

BLACK DIAMOND CITY COUNCIL MINUTES

October 15, 2015

Council Chamber, 25510 Lawson Street, Black Diamond, Washington

CALL TO ORDER, FLAG SALUTE:

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

ROLL CALL:

PRESENT: Councilmembers Deady, Edelman, Goodwin and Taylor.

ABSENT: Councilmember Morgan (excused)

Staff present: Seth Boettcher, Public Works Director; Barbara Kincaid, Community Development Director; Jamey Kiblinger, Police Chief; and Brenda L. Martinez, City Clerk.

APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS:

Mayor Benson introduced Trip Hart who was in attendance to present “Every Day SoHaPP”.

Mr. Harp, Chair of the LINCK Civility, Compassion, Kindness, a task force of the Rainier Foothills Wellness Foundation discussed with Council their vision of being a community of healthy relationships between caring and engaged citizens, with parents and the community respectfully raising children with nurturing support. He discussed how they are seeking to inspire citizens of the plateau communities to be compassionate to themselves, and make long lasting changes improving their mental health and level of happiness. Doing so will enhance vibrant well-being for themselves and the communities, as some of the proposed practices impact others in positive and beneficial ways.

He also discussed the principles of Science of Happiness and Positive Psychology – SoHaPP and how they have been receiving notoriety lately. He further discussed how mental health treatment can be enhanced with the cultivation of three life qualities: 1) a positive outlook, 2) a giving spirit, and 3) a healthy brain – he gave examples for each of the three life qualities.

He thanked Council for allowing him the time to share this with them.

CONSENT AGENDA:

A **motion** was made by Councilmember Deady and **seconded** by Councilmember Edelman to adopt the Consent Agenda. Motion **passed** with all voting in favor (4-0). The Consent Agenda was approved as follows:

- 1) **Claim Checks** – October 15, 2015, No. 42775 through No. 42822 (void 42677) and EFTs in the amount of \$102,462.72
- 2) **Payroll** - September 30, 2015 - No. 18680 through No. 18697 and ACH payment in the amount of \$264,257.85
- 3) **Minutes** – Black Diamond Transportation Benefit District Special Meeting of September 17, 2015, Special Council Meeting of October 1, 2015, and Council Meeting of October 1, 2015

PUBLIC COMMENTS:

Christian Ciaparrone, Black Diamond discussed with Council the beaver dam problems he is experiencing on his property. He noted the level of the dams has increased and his property is now under water which has never happened in the past. He also noted contacting Councilmember Taylor and Seth Boettcher on this issue.

PUBLIC HEARINGS:

Proposed Ordinance 15-1061, Adopting Concurrency Regulations for the review of Legislative and Quasi-judicial applications, as mandated by the Growth Management Act for Transportation Facilities, adopting a new Chapter 11.11 in the Black Diamond Municipal Code.

Public Works Director Boettcher stated tonight's public hearing is for the public to provide comments to the Council regarding the proposed concurrency ordinance. Mr. Boettcher also stated he believes there will be some edits depending on the comments received. The comments under advisement and if the edits will be substantive he noted the city may need to hold a second public hearing on this at their November 19 meeting. So far the City has received public comments from Judith Carrier, YarrowBay Holdings, and Peter Rimbos on behalf of the Citizen's Technical Advisory Team (TAT).

He also discussed how this ordinance brings us into compliance with state law. This ordinance allows the city to monitor the Level of Service (LOS) of intersections, reserve and track capacity for each development and require that developments within the City maintain transportation concurrency for their projects within six years of the LOS deficiency.

Mayor Benson opened Public Hearing at 7:24:03 pm.

Judith Carrier, Auburn WA read into the record her written comments which are attached and incorporated into the minutes.

Peter Rimbos, Maple Valley WA speaking on behalf of the Citizen's Technical Advisory Team commented on submitting written comments earlier in the week along with the recommendations they provided. He then read into the record his oral testimony which is attached and incorporated into the minutes.

Mayor Benson closed Public Hearing at 7:33:16 pm.

UNFINISHED BUSINESS: None

NEW BUSINESS:

Resolution No. 15-1046, Showing good faith and continuing progress toward compliance with 36.70.130 RCW to update the Comprehensive Plan

Community Development Director Kincaid reported adoption of the proposed resolution affirms the good faith effort and continuing progress to comply with the Growth Management Act in the Comprehensive Plan update. She discussed how currently the City has not met the adoption deadlines and that many entities have not either. She also noted that attached to the resolution is a work plan that shows the aggressive schedule for bringing materials forward to the Council and public.

A **motion** was made by Councilmember Taylor and **seconded** by Councilmember Edelman to adopt Resolution No. 15-1046, to show good faith and continuing progress toward compliance with 36.70.130 RCW to update the Comprehensive Plan. Motion **passed** with all voting in favor (4-0).

