

SULTAN CITY COUNCIL AGENDA COVER SHEET

ITEM NO: C-5

DATE: July 22, 2010

SUBJECT: Adopt Ordinance No.1084-10 Permit Extension

CONTACT PERSON: Deborah Knight, City Administrator

ISSUE:

The issue before the city council is to Adopt Ordinance No. 1084-10 providing a 2-year extension to “active” Preliminary Plats/PUD’s, set to expire after July 1, 2010, with Council approval of a Developer Agreement.

STAFF RECOMMENDATION:

City staff recommend the city council adopt Ordinance No. 1084-10 to amend Sultan Municipal Code Title 16.

SUMMARY:

In response to the present economic conditions, other cities in the region have been adopting short-term revisions to Zoning and Land Division Codes to offer relief and economic stimulus during the recession.

This action will provide time for the housing market to continue to recover and potentially for the developer to build homes or market the property to another builder. The following municipal code chapters will be amended as set forth in Attachment A.

- SMC 16.10.150 – Expiration of Preliminary Planned Unit Development (PUD)
- SMC 16.10.200 – Expiration of Final PUD
- SMC 16.28.210 – Compliance with Conditions of Approval for a Short-Plat
- SMC 16.28.350 – Term of Preliminary Plat approval including those connected to PUD’s

BACKGROUND:

This issue was a discussion item at city council meetings on January 28, 2010, February 11, 2010 and March 11, 2010. The city council considered a number of different issues relating to economic stimulus including extending plat timelines, and delaying Park Impact Fees, Transportation Impact Fees and Utility Connection Fees.

The Council directed the planning board to amend the Sultan Municipal Code Development Regulations (Title 16) to implement short-term changes to the City's Zoning and Land Division Codes to offer relief and economic stimulus during the recession.

The planning board discussed the issue at its April 6, 2010 meeting and set a public hearing for April 20, 2010. The planning board held the April 20, 2010 public hearing. The planning board received comments from Craig Sears (Taylor Group), Ginger York and the Master Builders Association (Attachment B).

The Master Builders Association supported the staff recommended amendments to the Sultan Municipal Code. Mrs. Ginger York requested the planning board further consider deferring impact fee payments until actual building occupancy rather than at certificate of occupancy (C of O). Mrs. York explained small developers struggle with paying the impact fees in this credit market until the units are sold. Units can continue to sit empty even after C of O is issued by the city.

The planning board directed staff to provide additional information on deferring impact fee payments until the time of closing of sale. The discussion centered around recording a covenant against the property for the impact fee in effect at the time of payment. Fees associated with filing and recording the covenant as well as its release following payment of the fee would be paid by the applicant (developer).

At the planning board's May 4, 2010 meeting, the board discussed amending the staff recommendation to use a recorded covenant against the property as the mechanism to secure impact fee payments. Planning board member Bob Knuckey recommended using a promissory note and deed of trust instead of a covenant to secure impact fee payments.

City staff and the city attorney reviewed Mr. Knuckey's proposal to adopt a policy of guaranteeing payment of deferred impact fees using a promissory note and deed of trust. Attachment C includes a similar program initiated by the City of Pleasanton, California. Staff recommend using the Pleasanton program as a template for the City of Sultan.

The city council discussed the planning board's recommendation at the council meeting on June 24, 2010 and directed staff to prepare an ordinance for the plat extension portion of the board's recommendation only. The city council did not support deferring impact fees.

DISCUSSION:

The proposal is to limit the time extension to active Preliminary and Final Plats/and Planned Unit Developments (PUD's).

The ordinance would not apply to expired Preliminary or Final PUD's/Plats or Preliminary or Final PUD's/Plats filed after July 1, 2010.

The proposed ordinance would not apply to the most recently approved Preliminary PUD extension which expired on April 10, 2010.

The proposed ordinance would not apply to the most recently filed application for a PUD, accepted by the city in November 2009, since the applicant has not completed the necessary steps for a Preliminary PUD. The PUD is not yet considered "active" since it has not received council approval.

