

BLACK DIAMOND CITY COUNCIL MINUTES

Special Meeting December 2, 2008

Black Diamond Elementary School Gymnasium
25314 Baker Street, Black Diamond, Washington

CALL TO ORDER, FLAG SALUTE:

Mayor Botts called the special meeting to order at 7:00 p.m. and lead us all in the Flag Salute.

ROLL CALL:

PRESENT: Mayor Botts, Councilmembers Hanson, Bowie, Boston, Olness and Mulvihill.

ABSENT: None

Staff present were: Gwendolyn Voelpel, City Administrator; Andy Williamson, Economic Development Director; Steve Pilcher, Community Development Director; Aaron Nix, Natural Resources/Parks Director; Loren D. Combs, City Attorney and Brenda L. Streepy, City Clerk.

PUBLIC COMMENTS: None

PUBLIC HEARINGS:

Continuation of Public Hearing on Proposed Sensitive Areas Ordinance

Mayor Botts welcomed everyone and thanked them for attending. He reminded those in attendance that this is not Black Diamond's idea, but is a state mandate and they have certain standards we need to meet. He noted since he has been on the Council the environment has been very important. Council authorized Parametrix to prepare a study that was specific to Black Diamond as they didn't want to follow what other cities have done, because Black Diamond is unique.

Natural Resources/Parks Director Nix submitted documents to the City Clerk to be entered into the official record. Mr. Nix referenced handouts that are available for folks tonight. In addition, he discussed the Transfer of Development Rights Program the City offers. He explained this program allows individuals to purchase and sell residential development rights from lands that provide a public benefit such as farms, forest, open space, regional trail and habitat for threatened or endangered species. Land owners can receive financial compensation without developing or selling their land and the public

receives permanent preservation of the land in exchange. Transfer of Development Rights can be used to build additional houses on other parcels within the City that are designated as receiving areas. He thanked everyone for coming out to testify and those folks who have provided written comments.

Mayor Botts re-opened the public hearing continuation on the proposed Sensitive Areas Ordinance at 7:11 p.m.

Brad Habenicht, 23620 225th Ave SE Maple Valley commented on allowing trails within wetland buffers. He would like to see language added to the document that would allow trails to be put in class 1 and class 2 if they were elevated to allow connection to neighborhoods and other trails within the city. He stated he has multiple pieces of property and is willing to use the TDR program to allow a trail system to be put in and would like to work this out with the City.

Tom Payne, 32812 Hyde Ave Black Diamond is concerned as this proposed ordinance will affect a great number of Black Diamond residents. He asked Council to consider the financial impact to the citizens when adopting this ordinance because as written it would take up all his land and he would not have an option to sell. He also asked Council to remember it's the citizens of Black Diamond who voted them into office and they trust you to do what is right, so please do what is right.

Sandy Sternoff, 1018 Summit Ave Seattle owner of Cedarbrook Mobile Home Park stated her property is a prime location for redevelopment. However, the currently drafted Sensitive Areas Ordinance (SAO) virtually eliminates her ability to do so because of the setbacks delineated by the draft SAO. She expressed she appreciates all the work the city and staff have put in and feels the City would be better served by the redevelopment of this property and respectfully requested that the buffers and setbacks be carefully reviewed, and by achieving an appropriate balance between maintaining existing wetlands by allowing development in a manner that does not economically harm the community.

Christine Robinson, 32719 Commission Ave Black Diamond voiced her displeasure with the ordinance and the Best Available Science prepared by Parametrix, as she stands to lose seven of her nine acres. She stated she understands this is mandated, but not at this magnitude. She feels property owners are not being compensated and does not feel the City's TDR program is compensation. She urged Council not to take what is hers, but to buy it if they feel it is so important to protect for future generations. She further urged Council to put a motion on the floor to grandfather her in.

Garrett Huffman, Master Builders Association recommended that Council should the buffers as benign as possible by keeping the figures at 150' for category 1, 100' for category 2, 75' for category 3, and 35' for category 4, as this would do the least amount of damage to the public. He urged Council to adopt an ordinance that would have the least amount of damage to the public and to go with the smallest buffers.

