

FILED

STATE OF WASHINGTON
BY 

NO. 35592-2-II

IN THE COURT APPEALS OF THE STATE OF WASHINGTON

DIVISION II

CHARLES and BILLYE GAYE LAWRENCE, a marital community,

Petitioners,

vs.

PRIVATE CAPITAL, LLC, a Washington Corporation doing business in Washington, SHANE MCGUFFIN, the applicant, and CITY OF CAMAS, a municipal corporation,

Respondents.

APPELLANTS' OPENING BRIEF

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P.M. 58-07

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I. INTRODUCTION.

This is a case involving land use issues under LUPA, RCW 36.70C et seq., regarding the development of a residential subdivision in Camas, Washington. The key issues involve whether Camas followed Camas' law and Camas' procedures in approval of this subdivision. While our advocacy on the project has substantially improved the project at the local government level on the wetland issue by reducing the wetland impacts by 81%, three errors and three issues remain unresolved.

First, Camas has unique code provisions regarding significant tree preservation, according to Code, "every reasonable effort shall be made to preserve existing significant trees". The City/reviewing Court concluded that this standard was satisfied by proposing to cut 80% of the significant trees on the site. We vociferously disagree.

The second error involves the Camas City Council erred repeatedly by taking evidence that was not "presented to the Planning Commission" in violation of their own Code, and the *Maranathra Mining v. Pierce Co.*, 59 Wn.App 795, 801 P.2d 985 (1990) line of cases. This error prejudiced our ability to obtain adequate mitigation for the project's significant hydrogeological impacts under SEPA and the Platting Statute.

Finally, the City's belated and inadequate issuance of Findings and Conclusions, drafted after Lawrence filed suit, fails to meet the standards of *Weyerhaeuser v. Pierce Co.*, 124 Wn.2d 26, 873 P.2d 498 (1994).

II. ASSIGNMENTS OF ERROR.

ASSIGNMENT OF ERROR NO. 1: DID THE CITY OF CAMAS ERR WHEN IT CONCLUDED AN APPLICANT COULD "PRESERVE EXISTING SIGNIFICANT TREES" UNDER CMC 17.19.030A(2) BY CUTTING THEM DOWN AND REPLACING THEM WITH SAPLINGS?

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ASSIGNMENT OF ERROR NO. 3: DID THE CITY OF CAMAS ERR IN FAILING TO MAKE ADEQUATE FINDINGS FOR FACTUALLY CONTESTED ISSUES UNDER *WEYERHAEUSER, ET AL.*

III. STATEMENT OF THE CASE.

A. BACKGROUND.

Applicant proposes to build a residential subdivision in a sensitive area in the Prune Hill area of Camas. This site contains steep slopes, CP 29, wetlands, CP 63, springs and seeps, CP 49, and wildlife habitat.¹

The “significant” tree plan of saved and removed trees is CP 136. From this, we estimated/counted a loss of 125 of 150 trees². Applicant conceded to a loss of 109 of 136, or 80%. CP 170³. The site map shows the

¹ Administrative Record, Document C.1.d, Exhibit B. (Please note we tried to designate a few of these key Administrative Records into the Clerk’s Papers for the Court’s convenience, See CP 19, but this was not done. So, we are including with the Case Manager’s blessing a copy of the City of Camas’ Table of Contents for their Administrative Record. It has a somewhat unusual numbering system.

²Administrative Record, D1 at 2, C4 at 3, C.1.d at 10.

³Without waiving our procedural objection to second hearing, Administrative Transcript at 134, lines 19 & 20.

lot lines at the setback lines. CP 135. When we superimposed the trees saved and the building envelopes, no building envelopes were changed to protect/save any trees. CP 183. None of these facts are contested.

When this proposal came up to hearing, the Staff Report of October 11, 2005⁴ indicated as stated below that this project did not meet Camas' Code, and contained numerous findings indicating the project did not meet wetland, as well as tree preservation and other standards. The report stated:

To be in full compliance, the applicant must revise their plan to include building the public trail along the unimproved NW Cascade Street, preserve wetland areas, and retain significant trees. Id. at Page 3.

Staff Comment: The subdivision design does not comply with road construction standards, nor does it comply with requirements to protect wetlands/sensitive areas. Id. at Page 5.

The applicant fails to provide convincing evidence that filling wetlands would be appropriate and necessary.

The applicant fails to propose alternative designs such as a reduction in the size, scope, configuration, lot count or density of the proposed lots to avoid sensitive areas, significant trees, and wildlife habitat. Id. at Page 7, emphasis added.

To summarize the staff's concerns:

⁴Administrative Record, F.6

10. The application and plans shall be consistent with the applicable regulations of the adopted comprehensive plans, shoreline master plan, state and local environmental acts and ordinances in accordance with RCW 36.70B.030. (Italics in original).

Applicant Response (Id. at page 7): All plans and other submittal items are consistent with the requirements of the CMC, the Comprehensive Plan, environmental ordinances, and RCW 36.70B.030.

Staff Comments: Staff has commented throughout this report on the areas in which the applicant does not meet these requirements. Id., emphasis added.

Curiously, and internally inconsistently, the report called for *approval* of the subdivision even though the project did not meet Camas' standards.

Id. at 8.

B. FIRST PLANNING COMMISSION HEARING.

At the Planning Commission hearing, Mr. Lawrence testified that an underground stream goes through his property now, and run through the middle of his home, and this much construction could make his home unliveable. CP 108. This presence of subsurface water flows was confirmed by applicant's wetland biologist, who confirmed "high rate of underground flows in the subsurface" caused springs on the site. CP 49. The Wetlands Report also noted an excavated drainage system "intercepting groundwater throughout the site." CP 50.

Applicant's geotech testified the site was very wet, even the non-wetland portions. They stated at CP 35.

"The primary feature of concern at the site is the moisture sensitivity of the underlying sandy and silty clay silt subgrade soil materials."

The site is so wet that:

"...we recommend that all planned structural improvement areas for residential homesites and/or pavements be stripped and cleared of any... vegetation, topsoil materials,... present at the time of construction. In general, we envision that about 12 to 18 inches of topsoil stripping may be required to remove existing topsoil materials". Id.

Why?

"In regard to the moisture sensitivity of the underlying sandy and clay silt subgrade soils, these soils can rapidly deteriorate under wet and/or inclement weather conditions". Id.

Applicant's experts asked for the following Conclusions and Recommendations in their report.

In this regard, we recommend that all aspects of the site grading and foundation preparation work be scheduled for the drier summer months which are typically June through September. Id., emphasis added.

We recommend the Redmond & Associates be retained to provide construction monitoring and testing services during all site earthwork and foundation excavation operations. CP 39.

Even these mild recommendations were not recommended for approval by staff.⁵

As a result, licensed geologist, Martin S. Burke and Associates stated at Page 4:

Due to the current lack of understanding of the hydrodynamic forces at the site; the impacts of the utilities; and the impacts of the proposed development on the groundwater, wetlands, springs, headwaters, and surrounding properties, the final outcome of the proposed development is difficult to predict. What is not difficult to predict is that, whatever impacts result, they would most likely be irreversible and detrimental to the wetlands and headlands environment present at the site.⁶

The proposal then went to the Camas Planning Commission. One of the Commissioners in deliberations, said “I like the project. But what I can’t see is how to make it fit with the Code”. CP 157. The Planning Commission then modified the project by reducing the wetland impacts by one lot or approximately 7,577 square feet, but failed to rule on any of the other issues

⁵Only a condition requiring the residential buildings to be built consistent with the Geotech Report was included. Administrative Record C.4 at page 4. Thus the roads, stormwater facilities, etc. could be constructed without following the Geotech Report, as well as all of the site’s excavation and filling.

⁶Administrative Record C.1.d at 9, K6 at 4 (primary source). Where the CP’s is only a quote or a reference to another document in the Administrative Record, we are trying to provide a reference to the original “primary source” document also.

submitted by Lawrence. CP 151. Finding #5 of the City's Final Decision fails to make mention of this⁷.

