

# **BLACK DIAMOND CITY COUNCIL MINUTES**

**September 18, 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, and Olness.

**ABSENT:** Councilmember Mulvihill (Excused)

Staff present were: Gwendolyn Voelpel, City Administrator; May Miller, Finance Director; Steve Pilcher, Community Development Director; Andy Williamson, Economic Development Director; Jamey Kiblinger, Police Chief; Aaron Nix, Natural Resources Director; Kevin Esping, Facilities Coordinator; Greg Smith, Fire Chief; Loren D. Combs, City Attorney and Brenda Streepy, City Clerk.

**PUBLIC COMMENTS: None**

## **PUBLIC HEARINGS:**

### **Resolution No. 08-508, Latecomer's Agreement – Diamond Square**

Public Works Director Boettcher reported staff received the paperwork submitted from the developer and thoroughly went through the various costs associated with the project and during the review process was able to identify some double accounting, so that is why there is a depot in the construction cost. Staff is recommending dropping the administration costs from 20% to 10%. Of a procedural note, Mr. Boettcher mentioned that the developer did not get proper notification of the hearing and in all fairness they need an opportunity to address Council and recommends that Council take public testimony tonight, but continue the public hearing until the October 2<sup>nd</sup> Council meeting.

**Mayor Botts opened the Public Hearing at 7:12 p.m. No public testimony was heard and Mayor Botts announced that the Public Hearing would be continued until the October 2, 2008 Council meeting.**

**Ordinance No. 08-869, Continuation of Mobile Home Landing Moratorium**

City Attorney Combs explained that this moratorium has been in existence for quite sometime and adoption would continue the same moratorium that is already in affect. Mr. Combs recommended to Council they continue this moratorium and if they do decide to continue, a roll call vote is required with all Councilmembers present voting in favor.

**Mayor Botts opened the Public Hearing at 7:15 p.m.**

**Pat Vukich - 24129 25<sup>th</sup> SE Maple Valley** asked if any property in the City is zoned in the new comprehensive plan for mobile homes.

Community Development Director Pilcher responded that in the new comprehensive plan any where you can put a single-family residence a manufactured home that meets certain criteria can be placed as well.

Mr. Vukich also asked if any land will be zoned for a mobile home park in the new comprehensive plan.

Mr. Pilcher responded in his recollection without having the plan in front of him that it will be allowed in a certain zoned district.

**Mayor Botts closed the Public Hearing at 7:20 p.m.**

A **motion** was made by Councilmember Hanson and **seconded** by Council Boston to adopt Ordinance No. 08-869, continuing a moratorium on the landing of mobile homes or manufactured homes within the City. A roll call vote was taken and motion **passed** with all voting in favor (4-0).

**Ordinance No. 08-870, Continuation of accepting applications for Master Planned Developments, Subdivisions, and Planned Unit Developments within the City.**

City Attorney Combs reported this is an ordinance that has been before Council many times, however there is one difference between the past ordinances and this one as this ordinance also includes preapplication meetings. Mr. Combs also noted that this is an emergency ordinance and if passed would require a roll call vote with all Councilmembers present voting in favor.

**Mayor Botts opened the Public Hearing at 7:23 p.m.**

**Pat Vukich - 24129 25<sup>th</sup> SE Maple Valley** stated that five months ago Mr. Combs guaranteed this would be lifted this time. Mr. Combs responded that he is sure he has said this over the past many times as we always hope this will not be extended again.

Councilmember Hanson also responded that the Council hopes this moratorium will be lifted soon, but until all documents are in place we can not do that.

Mayor Botts clarified that it is the Council asking to continue the moratorium not Mr. Combs.

Community Development Director Pilcher also clarified that continuation of this moratorium only applies to certain types of development within the City. Permit applications will continue to be accepted for single family homes and mutli-family housing, commercial or industrial projects where allowed by zoning.

**Colin Lund, YarrowBay** stated he knows the City is working hard to lift this moratorium and thanked everyone for all their hard work. However, he has a Board meeting coming up and is not looking forward to reporting that the moratorium is being extended for another six months. Mr. Lund asked Council if there is some way to possibly only do a sixty day moratorium and then review at the end of the sixty days. He also asked Council to consider some alternatives to the way it is drafted as he is concerned that it does not allow preapplication meetings. Mr. Lund gave an example of how they covered this with Snohomish County.

Councilmember Olness expressed she is concerned with the six month extension and feels Mr. Lund raises a good point about extending it for sixty days.

Councilmember Hanson agreed.

Councilmember Bowie clarified that six months is what is allowed by state law and the sixty days is a number pulled out of the sky and would be more comfortable with the end of the year.

