relevant to determining the satisfaction of this criteria for preliminary plat approval. Therefore, we ask the Examiner to issue a subpoena requesting Ms. Welsh's presence at the hearing on August 25, 2014.

Per BDHERPP 3.15(d) subpoenas must be served no less than seven (7) days prior to the appearance ordered; therefore, Yarrow Bay cannot wait until issuance of the staff report (only 5 business days prior to the hearing date under BDMC 2.30.090) or until questions are raised in public testimony to determine the relevancy of Ms. Welsh's testimony without significantly delaying the close of hearing.

The contact information for Stacey Welsh is: Stacey Welsh, Associate Planner, City of Federal Way, Planning Division, Community & Economic Development, 33325 8<sup>th</sup> Ave South, Federal Way, WA 98003.

Please note that while requests for subpoenas may be made ex parte (*see* BDHERPP 3.15(g)), as a courtesy we have included City staff member Andy Williamson and City Attorney Carol Morris as cc's on this email request.

Your consideration of our request is appreciated. If you have any questions regarding Yarrow Bay's request, please contact me using the information below.

Sincerely,  
Megan Nelson

Director of Legal Affairs  
Yarrow Bay  
425-898-2104  
[mnelson@yarrowbayholdings.com](mailto:mnelson@yarrowbayholdings.com)

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**From:** Andy Williamson [<mailto:AWilliamson@ci.blackdiamond.wa.us>]  
**Sent:** Friday, July 25, 2014 11:55 AM  
**To:** Colin Lund; Justin Wortman; Megan Nelson  
**Subject:** FW: Public Hearing Notice

Attached you will find our official notice for the phase 2 plat c hearings  
Please post the site per city code  
Andy Williamson

## Tracey Redd

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**From:** Andy Williamson  
**Sent:** Tuesday, August 05, 2014 9:52 AM  
**To:** 'phil olbrechts'; 'Megan Nelson'  
**Cc:** 'Colin Lund'; 'carol@carolmorrislaw.com'  
**Subject:** RE: Public Hearing Notice - Request for Subpoena in advance of Preliminary Plat Hearing

Mr. Examiner:

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**Subject:** RE: Public Hearing Notice - Request for Subpoena in advance of Preliminary Plat Hearing

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**Sent:** Tuesday, July 29, 2014 5:01 PM  
**To:** Andy Williamson; 'Megan Nelson'  
**Cc:** 'Colin Lund'; [carol@carolmorrislaw.com](mailto:carol@carolmorrislaw.com)  
**Subject:** RE: Public Hearing Notice - Request for Subpoena in advance of Preliminary Plat Hearing

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**Sent:** Tuesday, July 29, 2014 4:34 PM  
**To:** 'phil olbrechts'; 'Megan Nelson'

**Cc:** 'Colin Lund'; [carol@carolmorrislaw.com](mailto:carol@carolmorrislaw.com)

**Subject:** RE: Public Hearing Notice - Request for Subpoena in advance of Preliminary Plat Hearing

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**Subject:** RE: Public Hearing Notice - Request for Subpoena in advance of Preliminary Plat Hearing

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**Sent:** Tuesday, July 29, 2014 10:27 AM

**To:** Phil Olbrechts ([olbrechtslaw@gmail.com](mailto:olbrechtslaw@gmail.com))

**Cc:** Colin Lund; Andy Williamson; [carol@carolmorrislaw.com](mailto:carol@carolmorrislaw.com)

**Subject:** FW: Public Hearing Notice - Request for Subpoena in advance of Preliminary Plat Hearing

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Please note that while requests for subpoenas may be made ex parte (*see* BDHERPP 3.15(g)), as a courtesy we have included City staff member Andy Williamson and City Attorney Carol Morris as cc's on this email request.

Your consideration of our request is appreciated. If you have any questions regarding Yarrow Bay's request, please contact me using the information below.

Sincerely,  
Megan Nelson

Director of Legal Affairs  
Yarrow Bay  
425-898-2104  
[mnelson@yarrowbayholdings.com](mailto:mnelson@yarrowbayholdings.com)

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**From:** Andy Williamson [<mailto:AWilliamson@ci.blackdiamond.wa.us>]

**Sent:** Friday, July 25, 2014 11:55 AM

**To:** Colin Lund; Justin Wortman; Megan Nelson

**Subject:** FW: Public Hearing Notice

Attached you will find our official notice for the phase 2 plat c hearings  
Please post the site per city code  
Andy Williamson

## Tracey Redd

---

**From:** Andy Williamson  
**Sent:** Wednesday, August 13, 2014 9:12 AM  
**To:** Brenda Martinez; Rachel Pitzel  
**Subject:** FW: Black Diamond Hearing Examiner Rules of Procedure  
**Attachments:** Black Diamond Hearing Examiner Rules of Procedure.doc

Can we get this posted asap  
Thanks

---

**From:** Phil Olbrechts [<mailto:olbrechtslaw@gmail.com>]  
**Sent:** Monday, August 11, 2014 1:26 PM  
**To:** Andy Williamson  
**Subject:** Black Diamond Hearing Examiner Rules of Procedure

Hi Andy,

Attached are the revised Rules of Procedure. Please replace the existing rules posted on the City's website with the attached. Thanks!