Jessica Cavanaugh, 32823 Merino Street Black Diamond urged Council to take a look at what this buffer would do to homeowners. She stated she bought property to have property and does not want to have it taken away. She added she is a good steward of the land and does not feel that added buffer is the choice for Council to make. She would like to see Council look at other options instead of taking her property, because as a tax payer she feels she should be able to do what she wishes with her property. She does not feel the City's TDR program is compensation and asked Council to consider the property owners who live in the city and want to continue to support the city when making this decision.

Craig Birklid, 33701 Abrams Ave Black Diamond commended Council for what they are trying to implement, but is concerned with the level of setbacks this ordinance proposes as they are significant. He encouraged Council to review these and to look at providing incentives in the ordinance to homeowners.

Steve Hammond, Citizens Alliance for Property Rights expressed when you have a responsibility to represent people and special interest one of the goals is that there should be minimal damage – do no harm. He stated he was a member of the King County Council in 2004 during the passage of the critical areas ordinance and was an opponent. He added there is a great deal of case law where the court says you must look at best available science, but you do not have to follow if you can prove why. He further stated if clean air and clean water are worthy goals (which he feels are) then let's tax ourselves for it and let's all pay for it and not put the burden on the backs of a few who happen to be unlucky enough to own the property where this is trying to be accomplished.

Bill Kombol, 30533 234th Ave SE Black Diamond urged Council to take a more reasonable approach to the Sensitive Areas Ordinance and suggested doing away with the core wetland approach and instead adopt the more common Department of Ecology's category 1 through 4, as he feels the proposed buffers are too large. He asked Council to consider the draft SAO document prepared by Don Lagen, which was based on best available science. He is also concerned with how the SAO treats developers when they build streets, and water and sewer services and the City when they build streets, and water and sewer services. He discussed phasing out non-conforming use. He expressed to Council that if they have not fully read, fully understand, and fully agree with this document they should not adopt it as presented.

Ben Gingrich, 24526 Roberts Drive Black Diamond feels the 225' buffer is too large and is concerned with the amount of land the City is taking from the taxpayers. He stated this is unreasonable and hopes the City Council understands what they are taking before making this decision.

Doug Ostgard, 23703 Roberts Drive Black Diamond understands this is a mandate from the state, but feels it is also a mandate from the people in this area to adopt an ordinance with reasonable buffers. He asked Council to be an advocate for the citizens of Black Diamond and to make sure they really understand all the components with this

ordinance before adopting. He would like to see the appeal process go through a third party and also suggested looking at options to assist folks with environmental studies.

Ryan Kohlmann, YarrowBay Group, referenced a letter the City received from YarrowBay, which outlined a number of technical recommendations. He touched on a few of those recommendations; keeping the concept of the core area and define what it means as this area is really for wildlife and is not a feature necessary for water quality, smaller buffer sizes proposed in the draft SAO prepared by Don Largen and supported by best available science, and vegetation management standard which he added is very onerous.

Joe May, 29611 232nd Ave SE Black Diamond complimented Council on their attempt to try and satisfy everyone, as this task is an unenviable one. He urged Council to consider mitigation measures that take into account two fairly important facts, 1. a horse shed will not have the same impact as a large development and 2, private property has value and diminishing this value through government mandates must be accompanied by some reduced assessment or out right purchase. He sees an unintended alliance between big developers and private property owners as they are both fighting for property rights. He wished Council good luck in trying to preserve property rights and sensible environmental regulations.

Robert Rothchild, 29411 232nd Ave SE Black Diamond discussed the results from water quality tests taken from Lake Sawyer. He feels there obviously needs to be a balance and it is confusing as scientists are saying one thing and property owners are saying what they feel is right. He thinks the concept to do no harm is not working as we are harming the environment and would like to see something passed that takes a stand to protect this area not only for our kids but for their kids as well.

