

BLACK DIAMOND CITY COUNCIL MINUTES
Council Meeting of February 17, 2022
Hybrid Meeting Via Zoom and In-Person
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 led us all in the Flag Salute.

ROLL CALL:

PRESENT: Councilmembers Deady, Smith, Mulvihill, de Leon, O'Donnell, and Page

ABSENT: Councilmember Stallard (excused)

Staff present: Jamey Kiblinger, Police Chief; Mona Davis, Community Development Director; Scott Hanis, Public Works Director; Andrew Williamson; MDRT/Ec Dev Director; David Linehan, City Attorney; Rob Reed and Tristen Bennett, IS Department, and Brenda L. Martinez, City Clerk/HR Manager.

AGENDA REVIEW AND APPROVAL:

Councilmember Deady **moved** to approve the agenda; **second** Councilmember O'Donnell. Motion **passed** with all voting in favor (6-0).

APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS: None

CONSENT AGENDA:

Councilmember de Leon **moved** to adopt the Consent Agenda; **second** Councilmember Mulvihill. Motion **passed** with all voting in favor (6-0). The Consent Agenda was approved as follows:

- 1) **Claim Checks** – February 17, 2022, Check No. 51073 through 51137 and EFTs in the amount of \$418,020.03
- 2) **Payroll** – January 2022, Check No. 20155 through 20161 and ACHs in the amount of \$489,463.18
- 3) **Minutes** – Council Meeting of February 3, 2022
- 4) **AB22-014** – Accepting Donation of Exercise Bike from Councilmember Page for City Personnel Use
- 5) **AB22-015** – Resolution Declaring Certain City Property Surplus

PUBLIC COMMENTS:

PUBLIC HEARINGS:

6) AB22-016 – Open Record Hearing Regarding Noise Variance Application at 216th Ave SE and 292nd St for Tamarack Plat Improvements

Mayor Benson opened the public hearing on City File No. PLN22-003, which is an application for a Noise Variance requested by the Applicant C.C. Edwards Construction, Inc. She noted the applicants' request is to be allowed to install a sewer main to serve the Tamarack subdivision with the option to perform the work between the hours of 8 p.m. and 7 a.m., which is outside of the normal work hours. She stated the address for the work site is located at the Tamarack plat, 2163 SE 2952nd St.

Mayor Benson stated the Council that the burden of proof is on the Applicant to demonstrate that under Black Diamond Municipal Code section 8.12.030(A), the Noise Variance is necessary to further a public purpose, no reasonable alternatives are available, and the variance is for the shortest time possible in order to accomplish the public purpose.

She further added, the City Council will hear this matter in its quasi-judicial capacity. After hearing the testimony and reviewing the evidence in the record, and after conducting deliberations, the City Council will make a decision to either approve the Variance, deny the Variance, or approve the Variance with additional conditions or modifications.

Mayor Benson announced the following order for the proceedings that will be used for this hearing:

First, Community Development Director Mona Davis will present a Staff Report and recommendations concerning the Variance application.

Second, Applicant C.C. Edwards Construction will present additional testimony or evidence in support of its Variance application, and will answer any questions from Councilmembers.

Third, we will take Public Testimony regarding the Variance application. Each member of the public will be allowed 5 minutes to speak.

Fourth, Director Davis may provide rebuttal comments in response to the public testimony and the evidence presented by the Applicant. Ms. Davis will also answer any questions from Council.

Fifth, the Applicant may provide rebuttal comments or evidence in response to the City's presentation and public testimony. The Applicant will also answer any additional questions from the Council.

The City and Applicant will each have up to 20 minutes to present their case to the Council, including time for rebuttal. However, the Council may choose to allow additional time to

answer questions or present additional information as it deems appropriate in the interest of fairness and a complete record.

Mayor Benson asked if there was any objection from the Applicant to this order of the proceedings or time allotment? There were no objections from the Applicant.

Mayor Benson announced that before proceeding any further, we need to address the appearance of fairness doctrine. She stated the Appearance of Fairness Doctrine is a rule of law requiring government decision-makers to conduct quasi-judicial hearing and proceedings, like this one, in a way that is fair and unbiased in both appearance and fact.

Mayor Benson added that first, she will ask Councilmembers if any of you have a personal or financial interest in the applicant's work or the developer's project? She then proceeded to ask if any Councilmember have any of the following interests?