C. FIRST CITY COUNCIL PROCEEDINGS.

Applicant, unhappy that it could lose a developable lot, then in a letter from Mr. Howsley, applicant's attorney, introduced copious new evidence into the record before the City Council, including, but not limited to, new Wetlands expert testimony, new information from Department of Ecology and CTED and new information regarding the Washington Fish and Wildlife Report. CP 152.⁸ The City Council, without hearing argument from any side, and over the objection of Lawrence, accepted this new evidence from applicant's attorney, Mr. Howsley, and remanded this case to the Planning Commission to review applicant's new information. The transcript of the City Council's meeting of November 21, 2005 says:

Dennis: With that, any questions of staff: I would... we have had, I think, appeals from both sides on this decision. You guys have received information, some of which in talking with out City Attorney, was deemed as adding to the record and this is a closed hearing. We should only be considering the record from the Planning Commission. So if counsel wishes to consider the information that has been brought forward, I would ask that council consider remanding this

⁷Administrative Record AB, Finding #5.

⁸See also, Administrative Record C.1.e (primary source).
APPELLANTS' OPENING BRIEF 8

back on that specific... those specific issues to the Planning Commission. Questions from council?

Female: If that be the case, then I would make that motion that it be remanded back to the Planning Commission for reconsideration of the new information that has been introduced into the record.

Female: Second

Dennis: Wow! You guys all... It's been moved by Kufeldt-Antle, seconded by Dietzman that the Hancock Springs Preliminary Plat be remanded back to the Planning Commission for consideration of the additional information brought forward on the wetlands. I believe that is the new information that was brought forward. And habitat. All those in favor. (All ayes) Opposed? (No nays). Thank you. (Transcript at 86 - 87) CP 152-3. (Emphasis added)⁹

No reference to this taking of outside evidence or the objection of Lawrence is found in Finding #6.¹⁰

D. PLANNING COMMISSION SECOND HEARING.

The Planning Commission, at their second hearing was instructed to hear applicant's new evidence and was not allowed to hear Lawrence's arguments on any other issues despite the notice of hearing saying it was a fully open record hearing.

MacPherson: We're here on the remand. This was in front of the Planning Commission initially on October 18. There was

⁹See Administrative Record, Transcript 86-87 (primary source).

¹⁰See Administrative Record, AB, Finding #6.
APPELLANTS' OPENING BRIEF 9

a record made... and the Planning Commission made a recommendation and sent it on to council and I wasn't present at council but apparently the motion... kind of right at the outset was to remand this back to the Planning Commission on issues relating to the wetland report and habitat issues only. So the wildlife and wetlands. The Notice of Hearing that went out indicated that it was a remand with an open public record. So there's kind of... some conflict there. What we have in front of us as far as the actual minutes of council and from reviewing the tape, indicate that it was remanded back to the Planning Commission for consideration of the information brought forward on the wetland and habitat issues. And so given that that... we're not really in a position at the Planning Commission level to really discern council's intent if we need to go with exactly what it says. This is what council remanded to us... back to us. The specific issues wetland and habitat issues only. And so I understand we have some additional information on those two issues only that you can consider and you're gonna make another recommendation... you can revise your conditions and you can forward it back up to council for their determination. But it should be limited to just those two issues because that was the motion that was in front of council and that was the specific remand issues that are in front of you here today. (Transcript 87 - 88). CP 153¹¹ emphasis added.

John Karpinski for Lawrence objected, stating:

First of all, I object, for the record, of any introduction of any new evidence. I've sent out a legal memo that says that I don't think there's legal authority to do that.

I object, if new evidence is going to be introduced, only partially re-opening the record on the two issues. There's certainly other issues like the trees and the geologicals stability that we never got a chance to even talk

¹¹See also, Administrative Record, Transcript 87-88 (primary source).
APPELLANTS' OPENING BRIEF 10

about at the council. That just got kicked back to you without any discussion.

And third, if we're gonna be talking about the new documents that came in today that just got handed to me as I walked into the room tonight, that we're gonna need more time to analyze the impacts of these, but I'll do the best that I can to give you my comments today on those documents. (Transcript at 92 - 93) CP 153¹², emphasis added.

This did not give Lawrence the right to submit additional information on hydrogeological and other issues. The Lawrences' request for a Continuance was also denied.

The applicant proposed a plan that would hold two wetland lots for later approval¹³.

The Planning Commission then approved removing two lots containing a majority of the site's filled wetlands from the plat, without future development options as per Lawrence's request. See, e.g., CP 63. (Removal of Lots 10 & 11).

E. CITY COUNCIL SECOND HEARING.

The applicant objected to this permanent removal of the two lots.

Third, we ask that you overturn the planning commission recommendation that the proposed fill be reduced by two lots

¹²See Administrative Record, Transcript 92-93 (primary source).

¹³Administrative Record, C.1.f
APPELLANTS' OPENING BRIEF 11

in accordance SEPA mitigated determination of non-significance. This would approve the subdivision as shown by the applicant in its August 19, 2005 submittal.¹⁴

Then withdrew the objection.¹⁵ The two lot reduction reduced the wetlands fill from 0.47 acres to 0.09 acres, an 81% reduction¹⁶.

The City Council at their meeting of January 17, 2006, again accepted new additional evidence - this time expert testimony from applicant's landscape architect (Transcript at 134 - 136)¹⁷ and applicant's geotech, (Transcript at 137)¹⁸ and approved the development, CP 156, without Findings and Conclusions¹⁹.

We filed our Land Use Petition on January 20, 2006. CP 3, et seq. The City of Camas then withdrew their Notice of Decision of January 18, 2006, CP 98, and issued a new decision, this time with "findings" on March 6, 2006²⁰. Our Second Amended Land Use Petition followed. CP 84, et seq.

¹⁴Administrative Record, C3.

¹⁵Administrative Record, C5.

¹⁶ Administrative Record, Compare Exhibit 0-12 to Exhibit C.1.f.

¹⁷ Administrative Transcript pages 134 - 136 (primary source).

¹⁸Administrative Transcript page 137 (primary source).

¹⁹Administrative Record B-3

²⁰Administrative Record, AB.
APPELLANTS' OPENING BRIEF 12

IV. ARGUMENT.

ASSIGNMENT OF ERROR NO. 1: DID THE CITY OF CAMAS ERR WHEN IT CONCLUDED A DEVELOPER COULD “PRESERVE EXISTING SIGNIFICANT TREES” UNDER CMC 17.19.030A(2) BY CUTTING THEM DOWN AND REPLACING THEM WITH SAPLINGS?

ISSUE 1. CAMAS CODE REQUIRES MAKING “EVERY REASONABLE EFFORT” SHALL BE MADE TO ‘PRESERVE EXISTING SIGNIFICANT TREES’.

Camas has substantial standards for the preservation of trees it deems significant. CMC 17.19.030A(2) states:

Vegetation. In addition to meeting the requirements of CMC Chapter 18.31, Tree Regulations, “every reasonable effort shall be made to preserve existing significant trees and vegetation, and integrate them into the land use design.” (Emphasis added.)

This ordinance is to be construed as a “minimum standard” under CMC 17.19.010, Applicability, which says:

17.19.010 Applicability.
The standards set forth within this chapter are minimum standards applicable to land development. Based on the complexity or circumstances of the project or site conditions location (e.g. critical areas), the decision maker may require a land development to be designed to exceed the minimum standards or impose conditions deemed in the public interest. (Ord. 2443 § 2 (Exh. A (part)), 2006, emphasis added).

The key words here are every, preserve and existing. Does the proposal make “every” reasonable effort? Does the Plan “preserve” “existing” trees?

ISSUE 2. DEVELOPER HERE PROPOSES TO CUT 80% OF THE “SIGNIFICANT” TREES.

