

City of Langley
MEMORANDUM

DATE: April 28, 2010

TO: Members of the City Council
Members of the Planning Advisory Board

FROM: Paul Samuelson, Mayor

RE: **Subarea Planning and Consistency with the Comprehensive Plan**

ATT: Attorney's Opinion

With the questions and concerns about subarea planning next on the priority list for discussion by the Council and Planning Advisory Board, I asked Larry Cort to contact City Attorney Grant Weed for an opinion on Question G-1 in your topical list of concerns. The Council's concern seemed to focus primarily on whether the adoption of a new zoning map without incorporating the subarea approach would be inconsistent with our Comprehensive Plan.

I invite you to read Grant's opinion on this matter prior to Monday's Council/PAB discussion. In particular, I would draw your attention to the fifth paragraph in Grant's opinion in which he relies upon "the optional and permissive nature of sub-area planning in the GMA" to assert that adopting "a revised zoning map without sub-areas as more a matter of timing and sequence than a matter of creating an inconsistency."

I look forward to a good discussion on Monday.

**Subarea Planning and Consistency with the Comprehensive Plan
Response Received from City Attorney Grant Weed on April 25, 2010**

Hi Grant –

I have attached a two-page document prepared by Langley Councilmember Robert Gilman regarding the prospect of subarea planning here in Langley. Based on the language in our Comprehensive Plan, there is some concern that the subarea approach is required as the basis for zoning in Langley. Or, more specifically, if the City adopts a revised citywide zoning map without using subareas, then our development regulations would be inconsistent with our Comprehensive Plan and therefore subject to legal challenge. The administration interprets the subarea language to support a tool which can, where appropriate, be employed to bring greater depth to our zoning regulations. We see substantial Council discretion in implementing the subarea approach, especially in Land Use Policies 1.2 and 1.3, and see no serious problems with docketing the consideration of subarea planning for next year and beyond.

Could you please take a quick look at this to see what you think?

Many thanks as always!

Larry

Hi Larry

I have reviewed your e-mail and the attached document prepared by Councilmember Gilman. I have also reviewed the Growth Management Act and in particular, the sections of RCW 36.70A relating to adoption of comprehensive plans. The following are my thoughts and opinions:

I think the starting point is RCW 36.70A.080. This section of GMA is succinct but it recognizes that there can be elements to a comprehensive plan that are "optional". Subsection (2) of RCW 36.70A.080 states that: "A comprehensive plan **may** include, where appropriate, sub-area plans, each of which is consistent with the comprehensive plan." Because of the use of the word "may" in the statute, I read it as allowing for subarea plans, but they are not a required element of a comprehensive plan. The decision to create a sub-area plan is permissive and discretionary. However, if a city or county planning under GMA decides to create subarea plans, as with zoning regulations, they must be consistent with the comprehensive plan. I believe that to be the intent of RCW 36.70A.130(1)(d).

For other cities our firm represents and in particular, the City of Marysville, it first adopted a GMA comprehensive plan in about 1995 that covered the entire city but referenced the intent to adopt sub-area plans over time that were to serve as an overlay or a supplement with more detail to the general comprehensive plan and with implementing zoning and development regulations. The sub-area plans in Marysville have been adopted over time as support by property owners and citizens could be secured.

Certainly if there is a desire to adopt policy or regulations in a sub-area plan that diverges from the general comprehensive plan the general plan needs to be amended as well or at least a reference should be made in the sub-area plan that if there are inconsistencies, the sub-area plan will control or serve to automatically amend the general comprehensive plan.

While it certainly appears that based on the excerpt of the City's comprehensive plan cited in Councilmember Gilman's document that there is a policy and intent to ultimately implement zoning and other site specific regulations through a sub-area planning process, given the optional and permissive nature of sub-area planning in GMA, I do not see it as precluding the adoption of a zoning map or interim zoning measures until the sub-area process is complete. I see the adoption of a revised zoning map without sub-areas as more a matter of timing and sequence than a matter of creating an inconsistency. I would also add however, if it is not the intent of a majority of

the Councilmembers to ultimately move toward a sub-area planning process, a revision to the comprehensive plan should be made a part of the annual docketing process so the reference to the sub-area planning process can be revised or deleted. On the other hand, if the City Council continues to be committed to the sub-area process as described in the comprehensive plan it should set out to accomplish it so ultimately, the subarea plans adopt and implement zoning and other regulations that are consistent with the City's general comprehensive plan. But once again, I do not think the adoption of sub-area plans must necessarily be a mandatory prerequisite to adoption of an amended zoning map or other regulations.

I hope this helps shed some light on the issue. Be sure to contact me if you have questions or concerns. However, I will be out of the office from 4-26 to 5-6.

Regards,
Grant