Councilmember Hanson asked how about 90 days?

City Administrator Voelpel explained there is still a lot of information to review and this could mean adding additional night meetings to accommodate this schedule.

Councilmember Boston expressed that he is willing to meet as much as needed to get this done and also asked about preapplication work.

City Attorney Combs responded that he does not recommend preapplication meetings before the moratorium is lifted as the rules staff would be judging by would not be in place and that is the purpose of the preapplication meeting.

Mr. Lund stated that YarrowBay staff represent the City very well to their Board and would like to be able show that there is movement forward in hopes we could get an application that is about 95% done before submitting.

City Attorney Combs noted that this is a waste of staff's time to review and cautioned Council to not play games with their regulations.

Councilmember Bowie asked Council to consider 120 days.

Councilmember Hanson and Olness would like it to be 90 days.

Councilmember Bowie asked Council to consider extending the moratorium through December 31, 2008, but should it become clear to staff in November that this will not happen we then need to extend again rather than push staff to bring materials forward that are not satisfactory.

**Mayor Botts closed the Public Hearing at 7:46 p.m.**

A **motion** was made by Councilmember Boston and **seconded** by Councilmember Olness to adopt Ordinance No. 08-870 continuing a moratorium until December 31, 2008 on accepting applications for Master Planned Developments, Subdivisions and Planned Unit Development within the City and adding a moratorium on preapplication meetings on those applications if required by City Code and declaring this ordinance a public emergency ordinance and thus effective immediately. A roll call vote was taken and motion **passed** with all voting in favor (4-0).

**UNFINISHED BUSINESS: None**

**NEW BUSINESS:**

**Resolution No. 08-541, Okanogan County Jail Agreement**

Chief Kiblinger spoke regarding the City's need for additional facilities for housing offenders. She explained that Okanogan County Jail agrees to transport and house prisoners at a rate of \$47 per day. She also mentioned this jail would be utilized when the City has long-term commitments issued from our Court.

A **motion** was made by Councilmember Bowie and **seconded** by Councilmember Boston to adopt Resolution No. 08-541, authorizing the Mayor to execute an agreement with Okanogan County Jail to house inmates on the behalf of the City of Black Diamond. Motion **passed** with all voting in favor (4-0).

**DEPARTMENT REPORTS:**

**MAYOR'S REPORT:**

Mayor Botts commended both Council and staff for the extra time they have been putting in lately.

**COUNCIL REPORTS:**

**Reserve at Covington Creek**

Councilmember Hanson – I would like to touch on the Covington Creek issue for a little bit as I was not here last week, and I guess when we originally talked about this I thought the letter would be sent out saying that we opposed the project and then I heard that Council just opposed it from being in a PAA, so ah I mean I oppose the project I don't think there needs to be any more development I don't think we need any more in ours but if they are going to push for it to go through can we add the reserve to the MPD physical analysis would that help us with I mean if they are going to do this project.

Councilmember Bowie – Well so your physical analysis, are you assuming that King County is going to ram that into our PAA figuring we will add it into a PAA leave it in King County.

Councilmember Hanson – What I am saying there is we should try to benefit from it if we can, if they are going to put it there lets have control over it and have the guidelines we are working on now.

Councilmember Bowie – So have control over in so much as to someday potentially allow it to become part of the City?

Councilmember Hanson – Yeah. Ok (Bowie), if they are going to go through with it then lets do it like we did the MPD and have it go through and attach it to the physical part of the MPD that is going on now...just, does that make sense?

Councilmember Bowie – So this is a small portion of the property up on the west side of Lake Sawyer that the Executive has decided to become an urban planner instead of a rural planner like King County is suppose to be he wants to add more urban area under the guys that are creating open space in the rural area, stripping what little density there is and transferring it into this area so I can understand that but you got a large amount of unincorporated King County that is urban and contiguous and around this property so why are we not dealing with that? We are doing the haphazard silent project at the request of the Executive's Office. Why isn't King County cleaning up this area out here and there is another area I believe towards Covington that's urban that's not in the City's PAA, why aren't they addressing that?

Councilmember Hanson – I don't know - that is a good question, but I do know this is going to affect Black Diamond. Don't disagree (Bowie). Regardless if we are a part of it or not, so if we are going to do it then lets have some mitigation and some say in it then.

Councilmember Bowie - Well you can always have some say if it's not in the City.

Councilmember Hanson - How? Why would they listen to anything we have to say?