Ordinance No. 15-1062, rezoning certain properties in the Master Planned Development zone to R4 and R6

Community Development Director Kincaid reported this is a city initiated rezone of certain properties totaling approximately 160 acres in the MPD zone (that are not under the MPD permit and development agreement) to R4 and R6. She stated on September 8th the Planning Commission held a work session and a public hearing on this rezone and on October 6th the Planning Commission gave a recommendation to adopt as presented.

Planning Commission Chair Pam McCain stated she was here to give the recommendation of the Planning Commission to approve the rezone of approximately 160 acres from the MPD Zone to R4 and R6. She commented the recommendation resulted from a unanimous vote (7-0) of the Planning Commission on October 6th. She further commented that Exhibit C to the ordinance contains the Planning Commission's vote which was taken after a work session and public hearing held on September 8th.

A **motion** was made by Councilmember Goodwin and **seconded** by Councilmember Edelman to adopt Ordinance No. 15-1062 relating to land use and zoning, rezoning 26.26 acres from Master Planned Development (MPD) to Residential 4 (R4) zoning district, located with the NW ¼ Section 22, Township 21, Range 6, King County parcel numbers as shown and rezoning 130.65 acres from Master Planned Development (MPD) to Residential 6 (R6) zoning district, located within the NW ¼ Section 22, Township 21, Range 6, King County parcel numbers as shown and amending the official zoning map to be consistent therewith. Motion **passed** with all voting in favor (4-0).

Ordinance No. 15-1063, repealing Ordinance No. 15-1055, which extended a moratorium imposed on the acceptance of Development Applications within the Master Planned Development District.

Community Development Director Kincaid reported now that Council has put in place zoning for those parcels under the moratorium this ordinance would repeal the moratorium that is over them at this time.

A **motion** was made by Councilmember Goodwin and **seconded** by Councilmember Deady to adopt Ordinance No. 15-1063, repealing Ordinance No. 15-1055 which extended a moratorium imposed on the acceptance of Development Applications within the Master Planned Development District. Motion **passed** with all voting in favor (4-0).

DEPARTMENT REPORTS: None

MAYOR'S REPORT:

Mayor Benson reported attending an emergency management meeting and earthquake drill; she presented to the Black Diamond Community Center a contract regarding insurance and stated Council will be voting on this at their November 5 Council meeting. She also attended the Ad Hoc Transportation Advisory Committee meeting, Finance Committee meeting and the Planning and Community Service Committee meeting. She informed Council that City staff is working on getting a Wellness Program put in place for the City.

COUNCIL REPORTS:

Councilmember Deady reported attending the Black Diamond Community Center dinner auction and the Ad Hoc Transportation Advisory Committee meeting.

Councilmember Morgan (absent)

Councilmember Edelman reported attending the Black Diamond Community Center dinner auction, the Finance and Planning and Community Service Committee meetings. She also attended the ribbon cutting ceremony for a new business in town – The Studio Bar. She gave an update on the items discussed during the Public Information Committee (PIC) meeting and thanked Council for their input on the E911 issue as some of their comments have been included in the document. She discussed the upcoming SCA Networking Dinner on October 28 and their Annual Dinner on December 2.

Councilmember Goodwin reported attending the Ad Hoc Transportation Advisory Committee meeting and noted there were 14 folks in attendance. Upcoming meetings for this Ad Hoc Committee will be the second Thursday of every month at 7:00 p.m.

Councilmember Taylor thanked Mr. Ciaparrone for coming to address Council as he pointed out a big problem in the city regarding beaver dams.

ATTORNEY REPORT: None

PUBLIC COMMENTS: None


EXECUTIVE SESSION: None

ADJOURNMENT:

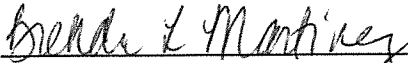
A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to adjourn the meeting. Motion **passed** with all voting in favor (4-0).

Meeting ended at 7:56:25 p.m.

ATTEST:



Carol Benson, Mayor



Brenda L. Martinez, City Clerk

Brenda Martinez

From: Peter Rimbos <primbos@comcast.net>
Sent: Friday, October 16, 2015 8:55 AM
To: Tamie Deady; Janie Edelman; Craig Goodwin; Erika Morgan; Ron Taylor
Cc: Carol Benson; Brenda Martinez; Meri Jane Bohn
Subject: ORAL COMMENTS--PROPOSED ORDINANCE NO 15-1061
Attachments: Public_Hrg--Oral_Comments--10-15-15.doc

City of Black Diamond
24301 Roberts Dr
P.O. Box 599
Black Diamond, WA, 98010

October 16, 2015

City Council Members,

Good morning. At last night's City Council Public Hearing on the proposed Ordinance No. 15-1061 (to establish a new Black Diamond Municipal Code **Chapter 11.11 CONCURRENCY MANAGEMENT**) I presented Oral Comments on behalf of our Citizens' Technical Action Team (TAT). Those comments are attached.

Should you have any questions regarding these Oral Comments, please feel free to contact me at your convenience.

Thank you.

Peter Rimbos
Leader and Transportation Focal
Citizens' Technical Action Team (TAT)
primbos@comcast.net

"To know and not to do is not to know."-- Chinese proverb

Please consider our shared environment before printing.

