

Langley City Council Special Meeting Minutes
Langley Passage April 5, 2011

Mayor Samuelson opened the closed record hearing at 3:00 PM for the City Council to review the Langley Passage Preliminary Plat Application. Present were Council Members Robert Gilman, Rene Neff, Bob Waterman, Fran Abel and Hal Seligson. Also present were Attorney Carol Morris; Engineer, Ryan Goodman; Planner Jeff Arango and Deputy City Clerk, Annette Andrews-Lux. The flag salute was lead by Council Member Waterman. Paul led roll call. This meeting is not an open record hearing but a review of appeals.

Under the appearance of fairness doctrine, Mayor Samuelson asked if any Council Members had any conflicts of interest or had any ex parte contacts on this issue outside of the public process. Each council member responded that they could fairly participate in the process. The public was asked if anyone should be eliminated from the process. In response Steve Erikson made a statement to go on record as being against the process itself.

Clarification was made by Robert Gilman about the focus of the meeting. Carol Morris referenced additional documents that have been received that will be listed as Exhibit C. Jeff Arango described the 2 documents that came in over the weekend (dated 4/4/2011).

Carol referred to the staff's recommended outline of the hearing. Steve Erikson objected to the stated process. Mayor cited his comments as out of order. Robin Adams asked under what authority the process has been turned over to Carol Morris. She affirmed that she is proposing that we follow the process the staff recommended but that the council will decide.

Comments by Robert Gilman making inquiries of Carol about appeal process. She asked the Council whether they wanted to proceed with number six on the outline or to pursue an explanation of the appeal process.

Bob Waterman summarized where we are at in the process. Mayor affirmed that this process would include the desires expressed by Robert and Bob.

Statement by Robert Gilman.

Statement by Rene. Rescinding the vote denying the proposal is linked to the applicant's willingness to address the critical issues.

Fran submitted her agreement to the previous comments by council members. Hal also noted his agreement as well.

Mayor clarified that the council is now willing to proceed with the process recommended by the staff.

#6. Motion from WEAN to continue to another date. Discussion among council members. Motion by Bob to not continue discussion and decision to a later date. Seconded by Fran. Motion approved.

#7.

Robin Adams made a comment that this hearing is illegal and there needs to be an opportunity for public to speak and address this issue. Others in audience echoed this and asked for a time to speak.

New evidence: Information on new utility plan

Gilman: Sewer and water plans were not included in evidence originally considered as part of the record.

Ryan referred to letter from Challis noting exhibit P-10

Mayor asked the staff to participate in the discussion

Bob stated that he does understand that this information was part of the record.

Preliminary plat proposal coming to the City that involves discussion and negotiation

Gilman: Not clear to what degree these plans were in the record and whether they received adequate review by staff and public and whether they can make a ruling.

Specific recommendation

Evidence/arguments

Leave record

Clarification:

Determined that No additional evidence added to the record since

Rene moved to deny the motion #7 due to the fact that it is a moot point. Hal seconded the motion. The motion was unanimously approved and passed.

Clarification by Gilman: not voting on final plan regarding to the sewer exact plan and placement. Applicant's engineer would submit specific plans which would be considered

for approval. Ryan: his understanding is that the alignment on alternate plan would be exempt from SEPA review, as it is in the right of way.

#8 Motion to deny cross-examination of Bob Snyder made by Rene. Motion amended by Robert but then withdrawn. Original motion seconded by Bob. Motion carried by unanimous vote. Motion passed with the understanding that oral argument can be added later at an appropriate place.

#9 Meeting closed to further public comment.

Council would like to proceed to work through the application by considering the conditions in discussion among themselves, with the option to ask questions as needed.

A. Sewer system- a key issue, when and where these concerns would be addressed along the way.

Ryan addresses low pressure gravity system in regards to current proposed line.

Process needs to be clarified. Administrative process to determine what is needed to comply with all local regulations and state law.

Hal- clarified requirement of mandated hook up to current sewer systems.

Carol –what is before us are conditions possible to be put on this proposal.

Rene asked for clarification of Carol

Motions to address each particular condition as noted in exhibit 37.

Given the inconsistencies Code and Comprehensive plan, where does this leave us? Ryan referred to LMC 15.01.150. Gilman recommends that in regards to this condition that due consideration be given to as much gravity system as possible.

1. Robert motioned that the condition that the sewer extension shall extend down Edgcliff. Rene seconded and motion passed.

2. Wording change: "...shall not reduce wetland functioning." -rest of the wording is stricken from the record. Bob moved to approve this change. Hal seconded, and unanimously passed.

3. "Stormwater....shall be designed to have a net zero-impact." Proposal of change to wording regarding "zero impact".

Underlying intent is to make sure there is no significant *increase* in stormwater runoff and , because there is a wetlands nearby, we must be careful not to impact it negatively and so must not significantly *diminish* the amount of water.