Gary Hanson, 32915 Merino Street Black Diamond stated he moved to Black Diamond a few years ago and when he purchased the property he was aware it had wetlands and was ok with the buffer size, however he did not know he would have an added buffer that would encompass his entire house. He is very concerned about the future as those limitations could be changed drastically. He feels if Lake Sawyer is the reason for imposing these restrictions then motorized boats should be banned from the lake. He added he would like to see the buffers left alone.

Roger Hertrich, 1020 Puget Drive Edmonds stated he is a land owner in Black Diamond and concurs with the previous speakers. He feels it is important not to intrude extensively on property rights and to treat citizens as well as you can. As a former Councilmember for the City of Edmonds he does not like to see Council's use a "heavy boot" to accomplish something. He added Black Diamond wants to grow and have an economy with businesses and more people and it concerned if the document is adopted as proposed the City would no longer be an economic reality, but rather it will become a huge buffer. He suggested that Council go back to the drawing board and see what is the bare minimum needed.

Allison Moss, 2183 Sunset Ave SW Seattle spoke regarding two thoughts she would like leave Council with tonight. First, she helped Island County develop it s first critical areas regulations, which took several years, a lot of money and ended up being supported by all of the state agencies. She explained the starting point of the process was what has work and what has not worked with the current regulations on the books, which allowed them to not start from scratch. She suggested Council try this approach as it sounds like a lot is currently working in Black Diamond. Second, she noted we've heard a lot about no harm tonight and reference a case in Skagit County that pitted two goals of the Growth Management Act against each other – preserving farmland and preserving fish and the outcome of the case. She urged Council to take a look at what has worked before and the no harm standard.

Cindy Sizemore, 3506 257th Ave SE Black Diamond explained at this time the proposed ordinance does not affect her property. As a real estate appraiser she discussed property values in relation to affected property owners. She stated when something is designated as a non-conforming use it affects the property owners ability to sell and secure financing. She appraises acreage and during the process she evaluates any wetlands on the property and looks at all regulations that affect the property to determine its value. She urged Council to take a look at how this ordinance will affect citizens' property values in an already declining market.

Gary Berke, Morgan Street Black Diamond stated he stands here before Council tonight hoping they have been listening to the speaker tonight and make the right decision, because if not, his dreams will be shattered should Council decide to adopt such a drastic setback as is four acres will be dramatically impacted.

Jason Cavanaugh, 32823 Merino Street Black Diamond agrees with a lot of what has been said. He is not opposed to protecting the environment, but feels it should not be at the property owner's expense. He expressed the bottom line is Council needs to do more investigation and educate themselves on what this will do to property owners should this huge buffer get passed as it will devalue property and make it hard to sell. He stated Council was elected by the people for the people and we voted you in and can choose not to elect you. He asked them to think long and hard about what they are going to adopt. He mentioned if Lake Sawyer is so important then why does the City not require those folks on septic to hook up to city sewer. He added whatever Council decides on the 225' buffer size he would like to be compensated and does not feel the TRD program is compensation. He reiterated this is land taking and asked Council to look at how courts are ruling in favor of land owners.

Jamey Balian, YarrowBay Group stated the most important issue appears to be the buffer size as this has the most impact to property owners. She added she has spent a lot of time in reviewing this thick document and the City is doing so much more to protect the wetlands and Council should keep this in mind. She feels Council can make some concessions on the buffers as so much is already being done.


Mayor Botts closed the public hearing on the Sensitive Areas Ordinance at 8:11 p.m.

UNFINISHED BUSINESS: None
NEW BUSINESS: None
DEPARTMENT REPORTS: None
MAYOR'S REPORT: None
COUNCIL REPORTS: None
ATTORNEY REPORT: None
PUBLIC COMMENTS: None
CONSENT AGENDA: None
EXECUTIVE SESSION: None


ADJOURNMENT:

A **motion** was made by Councilmember Olness and **seconded** by Councilmember Mulvihill to adjourn the meeting. Motion **passed** with all voting in favor (5-0).

ATTEST:



Howard Botts, Mayor



Brenda L. Streepy, City Clerk