Ordinance No. 15-1061
BDMC Chapter 11.11 CONCURRENCY MANAGEMENT

ORAL COMMENTS

Good evening. My name is Peter Rimbo. I lead and am the Transportation Focal for the Citizens' Technical Action Team. I will be speaking tonight on our team's behalf.

Earlier this week we submitted to you our detailed **Written Comments**. I won't repeat those here. In summary, the proposed Ordinance is very well researched and written, but we did provide you recommendations, along with concerns about implementation.

While we understand the proposed Ordinance deals with concurrency for the entire City, as it must, I will address the potential impacts on the vast majority of concurrency testing the City will be conducting due to the two Master-Planned Developments (MPDs), which will generate well over 80% of future traffic. How did we arrive at that number? With a current population of 4,160, full build-out of MPDs' 6,050 homes assuming a low-ball estimate of 3 people/home results in a MPD population of 18,150 and a total City population of 22,310. Consequently, the MPDs percentage of total population is 81%. Increasing this percentage will be the addition of 1.15M sq ft of MPD Commercial space, which also will add traffic.

Fortunately, the City has tremendous discretion when it comes to Transportation Concurrency. First according to the State law, transportation concurrency cannot be vested. Also, according to the MPD Ordinance Conditions of Approval, YarrowBay (YB) must meet "then-applicable" City Level-of-Service (LOS) standards.

As part of implementation, we call your attention to the following points:

1. LOS measures should be tailored to track whether transportation investments are keeping pace with growth.
2. Adjusting LOS is one way to appropriately balance GMA goals, such that the City can seek a balance between new capacity for growth, addressing system deficiencies, and maintenance and rehabilitation of the existing system.
3. Establish LOS standards based on priorities, so that Staff can provide a way for policy-makers to understand trade-offs (e.g., using weighting factors) and to experiment with different policy priorities to see their effects.
4. The transportation system is critical to implementing the city's land-use vision. Transportation plans and supporting LOS measures should be consistent with and encourage projects supporting that vision.
5. Since Concurrency calls for transportation improvements to be in place at the time of development or firm financial commitments (not hoped-for Grants) in place to complete the improvements within six years without decreasing service levels below locally established minimum standards, it prevents development that is out of sync with the public facilities necessary to support such development.
6. The concurrency management system is the combination of comprehensive plan policies, implementing development regulations, and the day-to-day operations that meter and monitor the achievement of concurrency.

Ordinance No. 15-1061
BDMC Chapter 11.11 CONCURRENCY MANAGEMENT

ORAL COMMENTS

7. Your concurrency management system should also serve as an on-going feedback process with the LOS standards you have adopted.
8. Local governments have considerable flexibility in designing concurrency measurement methods and LOS standards, including making a policy choice to accept roadway congestion rather than limit development. However, once jurisdictions have set their LOS standards, they must deny development that would cause the affected transportation facilities to fail or exceed their standards unless they require mitigation to accommodate the impacts of development.
9. Concurrency determination is an allocation of a scarce public resource to a particular project. Your system will need to balance providing projects with certainty and predictability, with ensuring this scarce public resource is put to good use and meets the Public's needs.
10. A project can be reduced in scale to reduce number of trips generated. A project can be deferred or phased to remain in sync with infrastructure improvements. If probable funding falls short, the City's plan must include a discussion of how additional funding will be raised or how land use assumptions will be reassessed to ensure that adopted LOS standards will be met.
11. Early project phases can be approved, while subsequent phases deferred until adequate capacity comes on line to better connect project success with future market conditions and delivery of future capital projects. In this way, both the community and the developer take on some of the additional risk. Phase deferral can be useful when actual demand is far removed in time from the initial Concurrency test. Plus, cities can prevent a large, multi-phase project from tying up significant amounts of capacity years before fully occupied.
12. The concurrency-determination process can manage cumulative area-wide impacts, while Traffic-Impact Analyses (TIAs) under SEPA handle operational impacts from specific projects.
13. Inter-jurisdictional coordination is critical. Concurrency can be managed through coordinated transportation modeling, coordinated transportation mitigation or operation of a regional concurrency system. The City's Ordinance should be consistent with Countywide Planning Policies (CPPs).

Thank you.

ORAL COMMENTS

Good evening. My name is Peter Rimbo. I lead and am the Transportation Focal for the Citizens' Technical Action Team. I will be speaking tonight on our team's behalf.

Earlier this week we submitted to you our detailed **Written Comments**. I won't repeat those here. In summary, the proposed Ordinance is very well researched and written, but we did provide you recommendations, along with concerns about implementation.

While we understand the proposed Ordinance deals with concurrency for the entire City, as it must, I will address the potential impacts on the vast majority of concurrency testing the City will be conducting due to the two Master-Planned Developments (MPDs), which will generate well over 80% of future traffic. How did we arrive at that number? With a current population of 4,160, full build-out of MPDs' 6,050 homes assuming a low-ball estimate of 3 people/home results in a MPD population of 18,150 and a total City population of 22,310. Consequently, the MPDs percentage of total population is 81%. Increasing this percentage will be the addition of 1.15M sq ft of MPD Commercial space, which also will add traffic.

