

BLACK DIAMOND CITY COUNCIL MINUTES

May 20, 2010

Council Chamber, 25510 Lawson Street, Black Diamond, Washington

CALL TO ORDER, FLAG SALUTE:

Mayor Olness called the regular meeting to order at 7:00 p.m. and the Boy Scouts lead us all in the Flag Salute.

ROLL CALL:

PRESENT: Councilmembers Hanson, Boston, Saas and Mulvihill.

ABSENT: Councilmember Goodwin (excused)

Staff present were: May Miller, Finance Director; Steve Pilcher, Community Development Director; Seth Boettcher, Public Works Director; Chip Hanson, IS Manager; Jamey Kiblinger, Police Chief; Greg Smith, Fire Chief; Chris Bacha, City Attorney and Brenda L. Martinez, City Clerk

PRESENTATIONS: None

PUBLIC COMMENTS:

Colin Lund, YarrowBay Group, Black Diamond – updated everyone on happenings at their property; unknown tree removal, notification to the City and permits secured.

Councilmember Saas asked how it was mitigated.

Mr. Lund responded \$250 permit fee and \$50 replacement.

Melanie Gauthier, Black Diamond – commented on notice given by Palmer Coking Coal regarding mining; stated she would like to see a fence up before that happens.

Peter Rimbos, Greater Maple Valley – questions regarding the closed public hearing process.

Robin Taylor, Black Diamond – commented on ballot box being removed from library and requested Council to lobby the King County Council.

Cindy Proctor, Sun Mountain Drive, Enumclaw - acknowledged Councilmember Goodwin was in Haiti and thanked him for being an ambassador; questions on RH2 contract; funding agreement and vesting.

Cindy Wheeler, Black Diamond - expressed concerns regarding enforcement on YarrowBay Development and staffing.

Les Dalson, King County Area – concerned with MPD projects; asked Council to listen and question everyone during the process and to take their time.

Sean Taeschner, Black Diamond – stated he was here as a citizen and reporter and addressed Council on several issues regarding stormwater revenue - asked where the money is going and suggested a flow chart; stormwater sewers built around Lake Sawyer; plan being implemented and built and asked if Council will solve difference between septic and Metro Soos customers.

UNFINISHED BUSINESS: None

PUBLIC HEARING:

Stormwater Comprehensive Plan

Public Works Director Boettcher reported that the stormwater utility was launched and underway as a result of our first NPDES permit that was issued in 2007 and the City is ramping up on meeting all the stormwater requirements. Mr. Boettcher explained that because there is a Total Maximum Daily Load (TMDL) on Lake Sawyer, most cities our size would not have to do this. He noted that the City was able to get a Department of Ecology grant to fund half the costs of the Stormwater Comprehensive Plan. He then introduced Brandon Smith of PacWest Engineering.

Brandon Smith, PacWest Engineering reported that PacWest prepared the plan in concert with City staff. He explained that the City of Black Diamond fell upon new requirements by the National Pollution Discharge Elimination System (NPDES) Phase II permit that triggered the City to form a plan to meet the Federal requirements which comes from the Clean Water Act. Mr. Smith reported that they did an inventory of the system; developed mapping system; analyzed cities existing pipe system, looked at proposed developments plan; water quality components of the City's system; encouraged folks to look at the Capital Improvement Plan (CIP) to see the priorities for capital needs; discussed education needs for the community (i.e. washing vehicles) and low impact development to manage stormwater where it occurs.

Councilmember Saas clarified that the \$10 charge was something the City has to do.

Mr. Smith confirmed that yes; it is mandated to do so.

Mayor Olness opened the public hearing at 7:45 p.m.

Jerry Smith, Black Diamond – asked if the City has a preventative maintenance plan.

Public Works Director Boettcher replied yes, the City has been maintaining the catch basins; will be pumping catch basins again in late summer or early fall at a cost of \$50,000.

Councilmember Boston asked if the cost was affiliated to renting a Vactor Truck.

Public Works Director Boettcher replied yes.

Robert Taeschner, Black Diamond – commented specifically on the Lake, stated facts regarding streets that parallel the Lake and water that ends up on Mr. Smith's property. Mr. Taeschner asked where the catch basins are and if it runs into the properties.

