

BLACK DIAMOND CITY COUNCIL MINUTES
Council Special Meeting of January 11, 2024
Hybrid Meeting Via Zoom and In-Person
Council Chamber, 25510 Lawson Street, Black Diamond, Washington

CALL TO ORDER:

Mayor Pro-Tem Deady called the special meeting to order at 6:00 p.m.

ROLL CALL:

PRESENT: Councilmembers Deady, Douglass (Zoom), Smith, Mulvihill (Zoom), de Leon (Zoom), Jones, Page

ABSENT: None

Staff present: Mona Davis, Community Development Director; Andrew Williamson, MDRT/Ec Dev Director; David Linehan, City Attorney; Rob Reed, IS Manager, and Brenda L. Martinez, City Clerk/HR

PUBLIC HEARING:

1) Quasi-Judicial Closed Record Hearing – Palmer Rezone Nos 1, 2, and 3

Mayor Pro-Tem Deady announced that the Black Diamond City Council will conduct a hybrid in-person and virtual/telephonic CLOSED RECORD HEARING on the proposed Palmer Rezone 1 (PLN22-045), Palmer Rezone 2 (PLN22-0022), and Palmer Rezone 3 (PLN22-047). Only parties of record who testified at the open-record hearing in front of the Hearing Examiner on November 6, 2023, may speak at the closed record hearing. All testimony is limited to discussion regarding the Hearing Examiner's recommendations. All arguments must be based on the factual record developed at the Hearing Examiner's open-record hearing on November 6, 2023. No additional documents or information may be presented or accepted.

The order of proceedings shall be as follows:

- a) Mayor to state the hearing procedures and City Attorney Linehan inquired regarding appearance of fairness/conflicts of interest.

Mayor Pro-Tem Deady opened the closed record hearing on City File No. PLN 22-0045, PLN-22-0022, PLN 22-0047, which are applications from Palmer Coking Coal for Site Specific Rezone Variance parcels within the City of Black Diamond. She stated that rezone 1 proposes to rezone 20.63 acres from the R4 zone, single family residential to the MDR8 zone, medium density residential, rezone 2 proposes to rezone 25.46 acres from the business industrial park zone to the MDR8 residential zone, and rezone 3 proposes to rezone 27.96 acres from business industrial park to the MDR8 residential zone. All three

zones consist of property that is designated medium density residential in the city's comprehensive plan.

Mayor Pro-Tem Deady stated that the city council will hear this matter in its quasi-judicial capacity and that site specific rezones are a type 4 decision under the municipal code, meaning that the city council makes the financial decision after a recommendation from the Hearing Examiner and a closed record hearing by the council. She further added that after hearing the presentation of the parties tonight, reviewing the evidence in record, and conducting deliberations, the city council will make the decision to either approve or deny the rezone applications.

Mayor Pro-Tem announced the following order for the proceedings that will be used for this hearing:

- First, the Community Development Department will have 15 minutes to present its recommendations concerning the applications.
- Second, Applicant Palmer Coking Coal will have 15 minutes to present its arguments in favor of the rezone.
- Third, any member of the public who gave testimony at the open record hearing on November 6, 2023, will be allowed 5 minutes to speak.
- Fourth, City Staff will have 5 minutes to provide rebuttal comments.
- Fifth, the Applicant will have 5 minutes to provide rebuttal comments.
- Sixth, the public participants will then have 2 minutes to provide rebuttal comments and the council may choose to allow additional time for any of the speakers, as it deems appropriate.

Mayor Pro-Tem Deady stated that the council should be allowed to ask questions to the parties and asked the council if there were any objections to the order of these proceedings and there were no objections.

Mayor Pro-Tem announced that city attorney, David Linehan, will ask us about the appearance of fairness because this is a quasi-judicial proceeding.