Fortunately, the City has tremendous discretion when it comes to Transportation Concurrency. First according to the State law, transportation concurrency cannot be vested. Also, according to the MPD Ordinance Conditions of Approval, YarrowBay (YB) must meet "then-applicable" City Level-of-Service (LOS) standards.

As part of implementation, we call your attention to the following points:

1. LOS measures should be tailored to track whether transportation investments are keeping pace with growth.
2. Adjusting LOS is one way to appropriately balance GMA goals, such that the City can seek a balance between new capacity for growth, addressing system deficiencies, and maintenance and rehabilitation of the existing system.
3. Establish LOS standards based on priorities, so that Staff can provide a way for policy-makers to understand trade-offs (e.g., using weighting factors) and to experiment with different policy priorities to see their effects.
4. The transportation system is critical to implementing the city's land-use vision. Transportation plans and supporting LOS measures should be consistent with and encourage projects supporting that vision.
5. Since Concurrency calls for transportation improvements to be in place at the time of development or firm financial commitments (not hoped-for Grants) in place to complete the improvements within six years without decreasing service levels below locally established minimum standards, it prevents development that is out of sync with the public facilities necessary to support such development.
6. The concurrency management system is the combination of comprehensive plan policies, implementing development regulations, and the day-to-day operations that meter and monitor the achievement of concurrency.

Ordinance No. 15-1061
BDMC Chapter 11.11 CONCURRENCY MANAGEMENT

ORAL COMMENTS

7. Your concurrency management system should also serve as an on-going feedback process with the LOS standards you have adopted.
8. Local governments have considerable flexibility in designing concurrency measurement methods and LOS standards, including making a policy choice to accept roadway congestion rather than limit development. However, once jurisdictions have set their LOS standards, they must deny development that would cause the affected transportation facilities to fail or exceed their standards unless they require mitigation to accommodate the impacts of development.
9. Concurrency determination is an allocation of a scarce public resource to a particular project. Your system will need to balance providing projects with certainty and predictability, with ensuring this scarce public resource is put to good use and meets the Public's needs.
10. A project can be reduced in scale to reduce number of trips generated. A project can be deferred or phased to remain in sync with infrastructure improvements. If probable funding falls short, the City's plan must include a discussion of how additional funding will be raised or how land use assumptions will be reassessed to ensure that adopted LOS standards will be met.
11. Early project phases can be approved, while subsequent phases deferred until adequate capacity comes on line to better connect project success with future market conditions and delivery of future capital projects. In this way, both the community and the developer take on some of the additional risk. Phase deferral can be useful when actual demand is far removed in time from the initial Concurrency test. Plus, cities can prevent a large, multi-phase project from tying up significant amounts of capacity years before fully occupied.
12. The concurrency-determination process can manage cumulative area-wide impacts, while Traffic-Impact Analyses (TIAs) under SEPA handle operational impacts from specific projects.
13. Inter-jurisdictional coordination is critical. Concurrency can be managed through coordinated transportation modeling, coordinated transportation mitigation or operation of a regional concurrency system. The City's Ordinance should be consistent with Countywide Planning Policies (CPPs).

Thank you.

ORAL COMMENTS

Good evening. My name is Peter Rimbos. I lead and am the Transportation Focal for the Citizens' Technical Action Team. I will be speaking tonight on our team's behalf.

Earlier this week we submitted to you our detailed **Written Comments**. I won't repeat those here. In summary, the proposed Ordinance is very well researched and written, but we did provide you recommendations, along with concerns about implementation.

While we understand the proposed Ordinance deals with concurrency for the entire City, as it must, I will address the potential impacts on the vast majority of concurrency testing the City will be conducting due to the two Master-Planned Developments (MPDs), which will generate well over 80% of future traffic. How did we arrive at that number? With a current population of 4,160, full build-out of MPDs' 6,050 homes assuming a low-ball estimate of 3 people/home results in a MPD population of 18,150 and a total City population of 22,310. Consequently, the MPDs percentage of total population is 81%. Increasing this percentage will be the addition of 1.15M sq ft of MPD Commercial space, which also will add traffic.

Fortunately, the City has tremendous discretion when it comes to Transportation Concurrency. First according to the State law, transportation concurrency cannot be vested. Also, according to the MPD Ordinance Conditions of Approval, YarrowBay (YB) must meet "then-applicable" City Level-of-Service (LOS) standards.