The following table summarizes the status of development applications submitted to the city:

DEVELOPER	TYPE	PRE-APP DATE	PRELIMINARY APPROVAL	EXPIRATION
Brickyard (Vodnick)	PUD	7/27/05	2007	09/6/2009 - expired
Cascade Breeze	Subdivision	07/06/05	2006	2011
Green	PUD	11/01/06	2007	Final PUD Approved Subdivision expires 2013
Hammer	PUD	07/26/05	2007	Hold pending bankruptcy
Joshua Freed - Caleb Court	PUD	09/01/06	2008	04/10/2010 - expired
Ramirez Twin Rivers	Subdivision	12/01/04	2007	2012
Steen Park	Subdivision		Final Plat 8/2007	N/A

State Legislative Efforts

The Master Builders Association was unsuccessful in advancing ESSB 3067 which would have required cities in King and Snohomish Counties that collect impact fees to allow residential builders to require homebuyers to pay the impact fees at closing vs. builders paying when applying for a permit.

However, SB 6544 enacted in March and effective June 10, 2010 for applications submitted after June 10, 2010 provides the following:

- Extends time limitations associated with final plat submissions and the requirements governing applicable subdivisions from five to seven years.
- Expires the extension provisions on December 31, 2014.

FISCAL IMPACT:

There are pros and cons associated with the decision to adopt a permit extension. This is the reason why the vast majority of cities have adopted short-term changes necessary to stimulate the economy.

The intent of adopting these types of ordinances is to provide short-term relief and get homebuilders and developers moving again. This is balanced against the need to ensure that in the long-run, after the economy has recovered – the requirement to move projects along and not tie up land and staff resources is necessary.

A decision by the city council to fundamentally change the land division code should be carefully considered and analyzed prior to implementation.

ALTERNATIVES:

1. Have First Reading Ordinance No. 1084-10. This alternative indicates the city council understands the issue and supports short-term amendments to the Sultan Municipal Code to offer economic relief to developers during the economic recession.
2. Do not have First Reading and direct staff to areas of concern. This alternative implies the city council either doesn't support the proposed amendments or has questions and/or concerns that should be resolved before making a recommendation. The city council should direct staff to areas of concern.

RECOMMENDED ACTION:

Have First Reading Ordinance No. 1084-10 to amend Sultan Municipal Code Title 16.

ATTACHMENTS:

- A – Ordinance No. 1084-10
- B - April 20, 2010 Written Comments
- C- Master Builders Association summary of economic stimulus measures

CITY OF SULTAN
WASHINGTON
ORDINANCE NO. 1084-10

AN ORDINANCE OF THE CITY OF SULTAN AMENDING TITLE 16 OF

THE SULTAN MUNICIPAL CODE

WHEREAS, pursuant to the provisions of state law, Chapter 35A.63 of the Revised Code of Washington (RCW) and chapter 36.70A RCW, the Sultan City Council has adopted the Sultan Municipal Code (SMC), including Title 16, which regulates development; and

WHEREAS, as a result of the current downturn in the local economy, a diminishing number of new residential units are being built, which adversely impacts the City's housing stock, local economy and revenue for governmental services, and

WHEREAS, unless the City acts, the housing market may continue to languish and adverse consequences of decreased revenues, abandoned projects, and underutilized land will occur; and

WHEREAS, a need exists to amend Title 16 to afford more flexibility to applicants on the timing of the expiration of preliminary and final plat and planned unit development approvals; and

WHEREAS, the planning board held a public hearing on April 20, 2010 to take comment on the proposed amendments to Title 16 and;

WHEREAS, the City Council finds the proposed amendments to the Sultan Municipal Code to be consistent with and to implement the intent of the Comprehensive Plan; and

WHEREAS, the City Council has concluded that it is in the interest of the public health, safety and welfare to adopt this ordinance;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SULTAN, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Sections 16.10.150, 16.28.210, and 16.28.350 are hereby amended to read ~~The proposed amendments subject to this ordinance are as~~ set forth in Attachment "A" hereto.

Section 2. Applicability.

