

# **BLACK DIAMOND CITY COUNCIL MINUTES**

**May 15, 2008**

Council Chamber, 25510 Lawson Street, Black Diamond, Washington

## **CALL TO ORDER, FLAG SALUTE:**

Mayor Botts called the regular 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, Mulvihill and Olness.

**ABSENT:** None

Staff present were: Gwendolyn Voelpel, City Administrator; Dan Dal Santo, Utilities Supervisor; Andrew Williamson, Economic Development Director; Steve Pilcher, Community Development Director; May Miller, Finance Director; Greg Smith, Fire Chief; Loren D. Combs, Jamey Kiblinger, Interim Police Chief; City Attorney; Steven Rosen, Municipal Court Judge; Kaaren Woods, Court Administrator; and Rachel Pitzel, Deputy City Clerk.

**PUBLIC COMMENTS:** None

Mayor Botts announced that Appointments will be done before the Public Hearings.

## **APPOINTMENTS, PRESENTATIONS, ANNOUNCEMENTS:**

### **Resolution No. 08-506-Confirmation of Chief of Police**

Mayor Botts explained that on April 10<sup>th</sup> the Civil Service Commission met regarding the selection and hiring process for the Chief of Police. The Commission motioned that the position be filled through an internal recruitment process. Only one application was received, that of Jamey Kiblinger. On May 1, 2008 the Civil Service commission interviewed Ms. Kiblinger and recommended her appointment to the position by a May 2 letter to Mayor Botts. Mayor Botts explained some text changes in the employment agreement for the Chief of Police position under section 6 of the agreement, and noted a redlined copy is attached for the Council's review.

A **motion** was made by Councilmember Olness and **seconded** by Councilmember Mulvihill to adopt Resolution No. 08-506, confirming the appointment of Jamey

Kiblinger to the position of Police Chief and authorizing the Mayor to execute an Employment Agreement. Motion **passed** with all voting in favor (5-0).

Judge Rosen performed the Oath of Office for Jamey Kiblinger to become the newly appointed Police Chief for the City of Black Diamond.

#### **Resolution No. 08-504-Confirmation of Stewardship Director**

Mayor Botts explained that Aaron Nix has more than 20 years of environmental protection experience, including acting as a water quality/quantity scientist for Redmond, lead stormwater inspector for Federal Way and Environmental Protection Manager for Auburn since 2001. Mr. Nix was chosen after an open recruitment process and an interview panel screening as the most qualified candidate. On May 2<sup>nd</sup>, Aaron accepted the position of Stewardship Director for the City of Black Diamond, pending Council confirmation, with plans to begin work on May 19, 2008.

A **motion** was made by Councilmember Bowie and **seconded** by Councilmember Boston to adopt Resolution No. 08-504, confirming the appointment of Aaron Nix to the position of Stewardship Director. Motion **passed** with all voting in favor (5-0).

#### **Resolution No. 08-505-Confirmation of Public Works Director**

Mayor Botts explained that Seth Boettcher has more than 20 years of engineering experience, including acting as the Director of Public Works for Eatonville for over five years and Public Works Director in Bonney Lake for more than seven years. Seth is currently serving as City Engineer for Puyallup. Seth was chosen after an open recruitment process and an interview panel screening as the most qualified candidate. On April 30<sup>th</sup>, Seth accepted the position of Public Works Director for the City of Black Diamond, pending Council confirmation, with plans to begin work on June 2, 2008.

A **motion** was made by Councilmember Olness and **seconded** by Councilmember Mulvihill to adopt Resolution No. 08-505, confirming the appointment of Seth Boettcher to the position of Public Works Director. Motion **passed** with all voting in favor (5-0).

