

Supreme Court review requested in Black Diamond case

by DENNIS BOX, Covington Reporter Editor
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A petition was recently filed asking the state Supreme Court to review a Court of Appeals decision favoring developer YarrowBay's plans for two master planned developments in Black Diamond.

The petition for review was filed Feb. 26 by Toward Responsible Development, an organization that has appealed YarrowBay's development plans. Robert Edelman and Vernon Gibson are listed as governing officers on the Secretary of State website. The organization filed with the state Sept. 30, 2010.

The three-judge panel on the Court of Appeals ruled on Jan. 27 that Phil Olbrechts, the Black Diamond hearing examiner, properly applied the "rule of reason" in finding that the environmental impact statement adequately addressed the impacts from the developments.

The two developments are The Villages and Lawson Hills.

YarrowBay began clearing and grading work in December on The Villages Phase 1A, about 93 acres. According to a statement in December from Brian Ross, YarrowBay managing partner, this phase plans for 378 single family homes, 395 multi-family units, nine townhouses, 190,000 square feet of commercial space, parks and a site where an elementary school could be built in the future.

The 20-year build out of the developments would add about 6,000 homes, increasing the population of the town from about 4,100 to about 20,000.

The petition headed to the Supreme Court began when the Land Use Petition Act appeal went before King County Superior Court Judge Patrick Oishi Aug. 3, 2012. Oishi dismissed the appeal Aug. 27. The appellants listed in the Superior Court brief were Toward Responsible Development, a nonprofit corporation, and Cynthia and William Wheeler, Robert Edelman, Peter Rimbos, Michael Irrgang, Judith Carrier, Eugene May, Vicki Harp, Cindy Proctor and the Estate of William C. Harp.

Only Toward Responsible Development filed the appeal to the Court of Appeals and the petition to the Supreme Court.

According to the Supreme Court clerks' office, in about four to six months the court will decide if the petition will be accepted for review. The court receives about 900 petition each year and a small fraction of those are accepted for review. If the petition is accepted it can take from six to 18 months for a decision to be rendered.

The Court of Appeals decision awarded court costs to YarrowBay but the ensuing petition puts the court cost issue on hold until the review is decided.

David Bricklin, attorney for Toward Responsible Development, wrote in an email Jan. 30, "The only appellant was TRD. It is a corporation, registered in the state of Washington. It is the only entity potentially liable for court costs. No individuals appealed."

According to the cost bill brief filed Feb. 6 by YarrowBay, the developer is requesting \$153,237.46 in attorney fees and expenses and \$425.93 in court costs. The city of Black Diamond also filed a cost



Black Diamond vicinity map shows The Villages development site in light brown and Lawson Hills in dark brown. — Image Credit: Courtesy Image

bill brief requesting \$30,275.50 for the services of Kenyon Disend, the Issaquah firm that was providing city attorney services. The city also requested 174.68 in court cost.

An objection of the cost bill was filled Feb. 18 by Toward Responsible Development.

According the Court of Appeals clerk's office, if the Supreme Court accepts the case, that court will render the decision on costs.

If the petition is denied, YarrowBay will file a mandate for cost.

According to the clerk's office, a court commission appointed by the judges will make a decision on the award of cost.

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