(1) This ordinance shall apply to all active PUD and preliminary and short subdivision approvals~~applications and requests for approval~~. For the purposes of this ordinance, "active PUD and preliminary and short subdivision approvals" shall mean those PUD and preliminary and short subdivision proposals that have been approved by the City Council and have not expired prior to the effective date of this ordinance.

(2) Public notice given prior to the effective date of this ordinance for any pending development permit application shall remain valid for such permit application.

(3) This ordinance shall not otherwise affect the vesting date for any application as provided for under state law.

Section 3. Severability.

The above "Whereas" clauses of this ordinance constitute specific findings by the Council in support of passage of this ordinance. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.

Section 4. Effective Date.

This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 22nd DAY OF July , 2010.

CITY OF SULTAN

Mayor Carolyn Eslick

ATTEST/AUTHENTICATED:

Laura Koenig, City Clerk

Approved as to form:

Margaret King, City Attorney

Filed with the City Clerk:

Public Hearing:

First Reading:

Public Hearing:

16.10.150 Expiration of preliminary PUD.

A. For preliminary PUD approvals for which a master phasing plan has not also been approved pursuant to SMC [16.10.040](#), an applicant shall file an application for a final PUD approval with the city within 12 months from the date of preliminary PUD approval by the city council. This period shall automatically be tolled for any period of time during which a court appeal is pending.

B. The hearing examiner may authorize one additional 12-month extension for filing a final PUD application if the hearing examiner finds that such extension is consistent with the approval criteria required for each project and that no new information or change in circumstances justifies changing the city's previous preliminary PUD approval.

C. A phasing plan shall accompany the master plan, for developments where a general master plan for the entire project provides for the project to be constructed in phases. The phasing plan shall describe the general boundaries of each phase and the expected date at which a detailed site plan or subsequent preliminary and final PUD application for that phase of the development will be submitted; provided, however, no project to be developed in phases may exceed five years from the time the master plan is approved until the final phase is submitted. The hearing examiner, as a condition of preliminary PUD or master plan approval, may calculate the amount of time until completion and may also set a schedule for completion of the various phases; such time period may never exceed five years. The time period will be calculated based on the size, location, and development potential of the area, and the need for utility and service extensions for the proposed project and other projected developments in the area.

D. If a final PUD is not filed within the time periods provided in this section, the preliminary PUD approval shall expire, the PUD overlay zoning shall be removed from the official zoning map of the city and the property shall revert to the underlying "fallback" zoning shown on the official zoning map. (Ord. 1051-09 § 1; Ord. 793-02 § 1

E. Provisions for Temporary Extension of Preliminary PUD Approvals:

1. Effective until July 1, 2012, a one-time, 24-month extension of preliminary PUD approval may be granted by the Hearing Examiner in lieu of or in addition to the one-time 12-month extension authorized in 16.10.150 B. This extension shall be reviewed following the procedures set forth in 16.10.150 (B).

2. This provision is available to and only to developments which have a current valid unexpired preliminary PUD approval granted prior to July 1, 2010.

3. No more than one (1) extension may be valid at any time for a preliminary PUD.

4. In no case shall more than two extensions be granted to any preliminary PUD.

5. An extension granted under provision 16.10.150 E shall be calculated from the expiration date of any previously approved time extension.

6. The applicant for an extension under this provision shall submit a written request for an extension to the community development director at least ninety days (90-days) prior to the date upon which the preliminary PUD would otherwise expire. Failure to submit an extension request prior to the expiration date of the preliminary PUD shall result in the preliminary PUD being deemed expired. Applications for an extension under this provision shall consist of the following:

a. A statement making the case for extension, specifically addressing the short-term economic issues, and the long-term economic viability of the project.

b. A statement acknowledging that the preliminary plat approval expires at the end of the extension without appeal or recourse for additional extensions.

c. A statement acknowledging that the City, as a condition of the extension, has the right to require the developer to ~~enter into engage in construction of~~ a Development Agreement as provided by state law to insure that the form and function of the extended Preliminary PUD approval meets the requirements of the City of Sultan land development standards as provided in SMC Title 12, Title 14, Title16, Title 17, and the City's published Engineering Standards Document.

d. A draft Development Agreement agreed to by the Developer and the City shall be a required component of the application packet~~d~~ forwarded to the Hearing Examiner.

e. If the City and the Developer cannot come to agreement on the provisions of a Developer Agreement as required in item "d." above, the City shall prepare a set of findings and proposed Developer Agreement conditions that, in the City's opinion, should be included as a condition(s) of the extension.

f. Payment of the Hearing Examiner Fee ~~in the amount set forth in as provided by~~ the ~~then-applicable~~ City of Sultan Annual Fee Schedule.