City Attorney Linehan stated that the appearance of fairness doctrine requires government decision makers to conduct quasi-judicial hearings and proceedings in a way that is fair and unbiased in both appearance and in fact and added that he will ask a series of questions to the council members about personal or financial interests in the applicant's business or projects and proceeded to ask the following:

City Attorney Linehan proceeded to ask Councilmembers if they had:

- 1) A financial interest in the applicant's business that would be benefitted by the approval of the Rezones? **All Councilmembers responded no.**
- 2) An ownership interest in which the rezone is being requested? **All Councilmembers responded no.**
- 3) Business or financial interest that would be benefited by the approval or denial of the requested rezones? **All Councilmembers responded no.**
- 4) If any Councilmember owned any property that would be directly or uniquely benefited by the approval or denial of the rezones. **All Councilmembers responded no.**

Next, Attorney Linehan asked if any of councilmembers had any "exparte" contacts outside of the confines of today's hearing and Councilmember Page stated that residents reached out to her looking for clarification and she re-directed them to community development. She also added that Bernie O'Donnell sent an email to all councilmembers and that the email was added to the hearing record. Councilmember Page, de Leon, and Mulvihill all stated that they did have contacts, but this would not affect their ability to hear and consider the rezone in a fair and objective manner.

Finally, Mayor Pro-Tem Deady 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 party or citizen on appearance of fairness.**

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

b) City Staff presentation

Mayor Pro-Tem Deady announced that they will now proceed to the presentation of parties, beginning with Director Davis, concerning Rezone 1, 2, and 3.

Director Davis and Contract Planner, Andrew Love will report on the rezoning and Andrew Love will begin with Staff's presentation.

Mr. Love briefed Council on the application process and recommendations by the planning staff and the findings of the Hearing Examiner. He stated that there is no development activity proposed at this time on any of the parcels mentioned regarding the rezone applications. He added that any subsequent development applications will require an additional site plan or preliminary plat review at the time of application. He reported that the city's comprehensive plan designates all 7 parcels as medium density residential, and the proposed rezones are consistent with the city's adopted comprehensive plan. He expressed that the MDR8 zoning would allow for a diverse mix of housing. Staff provided its recommendations to the Hearing Examiner, supporting the approval of all three rezones without conditions on Monday, November 6, 2023, where public comments were also heard.. Written responses from the applicant and city staff were provided to the Hearing

Examiner on Monday, November 13, 2023. On November 28th, the Hearing Examiner made his written recommendation, concluding that the rezones are consistent with the comprehensive plan and suitable for development and concluded that there are adequate facilities for rezones 1 and 2. The Hearing Examiner did state that there are insufficient transportation facilities for proposed rezone 3 with the pipeline road not yet constructed. The Hearing Examiner concurred with the city and concluded that rezoning of 1, 2, and 3 will promote general health, safety, and welfare of the community.

Director Davis spoke and reiterated city staff's initial recommendation that rezone 3 be approved without conditions but stated that the rezone decisions are ultimately up to the city council. She ended by saying that staff are happy to answer any questions throughout the hearing.

c) Applicant spokesperson presentation

Mayor Pro-Tem Deady announced that the applicant will begin its presentation in support of the requested results.

Tara Aalmo, one of the five managing partners for Palmer Coking Coal, stated that their desire is to work with the city and its residents to develop their property so it will have a lasting impact on this community.

Jamie Balint, Attorney for Palmer believes that the Hearing Examiner's decision is thorough and consistent with applicable code and state law. She also added that they completely agree with Ms. Davis and their proposed condition would be that the rezone was approved, and they would record a restrictive covenant on title that would prohibit the issuance of a building permit for rezone 3 and until such time there is a primary access point for their property other than through Sunny Lane or Bruckner's Way. She ended by adding that their transportation engineer is available for questioning regarding traffic analysis.

Mayor Pro-Tem Deady opened public comment testimony for anyone who testified at the open record hearing on November 6, 2023, allowing 5 minutes for their statements.

d) Presentations by other parties of record (if any).

Kristen Bryant, Bellevue, stated that the council should consider its evidence that refutes many of the examiners and deny all 3 rezones for lack of availability of public services and for failure to comply with the comprehensive plan. She added that the Hearing Examiner didn't fully summarize a lot of the public comments and one of the biggest points is that the growth targets set by the county-wide planning policies are violated by this rezone. She noted that the Puget Sound Regional Council denied certification because Black Diamond was not compliant with regional transportation plans.