### **PUBLIC HEARINGS:**

#### **Variance Application- King County Library System and BNBuilders**

City Attorney, Loren D. Combs took the stand to explain that this is a Quasi-Judicial Hearing. City Attorney Combs also explained that everyone involved with the Library variance, employees, library district, city employees, contractors and councilmember's, etc. have all been told not to discuss the variance since it had been filed. City Attorney Combs asked that the record reflected there had been no comment and everyone involved nods their heads "No", this was conducted in a way to not render an impartial decision. The record reflects no one commented.

City Attorney Combs explained that the King County Library System and BNBuilders need a Burden of Proof that they deserve a variance. City Attorney Combs explained the process of the public hearing to the Council.

Mayor Botts opened the public hearing at 7:18 p.m.

Kirk Lilley, KNLGates, Seattle WA.

Mr. Lilley opened his comments by stating the King County Library System (referred to from now on as KCLS or library) asked him to help present to Council why City Council should grant the Library a variance to keep the utility pole as is. Mr. Lilley said he will explain that the pole was placed in a spot that would encroach two feet into a planned six foot sidewalk. Mr. Lilley stated that the question tonight is straightforward, should the Council allow the utility pole to remain where Puget Sound Energy placed it until the property owner next door puts his utilities underground under Code requirements, at which point the Library would remove the pole.

Mr. Lilley showed a diagram of the utility pole and new Library, as well as the street and application, which is entered into the record as Exhibits 1, 2 and 3.

Mr. Lilley stated that KCLS had received mixed messages from City staff, whereas, two days ago the Library was told they might not be receiving a temporary occupancy for the grand opening until a solution for the pole was reached. Mr. Lilley stated that Council can provide them with a solution that night, part of the Library's obligation was to provide frontage improvements, the sidewalk, put utilities underground and to also add a curb and bike lane. The Library is currently the only property with these improvements as it is the only developed property at this time. The Library is asking for a variance to either allow the sidewalk to end at the driveway 4 ft. instead of 6 ft. or allow the sidewalk to end just short of the pole. The variance would not be permanent; the Library would remove the pole and continue the sidewalk where it will end before or after, if that is what Council decides.

Mr. Lilley stated that KCLS and BNBuilders have learned earlier this week that city staff have taken a new position on the pole, whereas the City Attorney stated that new poles are not allowed in this zone at all. Mr. Lilley states that the City Code imposes six or seven criteria's that the Library must meet. Mr. Lilley read the Washington Case Law regarding variances and said that leaving the pole where it is will not hurt surrounding properties and unique physical circumstances were not created by the Library which makes the case even stronger since the pole would not be permanent. Mr. Lilley then stated that zoning codes for this area ensures that at some point in time, the property to the West would have utilities put underground, and when it does, the pole will be removed and the sidewalk would be extended in compliance with the code.

Mr. Lilley read and explained the seven criteria that the Library must meet per City code and explained each criteria and how the Library has met those needs. He then stated that granting the variance solves a transitional problem in this area; the Code enforces a parcel by parcel process, underground utilities and sidewalks. He states until the property next

door has their utilities underground, the Library's improvements will stand out. The sidewalk will end and the wires will come out of the ground, in the interim it will be like any other pole in the street. Mr. Lilley stated that the Library needs this pole for its utilities; the pole is making it necessary for frontage improvement work and that City staff recommends denial on the Library's request, because KCLS will be using the property in some profitable sense. Mr. Lilley added that we are talking about the public Library, a public service which is not about profitability.

Mr. Lilley then stated that he wanted to refer back to a recent message from the City suggesting a new position on the pole. He stated the City has changed their mind more than once on this project. He then enters into record Exhibit 5, which is a letter from 2005 reflecting a change in staff's mind regarding the pole. Mr. Lilley then addressed to the Council an email he received from City Attorney Combs last Monday stating that poles are not allowed to be rezoned; meaning library must go underground to the next available pole. He stated that the Library and BNBuilders had never heard this before and it is inconsistent with what was said in the past.

City Attorney Combs asks if the email was going to be admitted as evidence.

