

**BLACK DIAMOND CITY COUNCIL MINUTES**  
**Special Meeting – August 23, 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 4:17 p.m. and lead us all in the Flag Salute.

**ROLL CALL:**

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

**ABSENT:** Councilmember Mulvihill (excused).

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. Councilmember Hanson responded – No.

Councilmember Saas responded he received a voicemail from Gomer Evans encouraging approving the MPDs.

Councilmember Goodwin responded he received a voicemail from Gomer Evans encouraging approving the MPDs; email received from Mr. Peter Rimbos regarding traffic which Councilmember Goodwin stated he did not read.

Councilmember Boston responded he received a voicemail from Gomer Evans encouraging approving the MPDs; 8/20 contact from Mr. Gary Habenicht; email from Mr. Rimbos.

City Attorney Sterbank asked if Mr. Habenicht or Mr. Evans were present; they were not.

Councilmember Saas responded he received an email from Mr. Rimbos as well.

Councilmember Hanson responded she had not checked her email.

## **CONTINUATION:**

Mayor Olness stated at the last meeting Council directed Mr. Sterbank to prepare a revised version of the conditions for both The Villages and Lawson Hills.

City Attorney Sterbank noted condition changes; the parallel changes as Councilmember Saas direction to add some language regarding Botts Drive; noted conditions per Councilmember Goodwin's direction regarding defining for stormwater amenity.

City Attorney Sterbank passed out the revised conditions.

Councilmember Goodwin stated he had some input and comments on fiscal conditions, refers to Condition #151 that a new funding agreement be developed and no repayment on the part of the City in regards to impact fees; pointed out having a moratorium on operating and maintenance costs from cash subsidies by the applicant.

Councilmember Hanson commented on revenue from REET, roads, police, stormwater and asked if Councilmember Goodwin could be more specific.

Councilmember Goodwin gave an example; ongoing expense we do not want to leave ourselves vulnerable to not be able to go forward without the cash subsidies from the developer; would like to add that after 50% build out it needs to be viable and no more cash subsidies should be received.

Councilmember Hanson agreed there needs to be something there, but does not know what that number, or percent should be.

Councilmember Boston stated there has to be some incentive to have the City essentially be on its own and operate the taxes that we do receive and the revenues that we do receive; being that the City is taking on brand new things do we really know what the maintenance costs will be.

Councilmember Hanson referred to fiscal analysis at each stage, but is not sure what the answer is.

Councilmember Goodwin stated that maybe it is after phase two or 50% and can't move forward unless we are in fiscal balance; would be a shame to move forward with all this residential and the commercial never comes and how do we protect the City.

Councilmember Hanson asked how that would work when you need the commercial to move forward. Commercial is not going to come unless you have the population to support it.

Councilmember Boston commented on 2,500 homes at the end of phase two.

Councilmember Goodwin gave an example after 2<sup>nd</sup> phase and fiscal balance is such the additional residential must wait until it is in fiscal balance, this is the intent.

City Attorney Sterbank referred to the phasing plan The Villages section 9.

Councilmember Goodwin referred to applicant looking for approval to move on to the other phases even if the commercial does not come.

Councilmember Boston stated to give incentives for both the City and the developer to bring the commercial here.

Councilmember Hanson asked staff and it appears commercial will not come until there is a certain amount of homes and how do we get from this point to that point.

Councilmember Goodwin referred to fiscal balance and deficit noted we cannot predict the economics condition in the future and trying to avoid a situation that down the road we are not really hung out; need something to protect the City from an on-going fiscal balance.

Councilmember Saas stated he would like Finance Director Miller's input of how this relates and what is that number.

Councilmember Hanson is concerned the previous agreement in place they have to keep the City fiscally going and how will this affect that.

City Attorney Sterbank asked that maybe Finance Director Miller could provide a spreadsheet with a few different options.

Councilmember Boston asked how you would project that you would have that balance.

Councilmember Goodwin referred there is a requirement to have fiscal analysis every five years and have asked for language to include that it would limit the amount of cash payments from the applicant; trying to find that balance before there is a point of no return.

Councilmember Boston read three bullet points from the application; referred to project list of General Fund Revenues on page 12-10, figure 12-2.

Councilmember Saas commented on trying to find some kind of “stop loss”.

Councilmember Hanson responded she was wondering if at the first analysis they have to do before they start which would be better than the one in the application and we can take those numbers and decide then and write this in as a condition.

Councilmember Boston wondered what if the check was only \$5,000; what’s wrong if your operations and maintenance is only running at a \$5,000 deficit and what is in balance and do you want to hold off homes for this little amount and struggles how to work this to make it protect the City.

Councilmember Saas respects Finance Director Miller’s opinions and looks to her guidance on the subject.

Councilmember Boston stated he assumed she would look to other cities for data for commercial.