8. Upon receipt of a written extension request, the community development director shall schedule review of the application with the Hearing Examiner as provided in 16.10.150 B. The Applicant, the City, and the public shall be allowed to present brief verbal statements at a hearing according to provisions of SMC 2.26.090 through 2.26.120.

9. To approve an extension, the Hearing Examiner shall find that the proposed extension is supported by the information presented for review, and that the Draft Developer Agreement, or City-proposed conditions for extension are appropriate. Approval of any extension under this provision shall include specific recitation of any conditions required to bring the subject Preliminary PUD into conformance with City development standards as described in Section 16.10.150 E. 6. c. above.

10. If the extension is approved by the Hearing Examiner, the community development director shall notify the applicant in writing of the expiration of the initial 12-month extension and the granting of the 24-month extension including the date on which this extension expires.

16.10.150 Expiration of preliminary PUD.

A. For preliminary PUD approvals for which a master phasing plan has not also been approved pursuant to SMC [16.10.040](#), an applicant shall file an application for a final PUD approval with the city within 12 months from the date of preliminary PUD approval by the city council. This period shall automatically be tolled for any period of time during which a court appeal is pending.

B. The hearing examiner may authorize one additional 12-month extension for filing a final PUD application if the hearing examiner finds that such extension is consistent with the approval criteria required for each project and that no new information or change in circumstances justifies changing the city's previous preliminary PUD approval.

C. A phasing plan shall accompany the master plan, for developments where a general master plan for the entire project provides for the project to be constructed in phases. The phasing plan shall describe the general boundaries of each phase and the expected date at which a detailed site plan or subsequent preliminary and final PUD application for that phase of the development will be submitted; provided, however, no project to be developed in phases may exceed five years from the time the master plan is approved until the final phase is submitted. The hearing examiner, as a condition of preliminary PUD or master plan approval, may calculate the amount of time until completion and may also set a schedule for completion of the various phases; such time period may never exceed five years. The time period will be calculated based on the size, location, and development potential of the area, and the need for utility and service extensions for the proposed project and other projected developments in the area.

D. If a final PUD is not filed within the time periods provided in this section, the preliminary PUD approval shall expire, the PUD overlay zoning shall be removed from the official zoning map of the city and the property shall revert to the underlying "fallback" zoning shown on the official zoning map. (Ord. 1051-09 § 1; Ord. 793-02 § 1

E. Provisions for Temporary Extension of Preliminary PUD Approvals:

1. Effective until July 1, 2012, a one-time, 24-month extension of preliminary PUD approval may be granted by the Hearing Examiner in lieu of or in addition to the one-time 12-month extension authorized in 16.10.150 B. This extension shall be reviewed following the procedures set forth in 16.10.150 (B).

2. This provision is available to and only to developments which have a current valid unexpired preliminary PUD approval granted prior to July 1, 2010.

3. No more than one (1) extension may be valid at any time for a preliminary PUD.

4. In no case shall more than two extensions be granted to any preliminary PUD.

5. An extension granted under provision 16.10.150 E shall be calculated from the expiration date of any previously approved time extension.