Mr. Lilley stated yes, he will get that to the City to be added to the record as Exhibit 6. Mr. Lilley referred to the drawings and reports which show staff's position that requests should be denied. The drawing shows the utility pole was not placed by what the drawing identifies. Mr. Lilley states that on an actual site, some things have to move per the schematic on map. In closing Mr. Lilley stated that the solution is to give KCLS the variance and once the whole road has underground utilities they are asking that Council allow the pole as is, although not perfect, it serves a purpose, it's not permanent and it will eventually go underground. The goal is to get the Library open for public use. Mr. Lilley states that engineers and contractors are there to answer any of Council's questions.

Loren D. Combs, VSI Law Group, Tacoma, WA.

City Attorney Combs entered into record an email from City Administrator Voelpel as Exhibit 7, sent to Library contractors on December 24 at 12:48 p.m., which includes an e-mail from Brian Wersma. Mr. Combs stated that he is really glad he brought the email as it dovetails with the argument that the City is sending mixed messages. Mr. Combs stated that the e-mail was sent twice which clearly says to move the pole. The contractor acknowledges that Ms. Voelpel says to move the pole. Mr. Combs stated that the City is dealing with a contractor who did not listen.

Mr. Combs stated that requirements for a sidewalk show very clearly that a pole should be behind the sidewalk. He stated that this is the contractor's document, not the City's document. City Attorney Combs stated that when out in the field adjustments can be done, but the result still stays the same, he also stated that the City did not put the rockery there, that the contractor built the rockery therefore, the contractor created the problem. City code allows variances, when the Library received the message, they could have applied for a variance for the sensitive areas and had it moved back. Mr. Combs stated

that the Library had to ask for it, they needed to come before Council and compensate for the wetland.

Mr. Combs stated that one of the conditions of the Code book is the contractor can't create the problem, the City did not put the pole there, the contractor did. Mr. Combs then stated that the zoning code was changed as recently as 1991 and this wasn't a new rule. He then reminded everyone that the City has been in a moratorium since 1994 or 1995, and is not an area in transition.

Mr. Combs stated that the Library can't ask for special dispensation because they are a Library, he stated that everyone agrees it's a great use and a needed use, but the Library has to play by the same rules. Mr. Combs explained that the Library had options, but they chose to do the work the way the contractor wanted. Mr. Combs explained to Council that the City did not change their position. He also explained that the City needs to set standards and that everyone needs to follow those standards.

Mr. Combs stated that the land can be reasonably used without this variance. Mr. Combs stated that the City has tried to be fair and cooperative and it shows in the email Exhibit 7, that if the Library agreed to take the pole down and go underground, that the City would give the variance application fee back. Mr. Combs stated that the Library needed to comply with the law. Mr. Combs then asked the Council to remember that the Library needed to convince them and if Council is not convinced, they should not allow the variance.

Kirk Lilley, KNLGates, Seattle WA.

Mr. Lilley was given a chance for rebuttal and stated he would like to clarify a few points. Mr. Lilley stated that Mr. Combs noted that the applicant wired the pole; Mr. Lilley wanted to let Council know that this is not the case as Puget Sound Energy wired the pole. Mr. Lilley then stated that zoning codes do not apply to every situation. The pole is in the middle of the sidewalk by two feet in a six foot sidewalk, leaving four feet which allowed for the ADA requirement. Mr. Lilley then asked for Council to look at the situation; this sidewalk ends on a gravel area, for about 3 feet until it turns into a four foot sidewalk. Mr. Lilley states that Council can not just say a former employee approved it, and therefore our hands are tied.

Mayor Botts closed the public hearing at 8:17 p.m.

A **motion** was made by Councilmember Olness and **seconded** by Councilmember Mulvihill to deny King County Library System a variance application. Motion **passed** with all voting in favor (5-0).

### **Stormwater Management Program**

Utilities Supervisor, Dal Santo stated that this public hearing is part of the requirements for Phase II of the Stormwater Management Plan for any public comment to be heard on

the plan that PacWest had put together. Mr. Dal Santo stated that the City will be submitting the plan to the Department of Ecology if Council moves to adopt it.

