

BLACK DIAMOND CITY COUNCIL MINUTES
Special Meeting – August 18, 2010
Council Chambers
25510 Lawson Street, Black Diamond, Washington

CALL TO ORDER, FLAG SALUTE:

Mayor Olness called the special meeting regarding the closed record hearing of the proposed Master Planned Developments back to order at 6:30 p.m. and lead us all in the Flag Salute.

ROLL CALL:

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

ABSENT:

Staff present were: Bob Sterbank, City Attorney and Brenda L. Martinez, City Clerk

APPEARANCE OF FAIRNESS:

City Attorney Sterbank – asked the following question collectively of all five Councilmembers: Do you have any interest in the property that is subject to the Master Planned Development (MPD) applications? All Councilmembers responded- No.

City Attorney Sterbank – asked the following question collectively of all five Councilmembers: Do you stand to gain or lose financially as a result of the outcome of these proceedings? All Councilmembers responded- No.

City Attorney Sterbank – asked the following question collectively of all five Councilmembers: Has anything happened since last proceedings you can think of that could impact your ability to be fair and unbiased? All Councilmembers responded- No.

City Attorney Sterbank – asked the following question collectively of all five Councilmembers: Any ex parte contact outside of the proceeding? If so, describe contacts. All Councilmembers responded- No.

CONTINUATION:

Mayor Olness announced that Council had asked City Attorney Sterbank to bring a comparison list of conditions and that will be discussed first if Council doesn't have anything they would like to discuss before that.

Councilmember Boston commented that he would like to address some of the items discussed last night including reasons to deny applications, in pursuit of due diligence would like to discuss reasons to approve, (passed out handout) referencing copies of figures 1-3, 1-4, 1-5 and 5-2 from the EIS and discussed items contained within including improvements, density and open space for the alternatives; discussed grading in the developable areas; applicant cannot proceed without a Development Agreement, moving from more general to more specific; wouldn't it be better to have one entity control runoff; density is allowed by code and controlled by Council; although current code does not fit desires of some it is the code that must be applied; higher density can be a vibrant fiscal and physical at of a community with a lower impact to traffic; subsequent application pages show look of development with design guidelines; Master Planned Development (MPD) is an overlay which supercede all other zoning; areas must be developed as an MPD; why approve the application; the case for denial is not strong enough; Black Diamond Urban Growth Area Agreement (BDUGAA) was not appealed; over the following 14 years, City leaders and citizens have continued the vision by placing a moratorium on developments while putting in place the codes, regulations and comprehensive plan, what did change were how cities were financed; densities are in sync with Growth Management Act (GMA); important to consider what growth does form State Department of Commerce website (not admitted because not part of the record); ownership does come with responsibility; current residents will benefit from planned infrastructure and improvements; it is disingenuous to degrade apartment dwellers; space will be made available for a future transit site; MPD provides concurrency for traffic impacts; there is an ability now for roundabouts letting traffic move more smoothly; large containment ponds for stormwater; Low Impact Density (LID) used throughout project; school sites will be part of the plan; small conventional development who would volunteer land; the sites will be located if possible to allow for walk-able schools; developer will finance fire mitigations; there will be no unregulated tree cutting; conventional development does not require the concurrency development of commercial; needed tax revenues are being bled to other communities; current citizens are not willing to tax themselves for needed improvements, Black Diamond would survive but not thrive.

Councilmember Hanson commented the she looked over the tree preservation ordinance and staff recommendations; have to start with an inventory of trees when they submit any plans along with a grading plan; they don't meet the 40% tree preservation open space; will need to inventory site and find places where can be kept; there is a lot of control there; confirmation from staff; site plan will have to be approved, does trust staff; there is an application process and a permit has to be okayed at each level.

Councilmember Mulvihill thanked Councilmember Boston for all his information.

Councilmember Boston replied this is what we are supposed to do, look at it both ways.

Councilmember Goodwin stated that Council wants to understand both sides of the equation; it is important to differentiate between Lawson Hills and The Villages; thinks Lawson Hills has potential as an MPD; wonders if same benefit is in The Villages; it is easy to paint an idealistic picture; process doesn't mean clear cutting won't happen; will

take inventory and clear cutting will happen even with a permit; that is what the Hearing Examiner said; thinks the City Council's goal should be to think about mitigation if going to approve, not an ideal but worst case situation; not a matter if they trust or not trust applicant and may think best of those we are currently working with; need to protect City on a long term basis and evaluate pros and cons.

