

**BLACK DIAMOND CITY COUNCIL MINUTES**  
**March 20, 2014**  
Council Chamber, 25510 Lawson Street, Black Diamond, Washington

**CALL TO ORDER, FLAG SALUTE:**

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

**ROLL CALL:**

**PRESENT:** Councilmembers Deady, Morgan, Edelman, Benson and Taylor.

**ABSENT:** None.

Staff present were: Stacey Welsh, Community Development Director, Andrew Williamson, Economic Development Director; Aaron Nix, Natural Resources/Parks Director; Jamey Kiblinger, Police Chief; Greg Smith, Fire Chief; Christy Todd, City Administrator; Carol A. Morris, City Attorney and Rachel Pitzel, Deputy City Clerk.

**PUBLIC COMMENTS:**

Cindy Proctor, Enumclaw – asked Council if they could donate a page or section on the website for the 2015 Comprehensive Plan update and participation process. She noted this being a big update and there doesn't seem to be a big robust of public participation. Discussed the EIS and the school impacts and transportation needs; Advisory group should be formed and stated the timeframe is not a long time to get public participation.

Robbin Taylor, Black Diamond – noted that last week at the Town Hall meeting she was surprised the speaker was cut off at 5 minutes. She stated this is the citizen's opportunity to address Council with a dialogue and to be able to speak to their elected as a whole and one on one. She asked the Mayor to become familiar with Rules of Order and was upset about a discussion of the rule change without the public being noticed. She noted that process is important.

Mayor Gordon noted a limit was put in place to give everyone a chance to speak, once everyone had the opportunity to speak; they are invited up again if they choose to do so.

Cindy Wheeler, Black Diamond – applauded Ms. Taylor for her remarks and stated that Council has an informed community with expectations and echoed Ms. Taylor's concerns. She noted Council having a Special Meeting and there not being public comments on the agenda and stated that the public does not like being shut out. She reiterated, citizens do not want a Council meeting where there are not public comments.

Mario Sorci, Black Diamond – commented that he agreed with the time limit and 5 minutes was ample time for one person to discuss their concerns and then once everyone talks to invite others to come speak again.

## **PUBLIC HEARINGS:**

### **AB14-031A – Consideration of Resolution Adopting General Government Facilities Mitigation Fee Plan**

Mayor Gordon opened the public hearing at 7:10:07 p.m.

City Administrator Todd reported that this is the third time in the last few weeks that Council has been introduced to MAKERS plan. (She noted dates). She stated between March 6 and tonight there were a few edits and it includes some supplemental information to the plan. She introduced Julie Bassuk who was there to do some Q & A on this plan which Council had in front of them.

Ms. Bassuk began by giving a quick overview and the changes in the document, she stated given the time frame she wanted to make sure that when she left the meeting that evening any requests for updates or questions should happen before she leaves the meeting.

Councilmember Taylor wanted to clarify that the fee schedule can be changed at a later date.

Ms. Todd answered yes; they can come back to that and make any changes necessary at that time.

Ms. Bassuk began the overview and revised version of the working plan that is a Draft; summarized changes that were made, executive summary; three main sections; mostly proofreading and editor changes; added page at very end about development share of cost. Ms. Bassuk then introduced the Q & A document, which is to answer questions that came up in the last two meetings; 18 questions were addressed and went through the questions.

Councilmember Morgan noted a few things: Abrams Avenue site acreage, and asked if that was pro-rated; will the police shooting range be revenue for the City; if the developer chooses to change the characteristics of dwellings would we expect a change; would City Hall land and Public Works land cost change; overall plan of where these facilities might end up; the 80/20 are placeholders, did you go down into that detail on the calculations; how firm are the cost estimates; how much of an evaluation has been made of the properties that belong to the City; noted she calculated around 1% of the voters at a Council meeting, the square footage would need to be larger to accommodate the growth.