Gary Jones, Black Diamond, commented on the recommendation from the Hearing Examiner that the city code requirements were met. He noted that it does not correctly address all the issues. He stated that Exhibit 30 shows that we can't keep up with the basic

services for the growth of Black Diamond and there is not sufficient revenue to fund fire and police staff. He added that given the existing city infrastructure deficiencies, the Palmer rezone should be denied.

Phil Acosta, Black Diamond, announced that he would be testifying regarding his exhibit 27 about his concerns of increased traffic on the 288th corridor. He stated that nothing has been done to the existing roadways except to help people blend into the traffic and if Palmer wants this rezone, the Pipeline Road needs to be completed. He added that the Hearing Examiner missed something, and all 3 rezones are affected by Pipeline Road and Ten Trails.

Gary Kohl, Black Diamond, stated that the residents don't feel like the city is representing us and the city codes are not being met. He said that the need for other types of housing is not a reason to approve the rezones and therefore he is asking that Council deny the rezones. He added that we must work together to make a reasonable plan for the future of our children and us with proper planning in place first.

Roseanne McPherson, Black Diamond, commented that the comprehensive plan needs to be revisited to accommodate what Black Diamond needs, as far as services and infrastructure, and schools. She said she would not be voting for something that the city council may or may not approve of. She also stated that the city hasn't enforced their agreement or done what they said they were going to do.

Don McPherson, Black Diamond, stated that he spoke at the last hearing examiners, and he doesn't understand how they could come up with a recommendation where there is no adequate transportation. He says that it is dangerous to cross the street just to walk their dog and if Pipeline Road is not put in, all the trucks going 40mph will be on Bruckner's Way and Roberts Drive.

Ruslan Sorochuk, Black Diamond, reported that the water system plan is not current, as noted in his exhibit 22. He stated that the Department of Health commented that criteria failed to be met and there is not going to be enough water to serve the new developments. He spoke regarding the traffic issue and about the animal's living area being affected by the development of houses and how people are killing them with their cars.

Kristen Bryant, Bellevue, on behalf of her father, spoke regarding transportation and stated that the rezones fail to satisfy the requirements of subsections B4 & 7 (BDMC) due to inadequate transportation facilities needed to serve new residential use and exhibit 33 shows that all traffic estimates found in the current comp plan assume no traffic coming from the 3 rezone sites and they are not consistent with the comp plan, showing failures at one or more intersections even with additional residential development, as well as failures with the roundabout at Pipeline Road and others. She noted that BDMC 18.08.020.4 requires denial of these rezones. She stated that Black Diamond needs to accommodate some sort of planning document now.

e) Rebuttals

City:

Director Davis, responded to the testimony stating that several conversations have been had with Department of Commerce and the city does have growth targets with a great need for housing, with neighboring cities all facing the same situations of exceeding growth targets. She added the city doesn't have the current zoning right now to accommodate the types of housing that the Department of Commerce is requiring the city to build. She stated that in every jurisdiction that she has worked in, that if your comprehensive plan is inconsistent with your zoning maps, you approve the rezones or you recommend approval for rezones. She added that the UGA is every bit the place to put new growth and that we are not asking to expand the UGA by these rezones but rather put our growth within the growth area boundary of the city. She also stated that the traffic impacts were evaluated, and the applicant and their traffic engineer are here tonight, confirming that the overall traffic will be less associated with residential versus business and Industrial Park. Fish passage has created a ton of delay, and the city has been working diligently with WSDOT to try to build out the roads along with all the other commitments.

Applicant:

Ms. Balint spoke on behalf of the applicant Palmer, addressing Ms. Bryant's comments, stating that it is not appropriate to compare developed versus undeveloped because this is not about development right now. She stated that Palmer may be required to perform transportation improvements, but the time for that is not now; Palmer supports the construction of Pipeline Road and is willing to dedicate the right of way.