Bluff- best served by less water. Wetlands best served by maintaining amount. Point of this condition is to prevent the negative impact from happening

Proposed change: “The stormwater handling for this project shall be designed so that post-development groundwater levels will be no greater than pre-development levels, and wetland functioning will be maintained according to our Critical Areas ordinance.”

Jeff recommended citing specific portions of the record.

Gilman: Possible additional condition in regards to groundwater runoff. He referred to citation from Comprehensive plan: Utilities element - Policy J referral to “areas where water flows to and through steep bluffs” and how that relates to infiltration. Stated that it seems clear that it is an instance of fact in this situation

Cited LMC 15.01.430.B: “use of all reasonable and appropriate low impact development measures shall be required prior to consideration of conventional

Quoted from Low Impact Handbook Pg. 11 sec 1.4: water source reduction measures focus on “evaporating, transpiring and infiltrating water”

Referred to SEPA requirements (state law) that you need to look at the *cumulative* effect of groundwater. When situation is already adverse, any further addition to water has a negative impact.

Statement of intent to allow for up to but no more than 10 minutes of oral testimony on this new potential condition.

Jeff referred to the fact that the approved design and any changes to requirements regarding potential impact must be based on the existing studies. Concern is the relationship between the studies and the impact.

Gilman suggested a potential significant error in judgment on the part of the staff in its initial recommendations and requirements

condition is inconsistent with existing code and must be based on the records contained in the study. This interpretation of the code is being made on the part of the staff

Rene referred to recommendations from consultants: pg. 7 of Aspect consulting document, Oct 5, 2007, recommend against managing stormwater runoff through infiltration.” Pg. 10 contains 4 specific recommendations. Is this not part of the record?

Gilman cited from Langley Stormwater management plan:..”attention given to not increasing stormwater runoff”

Steve, Erikson, WEAN: RCW Land use 11/15/10 adopted minutes. Appeal date had passed. To interpret regulation look to policy and its intention. Condition needs to be directed related to impact and he affirms that the condition is doing so. Need to be mindful of cumulative impact in regards to future potential developments. Should include margin for years of increased precipitation. Still recommends environmental impact study.

Elaine Spencer, Whidbey Neighborhood Partners. Does not consider the condition legal. Refers to the existence of a spillover point that goes into an existing ditch. What happens here is setting precedence for future projects. In reference to consulting report, please note that there were differences of opinion. The City's own consulting process resulted in the decision that was made by the staff. She notes that it must be realized that the level of water will vary from year to year.

Robin Adams, Langley Critical Areas Alliance. Believe that this condition is essential, prefers Gilman's wording. Addressed issues of where does the water go after it goes into the aquifer? Unanimity among experts consulted directly about water affects. Refers to LMC 15.01349F Code specifically states that infiltration may be eliminated when an area is designated as "critical areas".

Gilman: his intent is that this be done at a design level, use of model using average rainfall- not a specific number. Stated he is looking for a workable, achievable option. Addressed the issue of water flow to the ditch and the reality of increased pressure to the aquifer. Urged consideration of alternative designs.

Spencer: will agree to a situation that they deem workable, even if they continue to disagree with some fundamental issues. They will look at a transcript for specific wording.

Fran moves that revised wording be adopted for condition #3. Robert seconded the motion and the motion unanimously approved.

Conditional #4- Bob moved to omit this condition and Hal seconded the motion. Motion was unanimously passed. (see exhibit pg. 80 #6 for complete phrasing of condition.)

Gilman suggested making the monitoring statement more general.

Proposal to amend to "shall monitor flow and overall performance of the surface drainage system along '**the segment impacted**' from the plat boundary... and add in the rest of the statement from pg. 80.

Bob moved to accept this new wording, Rene seconded the motion. Motion was passed.

Addressed Pg. 63 preliminary plat appeals.:

Robert moved to deny the appeals of WEAN and the Langley Critical Care Alliance, except to the extent that they are consistent with the conditions imposed by the council. Motion was seconded by Bob and motion was unanimously passed.

Amendments will be made to findings of facts and conclusion of law to add that this project is an instance in which “water flows to and through steep bluffs” and will add the newly imposed condition.

Gilman asked for the staff to review the new conditions and findings and fact.

Robert moved to approve the findings and fact and conclusion of law, with new additions and that this approval will be reviewed for consistency by the staff. Fran seconded the motion and the motion was unanimously passed.

Rene moved that the council approves the Langley Passage preliminary plat application with the conditions listed in the draft findings of fact and conclusions of law, as modified and voted upon by the council on this date of April 5, 2011. Hal seconded, and the motion

Staff is requested to prepare the final draft of the findings of fact and conclusions of law and a copy will be mailed out.

Bob motioned to adjourn the meeting, Hal seconded the motion, and the meeting was adjourned at 6:53 p.m.

Respectfully submitted,

Annette Andrews Lux