Jack Sperry, Black Diamond – stated he wanted growth to pay for growth. He noted the use of square footage presumes the current citizens need these new facilities and that is not the case. He proposed the City accept the MAKERS study and immediately proceed with a revised study based upon the following approach. City needs to identify specific critical deficiencies in the current facilities. The City has been able to adequately support the current residents and citizens would not support a larger new cost to convert the existing facilities into state of the art facilities as envisioned in MAKERS study. He proposed current residents being responsible or obtaining adequate government facilities to support their needs and future new development being responsible for the additional facilities needed because of their increase population. He stated again, growth should pay for growth.

Bob Edelman, Black Diamond – commented on the clarity of requirements, poorly written and confusing. He asked the following questions - does the mitigation fee plan establish the mitigation fee or can they be changed; is there any requirement for passage of the council resolution under discussion; must funds be expended in five years per State statute or expended or encumbered in nine years per Section 13.9; what is the meaning of the word “outlined” in Section 13.9. He stated by State law, the Development Agreement can't impose city-wide mitigation fees but that fees can be established by voluntary agreement. The MAKERS study should only address YarrowBay development and fees should only be imposed on YarrowBay. He suggested the City Attorney review the legality of all the provisions of Section 13.9 and noted that there should be no added burden to property owners or the city budget and that growth must pay for growth.

Richard Ostrowski, Black Diamond – commented that the plan proposed does not assure that he citizens will not be taxed for new development. He said it has the opposite effect on citizens compared to developers; mitigation fees will not increase the purchase price of properties based on market values. He urged Council to increase the mitigation fees proposed by MAKERS to an adequate level.

Megan Nelson, YarrowBay – commented that she would like to start by saying YarrowBay, Mr. Sperry and Mr. Edelman are all agreeing on the same thing. She noted that Mr. Lund submitted testimony of the General Facilities Plan, they had experts look at MAKERS study and she has copies available if Council would like. She noted as outlined in those submittals the draft plan is flawed; urged Council to not adopt; discussed the law and the plan imposed the cost on new development. The study failed to use the LOS that is used by the Comprehensive Plan; commercial land not included in the study and directs Council to the letter for further examples. She discussed the interpretation of Section 13.9 and stated that YarrowBay has offered to sign a statement, letter or binding agreement regarding the plan and the due date. She noted there is no reason to rush for adoption on a plan that needs work and encouraged Council to take the extra time and the comments that were submitted; listen to the public; allow the parties to make the plan right. She discussed litigation and how it is contrary to the goal of this study in the first place.

Robbin Taylor, Black Diamond – noted the previous administration allowed the staff to put a hold on preliminary plat permits that are still languishing whether they should have been approved or denied. YarrowBay is offering to sign a binding agreement, she cautioned Council to beware that it might put the future Council and City in a situation later on.

Cindy Proctor, Black Diamond – stated that the Council should send this Development Agreement and Condition to a law firm in Seattle and get a summary and look at the cost in a long term point. She commented that deaths by a thousand cuts are painful on costs that occur. She agreed with the methodology, but the cost is understated. She discussed the economy changes and comprehensive plan projection for people of growth. She suggested Council to stop everything proceed with new legal advice and the need to move past this, get the Development Agreement vetted by a real firm and to have a summary done. She noted YarrowBay will then be able to build in the reason they are supposed to.

Cindy Wheeler, Black Diamond – noted for the record she is sick of this and agrees with Ms. Proctor and stated Council should proceed with new legal advice and a summary of exactly what is in the Development Agreements and what everything means. She stated that the language is unclear and it needs to be clarified. She noted that was the job of our city, to

protect our city assets; growth needs to pay for growth. She stated when Lake Sawyer annexed in they were promised that growth would pay for growth. She read the City's mission statement to Council and noted 80/20 is not growth paying for growth; discussed the Safety Levy and Special Election and going backwards on growth paying for growth. She stated that the City needs to get a better number out of this study.