# **CITY OF BLACK DIAMOND HEARING EXAMINER RULES OF PRACTICE AND PROCEDURE**

**Note: These Rules of Procedure were amended by the Hearing Examiner on August 11, 2014 in order to renumber Section 3.15, Subpoenas, to 2.32.**

## **Section 1: General Provisions**

- 1.01 Applicability
- 1.02 Effective Date
- 1.03 Interpretation

## **Section 2: Rules of General Application**

- 2.01 Scope
- 2.02 Definitions
- 2.03 Hearing Examiner's Jurisdiction
- 2.04 Computation of Time
- 2.05 Filing and Service of Documents
- 2.06 Expeditious Proceedings
- 2.07 Scheduling Hearings
- 2.08 Consolidation
- 2.09 Presiding Official
- 2.10 Disqualification or Recusal of an Examiner
- 2.11 Witnesses
- 2.12 Expected Conduct
- 2.13 Motions
- 2.14 Evidence
- 2.15 Official Notice
- 2.16 Site Inspection
- 2.17 Continuing or Reopening Hearing
- 2.18 Leaving the Record Open
- 2.19 Distribution of Decisions and Recommendations
- 2.20 Remand
- 2.21 Termination of Jurisdiction
- 2.22 Clerical Errors
- 2.23 Proceedings Recorded
- 2.24 Disclosure of Public Records
- 2.25 Transcript of Proceedings
- 2.26 Retention of Records
- 2.27 Recording Devices
- 2.28 Appearance of Fairness
- 2.29 Hearing Examiner's Decision

- 2.30 Reconsideration
- 2.31 Record
- 2.32 Subpoenas

### **Section 3: Code Enforcement Actions**

- 3.01 Dismissal
- 3.02 Clarification
- 3.03 Amendment
- 3.04 Withdrawal of Code Enforcement Appeal
- 3.05 Party Representative Required
- 3.06 Notice of Appearance
- 3.07 Intervention
- 3.08 Parties' Rights and Responsibilities
- 3.09 Default
- 3.10 Hearing Format
- 3.11 Communications From Non-Parties
- 3.12 Burden of Proof
- 3.13 Reconsideration
- 3.14 Subsequent Appeal

### **Section 4: Recommendations to Council**

- 4.01 Nature and Purpose of Proceedings
- 4.02 Rights of Parties and Interested Persons
- 4.03 Format of Public Hearing

## **SECTION 1: GENERAL PROVISIONS**

### **1.01 APPLICABILITY**

These Hearing Examiner Rules (Rules) are adopted to supplement the ordinance requirements for matters within the Hearing Examiner's jurisdiction and govern administrative practice and procedure before the Hearing Examiner. In any case of conflict between a Hearing Examiner Rule (HER) and the Black Diamond Municipal Code (Code), the Code shall control.

### **1.02 EFFECTIVE DATE**

These Rules shall apply to all matters filed with or otherwise properly before the Hearing Examiner on or after the effective date of adoption of these Rules by the Hearing Examiner.

### **1.03 INTERPRETATION OF RULES**

(a) The Hearing Examiner shall interpret the Hearing Examiner Rules of Practice and Procedure and determine how the Rules apply in specific instances. An affected party may petition the Hearing Examiner during the pendency of a matter under review to request a declaratory ruling regarding the applicability of these Rules to specific actual circumstances. Except during hearing, such request must be in writing and clearly identify the subject Rules and describe the circumstances for which the declaratory ruling is sought.

(b) Where questions of practice and procedure arise that are not addressed by these Rules, the Hearing Examiner shall determine the practice or procedure that she or he deems most appropriate and consistent with providing fair treatment and due process. In making such determinations, the Hearing Examiner may look to the current Civil Rules of Superior Court for guidance.

## **SECTION 2: RULES OF GENERAL APPLICATION**

### **2.01 SCOPE**

Rules in this section apply generally to all matters where the Hearing Examiner has authority to decide or recommend the outcome.

### **2.02 DEFINITIONS**

The following definitions shall apply unless the context or subject matter requires otherwise:

(a) "Affidavit" - a written or printed statement declared or certified to be true and correct under penalty of perjury under the laws of the state of Washington. "Affidavits" includes the declarations authorized under RCW 9A.72.085, as now or hereafter amended.

(b) "Appeal" - a challenge to a decision or other action where the MCC or other authority authorizes the Hearing Examiner to review and decide.

(d) "Appellant" - the person(s), organization, association, corporation, or other entity who files a complete and timely appeal of a decision or other appealable action.

(e) "Applicant" - the person(s), organization, association, corporation or other entity who files an application or otherwise formally requests a permit or other type of County action, interpretation, or authorization which is the subject of an appeal or other review by the Hearing Examiner.

(f) "Code" – Black Diamond Municipal Code (BDMC).

(g) "Code Enforcement Action" - Any civil proceeding the purpose of which is to stop a person or entity from violating any provision of the Black Diamond Municipal Code.

(h) "Days" - calendar days.

(i) "Department" - the department, agency, board, commission or other County entity responsible for the recommendation, decision or other action that is subject to review by the Hearing Examiner.