Public Works Director Boettcher clarified that there is not a catch basin and how the roads were designed to get the sheet flow back into the natural ground rather than collecting when you have good infiltrated soils.

Councilmember Saas asked if having an infiltration system is better than collection.

Donna Gauthier, Black Diamond – discussed issues regarding the petition that the road in front of her house caused damages to her property; who is responsible to fix the road; in the meantime the water is running off the road and damaging her property and home.

Cindy Wheeler, Black Diamond – commented on her concerns with the statement that we have pumped the Lake Sawyer basins and this was 13 years ago, and urged Council to be proactive. She stated that this was a complex issue as much it is a science. She also discussed her concerns with two members not knowing what TMDLs were; page 31 seems to have some erroneous data; 18 acre figure not being correct; page 41 on infiltration ponds; page 62 detailed soil analysis needs to be done by the developer, not sure what the timeline is for this and wonders why the urgency; page 97 and 98 appalled these are included in the plan as we are currently in the MPD hearing process.

Robert Taeschner, Black Diamond – clarified that all runoff from 229th Avenue ends up in the Lake. He encouraged Council to read the whole document and understand it as the citizens will have to live with what Council decides.

Jerry Smith, Black Diamond – commented that Mr. Taeschner is referring to his property and the water that runs down 307th and some does run into the Lake but most of it runs into his property and floods his property. He stated that he is in the process of putting in a new back yard and believes it's from the runoff of the oil and gasoline. He said that out of the seven years he have never seen a Black Diamond maintenance truck on his street, he asked the City to help him out with catch basins on that street.

Cindy Proctor, Sun Mountain Drive, Enumclaw - commented on having amendment language in the document so when its 5 years from now and the plan is basing information on the now and not the future it can be amended.

Bob Rothschild, Black Diamond – asked which City document would define the maintenance plan and wants to make sure we stick to it and is concerned the catch basins have not been pumped in 13 years.

Mr. Smith from PacWest Engineering replied that it can be found in the Stormwater Comprehensive Plan and explained the reasoning on the frequency and what it best practice.

Mr. Rothschild wanted clarification on the \$50,000 and if it was for the whole City.

Public Works Director Boettcher replied yes, most of the money will be spent on catch basin cleaning and some will be spent on education and equipment purchase, he stated the City does not have a day scheduled, but does plan to pump them this year but not sure how many will be done.

Mr. Rothschild asked if there was a requirement by 2014 in respect to pumping basins and that some of the things in the document need to be clarified and if it is not appropriate for this document then it needs to be another document as we need to be accountable. He also questioned the Capital Improvement Plan; discussed water flows and Highway 169 and its runoff. He reiterated that Council should clarify the maintenance plan; give treatment a higher priority and address drainage off of Highway 169 areas.

Rick Bingle, Black Diamond – asked if all the Councilmembers have read the document and if not; will they and, can they acknowledge if they have.

Councilmember Saas replied that he had not read the whole document in its entirety, but would before voting on it.

Councilmembers Mulvihill, Boston and Hanson stated they have read it, but they will be asking a lot of questions at the Workstudy to make sure everyone understands the whole document.

Erika Morgan, Black Diamond – commented that where she lives on Black Diamond Lake, section 23 her concerns in regards to water that whole northwest quarter is wetland. Because of all the work and replanting done, trees weren't rooted properly and those trees come crashing down. She stated these were concerns; she also noted that whenever a big machine digs on her property and there isn't a French Drain it is like working in quick sand. She wanted to pull all that in the mix so everyone was aware of what happens out there.

Sean Taeschner, Black Diamond – diagramed the water system on the white board.

Bob Elderman, Black Diamond – asked in the Capital Improvement Plan if items 1-13 are things that would be expected to happen without development and if there have been estimates of what the charge will be per month to residents; asked if projects 1-10 were necessary.

Public Works Director Boettcher replied yes those are expected to happen without development and in regards to the CIP the City will be reviewing charges and the number of projects implemented over the next six years is very small; this plan is looking long term and as far as projects 1-10 they are necessary, but not all at once.