Councilmember Bowie - Well who knows if they are ever going to 'cause it's King County (Bowie). But it sounds like there are some Councilmembers who are listening. I received a phone call two days ago from the Chief of Staff of Councilmember von Reichbauer's office who wanted to have a chat about this it sounds like some how if you can even imagine this, King County folks muffed the Council district where the property

lies. So King County staff thought this property lies within I believe District 7, Councilmember Dunn's district and real recently someone realized it wasn't it was within Councilmember von Reichbauer's district, so there was discussion between the Chiefs of staff and surprisingly, I got a call from the Chief of Staff wanting to know the background because his boss wanted to make sure that he interfaced with the County that he is adjacent too and communicated with, which is highly unlike King County but this wasn't the normal King County we deal with, this was a Councilmember and I think Councilmember Dunn's office has been doing that really well and that is good news, maybe we do really have some sort of representation on the Council. So I don't know why you clean this up. So if you... I disagree with process, timing, the City has a whole bunch of other distractions and needing another one I don't think is now and I disagree with King County not dealing with the rest of the urban area and I think it's appalling the Executive wants to add another piece of urban area for whatever lame reason he is coming up with just to do it. And he is trying to shed urban areas everywhere. This isn't going to generate his 90 million dollar shortfall he is going to generate some money off it if it stays in the County but nothing like that. So I'm still opposed to this concept, the method by which they are handling it, if they want to amend the City's PAA if they want to adjust UGA I think that is a probably a discussion the City would have with KC and I do not think the County has ever come to the City to talk about that it was this executive process. Councilmember von Reichbauer's Chief of staff said they as a council just learned of this June 13<sup>th</sup> of this year and we were made aware of it what September or October of last year we were made aware of it and were going to get a presentation from Council staff some months ago and King County staff realized KC Council staff didn't know anything about this as it was laying underneath the radar, gee I wonder why and thought they figured they should bring their council up to speed before giving a presentation to the City Council.

Councilmember Hanson – Well I agree I am opposed to the project and the way it has all happened I'm just saying.

Councilmember Bowie – Now if the project happens if King County chooses to do this on their own and I'm sure they will as it's King County. The City has some abilities through SEPA whether or not that is going to heed anything with King County you got me. You look at the single access roadway that serves the couple of hundred lots that are in there, 300 and some lots, not suppose to have that many lots served by a single access roadway, there is a second access that has been constructed for that and that fulfilled KC own requirement for a multiple access to that site, right? Another part of KC the Transportation folks bend to public pressure because that second access created traffic to the school through a housing development, so KC Road Service and Transportation Division blocks off and isolates that access that was created to allow it to happen in the first place. So had that of happened or had the development owner known that the road services was going to do that they couldn't have allowed that to happen as they would have had to construct a second access. It's typical King County stumbling.

Councilmember Boston – Question, I really don't know who to address it to but has to with traffic- if an intersection is in the City of Black Diamond and we have all our ducks

in a row and our Comp plan was passed and our level C LOS was in affect would SEPA when they do their study have to comply with the City's LOS for that intersection.

Mr. Boettcher – Yes, I believe it would.

Councilmember Bowie – So are specific to the intersection or any element that may lie within the City.

Councilmember Boston – Well pretty much anything, but we are talking about this one particular piece and the impact it is going to have on at least two intersections if not three, but essentially any roadway, I'm trying to be specific.

Councilmember Hanson – And again, that is why I'm thinking if we, are they going to follow all the rules.

Councilmember Bowie – They have all the rules in place now and don't follow them that is what happened with the second entrance.

Councilmember Hanson – Wouldn't they have too?

Loren – Part of the problem is Seth is correct they are suppose to do that, but what are you going to do if they don't? Then you have to file an appeal and go through that process. The only assurance you have it to make sure it is in your control.

Councilmember Hanson – That is what I'm saying I think it's my opinion if it is going to happen then let it be part of Black Diamond so we can have control and mitigate things and somehow connect it with the MPD physical analysis as we all know it does not generate a positive income by just having houses so somehow we've got to be able to make that a positive cash flow and not negative, right?

Councilmember Olness – Right, because we figure in eight years it would be negative.

Councilmember Hanson – So that is why I'm saying if we can connect it to the physical part of the MPD that would help.

Loren – This is something to look at but that could be difficult because it is not within our jurisdiction.

Councilmember Hanson – Right, but if they want it in our City if they want us to annex that piece.

Loren – Yes, we could do a mini BUGGA that would restrict the development of it until such time of annex. If the County would go along with that you could do that.

Bowie – So if we are going to do that why deal with this small piece of property why don't you deal with the rest of it.

Loren – If you are going to do it you do it right.

