

BLACK DIAMOND CITY COUNCIL MINUTES

March 18, 2010

Council Chamber, 25510 Lawson Street, Black Diamond, Washington

CALL TO ORDER, FLAG SALUTE:

Mayor Pro-Tem Boston called the regular meeting to order at 7:00 p.m. and lead us all in the Flag Salute.

ROLL CALL:

PRESENT: Councilmembers Hanson, Goodwin, Boston, Saas and Mulvihill.

ABSENT: Mayor Olness (excused)

Staff present were: Andrew Williamson, Economic Development Director; May Miller, Finance Director; Aaron Nix, Natural Resources/Parks Director; Seth Boettcher, Public Works Director; Jamey Kiblinger, Police Chief; Greg Smith, Fire Chief; Chris Bacha, City Attorney and Brenda L. Martinez, City Clerk

PUBLIC COMMENTS:

Lisa Garvich, Black Diamond – stated that she had a question regarding the Public Safety Levy and the timelines. She stated that she would like to know how she goes about finding how the levy money will be spent once it passes in reference to what percentage go to police and what percentage go to fire. She stated that she has some level of concern regarding the fire service especially with the potential development that is forthcoming. She encouraged Council to adopt stricter fire regulations.

Mayor Pro-Tem Boston replied that Finance Director Miller will be able to get the information regarding the percentages and the fire contract to Ms. Garvich.

Robin Taylor, Black Diamond – reported that some information has come her way regarding a former Councilmembers son who moved into a YarrowBay property next to her and was a little concerned that there was a conflict of interest there but never said anything to the Council. She stated that it has now come to her attention that there is a current sitting Councilmember who also has a relative living in a YarrowBay property rent free. She stated that to her it looked like the City was “getting into bed” with YarrowBay. Ms. Taylor stated that King County has a huge ethics policy in place and asked if the City has anything like that in place and requested that there be full disclosure if anybody has any side dealings with YarrowBay.

PRESENTATIONS: None

UNFINISHED BUSINESS: None

PUBLIC HEARING:

Ordinance No. 10-937, limiting the use of phosphorous based fertilizers on lawns throughout Black Diamond in order to preserve and protect water quality within water bodies throughout the City

Natural Resources/Parks Director Nix reported that the Mayor had asked him to do some research regarding what King County is doing with limiting phosphorous based fertilizers used for lawns. He also noted that Maple Valley recently adopted such an ordinance. The use of phosphorous-based fertilizers has been linked to the reduction of water quality within water bodies' through-out the country and the state of Washington. This ordinance will take steps in limiting the use of phosphorous-based fertilizers on turf in Black Diamond and will promote education in alleviating the impacts associated with their use. Mr. Nix handed out copies of the one written comment by Mr. Garvich.

Mayor Pro-Tem Boston opened the public hearing at 7:13 p.m.

Steve Garvich, Black Diamond – stated that he agrees with this subject and it is a good attempt, but he does feel that the City should not pass the ordinance yet as more research needs to be done. He stated he also noticed there are no fines associated with the proposed ordinance and feels that more investigation needs to be done in regards to the enforcement. He stated that if you can't enforce the issue there is no purpose of having an ordinance. Mr. Garvich stated that the City should introduce ways about educating the public and businesses as well as notifying the many gardeners around the neighborhood He stated that the written comments he submitted are just some ideas. He applauded Council for getting this going and stated it was a good start.

Bob Edelman, Black Diamond – stated that he has been involved in water quality on Lake Sawyer and does not want to see additional loads of phosphorous levels on Lake Sawyer. He suggested that the action be deferred until further studies are conducted. His primary concern is that there may be no scientific basis for the ordinance. Mr. Edelman read the bullet points from his written comments which are attached and incorporated into the minutes.

Ron Taylor, Black Diamond – voiced opposition at least as it is written. Mr. Taylor views it as another attempt of government patrol and has concerns where phosphate is banned out right and completely. He talked about the need for phosphorus and what adverse affects happen regarding turf and runoff. Mr. Taylor stated that if Council feels imperative to enact some sort of regulations, to look at not banning it completely and echoed the previous speakers' comments regarding geese.

Bob Rothschilds, Black Diamond – stated that he is in favor of some form of proposal. This ordinance does eliminate the use of phosphorus on turf. There are fertilizers you can buy at hardware stores to make your lawn as green and luscious as you want. He stated

that all these issues are not just Lake Sawyer issues, as there are many other lakes and streams within the City. Mr. Rothschilds stated that a need is to limit the amount of use of phosphorus in watersheds; this is an international problem not just a Black Diamond problem. He stated the way to clean up the watersheds is by a lot of little steps and the City has made a huge stride when we stopped the sewage plant approximately 17 years ago, and if more studies are needed for this ordinance, that was fine but he is in support of adoption of some form of an ordinance.