David Toyer, strategic advisor, and consultant for Palmer stated that an extensive policy analysis of both the county-wide planning policies as well as multi-county planning policies have been included. Usage rates were compared, and capacity differentials show it is sufficient as it exists at this time for development. He stated there is a two-part analysis that relates to rezones and to projects. Exhibit 36 shows a tremendous amount of detail regarding all the items that were raised on the public facilities and services side tonight.

Public:

Gary Jones, Black Diamond, announced that he has nothing against the construction in Black Diamond, but it should be responsible, and we should know where our taxes are going to be in the future.

Gary Kohl, Black Diamond, stated that planning is key and that we've already approved too much development and there is no reason to approve more. He said that we need to fix what we have done, and there is never going to be enough money for the infrastructure and compounding the problem is irresponsible.

Roseanne McPherson, Black Diamond, questioned how the Department of Commerce dictates that we need more housing. She stated that you can't just rezone and then plan later and compared that to letting the horse out of the barn.

Philip Acosta, Black Diamond, stated that it is really hard to believe that we need more housing. He said that we are building more than our share and he feels we need more transparency from Palmer on their commitment of when they will build the Pipeline Road.

William Bryant, Black Diamond, stated that Black Diamond's building requirements is 2,900 units and it seems like the city is jumping way ahead of everything. He commented on the traffic backed up down his road off highway 169, but stated he knew that was going to be fixed with a roundabout. He also commented on all the garbage in front of his house and how people are speeding down the roads and it seems like nobody cares.

Russel Sorchuk, Black Diamond, stated that some people say there are not enough affordable houses, but there is a lot of availability in Ten Trails, and it is pretty much affordable so he is not sure that we need a lot of housing.

Kristen Bryant stated that the city of Black Diamond is the only city in the Puget Sound Regional Council's jurisdiction that was denied approval for its comprehensive plan for exceeding growth targets. She stated that the Hearing Examiner is not in a position to give opinions on the prevalence of single-family homes in Black Diamond and without an independent financial analysis you can't just say what is a lot of acres for light industrial versus housing.

f) Council Questions

Councilmember de Leon asked for Ms. Davis to speak to the Muckleshoot comments and questions related to the water quality.

Director Davis responded noting that all the questions that came in with the rezone applications would be addressed at a future time with development and they would be re-routed to the Muckleshoots.

Councilmember Jones – what is the timeline and the next steps for this?

Director Davis responded stating that there is no specific timeline and that we need to try and process all land-use applications as quickly as possible so that we can come to a decision.

Mayor Pro-Tem Deady announced that the presentations have been concluded and the hearing is now closed, and no additional arguments will be heard. Closed hearing at 7:41 p.m.

- g) Optional Executive Session for deliberations, consistent with RCW 42.30.140(2), with possible action to follow on Palmer Rezone 1, Palmer Rezone 2 and/or Palmer Rezone 3

Mayor Pro-Tem stated that the council will now retire to closed session and begin its deliberations.

Council went into closed session at 7:42 p.m. for 45 minutes with possible action to follow.

At 8:27 p.m. a 20-minute extension was announced.

At 8:47 p.m. a 10-minute extension was announced

At 8:57 p.m. Mayor Pro-Tem Deady called the meeting back to order.

Action: Councilmember Page **moved** to approve rezones 1 and 2 and adopt the findings and recommendations of the hearing examiner; **second** de Leon. Motion **passed** with all voting in favor (7-0).

Mayor Pro-Tem Deady stated that Council is still deliberating on rezone 3 and will get back to you when we figure that one out.

Council tasked the City Attorney to bring an ordinance back to the next available council meeting to document their decision this evening.

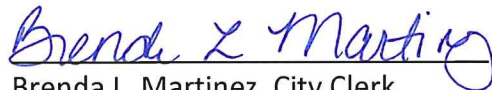
ADJOURNMENT:

Councilmember Smith **moved** to adjourn the meeting; **second** Councilmember Jones. Motion **passed** with all voting in favor (7-0). The meeting ended at 8:58 p.m.



Carol Benson, Mayor

ATTEST:



Brenda L. Martinez, City Clerk