Mayor Botts opened the public hearing at 8:29 p.m.

No comments were heard.

Mayor Botts closed public hearing at 8:29 p.m.

A **motion** was made by Councilmember Mulvihill and **seconded** by Councilmember Olness authorizing the Mayor to submit the 2008 Stormwater Management Plan to the Department of Ecology. Motion **passed** with all voting in favor (5-0).

**UNFINISHED BUSINESS: None**

**NEW BUSINESS:**

**Resolution 08-507, Accepting Furniture Donation**

Economic Development Director Williamson reported that the City is currently in the process of receiving bids for new office furniture to outfit both City Hall and Community Development buildings. Until the new furniture is received, there is a need for used office furniture. YarrowBay has donated one conference table with eight chairs and one used desk, with a value of \$1,000. Mr. Williamson asked the Council to adopt Resolution 08-507.

A **motion** was made by Councilmember Hanson and **seconded** by Councilmember Boston to adopt Resolution No. 08-507, accepting furniture donation from YarrowBay. Motion **passed** with all voting in favor (5-0).

**Resolution No. 08-501, First Addendum to PSA with Parametrix**

Councilmember Boston exits the meeting.

City Attorney Loren D. Combs stated the Parametrix contract allowed the City and Consultant to amend the agreement to provide for certain work relative to the City's critical areas regulations. YarrowBay has agreed to fund the Professional Services Agreement and all costs that will be incurred by the City in entering into the First Addendum.

A **motion** was made by Councilmember Mulvihill and **seconded** by Councilmember Hanson to adopt Resolution No. 08-501, relating to the preparation of the critical areas ordinance authorizing the Mayor to execute the first addendum to the Professional Services between Parametrix, Inc. and the City of Black Diamond. Motion **passed** with all voting in favor (4-0).

### **Ordinance No. 08-862, Fixing the Compensation for Judge Pro-tem**

Municipal Court Judge Rosen explained that State Law requires compensation to have a Judge pro-tem sit in when he is not available.

Councilmember Bowie asked if there would be any other fees or cost incurred, such as travel time or is it strictly for the pro-tem services?

Judge Rosen responded that it is a two hour minimum. Judge Rosen also explained that on May 28<sup>th</sup> a different Judge would be coming to sit and watch the procedures.

A **motion** was made by Councilmember Olness and **seconded** by Councilmember Mulvihill to adopt Ordinance No. 08-862, Fixing the Compensation for Judge Pro-Tem. Motion **passed** with all voting in favor (4-0).

### **Resolution No. 08-509, Community Development Block Grant Funds**

Utilities Supervisor Dal Santo stated that the City had successfully completed the pre-application for the project and now needs to complete the full application packet by May 30, 2008 and is asking that Council authorize staff to apply for this grant with no matching funds.

Councilmember Boston re-enters the meeting.

A **motion** was made by Councilmember Hanson and **seconded** by Councilmember Bowie to authorize the Mayor to submit a 2009 King County Community Development Block Grant Fund application for Morgan Street sidewalk construction. Motion **passed** with all voting in favor (5-0).

### **Resolution 08-510, Inter-local agreement with King County**

Finance Director Miller explained that this Resolution would bring money into the City. Funds can be used for acquisition and open space, expansion of park and recreation opportunities. King County would remit money to the City monthly, with a first annual allocation estimate of \$7,908.52.

Councilmember Olness asked if there was some way we can allocate for parks.

Ms. Miller stated it can be used for acquisition of open space.

Councilmember Olness asked if it can be used for Lake Sawyer Park but not the boat launch.

City Administrator Gwendolyn Voelpel and Ms. Miller both stated that will be looked into.