Cindy Proctor, Sun Mountain Drive, Enumclaw – commented that some of the citizens want the City to be mandated to do this, she stated that it's not a mandate that we have to do, but are fortunate enough that the voters have elected to govern themselves and govern the developers.

Bob Rothschild, Black Diamond – asked how much money is being collected by the stormwater fund.

Finance Director Miller replied that approximately \$240,000 per year and clarified the expenses for the Capital Improvement Plan.

Mr. Rothschild commented that the reason he asked is to get a feeling for the \$1 million dollars of projects planned, if we just do ongoing maintenance, we never improve the situation by not doing any infrastructure improvements.

Robert Taeschner, Black Diamond – commented that the money can be used in two ways, 1) for maintenance done by City personnel and 2) capital improvements done by outside sources.

Jerry Smith, Black Diamond – commented that he understood the \$240,000 in revenue was to be spent on the stormwater maintenance drains and sees now the money is going in a different place, would like to see us take \$40,000 and hire on another maintenance worker.

Mayor Olness closed the public hearing at 8:48 p.m.

Stormwater Management Plan

Public Works Director Boettcher reported one of the requirements of our permit is to establish a stormwater program and it is based on the outline of the NPDES Phase II permit requirements. He stated that some areas have been summarized and verbiage added to what we are doing here in Black Diamond and also gets into the specifics of what we are doing this year. He commented that several typos in the document will be dealt with later and on Section 7.2 second bullet some language needs to be added as it is not a complete sentence.

Councilmember Hanson stated that we need to have education of the public and it is so important to let them know what we can do to help and the best way is to educate our children and would like us to concentrate on a little more education.

Public Works Director Boettcher identified in the document where this is addressed. He explained how this plan correlates and the differences to the Comprehensive Plan and how staff will implement the permit requirements, he also stated the last component is pollution control.

Mayor Olness opened the public hearing at 8:53 p.m.

Bob Rothschild, Black Diamond – commented that he read the document and had a couple of questions, cleaning the catch basins and wonders how big they are.

Public Works Director Boettcher replied that they vary in size and some are as big as a manhole.

Mr. Rothschild commented that there are larger ponds in neighborhoods and some are in older and newer neighborhoods and they all need to be maintained, question is are the requirements in the Management Plan or a different document.

Public Works Director Boettcher replied that page 16 of the Stormwater Management Plan explain this.

Mr. Rothschild asked if the facilities have been pumped and inspected; more training needed; section one discussion on TMDL and wonders why it mentions it and what the tie-in is.

Public Works Director Boettcher replied that one of the main requirements is to implement the 2005 DOE Manual and one of the other items is the septic system maintenance program.

Mr. Rothschild asked if he was correct in understanding the Management Plan needs to meet the requirements of the TMDL and in the 60 hours of public testimony not sure we are even meeting the TMDL, he stated the point is there is much more than the 2005 DOE Manual and it needs to be expanded.

Cindy Wheeler, Black Diamond – commented on the 2005 DOE manual that was adopted by this Council without allowing a public hearing and declared that it was a public emergency that allowed them to not have a public hearing. She stated that she was happy to see that on page 7 the City was going to require that public hearings be held in regards to the Stormwater Management in place. She commented that the 2005 plan was not the best choice and not offering the best protection, she stated that she would like to augment Bob's comment that we augment the plan that we currently have in place, and asked that Council does not impose that kind of legislation on citizens again by bypassing public hearings.

Discussion took place regarding a public hearing being held for that particular meeting and it was noted that a public hearing did take place on June 25, 2009.

Sean Taeschner, Black Diamond – asked Council what the public emergency was and the correlation with lifting the moratorium; what classifies a public emergency and when that term can be used.

Cindy Proctor, Sun Mountain Drive, Enumclaw – read from Ordinance 09-914 the language of emergency ordinance. She stated the term has been used for two ordinances; once for the 2005 DOE Ecology Manual and the other for an Ordinance amendment repealing Chapter 12 of the Municipal Code. She stated that typically a public emergency would be a catastrophic mine disaster, forest fire or riots during WTO when normally it doesn't see the City Attorney using that code, because what that does is violates the constitutional right and makes the code invalid. She stated that the only way to by-pass a public hearing process is by declaring a public emergency.