Dave Amber, Black Diamond – commented that growth needs to pay for growth, from the beginning of this project he noted citizens were told they would not have to pay for the growth. He also noted having YarrowBay threaten litigation is not a partner he would trust, the people are looking for council and Mayor to protect them from being drained by expenses. He commented there are a lot of loop holes and vagueness in the Development Agreement and the document should be examined and gone over in detail as it is poorly written and not written to protect the citizens. He asked Council to take their time and agreed with previous comments that it should be looked at by a separate source.

Mayor Gordon closed the public hearing at 8:05:25 p.m.

Councilmember Taylor noted the burning question based on testimony tonight and his previous understanding we had to have something on the book by April, he stated that gives Council two weeks and he doesn't think it is going to happen in time.

City Attorney Morris reported that Council does not have to adopt tonight that YarrowBay has stated they are not going to hold them to that date and are willing to stick to that and waive that requirement. She noted Council has a working draft in front to them, they can adopt for purposes of study but they will want to adopt a final version.

Councilmember Taylor noted that by our next meeting we have to have a resolution and a final plan to adopt or we have to have a legally reviewed agreement between the City and YarrowBay that has a binding date.

City Administrator Todd noted that a final plan will be in Council's packet on April 3<sup>rd</sup> and that is why Ms. Bassuk asked for any input tonight so she can include that in the final plan.

Councilmember Benson stated that it was said the fee wouldn't be adopted with this plan so if this is a final plan with the fee, how do you decide to change the fee?

Ms. Bassuk noted one of the unclear elements about the Development Agreement they have been under the understanding you need to adopt under a year.

Councilmember Benson asked if that would be an amendment.

City Administrator Todd noted it is a suggested fee, that the study supports. She noted the plan is to bring forth the fee during the June timeframe and walk through the process for adoption in July. Which means it is a living document so if the fee changes you can go and amend the plan.

City Attorney Morris noted that comments that were raised tonight need to be addressed, doesn't see a reason to adopt until everyone is okay with it.

Councilmember Edelman stated she is not comfortable until all questions are answered and we know what is legal. She noted she wants the letter from YarrowBay in her hand if that is what they chose to do.

Mayor Gordon instructed City Attorney Morris to pursue with YarrowBay's offer; we will take them up on it.

Councilmember Taylor commented he would agree that it would appear Council can't get all the questions answered in this short of time and by the next meeting they have to have an agreement between the City and YarrowBay on the delay of execution on this.

Mayor Gordon instructed City Attorney Morris to work with YarrowBay and notify when this agreement is ready.

## **PRESENTATIONS:**

Councilmember Deady left the meeting to lock up gymnasium at 8:16 p.m.

**Police Department – Chief Kiblinger** – gave a PowerPoint presentation which summarized reduction in staff changes, priorities, key initiatives, marine services, community services and outreach, records, training, daily training bulletins, crime and statistics patrol, staffing comparisons, municipal court- case filings, jails reserve program, boots and badges, DARE, KCIRT, serving the community, local partnerships, officer spotlight. She took questions from audience.

Councilmember Deady enters meeting at 8:20 p.m.

Councilmember Morgan left the meeting at 8:32 p.m.

Councilmember Morgan entered the meeting at 8:35 p.m.

**Fire Department – Chief Smith** – gave a PowerPoint presentation which summarized last year's call volumes, current information of what is happening with the Fire Department, Ad Hoc Committee, Interlocal Agreement, Fire Station 98 remodeling, 911 incidents, Valley Com, cell phone use and knowing where you are- remember if you don't have service you can still dial 911 from your cell phone and it will go through, epinephrine now carried by Fire, CERT, Swift Water Rescue, Wildland Hand Team, Volunteer Firefighter Academy, website, a reminder that burn permits are not issued in Black Diamond- recreation fires are okay.

## **UNFINISHED BUSINESS:**

### **Resolution No. 14-931, confirming the Mayor's appointments to the Planning Commission**

Councilmember Edelman left the meeting at 8:55 p.m.