(j) "Director" - the head of the department, agency, board or commission, or other unit of County government or the department head's designee responsible for the recommendation, decision or other action that is subject to review by the Hearing Examiner.

(k) "Examiner" - the Hearing Examiner, or a Deputy Hearing Examiner or an alternate Hearing Examiner who has been delegated responsibility by the Hearing Examiner or County Commissioners to conduct a hearing or otherwise preside over a particular matter.

(l) "Ex parte communication" - a communication between one party and the Examiner in the absence of the other party(s).

(m) "Hearing Examiner" – same as "Examiner".

(n) "Interested person" - any individual, or public or private organization of any character, significantly affected by, or interested in proceedings before the Hearing Examiner, including any party.

(o) "Motion" - a request made to the Hearing Examiner, whether written or oral, for an order or other ruling.

(p) "Order" - a ruling, instruction, or other directive issued by the Hearing Examiner in response to a request or motion by a party, or on the Hearing Examiner's own initiative.

(q) "Party" - the person(s), group, organization, corporation, or other entity that has filed a development permit application or an appeal, or is granted right of appeal automatically by ordinance; the person(s), group, organization, corporation, or other entity granted party status

through intervention; County staff when the County is prosecuting a code enforcement action or has a decision subject to appeal before the Examiner; the person(s), group, organization, corporation, or other entity who filed the application, request, or petition for a permit or other type of City authorization or action which is the subject of the appeal; the owner(s) of the property subject to the City decision or other action.

(r) "Public hearing" - a hearing held by the Hearing Examiner for the purpose of developing a record to substantiate a recommendation or decision. Serves as the "open record hearing" as defined in the Regulatory Reform Act, Chapter 36.70B RCW.

(s) "Representative" - that individual designated by a party to be the official contact person and to speak for the party.

(t) "Rule(s)" - the Hearing Examiner Rules of Practice and Procedure, as currently amended.

(u) "Timely" - within the time prescribed by applicable ordinance or, in the absence of ordinance provision, the time prescribed by Hearing Examiner rule, or within the time determined by the Hearing Examiner.

(v) "Witness" – Any person who provides testimony (sworn or unsworn) at a hearing.

### **2.03 HEARING EXAMINER'S JURISDICTION**

The Hearing Examiner can only hear and make recommendations and decisions in those matters and on those issues where ordinance or other appropriate authority grants to the Hearing Examiner the authority to do so. The Hearing Examiner does not have the authority to rule on the validity of ordinances.

### **2.04 COMPUTATION OF TIME**

Except as otherwise provided by the Code, computation of any period of time prescribed or allowed for matters before the Hearing Examiner, shall begin with the first day following that on which the act or event initiating such period of time shall have occurred. When the last day of the period so computed is a Saturday, Sunday, or national, state or City holiday, the period shall extend to the end of the next day when the County offices are open for business.

### **2.05 FILING AND SERVICE OF DOCUMENTS**

(a) Documents shall be deemed filed with the Hearing Examiner on receipt at the City of Black Diamond Department of Community Development located at 24301 Roberts Drive with a mailing address of City of Black Diamond Department of Community Development, P.O. Box 599, Black Diamond, WA 98010.

(b) Documents shall be served personally or, unless otherwise provided by applicable ordinance, by first-class, registered, or certified mail, or by facsimile (fax) transmission. Service shall be

regarded as complete upon deposit in the regular facilities of the U.S. Mail of a properly stamped and addressed letter or packet, or at the time personally delivered, or transmitted by fax.

## **2.06 EXPEDITIOUS PROCEEDINGS**

To the extent practicable and consistent with requirements of law, hearings shall be conducted expeditiously. At every stage in the proceedings, all parties shall make every reasonable effort to avoid delay.

## **2.07 SCHEDULING HEARINGS**

The City of Black Diamond Department of Community Development shall promptly schedule hearings after consultation with the Hearing Examiner.

## **2.08 CONSOLIDATION**

Where practical, feasible, and consistent with ordinance requirements, all matters under the jurisdiction of the Hearing Examiner relating to the same matter, should be consolidated for hearing. The Hearing Examiner may order consolidation with or without a request from any party.

## **2.09 PRESIDING OFFICIAL**

- (a) The Hearing Examiner shall preside over hearings held under these Rules.
- (b) The Examiner conducting a hearing shall have the duty to ensure a fair and impartial hearing, to take all necessary action to avoid undue delay in the disposition of proceedings, and to maintain order. The Examiner shall have all powers necessary to these ends, including, but not necessarily limited to the following:
1. Determine the order of presentation of evidence;
  2. Administer oaths and affirmations;
  3. Rule on offers of proof and receive evidence;
  4. Rule on procedural matters, objections and motions;
  5. Question witnesses and request additional exhibits;
  6. Permit or require oral or written argument or briefs and determine the timing and format for such submittals;
  7. Regulate the course of the hearings and the conduct of the parties and others so as to maintain order and provide for fair hearing;

8. Make and issue the decision or recommendation.

### **2.10 DISQUALIFICATION OR RECUSAL OF AN EXAMINER**

(a) In the interest of fairness to the parties, an Examiner on his/her own initiative may recuse himself/herself from hearing a particular matter in the event of personal bias, prejudice, financial interest, or other substantial reason.