How does the project meet the “every” reasonable effort test?

What is “every” reasonable effort? “Every” is defined by its common meaning *Mall Inc. v. City of Seattle*, 108 Wn.2d 369, 739 P.2d 668 (1987).

The dictionary definition of “every” means:

eve-ry (ev-ree) *adj.* 1. Each single one without exception, *enjoyed every minute*. 2. Each in a series, *went visiting every fourth day*. E. All possible, *she will be given every care*. **every other day or week**, etc. with one between each two selected. ▷ See the note under **everyone**. (Bold, etc. in original)

So, what facts in the record show that the applicant made “each single one without exception” reasonable effort?

- The Tree Plan proposes to cut 80% of the on site significant trees. CP 136²¹. We originally estimated the loss at 125 of 150²². But the applicant concedes to a loss of 109 of 136 or 80%.²³

- Did not alter a single building envelope to save a single tree. CP 135.

- Allows trees to be cut as large as 54" in diameter. CP 136.

²¹Administrative Record, D.3.a, Revised Tree Survey of October 18, 2006.

²²See footnote 2.

²³See footnote 3.

- Did not even require all trees outside of building envelopes on proposed lots to be saved from cutting on our super-imposed map of building envelopes and saved trees. *Id.*, CP 183.

- The proposed lot envelopes were set at the property setbacks, the maximum allowed size. CP 19, C4 at 5, 13.²⁴ The lots averaged 9,623 square feet²⁵, but the Code only requires a 1,600 square foot building envelope²⁶. The minimum lot size for this zone is 7,000 square feet, CP 131, ¶5.

Essentially, we believe little or no effort was made by the developer, “reasonable” or not, to protect significant trees, instead of “every” reasonable effort. Only six small patches of trees are preserved, some as small as a single tree.²⁷

²⁰Administrative Record, C4 pages 5 & 13.

²⁵Administrative Record, F6, page 5.

²⁶ CMC 17.19.030 3. Building Envelopes. No lot shall be created without a building envelope of a size and configuration suitable for the type of development anticipated;

a. For single-family detached housing, a suitable size and configuration generally includes a building envelope capable of siting a forty-foot by forty-foot square dwelling within the building envelope.

(40' x 40' = 1,600 square feet).

²⁷Administrative Record, C4, page 10, Exhibit “A”.

This mandatory requirement (“every reasonable effort shall be made”) has not been implemented here. CMC 17.19.030A(2). The applicant concedes 109 to 136 of the significant trees, 80%, will be cut!²⁸ As shown in the Revised Tree Plan²⁹, former Lots 14, 15 and 16³⁰ have dozens of significant trees, yet only a few trees will be preserved. (Now called Lots 14, 13, & 12, see CP 181). Likewise, former Lots 2, 3, 4, 5, 6, and 7, CP 182, all contain significant trees that could easily be preserved, but were inexplicably slated for destruction by the developer. *Id.* (Those numbers did not change, see CP 181).

The developer did not even protect all the trees outside of the existing building envelopes! Compare CP 183 with CP 182. Nor did the developer shrink any of the oversized building envelopes to preserve any trees, we believe is a proper reading of “every reasonable effort” of the City.

²⁸See footnote 3.

²⁹See footnote 15.

³⁰Please note the lots were re-numbered when we saved two wetland filled lots from development. See Administrative Record, C4, Exhibit “G”.
APPELLANTS’ OPENING BRIEF 16

The City staff's original Staff Report agreed that these significant trees were not saved, and this constituted a Code violation. As the Camas Staff Report³¹ states:

To be in full compliance, the applicant *must revise their plan to... retain significant trees.* (Emphasis added.)

Also, The applicant fails to propose alternative designed such as a reduction in the size, scope, configuration, lot count or density of the proposed lots to avoid sensitive areas, significant trees, and wildlife habitat. Id. at 5, emphasis added.

We therefore, respectfully request the Court reverse approval on this issue, and remand for requirement for “protecting” additional “existing” trees on originally configured Lots 2, 3, 4, 5, 6, 7, 14, 15 and 16 as shown above. The City's Decision was not based on substantial evidence and as will be shown below, was an erroneous application of law to fact, as well as a clear error of law under LUPA. A fuller discussion of the Standard of Review is found in §Issue 4, infra.

ISSUE 3. CAMAS ERRONEOUSLY CONSTRUES “PRESERVE EXISTING SIGNIFICANT TREES” TO ALLOW CUTTING THESE TREES AND REPLANTING WITH SAPLINGS.

Camas construes this Code as allowing the cutting down of existing trees and replanting different trees to meet the Code's definition of “preserve”

³¹Administrative Record F6 at 3.
APPELLANTS' OPENING BRIEF 17

“existing” trees. As the City of Camas stated in its Trial Court Brief at page

15:

“Vegetation. In addition to meeting the requirements of CMC Chapter 18.31, Tree Regulations, every reasonable effort shall be made to preserve existing significant trees and vegetation, and integrate them into the land use design.” CMC 17.19.030A(2) The ordinance thus does not go so far as outright prohibit the removal of trees, but establishes a standard by which to review the design of the subdivision. As with the wetlands ordinance, despite staff’s recommendation as to what constituted “reasonable effort”, it is ultimately up to the Council to make this call and deference must be given to the decision maker. With the extensive replanting scheme proposed by applicant¹ and other measures, the Council found that the mitigation measure were sufficient.

[¹Petitioner ignores the applicant’s tree replanting plan altogether. The applicant proposes replacing the 80 trees to be removed with replanting 102 new trees. AR Exhibit D-3-c. This undermines the argument that the loss of trees is a significant impact by providing mitigation for the trees that must be cleared. Petitioners’ position would make it virtually impossible to comply with the ordinance and remove the trees from proposed building sites, utility corridors and road networks. It is an inevitable fact that in the course of providing the required infrastructure to support modern subdivisions, trees will be removed. The City’s requirement to mitigate by replacement is reasonable and consistent with the City’s Tree Conservation ordinance. Emphasis added, footnote in original.]

Please note that under Camas’ existing Code, retaining one non-significant tree is worth two (2) newly planted saplings. CMC 17.19.030(F)(2) states:

2. The city council finds that the existing mature landscaping of trees, and shrubs provide oxygen, filter the air, contribute

to soil conservation and control erosion, as well as provide the residents with aesthetic and historic benefits. For these reasons, the city encourages the retention of existing trees that are not already protected as significant trees under the Camas Municipal Code. Generally, the city may allow the tree requirements under subsection (F)(1) of this section to be reduced at the request of the developer, by a ration of two new trees in favor of one existing tree, provided such trees have been identified on approved construction plans. (Emphasis added.)

Yet killing 80 “significant existing trees” were only worth 102 new saplings, less than a 2:1 ratio. Even if you can “preserve an existing” tree by killing it and planting another one, why do significant trees get less mitigation than non-significant trees? This is an error of law, application of law to fact, and substantial evidence.

ISSUE 4. REVIEWING COURT GAVE TOO MUCH “DEFERENCE” TO CAMAS’ ERRONEOUS INTERPRETATION UNDER LUPA.

Here, Camas’ actions are reviewed under the Land Use Petition Act, RCW 36.70C. et seq.

As *J.L. Storedahl & Sons, Inc. v. Cowlitz County*, 125 Wn.App. 1 (2005) 103 P.3d 802, 122 Wn.App. 1068, (2004), at 6 states:

Standard of Review

The Land Use Petition Act, chapter 36.70C RCW, governs judicial review of land use decisions. *HJS Dev., Inc. v. Pierce County, Dep’t of Planning & Land Servs.*, 148 Wn.2d 451, 467, 61 P.3d 1141 (2003) (citing *Chelan County v.*

Nykreim, 146 Wn.2d 904, 916-17, 52 P.3d 1 (2002)). 'A petition for review by the superior court constitutes appellate review on the administrative record before the local jurisdiction's body or officer with the highest level of authority to make the final determination.' *HJS*, 148 Wn.2d at 467; *see also Citizens to Preserve Pioneer Park v. City of Mercer Island*, 106 Wn.App. 461, 470, 24 P.3d 1079 (2001); RCW 36.70C.130(1), .020(1).