Councilmember Hanson stated she thinks City Council needs to remember the development agreement and what that brings to the table, more defined picture of what they are proposing; make sure we set enough conditions and mitigations in Development Agreement; thinks they should go over conditions of approval.

Mayor Olness asked Council if they would like to proceed with what City Attorney Sterbank had prepared.

Councilmember Boston asked Councilmember Goodwin about possibility of YarrowBay not being here, whoever they sell to will be regulated by the plan; administratively there must be enough checks and balances for a development agreement and permits; worst case should be considered.

City Attorney Sterbank reported he brought two stacks to go through; discussed how materials are laid out and how changes requested by Council are incorporated.

Council consensus was to start with the Lawson Hills conditions.

Councilmember Goodwin requested to hear highlights and will need to go through materials in depth.

City Attorney Sterbank discussed high density development and noise; proposed new condition about a haul route along Lawson Parkway; minor modifications to water and sewer conditions.

Councilmember Hanson stated that transportation is not in there.

City Attorney Sterbank replied it is not included since it is largely the same as in The Villages.

Councilmember Saas stated he didn't think there was enough study on that, once Botts Drive hits additional 10% traffic it would then trigger additional improvement; wanting it to be done sooner rather than later.

Councilmember Hanson asked if the school is built at the end of Botts Drive then frontage improvements along road would be good, especially stormwater; wetland along both sides of Botts Drive.

City Attorney Sterbank asked if there was a threshold.

Councilmember Goodwin stated if additional traffic then it should be addressed up front.

Councilmember Hanson stated that she read somewhere that there had to be a study on the miner home on Lawson Hills if it met the historic preservation; needs to look back to find it.

City Attorney Sterbank asked if there were any more questions on Lawson Hills.

Councilmember Goodwin stated Council needs to discuss buffers on Lawson and believes it was integrated into the noise issues.

Councilmember Saas stated Council did discuss that a little when Public Works Director Boettcher was here; 0-10' reference to road.

City Attorney Sterbank replied he thought it was addressed by condition for noise attenuation from the road.

Councilmember Boston stated he thought the road may have to be moved to make room for a burn.

City Attorney Sterbank replied widen buffer, move road to accommodate.

Councilmember Saas asked if it could be reevaluated to provide a larger buffer for the Taylors, would feel comfortable with that.

Councilmember Hanson stated she found the language addressing the miner home on page 60 of Lawson Hill MPD; applicant shall complete national historic place paperwork.

Councilmember Goodwin asked if that was a condition.

Councilmember Hanson replied yes it is.

Councilmember Goodwin stated it is in the FEIS, applicant is not suggesting any changes to it.

Councilmember Hanson wanted to point it out because it is where a school or road will go.

City Attorney Sterbank asked if there was any more on Lawson Hills and if Council would like to move on to The Villages.

City Attorney Sterbank asked Council to look at page 2 the transportation section; discussed how items are laid out; trying to minimize future disputes; new transportation demand model; discussed items to be incorporated and limits of the study area; mode split analysis discussed; not any critique in the record or intersections and discussed model may not need to go that far; discussed areas related to Maple Valley and intersections requested by King County; validation based on actual traffic counts within two years of model creation.

Councilmember Boston asked if two years was viable.

City Attorney Sterbank replied creating a model now, and validating it based on existing traffic now; trying to create a window which would count as existing traffic.

Councilmember Hanson stated looking at list of intersections and improvements; Auburn Black Diamond Road and SE Green Valley Road; would it be here or during for a noise study; will be a lot more traffic on Auburn Black Diamond Road and there are 3-4 homes in 101 Pines against that; County put jersey barrier next to Horseshoe Lake and the noise bounces off there and asked can we have them study the noise there.

City Attorney Sterbank replied it is better addressed in noise section rather than the traffic section of The Villages, can craft condition to address that; discussion of condition #12, regarding HE's recommendation of peak hour factor and existing speed limits and projects not funded but have likelihood of being built; want model to reflect likely real condition but also reflecting Council's and Hearing Examiners other interests; discussion of model distribution.

Councilmember Goodwin stated he thought we would show the model based upon funded and unfunded and look at the model two ways.

City Attorney Sterbank stated that yes, what is shown here is suggested by City's transportation engineer; could do both; should consult with jurisdiction about what may be built.