(b) Prior to hearing, a party may request that the Hearing Examiner assign a different Examiner to hear a particular matter. The request must be in writing, submitted at least seven (7) days prior to the day the hearing is to begin, with a copy of the request to each of the other parties. The request must set forth the reasons for the belief that personal bias, prejudice, financial interest, or other substantial reason for disqualification or recusal exists.

(c) In case of disqualification or recusal, the Hearing Examiner shall reassign the matter to a different Examiner.

### **2.11 WITNESSES**

(a) All witnesses except citizens expressing their opinion as identified in HER 4.03 are subject to cross-examination by the other party(s).

(b) The rules of privilege shall be effective to the extent recognized by law.

(c) Hearing Examiner hearings are open to the public. However, in code enforcement actions and the appeals thereof, persons who are not parties are generally not permitted to testify unless called as witnesses. In closed record appeals as defined by the Regulatory Reform Act, Chapter 36.70B RCW, only persons who previously contributed to the record are allowed to present argument.

(d) The Examiner may limit the length of testimony to expedite the proceedings and avoid the necessity to continue the hearing. Maximum practicable advance notice will be provided if such time limitations are to be imposed. If parties are unable to complete their arguments and testimony within the allotted time, an opportunity will be granted to submit written materials after the close of the hearing; other parties will be allowed an opportunity to offer written rebuttal to any such materials.

(e) At the discretion of the Examiner, or where the parties agree and the rights of the parties will not be prejudiced, the Examiner may allow testimony via telephone or television or similar electronic means if the County has the technology available. Each party to the proceeding shall have the opportunity to hear (or, if televised, to both hear and see) testimony given in this manner and to question the person giving such testimony.

### **2.12 EXPECTED CONDUCT**

(a) All persons appearing before the Hearing Examiner shall conduct themselves with civility and courtesy to all persons involved in the hearing.

(b) No party or other person shall communicate with an Examiner presiding over a matter or with any employee of the Hearing Examiner's Office in an attempt to influence the outcome or to discuss the merits of that matter.

(c) No party or other person, other than staff when not acting as a party, shall make or attempt ex parte communication with the Examiner regarding any matter under pending review by the Examiner. Procedural matters may be addressed by written correspondence, copied to all known parties. In all matters involving an open record hearing, prior to and during the hearing, the Examiner may ask County staff to submit additional information into the record.

(d) If a substantial prohibited ex parte communication is made, such communication shall be publicly disclosed by the Examiner: any written communications, and memorandums summarizing the substance and participants of all oral communications, shall promptly be made available to the parties for review and an opportunity to rebut those communications.

## **2.13 MOTIONS**

(a) All motions, other than those made during a hearing, shall be in writing, and shall state the order or relief requested and the grounds for the motion. Every motion and answering statement and accompanying papers, shall be served on each party representative on the day it is filed with the Hearing Examiner.

(b) Within seven (7) days after service of any written motion, or such longer or shorter period of time as may be designated by the Hearing Examiner, the other party(s) shall file a written answer. When the Hearing Examiner has received the answering statement(s), or the seven (7) days or other period of time designated by the Hearing Examiner has elapsed, the Hearing Examiner shall rule on the motion. Failure of a party to file a timely response, may be considered by the Hearing Examiner as evidence of that party's consent to the motion.

(c) The Hearing Examiner may call for oral argument prior to ruling if consistent with state law.

(d) For motions made at hearing or for motions made for the extension of time or the expedition of hearings, the Hearing Examiner may waive the requirements of this section and may also rule upon such motions orally.

## **2.14 EVIDENCE**

(a) Evidence, including hearsay, may be admitted if, in the judgment of the Examiner, it is relevant to the issue(s) on appeal, comes from a reliable source, and has probative (proving) value. Such evidence is that which would commonly be relied upon by responsible persons in the conduct of their important affairs.

(b) The Examiner may exclude evidence that is irrelevant, unreliable, immaterial, unduly repetitive, or privileged.

(c) Opinion evidence of non-experts presented at public hearings is discouraged but may be admitted, although it need not be given weight by the Examiner.

(d) Documentary evidence may be received in the form of copies or excerpts. The Examiner may require that the parties be given an opportunity to compare the copy with the original, and that the complete document from which an excerpt is taken be made available for inspection by all parties.

### **2.15 OFFICIAL NOTICE**

(a) The Examiner may take official notice of judicially cognizable facts. In addition, the Examiner take notice of general, technical, or scientific facts within his or her specialized knowledge.

(b) Parties must be notified during the hearing, or before issuance of decision, of the specified facts or materials noticed and the source thereof, and afforded an opportunity to contest or rebut the facts or materials so noticed if additional evidence may still be admitted as restricted by state law.

(c) A Hearing Examiner ruling, decision, or recommendation may refer to and utilize any part of the Code or any state law and any issued Hearing Examiner decision.

### **2.16 SITE INSPECTION**

Where it would assist the Examiner in clarifying or understanding the evidence adduced at hearing, the Examiner may inspect property subject to Examiner review prior to the close of the record.