On review of a superior court land use permit decision, we stand in the same shoes as that court. *HJS*, 148 Wn.2d at 468 (citing *Citizens*, 106 Wn.App. at 470). We review the administrative decision on the record of the administrative tribunal, not the superior court record. *HJS*, 148 Wn.2d at 468 (citing *King County v. Boundary Review Bd.*, 122 Wn.2d 648, 672, 860 P.2d 1024 (1993)). We therefore review the record before the Board and review questions of law de novo to determine whether the facts and law supported the land use decision. *HJS*, 148 Wn.2d at 468; *see also City of Univ. Place v. McGuire*, 144 Wn.2d 640, 647, 30 P.3d 453 (2001); *Girton v. City of Seattle*, 97 Wn.App. 360, 363, 983 P.2d 1135 (1999), *review denied*, 140 Wn.2d 1007 (2000).

We contend the actions of the City here on the tree issue violates RCW 36.70C.130:

(b) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise;

(c) The land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court; and

(d) The land use decision is a clearly erroneous application of the law to the facts;

Therefore, we understand the Court of Appeals is not bound by the Trial Court's analysis and will look at this matter in the same capacity as the trial court. *Storedahl*, at 6. However, we anticipate a "deference" defense, so we present our arguments here.

The Superior Court found Camas' cutting down existing, significant trees was "preserving" their "existence", and was within the Council's reasonable deference. "As with respect to wetlands, deference should be given in interpretation of the City Council, the court finds no error in the City's finding." Memorandum Opinion at 9, (CP 199) Referring to *Waste Management of Seattle, Inc. v. Utils. & Transp. Comm'n*, 123 Wn.2d 621, 628, 829 P.2d 134 (1994) (where interpretation of legislation is ambiguous, the agency is given discretion).

However here, no party has argued the words "existing" or "preserve" were ambiguous giving the City discretion in its interpretation. Courts normally interpret words such as "preserve" and "existing" by the normal dictionary definitions. "Preserve" means: "to keep safe from injury; to save from danger; to keep in existence". Webster's English Dictionary. Cutting a tree down does not "preserve" it. If that was not clear enough, "existing" APPELLANTS' OPENING BRIEF 21

means: “to have an actual being” which obviously cannot occur if the tree has been cut down and disposed of. Webster’s English Dictionary.

The City does not have the discretion to define Code provisions to mean other than what the Code says. Under LUPA, the court may grant relief when the petitioner establishes that “[t]he land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise.” RCW 36.70C.130(1)(b).

Construction of a statute is a question of law and is reviewed *de novo*. *McTavish v. City of Bellevue*, 89 Wn.App. 561, 564, 949 P.2d 837 (1998). When a statute is unambiguous, construction is not necessary and the plain meaning controls. *McTavish*, 89 Wn.App. at 565, 949 P.2d 837. Where a statute is ambiguous, the agency's interpretation is accorded deference in determining legislative intent. *Waste Management of Seattle, Inc. v. Utilities & Transp. Comm'n*, 123 Wn.2d 621, 628, 869 P.2d 1034 (1994). Absent ambiguity, however, there is no need for the agency's expertise and deference is inappropriate. *Waste Management*, 123 Wn.2d at 628, 869 P.2d 1034. In the court lies the ultimate authority to interpret a statute. *Waste Management*, 123 Wn.2d at 627, 869 P.2d 1034. Because municipal ordinances are the

equivalent of a statute, they are evaluated under the same rules of construction. *McTavish*, 89 Wn.App. at 565, 949 P.2d 837.

Of course, agencies are permitted to fill in statutory gaps through rulemaking. *See State ex rel. Evergreen Freedom Found. v. Wash. Educ. Ass'n*, 140 Wn.2d 615, 634, 999 P.2d 602 (2000) (holding that agencies are permitted to fill in gaps and interpret a statute when it is ambiguous); *Hama Hama v. Shorelines Hearings Bd.*, 85 Wn.2d 441, 448, 536 P.2d 157 (1975). However, the courts have expressly limited this authority to clarifying ambiguities in a statute which necessitates gap-filling. In no case is an agency permitted to engage in statutory interpretation “to ‘amend’ the statute.” *Hama Hama*, 85 Wn.2d at 448, 536 P.2d 157. Moreover, agencies are not permitted to create exemptions that are not permitted by the statute: such efforts at statutory ‘construction’ are viewed with extreme skepticism.

In this case, there are no requirements in conflict, and the most reasonable interpretation of both ordinances can be given effect. *See City of Seattle v. State Dep't. of Labor and Indus.*, 136 Wn.2d 693, 698, 965 P.2d 619 (1998) (“Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.” (citations omitted)). There is thus nothing to interpret, and the plain language of both ordinances must be enforced.

It is beyond question that the City is bound by the ordinances as written. *See, e.g., Dykstra v. Skagit County*, 97 Wn.App. 670, 677, 985 P.2d 424 (1999) (local government entity's prior erroneous enforcement of a land use regulation does not foreclose proper exercise of authority in subsequent cases), *review denied*, 140 Wn.2d 1016, 5 P.3d 8 (2000). In *Clark County Natural Resources Council v. Clark County Citizens United, Inc.*, 94 Wn.App. 670, 677, 972 P.2d 941, *review denied*, 139 Wash.2d 1002, 989 P.2d 1136 (1999), the court explained:

Although a court will defer to an agency's interpretation when that will help the court achieve a proper understanding of the statute, 'it is ultimately for the court to determine the purpose and meaning of statutes, even when the court's interpretation is contrary to that of the agency charged with carrying out the law.' Here, in our view, the Board misread the statute and exceeded its authority. If we were to defer to its ruling, we would perpetuate, not correct, its error. Under these circumstances, we hold that deference is not due.
(Citations omitted).

In this case, the City's interpretation violates basic statutory interpretation principles and would also raise concerns of fundamental fairness in, at the least, comprehensive planning. *See, Faben Point Neighbors v. City of Mercer Island*, 102 Wn.App. 775, 781-782, 11 P.3d 322 (2000) (rejecting City's interpretation where inequities would result).

ASSIGNMENT OF ERROR NO. 2: CAMAS CITY COUNCIL TWICE TOOK EVIDENCE OUTSIDE OF THE RECORD PRESENTED TO THE PLANNING COMMISSION IN VIOLATION OF CAMAS CODE AND THE *MARANANTHRA MINING V. PIERCE CO.*, 59 WN.APP 795, 801 P.2D 985 (1990) LINE OF CASES.

ISSUE 1. CAMAS CODE LIMITS CITY COUNCIL TESTIMONY TO THAT “PRESENTED TO THE PLANNING COMMISSION”.

CMC 18.55.180 describes the hearings process for Type III applications:

F) The City Council, in a closed record meeting, considers the Planning Commission record and makes the final decision on the matter. The City Council may approve, with conditions, deny, or remand the matter for further specific consideration. (Emphasis added.)

In addition, the Camas Municipal Code, CMC 18.55.200C provides as follows:

C) Type III - Planning Commission Recommendations Are Not Appealable. However, any party may submit written arguments based on the record to refute the Planning Commission recommendation no later than 7 days prior to the City Council meeting on the matter. (Emphasis added.) (Camas Response Brief at page 4)

Thus, even though the Planning Commission is making a reconsideration, the

City Council review is a closed record review.

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ISSUE 2. CAMAS CITY COUNCIL ILLEGALLY TWICE TOOK TESTIMONY NOT “PRESENTED TO PLANNING COMMISSION”.

