

CITY OF BLACK DIAMOND, WASHINGTON

ORDINANCE NO. 10- 935

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, REGARDING TIMELINES FOR HEARING EXAMINER DECISIONS ON APPEALS AND MASTER PLANNED DEVELOPMENT APPLICATIONS AND AMENDING SECTIONS 18.08.220 and 18.98.060 OF THE BLACK DIAMOND MUNICIPAL CODE

WHEREAS, section 18.08.2220 of the current Municipal Code requires the Hearing Examiner to render a decision on an appeal within 90 days of the date the appeal was filed; and

WHEREAS, section 18.98.060.A.6 of the current Municipal Code requires the Hearing Examiner to transmit a recommendation on an MPD permit application within 14 calendar days of the close of a public hearing; and

WHEREAS, the Planning Commission considered the proposed amendments at its February 9, 2010 regular meeting and recommends the City Council approve the proposal; and

WHEREAS, the City Council finds that both appeals and MPD permit applications are likely to be complex issues for which the Hearing Examiner may benefit from additional time for rendering a decision;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Section 18.08.220 of the Black Diamond Municipal Code is amended to read as follows:

18.08.220 Appeal process.

A. Within 14 calendar days following timely filing of an administrative appeal, the department shall mail notice of the date time and place for the appeal hearing to all parties who received notice of the decision.

B. Appeals shall be heard and decided within 90 days from the date the appeal is filed- unless the hearing examiner determines by written findings that a specified amount of additional time is necessary because the matter is of unusual complexity or scope or for other good cause shown. The period of time for hearing and deciding an appeal shall be excluded in calculating the 120 day period for permit issuance established pursuant to BDMC 18.08.100 or state law.

C. The hearing shall be limited to the issues included in the written appeal statement. Participation in the appeal shall be limited to the City, the applicant, and those persons or entities which have timely filed complete written appeal statements and paid the appeal fee.

D. The appellant shall carry the burden of proof in the appeal. The burden of proof shall be met by a preponderance of the evidence in order for the appellant to prevail; provided that in any appeal of a SEPA decision, the decision of the department shall be given substantial weight and may be overturned only if it is clearly erroneous.

Section 2. Section 18.98.060 of the Black Diamond Municipal Code is hereby amended to read as follows:

18.98.060 MPD permit - Review process.

A. MPD Permit – Pre-application Conference, Public Information Meeting and Planning Commission Informational Meeting Required.

1. A pre-application conference between the MPD applicant or representative and staff is required before the city will accept an MPD permit application.

a. The purpose of this conference is for the applicant to familiarize the staff with the proposed MPD, and for the staff to review with the applicant the city's submittal requirements, anticipated staffing needs, and processing procedures for MPD permit approval. The goal is to identify the city's objectives and likely issues, and to eliminate potential problems that could arise during processing of the MPD permit application prior to formal processing on the MPD permit application.

b. The applicant or representative shall present the information required as part of the MPD application. The city's intent is that the conference occurs after site inventory and analysis has been substantially completed, but prior to the completion of detailed survey, architectural or engineering work on the proposal.

c. A nonrefundable pre-application conference fee in an amount set forth in the adopted fee schedule resolution shall be paid before the pre-application conference will be scheduled.

d. If, at the pre-application conference, the city determines that it does not have adequate staff, space, or equipment, to process the application, then the applicant shall deposit with the city an amount sufficient for the city to hire the additional staff and/or consultants, and acquire the space and/or equipment necessary to process the application. The deposit must be made no less than four months or more than five months before the application is submitted. The public information meeting may not be scheduled until the deposit has been made. The city council may waive or shorten the four-month period if it is determined the necessary arrangements for staffing, space and equipment can be made in less than four months.

2. After the pre-application conference has been completed, a public information meeting shall be conducted by the applicant prior to acceptance of an MPD permit application.

a. The applicant shall schedule and conduct a public information meeting regarding the proposed application. The public information meeting shall be conducted at City Hall, or at such other public location within the city that will accommodate the anticipated attendees. The applicant shall attend the meeting and provide information to the public regarding the proposed project, its timing, and consistency with the city's MPD code, the comprehensive plan, and other applicable city codes and regulations.

b. The public information meeting shall not be a public hearing, but shall allow for an informal exchange of comments between the applicant and the general public. Notice of this meeting shall be provided in the newspaper of record at least fourteen days in advance of the meeting and shall be mailed to the property owners identified in subsection (B)(7)(c) of this section.