Bowie – Read recap from voice of valley. I would be okay with engaging in negotiations with KC for an UGA agreement that would deal with that island out there and kind of think logically of that process and I might try and forget about the whole Lake Sawyer history and how the City wasn't good enough or smart enough to take that area. Maybe I wouldn't forget – probably won't. Mr. Vain laughed when I told him the process that has been followed and that is why his boss likes to stay in touch with his folks in his district.

Councilmember Boston – I thought there was a time table? Discussion pursued on time table.

Gwendolyn – Public hearing will take place on the 29<sup>th</sup> of September and adoption will occur after that.

Councilmember Bowie - Sounded like I was hearing from some Councilmembers that instead of having the letter be sent and worded as we had originally, that there was a different tone, different thoughts, different views that we wanted to conveyed in the letter. Do we still want to send the original letter or do we want to change the letter.

Councilmember Olness and Boston – The original intent was it was the annexation we were opposed to. Because of the fact, that it would be negative.

Councilmember Bowie – Ok, so help me Loren. King County can't annex that property into our City, correct? Correct (Loren). So KC could on their own, adjust an Urban Growth boundary and could probably adjust a PAA. I think if they did and we were really dragging and kicking we could probably take that to the Growth Hearing Board.

Loren - Yes, but remember actions, those are county actions, but there are all sorts of logical reason why it wouldn't comply with the law, but you would have to mount a case against it before the growth hearing board as soon as they adopt it.

Councilmember Hanson – So then Rebecca you are not opposed to the project going if it is not in the annexation area. That is how I originally felt. But I did express my concerns with the road and also expressed concerns on how maybe how badly they wanted us to annex or wanted us to cooperated that we would like the land the fire station was on and there might be some other trade offs and that is what I thought was going to be put in the letter and listing our concerns and especially the road.

Councilmember Bowie – So Rebecca are you focused on jus this property or that other adjoining urban area. Are you combining it as a whole?

Councilmember Olness - We looked at all the property and why did they just pick that property.

Councilmember Bowie -So there is this 50ish acres that the executive wants.



Councilmember Olness – One of my questions was if we were to annex the part that is shown on the map why couldn't we take the piece that is very close where our fire station is?

Councilmember Bowie – So Rebecca, showed and discussed area on map. Sawyer Glen those land owners talked to the City in Paulsen days and wanted to be part of the City and are outside the PAA and to amend the comp plan to adjust our PAA with something that would never happen. We need to deal with the whole area why not deal with the whole area. It does throw a wrench, but why not just deal with it.

Councilmember Hanson – What should the letter say that we are going to send then? Can we say that we oppose the project moving forward whether it being on its own or in our PAA, if they are going to push it forward then...help me.

Councilmember Bowie – Do you want to address that urban area that is there with it?

Councilmember Hanson – I don't know – I haven't seen that whole urban thing.

Councilmember Olness – What difference is going to make if we oppose it? I think it's pretty presumptuous to think we can stop them.

Councilmember Bowie - You can take a position. The City can write a letter the Councilmembers can each right a letter. Do I really think anyone in KC is going to listen to us...I don't know. It sounds like somebody is, but there are other members on the Council.

Councilmember Boston - Can we write a letter saying that the City is interested in pursuing but not with the boundaries as shown?

Councilmember Bowie – Loren, can we not support the project in its current form, hold it, and welcome discussions on PAA adjustments in regards to that whole area but if we go down that path far enough the Council is going to be conducive to taking density credits from rural king county and dropping them into the City. If that project happens if the PAA moves if we get all of that area we would be allowing rural density from KC to enter the City, correct?

Loren – Maybe not. You have only allowed that to happen once and made a really good deal. Kristine had a good idea earlier - you could put this in the positive note and say you could support the project if it was included in the PAA and no development was allowed unless it was developed consistent with City standards and require a pre-annexation agreement – that's another thought. You say ok, let's spin it so you get positive play out o it. That urban development should be inside urban areas, which the City is and we support urban services that are developed to urban standards and should be developed in accordance with our standards and then they can't develop out there unless they first petition the City for annexation and annexation is allowed then they are in the City and develop in the City, if we deny it for some reason then they would be allowed to do the project in the county following City standards. What you do is create an option for them.

The City can't stonewall and never annex them so therefore they can't develop but they have to first at least attempt to get in the City first before they are allowed to develop. Then you've put it in a positive spin and you're throwing the Growth Management Act right back in their face to say the whole idea of this was that urban development in urban areas not in rural areas.

Councilmember Hanson – What about the physical part of it?

Loren – Right and that's how you do it.

Gwendolyn – That's why you get the pre-annexation agreement.