Councilmember Goodwin stated there needs to be a procedure to find in the development agreement how the fiscal balance will be determined.

Councilmember Hanson asked why they can’t put that in the development agreement.

Councilmember Goodwin felt it is in there, but what happens if it showed fiscal deficit; and this language is too restrictive that Mr. Sterbank prepared.

Councilmember Boston discussed needing to look at the trends.

Councilmember Goodwin stated this is what the fiscal balance would do.

Councilmember Hanson referred to Appendix D in The Villages application.

Councilmember Boston stated he does not want to tie the hands of future business leaders by saying the City has to stop expanding one way or another.

Councilmember Hanson stated they would have to pay to get something built that would be a capital improvement that would come out of City funds.

Mayor Olness announced a short recess at 5:01 p.m.

Mayor Olness called the meeting back to order at 5:05 p.m.

Councilmember Boston agreed with Councilmember Goodwin that Phase 2 at the end is a good time to see where we are, but as far as a condition to stop, we might give them an option to work through the fiscal part.

Councilmember Saas stated to have an account that once it got too low, it would be the “stop loss”.

Councilmember Boston asked for any thoughts on how to reword this other than what Councilmember Goodwin has suggested at the end of Phase 2.

Councilmember Goodwin suggested that it be written as ongoing deficits continue to be projected and in order to precede some other alternative other than cash subsidies as determined by the Council at that time.

Councilmember Hanson asked how much needs to be out of balance; needs to be some reasonableness associated with it.

Councilmember Boston asked if we could work this in there.

City Attorney Sterbank clarified that language can be adjusted to indicate if the fiscal projection conducted prior to the start of Phase 3 indicates the likelihood of “significant ongoing fiscal deficits” then the applicant must address those projected deficits by means of in cash payments; does this capture the consensus of the Council.

Councilmember Hanson commented on unfunded projects and referred to stormwater.

City Attorney Sterbank noted this would be up to the Council whether you wanted to accept it as a “means other than cash payments”.

Councilmember Goodwin felt this language proposed covered it.

There was Council consensus on the proposed language.

Councilmember Goodwin stated that one more fiscal condition, one of the things we discussed was the CFD certainly this is to be considered as a viable option and at the City’s sole discretion and did not see it in the conditions.

City Attorney Sterbank stated he did not draft it as it was not clear whether the Council wanted to see a CFD and asked if the Council would like to mirror the language in the condition.

Councilmember Boston asked why it needed to be part of the MPD.

Councilmember Goodwin stated because the applicant has made it clear that a CFD is their intended method of financing.

Councilmember Saas asked what happens if legislation changes; gave an example of not needing Council’s approval for a CFD would they be vested to what we adopted or would they abide by those changes.

City Attorney Sterbank clarified this is not a development regulation, not something that is adopted as part of the City code. Because this is state law, future Council will have to follow whatever criteria the legislature sets.

Councilmember Goodwin stated he would like the intent to be very clear; referred to condition #122, concerns the corner store, the development agreement needs to define the criteria, some objective criteria; condition #125 clear the intent is specifics 4 dwelling units per net acre and net being the minimum not the maximum.

City Attorney Sterbank stated he will do some research on residential properties as distinguished from the Comp Plan.

Councilmember Goodwin referred to page 10, traffic on The Villages, item number V read excerpt, and asked what proportionate shares mean, believes what this means is that on any mitigation; and does not know if this is consistent with growth pays for growth.

City Attorney Sterbank clarified why it was written this way.

Councilmember Goodwin stated even though it is within LOS standards and there is not cause for a need to change.

City Attorney Sterbank stated Council can discuss this further in Executive Session.

Councilmember Goodwin stated he would like to have this discussed in Executive Session; referred to HOAs on page 11, condition #24 and adding additional language for certain maintenance.

Councilmember Hanson stated that having the HOA was going to alleviate some of our city's costs by not having to maintain these; stormwater and catch basins as well.

Councilmember Goodwin stated this would be one of the very inappropriate things.

Councilmember Boston stated the same thing applies to streets if you have private streets and if they are not maintained at the level to what the City thinks they should be and the City does not want to get in the business of regulating HOAs and can we tie this down in the development agreement.

City Attorney Sterbank clarified what the proposed condition states regarding to HOAs responsible for street side landscaping unless everyone agrees otherwise. This condition was written by the Examiner to benefit the City by saying the HOAs can't do certain things, you are taking that tool off the table, and it's the Council's discretion to do that here or in the development agreement.

Councilmember Goodwin stated a condition need to be established either here or in the development agreement.

City Attorney Sterbank asked Council if this should be reflected in the revised conditions or the development agreement.

Council consensus was to have it be reflected in the development agreement.

Councilmember Goodwin referred to page 15 (c) and the changes made.

City Attorney Sterbank clarified where the deletion should have been shown.