City Attorney Bacha replied that in terms of declaring a public emergency, you are not correct, public hearings are required on a state statute not required for every ordinance that is enacted by the City Council.

Cindy Proctor, Sun Mountain Drive, Enumclaw – replied that they yes, they are; she stated that she checked with the Attorney General's office and in Chapter 1 of the Black Diamond Municipal Code where the City adopted RCW 35, she stated she went over this two Council meetings ago, that we adopted standards that if we are going to do a code codification change that we are required to have a public hearing unless we pass a Resolution or unless we have a public emergency or public hearing. She also discussed the public hearing process; she had a different statement regarding the hearing process for the MPDs regarding recorded maintenance agreements; the Developments maintaining all the stormwater and catch basins within their property sites as part of that development agreement and asked if that would be a part of the Stormwater Management Plan.

Rick Bingle, Black Diamond – commented that he wanted to challenge the council and ask why we would have to choose the lowest standards - we deserve the best. Set the highest standards and you may find support; choose the lowest and you will find resistance.

Public Works Director Boettcher responded that the 2005 Manual is one of the premier stormwater manuals in the nation. King County manual had not even been approved by the Department of Ecology and applauded Council for adopting the highest standards that meet our requirements.

Mayor Olness closed the public hearing at 9:18 p.m.

NEW BUSINESS:

Resolution No. 10-685, establishing a date, time and place for commencing a closed record hearing to consider the recommendation of the Hearing Examiner on The Villages Master Planned Development Application

Community Development Director Pilcher reported that Council has two resolutions before them that are related. He stated that the City has received the Hearing Examiners recommendations and the earliest we can start the closed record hearings would be June 7. Mr. Pilcher commented that staff recommends the first evening to be setting the rules, and appearance of fairness and the next night would be the applicant and staff presentations and then start the public hearing process.

Mayor Olness suggested that we open the hearing on June 7. She commented it would be at the Black Diamond Elementary School Gymnasium and she proposed the following dates: June 7, June 9, June 10, June 14, 15 and 16.

Councilmember Saas proposed to start the week of June 21.

Councilmember Hanson polled the audience.

Audience input that evenings, consecutive days and more than 2 hours at a time would be preferred.

Citizen comment that they would like to have input on the structure of the hearings.

Mayor Olness recessed the meeting for approximately 5 minutes at 9:34 p.m.

Mayor Olness called the meeting back to order at 9:41 p.m.

Mayor Olness stated there is consensus from Council to hold hearing on June 21, but stated that the City will need to check with the school for availability.

A **motion** was made by Councilmember Boston and **seconded** by Councilmember Mulvihill to adopt Resolution No. 10-685, a closed record hearing to consider the recommendation of the Hearing Examiner on The Villages Master Planned Development Application to commence on June 21, 2010. Motion **passed** with all voting in favor (4-0).

Resolution No. 10-686, establishing a date, time and place for commencing a closed record hearing to consider the recommendation of the Hearing Examiner on Lawson Hills Master Planned Development Application

A **motion** was made by Councilmember Boston and **seconded** by Councilmember Mulvihill to adopt Resolution No. 10-686, a closed record hearing to consider the recommendation of the Hearing Examiner on Lawson Hills Master Planned Development Application to commence on June 21, 2010.

Councilmember Hanson clarified that the time of the hearing would be 7 p.m.

Motion **passed** with all voting in favor (4-0).

Cindy Wheeler, Black Diamond – commented that she thought the break was to establish whether or not Council would accept citizen input regarding the hearings.

Councilmember Hanson suggested that the citizens write to the Mayor their suggestions and they are more than welcome to also come to the two Council meetings prior to June 21 to give their ideas as well.

Tim Nixon, Black Diamond – commented that Council should perhaps put a draft together and bring to the next Council meeting for the citizens to review and comment on.

City Attorney Bacha commented that Council can hear from the parties at the time you open the hearing and would be concerned that any emails would be ex-parte communications.