- 1) A financial interest in the applicant's business that would be benefitted by the approval of the variance? **All Councilmembers responded no.**
- 2) An ownership interest in the Tamarack development? **All Councilmembers responded no.**
- 3) Ownership of property within close proximity of the Applicant's work site such that your property will be directly affected by the approval or denial of the requested Noise Variance? **All Councilmembers responded no.**

Next, Mayor Benson asked if any Councilmember had any "ex parte" contacts with the Applicant or any members of the public here tonight regarding this application? **All Councilmembers responded no.**

Finally, Mayor Benson asked if there was any party or member of the public audience who wishes to challenge on appearance of fairness grounds any Councilmember's participation as a decision-maker in this matter? If so, she added for them to please identify themselves and include the reasons for their objection. **There were no challenges by any citizen on appearance of fairness.**

Mayor Benson stated that all testimony in this quasi-judicial hearing must be taken under oath. She then asked that those expected to testify to stand and raise their right hand and administered the oath.

Mayor Benson announced that we will now proceed to hear testimony and evidence and will begin with a presentation by Director Davis of the Staff Report for the application.

Community Director Davis entered into the record an exhibit containing the Staff Report, Noise Variance Request, Master Application Form, and Vicinity Map.

Director Davis explained that the packet material provided tonight contains the land use application submitted on January 20, the applicants letter of intent, a vicinity map along with the staff report that she has entered into the record as an exhibit. She further

explained that CC Edwards Construction submitted for a noise variance to allow work for outside normal construction hours, specifically night work between approximately 8 p.m. to 7 a.m. on weekdays to install a new sewer main for the plat of Tamarack that is located at the intersection of 216th and SE 292nd Street. She noted that by allowing for night time construction, it would minimize impacts associated with traffic delays and road closures and allow the contractor to finish the work more quickly and efficiently. The applicant provided a letter of intent that details the benefits of authorizing this variance request and in conversations with the applicant (Kevin Williams) it is her understanding that this work will involve standard construction activity utilizing two excavators and a loader with the work expected to occur sometime in April. She stated the project meets the various criteria outlined in the Black Diamond Municipal Code Section 8.12.030 for public purpose, with no reasonable alternatives being available that would create increased impacts on traffic or surrounding uses. Granting the night work would allow the work to be accomplished in a shorter time duration. In closing she stated that after analyzing the subject permit application and approval criteria in the Municipal Code staff recommends approval of this noise variance. She noted she is happy to answer any questions throughout the course of the hearing.

Mayor Benson announced that testimony would now be heard from the applicant in support of the requested variance. She mentioned that he will have combination of 20 minutes.

Kevin Williams, CC Edwards, stated that he agrees they want to minimize traffic, the safety of the pedestrians, the impact of the school and buses, they know there is going to be, as they have to go through the major intersection there by the Sawyer market and that's going to be really slow down traffic and he stated that buses come through there, so this is to minimize that traffic and can turn our day work from three to four weeks, into one week of completion doing this at night with less traffic and pedestrians, and noted this is why they are applying for the noise variance to work at night get this done faster and smoother so they don't impact too many people.

Mayor Benson announced that testimony from the public will now take place. She asked those wishing to provide testimony to please identify themselves and city of residence. She noted they have 5 minutes for their testimony and all comments need to be addressed to Council. She further added that testimony should be relevant to the application of variance and should not be of a personal nature. In the interest of time and efficiency she noted that if there are a large number of speakers who are part of a common group or organization to please designate a representative to speak on behalf of the organization or group rather than each member repeating the same comments. She mentioned that behaviors such as booing or harassing remarks are prohibited.

Danny Gomez, talked about the disturbance to his family during the night as his wife gets up very early in the morning to go to work. He noted their concerns are basically losing sleep, noise, and who's going to fix the infrastructure in those areas, as those roads were not made for 16,000-pound weights. He stated he is not opposed to it, he just wondered if

they could sit back and say okay let's keep this work as quiet as possible and gave examples of noises they don't want (backup alarms, street sweepers).

Jeff Gregor, discussed living right on the road where Sawyer grocery store and the construction will take place. He talked about being retired, however his wife still works and for her sake this is going to be bad. He was curious when the project would start, he heard April, and for how many days are anticipated for the work. He believes he and his neighbors will be the most impacted by all the noise and mentioned the alarms and all the backup alarms and those are his questions

Ashley Bell, Black Diamond. She mentioned their home being affected by this construction and is concerned as they have three school aged children at home and depending on the duration of the project their sleep and other activities will be affected. She added so for them it's really about having no relief for night work and day work and being able to maintain our children's sleep to be able to go to school. She really wants to know what type of work will be happening, what type of materials will be included and the type of noise, and how long is the variance being requested for.

