

Introduction, Explanation of Format, and Summary of Comments  
Villages MPD Phase 2 Preliminary Plat C – PLN 13-0027

Submitted by Brian Derdowski on behalf of Save Black Diamond et al.  
December 11, 2014

Our Comments are organized using the Staff Report as their base. The Staff Report that we used was the one that has been available on the City's website for several day. The revisions to the Staff Report that were posted on December 10 have not been reviewed.

The Staff Report was a difficult document to work from. It is very long and repetitive. We believe that a better format would have been one focused on the Applicant's submittals and evaluated against the Black Diamond Municipal Code (BDMC), the Master Planned Development (MPD) approval, and the Development Agreement (DA) on a section by section basis.

We systematically reviewed each line and each word of the Staff Report and provided colored font highlights and colored font comments. The highlights were selected to provide an understandable connection to the associated comment.

After we reviewed the document, we edited out comments that did rise to the level of a significant or documentable concern given the timeframe that we had to prepare our testimony. Then, we divided our comments into two sections: Procedural and Substantive. Our comments are in the order of the original Staff Report, so they are not grouped in a logical manner. This problem was caused by the format chosen by the staff.

**The comments that relate to our Procedural Concerns can be approximately summarized as follows:**

- Many applicable requirements were not addressed. The staff report selectively reviewed portions of the BDMC, MPD approval and DA instead of systematically reviewing each and every provision with notes as to applicability. It should be noted that where a relevant requirement was not reviewed, that could be considered as a *prima facie* instance of inadequacy.

- Reliance on facilities in Plat 1 in an inappropriate or unlawful manner. This issue will also be addressed by our legal advisors. This is a fundamental issue for this hearing. It was raised by the City's Master Development Review Team (MDRT) and by the City Attorney. We raised this issue in our earlier comments submitted this past summer. Our highlighted comments identify areas where this problem applies.
- Staff proposes to use Utility Permits to make certain substantive determinations later instead of making appropriate determinations in the context of the plat hearing. This raises a number of due process concerns. Moreover, Utility Permits are not defined in the BDMC, nor has the City adopted approval criteria. In some cases the delayed determinations would normally require SEPA and public review, but the use of Utility Permits, if allowed, would circumvent these requirements.
- Concurrency timing is applied inconsistently and not in accordance with legal requirements. The availability of sewer, water and transportation services to serve the development is a matter that is well established in law and practice. This issue will also be addressed by our legal advisors. Our highlighted comments identify areas where this problem applies.
- Staff made incorrect determinations regarding which conditions applied to the Plat as opposed to the MPD or DA. We point out certain conditions that flow down to the implementing project level. The problem here involves vesting as well. A Plat is a "stand-alone" permitting action with many discretionary determinations and conditions that must be independently applied to the Plat. For example, determinations of the availability of school capacity must be made at the time of Plat approval. The existence of the Tri-Party School Agreement does not guarantee that the Plat can be served by adequate school capacity. So too, determinations of wetland boundaries cannot be "fixed" permanently as the DA suggests because the BDMC Sensitive Areas Requirements "trump" any conflicting condition in the DA. The State law that authorized DAs makes clear that they must be consistent with local development regulations, so it is appropriate to review the Plat against the requirements in code and statute because these laws are the foundational legal framework upon which the MPD and DA were based.

- The use of CCRs to apply conditions at the Final Plat stage is appropriate. However, making substantive decisions through the drafting of the CCRs after the Preliminary Plat is approved is an illegal delegation of legislative authority. This approach would also circumvent public input. Our highlighted comments identify a number of issues that should be resolved at this stage in the proceedings, not later.
- The approach of applying important policies and requirements at the building permit level is problematic because these applications are administrative in nature, so the authority to impose general conditions could be challenged as contrary to code provisions.
- Certain review actions were not accomplished consistent with all applicable requirements. The Design Review Team, the Water Quality Committee, and approvals of Detailed Regional Infrastructure Improvements, Surface Water Deviations, Road Standard Modifications, Proposed Phasing, and Wetland Field Verifications, are among the actions that we comment upon based on the Staff Reports characterization of these actions.
- The water availability component of the plat review did not properly consider the Water Supply and Facility Funding Agreement in the context of the regionally adopted water service areas. The concerns of the Covington Water District were not appropriately considered.
- The reduction of density that was approved by a Minor MPD Amendment may have implications for future development proposals involving density transfers and transfer of density rights (TDRs). These need to be addressed during plat review.
- Certain other errors in assumptions and application of requirements are also noted.

**The Comments that relate to our Substantive Concerns apply to the following significant issues:**

- The stormwater conditions are not sufficient to ensure that erosion control will be adequate.

- Additional data and analysis is required to determine that the proposed facilities can be designed and constructed to meet the applicable standards. Our stormwater management advisors will address these issues as well.
- The wetland delineations, buffers, and mitigation plan are not sufficient to protect the functions and values of the plat's on-site and off-site wetlands, and in some cases are in conflict with code. Our wetland advisors will address these issues as well.
- The wildlife corridor and management areas are mis-characterized and not conditioned appropriately.
- Road safety, internal circulation, and regional connections have not been properly reviewed or conditioned.
- The Tree Inventory was not properly conducted, and the tree protection conditions are inadequate.
- Provisions for parks and trails need to be clarified by appropriate conditions.
- The MPD Standards and Design Guidelines need to be reviewed and appropriately conditioned.
- The Fiscal Analysis did not comply with MPD requirements, and the impacts of Phase 1 and Phase 2C should be evaluated separately since either project could proceed on its own.
- The CCRs that are proposed are noted with important questions and considerations that should be considered during plat review.
- Certain suggestions are made to selected conditions of approval.
- Several other specific comments address sections in the staff report that are unclear and/or require additional review and conditioning.