Councilmember Goodwin referred to page 19, AKART change in definition; page 20 condition, #78 proposed additional language as it relates to the development agreement, should relate to monitoring plan, staff has some language of things that would be monitored and suggest we put that in there as this would be more consistent; agrees with new condition with the maximum loading on total phosphorus but need to include staff condition on the monitoring.

City Attorney Sterbank verified with Council on the consensus, both places in condition #78 where the Examiner referred to the phosphorus monitoring plan.

Councilmember Boston stated stormwater ponds being amenities and trying to come up with when it is an amenity.

City Attorney Sterbank referred to page 18 on The Villages, condition #69.

Councilmember Saas asked about condition #115.

City Attorney Sterbank clarified that condition #115 is a duplicate.

Councilmember Hanson referred to page 25, condition #118 read excerpt, and wondered if this is something that may be put in the development agreement; she stated when you take down their habitat, the animals will go in back yards and eat the plants and vegetation and would like to see it more defined and that staff has a bigger part in overseeing it.

Councilmember Boston stated condition #117 is kind of general regarding plant species selection, and want to leave it up to the information that is out there.

Councilmember Hanson stated there is a difference to what the deer and elk feed on; gave examples of what types of plant deer and elk feed on.

Councilmember Goodwin asked what mast-producing species is.

Natural Resources/Parks Director Nix stated he believed it is a typo.

City Attorney Sterbank replied he will find out the correct verbiage.

Councilmember Boston stated it could be as far as the tree plant; tree replacement introducing those types of trees that are more foraged versus replacing everything but fir trees.

Councilmember Hanson commented on wildlife, since the SAO buffers are a lot bigger and one thing they might be able to be enhanced and animals can travel on land although some is private, in applicants closing statement they talk about the corridor and how they are going to enhance that but concerned there isn't enough food and emphasis on how to make sure that they have sustainable food as this is taking away a significant amount of their space; gave examples of plants you could use and would like to have Mr. Nix be more one on one with them.

Councilmember Goodwin stated one way to do that is to create a condition to have it addressed in the development agreement.

Councilmember Boston stated that there was some testimony that the development might in fact benefit the elk population, because the elk feed on landscape that is more likely to be present because of the development.

Councilmember Hanson stated planting the buffers with the appropriate food would be good.

Councilmember Boston asked if she would like to draft a condition now or in the development agreement.

Councilmember Hanson stated draft a condition that it needs to be considered in the development agreement, needs to be in both the buffers and open space; condition at Stewardship Director needs to be involved in a food plot plan for wildlife.

City Attorney Sterbank clarified this is referring back to the landscape plan and mass producing species.

Councilmember Saas asked a question regarding going up or down one on density reclassification.

City Attorney Sterbank stated he needed more clarification on this subject.

Councilmember Boston stated the options would be a minor amendment to the MPD with Council approval or; not sure of the second option.

Councilmember Hanson asked where this is written.

City Attorney Sterbank responded right now it is written as a condition, condition #156 of The Villages, read excerpt.

Councilmember Saas stated he would like to get Council approval for up or down reclassification.

Councilmember Goodwin stated there should be some flexibility but the question is how much and how it should be determined.



Councilmember Boston stated that the question is if there is an up there should be a down.

Councilmember Goodwin responded there needs to be a balance.

City Attorney Sterbank referred to condition #126 of The Villages, read excerpt.

Councilmember Saas referred to the Black Diamond Municipal Code 18.98.100 which spells out process for minor amendments.

Councilmember Hanson asked what does this mean- "it abuts the perimeter of the MPD".

City Attorney Sterbank clarified that he believed it would be directly abutting.

Councilmember Hanson stated that she would like clarification on whether or not a buffer counts or not.

City Attorney Sterbank clarified there are a number of parcels adjacent that do not have a buffer and provided some examples in Lawson Hills and The Villages.

Councilmember Hanson stated she would like more clarification.

Councilmember Goodwin stated he agrees with Councilmember Hanson, it is inconsistent with the intent; the intent would be to not allow without an amendment; only place without buffers is adjacent to undeveloped land.

### **EXECUTIVE SESSION:**

Mayor Olness announced an Executive Session at 6:10 p.m. to discuss potential litigation pursuant to RCW 42.30.110(1) (i) which was expected to last approximately 20 minutes with no action to follow; closed record hearing will continue tomorrow August 24, 2010 at 6:30 p.m.

The special meeting was called back to order at 6:35 p.m.

### **ADJOURNMENT:**

A **motion** was made by Councilmember Goodwin and **seconded** by Councilmember Hanson to continue the special meeting regarding the closed record hearing of the proposed Master Planned Developments on August 24, 2010 in the Council Chambers at 6:30 p.m. Motion **passed** with all voting in favor (4-0).

ATTEST:

  
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Rebecca Olness, Mayor

  
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Rachel Pitzel, Deputy City Clerk