6. The applicant for an extension under this provision shall submit a written request for an extension to the community development director at least ninety days (90-days) prior to the date upon which the preliminary PUD would otherwise expire. Failure to submit an extension request prior to the expiration date of the preliminary PUD shall result in the preliminary PUD being deemed expired. Applications for an extension under this provision shall consist of the following:

a. A statement making the case for extension, specifically addressing the short-term economic issues, and the long-term economic viability of the project.

b. A statement acknowledging that the preliminary plat approval expires at the end of the extension without appeal or recourse for additional extensions.

c. A statement acknowledging that the City, as a condition of the extension, has the right to require the developer to engage in construction of a Development Agreement as provided by state law to insure that the form and function of the extended Preliminary PUD approval meets the requirements of the City of Sultan land development standards as provided in SMC Title 12, Title 14, Title 16, Title 17, and the City's published Engineering Standards Document.

d. A draft Development Agreement agreed to by the Developer and the City shall be a required component of the application packed forwarded to the Hearing Examiner.

e. If the City and the Developer cannot come to agreement on the provisions of a Developer Agreement as required in item "d." above, the City shall prepare a set of findings and proposed Developer Agreement conditions that, in the City's opinion, should be included as a condition(s) of the extension.

f. Payment of the Hearing Examiner Fee as provided by the City of Sultan Annual Fee Schedule.

8. Upon receipt of a written extension request, the community development director shall schedule review of the application with the Hearing Examiner as provided in 16.10.150 B. The Applicant, the City, and the public shall be allowed to present brief verbal statements at a hearing according to provisions of SMC 2.26.090 through 2.26.120.

9. To approve an extension, the Hearing Examiner shall find that the proposed extension is supported by the information presented for review, and that the Draft Developer Agreement, or City-proposed conditions for extension are appropriate. Approval of any extension under this provision shall include specific recitation of any conditions required to bring the subject Preliminary PUD into conformance with City development standards as described in Section 16.10.150 E. 6. c. above.

10. If the extension is approved by the Hearing Examiner, the community development director shall notify the applicant in writing of the expiration of the initial 12-month extension and the granting of the 24-month extension including the date on which this extension expires.

16.28.210 Compliance with conditions of approval.

All conditions for approval shall be met by the applicant within one year or the short subdivision shall be deemed expired. Sale, lease, or transfer of land within the subdivision shall not be completed until all conditions of approval have been met. (Ord. 1051-09 § 1; Ord. 840-04 § 1; Ord. 630 § 2[16.10.010(1)(a) (vii)(o)], 1995)

A. Provisions for Temporary Extension of Time to Meet Conditions of Short Plat Approval:

1. Effective until July 1, 2012, a one-time, 24-month extension of the time to comply with conditions of approval required by the City in approval of a short subdivision may be granted by the community development director. This extension shall be added to the one-year period required in 16.28.210 above. This extension shall be reviewed following the procedures set forth in this Section.
2. This provision is available to and only to developments which have a current valid unexpired short subdivision approval prior to July 1, 2010.
3. No more than one (1) extension may be issued for compliance with conditions of approval for a short subdivision.
4. An extension granted under this section shall expire any previously granted extension. The 24-month extension granted by this section shall be the only valid extension and shall be the final extension granted to a development.
5. The applicant for an extension under this provision shall submit a written request for an extension to the community development director at least ninety days (90-days) prior to the date upon which the short subdivision approval would otherwise expire. Failure to submit an extension request prior to the expiration date of the short subdivision shall result in the short subdivision being deemed expired. Applications for an extension under this provision shall consist of the following:
 - a. A statement making the case for extension, specifically addressing the short-term economic issues, and the long-term economic viability of the project.
 - b. A statement acknowledging that the preliminary plat approval expires at the end of the extension without appeal or recourse for additional extensions.
 - c. A statement acknowledging that the City, as a condition of the extension, has the right to require the developer to ~~enter into engage in construction of~~ a Development Agreement as provided by RCW 36.70B.170 to insure that the form and function of the short subdivision approval meets the requirements of the City of Sultan land development standards as provided in SMC Title 12, Title 14, Title 16, Title 17, and the City's published Engineering Standards Document.
 - d. A draft Development Agreement agreed to by the Developer and the City shall be a required component of the application packet.
6. Upon receipt of a written extension request, the community development director shall review the application.
7. To approve an extension, the community development director shall find that the proposed extension is supported by the information presented for review, and that the Draft Developer Agreement. Approval of any extension under this provision shall include specific recitation of any conditions required to bring the subject short subdivision into conformance with City development standards as described in Section 16.28.210 A. 5. c. above.

