

**BLACK DIAMOND CITY COUNCIL MINUTES**  
**February 26, 2009**  
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; Andy Williamson, Economic Development Director; Aaron Nix, Natural Resources/Parks Director; Steve Pilcher, Community Development Director; Greg Smith, Fire Chief; Loren D. Combs, City Attorney; Brenda L. Streepy, City Clerk and Rachel Pitzel, Deputy City Clerk.

**PUBLIC COMMENTS:**

**Colin Lund, 32241 Botts Drive, Black Diamond** wanted to thank City staff and Council for all the work done especially on the SAO. Mr. Lund expressed that it's been challenging and confusing and there are still things that need to be worked out, but YarrowBay thinks that they are following a version that is workable. He stated job well done.

**Mario Sorci, 24303 Roberts Drive, Black Diamond** spoke in regards to the new stormwater utility rate. Mr. Sorci stated that the city should look into were cuts could be made in the city expense by reducing the city costs when it came to wages and bring that in line instead of passing a bill that is generating a revenue boost during a time where people are struggling.

**Brad Habenicht, 32620 225<sup>th</sup> Avenue, Maple Valley** stated he was unclear on the meaning non-conforming in the SAO document. Mr. Habenicht expressed that he would like to know what outcome that has on a property owner economically in being able to sell their property for a fair market value or to do a refinance with a lender when you have to disclose any special limitations/restrictions to the property that would affect the market value. Mr. Habenicht then stated that according to the definition that he read, it clearly would be something that needed to be disclosed and would affect the value of the property and affect a person's ability to get a refinance on the property if they wanted to.

Mr. Habenicht wanted to bring this forward to Council even though it is a little late in the process.

**PUBLIC HEARINGS:**

**Proposed new Design Guidelines for Development within the City of Black Diamond**

Community Development Director Pilcher stated that the City Planning Commission had recommended that the Council consider approval of a set of design guidelines to guide future development with the City of Black Diamond. The guidelines represent the final stage of the planning "trifecta" of Comprehensive Plan, Zoning Code and Design Guidelines, all of which need to be adopted prior to the Council lifting the subdivision and master planned development moratorium. Mr. Pilcher handed out an updated map for the proposed boundaries for the Village Core. Mr. Pilcher also noted that Council received a letter from YarrowBay with their concerns and asked Council to schedule a workstudy on March 12 to discuss the concerns in greater detail.

Mayor Botts noted that the proposed new design guidelines are strictly for comments.

Mr. Pilcher stated that was correct, that staff was not asking for any action from the council that evening.

**Mayor Botts opened the Public Hearing at 7:09 p.m.**

**Ryan Kohlman, 32214 Botts Drive, Black Diamond** stated that the letter submitted to Council the day before the meeting was to primarily give some global thoughts for Council to think about. Mr. Kohlman stated that back in January 2009 YarrowBay and staff came together to discuss some of the suggestions and recommendations and the letters intent was to not nitpick but to help the genesis behind what YarrowBay stated in the letter, which is more flexibility in the design guidelines. Mr. Kohlman then stated that he urges the Council to look through the suggestions/recommendations and read them. He expressed that YarrowBay looks forward to discussing them during the workstudy session.

**Mayor Botts closed the Public Hearing at 7:12 p.m.**

**Proposed amendments to Chapter 18.98 Black Diamond Municipal Code, concerning Master Planned Developments**

Community Development Director Pilcher stated that amending the existing Master Planned Development Ordinance (Chapter 18.98) is another step that needs to occur prior to the MPD moratorium being lifted. Mr. Pilcher also stated that he is not asking for any action from the Council that night, he asked Council to please consider testimony and ask questions of staff which then can be discussed in greater detail at the March 12 workstudy.

