

SULTAN PLANNING BOARD AGENDA ITEM COVER SHEET

ITEM NO: P-1

DATE: March 19, 2008

SUBJECT: Hold a Public Hearing on Ordinance No. 981-08 imposing a moratorium

CONTACT PERSON: Deborah Knight, City Administrator

ISSUE:

The issue before the Planning Board is to hold a public hearing on Ordinance No. 981-08 imposing a moratorium on the acceptance of and processing of applications for subdivisions under Sultan Municipal Code 16.28.250 through 16.28.390, and 16.28.470, planned unit developments under Sultan Municipal Code chapter 16.10, rezones under Sultan Municipal Code chapter 21.10; and annexations under any method.

STAFF RECOMMENDATION:

Hold a public hearing on Ordinance No. 981-08.

Discuss findings of fact and make a recommendation to the City Council. Findings of fact must be based on documentation and testimony that is part of the record of the public hearing, including staff reports and attachments to staff reports, exhibits admitted during the public hearing, and testimony. Findings will be drafted based on the record created at the March 13, 2008 and March 19, 2008 public hearings.

Pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council may additionally enter supplemental findings of fact in support of the moratorium imposed under Ordinance 981-08.

SUMMARY:

The City Council held a public hearing on March 13, 2008 and adopted Ordinance No. 981-08 imposing a moratorium on the acceptance of and processing of applications for subdivisions, planned unit developments and annexations.

RCW 36.70A.390 and RCW 35A.63.220 set the requirements for county and city governments to enact moratoria. State law allows cities to adopt a moratorium without holding a public hearing prior to adoption as long as a public hearing is held within at least sixty days of its adoption whether or not the governing body received a recommendation on the matter from the planning commission or department.

A moratorium, interim zoning map, interim zoning ordinance, or interim official control adopted under these sections may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period.

A moratorium, interim zoning map, interim zoning ordinance, or interim official control may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal.

BACKGROUND:

The Central Puget Sound Growth Management Hearings Board (Board) considered Fallgatter V, Fallgatter VIII, and Fallgatter IX, and found the City of Sultan's Capital Facilities Plan (CFP) and Transportation Improvement Plan (TIP) **noncompliant** with the Growth Management Act (GMA) and **invalid**. The Board also found the City noncompliant with the GMA for failing to complete its review and update of development regulations required by RCW 36.70A.130(1)(b).

A finding of invalidity means that the TIP and CFP cannot be used to determine concurrency under the Growth Management Act. Since the City's development regulations (SMC 16.108.030) require that the City issue certificates of concurrency before certain developments such as PUDs and Subdivisions can be approved, the City has been in a **de facto** moratorium since the City received the Board's order in Fallgatter IX back on September 6, 2007.

A moratorium prevents the City from accepting certain development applications as defined in the moratorium. Absent a moratorium, the City may accept applications and process those applications to the point where a certificates of concurrency is required for approval.

At a Compliance Hearing on February 7, 2008, the Board instructed the City to advise the Board if the City would consider the adoption of a moratorium to prevent vesting of development applications in the absence of a **valid** CFP.

The City Council reviewed the Board's instructions to the City at its meeting on February 14, 2008 and directed staff to return with an adopting ordinance for consideration at its February 28, 2008 meeting.

Because three Council members could not attend the Council meeting on February 28, the remaining four Council members continued the moratorium discussion to their March 13, 2008 meeting, when all Council members could be present. The City Council held a public hearing on March 13, 2008 and adopted Ordinance No. 981-08.

DISCUSSION:

Proposed Moratorium

Because the TIP and CFP are determined to be invalid, the proposed moratorium is city-wide rather than site specific.

The proposed moratorium is limited to those development applications where the City is required to issue certificates of concurrency. The moratorium is intended to address the Board's concerns to prevent vesting of new development applications in the absence of a valid CFP.

The moratorium includes an emergency clause to allow the moratorium to take effect immediately upon passage. In *Matson v. Clark County*, the Court of Appeals specifically identified prevention of a "rush to vest" as a legitimate basis for use of an emergency effective date.

As of Thursday, March 13, 2008, the community development director will not be able to accept and the City will not be able to process applications for:

1. Subdivisions under SMC 16.28.250 through 16.28.390 and 16.28.470
2. Planned unit developments under SMC 16.10
3. Rezones under SMC 21.10
4. Annexations under any method

This moratorium would not apply to applications for short subdivisions (4 or less lots) under Sultan Municipal Code (SMC) 16.28.010 through 16.28.240.

This moratorium would not apply to:

1. Applications for development that vested before September 6, 2007, including related construction permits for those vested applications;
2. Applications for development that do not require a certificate of concurrency for approval.