16.28.350 Term of preliminary plat approval.

- A. Approval of preliminary plat shall be effective for five years from the date of approval unless extended by the hearing examiner as provided for herein.
- B. Upon written application therefore by the applicant or his successor, and filed with the city at least 30 days prior to the expiration of approval, the hearing examiner may extend approval for not more than one additional one-year period, if, in the opinion of the hearing examiner, the applicant has attempted in good faith to submit the final plat within the five-year period in accordance with preliminary plat approval procedures contained herein.
- C. Nothing contained herein shall prohibit the applicant, during the effective life of the preliminary plat approval, from developing his or her subdivision and requesting final approval by divisions; provided, that no deviation from the general scheme of the preliminary plat as approved may be permitted in any manner other than by the procedures set out herein governing the approval of preliminary plats. (Ord. 1051-09 § 1; Ord. 840-04 § 1; Ord. 815-03 § 2; Ord. 630 § 2[16.10.010(1)(b)(v) (a)], 1995)

D. Provisions for Temporary Extension of Preliminary PUD Approvals:

- 1. Effective until July 1, 2012, a one-time, 24-month extension of preliminary PUD approval may be granted by the Hearing Examiner in lieu of the one-time 12-month extension authorized in 16.28.350 B.
- 2. This provision is available to and only to developments which have a current valid unexpired preliminary plat approved granted prior to July 1, 2010
- 3. No more than one (1) extension may be valid at any time for a preliminary PUD.
- 4. In no case shall more than two extensions be granted to any preliminary plat including the extension granted under 16.28.350 D.
- 5. An extension granted under this section shall expire any previously granted extension. The 24-month extension granted by this section shall be the only valid extension and shall be the final extension granted to a development.
- 6. The applicant for an extension under this provision shall submit a written request for an extension to the community development director at least ninety days (90-days) prior to the date upon which the preliminary plat would otherwise expire. Failure to submit an extension request prior to the expiration date of the preliminary plat shall result in the preliminary plat being deemed expired. Applications for an extension under this provision shall consist of the following:
 - a. A statement making the case for extension, specifically addressing the short-term economic issues, and the long-term economic viability of the project.
 - b. A statement acknowledging that the preliminary plat approval expires at the end of the extension without appeal or recourse for additional extensions.

- c. A statement acknowledging that the City, as a condition of the extension, has the right to require the developer to ~~enter into engage in construction of a~~ Development Agreement as provided by RCW 36.70B.170 to insure that the form and function of the extended preliminary plat approval meets the requirements of the City of Sultan land development standards as provided in SMC Title 12, Title 14, Title 16, Title 17, and the City's published Engineering Standards Document.
- d. A draft Development Agreement agreed to by the Developer and the City shall be a required component of the application packet~~d~~ forwarded to the Hearing Examiner.
- e. If the City and the Developer cannot come to agreement on the provisions of a Developer Agreement as required in item "d." above, the City shall prepare a set of findings and proposed Developer Agreement conditions that, in the City's opinion, should be included as a condition(s) of the extension.
- f. Payment of the Hearing Examiner Fee ~~in the amount set forth in the then-applicable as provided by the~~ City of Sultan Annual Fee Schedule.
- 8. Upon receipt of a written extension request, the community development director shall schedule review of the application with the Hearing Examiner as provided in 16.10.150 B. The Applicant, the City, and the public shall be allowed to present brief verbal statements at a hearing according to provisions of SMC 2.26.090 through 2.26.120.
- 9. To approve an extension, the Hearing Examiner shall find that the proposed extension is supported by the information presented for review, and that the Draft Developer Agreement, or City-proposed conditions for extension are appropriate. Approval of any extension under this provision shall include specific recitation of any conditions required to bring the subject preliminary plat into conformance with City development standards as described in Section 16.28.350 D. 6. c. above.
- 10. If the extension is approved by the Hearing Examiner, the community development director shall notify the applicant in writing of the expiration of the initial 12-month extension and the granting of the 24-month extension including the date on which this extension expires.