

To: Mayor Samuelson and Members of the City Council

Date of Report: October 13, 2010 *see*

Staff Contact: Larry E. Cort, Director of Community Planning

Meeting Date: October 18, 2010

Subject: CLOSED RECORD HEARING – CONTINUATION
Langley Passage Preliminary Plat

Application: SUB 2006-01, Langley Passage 20-Lot Preliminary Plat

Applicant: Whidbey Neighborhood Partners
PO Box 1355, Freeland, WA 98249
Contact Person: Gary Roth

PAB Appellants: Whidbey Environmental Action Network (WEAN)
PO Box 53, Langley, WA 98260
Contact Person: Steve Erickson

Langley Critical Areas Alliance (LCAA)
c/o CRU Strategies Ltd., PO Box 1269, Langley, WA 98260
Contact Person: Robin G. Adams

Whidbey Neighborhood Partners
PO Box 1355, Freeland, WA 98249
Contact Person: Gary Roth

New Documents: Council Questions of the Record, 20 September 2010
(Distributed) Council Questions of Legal Counsel, 20 September 2010
Responses from Whidbey Neighborhood Partners, 4 October 2010
Responses from Langley Critical Area Alliance, 4 October 2010
Responses from City staff, 4 October 2010
Responses from Whidbey Environmental Action Network 4 October 2010
Responses from Legal Counsel, 11 October 2010

Attachment: Memorandum from Carol Morris to Mayor and Council, 4 October 2010

This staff report formally supplements the record for the application by Whidbey Neighborhood Partners for Langley Passage, a proposal to subdivide 8.52 acres into 20 building lots and three non-buildable tracts. Specifically, the documents cited above have been distributed to the City Council and are considered part of public record for this application. The closed record hearing

to consider the Planning Advisory Board's recommendations on this action, and the appeals filed challenging those recommendations, was continued to the regular City Council on October 18, 2010. The Council is advised to review the attached October 4, 2010 memorandum from Carol Morris for procedural guidance on the upcoming continuation of the closed record hearing. In particular, the second paragraph under "Questions" outlines the options available to the Council.

MEMO

DATE: October 4, 2010
TO: Mayor and Council, City of Langley
FROM: Carol A. Morris, Morris Law P.C.
RE: Procedures for Langley Passage Closed Record Hearing

The following addresses a couple of procedural and appearance of fairness issues relating to the Langley Passage closed record hearing, which has been continued until October 18, 2010.

Questions. The Council has asked a number of questions of the staff, attorney, applicant and appellants. The information responsive to these questions is due from the staff and appellants on October 4, 2010. Because many of the questions asked of the attorney hinge on information from the staff, I am requesting additional time to respond, so that my answers would be provided to you on or before October 11, 2010.

The closed record hearing was continued until October 18, 2010, so the Council will not have an opportunity to ask additional questions until then. During the October 18, 2010 meeting, the Council may: (1) ask additional questions, establishing a date/time for responses which may or may not require continuation of the closed record hearing¹; (2) close the closed record portion of the hearing to such additional questions and begin deliberations; (3) deliberate, and continue to ask questions of the City's attorney and staff; (4) vote on the Langley Passage SEPA appeal and underlying application; (5) ask the City's attorney and staff to draft the necessary findings, conclusions and decision.

As you are aware, the Council's decision must be based on substantial evidence in the administrative record. Therefore, it is necessary that the basis for the Council's decision be articulated together with the supporting references to the administrative record. In other words, when the Council deliberates and makes a final decision, the Council should be prepared to identify the specific portion of the administrative record which supports each aspect of the decision, so the references can be cited in the findings and conclusions that will be drafted for the Council.

Decision on SEPA Appeal and Underlying Application. There are **two** actions currently before the Council on Langley Passage -- the SEPA Appeal and the final decision on the

¹ It is possible that the Council's questions may be so simple that the Council might delay the closed record hearing for the receipt of responses until the latter portion of their meeting on October 18, 2010.

preliminary plat application. If the Council were to find that the SEPA Responsible Official and Planning Advisory Board correctly determined that an EIS was not required, the Council must proceed to also make findings and conclusions related to whether the preliminary plat application (as conditioned in the staff recommendation and the MDNS) meets the City's code, SEPA and the State Subdivision Act.

If the Council were to find that the SEPA Responsible Official and Planning Advisory Board were incorrect, and that an EIS should have been required, the Council still must proceed to make findings and conclusions related to whether the preliminary plat application (as conditioned in the staff recommendation and in the MDNS) meets the City's code, SEPA and State Subdivision Act. The Council should not assume that there is no need to act on the preliminary plat application if it finds that an EIS should have been prepared. This is because any decision made by the Council may be appealed to superior court, and the superior court may, but is not required to remand this matter back to the City for further action. In other words, if the Council's decision was limited to findings and conclusions that an EIS should have been prepared, and the court overturns the Council's decision, there likely will be no remand. The court may then proceed to determine whether the Planning Advisory Board's decision to deny the preliminary plat application should be upheld.