As part of implementation, we call your attention to the following points:

1. LOS measures should be tailored to track whether transportation investments are keeping pace with growth.
2. Adjusting LOS is one way to appropriately balance GMA goals, such that the City can seek a balance between new capacity for growth, addressing system deficiencies, and maintenance and rehabilitation of the existing system.
3. Establish LOS standards based on priorities, so that Staff can provide a way for policy-makers to understand trade-offs (e.g., using weighting factors) and to experiment with different policy priorities to see their effects.
4. The transportation system is critical to implementing the city's land-use vision. Transportation plans and supporting LOS measures should be consistent with and encourage projects supporting that vision.
5. Since Concurrency calls for transportation improvements to be in place at the time of development or firm financial commitments (not hoped-for Grants) in place to complete the improvements within six years without decreasing service levels below locally established minimum standards, it prevents development that is out of sync with the public facilities necessary to support such development.
6. The concurrency management system is the combination of comprehensive plan policies, implementing development regulations, and the day-to-day operations that meter and monitor the achievement of concurrency.

Ordinance No. 15-1061
BDMC Chapter 11.11 CONCURRENCY MANAGEMENT

ORAL COMMENTS

7. Your concurrency management system should also serve as an on-going feedback process with the LOS standards you have adopted.
8. Local governments have considerable flexibility in designing concurrency measurement methods and LOS standards, including making a policy choice to accept roadway congestion rather than limit development. However, once jurisdictions have set their LOS standards, they must deny development that would cause the affected transportation facilities to fail or exceed their standards unless they require mitigation to accommodate the impacts of development.
9. Concurrency determination is an allocation of a scarce public resource to a particular project. Your system will need to balance providing projects with certainty and predictability, with ensuring this scarce public resource is put to good use and meets the Public's needs.
10. A project can be reduced in scale to reduce number of trips generated. A project can be deferred or phased to remain in sync with infrastructure improvements. If probable funding falls short, the City's plan must include a discussion of how additional funding will be raised or how land use assumptions will be reassessed to ensure that adopted LOS standards will be met.
11. Early project phases can be approved, while subsequent phases deferred until adequate capacity comes on line to better connect project success with future market conditions and delivery of future capital projects. In this way, both the community and the developer take on some of the additional risk. Phase deferral can be useful when actual demand is far removed in time from the initial Concurrency test. Plus, cities can prevent a large, multi-phase project from tying up significant amounts of capacity years before fully occupied.
12. The concurrency-determination process can manage cumulative area-wide impacts, while Traffic-Impact Analyses (TIAs) under SEPA handle operational impacts from specific projects.
13. Inter-jurisdictional coordination is critical. Concurrency can be managed through coordinated transportation modeling, coordinated transportation mitigation or operation of a regional concurrency system. The City's Ordinance should be consistent with Countywide Planning Policies (CPPs).

Thank you.

Comments_Transportation Concurrency Ordinance Hearing_10152015

Judy Carrier [gotrocks886@msn.com]

Sent: Thursday, October 15, 2015 2:38 PM

To: Tamie Deady; Ron Taylor; Erika Morgan; Janie Edelman; Craig Goodwin

Cc: Carol Benson

Good afternoon, Council members,

Please consider these comments as part of the Transportation Concurrency Ordinance #15-1061 Public Hearing tonight, October 15, 2015 at 7:00 PM.

Transportation has been among the key concerns of Black Diamond citizens as well as those in surrounding jurisdictions during the years since the Yarrow Bay MPDs were first proposed. Many of your constituents are aware these concerns have not been adequately addressed by either the developers or the city government over that time, even with the continual expert and citizen research and testimony and resulting Hearing Examiner recommendations made to this point.

It is of great importance the Transportation Concurrency Ordinance be as sound and as legally indisputable as possible in respect to traffic and transportation impacts in order to benefit and protect the City of Black Diamond as well as its neighbors.

I am pleased with the contents of the ordinance so far, but am amazed at some areas, large, small, complicated and otherwise, that still need to be studied and revised. There are some critical directives dealing with when and how the ordinance will be applied that are missing or need rewording.

Please pursue this and make changes that will make this ordinance exceptionally strong and unquestionable in meaning, including the City's ability to use it whenever a need for reliable transportation concurrency information arises.

The ability of the government of the City of Black Diamond to keep traffic and transportation concurrent is of great significance to all of us.

Thank you,

Glenn and Judy Carrier

RECEIVED
CLERK OFFICE

October 15, 2015

OCT 15 2015

BY: BLM

Honorable Mayor and Members of the City Council
City of Black Diamond
25510 Lawson Street
Black Diamond, WA 98010

Re: Comment on Proposed Transportation Concurrency Ordinance (No. 15-1061)

Dear Mayor Benson and Council Members:

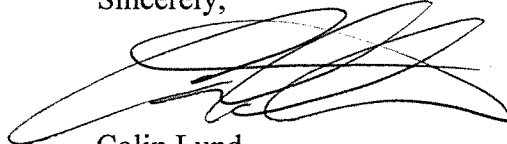
On behalf of the owner and developer of The Villages and Lawson Hills Master Planned Developments (MPDs), please accept the following comments on the City of Black Diamond's proposed transportation concurrency ordinance (No. 15-1061) that is on the agenda for today's City Council. By way of these comments, please include Yarrow Bay, BD Lawson Partners LP, and BD Village Partners LP (collectively, Yarrow Bay) as a party of record in the City's consideration of this new legislation and include this comment letter in the written record associated with such ordinance.