At the end of the first Planning Commission hearing, applicant, apparently unhappy that it could lose a developable lot, introduced copious new evidence into the record before the City Council, including, but not limited to, new expert testimony on wetlands, hydrology, water quality and wildlife habitat from Mr. Bieger, more Washington Fish and Wildlife testimony, new information from Department of Ecology, and new information regarding the Washington Fish and Wildlife Report. CP 156.³²

At the first City County Hearing, the City Council, without hearing argument from any side, and over the objection of Lawrence³³. (*See also*, CP 153), accepted this new evidence from the applicant and remanded this case to the Planning Commission to review only the applicant’s new information.

The City Council’s Transcript says:

Hancock Springs Preliminary Plat:

Dennis: With that, any questions of staff: I would... we have had, I think, appeals from both sides on this decision. You guys have received information, some of which in talking with out City Attorney, was deemed as adding to the record and this is a closed hearing. We should only be considering

³²See Footnote 8 (primary source).

³³Administrative Record, C.4, Exhibit B.
APPELLANTS’ OPENING BRIEF 26

the record from the Planning Commission. So if counsel wishes to consider the information that has been brought forward, I would ask that council consider remanding this back on that specific... those specific issues to the Planning Commission. Questions from council?

Female: If that be the case, then I would make that motion that it be remanded back to the Planning Commission for reconsideration of the new information that has been introduced into the record.

Female: Second

Dennis: Wow! You guys all... It's been moved by Kufeldt-Antle, seconded by Dietzman that the Hancock Springs Preliminary Plat be remanded back to the Planning Commission for consideration of the additional information brought forward on the wetlands. I believe that is the new information that was brought forward. And habitat. All those in favor. (All ayes) Opposed? (No nays). Thank you. (Transcript at 86 - 87) CP 152-3³⁴, emphasis added.

This Council acceptance of new evidence not before the Planning Commission to the benefit of the applicant and to the burden of Lawrence continued at the second City Council hearing.

The City Council at their second meeting of January 17, 2006, accepted new expert testimony from applicant's geotech, in the middle of deliberations, and allowed applicant to directly contradict his study's

³⁴Administrative Record, Administrative Transcript at 86-87 (primary source).

hydrological conclusions on whether wet weather construction should be allowed. CP 156, CP 194³⁵

Of course, no right to cross examination was granted to us on this dramatic contradiction in this geo-hydrological testimony either.

Both of these actions violated the law to the detriment of Lawrence.

RCW 36.70C.130(a):

The body or officer that made the land use decision engaged in unlawful procedure or failed to follow a prescribed process, unless the error was harmless;

Marananthra Mining v. Pierce Co., 59 Wn.App 795, 801 P.2d 985 (1990), *State ex rel. Lige & Wm. B. Dickson Co. v. Pierce Co.*, 65 Wn.App 614, 829 P.2d 217, Rev. Den. 120 Wn.2d 1008 (1992), *East Fork Hills Rural Ass'n v. Clark County*, 92 Wn.App 838, 965 P.2d 650 (1999), *Weyerhaeuser v. Pierce Co.*, 124 Wn.2d 26, 873 P.2d 498 (1994). City Findings 5 and 6 are inaccurate for the reasons stated above. Finding 7 is inaccurate in so far as applicant originally objected to the two lot wetland protection³⁶, and then withdrew that objection³⁷.

³⁵Administrative Record, Administrative Transcript at 137 (primary source).

³⁶Administrative Record C3, 1/9/2006 Howsley letter.

³⁷Administrative Record C5, 1/13/2006 Howsley letter.
APPELLANTS' OPENING BRIEF 28

ISSUE 3. THE ILLEGAL TESTIMONY/PROCEDURE WAS NOT HARMLESS ERROR - PROJECT FAILS TO MEET STANDARDS FOR HYDROLOGICAL SAFETY.

A) PROJECT VIOLATES RCW 58.17.110 AND SUBSTANTIVE SEPA FOR ITS HYDROGEOLOGICAL IMPACTS.

1) Law. Supports mitigation if project causes significant hydrological impacts.

a) RCW 58.17.110.

Approval or disapproval of subdivision and dedication --
Factors to be considered -- Conditions for approval -- Finding --
Release from damages.

(1) The city, town, or county legislative body shall inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication. It shall determine: (a) If appropriate provisions are made for, but not limited to, the public health, safety, and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds, and shall consider all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) whether the public interest will be served by the subdivision and dedication.

(2) A proposed subdivision and dedication shall not be approved unless the city, town, or county legislative body makes written findings that: (a) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including

sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) the public use and interest will be served by the platting of such subdivision and dedication. If it finds that the proposed subdivision and dedication make such appropriate provisions and that the public use and interest will be served, then the legislative body shall approve the proposed subdivision and dedication. Dedication of land to any public body, provision of public improvements to serve the subdivision, and/or impact fees imposed under RCW 82.02.050 through 82.02.090 may be required as a condition of subdivision approval. Dedications shall be clearly shown on the final plat. No dedication, provision of public improvements, or impact fees imposed under RCW 82.02.050 through 82.02.090 shall be allowed that constitutes an unconstitutional taking of private property. The legislative body shall not as a condition to the approval of any subdivision require a release from damages to be procured from other property owners. (Emphasis added.)

b) Substantive SEPA

In addition to SEPA's requirements of thorough and careful study of environmental impacts, SEPA also has substantive provisions that authorize local governments to impose mitigating conditions for significant environmental impacts. These substantive provisions are based not only on SEPA's fundamental and inalienable right to a healthful environment, RCW 43.21.020(3) but also SEPA's directives that the policy, regulations, and laws of the State of Washington be interpreted and administered in accordance with SEPA policies. RCW 43.21C.030(1), WAC 197-11-032(2)(a). This requirement includes municipalities. Id. SEPA also requires methods and

APPELLANTS' OPENING BRIEF 30

procedures “which will ensure the presently unqualified environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations”. *Save Our Rural Environment v. Snohomish Co.*, 99 Wn.2d 363, 372, 662 P.2d 816 (1983). In *Victoria Tower Partnership v. Seattle, Victoria Tower II*, supra, the court observed that “SEPA is not a substitute for local zoning decisions, but overlays local ordinances and must be enforced even when a particular use is allowed by local law or policy”. *Victoria Tower II*, supra at 384.

If there was any question regarding the strength of SEPA’s mitigating measures, the landmark Washington Supreme Court decision of *Polygon Corp. v. City of Seattle*, 90 Wn.2d 59, 570 P.2d 1309 (1978), made it clear. In *Polygon*, a unanimous Washington Supreme Court upheld a denial of a multistory apartment complex on Queen Anne Hill in Seattle, due to its size, scale, shadow, view, property value, traffic noise and cumulative impacts, despite the building being permissible under Seattle’s zoning ordinances.

Although the Washington Legislature in 1983 passed standards and criteria for the exercise of substantive SEPA authority, substantive SEPA is alive and well. In *West Main Associates v. Bellevue, (West Main II)*, 49 Wn.App 513, 742 P.2d 1266 (1987), the Washington Court of Appeals

upheld a denial of a commercial building in Old Bellevue due to its scale, traffic, cumulative, scenic, shadow and air pollution impacts.

Substantive SEPA authority must be based on Substantive SEPA Policies. Camas has adopted Substantive SEPA Policies. They are:

CMC 16.28.050 Adopted policies.

The city designates and adopts by reference the following policies as the basis for the city's exercise of authority pursuant to Sections 16.28.020 through 16.28.060:

A. The city shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs and resources to the end that the state and its citizens may:

1. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
2. Assure for all people of Washington safe, healthful, productive and aesthetically and culturally pleasing surroundings;
3. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
4. Preserve important historic, cultural and natural aspects of our national heritage;
5. Maintain, wherever possible, an environment which supports diversity and variety of individual choice;
6. Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
7. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

B. The city recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment. (Prior code § 10.32.210(d))

These follow the statutory language of SEPA, and the basis for SEPA substantive mitigation has been upheld in *West Main Associates v. Bellevue*, 49 Wn.App. 513, 742 P.2d 1266 (1987) [*West Main II*].