A **motion** was made by Councilmember Olness and **seconded** by Councilmember Mulvihill to adopt Resolution No. 08-510, authorizing the Mayor to sign the Special Property Tax Levy Agreement with King County. Motion **passed** with all voting in favor (5-0).

## **DEPARTMENT REPORTS:**

### **Police Department**

Chief Kiblinger announced traffic school was back and running, the first class is scheduled for July.

Councilmember Olness asked about the boating classes and if many have signed up?

Chief Kiblinger stated that one came to the last meeting, but the next class has 15 students that are scheduled to attend.

Councilmember Olness asked about the new boat and if it was being used yet.

Chief Kiblinger stated yes, it is out in the water.

## **MAYOR'S REPORT:**

Mayor Botts asked the Council if they would like to keep the July 3<sup>rd</sup> meeting or cancel it. Councilmembers agreed to cancel July 3, 2008 meeting.

## **COUNCIL REPORTS:**

Councilmember Bowie states that the Utility Committee met and went over the Draft Water System Comprehensive Plan and should have a document ready to send to the Department of Health. Mr. Bowie stated that the City has a wish list, but the items on the list exceed the grant amount.

City Administrator Voelpel stated that she will work with Finance Director Miller regarding how to come up with the funds.

Councilmember Boston stated that he would like to talk about the parks and the questionnaire that City Administrator Voelpel sent out for review. Councilmember Boston stated the Councilmember Bowie brought up that the North coal cart park is not City property.

City Administrator Voelpel stated that it was used in the old survey, and Council does not have to list it as a Park and might want to look at an entrance some place else for a trail head.



Councilmember Boston stated that Councilmember Bowie also mentioned that the City may have an in-city forest located South of Lawson Hills. Councilmember Boston asked if there was any possibility that it is a park and should it be on the list of parks in the survey.

City Attorney Combs stated that the money to purchase that land is in escrow with Chicago Title and the City is waiting for a boundary lot adjustment to be done before the City can close the transaction. But stated yes, it will be a park.

Councilmember Olness spoke regarding Memorial Day, May 26<sup>th</sup> and asked everyone to remember there will be a ceremony at the cemetery starting at 10:00 a.m.

### **ATTORNEY REPORT:**

City Attorney Combs reported there will be a half hour executive session, with no action to follow.

### **PUBLIC COMMENTS: None**

### **CONSENT AGENDA:**

A **motion** was made by Councilmember Hanson and **seconded** by Councilmember Olness to adopt the Consent Agenda. Motion **passed** with all voting in favor (5-0). The Consent Agenda was approved as follows:

1. **Resolution 08-511**, authorizing the Mayor to execute the Coordinated Prevention Grant Regular Cycle Agreement with The Washington State Department of Ecology.
2. **Minutes** – Council Meeting of May 1, 2008 and Workstudy Notes of May 1, 2008.
3. **Claim Warrants** – May 15, 2008 No. 31648-31657, 31658-31702, 31707-31721 (voided checks 31703-31706) in the amount of \$198,943.48
4. **Payroll** – April 30, 2008, No. 14657 through 14719 (voided warrants 14720-14727) in the amount of \$210,415.57.

### **EXECUTIVE SESSION:**

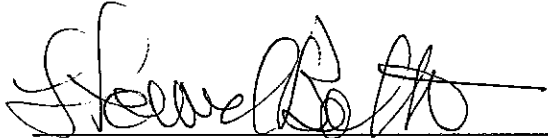
Mayor Botts recessed the regular meeting for an Executive Session at 9:10 p.m. to discuss personnel issues. No action is to follow the Executive Session, which was expected to last for half hour.

The regular meeting was reconvened at 9:40 p.m.

**ADJOURNMENT:**

A **motion** was made by Councilmember Bowie and **seconded** by Councilmember Boston to adjourn the meeting. Motion **passed** with all voting in favor (5-0). Meeting adjourned at 9:41 p.m.

ATTEST:

  
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Howard Botts, Mayor

  
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Rachel Pitzel, Deputy City Clerk