

BLACK DIAMOND CITY COUNCIL MINUTES
November 13, 2008
Council Chamber, 25510 Lawson 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; Aaron Nix, Natural Resources/Parks Director; Steve Pilcher, Community Development Director; Andy Williamson, Economic Development Director; Tom Guilfoil, Assistant City Attorney; Loren D. Combs, City Attorney and Brenda L. Streepy, City Clerk.

PUBLIC COMMENTS: None

PUBLIC HEARINGS:

Draft Sensitive Areas Ordinance

City Attorney Combs reported the Supreme Court has a motion pending concerning the Shoreline Master Program trumping the Sensitive Areas Ordinance and therefore would not apply to the area within 200 ft. around Lake Sawyer. If Council wishes to take the position of the Supreme Court that says the Sensitive Areas Ordinance does not apply to those areas that the Shoreline Master Program serves it should do so by motion. Mr. Combs added the Shoreline Master Program will be required to be updated by 2011.

City Administrator Voelpel stated when Council decides to modify the City's Shoreline Master Program every citizen around Lake Sawyer will be notified of the public hearings.

A **motion** was made by Councilmember Mulvihill and **seconded** by Councilmember Olness to adopt the position that the Sensitive Areas Ordinance does not apply to those areas served by the Shoreline Master Program. Motion **passed** with all voting in favor (5-0).

Mr. Combs explained that all written comments submitted are already part of the official record. Mr. Combs added the purpose for this hearing is for all citizens to tell Council what their position is on this matter. He reminded all it is not a debate, questions are addressed to the Council and staff does not interject once the hearing is opened. Council will ask clarification questions to staff before the hearing is opened. After that is done the Mayor will then open the public hearing.

Mayor Botts explained the Sensitive Areas Ordinance is not a Black Diamond idea as it is passed down by the state mandating there would be protection of wetlands and water. The City of Black Diamond decided several years ago there are a lot of wetlands within the City that need to be protected as it all runs into Lake Sawyer. Mayor Botts further explained Council asked that a study be done that is specific to Black Diamond. Staff hired a competent consultant, Parametrix, Inc. to prepare a document using Best Available Science. Mayor Botts stressed that staff is doing what Council directed them to do and to not kill the messenger.

Mayor Botts asked Council to address staff with clarification questions on the proposed document.

Councilmember Hanson referred to section 19.10.170 D (4) and asked Natural Resources/Parks Director if percentages could be changed. Mr. Nix referred to page 44 of the document that relates to mitigation. Mr. Nix added these are suggested mitigation ratios and in the case of a category IV there are four options reestablishment, creation, rehabilitation and enhancement only.

Mayor Botts announced there is a building code violation as the maximum occupancy for this room in 92 and we are currently over that amount and asked for volunteers to leave the meeting.

Councilmember Bowie expressed he is okay with those folks that want to give testimony tonight and suggested continuing the hearing to a larger venue.

A **motion** was made by Councilmember Hanson and **seconded** by Councilmember Olness to continue the public hearing on December 2, 2008 at 7:00 p.m. in the Council Chambers, 25510 Lawson Street. Motion **passed** with all voting in favor (5-0).

Council directed staff to reserve a larger venue for December 2 and notify residents of location change.

Councilmember Olness discussed the numerous emails she received complaining about the notification process for this meeting. She explained it was noticed in the Voice of the Valley, the City website, as well as in the City newsletter that goes to every resident in Black Diamond.

Mayor Botts opened the Sensitive Areas Ordinance public hearing at 7:38 p.m.

Natural Resources/Parks Director Nix explained Council and staff are working very hard to put in place the best Sensitive Areas Ordinance for Black Diamond and continue this process with citizen input.

Richard Pierotti, 16113 Se 170th PL Renton expressed he does not support the proposed Sensitive Areas Ordinance as it will significantly affect the price of his land and the possible use of his property by Nestle may not happen due to the size of the proposed buffer. He is concerned that residents have not had enough time to fully understand the ordinance and would like to see Council host another informational meeting and not rush through the approval process so everyone has ample time to understand the full extent of the ordinance.