Councilmember Goodwin stated he would like to compare it to what the Hearing Examiner had recommended.

City Attorney Sterbank replied that the green underscoring shows the difference in the document.

Councilmember Hanson stated that part of the unfunded that is where the REET money comes in, grant money; model should show unfunded, just because you don't have it doesn't mean you won't get it and referred to the Railroad Avenue project.

Councilmember Saas commented as far as unfunded those will get revaluated at the next point of validation.

City Attorney Sterbank replied it could be done, however there is not language in there now that directs that, but it would be easy to add it in.

Councilmember Saas discussed City Capital Improvement Projects and outlook.

City Attorney Sterbank discussed Hearing Examiners suggestions, condition, #13, condition #14 mode split analysis; condition #15 cleanup of the language on trip capture assumptions; conditions #16 and #17 Hearing Examiners language of mitigation,

summarized new condition that follows shown in blue underscore addressing additional mitigation for Maple Valley and inserted additional language on proportionate sharing; referred to page 7 and outlined the condition based on Council direction regarding the 850 units.

Councilmember Hanson asked if the Council was still in agreement on the 850 units.

Councilmember Mulvihill replied yes, as this is the end of phase 1A.

City Attorney Sterbank explained the second step in the review process of the traffic model; explained he summarized three or four pages in a few minutes and commented Council should take more time to review; noted changes from the Hearing Examiner notation on page 9 regarding things that limit the analysis which seemed unnecessary in light of what we're talking about; also his language called for additional mitigation if the existing mitigation was substantially inadequate or if the quantity of impact exceeded the levels predicted, proposed to modify some language used.

Councilmember Goodwin asked a question regarding proportionate share on page 10.

City Attorney Sterbank clarified proportionate sharing; addressed condition #21 on page 11 and noted Council found condition okay as proposed by applicant; stated Councilmember Boston wanted some additional language on park and rides condition #27 on page 12; page 13, condition #34 is reflecting Council's direction to have studies done at the applicants expense but the consultant would be commissioned by the City.

Councilmember Goodwin asked a question regarding additional benefit for Green Valley Road monitoring.

City Attorney Sterbank stated that he wanted to ask Council about that because the new model validation calibration is going to involve comparisons and will likely be picked up in that process.

Councilmember Hanson felt this would be at a later time in the development.

Councilmember Goodwin stated we would be monitoring at the 850 level; need to look at risks.

Councilmember Hanson stated instead of having the South connector come out on Green Valley Road folks would rather see the road go through core wetlands and wanted Council to keep this in mind.

City Attorney Sterbank asked Council to turn to noise and highlighted the condition; next significant appears on page 18 condition #68 dealing with stormwater.

Councilmember Goodwin expressed his concern in the Hearing Examiners recommendation.

City Attorney Sterbank replied it would require the Public Works Director approval and have suggested language that would clarify; he read from the condition; condition 75 use to applicants new condition and added language from Councils direction; highlighted the suggested language; page 20 attempted to craft new condition that Council asked for regarding the TMDL and monitoring; this takes us through the bulk of changes Council asked for; starting on page 30 you will see condition 160 and explained the reasoning for this.

Councilmember Hanson stated first, The Villages page 211 condition 136 read the condition regarding limitation on front loading lots, would like to come back to this part to see what the proposal is and tighten it up a little bit.

City Attorney Sterbank responded the applicant addressed this in the new conditions from the applicant (referred to page 27 conditions 136).

Councilmember Hanson then referred to the Villages page 193, read excerpt from the bottom regarding major amendments to the MPD; concerned with the South Connector coming out on Hwy 169, you have to go through wetlands and is a major impact on the environment; stressed this is one of the things she is concerned about and wanted to keep folks aware of this as once the environment is gone we will never get it back.

Councilmember Boston asked what we are looking at is a compilation of all the conditions of the Hearing Examiner and applicant.

Councilmember Goodwin stated stormwater ponds as an amenity is an oxymoron for him and would like to see some checks and balances and tighter guidelines in the development agreement as what constitutes an amenity; does not think the guidelines provided is adequate; open to a way to do just want to see some criteria.

Councilmember Hanson referred to stormwater ponds Council saw on the tour of Issaquah Highlands.

Councilmember Boston talked about getting information on this pond for any troubles they are experiencing.

Councilmember Goodwin stated applicant proposed condition #122 in The Villages on corner stores and assumes this does not include a gas station; he makes this assumption, but we need clarification.