Mayor Gordon reported this resolution formalizes the confirmation vote taken on March 13 at a Special Meeting held to conduct interviews.

A **motion** was made by Councilmember Deady and **seconded** by Councilmember Morgan to adopt Resolution No. 14-931, confirming the Mayor's appointments to the Planning Commission. Motion **passed** voting in favor (3-1, Taylor).

Councilmember Edelman entered the meeting at 8:57 p.m.

## **NEW BUSINESS:**

### **Ordinance No. 14-1023, enacting a moratorium prohibiting the establishment, location, operation, licensing, maintenance or continuation of any medical cannabis collective garden or any medical marijuana dispensary and establishing a one-year work plan**

Community Development Director Welsh reported the new ordinance enacts a moratorium prohibiting the establishment, location, operation, licensing, maintenance or continuation of any medical cannabis collective garden or any medical marijuana dispensary and establishing a one-year work plan; the work plan will allow City staff, the Planning Commission, and the City Council the necessary time to consider changes to State law from the 2014 legislative session, and to move any proposed zoning and development code changes through established governmental processes. This moratorium is authorized pursuant to RCW 35A.63.220 and RCW 36.70A.390.

A **motion** was made by Councilmember Deady and **seconded** by Councilmember Benson to adopt Ordinance No. 14-1023, relating to the medical use of marijuana, adopting a one-year moratorium prohibiting the submission or acceptance of any development or business licensing application for the siting, establishment, operation, continuance or maintenance of any structures, property, uses or activities relating to medical marijuana cultivation, processing, storage, sale dispensing, deliver, exchange or bartering, and adopting a one year work plan, to be in effect while the City performs the activities described in this ordinance.

Councilmember Taylor commented that it is important to note this is necessary because of conflicting laws, he stated Council needs to step their way through this mine field and the only wise thing to do is put off until we get this right so we don't make mistakes.

Councilmember Morgan agreed with Councilmember Taylor and stated we don't have a choice; we need to understand what this change means for the City of Black Diamond.

Vote: Motion **passed** voting in favor (5-0).

### **Ordinance No. 14-1024, enacting a moratorium prohibiting the acceptance or processing of applications, or issuance of permits and approvals, and uses or activities associated with production, processing, and retailing of marijuana and marijuana-infused products and establishing a one-year work plan**

Community Development Director Welsh reported the new ordinance a moratorium prohibiting the acceptance or processing of applications, or issuance of permits and approvals, and uses or activities associated with production, processing, and retailing of marijuana and marijuana-infused products and establishing a one-year work plan; the work

plan will allow City staff, the Planning Commission, and the City Council the necessary time to consider changes to State law from the 2014 legislative session, and to move any proposed zoning and development code changes through established governmental processes. This moratorium is authorized pursuant to RCW 35A/63.220 and RCW 36.70A.390.

A **motion** was made by Councilmember Deady and **seconded** by Councilmember Benson to adopt Ordinance No. 14-1024, relating to the recreational use of marijuana, adopting a moratorium prohibiting the siting, establishment, location, maintenance operation or continuance of any structure, property or used relating to recreational marijuana production, processing, cultivation, storage, sale, deliver, exchange or bartering, as well as a prohibition on the submission of any development or business license applications for such uses, and adopting a one year work plan, to be in effect for a period of one year, while the City follows a work plan and considers the public health, safety, environmental and secondary land use impacts of such uses, to allow the city adequate time to consider whether to adopt “permanent” zoning and business licensing regulations on the same subject. Motion **passed** voting in favor (5-0).

## **DEPARTMENT REPORTS:**

### **Administration – City Administrator Todd:**

Ms. Todd noted that the January 2015 Council meeting being on the 1<sup>st</sup> and city offices will be closed, proposed that Council have one business meeting in January or chose the 22<sup>nd</sup> or 29<sup>th</sup> to have a second business meeting. She would like to capture it now so we can relay to BergerABAM for their planning purposes. Discussion took place on the meeting dates for January 2015.