The moratorium would not apply to applications for those permits identified in the Growth Management Act at RCW 36.70A.302(3)(b), as set out below:

1. Permit for construction by any owner, lessee, or contract purchaser of a single-family residence for his or her own use or for the use of his or her family on a lot existing before September 6, 2007.
2. A building permit and related construction permits for remodeling, tenant improvements, or expansion of an existing structure on a lot existing before September 6, 2007.
3. A boundary line adjustment or a division of land that does not increase the number of buildable lots existing before September 6, 2007

A public hearing would be held not later than six months following the date of adoption by the Council, to consider the moratorium imposed, to determine whether to continue the moratorium, modify it or rescind it, and at which time, if the moratorium is continued or modified, to adopt findings of fact justifying the Council's decision.

It is the intent of the Council to lift this moratorium at such time as the Board rescinds its determination of invalidity. Unless modified or rescinded as a result of the public hearing, the moratorium will be effective for a period of six months from the effective date of the Ordinance.

New applications

Absent a moratorium, there is no basis for the City to refuse to accept new applications. However, under the City Code, applications subject to concurrency (i.e. PUD Applications, Subdivisions, etc.) cannot be approved without a certificate of concurrency per SMC 16.108.030.

The City will need to inform applicants that, because of the invalid CFP, the City cannot issue certificates of concurrency, therefore any application that requires concurrency cannot be approved until the City has a valid CFP.

Applicants can:

- Wait to submit an application until the City has a valid CFP
- Submit an application and waive the 120-day approval timeline
- Submit an application and risk denial of the application on day 120 because the City can't issue a certificate of concurrency.

Existing, vested applications

The City currently has three applications that have **vested** that may be affected by a moratorium:

1. Harris – commercial development
2. Grandview – planned unit development on Sultan Basin Road
3. Sky Valley Automotive – nonconforming use expansion

Vested means that the application is found to be substantially complete by the City or that the City did not respond with comments within the 28 day time period required by state law.

They can be processed as far as possible, but if they don't already have a certificate of concurrency, they cannot be approved.

Building Permits

Applications for building permits based on a previously-approved subdivision or site plans are not affected by the proposed moratorium.

FISCAL IMPACT:

The fiscal impact to the City could be serious. The City funds staff in the Community Development Department based on a certain number of anticipated land use applications.

The 2008 budget is built on an estimated 33 single family residences (SFR). City staff recommend adopting a conservative budget of \$54,500 in 2008 to avoid overestimating revenues.

There is a short-fall in the adopted Building Department budget. Anticipated Building permit expenses (\$95,280) will exceed anticipated Building Permit and Plan Check fees by approximately \$20,780. The difference is made up from other general fund sources such as property taxes. Other funds affected by the moratorium may include:

1. Hearing examiner fees (8 x \$1,500 = \$12,000) are offset by hearing examiner expenses (\$12,000) in the Planning and Development budget. This is a pass-through cost to the applicants.
2. \$55,00 in zoning and subdivision fees
3. \$20,000 in plan check fees

A moratorium also has the affect of dampening developer interest. Implementing a moratorium increases risk for developers since the length of the moratorium may be unknown. Especially in today's housing market, the City is unlikely to attract large new development to the Sultan community. Developers who have projects completed, but have not attracted builders may find it more difficult to market their properties.

RECOMMENDED ACTION:

Hold a public hearing on Ordinance No. 981-08 imposing a moratorium on the acceptance of and processing of applications for subdivisions under Sultan Municipal Code 16.28.250 through 16.28.390, and 16.28.470, planned unit developments under Sultan Municipal Code chapter 16.10, rezones under Sultan Municipal Code chapter 21.10; and annexations under any method.

Discuss findings of fact and make a recommendation to the City Council.

ATTACHMENTS:

A – Ordinance No. 981-08

B – Letter from Master Builders Association

COUNCIL ACTION:

DATE:

CITY OF SULTAN
Sultan, Washington

ORDINANCE NO. 981-08

AN ORDINANCE OF THE CITY OF SULTAN, WASHINGTON IMPOSING A MORATORIUM ON THE ACCEPTANCE OF AND PROCESSING OF APPLICATIONS FOR SUBDIVISIONS UNDER SMC 16.28.250 THROUGH 16.28.390, AND 16.28.470, PLANNED UNIT DEVELOPMENTS UNDER SMC CHAPTER 16.10, REZONES UNDER SMC CHAPTER 21.10; AND ANNEXATIONS UNDER ANY METHOD.