### **2.17 CONTINUING OR REOPENING HEARING**

(a) A scheduled hearing may be continued for good cause as determined by the Hearing Examiner. Motions for continuance shall be served and received by all parties and the Examiner at least seven days prior to the hearing date, unless extraordinary circumstances justify a later date. Written notice of the date, time, and place of the continued hearing shall be provided to each party and the County. The notice of a rescheduled hearing need not observe the time requirements to which the original notice was subject.

(b) Prior to the issuance of the subject decision or recommendation, the Examiner may continue or reopen (if consistent with state law) proceedings for good cause and may permit or require written briefs or oral argument.

(c) If the Examiner determines at hearing that there is good cause to continue such proceeding and then and there specifies the date, time, and place of the new hearing, no further notice is required

(d) If a matter is reopened after conclusion of the hearing, parties shall be provided not less than ten (10) days notice of the reopened hearing.

### **2.18 LEAVING THE RECORD OPEN**

(a) The Examiner may leave the record of hearing open at the conclusion of a hearing in order to receive argument or for other good purpose. Parties shall be provided notice of the consideration of any evidence received after hearing and shall have an opportunity to review such evidence and to file rebuttal evidence or argument.

(b) Except as provided elsewhere in these Rules, information submitted after the close of the record shall not be included in the hearing record or considered by the Examiner making the decision or recommendation.

### **2.19 DISTRIBUTION OF DECISIONS AND RECOMMENDATIONS**

A copy of the Hearing Examiner's decision or recommendation shall be distributed to each party representative, to those persons who have specifically requested a copy, and to others as specified by applicable ordinance(s).

### **2.20 REMAND**

(a) Prior to the issuance of the Hearing Examiner's recommendation or decision, if the Examiner determines that information, analysis, or other material necessary to the Hearing Examiner's recommendation has not been provided, the matter may be remanded to the Department for the addition of that information, analysis, or other material if allowed by state law.

(b) Where the Hearing Examiner's decision is to remand the matter to the Department for additional information, analyses, or other material, the Hearing Examiner shall retain jurisdiction in order to review the adequacy of that information, analysis, or other material. The Examiner may then issue a final decision or recommendation using the additional information. The decision to remand shall expressly state that jurisdiction is retained and what information, analysis, or other material is to be provided, and it may indicate when it is to be submitted. A copy of that information, analysis, or other material shall also be provided to each party to the proceeding, except where the size or condition of the required materials make copying impractical, notification to the other parties of the submittal, shall be sufficient. The parties shall have an opportunity to review, comment upon, and submit rebuttal to the information, analysis, or other material submitted. At the discretion of the Examiner and consistent with state law, the hearing may be reopened following such submittal.

(c) Where the decision of the Hearing Examiner is to remand for the preparation of a new departmental decision, the Hearing Examiner's jurisdiction is terminated and Director's subsequent decision shall be issued and subject to appeal in accordance with applicable ordinance(s).

### **2.21 TERMINATION OF JURISDICTION**

The jurisdiction of the Hearing Examiner is terminated upon the issuance of the decision or recommendation except where jurisdiction is expressly retained, or as otherwise provided in ordinance or in these Rules, or when a matter is remanded to the Hearing Examiner by the County Commissioners.

### **2.22 CLERICAL ERRORS**

Clerical mistakes in decisions, recommendations, orders, or other parts of the record, and errors arising from oversight or omission, may be corrected by Order at the Hearing Examiner's initiation, or in response to the motion of any party.

### **2.23 PROCEEDINGS RECORDED**

All proceedings before the Hearing Examiner shall be electronically recorded. The recordings of hearings shall be part of the official case record. Copies of the recordings shall be made available to the public upon request, subject to payment of a reasonable fee for copying.

### **2.24 DISCLOSURE OF PUBLIC RECORDS**

Hearing Examiner decisions and recommendations, the hearing record, and associated official files, are public records and shall be available for public review.

### **2.25 TRANSCRIPT OF PROCEEDINGS**

(a) Anyone desiring a certified transcript of a hearing may obtain a duplicate copy of the hearing tapes from the City of Black Diamond Department of Community Development and shall be responsible for arranging and paying for the preparation of a verbatim transcript. The completed transcript must be returned to the Hearing Examiner for certification.

(b) The parties shall have an opportunity to review and comment on the transcript. The Hearing Examiner shall resolve conflicts as to form and content of the transcript and provide a certification when such disputes are resolved and the Examiner is satisfied that the transcript provides a reliable record of the proceedings.

### **2.26 RETENTION OF RECORDS**

The case file, including the tape recording(s) and exhibits, shall be retained by the City of Black Diamond Department of Community Development consistent with the requirements of the Public Records Act (Chapter 42.17 RCW) and applicable retention schedules.

## **2.27 RECORDING DEVICES**

Photographic and recording equipment are permitted at hearings. The Examiner may deny or condition use of such equipment as she or he deems necessary to avoid disruption to the proceedings or prejudice to any party.

## **2.28 APPEARANCE OF FAIRNESS**

The appearance of fairness doctrine applies to proceedings under these Rules.

## **2.29 HEARING EXAMINER'S DECISION**

(a) Issuance. The Hearing Examiner shall issue a written decision and provide a copy of that decision to each party representative within the time required by the applicable ordinance.