Draft Section 11.11.012 describes the application process for capacity evaluation and subsection 11.11.012(B)(2) states that developers applying for a capacity reservation certificate (CRC) must cover the cost for the City to prepare a Traffic Impact Analysis (TIA). Assigning responsibility on the City to prepare such analyses is a significant departure from existing practices. In such practices covering transportation and other environmental disciplines, third-party consultants prepare the required analyses and the City is responsible for reviewing and ultimately approving or rejecting the findings. This is a very common practice within the Puget Sound region and throughout the State of Washington. Yarrow Bay has reservations regarding the City's desire to take on this increased work load and wonders whether the City really wants to be in the TIA business. Yarrow Bay requests that the City reconsider this change in practice.

In addition, Subsection 11.11.012(B)(2) states applicants "may still be responsible for increase in actual traffic impact that exceed traffic studies and shall be required to address the deficiency," including the possible revocation of the CRC. This provision is unprecedented and problematic for several reasons. It does not explain the way in which actual traffic impacts would be measured and does not recognize the possible differences between estimated and actual increases in background traffic volumes, especially over time. There also would be legal ramifications if a development is approved and constructed and the City subsequently chooses to revoke the issued CRC. For all of these reasons, Yarrow Bay strongly recommends that the City strike this provision.

Thank you for the opportunity to comment on the City's proposed ordinance No. 15-1061 regarding transportation concurrency.

Sincerely,

A handwritten signature in black ink, appearing to read 'Colin Lund', with several overlapping loops and a long horizontal stroke extending to the left.

Colin Lund
Director of Development



Brenda Martinez

From: Peter Rimbo <primbos@comcast.net>
Sent: Wednesday, October 14, 2015 8:46 AM
To: Tamie Deady; Janie Edelman; Craig Goodwin; Erika Morgan; Ron Taylor
Cc: Carol Benson; Brenda Martinez; Meri Jane Bohn
Subject: WRITTEN COMMENTS--PROPOSED ORDINANCE NO 15-1061
Attachments: BDMC_11.doc

City of Black Diamond
24301 Roberts Dr
P.O. Box 599
Black Diamond, WA, 98010

October 14, 2015

City Council Members,

Good morning. The Citizens' Technical Action Team (TAT) has reviewed the proposed Ordinance No. 15-1061 to establish a new Black Diamond Municipal Code **Chapter 11.11 CONCURRENCY MANAGEMENT**.

We have prepared detailed comments and provide them to you (see attached) ahead of this Thursday's Public Hearing. We suggest you consider discussing our comments with City Attorney Morris and Public Works Director Boettcher, primary authors of the proposed Ordinance, prior to final adoption.

We believe the proposed Ordinance is strong and well written, but we do have several recommendations that could enhance the final Ordinance.

Should you have any questions regarding our Comments and Recommendations, please feel free to call me at your convenience to discuss.

Thank you.

Peter Rimbo
425-432-1332
Leader and Transportation Focal
Citizens' Technical Action Team (TAT)
primbos@comcast.net

"To know and not to do is not to know."-- Chinese proverb

Please consider our shared environment before printing.

Ordinance No. 15-1061
BDMC Chapter 11.11 CONCURRENCY MANAGEMENT

INTRODUCTION

Herein, with respect to the DRAFT Ordinance to establish a new Black Diamond Municipal Code Chapter 11.11 CONCURRENCY MANAGEMENT, we provide comment.

Our comments are presented as: (1) General Comments that deal with the overall DRAFT Ordinance and its eventual implementation and (2) Specific Comments that provide line-by-line recommendations for change, addition, or deletion.

In conclusion, the DRAFT Ordinance is very well researched and written, but we do have some concerns and suggestions as enumerated herein.

GENERAL COMMENTS

Coverage and Scope

How does the City plan to handle water and sewer concurrency? This new code chapter originally was supposed to include water and sewer. It appears now the code only applies to transportation. Either the words “water” and “sewer” should be deleted (sections **11.11.001** and **11.11.014**) or the code should be revised to include water and sewer concurrency in all applicable sections.

Implementation

With the adoption of the DRAFT Ordinance dealing with Concurrency Management the City will be placing a great deal of responsibility on an already understaffed Public Works Department. The Concurrency Management contemplated in the DRAFT Ordinance will require a dedicated professional staff position with specific experience in jurisdictional concurrency evaluation and the ability to management subcontractors who will fulfilling some of the functions necessary to conduct concurrency testing and evaluation.

Public Participation

There appears to be no Public participation in the entire process contemplated in new **Black Diamond Municipal Code (BDMC) Chapter 11.11** other than through an Appeal. Public participation in the process is important and not just annually as contemplated by section **11.11.024 Annual reporting and monitoring**.