The City of Camas here, therefore, clearly has the right to adequately mitigate probable significant adverse environmental impacts. Under procedural SEPA, the City has the duty to review the applicant's proposal and the effect of applicable law to determine whether individually or collectively significant impacts exist. Substantively, the City has the authority and duty to impose additional mitigating measures to rectify significant environmental impacts. Here, as will be shown below, the project has significant hydrogeological environmental impacts warranting additional Substantive SEPA mitigation.

2) Facts.

At the Planning Commission hearing, Mr. Lawrence testified that an underground stream goes through his property now, and parts run through the middle of his home, and this much excavation next door could make his home unliveable. CP 108. This presence of subsurface water flows was confirmed by applicant's wetland expert, who confirmed "high rate of underground flows in the subsurface" caused springs on the site. CP 49.

The Wetlands Report also noted an excavated drainage system “intercepting groundwater throughout the site.” CP 50

Applicant’s geotech testified the site was very wet, even the non-wetland portions. They stated at CP 35.

“The primary feature of concern at the site is the moisture sensitivity of the underlying sandy and silty clay silt subgrade soil materials.” (Emphasis added.)

The site is so wet that:

“...we recommend that all planned structural improvement areas for residential homesites and/or pavements be stripped and cleared of any... vegetation, topsoil materials,... present at the time of construction. In general, we envision that about 12 to 18 inches of topsoil stripping may be required to remove existing topsoil materials”. Id.

Why is the expert’s proposing to strip almost the entire site of existing vegetation and topsoil? Their experts say:

The primary feature of concern at the site is the moisture sensitivity of the underlying sandy and clayey silt subgrade soil materials. CP 35 Emphasis added.

“In regard to the moisture sensitivity of the underlying sandy and clay silt subgrade soils, these soils can rapidly deteriorate under wet and/or inclement weather conditions”. CP 35.

Please note these soils will all be removed and disposed of. CP 35. Of course, this impact is not disclosed in the Environmental Checklist. CP 24.

Please note the Environmental Checklist also says “most of the site fill will be redistributed from within the site”. CP 24.

Applicant’s experts, being representative of the applicant, asked for the following Conclusions and Recommendations in their report.

In this regard, we recommend that all aspects of the site grading and foundation preparation work be scheduled for the drier summer months which are typically June through September. Id.

We recommend the Redmond & Associates be retained to provide construction monitoring and testing services during all site earthwork and foundation excavation operations. CP 39.

Even these mild recommendations were not recommended for approval by staff.³⁸

As a result, licensed geologist, Martin S. Burke and Associates stated at Page 4:

Due to the current lack of understanding of the hydrodynamic forces at the site; the impacts of the utilities; and the impacts of the proposed development on the groundwater, wetlands, springs, headwaters, and surrounding properties, the final outcome of the proposed development is difficult to predict. What is not difficult to predict is that, whatever impacts result, they would most likely be irreversible and detrimental

³⁸See footnote 5.

to the wetlands and headlands environment present at the site.
CP 109³⁹, emphasis added.

We asked for further SEPA mitigation/study of this issue before approval and this issue to be reversed. Lawrence made a minimum request that there at least be no wet weather excavation because of the instability of the subsoils, as recommended by the applicant's own geotech⁴⁰. CP 19, C4 at 4.

B) LIMITING REMAND TO APPLICANT'S ISSUE ON FIRST CITY COUNCIL HEARING AND ALLOWING APPLICANT'S GEOTECH TO CONTRADICT HIS OWN REPORT, IN THE MIDDLE OF COUNCIL DELIBERATIONS, AND WITHOUT CROSS-EXAMINATION, WAS PREJUDICIAL.

Lawrence could easily have won on the hydrogeological issue but for the illegal new evidenced, especially if allowed to cross examine their expert about his pliable opinions, it is very possible we could have reversed the hydrogeological issue like we won the wetland issue before. His report said the most important issue was to keep the subsoil dry. CP 35. But if it costs the developer money... his opinion apparently changed. Therefore, the error was prejudicial.

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³⁹Administrative Record, K6 at 4 (primary source).

⁴⁰Administrative Record, C4 at 4.
APPELLANTS' OPENING BRIEF 36

ASSIGNMENT OF ERROR 3. DID CITY OF CAMAS ERR IN FAILING TO MAKE ADEQUATE FINDING FOR FACTUALLY CONTESTED ISSUES UNDER *WEYERHAEUSER, ET AL.*

Camas failed to provide sufficient Findings of Fact, Conclusions of Law, or analysis to provide a basis for a contested decision under *Weyerhaeuser v. Pierce Co.*, 124 Wn.2d 26, 873 P.2d 498 (1994). “Findings” appear only after the City saw our lawsuit and withdrew its decision. CP 98⁴¹. Many of the “findings” in the City’s 2nd “final decision” are really conclusions of law and the resolution contains no “savings” clause. See “Findings” #14.⁴²

We appeal each of these Findings of Fact as not supported by substantial evidence. We hereby object to Findings #5, 6, 7 regarding procedure (See Assignment of Error 2), #14 and 17 on the tree issue (See Assignment of Error 1), 15, 16, and 18 on the hydrogeological issue (See Assignment of Error 2, Issue 3). Although some of the wetland findings were inaccurate, since we substantially prevailed on that issue, we are not objecting to erroneous findings here.

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⁴¹Administrative Record, B3, compare to AD (original sources).

⁴²Administrative Record, AB.

The original draft Staff Report called for denial, CP 134, and the Final Staff Report appears to have been politically changed for approval. For a good example of the changes made, see CP 138.

The purpose of Findings is to, as *Weyerhaeuser* states, provide a basis for the contested decision.

...The purpose of findings of fact is to ensure that the decisionmaker “has dealt fully and properly with all the issues in the case before he [or she] decides it and so that the parties involved” and the appellate court “may be fully informed as to the bases of his [or her] decision when it is made.”

...Statements of the positions of the parties, and a summary of the evidence presented, with findings which consist of general conclusions drawn from an “indefinite, uncertain, undeterminative narration of general conditions and events”, are not adequate.

...The findings and conclusions are clearly inadequate to determine the basis for the hearing examiner’s decision upholding the adequacy of the EIS. While a finding recites that the project is a private project, there is no clue as to the basis for that conclusion. There is also no way to tell how the hearing examiner concluded the EIS was adequate - he never addressed whether the EIS contains a proper discussion of alternatives to the proposed site, as required, yet that issue involves a major challenge to the adequacy of the EIS.

Weyerhaeuser at 35, 36, 37. For example, how does the applicant cutting down approximately 80% of the significant trees on the site, and apparently not moving a single building envelope smaller to save a tree, meet the City’s standards to make “every” reasonable effort to “preserve existing” significant

trees and vegetation? See Finding #14.⁴³ Again, the Findings do not describe why an 80% loss is acceptable, much less meet the “every” or “preserve existing” tests. Id.

Nor did the Findings reconcile the hydrological issues on the site that caused Applicant to have to hire a second geotech to refute his first geotech, much less refuting the geotech hired by Petitioner in this case. Is there “unusual subsurface hydrological phenomena known as “piping” going on on-site? CP 50. One of applicants experts says yes, one says no. Aren’t major underground water flows in this site something to be looked at very completely? Where is the Finding on that? And their geotech will apparently contradict their own testimony for the asking. CP 156, CP 194.⁴⁴ Build or no build in wet weather? How was that important issue resolved? How were the discrepancies between these three hydrological experts’ studies resolved? There is no Finding that describes that. Thus, the Findings were inadequate under *Weyerhaeuser*.

VI. CONCLUSION.

We respectfully request the Court:

⁴³Administrative Record AB.