3. After the public information meeting has been completed, a planning commission informational meeting shall be conducted. The planning commission information meeting is required before the city will accept an application for MPD permit approval.

a. The planning commission informational meeting will take place at a regular meeting of the commission. At this meeting, the applicant shall present the overall planning and design concept of the proposed MPD, and the commission shall provide preliminary feedback to the applicant regarding the consistency of

this concept with the city's adopted standards, goals and policies. The planning commission may bring specific issues of interest or concern to the attention of the applicant.

b. While a public meeting, the purpose of the planning commission informational meeting is not intended for the receipt of comments from the public regarding the proposed MPD.

4. MPD Permit Public Review Process.

a. Completeness Check and SEPA. Staff shall review the MPD application for completeness and, once it is determined to be complete, provide the required notice of application. Staff will then initiate the SEPA process.

b. Optional EIS Scoping Meeting. If the responsible official makes a determination of environmental significance regarding an MPD application, staff may schedule and conduct an EIS scoping meeting. The applicant shall attend the meeting and provide information regarding the proposed project, scope, planning, timing, and the results of any relevant environmental studies performed by the applicant's consultants.

c. Staff Review. At the conclusion of the SEPA process, staff will conduct its detailed review of the proposal. This review may include requesting additional information, or proposal revisions, from the applicant.

d. Staff Report. The staff will prepare a written staff report to the hearing examiner. The completed staff report shall be sent to the hearing examiner and to the applicant at least ten calendar days prior to the public hearing.

e. Hearing Examiner Public Hearing. The city's hearing examiner shall hold a public hearing on the MPD permit application,. At least fourteen calendar days prior to the public hearing, the city shall provide notice of the hearing as follows:

(a) Publication in the city's newspaper of record;

(b) Posting of the proposal site, in at least three locations visible from public streets or rights-of-way;

(c) Mailing to owners of record of properties within five hundred feet of the perimeter of the proposed MPD per 18.98.040(A)(9); and

(d) Any person(s) formally requesting notice.

5. MPD Permit Approval Criteria. The hearing examiner shall prepare recommended findings of fact, conclusions of law, and conditions of approval or a recommendation for denial for the city council's consideration, and shall transmit these to the city council within fourteen calendar days of the close of the public hearing unless the hearing examiner determines by written findings that a specified amount of additional time is necessary because the matter is of unusual complexity or scope or for other good cause. The examiner shall evaluate the MPD application and other evidence submitted into the record, to determine if the application, when appropriately conditioned, meets or exceeds the approval criteria set forth in section 18.98.080.

6. City Council. At its first regular meeting following the receipt of the hearing examiner's recommendations, the city council shall schedule a time for its consideration of the MPD. The council may:

- a. Accept the examiner's recommendation;
- b. Remand the MPD application to the examiner with direction to open the hearing and provide supplementary findings and conclusions on specific issues; or
- c. Modify the examiner's recommendation. If modifying the examiner's recommendation, the council shall enter its own modified findings and conclusions as needed.

7. Appeals. The council's decision with regard to an MPD permit shall be the city's final action for the purpose of any and all appeals. (Ord. 779 § 2 Exh. 1 (part), 2005)

Section 3. Severability. Each and every provision of this Ordinance shall be deemed severable. In the event that any portion of this Ordinance is determined by final order of a court of competent jurisdiction to be void or unenforceable, such determination shall not affect the validity of the remaining provisions thereof, provided the intent of this Ordinance can still be furthered without the invalid provision.

Section 4. Effective date. This Ordinance shall be in full force and effect five (5) days after publication as required by law. A summary of this Ordinance may be published in lieu of the entire Ordinance, as authorized by State law.

Introduced on the 18th day of February, 2010.

Passed by the City Council on the 18th day of February, 2010.



Mayor Rebecca Olness

ATTEST:



Brenda L. Martinez, City Clerk

APPROVED AS TO FORM:

Noel Treat, City Attorney

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