**Mayor Botts opened the Public Hearing at 7:16 p.m.**

**Ryan Kohlman, 32214 Botts Drive, Black Diamond** stated that YarrowBay did make comments during the Planning Commission on the MPD code and the remainder pieces that are left are not new they are the same as before and it boils down to the MPD's containing so many units and commercial space and it will take some time to develop. Mr. Kohlman stated that with the current economic cycle we are in today, it becomes very difficult to build out some of these things on a 15 year time frame. Mr. Kohlman stated that it was not just vesting for the MPD but for all other certain standards that apply to the MPD such as stormwater. In order to plan regionally there needs to be certainty regionally, otherwise you end up with a sort of mish-mash of different standards throughout the community and it doesn't appear that's something the city really desires in terms of different smaller facilities that become more costly and more intensive to manage. Mr. Kohlman then stated that another thing YarrowBay wanted to point out is the concept in phase and in the vesting. Mr. Kohlman stated that from what the document states is if the phase is not completed in five years it could create that phase to be null and void. The first phase of these MPDs is to complete a lot of these commercial pieces and five years is not a lot of time to be able to do that big of requirements. Economic Development is a big issue for everyone and YarrowBay is requesting that the Council considers the needs of the building community and providing some level of certainty. Mr. Kohlman stated that what it all basically comes down to is vesting.

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

**Proposed Ordinance 08-892, adding a new Chapter 18.14 to the Black Diamond Municipal Code concerning vesting of project permit applications**

Community Development Director Pilcher stated the issue of "vesting" development applications has been discussed with Council at previous work sessions and at an initial public hearing. Either at or prior to the hearing, at least two private attorneys provided comments. Those comments have been considered and have resulted in some minor modifications to the proposed ordinance under consideration. Mr. Pilcher also stated that this ordinance will establish clear guidelines concerning when project permit applications are to be considered vested and also provides for a time frame "closing out" applications that have become inactive.

Councilmember Hanson asked how long after an application for a short plat has been approved before the applicant has to build.

Mr. Pilcher stated that a preliminary approval site is approved for a five year period, and then the final short plat approval is granted, then the owner is free to sell the lots. If it is an old application, this vesting would allow the city to clean them up and close them out. Mr. Pilcher explained that the ordinance levels the playing field for those that have an old application versus those that just applied.

Councilmember Bowie asked for a definition for permit application.

Mr. Pilcher stated it is an interchangeable project permit.

Councilmember Hanson asked if each permit has its own vesting timeline.

Mr. Pilcher responded that they do, but noted if Councilmember Hanson was referring back to the short plat, that would be a different process.

**Mayor Botts opened the Public Hearing at 7:38 p.m.**

**Allison Moss, on behalf of the Sternoff Family** stated that on chapter 18.14.070 subsection B seemed to have a glitch regarding the reissuance and expiration dates and asked Council to look at those.

**Brad Habenicht, 32620 225<sup>th</sup> Avenue, Maple Valley** asked Council to look at the time period of the vesting as he felt two years in these economic times would be a negative impact and felt that a more reasonable time period would be three years. Mr. Habenicht also stated that the three years would help in the long range for planning and help a developer to deal with their lenders.

**Mayor Botts closed the Public Hearing at 7:42 p.m.**

Councilmember Bowie brought up section B, page 3 regarding the Building Official.

City Attorney Combs stated that Council will want to add the language: International Building Code to that section.

Discussion followed regarding 18.14.030 on page 4 in the document regarding RCW and the state laws of subdivisions and vesting of project permits.

Councilmember Bowie read section C of 18.14.030 on page 4 regarding grading and filling permits and wanted some clarity on that section.

City Attorney Combs explained that a person would need to put in applications for not only clearing and grading but for all applications needed to build on that lot, except if they only wanted to vest into the storm drainage at that time, a stormwater application needed to be put in place in order to vest in on the stormwater rates in effect at that time.

Discussion followed regarding changes to the Ordinance to be 1) page 3-section B changing building official to include IBC building issues, 2) page 8-section B to changing 90 days to 120 days and 3) page 8 -section 9 changing the year from 2011 to 2012.

A **motion** was made by Councilmember Boston and **seconded** by Councilmember Bowie to amend Ordinance No. 08-892, authorizing the following changes 1) page 3-section B changing building official to include IBC building issues, 2) page 8-section B to changing 90 days to 120 days and 3) page 8 -section 9 changing the year from 2011 to 2012. Motion **passed** with all voting in favor (4-0).

A **second motion** was made by Councilmember Boston and **seconded** by Councilmember Bowie to adopt Ordinance No. 08-892 as amended, relating to vesting of project permit applications and expiration of project permits and adding a new chapter 18.14 to the Black Diamond Municipal Code. Motion **passed** with all voting in favor (4-0).