There was Council consensus to move everything to a week later –regular meetings to be held on January 8<sup>th</sup> and 22<sup>nd</sup> with Workstudy/Town Hall on January 15<sup>th</sup>.

Ms. Todd also wanted to remind Council of the April 2<sup>nd</sup> Open House at the Black Diamond Elementary Gymnasium from 6-8:30 p.m. She noted that Department Directors will be there to assist BergerABAM. It will be an informal set up with different stations.

Ms. Todd reported she observed the Municipal Court for two hours and there were a lot of private counsel cases that day. She urged Council to observe the court and how the Judge and Prosecution are making decisions; she stated she has a better sense of what kinds of things are being brought through the Court and discusses the costs associated.

Ms. Todd discussed a future presentation opportunity called Seattle against Slavery. She noted that Seattle against Slavery came to the Suburban Cities Association meeting and spoke and they are willing to come to any jurisdiction and discuss human trafficking and how it expands into many areas. It can filter to training code enforcement officers who will be trained on this issue; she passed the brochure to Council to review and noted they can let her know at a later date if they are interested in having them come out to do a presentation.

## **MAYOR’S REPORT:**

Mayor Gordon reported after listening to the hearing tonight about the impact fees, he has grown very concerned and instructed the City Attorney to review the impacts of RCW 82.02.020 and how that will impact the City given the language that Council is reading, he has a very big problem with it and asked that she report back to the Council and himself and staff to see if there is really an issue.

## **COUNCIL REPORTS:**

### **Budget, Finance, Administration Committee:**

Councilmember Benson noted that Council was distributed the Final State Audit report and as usual passed with flying colors; March 27<sup>th</sup> is the next meeting.

### **Planning and Community Service Committee:**

Councilmember Edelman – no report.

### **Cemetery and Parks Committee:**

Councilmember Dedy noted Committee met this morning reviewed of property tax that goes to Park and trails, Bryant's and Boy Scouts garden; marathon in October; Earth Day is next month – talked about holding a clean- up at the Park on the 26<sup>th</sup> or 27<sup>th</sup>.

### **Public Safety Committee:**

Councilmember Taylor noted this committee chose not to meet this month as there were not enough agenda items. Talked about the presentation the Fire Department presented that evening.

### **Public Works Committee:**

Councilmember Taylor noted putting together a janitorial contract the old contract needed to be updated; Rock Creek Bridge design work and talked about not having a City Engineer appointed; discussed remodeling of the Council Chambers; asked staff about all the spam in email.

City Administrator Todd noted that two firewalls have been purchased and are being installed.

### **Regional Committees-**

**WRIA 9:** Councilmember Morgan – no report.

**Growth Management Planning Council:** Councilmember Edelman – no report.

**Sound Cities Association – Public Issues Committee (PIC):** Councilmember Edelman noted attending on the 12<sup>th</sup>, there was a presentation by King County regarding Cities Climate Collaboration KC4, noted they will also come out to do a presentation at a Council meeting if Council would want that; discussed Green House Gases; hazardous waste structure, TBD going to be on ballot in April; new committee to address human trafficking in King County.

**South County Area Transportation Board (SCATBd):** Councilmember Benson - no report



**South East Area Transportation Solutions (SEATS) Coalition:** Councilmember Benson discussed the TBD ballot issue; discussed the top projects and discussed the Oil by Railway.

**Sound Cities Association – Mental Illness and Drug Dependency Oversight Committee:** Councilmember Benson – no report.

**ATTORNEY REPORT: None**

## **PUBLIC COMMENTS:**

Brian Weber, Black Diamond – commented on behalf of the Boy Scouts wanted to thank Mayor Gordon for attending the Pinewood Derby contest. He noted they will also be participating in a flag retirement ceremony and will have more information to follow.