Mayor Pro-Tem Boston closed the public hearing at 7:29 p.m.

Councilmember Hanson referred to a visit from the WSU extension in Puyallup and would like to talk to them more. She stated that she would like to collect more data from them to aid in making a decision before a final decision is made.

Councilmember Mulvihill agreed that the City needs to adopt something and noticed this ordinance lacks regulating laundry detergent and felt that should be added, and would like to see more research done and see Mr. Garvich's ideas incorporated.

Councilmember Goodwin referred to Minnesota and talked about the over loading of phosphorus that has been detrimental. He stated that he thought it was too soon to adopt an ordinance for a number of reasons 1) education and 2) Senate Bill 6289 has been passed in the house. Councilmember Goodwin discussed conditions within the bill and felt it is premature until first, we know where this bill will end up and second, presuming it does pass there are conditions upon what an ordinance should state. Councilmember Goodwin added that the City needs to get the information and asked everyone to share their information and from this, we can then craft something that makes sense to our community.

Mayor Pro-Tem Boston stated that he agrees that the City needs to do something. He talked about working on an effective date to try and get the education out to everybody before it takes effect and agreed that crafting a better ordinance is needed.

NEW BUSINESS:

Resolution No. 10-679, authorizing the Mayor to sign the Second Memorandum of Understanding to the Collective Bargaining Agreement between the City of Black Diamond and Black Diamond Officers Association, adding Vision and Orthodontia coverage at the employees' sole expense and cost

City Clerk Martinez reported that this is the Second Memorandum of Understanding with the Police Officers Association, the first memorandum dealt with the \$50 co-pay. She stated this memorandum addresses adding vision and orthodontia coverage to the police officers benefits. She referred to section 15.1 in the collective bargaining agreement, which allows the Association to participate in other benefit programs that Association of Washington Cities offers at the members' expense - there is no expense to the City. She added the Police Officer's Association has asked to participate in Vision Service Plan, Full Family with a \$25 deductable and Orthodontia Plan V. She emphasized that this is at

no additional expense to the city; it is at the members' expense and recommends adoption.

A **motion** was made by Councilmember Mulvihill and **seconded** by Councilmember Saas to adopt Resolution No. 10-679, authorizing the Mayor to sign the Second Memorandum of Understanding to the Collective Bargaining Agreement between the City of Black Diamond and Black Diamond Officers Association, adding Vision and Orthodontia coverage at the employees' sole expense and cost. Motion **passed** with all voting in favor (5-0).

DEPARTMENT REPORTS:

Finance Director Miller distributed the final 2010 Budget document. She noted the actual year end figures are in the document per Councilmember Goodwin's request and thanked departments for all their hard work and especially thanked Deputy Finance Director Jana King for producing the final document. Finance Director Miller reported that the final budget document is available to view on the City's website. She recapped last months revenue trends and noted there is a sales tax graph posted on the finance page of the website showing the trends. Ms. Miller reported that the department is busy working on the annual report, street report and has begun the Capital Improvement Plan update process. Finance is also working with Community Development on getting the annual census material in to the Office of Financial Management. She stated that next year the 2010 census will be the basis for next year's official count.

Public Works Director Boettcher reported the Railroad Avenue project is moving along; however it has been a very disruptive week for the businesses. He stated that one of the construction timing decisions was allowing moving the first layer of asphalt to go down on April 1 which is sooner than scheduled. Mr. Boettcher discussed the contaminated material and the extra costs associated with the removal and noted that it will come back before Council at a future date.

MAYOR'S REPORT:

Mayor Pro-Tem Boston announced the updated schedule of the FEIS hearings and reminded everyone of the change to the MPD Rebuttal hearing which had been rescheduled for Monday March 22 at the Black Diamond Elementary gymnasium at 7 p.m.

COUNCIL REPORTS:

Councilmember Hanson addressed that she has disclosed her brother living in one of the YarrowBay houses and encouraged Ms. Taylor to get that information from the City's ex-parte file held with the City Clerk. Councilmember Hanson stated that her only involvement was introducing the two parties.

Councilmember Goodwin reported that the Parks/Cemetery committee would be doing some water quality sampling throughout the entire City on March 19.