Kristen Bryant, Bellevue noted this is the developer that has already requested lowering the age for senior housing down to 55. She mentioned they have cleared all the trees, and it's been quite a disturbance to the neighborhood. She discussed the noise ordinance where she lives in Bellevue and what she thinks Black Diamond's ordinance provides being a very broad range and doing night work, just to save them a little money is not appropriate. Saving money for a developer is something that shouldn't be more important than the people's health and safety and it shouldn't be allowed.

Tim Robinson, Adler's Cove Community, stated that the builder needs to be aware that most of the houses that border this project have children in the elementary school age range. He noted that being a problem and the need to take into consideration the disruption of individual's lives and to also consider it should not be granted just to save money.

Scott Swanson, noted being a reasonable person. He commented that the construction going on during the day is pretty obnoxious and the same construction at night will be really loud. He understands construction needs to happen but feels there is a better route to get to the end goal. He expressed it's a lot to ask residents to take a week or two off their schedules to save a save a \$1 for other people as they pay taxes.

Travis Henderson lives one block away from the project and wondered would there be any guarantee they could shorten the term of the project and would there be any penalties if they didn't and could they get a hard number on the length of their project if it took place during the daytime versus nighttime. He also asked about any possibility of compensation if there is a night project.

Staff Rebuttal

Director Davis stated she hears the public and their concerns and noted planning staff talking to several citizens by phone. She added that by allowing the night work does shorten the length of time, which is a benefit, but she also understands the noise issue for a week or more. She stated one thing to consider is the traffic impacts with closing the roadways during the day are going to be significant and noted Kevin will be speak more about that. She added that from what she understands traffic impacts could be significant during the day and could possibly be as much as a 20-minute delay at a time to get people through the construction area. She noted there are pros and cons to night construction.

Kevin Williams, CC Edwards, stated they looked at re-routing traffic and there is no real good possible way, and the detours would be long routes. He noted they will not be working during the day; it would be nights only with only one crew would be working on the project from 8 p.m. to 7 p.m. and nothing during the day. He stressed they are trying not to impact the community. He explained that by working at night, they believe they can reduce the amount of time for the project down from three weeks to a week and ½. He stated there will be no jack hammering and will be more low noise activities such as digging, backfilling, and compacting. He shared that police and lights for visibility will be present and the backup beepers on equipment and vehicles need to be on for safety reasons for the employees and pedestrians.

There were back and forth questions between the Council, staff, and public with the focus on length of time, other considerations such as doing the project during spring break, noise, what is low impact noise, how many other trades would be on site, projected start time for the project, was a traffic study done, size of the tree buffer, environmental issues and impacts on wildlife, alternative daytime work hours for the project, no work plan or traffic plan submitted, no neighbors being supportive, and impacts from generator noise, as well as rollers.

Mayor Benson closed the hearing and asked Council if they are ready to proceed with deliberations. Council noted being ready to deliberate.

Mayor Benson noted that as Council begins deliberations, to bear in mind that Council's decision under BDMC 8.12.030(C) shall be one of the following options: 1) Approve the variance, 2) deny the variance, or 3) approve the variance with additional conditions or modifications as needed to protect the public health, safety, or welfare.

Councilmember Deady expressed not being sure on the schedule and noted noise travels and feels the amount of time is a lot for those neighbors and understands the residents' concerns. She noted that people will find new routes and with all that she is not going to approve the variance.

Councilmember Smith thanked the residents who spoke and voiced their concerns. He also thanked Kevin Williams for his time being here. He noted being stuck as this will be painful either way and it's about choosing who will hurt and how. He noted there being valid points for and against the variance. He talked about putting on conditions and have a

monetary penalty if it goes over the 7 days. He was not sure if this is a middle of the roadway to limit the pain, but also acknowledging the neighbors.

Councilmember Mulvihill discussed her experience with low impact noise. She also mentioned the MPDs following strict noise ordinance and a noise hotline was set up, however, at that time not as many residents were affected and there was a good tree buffer. She noted for this project the tree buffer is not adequate, and also discussed the lighting and night pollution. She noted that as people sit in a bad spot of traffic, they tend to avoid it and shared how noise travels more at night.

Councilmember de Leon noted she was under the impression that this was a push come to shove and with that in mind and hearing the comments from neighbors and the contractor she is still remaining unconvinced that this is the best way to go and not enough due diligence was spent to see how it could impact animals and also emissions. In addition, she understands that not everyone works 9-5 and it can impact others and is concerned with the night pollution. She expressed being hesitant to move forward and is leaning towards denying. She wondered if there is a way to find compensation for businesses who are impacted.