(b) Contents. A decision or recommendation of the Hearing Examiner shall include, but not be limited to, a statement regarding the following:

- Background. The nature and background of the proceeding, including identification of party representatives participating in the hearing, prehearing determinations, and other similar information.
- Findings. The individual facts that the Examiner finds relevant, credible, and requisite to the decision, based on the evidence presented at hearing and those matters officially noticed. (This may include recitation of relevant provisions of ordinance, other regulation, or case law.)
- Conclusions. Legal and factual conclusions based upon specific provisions of law and the findings of fact.
- Decision or Recommendation. The Hearing Examiner's decision or recommendation based upon a consideration of the whole record and supported by substantial evidence in the record.
- Postscript. Information regarding subsequent procedural step(s), if any, for appealing the Hearing Examiner's decision.

(c) The decision may also include an order disposing of contested issues and/or directing parties to take actions consistent with the decision.

## **2.30 RECONSIDERATION**

(a) A party as defined in Section 2.02 may file a written motion for reconsideration within 10 calendar days of the date of the Hearing Examiner's decision. The timely filing of a motion for reconsideration shall stay the Hearing Examiner's decision until such time as the motion has

been disposed of by the Hearing Examiner. No party may file a motion to reconsider on a decision issued after reconsideration.

(b) The grounds for seeking reconsideration shall be limited to the following:

1. The Hearing Examiner engaged in unlawful procedure or failed to follow a prescribed process, unless the error was harmless;
2. The Hearing Examiner's decision is an erroneous interpretation of the law;
3. The Hearing Examiner's findings, conclusions and/or conditions are not supported by the record;
4. The Hearing Examiner's decision is a clearly erroneous application of the law to the facts; or
5. The Hearing Examiner exceeded the Hearing Examiner's jurisdiction;

(c) The motion for reconsideration must:

1. Contain the name, mailing address and daytime telephone number of the moving party, together with the signature of the moving party;
2. Identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested;
3. State the specific grounds upon which relief is requested;
4. Describe the specific relief requested; and
5. Where applicable, identify the specific nature of any new evidence. Such new evidence shall be considered only if the additional evidence relates to: (i) the grounds for disqualification of the Hearing Examiner when such grounds were unknown by the moving party at the time the record was created; or (ii) matters that were improperly excluded from the record after being offered by a party.

(d) The Hearing Examiner shall issue a decision on the motion as follows:

1. Deny the motion in writing; or
2. Issue an amended decision; or
3. Accept the motion and set the matter for closed record review with no or limited new evidence or information allowed to be submitted and only written reconsideration arguments allowed. Any written arguments must be filed within 10 calendar days from notice of the Hearing Examiner.

### **2.31 RECORD**

The record of an Examiner proceeding shall include:

1. All evidence received or considered;
2. Pleadings, procedural rulings, and other non-evidentiary materials that are part of the Hearing Examiner's file;
3. Statement of matters officially noticed, if any;
4. Findings, conclusions and decision of the Hearing Examiner;
5. Tape recording of the hearing.

### **2.32 SUBPOENAS**

(a) A request or motion may be made in writing for a subpoena to require a person to appear and testify at a hearing, or for a person to produce specified documents or other physical exhibits at a prehearing conference or at hearing.

(b) A request for a subpoena for a person shall: include the person's name and address; show the relevance of that person's testimony; and, demonstrate the reasonableness of the scope of subpoena sought. A request for a subpoena for documents or other physical exhibits shall: include the name and address of the person who is to produce the documents or other physical exhibit; specify the materials to be produced; indicate the relevance of the materials subpoenaed to the issues on appeal and, demonstrate the reasonableness of the scope of the subpoena sought.

(c) The party requesting the subpoena shall be responsible for serving the subpoena. An affidavit or declaration of personal service or of mailing shall be submitted to the Hearing Examiner as proof of that service.

(d) Except as otherwise allowed by the Hearing Examiner, subpoenas shall be served no less than seven (7) days prior to the appearance or production ordered.

(e) A subpoena may be issued with like effect by an attorney of record in the proceeding. The issuing attorney must sign the subpoena.

(f) Any motion to limit or quash (i.e., vacate or void) a subpoena shall be filed with the Hearing Examiner within seven (7) days of receipt of the subpoenas or such other time as specified by the Hearing Examiner.

(g) Requests for subpoenas and the rulings upon such requests may be made ex parte unless otherwise ordered by the Hearing Examiner.

### **SECTION 3: CODE ENFORCEMENT ACTIONS**

In addition to the Rules of General Application in Section 2, the Rules in Section 3 shall apply to code enforcement actions and the appeals thereof.

#### **3.01 DISMISSAL**

(a) A code enforcement action or appeal thereof may be dismissed without a hearing if the Hearing Examiner determines that it fails to state a claim for which the Hearing Examiner has jurisdiction to grant relief, does not comply with filing requirements, or is without merit on its face, frivolous, or brought merely to secure delay.

(b) Any party may request dismissal of code enforcement action at any time with notice to all parties. The Hearing Examiner may make a ruling on a motion to dismiss based upon written arguments or may call for oral arguments.

(c) When an appeal is withdrawn by the issuing Department, the appeal becomes moot and shall be dismissed.