**UNFINISHED BUSINESS: None**

**NEW BUSINESS:**

**Ordinance No. 08-875, Updating the city's protection of Sensitive Areas by adopting a new Sensitive Areas Ordinance**

Natural Resources/Parks Director Nix reported to Council that the final version of the Sensitive Area Ordinance presented incorporates all requested changes from the last study session as outline in the cover memo, as well as a few housekeeping wording clarifications that were noticed by staff or Assistant City Attorney Tom Guilfoil. Mr. Nix stated that the biggest changes Council will see is in line with Council decision to allow Department of Ecology Alternative III methodology to be used in areas outside the Core, section 19.10.230.D has been reworked significantly and former section 19.10.230.H (formerly pages 40-43) have been removed.

Councilmember Hanson asked if the last sentence in the definition on page 102-section 19.10.638 *Non-conforming* made sense. Councilmember Hanson remarked that she believed the statement to be inaccurate.

City Attorney Combs stated that last sentence in that definition needed to be removed as it was inaccurate.

Councilmember Mulvihill entered meeting at 8:34 p.m.

Councilmember Bowie requested that on page 35, paragraph six regarding on-site sewage disposal systems needed to be removed as he believed that it should not be in the buffer.

Discussion from Council followed regarding buffers and the on-site sewage disposal systems.

A **motion** was made by Councilmember Olness and **seconded** by Councilmember Mulvihill to amend Ordinance No. 08-875, authorizing the following changes **1)** correction to definition of *Nonconforming* on page 102 section 19.10.638 to strike the last sentence and **2)** page 35 deleting paragraph six, regarding on-site sewage disposal systems. Motion **passed** with all voting in favor (5-0).

A **second motion** was made by Councilmember Hanson and **seconded** by Councilmember Boston to adopt Ordinance No. 08-875 as amended, updating the city's protection of sensitive areas by adopting a new Sensitive Areas Ordinance that will be

codified as a new Chapter 19.10 to the Black Diamond Municipal Code and renaming Chapter 19.12 of the Municipal Code and making minor changes to 19.12 relating to agricultural activities. Motion **passed** with all voting in favor (5-0).

### **Resolution No. 09-581, Amending the City's General Fee Schedule**

Community Development Director Pilcher reported that the proposed revision to the general fee schedule would raise the basic application fee from the current \$7,500 to \$25,000; eliminate the "per lot" additional charge of \$60/lot; and establish a \$75,000 deposit to cover the initial costs of processing. Mr. Pilcher further explained that when it appears the initial fees are being exhausted, the City will require an applicant to submit additional deposit funds in order for review and processing to continue. He stated that this method would ensure that all city expenses are covered in full and also that an applicant pays only for actual review costs. Mr. Pilcher noted that as a housekeeping item, city staff fees were updated to reflect 2009 rates.

Councilmember Mulvihill wondered why the fee per hour for the Deputy Finance Director was more than the Finance Director.

Finance Director Miller stated that those numbers would be switched in the final version.

A **motion** was made by Councilmember Boston and **seconded** by Councilmember Bowie to adopt Resolution No. 09-581, updating the City's Fee Schedule to make housekeeping corrections and update fees to the Master Planned Development applications. Motion **passed** with all voting in favor (5-0).

### **DEPARTMENT REPORTS:**

City Administrator Voelpel reported that staff had a meeting with Nestle based on Councils direction. Ms. Voelpel stated that Nestle continues to work with the property owner on highway 169 for acquiring that property if such time Council directs the city to go forward with the agreement. Ms. Voelpel also stated that staff will be reporting any major mile stones and will continue to as long as the Council instructs staff to do so. Ms. Voelpel reported that Nestle will hold a town meeting at the end of March, but they are unsure of a date at the moment, but staff will keep Council in the loop. Ms. Voelpel also stated that she would like Council to let staff know at any time if the Council has changed their position on Nestle.

Councilmember Mulvihill asked why Nestle did not hold a town meeting at the beginning of the year.

City Administrator Voelpel stated that Nestle hadn't been around the community with all the weather difficulties and wanted to build a base with the community before they did that.

Councilmember Mulvihill asked if Nestle was doing anything up by the springs.

City Administrator Voelpel stated that they are getting to the next steps in their testing, where they are going to start looking into exploratory wells, we haven't agreed on those types, it stems from the geo-tech work and Nestle will be meeting with staff to go over where they might place those wells and that is the next part where they will actually be going on to our property and drilling wells.