Councilmember O'Donnell stated the contractor is asking to get the work done in 1 week rather than 2-3 weeks with daytime work. He noted the contractor is trying to do their job and not sure it is a money saving issue. He expressed that the unintended consequences could be big for the neighbors who are impacted and it being a tough deal at night. He noted there will always be disruption when construction is going on and feels we should keep with the original plan and keep it during the day.

Councilmember Page thanked everyone for testifying tonight and thanked Kevin Williams too. She discussed the financial penalty and her concerns. She commented that the greatest burden falls on the citizens who live in that area. She believes we are not at a point where there are no other alternatives, and feels the burden is too great to grant this and is inclined to say no.

Council Action: Councilmember Page **moved** to decline the variance; **second** Councilmember Deady. Motion **passed** with all voting in favor (6-0).

City Attorney Linehan discussed the process moving forward and asked if Council like him to prepare a resolution for action at an upcoming meeting from the comments he heard tonight. There was consensus to move forward with Attorney Linehan's suggestion.

Mayor Benson closed the hearing at 8:31 p.m.

UNFINISHED BUSINESS: None

NEW BUSINESS:

7) AB22-011 – Resolution Revising the City's Newly Amended Fee Schedule

Mr. Hanis briefed Council on this item.

There was Council discussion.

Councilmember de Leon **moved** to adopt Resolution No. 22-1473, revising the City's newly amended Fee Schedule; **second** Councilmember Deady. Motion **passed** with all voting in favor (7-0).

DEPARTMENT REPORTS:

Fire -Chief Smith reported on the aid car that is trying to be purchased and noted that Council may see action on that at the next meeting. He discussed fire loss in Black Diamond always being very low. He shared that they are still struggling with transport and are adapting to it. He also spoke on the rules regarding burning yard clippings and tree limbs

Public Works – Brock Deady shared with Council the website and how calendar for the gym rental works and thanked the IT personnel for their help on this. He noted wiring for outlets are going on to accommodate the exercise equipment and the gym is also being wired for internet. He shared that a new combination lock has been installed on the main door, roof and ceilings are being repaired, and painting will be done. He also mentioned the fees and the possibility of getting them increased and suggested raising them next year by \$5 or \$10 per hour.

MAYOR'S REPORT:

Mayor Benson reported attending the SCATBd meeting and shared that she commented on the PSRC plan and encouraged Councilmembers to comment too. She shared that city offices will be opened to the public on March 1st.

COUNCIL REPORTS:

Councilmember Mulvihill reported attending the MRSC, Jurassic Parliament and Kim Schrier's webinars. She shared that Ten Trails put in pickleball courts and didn't get credit for it and would like to see if that could be fixed.

Councilmember de Leon reported attending her committee meetings, updates on the new masking policies, called attention that she testified at a hearing on transportation, and also talked about the lack of bus routes in Black Diamond.

Councilmember O'Donnell noted that he is pro pickleball.

Councilmember Page reported attending her committee meetings and added that the Black Diamond Labor Days Committee met to kick things off and they are very excited to be bringing it back. She shared that the next meeting is on the 3rd Tuesday in March, and

they will be meeting once a month until summer and are in need of volunteers and sponsors. She also added that Miners Day is also being planned.

Councilmember Deady reported attending the PIC meeting, WRIA 9 Forum, Planning and Community Services and Public Works meetings, Public Health meeting where they discussed number one concern is hospitals, and the stress on doctors and nurses. She also attended the PROs plan meeting, Labor Day meeting and noted that they are looking for volunteers. She announced that Miners Day is being planned and stated it being a busy time for Black Diamond. She asked the citizens keep an eye out on social media for these events as details are released.

Councilmember Smith reported attending the Budget and Finance Committee meeting, PROS discussion meeting where residents were engaged and the need for more revenue streams. He noted while in Bend OR he was amazed by how many businesses they have. He noted doing research on how anti marijuana the city code is and looks forward to seeing how we can remedy that.

ATTORNEY REPORT:

Attorney Linehan reported that Black Diamond is keeping his firm busy and shared being happy to help anyone.

PUBLIC COMMENTS:

Brock Deady, Black Diamond spoke to Council.

EXECUTIVE SESSION: None

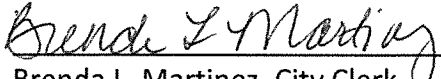
ADJOURNMENT:

Councilmember Smith **moved** to adjourn the meeting; **second** Councilmember Deady. Motion **passed** with all voting in favor (6-0). The meeting ended at 9:29 p.m.

ATTEST:



Carol Benson, Mayor



Brenda L. Martinez, City Clerk

Following adjournment of the meeting there was a closed session to discuss collective bargaining pursuant to RCW 42.30.140(4)