George McPherson, 29062 222nd PL SE Black Diamond is concerned with preserving the wetlands as all the water that runs through the City ends up in Lake Sawyer. The City participates in WRIA 9 a program to help protect salmon, fish and the environment. He expressed the Shoreline Management Act is one of the most valuable resources. It applies to all shorelines and upland areas within 200 ft of the waters edge. He noted it's unfortunate that wetlands have been destroyed in the past and asked everyone to read the City's vision statement, which tells where the City wants to go. He stated as long as he was on the Council and this Council as well really care about what goes on in the City and not just for us but for all those after us.

Sandy Sternoff, 1018 Summit Avenue, Seattle owner of Cedarbrook Mobile Home Park feels the way the ordinance is currently written puts a strain on her to do any kind of development on the property. She stated she has been a good steward of the wetlands on her property and the proposed buffers would allow her very little area to work with.

Jessica Cavanaugh, 32823 Merino Street Black Diamond discussed she has spent time with Mr. Nix reviewing the proposed ordinance and understands Council has a lot of decisions to make concerning the preservation of the wetlands, which she believes in, but not at the expense of the property owner. She explained when she purchased the property they knew it had wetlands and a buffer of 75 ft. and had she of known she would have an added buffer, she probably would not have purchased this property as an investment for her future. She also explained the proposed buffer eliminates the area where her family plays and the animals roam, as well as eliminates what she can do in the future to the property. She stressed she is a property owner who pays taxes and would like to have the right to do what she feels is necessary on her property. She urged Council to consider going down to a 185 ft. buffer instead of the proposed 225 ft. buffer and to go from 75% to 50% and to please keep the property owner in mind when making this decision.

Cindy Proctor, stated this is an incredibly sensitive issue for everybody and asked why is it is always ok to control the developer and when it is on us it is something different. She understands this is a tough issue, but is afraid if we start carving out the ordinance to meet everyone's need we then undermine the ordinance and jeopardize our beautiful habitat in Black Diamond.

Kevin Pierotti, 14213 SE 179th PL Renton stated he does not support this ordinance as written. He feels adding more buffers is not the solution and suggested an alternative approach would be water monitoring and stormwater monitoring. He also feels all folks affected by this ordinance are making a donation for everybody downstream and asked that it be more equitably distributed among all, as it feels this is a taking. He urged Council to look at different avenues before adopting the proposed buffers.

Jack Sperry, 15706 SE 173rd St Renton owns a small cabin on Lake Sawyer and dreams of building a permanent home in its place when retired. He fears if these new standards were to be implemented in the future he would not be able to build this home, thus taking an essentially very valuable piece of property and making it have no use at all.

Bob Rothchilds, 29411 232nd Ave SE Black Diamond a Lake Sawyer resident discussed a meeting he attended at Mike Cline's house to discuss with residents the possibility of annexation into the City and the vision of the City given at that time to the lake residents was the City was going to do what it takes to keep the lake clean. He added he does water quality testing on the lake and stressed how important the setbacks are to Lake Sawyer. If development is allowed in these buffers it will then make a bad situation worse. He asked Council to consider adopting the ordinance as presented by staff.

Dave Rodes, 22957 SE 292 PL a long time resident of Lake Sawyer is concerned that if his house was to burn down he would not be able to rebuild and would like to see the minimum requirements be applied to all houses around the Lake so they could rebuild if something happened. He also mentioned he would like to see conformity in the region on this issue.

Colin Lund, YarrowBay Group stated what we are really after is a sense of balance. He discussed research he found concerning a court decision from Island County. He stressed a jurisdiction must consider Best Available Science (BAS) when adopting a Sensitive Areas Ordinance, but jurisdictions do not need to be consistent with BAS because such a rule would interfere with the agencies abilities and goals. He further explained that even though Best Available Science must be considered, cities are entitle to deviate from this recommendation and are given discretion in developing regulations tailored to local circumstances. In addition, Mr. Lund discussed the Critical Areas Ordinance that was prepared by Don Largen. A lot of time and energy went into this document and during the public hearing process it was brought out that this document was not based on Best Available Science. However, we have found out from Mr. Largen that it was in fact based on Best Available Science. He also noted there have been significant changes to the Sensitive Areas Ordinance, which he just received a few days ago and has not had enough time to do a complete analysis. He asked Council to keep in mind GMA goals is a balance and what level of development standards you need to achieve.