⁴⁴See footnote 17 & 18, primary source.
APPELLANTS’ OPENING BRIEF 39

1. Reverse City of Camas approving this project, on significant tree and hydrogeological hearing issues, revising Decision Parts 1 & 2, and Findings (5, 6, 7, 14, 15, 17, & 18).

2. Remand to the City of Camas to fully enforce all terms of the significant tree code.

3. Remand to the City of Camas for a fully open factual hearing on all hydrogeological issues.

VII. APPENDIX.

Table of Contents for City of Camas' Administrative Record.

DATE: May 7, 2007.

Respectfully submitted,



Attorney for Appellants Lawrence
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360-690-4500
WSBA #13142

Appendix

HANCOCK SPRINGS (SUB05-03)

TAB. DOCUMENTS	
A.	Application Materials
1.	January 31, 2005 Landscape Plan / Planting Plan
2.	February 9, 2005 internal circulation memo with staff list requesting comments on completeness, or deficiencies to be addressed prior to scheduling a hearing
3.	March 8, 2005 letter to Applicant stating Incompleteness and requesting additional information
4.	March 16, 2005 letter to Mr. Marty Snell, Planning Manager, from Mr. James Howsley
5.	April 14, 2005 letter to Mr. Carothers, Public Works, from Mr. James Howsley
6.	Copy of April 14, 2005 letter to Mr. Carothers sent to Mr. Larry Browning with attached May 5, 2005 response from Mr. Carothers to Mr. Howsley
7.	May 5, 2005 letter to Mr. James Howsley, from Mr. Carothers
8.	May 19, 2005 letter to Mr. Shane McGuffin, Private Capital, LLC (representing applicant), from Mr. Kevin Grosz, The Resource Company
9.	May 27, 2005 letter to Mr. James Howsley from Mr. Daniel Redmond, Geotechnical Engineer for Redmond & Associates (with cc to Mr. Carothers)
10.	June 6, 2005 letter to Mr. Snell from Mr. Kimbal Logan of Private Capital, LLC
11.	June 7, 2005 letter to Mr. Carothers from Mr. Howsley (attached to email correspondence from Mr. Howsley to Mr. Carothers dated June 23, 2005, and email correspondence to Mr. Howsley from Mr. Carothers dated June 27, 2005
12.	August 8, 2005 letter to Mr. Carothers from Mr. McGuffin
13.	Preliminary Plat: revised curve radii March 28, 2005, revised lots 14-16 August 17, 2005, removed cascade street improvement August 18, 2005
B.	Preliminary Approval
1.	October 28, 2005 email communication from Staff re Minutes of Planning Commission on SEPA Appeal Decision
2.	Request for Items on Council Agenda for January 3, 2006
3.	Notice of Final Decision dated January 18, 2006 to Parties of Record from Mr. Phil Bourquin, Interim Planning Manager and Ms. Sarah Fox, Planner
4.	Retraction of Final Notice dated January 26, 2006 to Parties of Record from Mr. Bourquin and Ms. Fox.
C.	City Council January 3, 2006 and January 17, 2006
1.	Hancock Springs Preliminary Subdivision Exhibits List
a.	Revised Staff Report
b.	Tree Survey dated October 18, 2005
c.	Letter to Camas Public Works from Applicant dated October 31, 2005
d.	Letter to Mayor and City Council from Mr. Karpinski dated October 31, 2005
e.	Letter to Mayor and City Council from Applicant dated November 14, 2005

*Wetland plan
of Dec 19 2005
2nd
copy
Barry*

	f.	Preliminary Wetland Mitigation Plan dated December 19, 2005	
	g.	Letter to Resource Company from Department of Fish & Wildlife dated December 19, 2005	
	2.	Request for items on City Council Agenda dated January 3, 2006 from Ms. Fox	
	3.	Copy of letter submitted to City Council dated January 9, 2006 from Mr. Howsley	
	4.	Copy of fax submitted to City Council dated January 10, 2006 from Mr. Karpinski	
	5.	Copy of letter submitted to City Council via electronic mail dated January 13, 2006 from Mr. Howsley	X
	6.	Request for items on City Council Agenda dated January 17, 2006 from Ms. Fox	
	7.	Copy of "How Ecology Regulates Wetlands" Publication No. 97-112 from Washington State Department of Ecology, made available to City Council	X
	8.	Copy of "Critical Areas Assistance Handbook" from the Washington State Department of Community, Trade, and Economic Development, made available to City Council	X
D.	Planning Commission December 20, 2005		
	1.	September 9, 2005 letter to Planning Commission from Mr. Karpinski re Lawrence SEPA Appeal	
	2.	Notice of Special Public Hearing mailed to Parties of Record December 2, 2005 published December 6, 2005 for Hearing held December 20, 2005	
	3.	December 13, 2005 cover letter to Planning Commission from Ms. Fox with attached Exhibits:	
	a.	Notice of Special Hearing (Preliminary Plat Map attached)	
	b.	Revised Staff Report	
	c.	Revised Tree Survey dated October 18, 2005	
	d.	October 31, 2005 letter to Camas Public Works from Applicant	
	e.	October 31, 2005 letter to Mayor and City Council from Mr. Karpinski	
	f.	November 14, 2005 letter to Mayor and City Council from Applicant	
	4.	Hancock Springs Preliminary Plat - Phases 1 and 2 with Revised Curve Radii, Revised Lots 14-16 and Removed Cascade Street Improvement - received December 19, 2005	
E.	City Council November 21, 2005 (Remanded)		
	1.	May 8, 2005 letter of Incompleteness to Applicant from Mr. Bourquin	
	2.	May 19, 2005 letter to Mr. McGuffin from Mr. Grosz	
	3.	September 21, 2005 letter to Planning Commission from Ms. Jan Hancock	
	4.	October 11, 2005 letter to Planning Commission from Mr. Howsley (in response to Lawrence SEPA Appeal with attached exhibits A through C)	
	5.	October 12, 2005 Memorandum to Planning Commission from Mr. Shawn MacPherson of Knapp, O'Dell and MacPherson	
	6.	October 19, 2005 Revised Staff Report - Hancock Springs Preliminary Subdivision Application	
	7.	October 31, 2005 fax to Camas Public for distribution to City Council from Mr. Karpinski with attached exhibits A and B	

	8.	October 31, 2005 letter to City Council from Mr. Howsley with attached memo to Mr. Howsley from Mr. Brian Bieger of The Resource Company, Inc.
	9.	Hancock Springs Subdivision – Planning Commission Special Conditions of Approval for Hancock Springs Preliminary Subdivision
F	Planning Commission October 18, 2005	
	1.	Vacant Land Model dated March 29, 2005
	2.	Letter to Planning Commission from Mr. Karpinski re the Lawrence SEPA Appeal dated September 9, 2005, with attached VMC Section 20.777.090
	3.	September 21, 2005 letter to Planning Commission from Ms. Jan Hancock
	4.	October 10, 2005 Memorandum to Planning Commission from Mr. Snell
	5.	October 11, 2005 letter to Mr. Snell from Mr. Howsley, with attached Applicant Response to Lawrence SEPA Appeal
	6.	Staff Report – Hancock Springs Preliminary Subdivision Application dated October 11, 2005 (later revised per October 18, 2005 Hearing)
	7.	October 12, 2005 Memorandum to Planning Commission from Mr. MacPherson
	8.	October 18, 2005 letter to Mr. Snell (cc Mr. McGuffin) from Mr. David Sacamano of Illahee Group, Inc. (copies also submitted to Planning Commission)
	9.	Color map of Hancock Springs proposed subdivision and surrounding area
	10.	Existing topography map showing parcels of proposed subdivision
	11.	Street, Storm Drain & Water Plan and Profile
	12.	Property report on parcel 127356-000
	13.	Color map of Hancock Springs proposed subdivision and surrounding area