Councilmember Mulvihill stated that she was starting to doubt and stated she has heard from a lot of citizens regarding Nestle. Councilmember Mulvihill stated she is starting to feel uncomfortable. She also stated that she thinks that Council needed to think about whether or not Council wants Nestle before a lot more money is spent on their part and the City's. Councilmember Mulvihill stated that there have been a lot of changes on the agendas and the citizens are concerned Nestle is taking up a lot of unnecessary time.

Councilmember Hanson stated that she disagreed and felt that Council needed to move forward to see what Nestle could bring financially to the community. She stated that if Nestle has the town meeting and open house before the City allows them to drill, it would be nice to have the numbers and more information before Council shuts them down.

Councilmember Mulvihill stated that she thought the timing was bad. She also stated that in three years the city will be blending with Tacoma water, the citizens do not want to see our water source go away and stated she didn't know why we should do it before we have to join up with Tacoma.

Councilmember Olness stated that is the main reason why Council needed Nestle to have the public forum and public meeting.

Councilmember Boston replied that Council needed to know the number, the community needed to see the number. He stated that the numbers Nestle will give might be great and then the city will have jobs in town, but until we get to that point Mr. Boston didn't think that Council needed to squash the idea with Nestle.

Councilmember Bowie stated that as Councilmembers all of them are in charge of taking care of the water system. He stated that they all know that the city does not have a lot of water left in the system, but if the city says it's enough for 1,000 does it matter where the water is going as far as commercial or single family residences. Mr. Bowie stated that he has been asked great questions about blending the water and as Councilmembers; they need to be able to answer those questions. Councilmember Bowie stated that it would not hurt to have jobs in town and he thought it should be left open to hear more information before making a decision.

There was consensus from Council to continue talk with Nestle.

## **MAYOR'S REPORT:**

Mayor Botts reported on the 50<sup>th</sup> Birthday Celebration held at the Black Diamond Community Center and stated it went very well. Mayor Botts mentioned to Council that the Voice of the Valley had a problem with not printing enough papers and the residents of Black Diamond and Ravensdale did not receive their copies. Mayor Botts also stated that there were about 25 copies at the front desk of City Hall if anyone wanted one.

Councilmember Olness stated that a lot of the seniors complained about not receiving the Voice of the Valley.

Councilmember Bowie asked about the Voice of the Valley being our official paper and the public hearing coming up and wondered if the public hearing needed to be re-listed.

City Attorney Combs stated that legally the city was okay since it was published and it is available to view online.

## **COUNCIL REPORTS:**

Councilmember Boston announced that Council will revisit the Stormwater charges at the March 5 workstudy.

## **ATTORNEY REPORT: None** **PUBLIC COMMENTS:**

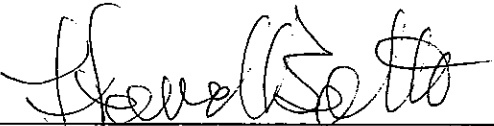
**Mario Sorci, 24303 Roberts Drive, Black Diamond** spoke in regards to Nestle, he stated that the city will be using Tacoma water once the pipe is opened and people will not be able to tell the difference in the water. He also stated that more importantly if the city sells the water to Nestle, the city will receive a constant stream of revenue, the infrastructure costs could be recovered from Nestle that could be used to pay a huge amount, and more importantly, the city is probably not going to have another 1,000 roofs in the downtown core that we are going to have to deal with, so Council needs to think of more than just selling the water, the city is going to sell our water whether it's to 1,000 houses or Nestle, and the idea that we can keep the downtown core or other parts of the city more rural looking is probably worth more than you could ever imagine. Mr. Sorci asked that the Council keep that in mind as he reiterated that the city would get to keep the revenue from water- a substantial amount, the city could get a good facility charge from Nestle to pay for some of that to Tacoma that we committed to and the city would get 50+ jobs, he stated that those jobs may not all live in the city, but at least there will be some more jobs in the city. He asked that the city keep that in mind.

## **CONSENT AGENDA: None** **EXECUTIVE SESSION: None** **ADJOURNMENT:**



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

ATTEST:

  
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Howard Botts, Mayor

  
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Rachel Pitzel, Deputy City Clerk