#### **3.02 CLARIFICATION**

Specified parties shall provide clarification, additional information, or other submittals as the Hearing Examiner deems necessary in order that the code enforcement action or appeal thereof can be made complete and understandable. The Hearing Examiner shall rule on the request of any party for clarification of a code enforcement action or appeal thereof. Request for clarification must be made in a timely manner as to afford reasonable opportunity for other parties to prepare response(s) for hearing.

#### **3.03 AMENDMENT**

The Hearing Examiner may allow, for good cause shown, an appeal to a code enforcement action to be amended within 10 days after it has been filed. In deciding whether to allow such an amendment, the Hearing Examiner shall attempt to ensure that the opportunity for a fair hearing by the other parties will not be prejudiced by the amendment.

#### **3.04 WITHDRAWAL OF CODE ENFORCEMENT APPEAL**

(a) An appeal to a code enforcement action may be withdrawn only by the appellant.

(b) Where an appeal is made by several persons, a group, organization, corporation, or other entity, withdrawal shall be made by the person who had been designated as the party representative [See HER 3.05].

(c) An appellant's request to withdraw shall be granted as a matter of right and the appeal dismissed.

### **3.05 PARTY REPRESENTATIVE REQUIRED**

When a party consists of more than one individual, or is a group, organization, corporation, or other entity, the party shall designate an individual to be its representative and inform the Hearing Examiner of the name, address and telephone number of that designated representative. The rights of such an appellant shall be exercised by the person designated as the party representative. Notice or other communication to the party representative, is notice or communication to party.

### **3.06 NOTICE OF APPEARANCE**

When a party is represented by an attorney, the attorney shall file a notice of appearance with the Hearing Examiner and send a copy of that notice to the other parties. Where the appellant's attorney filed the appeal and indicated his/her representative capacity, a notice of appearance does not need to be filed. The notice of appearance shall serve to designate the attorney as the party representative.

### **3.07 INTERVENTION**

(a) Upon a showing of a substantial or significant interest that is not otherwise adequately represented, the Hearing Examiner may permit an interested person, group, organization, corporation, or other entity, who is not a party to a code enforcement action or appeal thereof, to participate in the code enforcement action.

(b) A written request for intervention must be submitted to the Hearing Examiner at least five (5) days prior to the day on which the hearing begins. The intervention request must state the basis for the intervention and how the person, group, organization, corporation, or other entity making the request is affected by or interested in the code enforcement action or appeal thereof. In considering the requested intervention, the Hearing Examiner shall seek to ensure that intervention will not unduly delay the hearing process, will not expand the issues beyond those within the appeal, and will not prejudice the rights of any of the original parties. In granting intervention, the Hearing Examiner may limit the nature and scope of the intervention.

(c) Intervention is not a substitute means of participating in a code enforcement action or appeal thereof for those who could have appealed but failed to do so.

### **3.08 PARTIES' RIGHTS AND RESPONSIBILITIES**

(a) Each party in an appeal proceeding shall have the right to: due notice of hearing, presentation of evidence, rebuttal, objection, cross-examination, argument, and other rights determined by the Hearing Examiner as necessary for the full disclosure of facts and a fair hearing.

(b) Parties have the right to be represented by an attorney. Representation by an attorney is not required.

(c) Where a party has designated a representative, the representative shall exercise the rights of the party.

(d) All parties, witnesses, and others participating in and observing hearings shall conduct themselves with civility and deal courteously with all persons involved in the proceedings.

### **3.09 DEFAULT**

The Hearing Examiner may dismiss an appeal to a code enforcement action by an order of default where the appellant, without good cause, fails to appear or is unprepared to proceed at a scheduled and properly noticed hearing. The Hearing Examiner may also dismiss a code enforcement action and the appeals thereof if the County fails to appear to prosecute its case.

### **3.10 HEARING FORMAT**

(a) Code enforcement hearings, although generally informal in nature, shall have a structured format and shall be conducted in a manner deemed by the Examiner to make the relevant evidence most readily and efficiently available to the Examiner and to provide the parties a fair opportunity for hearing.

(b) Where the Code provides that the defendant or appellant must overcome deference accorded the Director's decision being appealed, the order of hearing is generally as follows:

1. Examiner's introductory statement;
2. Parties' opening statements (optional);
3. Appellant/defendant's presentation of evidence;
4. Department's presentation of evidence;
5. Rebuttal;
6. Closing argument of parties.

(c) Where no deference is accorded the Director's decision, the order of hearing for a code enforcement action or appeal thereof is generally as follows:

1. Examiner's introductory statement;

2. Parties' opening statements (optional);
3. Department's presentation of evidence;
4. Appellant/defendant's presentation of evidence;
5. Rebuttal;
6. Closing argument of parties.

(d) Notwithstanding the order presented above, the order of hearing may be modified or a different order established as the Examiner deems necessary for the clear and fair presentation of evidence. The order of the hearing may also be modified as agreed upon by the parties with the Examiner's approval.

(e) The order of presentation at hearing shall not alter or shift any burden(s) or presumption(s) established by applicable law(s).

### **3.11 COMMUNICATIONS FROM NON-PARTIES**

(a) Written communications received from non-parties regarding a pending matter, shall be disclosed by the Examiner at hearing for the review of all parties.