G Memos/Notices/Staff Report	
1	Notice of Public Hearing (Sent to Post Record 10-4-05)
2	Email correspondence: Brian Berger to Shane McGuffin dated 11-04-05
3	Correspondence from Brian Berger to Shane McGuffin dated 11-03-05
4	Notice of Final Decision, mailed 03-09-06
5	Affidavit of Publication from Post Record, published 09-20-05
6	Notice of Application and Public Hearing, mailed 09-15-05- tentatively scheduled for 10-18-05
7	Notice of Application and Special Public Hearing, scheduled for 09-20-05
8	Correspondence from Phil Bourquin to Applicant, dated 03-04-05
9	Correspondence from Eric Day (Consultant Planner) to Applicant, dated 06-16-05 with attached Camas Municipal Code 18.31 regarding wetlands
H SEPA Appeal	
1	Plat Map: Sheet 1 of 3, dated 08-05
2	Email correspondence from Bob Sable of MacKay & Sposito (representing Applicant) to Sarah Fox, dated 09-13-05
3	DOE correspondence from Panjini Balaraju to Martin Snell, dated 09-09-05
4	Fax cover, sent to Bob Sable and James Howsley from Sarah Fox, dated 09-09-05
5	Copy of SEPA, dated 08-26-05
I Staff Notes	
1	Fax cover, sent to Shane McGuffin from Sarah Fox, dated 09-09-05
2	Inter-Office-Memorandum from Wes Heigh to Sarah Fox dated 09-12-05
3	Preliminary Plat, dated 08-19-05
4	Inter-Office-Memorandum from Wes Heigh to Eric Day and Phil Bourquin, dated 03-05-05
5	Email from Wes Heigh to Bob Sable and Henry Diaz dated 08-11-05, email from Bob Sable to "Curleigh" Carothers and Wes Heigh from Bob Sable dated 08-11-05, and email to Bob Sable from "Curleigh" Carothers dated 08-12-05
6	Email from Randy Miller, Fire Marshall, to Sarah Fox dated 08-24-05
7	Email from Bob Sable to Sarah Fox dated 08-11-05
8	Correspondence from Eric (Levision? -Operations Manager) to Sarah Fox, not dated
9	Draft copy of Staff Report dated 08-25-05 <i>get, WZ</i>
10	Draft copy of Staff Report dated 04-04-05
11	GIS map dated 08-22-05
12	Memorandum circulated to staff from Sarah Fox dated 08-19-05
J Public Comment	
1	Notice of Public Hearing scheduled for 10-18-05
2	Preliminary Plat, dated 08-19-05
3	Returned letters from mailing dated 09-29-05
K Hancock Springs Preliminary Subdivision, February and August 2005	
1	Plat Map: Preliminary Utility and Erosion Control Plan, "Exhibit D" dated 02-04-05
2	Plat Map: Existing Conditions Basin Map, sheets 1 and 2, dated 01-31-05
3	Hancock Springs Preliminary Stormwater Report, dated 01-13-15
4	Plat Map: Circulation Plan, "Exhibit D" dated 03-28-05
5	Correspondence from Phil Bourquin to Applicant, dated 03-08-05

	6	Fax copy from <u>Martin S. Buck Associates, Inc</u> (Geologic and Environmental Consulting Services) to Charles Lawrence, dated 10-12-05
	7	Correspondence from Kevin Grosz of The Resource Company to Shane McGuffin dated 05-19-05
L		Application Form
	8	Application Forms, dated 02-09-05
M		Fee Schedule
	9	Fees
N		Pre-Application Notes
	10	Pre-Application Notes, dated 11-04-04
O		Narrative
	11	Hancock Springs Revised Narrative, dated 08-19-05
	12	Hancock Springs Narrative, original to submittal of 02-09-05
P		Reduced Plans
	13	Reduced plans, dated 02-08-05, 02-04-05 and 01-31-05
Q		Street Deviation
	14	Hancock Springs Street Deviation Request #1- Revision 08-15-05
	15	Correspondence from Shane McGuffin to "Curleigh" Carothers, dated 08-08-05
	16	Correspondence from James Howsley to Martin Snell, dated 03-16-05
	17	Superseded Hancock Springs Street Deviation Request #1
	18	Hancock Springs Street Deviation Request #2
P		SEPA Checklist
	19	SEPA Checklist
S		Tree Conservation Plan
	20	Tree Conservation Plan Report, dated 02-01-05
T		Wetlands and Habitat
	21	Correspondence from James Howsley to Martin Snell dated 09-06-05
	22	Correspondence from Kimbal Logan to Martin Snell, dated 06-06-5
	23	Correspondence from The Resource Company to Shane McGuffin, dated 05-19-05
	24	Wetlands Evaluation Report, dated 02-17-03 <i>orig wetlands?</i>
	25	Priority Species and Habitat Assessment, dated 01-13-05
	26	Wetland Buffer Variance Narrative, dated 01-21-05
U		Geotechnical Report
	27	Geotechnical Investigation by Redmond & Associates, dated 01-28-05
V		Archaeological Predetermination
	28	Archaeological Predetermination, dated 02-07-05
W		Traffic Analysis Report
	29	Correspondence from Mary Kate Koonce, EIT of Charbonneau Engineering to Shane McGuffin dated 04-06-05
	30	Traffic Analysis for Hancock Springs, dated 12-04
X		Draft CC&R's
	31	Draft CC&R's dated 02-04-05
Y		Owner Authorization
	32	Letter of Authorization from Janet Hancock and James Goldman to Camas Planning Department, dated 02-07-05

		300' Radius List
	33	Correspondence from Mike Reid of Fidelity National Title dated 01-25-05
AA		Plat Maps
	34	Plat Map: Preliminary Plat dated 02-05, sheets 1-3
	35	Plat Map: Preliminary Plat dated 08-05, sheets 1-3
	36	Plat Map: Preliminary Plat dated 02-05, sheets 1-3 with notes on maps
	37	Correspondence from Steve and Judy Bauer to City Council and Planning Department, dated 01-30-05
	38	Site Plan and Tree Survey "Exhibit A" with notes on map
	39	Plat Map: Existing Conditions Basin Map dated 01-05, sheets 1 and 2
	40	Plat Map: Landscape/Planting Plan dated 01-31-05, sheets 1 and 2
	41	Vacant Lands Model- Critical Lands, "Exhibit A", dated 03-29-05
AB		Resolution No. 1044

CERTIFICATION OF SERVICE

I hereby certify that I served the foregoing Appellants's Opening Brief on:

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by the following indicated method or methods:

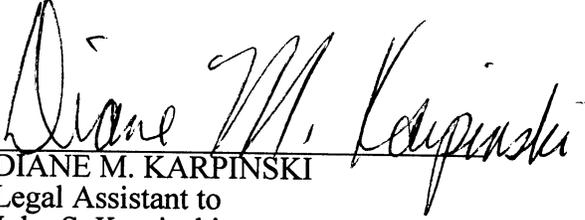
- by **mailing** a full, true and correct copy thereof in a sealed, first-class postage-prepaid envelope, addressed to the attorneys as shown above the last-known office address of the attorneys, and deposited with the United States Postal Service at Vancouver, Washington, on the date set forth below.
- by sending a full, true and correct copy thereof via **overnight courier** in a sealed, prepaid envelope, addressed to the attorney as shown above, the last-known office address of the attorney, on the date set forth below.
- by **faxing** a full, true and correct copy thereof to the attorney at the fax number shown above, which is the last-known fax number for the attorney's office, on the date set forth below. The receiving fax machine was operating at the time of service and the transmission was properly completed, according to the attached confirmation report.

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2 by sending a full, true and correct copy thereof via **e-mail** to the attorneys at the attorneys'
3 last-known office e-mail address listed above on the date set forth below.

4 DATED this 7th day of May, 2007.

5 

6 DIANE M. KARPINSKI
7 Legal Assistant to
8 John S. Karpinski,
9 Attorney for Appellants

10 Lawrence Crt App Opening Brief Cert of Serv. wpd

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