Bowie – What do we tell those folks that are around there and have asked to come into the City and said hey why can't we come into the City.

Loren – Well that's a different issue if you think this idea makes sense then that's one issue - setting the boundaries is part of the negotiations as to how bit it would be or wouldn't be that's part of your discussions for the mini BDUGGA. But you are using I think sound planning principles but you assuring as Kristine pointed out that it is fiscally responsible as well because if it pencils it pencils and it is adjacent to your City and you are going to adopt development regulations that are second to none so if it develops subject to regulations it's an urban development you get the construction money that comes in from building the project and it builds to your standards.

Councilmember Bowie – And we don't get hung up on the rest of this area as the lasso has not been thrown around the boundary yet.

Loren – Or it would get thrown around the boundary but not this minute and that would give time for Gwendolyn and the Mayor to enter into negotiations to see what makes sense from a planning perspective and craft the agreements. So you could frame up a letter to that regard if the council was amendable to that cause then you are using what the county says they believe in anyway - to have something happen that makes sense to the City of Black Diamond.

Councilmember Bowie – Now I was told by the same Chief of Staff that the information you received from King County staff Paul Reitenbach the idea of stripping density from rural land in KC and transferring it to urban and all rural land is in favor of this. Yes this is absolutely correct. It is a new idea coming out of the executive's office.

Loren - It's not like it was many years ago when they are telling you to take all the density and they get to keep all the open space your development regulations have a ton of open space and you integrate this into the program and you are going to take Urban Development because it's Urban Development. It's not like the old days when you were going to get stuck with the houses and not have any of the benefits that came with it. So that's one option the Council can try to see if you can put a positive spin on this instead of voting against something vote for something, but encourage them to do it in a way that makes GMA sense.

Councilmember Bowie – So would Council rather oppose something or would we rather support something if it followed a passion such as Loren described? Did we get our arms around that?

Councilmember Hanson – Yea. What Loren described.

Loren – It was actually your idea.

Councilmember Hanson – Thank you.

Councilmember Bowie – So we will call this the Councilmember Hanson idea? Amendment...to the letter? The Hanson Amendment, does that work?

Councilmember Hanson – Sure.

Mayor Botts – All those in favor of supporting the Hanson Amendment....

Councilmember Bowie – With regard to the Eagle Creek ...

Councilmember Olness and Hanson – Covington Creek.

Councilmember Bowie – ...Reserve at Covington Creek and surrounding Urban King County.

Councilmember Hanson – I am.

Mayor Botts – Do I hear second?

Councilmember Bowie – Second.

Mayor Botts – Motion made and seconded to adopt the Hanson Amendment which is regarding properties in King County commenting on the development. Any further comments? (Pause- no comment) All in favor?

All Councilmembers voted in favor.

Mayor Botts – Opposed? (none)

Mayor Botts - Motion carried.

## **ATTORNEY REPORT:**

City Attorney Combs asked that property acquisition be added to the executive session. Mr. Combs introduced to Council Tom Guilfoil a new associate to his firm and announced Tom will be working on the Black Diamond Urban Growth Area Agreement (BDUGAA) and the Waster Systems Facilities Funding Agreement (WSFFA).

## **PUBLIC COMMENTS:**

Chief Smith recommended to Council that they read the annexation agreement between the City of Auburn and King County on Leih Hill.

## **CONSENT AGENDA:**

A **motion** was made by Councilmember Boston and **seconded** by Councilmember Hanson to adopt the Consent Agenda. Motion **passed** with all voting in favor (4-0). The Consent Agenda was approved as follows:

**Minutes** – Council Meeting of September 4, 2008, Workstudy Notes of September 4<sup>th</sup> and September 8<sup>th</sup>.

**Claim Checks**- September 18, 2008, No. 32210 through No. 32229, No. 32308- No. 32315 (voided checks No. 32300- No. 32307) in the amount of \$140,777.18.

**Payroll Checks** – August 2008, No. 15145 through No. 15219 (voided check 15207) in the amount of \$272,312.99.

## **EXECUTIVE SESSION:**

Mayor Botts recessed the regular meeting for an Executive Session at 8:29 p.m. to discuss property acquisition and labor negotiations. No action is to follow the Executive Session, which was expected to last thirty minutes.

Mayor Botts announced a twenty minute extension to the Executive Session.


The regular meeting was reconvened at 9:14 p.m.

## **ADJOURNMENT:**

A **motion** was made by Councilmember Hanson and **seconded** by Councilmember Olness to adjourn the meeting. Motion **passed** with all voting in favor (4-0).

ATTEST:

  
Howard Botts, Mayor

  
Brenda L. Streepy, City Clerk