(b) The Examiner, after considering the objections of the parties and determining that undue delay or prejudice will not result, may permit relevant oral or written statements or both, by persons who are not parties or called by parties as witnesses. Limitations may be imposed on the length of such statements and cross-examination by the parties shall be permitted.

### **3.12 BURDEN OF PROOF**

(a) Where applicable ordinance(s) or other applicable law so provide, the Hearing Examiner shall accord deference or other presumption as directed by the applicable ordinance(s).

(b) Where the applicable ordinance(s) provide that the code enforcement defendant or appellant has the burden, defendant/appellant(s) must show by the applicable standard of proof that the Department's decision or action is not in compliance with the ordinance(s) authorizing that decision or action.

(c) Where the applicable ordinance(s) do not provide that the code enforcement defendant or appellant has the burden, the Department shall make a prima facie showing that its decision or action is in compliance with the ordinance(s) authorizing that decision or action.

(d) Unless otherwise provided by applicable ordinance(s), statute, or case law, the standard of proof is a preponderance of the evidence.

### **3.13 RECONSIDERATION**

(a) Reconsideration of a Hearing Examiner code enforcement decision may be granted by the Hearing Examiner to the extent consistent with state law, if a moving party demonstrates one or more of the following:

1. Irregularity in the proceedings by which the moving party was prevented from having a fair hearing;
2. Newly discovered evidence of a material nature that could not, with reasonable diligence, have been produced at hearing;
3. Error in the computation of the amount of damages or other monetary element of the decision;
4. Clear mistake as to a material fact.

(b) Motions for reconsideration must be filed within 10 days of the date of the Hearing Examiner's decision. Unless otherwise specifically provided by the applicable ordinance(s), the filing of a motion for reconsideration shall not stop or alter the running of the period provided to appeal the Hearing Examiner's decision.

### **3.14 SUBSEQUENT APPEAL**

Hearing Examiner decisions may be appealed as provided for in applicable law. Information regarding subsequent appeal opportunities shall be provided as a postscript on the Hearing Examiner decision.

## **SECTION 4: RECOMMENDATIONS TO COUNCIL**

In addition to the Rules of General Application in Section 2.0, the rules in Section 4 shall govern review of matters where the Hearing Examiner is to hold a public hearing and prepare a recommendation or final decision on land use permit applications or appeals of staff decisions on such applications.

### **4.01 NATURE AND PURPOSE OF PROCEEDINGS**

Public hearings shall generally be informal in nature, but conducted in such manner that the information and facts relevant to a particular proceeding will become the most readily and efficiently available to the Examiner. Irrelevant, immaterial, unreliable or unduly repetitious testimony, exhibits, or other information presented may be excluded by the Examiner.

### **4.02 RIGHTS OF PARTIES AND INTERESTED PERSONS**

Any party to a matter subject to a public hearing before the Hearing Examiner has the right to: to testify and present evidence; to ask questions of those testifying at hearing; and to receive a copy of the Hearing Examiner's recommendation or decision.

#### **4.03 FORMAT OF PUBLIC HEARING**

(a) A public hearing shall include, but need not be limited to, the following:

1. Examiner's introductory statement;
2. Report by the Director (including introduction of the official file, reference to exhibits, and a summary of the recommendation of the Department);
3. Testimony by the applicant or appellant;
4. Public comment in support of or in opposition to the application or appeal;
5. Opportunity for parties and Examiner to ask questions;
6. Opportunity for presentation of additional information as rebuttal.

(b) The Examiner may alter or modify the order of hearing if and as necessary to best provide for the presentation and understanding of information.

(c) Questions asked of citizens expressing their opinions shall generally be limited to clarification.

(d) Persons testifying as expert witnesses are subject to cross-examination.

## Tracey Redd

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**From:** Phil Olbrechts <olbrechtslaw@gmail.com>  
**Sent:** Monday, August 11, 2014 1:37 PM  
**To:** megan Nelson ;  
**Cc:** Andy Williamson; Carol Morris; olbrechtslaw@gmail.com  
**Subject:** Welsh Subpoena  
**Attachments:** Welsh subpoena.pdf

Attached is the subpoena requested by Ms. Nelson. As required by the Hearing Examiner Rules of Procedure, Ms. Nelson is responsible for serving the subpoena upon Ms. Welsh. I emailed an amendment to the Rules of Procedure earlier today that clarifies that subpoenas may be requested for permit applications.

**BEFORE THE HEARING EXAMINER FOR THE CITY OF BLACK DIAMOND**

Phil Olbrechts, Hearing Examiner

<p>RE: Villages MPD Phase 2 Preliminary Plat C</p> <p>PLN13-0027</p>	<p><b>SUBPOENA</b></p>
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TO: Stacey Welsh

BY THE AUTHORITY GRANTED BY BDMC 2.30.070(B) AND HEARING EXAMINER RULE OF PROCEDURE 2.32 YOU ARE COMMANDED to appear at the place, date and time specified below to testify in the above captioned case:

1:00 pm, August 25, 2014.  
Black Diamond City Council Chambers  
25510 Lawson Street  
Black Diamond, WA 98010

Dated this 11th day of August, 2014.



Phil A. Olbrechts

City of Black Diamond Hearing Examiner