Resolution No. 10-687, authorizing the Mayor to execute a Professional Services Agreement with RH2 Engineering for Engineering Assistance regarding the Capital Facility Charge Analysis for water and sewer

Public Works Director Boettcher reported that he needs to get prepared for the review of the proposed developments and agreement. There is a fair amount of work and research done to prepare for this next phase and that is what this contract is about. He stated that under the costs the fund source says YarrowBay reimbursable; this is no different than an application fee and does not fall under the funding agreement as it is an application cost. For reassurance level he did request that YarrowBay provide confirmation that they would be covering these costs. He explained the key revision to the previous agenda bill is to put a hold on items 3, 6 and 7 until Council decides and then we can terminate or move forward with these items.

Discussion took place regarding the needs of assistance within the Public Works Department for the proposed RH2 agreement.

A **motion** was made by Councilmember Boston and **seconded** by Councilmember Mulvihill to **postpone** Resolution No. 10-687, authorizing the Mayor to execute a Professional Services Agreement with RH2 Engineering for Engineering Assistance regarding the Capital Facility Charge Analysis for water and sewer to the June 3, 2010 Council meeting. Motion **passed** with all voting in favor (4-0).

DEPARTMENT REPORTS:

Mayor Olness noted that Finance Director Miller handed out the First Quarter finance reports.

IS Manger Hanson highlighted the cost estimates associated with video recording Council meetings. Discussed the three options, 1) Networked “security style”, 2) Video recording (self) and 3) Video recording (professional).

Mayor Olness asked Council if they wanted IS Manger Hanson to continue or send the information forward to the Finance Committee.

Councilmember Mulvihill stated she felt it was something the City does not need, it is an expense and it is a luxury that the City cannot afford and does not want to go any further with it.

Councilmember Boston stated that perhaps it should be worked into the budget process for next year.

Council consensus was to bring to the Finance Committee for more discussion.

MAYOR'S REPORT:

Mayor Olness reported that the Boy Scouts were holding a bike rodeo on Saturday, May 22 and reminded all present that on Monday, May 31 Memorial Day there will be a ceremony at 10:30 a.m. for the Veterans at the Black Diamond Cemetery. Mayor Olness also stated that there was concern about poison hemlock around Lake Sawyer, there has been some research and it is not poison hemlock, but unfortunately it is Common Tansy and the City has been out pulling the weeds, and commented there is information about it on the website under Parks on the Natural Resources homepage.

COUNCIL REPORTS: None

ATTORNEY REPORT:

Attorney Bacha reported that in response to a question tonight regarding public hearings for City ordinances, he stated that in the City's code, there is no requirement for a public hearing to be held for every code change.

PUBLIC COMMENTS:

Cindy Proctor, Black Diamond – commented that she will bring in the RCW for Mr. Bacha; understanding from Mr. Boettcher that staff is under a lot of pressure and hopes staff does not feel the citizens participation has anything to do with it; asked for clarification on the funding at the next meeting by Ms. Miller; sections that should be revised and cautioned the analogy of we will grow of 1,900 homes; taking out references to the MPDs and Development Agreement.

Peter Rimbos, Black Diamond – discussed going through the appeals and agree the City needs to take as much time as possible and read everything; suggested talking to each other about it.

Judith Carrier, Green Valley Road – discussed the upcoming hearings; time that went into the hearings; question regarding completion and if there is a certain timeline.

Sean Taeschner, Black Diamond – asked what the plan is if the City decides to not approve the developments.

Cindy Wheeler, Black Diamond – discussed two points, hard to hear staff is stressed and we should have been ramping up as we are receiving money to provide additional staff; representation of the people; asked when quasi-judicial ends for Council.

CONSENT AGENDA:

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

Councilmember Boston recused himself from item #6-Claim Checks on the consent agenda due to a conflict. Motion **passed** (3-0) on item 6 and all voting in favor (4-0) on items 7 and 8.

The Consent Agenda was approved as follows:

Claim Checks – May 20, 2010 No. 35547 through 35553 (voided checks No. 35554 through No. 35610) No. 35611 through No. 35667 in the amount of \$506,702.91

Payroll – April 30, 2010 No. 17042 through No. 17112 in the amount of \$250,750.05


Minutes – Council Meeting of May 6, 2010 and Workstudy of May 13, 2010

EXECUTIVE SESSION: None


ADJOURNMENT:

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

ATTEST:



Rebecca Olness, Mayor



Rachel Pitzel, Deputy City Clerk