Mayor Pro-Tem Boston introduced Chris Bacha as the new City Attorney and welcomed him. He explained that we hired a law firm so we had a team of good attorneys in all phases of municipal law and it was very apparent that the firm of Kenyon Disend has met our criteria.

An attendee asked who was representing the City the last couple of days in the hearings and was told that the City Attorneys were Mike Kenyon and Bob Sterbank during those hearings.

ATTORNEY REPORT:

City Attorney Bacha stated that he was glad to be here and explained his history. He stated that Noel had a lot of wonderful things to say about Council and staff. He explained that he is currently City Attorney for Orting and Burien. However, he will be ending with Burien next month.

PUBLIC COMMENTS:

Steve Garvich Black Diamond – talked about this road with potholes and would like to know if this could be brought up to the forefront of the six-year Transportation Improvement Plan and wondered when his road will be paved.

Public Works Director Boettcher stated that pothole maintenance will be forthcoming and repaving is budgeted for this year.

Bob Edelman, Black Diamond – responded to Councilmember Goodwin’s remark about scientific studies and didn’t want Councilmember Goodwin to get the wrong impression that he is in favor of having phosphorous go into our waters. He wants to see what the scientific basis of runoff is from birds and if it is going to add phosphorus to the water. Mr. Edelman would like to see what the problem is and if the studies exist then we will know what to address.

Lisa Garvich, Black Diamond- complimented Council for the process that was taken tonight in regards to passing ordinances and for taking slower steps and listening to the public.

CONSENT AGENDA:

A **motion** was made by Councilmember Mulvihill and **seconded** by Councilmember Saas to adopt the Consent Agenda.

Councilmember Goodwin recused himself from item #3-Claim Checks on the consent agenda due to a conflict; as he is employed and a shareholder for one of the vendors.

Motion **passed** (4-0) on item 3 and all voting in favor (5-0) on items 4 and 5.

The Consent Agenda was approved as follows:

Claim Checks – March 18, 2010 No.35302 through No.35364 in the amount of \$182,769.60

Payroll – February 2010 No.16896 through No.16967 in the amount of \$249,813.54

Minutes – Council Meeting of March 4, 2010

EXECUTIVE SESSION: None

ADJOURNMENT:

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

ATTEST:



Rebecca Olness, Mayor



Rachel Pitzel, Deputy City Clerk

Comments to the Black Diamond City Council regarding proposed ordinance 10-937

Thursday, March 18, 2010

I'm speaking against the proposed Phosphorus Fertilizer ordinance as proposed and suggest that action be deferred until further studies are conducted. My primary concern is that there may be no scientific basis for the ordinance.

- What studies have proven that turf fertilizers contribute significantly to lake phosphorus loading? By "proven" I mean scientific studies based on empirical data rather than supposition.
- My understanding is that soluble phosphorous in fertilizers quickly binds to soil particles and therefore doesn't contribute to runoff loading when the soil is protected with healthy ground cover. The more significant problem is phosphorous bound to soil particles in runoff from barren land or land with unhealthy ground cover. When the creeks are swollen and muddy, that's the time to worry most.
- Studies have shown that runoff from fertilized healthy turf (with strong roots) has about 1/3 less phosphorus than from unfertilized turf. A ban on phosphorous containing fertilizers could lead to more phosphorous loading rather than less.
- The biggest problem for Lake Sawyer has been organic phosphorous from geese and runoff from the fields containing sewer effluent. Animal and human waste is particularly rich in phosphorus. For example, one adult goose will excrete 0.86 pounds of phosphorus a year, almost three times the amount of organic phosphorus in runoff from an acre of fertilized turf.
- If our concern is fertilizer runoff then we should be very careful in favoring manure, compost, and sewer sludge. Depending on source and application, these "natural" fertilizers may be more susceptible to runoff and may contain harmful chemicals that did not decompose during treatment.

- Phosphorus is not the sole contributor to lake eutrophication. In fact, nitrogen loading is a far more serious eutrophication problem from misuse of fertilizers. Would we ban nitrogen fertilizers as well?

I have several other concerns besides the scientific basis of the ordinance.

- How will this ordinance be enforced?
- What will be the cost of testing so that a home owner can prove that phosphorous fertilizer is needed?
- Since runoff from unhealthy turf has about 50% more phosphorous than healthy turf, what are the unintended phosphorous loading consequences of fertilizer restrictions?
- The major problem in the future will be runoff from cleared land during development. What laws should be in place to keep soil phosphorous from those developments out of our lakes?

Thank you for your consideration.

Bob Edelman

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