Recommendations

To better ensure all the evaluation analysis, monitoring, and annual reporting needed for all infrastructure elements in the DRAFT Ordinance can be properly implemented, especially given the current City situation (i.e., underfunded and understaffed), the following general recommendations are offered:

1. Consider using an independent concurrency review panel as part of an annual review of the City’s Concurrency Management process. As an example of such a review panel, see **King County Code 14.70.270(C)**: *“(1) An independent expert review panel on concurrency shall be established to: a. review the report on the*

Ordinance No. 15-1061
BDMC Chapter 11.11 CONCURRENCY MANAGEMENT

concurrency update; and b. evaluate proposed changes to the transportation concurrency process, analysis and test developed by the road services division; (2) The panel shall be comprised of four to six persons and include representation from the development community, the environmental community, transportation planning professionals, the unincorporated area, the public at large and multimodal transportation interest groups. Each representative shall be appointed by the executive and confirmed by the council.; (3) A summary of the panel's review of the report on the concurrency update and its evaluation of proposed changes to the transportation concurrency process, analysis and test shall be included with the submittal of the report required by subsection B. of this section."

2. Develop and display at periodic Public meetings large-scale Concurrency Maps showing status of all City residential and commercial land uses based on Concurrency Evaluations. The maps also should provide a clear status of all CRCs. Such maps should be made available for public viewing. As an example of such Concurrency Maps, see **King County Code 14.70.270 Update of the transportation concurrency map.,(A)**.

3. Ensure High School facilities are subject to Concurrency Evaluation. As an example of such inclusion, see **King County Code 14.70.285 Minor developments and certain public and educational facilities.,(C)**.

4. Ensure the City Council is involved at appropriate stages of Concurrency Management, not just at the annual review contemplated in item 1. above.

SPECIFIC COMMENTS

11.11.001 Purpose.

The references to the WACs (365-195-510 and 365-195-835) are out of date. The correct reference is WAC 365-196-840 Concurrency, coupled with the already cited RCW 36.70A.

The following should be added:

"Ensure City level-of-service (LOS) standards are achieved "concurrently" with development, as required by the Growth Management Act and the Comprehensive Plan, by denying approval of development that would cause the LOS on transportation facilities to decline below City standards. Ensure the concurrency program directly reflects the financial commitments of the adopted Capital Improvement program (CIP) currently in effect."

11.11.002 Authority.

Add the following changes:

"The Director of Public Works or his/her designee, shall be responsible for implementing and enforcing this concurrency management ordinance through

Ordinance No. 15-1061
BDMC Chapter 11.11 CONCURRENCY MANAGEMENT

concurrency policies established by the City Council and executed through technical procedures periodically reviewed with the Council.”

11.11.003 Definitions.

The following should be better defined:

“CCC. ‘Traffic demand model’ means the simulation through the City’s traffic model of vehicle trip ends assigned on the roadway network.

11.11.005 Applicability.

Where is section “A”?

11.11.009 Level of Service Standards.

Subsection A.1.c. provides an out of date WAC reference “WAC 365-195-325.”

11.11.011 Capacity evaluations required prior to issuance of CRC.

Section B. What are the circumstances envisioned “...where LOS standards do not apply...” and what “...other factors...” could be used to prepare capacity evaluations?

11.11.012 Application for capacity evaluation.

Section B.1.: This specifies what information is required to be submitted by the Applicant to receive a CRC. It is presumed the ITE Land-Use Codes will be used to assume a set of trip-generation rates. This should be done with care, since the City has very little mass transit available to residents, thus “typical” trip generation rates used in many cities will not be applicable and, thus, the ITE rates will under-predict external trips (thus over-predict Internal Capture Rates--ICRs). The concern here is that if the City tells an Applicant to submit ITE Land-Use Codes (per the language in the DRAFT Ordinance), it will be required to only use those Codes, which might not be locally applicable to Black Diamond, as stated above. The City must have the flexibility to evaluate concurrency based on local conditions, not generic codes, when found not applicable.

Section B.2.: Miscellaneous spaces and periods need fixing.

11.11.014 Method of capacity evaluation.

Section A.: Can the “development agreement” called for here be *existing* Development Agreements (DAs) such as with the YarrowBay MPDs? Language should be clear that, if such existing DAs suffice, they must be amended accordingly. A viable and executable *Transportation Concurrency Plan* is not provided in the YarrowBay MPD DAs, as required by the **BD Municipal Code (BDMC) [Black Diamond Municipal Code, Codified through Ordinance No. 981, October 4, 2012]** and **BD Comprehensive Plan (BDCP)**. With respect to Transportation Concurrency testing, the DAs do not specify how it will be done, when it will be done, or if it will be done. Consequently, such a Plan should be incorporated into the DAs through a Major Amendment. The City’s Hearing Examiner (Hearing Examiner) recognized such deficiencies in the DAs and provided remedies in his Recommendations accordingly. A *compendium* of his concerns are listed below with our emphases [**Hearing Examiner DA Recommendations, pp. 82-86**]:

Ordinance No. 15-1061
BDMC Chapter 11.11 CONCURRENCY MANAGEMENT

- *“The DA traffic modeling [Hearing Examiner typo, should have been “monitoring”] plan lacks assurances traffic mitigation will comply with GMA mandated concurrency...”*
- *“Nothing in the monitoring plan requires concurrency review for implementing projects. Nothing requires that the City deny any implementing project applications that fail to meet concurrency.”*
- *“The Applicant and the City did not directly address the legal requirements for concurrency.”*
- *“The City is approving a concurrency program that hasn’t been developed yet....It has no idea at MPD/DA review whether the timing of the traffic improvements will actually comply with concurrency.”*
- *“It could take several years beyond the GMA six year maximum before improvements are actually completed to remedy LOS deficiencies caused-by large development projects. It is unlikely that the City could be found to have satisfied its due diligence in assessing concurrency when it only approves a conceptual framework with a huge margin of error where most details are left to the control and discretion of the Applicant.”*
- *“The City’s concurrency decision making is limited to MPD/DA approval because the MPD conditions and monitoring plan do not subject the traffic modeling [Hearing Examiner typo, should have been “monitoring”] reports for each phase to City approval.”*
- *“The timing required in the monitoring plan only requires modifications to be considered midway through each MPD phase....the Applicant and City ... have not referenced project level concurrency as a remedy to the traffic concerns raised by the public....the plan should be required to be updated to accommodate any changes necessitated by implementing project concurrency.”*
- *“It is recommended the DA contain a requirement that no implementing project shall be approved unless it complies with the City’s concurrency requirements.”*
- *“Adherence to GMA concurrency could require a reconsideration of the approved densities for the project if funding doesn’t become available to complete necessary improvements beyond those made available by the developer....”*
- *“The only methodology available to the City to correct project-created impacts to the LOS of state-owned facilities is to limit the density of the MPDs.”*

We have previously (see *“Transportation: A review of key issues, history, and future decision points*, Citizens’ Technical Action Team, March 2013) recommended a DA Amendment--*Transportation Concurrency Plan*--to remedy this:

“A Transportation Concurrency Plan shall be developed that specifies when and how concurrency testing will be done and evaluated.”

Ordinance No. 15-1061
BDMC Chapter 11.11 CONCURRENCY MANAGEMENT

Transportation Concurrency testing shall be periodically conducted for each implementing project and at the beginning, midpoint, and end of each Phase to ensure traffic mitigation is both timely and will comply with the State Growth Management Act-mandated concurrency. The Plan should be based on the premise that no implementing project be approved unless it complies with the City's concurrency requirements. The Transportation Monitoring Plan should be updated periodically to accommodate any changes necessitated by implementing project concurrency."

Section B.1.: There is no MDMC "Section 16.60.0003(B)(1)." Is this being added as part of the BDCP Update?

Section B.2.a.: This should also refer to a required "financial commitment" to be in place to complete the required mitigation "within six years."

Section B.3.: There is no discussion on whether the "Director's determination" also will be based on traffic-demand modeling and traffic-impact analyses, as discussed elsewhere.

Section E.1.b.: It must be made clear that should the Applicant choose this option, the Concurrency evaluation will be redone to determine if LOS standards are met.

11.11.015 Purpose of Capacity Reservation Certificate.

Clearly define what "*expiration of the underlying development*" means.

11.11.018 Transfer of reserved capacity. Since the YarrowBay MPDs comprise such a massive area and most likely multiple Traffic Analysis Zones for the purposes of Concurrency, what does "transfer of reserved capacity" connote here?

11.11.019 Denial letter. How does this apply, if at all, to existing permits? Are they grandfathered in, since no Concurrency Ordinance was in effect at the time they were vested? If so, how is this compatible with the City Hearing Examiner's statement that "concurrency cannot be vested"?

11.11.020 Notice of concurrency determination. It appears there is no Public participation until a concurrency determination is conferred and then only via the Appeal process.

11.11.024 A.3. Unfortunately, the 6-yr Transportation Improvement Plan (TIP) includes many proposed/anticipated Grants, as is customary in order to secure such Grants. However, the applicable WACs and RCWs cited earlier require "firm financial commitments," and thus, when computing available capacity, such Grants cannot be included.

11.11.024 A.5. Nothing here mentions whether development applications can be reduced in size to meet LOS standards under Concurrency, yet this is one of the alternatives provided by the RCWs to changing LOS standards and the other options

Ordinance No. 15-1061
BDMC Chapter 11.11 CONCURRENCY MANAGEMENT

listed. This should be fixed and the development reductions required should be reported and monitored.

11.11.024 A.6. This is blank.

11.11.024 B. and **11.11.024 C.** As discussed in our comments under **11.11.024 A.3.**, all financial commitments must be firm, not based on contemplated Grant applications.

11.11.025 Intersection LOS monitoring and modeling. Although the language here is good, it is too general. More specificity and detail are needed, along with citations to other code, procedures, etc. or reference should be made to a yet-to-be-developed Transportation Concurrency Process Manual.