Cindy Proctor, Black Diamond – commented that she had a few things to note for Council to wrap up: 1) Comprehensive Plan due date; 2) Need a Comprehensive Plan 101 for citizens and 3) YarrowBay waiving the April 5<sup>th</sup> date, do not trust them entirely and make sure that development does not start.

Cindy Wheeler, Black Diamond – encouraged Council to seek public input and processes, support the Comprehensive Plan 101 that Ms. Proctor suggested; discussed YarrowBay waiving the April 5<sup>th</sup> due date; noted the hydraulic permit was not discussed in Councilmember Taylor Public Works report, she stated a lot of public comment on the condition and it not being followed through on.

Robbin Taylor, Black Diamond – noted she did not want comments to get lost in the previous comment period about the Town Hall meeting. The issue is, she does not recall the Council sitting together as a whole on the talking time and does not recall a vote or anything. She stated that somehow, that determination was made behind closed doors and was not public, it was shocking. She stated she understood the time limit, but was more concerned about how the decision came to without a public discussion regarding changing the time. These decision need to be made publicly and not behind closed doors.

## **CONSENT AGENDA:**

A **motion** was made by Councilmember Benson and **seconded** by Councilmember Edelman to adopt the Consent Agenda. Motion **passed** with all voting in favor (5-0). The Consent Agenda was approved as follows:

**Claim Checks** – March 20, 2014, No. 40688 through No. 40745 (voids 40598; 40662) in the amount of \$135,503.34

**Payroll Checks** – February 28, 2014 No.18262, 18264 through No. 18281 and ACH Pay in the amount of \$262,411.53

**Minutes** – Special Meeting of February 27, 2014 and Regular Council Meeting of March 6, 2014

## **EXECUTIVE SESSION:**

Mayor Gordon announced an Executive Session at 9:06:56 p.m. to discuss real estate acquisition pursuant to RCW 42.30.110(1)(b); and to discuss litigation and potential litigation with legal counsel pursuant to RCW 42.30.110(1)(i); possible action to follow the Executive Session, which was expected to last approximately 21 minutes.

Mayor Gordon announced a 10 minutes extension to the Executive Session.

The regular meeting was called back to order at 10:09:47 p.m.

Mayor Gordon handed the meeting over to City Attorney Morris.

City Attorney Morris introduced Ordinance No. 14-1025 to Council relating to land use and zoning, adopting a moratorium on the acceptance of applications for new development within the Master Planned Development (MPD) district, excluding any applications subject to the Development Agreements approved for the MPD developments entitled The Villages and Lawson Hills; and such moratorium to be effective immediately, defining the applications subject to the moratorium, setting a date for a public hearing on the moratorium, establish six month as the tentative effective period until the Council public hearing on the continued maintenance of the moratorium and declaring an emergency necessitating immediate adoption of a moratorium. She noted they can set a date for the public hearing tonight or at a later time.

A **motion** was made by Councilmember Benson and **seconded** by Councilmember Deady to adopt Ordinance No. 14-1025, relating to land use and zoning, adopting a moratorium on the acceptance of applications for new development within the Master Planned Development (MPD) district, excluding any applications subject to the Development Agreements approved for the MPD developments entitled The Villages and Lawson Hills; and such moratorium to be effective immediately, defining the applications subject to the moratorium, setting a date for a public hearing on the moratorium, establish six month as the tentative effective period until the Council public hearing on the continued maintenance of the moratorium and declaring an emergency necessitating immediate adoption of a moratorium.

City Administrator Todd recommended Council to pick a best date for a public hearing.

A **motion** was made by Councilmember Benson and **seconded** by Councilmember Deady to amend the first motion to exclude a date to be discussed with staff on the best date available.


Councilmember Taylor wanted to point out to public that this is being under taken with a public hearing and will hear from public on this matter and it we be vetted. He stated he felt it was necessary.

Motion **passed** voting in favor (5-0).

## **ADJOURNMENT:**


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

ATTEST:



---

Dave Gordon, Mayor



---

Rachel Pitzel, Deputy City Clerk