Andy Kindig, PO Box 2486 Redmond explained he reviewed the October 2007 version of the document and feels the buffers proposed in this version are adequate.

Scott Brainard, 9505 19th Ave SE Everett stated that Best Available Science is no fixed number and the October 2007 draft was based on Best Available Science and had smaller buffers. The new code is now widening that buffer range. He noted that in preparing both documents all used the same information, but came up with different buffer sizes. It is now Council's decision to decide what range to use. He feels the buffers identified in the 2007 document are more than adequate for protection.

Joel Walker, 22464 Se 296th St. Black Diamond expressed he is happy to hear Lake Sawyer will not be governed by this document and asked to have written into the ordinance that no buffer zone will be around Lake Sawyer until the City is ordered to do so by the Washington State Supreme Court. He also asked Council to use reasonableness when deciding what to adopt for this ordinance.

Gary Berke, 24728 Morgan St. Black Diamond explained he has lived in Black Diamond for 35 years and in this time he has seen it go through quite a few changes both good and bad and considers this one bad. He is concerned as this ordinance will impact most of his property, plus the fact he would not be compensated and views this as a taking.

Clyde Erickson, stated salmon and boundaries on the land should be considered.

Brett Meyer, Morgan Street Black Diamond expressed he would be directly affected by this buffer zone. He reminded Council they were elected to make decisions that benefit those folks that live in the community and anything other than adopting the minimum would take something away from the good citizens of Black Diamond.

Christy Robinson, Commission Avenue Black Diamond believes Black Diamond is a beautiful area to live with gorgeous creeks all because residents take care of them. She is opposed to the 225ft buffers and stands to lose seven of her nine acres should this ordinance as it stands be adopted. She urged Council to think hard on the buffer size as she is being asked to donate her land, which is her retirement and does not understand how this is reasonable.

Deborah Payne, 32812 Hyde Avenue Black Diamond stated this code as written would take her house. She would like to see where it is written in the code you could rebuild if your house burned down. She stressed to Council adoption of this code would take everything and leave her with nothing.

Jessica Cavanaugh, 32823 Merino St. Black Diamond is concerned what the Sensitive Areas Ordinance will do to her property value as she has wetlands on her property and Rock Creek runs behind her property as well. She stated she is a good steward of the environment and does nothing in the 75 ft. buffer she has now and feels she is being punished even though she is a responsible property owner.

Mayor Botts announced the Sensitive Areas Ordinance public hearing will continue on December 2, 2008 at 7:00 p.m. in the Council Chambers unless posted otherwise.

Mayor Botts announced at 8:36 p.m. there would be a five minute recess of the meeting.

Mayor Botts called the meeting back to order at 8:41 p.m.

UNFINISHED BUSINESS: None

NEW BUSINESS: None

DEPARTMENT REPORTS: None

MAYOR'S REPORT:

Mayor Botts applauded everyone for the great turn out tonight and mentioned he is looking forward to the continuation on December 2, 2008.

COUNCIL REPORTS:

Councilmember Boston reported to Council on the recent trip the Finance Committee, Mayor and Andy Williamson took to Hope, British Columbia to tour the Nestle bottling facility. He also mentioned a complete report with pictures is forthcoming at the next regular Council meeting.

ATTORNEY REPORT:

City Attorney Combs reported there will be a ten minute executive session on potential litigation, with no action to follow.

PUBLIC COMMENTS: None

CONSENT AGENDA: None

EXECUTIVE SESSION:

Mayor Botts recessed the special meeting for an Executive Session at 8:45 p.m. to discuss potential litigation. No action is anticipated to follow the Executive Session, which was expected to last ten minutes.

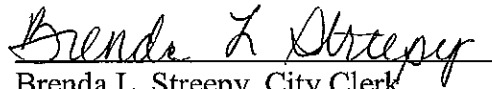
The regular meeting was reconvened at 8:54 p.m.

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).

ATTEST:


Howard Botts, Mayor


Brenda L. Streepy, City Clerk