WHEREAS, RCW 36.70A.390, 35A.63.220, and other lawful authority give the Sultan City Council ("Council") the authority to enact moratoria; and

WHEREAS, the Central Puget Sound Growth Management Hearings Board (the "Board") has considered Case No. 06-3-0003 (*Fallgatter V*), Case No. 06-3-0034 (*Fallgatter VIII*), and 07-3-0017 (*Fallgatter IX*), and found the City of Sultan's Capital Facilities Plan ("CFP") and Transportation Improvement Plan ("TIP") noncompliant with the Growth Management Act ("GMA") and invalid, and also found the City noncompliant with the GMA for failing to complete its review and update of development regulations required by RCW 36.70A.130(1)(b); and

WHEREAS, the City received the Board's Final Decision and Order in *Fallgatter IX* invalidating the CFP on September 6, 2007; and

WHEREAS, at a Compliance Hearing on February 7, 2008, the Board instructed the City to advise the Board if the City would consider the adoption of a moratorium to prevent vesting of development applications in the absence of a valid CFP; and

WHEREAS, it is necessary, in order to preserve the public health, safety, and welfare of City residents, and the City budget, to prevent certain development approvals in the City until the appropriate planning and legislative action can be completed in accordance with the Board's Orders; and

WHEREAS, it is the intent of the Council to lift this moratorium at such time as the Board rescinds its determination of invalidity;

NOW, THEREFORE, it is ordained by the City Council of the City of Sultan, Washington as follows:

Section 1. Moratorium imposed. A moratorium is hereby imposed. From and after the first day after the effective date of this Ordinance, the planning director shall not accept and the City shall not process applications for subdivisions under SMC 16.28.250 through 16.28.390 and 16.28.470, for planned unit developments under SMC 16.10; for rezones under SMC 21.10; and for annexations under any method.

Section 2. Clarification of Nonapplicability. This moratorium does not apply to:

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(a) applications for short subdivisions under SMC 16.28.010 through 16.28.240;

(b) applications for those permits identified in the Growth Management Act at RCW 36.70A.302(3)(b), as set out below:

- (i) permit for construction by any owner, lessee, or contract purchaser of a single-family residence for his or her own use or for the use of his or her family on a lot existing before September 6, 2007, except as otherwise specifically provided in the board's order to protect the public health and safety;
- (ii) A building permit and related construction permits for remodeling, tenant improvements, or expansion of an existing structure on a lot existing before September 6, 2007; and
- (iii) A boundary line adjustment or a division of land that does not increase the number of buildable lots existing before September 6, 2007;

(c) applications for development that vested before September 6, 2007, including related construction permits for those vested applications;

(d) applications for development that do not require a certificate of concurrency for approval.

Section 3. Duration. A public hearing shall be held not later than six months following the date of adoption by the Council, to consider the moratorium imposed and to determine whether to continue the moratorium, modify it or rescind it, and at which time, if the moratorium is continued or modified, to adopt findings of fact justifying the Council's decision. Unless continued, modified, or rescinded as a result of the public hearing, this moratorium shall be effective for a period of six months from the effective date of this Ordinance.

Section 4. Severability. If any section, sentence, clause, phrase, or other portion or provision of this Ordinance or its application to any person or project is, for any reason, declared invalid, illegal or unconstitutional in whole or in part by any court or agency of competent jurisdiction, the balance of this Ordinance shall be unaffected and shall remain in full force and effect.

Section 5. Effective date. The City Council hereby finds and declares that an emergency exists which necessitates that this Ordinance become effective immediately in order to preserve the public welfare and to prevent the potential for vesting of development for which capital facilities may not be provided.

Section 6. Declaration of emergency. The City Council hereby declares for the public interest, safety and welfare reasons set forth above, that an emergency exists necessitating that this Ordinance take effect immediately upon its passage.

PASSED by the City Council and APPROVED by the Mayor this ____ day of _____, 2008.

By _____
CAROLYN ESLICK, Mayor

ATTEST:

By _____
LAURA KOENIG, City Clerk

Approved as to form:

By _____
Kathy Hardy, City Attorney

Published: _____, 2008

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February 26, 2008

City Council
City of Sultan
319 Main Street
Sultan, WA 98294

Dear Councilmembers,

On behalf of the more than 4,500 member companies of the Master Builders Association of King and Snohomish Counties (MBA), I am writing to comment on the proposed city-wide moratorium on subdivisions, planned unit developments, rezones and annexations.

This is a unique circumstance in which a moratorium may not be needed. Conversely, a moratorium might actually make sense, given the deficiencies in the Capital Facilities Plan (CFP) that have been identified by the Central Puget Sound Growth Management Hearings Board.

We urge the Council to seek assistance from Snohomish County to address the current deficiencies in the CFP. The City should also seek assistance from other stakeholders that can aid in the development of a compliant CFP. Our association staff and members are willing to assist the City with this effort in order to complete the plan in a timely manner.

We encourage the City to act quickly on this matter. If the City does enact a moratorium, we urge the Council to keep it as short as possible. During deliberations, the Council should take into consideration the level of commitment and resources available to address these issues as quickly as possible.

Please feel free to contact me if you would like assistance from our association.

Sincerely,

Jennifer Jerabek
South Snohomish County Manager

sent via electronic mail