Councilmember Hanson felt this is where the design guidelines come into play.

Councilmember Goodwin referred to condition #125, trying to clarify the context of what the Hearing Examiner wrote; does not feel this is clear and would like some clarification as he is confused; condition #128 regarding expansion area and does not understand this and would like some clarification from staff and Council of what this really means.

City Attorney Sterbank noted how it was explained in the closing statements is that the applicant proposes that some of the units that would be authorized by the MPD could be constructed there, having the effect to lower density elsewhere, but that additional units beyond that could not be built there without a major amendment to the MPD; will confer with staff.

Councilmember Saas referred to Lawson Hills mines #104 and would like to see “may” be a “shall” and this is based on MPD Exhibit #120; noted question and answer from Golder if additional work needs to be done and when he sees “may” it is a red flag for him and would like to see this changed based on what Golder said; same thing requiring additional measures for specific limits for moderate mine hazardous and why wouldn’t we do this for the extreme or severe hazardous area.

Councilmember Hanson referred to BDMC regarding mine hazards; discussed mines not being straight down but at an angle.

Councilmember Saas asked if it’s based on our calculation on 1950 maps; need more clarification on the limits and boundaries.

Councilmember Hanson commented that the code is long and there are a lot of things that have to be done.

Councilmember Goodwin stated that the way he read Golder was arguing for more study not necessarily additional mitigation; you need to find out what the conditions are and can see this as a situation of where “may” might work since we need to find out if mitigation needs to be done.

Councilmember Saas thanked Councilmember Goodwin for helping him understand the use of the word “may” in regards to the mitigation.

Councilmember Goodwin asked in regards to residential units for balance, if that means we can move up one up or down, but it isn’t clear suggested ways to think about it is if you’re going to change one you need to reduce one by an equivalent amount.

City Attorney Sterbank replied that it would be how Council phrases it; areas designated on the map are expressed in a range, if there was a change from the lower end of one range to the upper of another you can have a fairly significant swing in what resulted on the ground.

Councilmember Goodwin stated it was worth considering in the changes applicant made in removing any ultra high density 18-30 away from the border areas; feels there should be no ability to move it back.

Councilmember Hanson stated that her understanding is Council has final say on high density as when it was proposed it had to met certain criteria.

Councilmember Goodwin noted it is in the submittal and defer to counsels interpretation and may need to clarify limitation in the development agreement.

City Attorney Sterbank referred to condition #126 in The Villages which does indicate that if the applicant requests residential category abutting the perimeter, Council saying they would like to see more specificity around that criteria, and raised question if the proposal is to change one to lower one would that require one to be raised somewhere else.

Councilmember Hanson commented on high density being used as retirement place.

Councilmember Saas questioned on buffers and Diamond Village high density.

Councilmember Hanson commented that there needs to be a buffer between existing residential and an MPD, need to clarify that as part of this will be addressed during the mitigation for noise.

Councilmember Saas referred to The Villages; condition #115 would like to see clarity as why this condition was scratched.

City Attorney Sterbank noted he would have to get back to them on this.

Councilmember Hanson asked a question on condition on design guidelines.

City Attorney Sterbank said on page 26 of his version he passed out, condition #129, design standards must comply with the MPD framework of design standards and guidelines.

Councilmember Goodwin suggested goal for Monday is to bring back any details and get a sense from Council of whether one or more is for approval or denial; if it's denial we can go home and if it is approval with conditions we can work through the conditions in full.

A **motion** was made by Councilmember Hanson and **seconded** by Councilmember Mulvihill to approve MPD applications with conditions.

Councilmember Goodwin stated he is not ready at this point to make a decision.

Councilmember Mulvihill clarified they would still have the opportunity to go through all the information.

Councilmember Boston would like another opportunity to review and make sure they are not missing anything.

Vote: Motion **failed** 2-3, with Councilmembers Boston, Goodwin and Saas voting against.

Mayor Olness announced availability for hearing schedule next week.

ADJOURNMENT:

A **motion** was made by Councilmember Goodwin and **seconded** by Councilmember Saas to continue the special meeting regarding the closed record hearing of the proposed Master Planned Developments on August 23, 2010 in the Council Chambers at 4 p.m. Motion **passed** with all voting in favor (5-0).

ATTEST:



Rebecca Olness, Mayor



Rachel Pitzel, Deputy City Clerk