

**SULTAN PLANNING BOARD  
AGENDA ITEM COVER SHEET**

---

ITEM NO: A-2

DATE: April 1, 2008

SUBJECT: Recommend Findings of Fact on Land Use Moratorium Ordinance No. 981-08

CONTACT PERSON: Deborah Knight, City Administrator *D. Knight*

ISSUE:

The issue before the Planning Board is to recommend Findings of Fact 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:**

Discuss the proposed findings of fact (below) and make a recommendation to the City Council.

**SUMMARY:**

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. If the governing body does not adopt findings of fact justifying its action before this hearing, then the governing body shall do so immediately after this public hearing.

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. The proposed Findings of Fact are based on the record created at the March 13, 2008 and March 19, 2008 public hearings:

## Moratorium Findings of Fact

1. The Central Puget Sound Growth Management Hearings Board (the "Growth 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).
2. The City received the Growth Board's Final Decision and Order in *Fallgatter IX* invalidating the CFP on September 6, 2007.
3. At a Compliance Hearing on February 7, 2008, the Growth Board instructed the City to advise the Growth Board if the City would consider the adoption of a moratorium to prevent vesting of development applications in the absence of a valid CFP.
4. The Growth Board determination of invalidity means the TIP and CFP cannot be used to determine concurrency. Because the City's development regulations (SMC 16.108.030) require certificates of concurrency for certain development approvals such as Planned Unit Developments and Subdivisions, the City has been in a de facto moratorium since the City received the Growth Board's order in *Fallgatter IX* on September 6, 2007.
5. Although invalidity prevents the City from approving new development applications that require a certificate of concurrency, the City may not refuse to accept those new development applications unless a moratorium is adopted.
6. A comment letter from Master Builders Association of King and Snohomish Counties ("MBA") was received on February 26, 2008 and indicated the City was in "a unique circumstance in which a moratorium may not be needed." But further noted that "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." MBA offered the assistance of their staff and members "in order to complete the plan in a timely manner."
7. [The Planning Board may want to add reference to additional public testimony here ...]

The Planning Board's recommendation will be forwarded to the City Council at its April 10, 2008 meeting.

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.

## BACKGROUND:

At a Compliance Hearing on February 7, 2008, the Growth Management Hearings Board (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, 2008, 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 imposing a moratorium. A number of people provided comments during the hearing (Attachment B).

The Planning Board held a public hearing on March 19, 2008 on Ordinance no. 981-08 imposing a moratorium on the acceptance of and processing of applications for subdivisions, planned unit developments and annexations. (Attachment C)

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.

A public hearing will be held no 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 a public hearing, the moratorium will be effective for a period of six months from the effective date of the Ordinance.

## DISCUSSION:

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 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 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 Board made its findings on Fallgatter IX back on September 5, 2007.

The difference between a moratorium and a de facto moratorium is that under a moratorium, the City may not accept certain development applications as defined in the ordinance. Under a de facto moratorium, the City may accept applications and process those applications to the point where a certificate of concurrency is required for approval.

### Moratorium

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

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

The moratorium included 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 is unable 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 does 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 does 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 does 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

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

#### RECOMMENDED ACTION:

Discuss the proposed findings of fact (Attachment A) and make a recommendation to the City Council.

#### ATTACHMENTS:

- A – Findings of Fact
- B – March 13, 2008 City Council Public Hearing Minutes
- C – March 19, 2008 Planning Board Public Hearing Minutes
- D – Ordinance 981-08

## Moratorium Findings of Fact

1. The Central Puget Sound Growth Management Hearings Board (the "Growth 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).
2. The City received the Growth Board's Final Decision and Order in *Fallgatter IX* invalidating the CFP on September 6, 2007.
3. At a Compliance Hearing on February 7, 2008, the Growth Board instructed the City to advise the Growth Board if the City would consider the adoption of a moratorium to prevent vesting of development applications in the absence of a valid CFP.
4. The Growth Board determination of invalidity means that the TIP and CFP cannot be used to determine concurrency. Because the City's development regulations (SMC 16.108.030) require certificates of concurrency for certain development approvals, such as Planned Unit Developments and Subdivisions, the City has been in a de facto moratorium since the City received the Growth Board's order in *Fallgatter IX* on September 6, 2007.
5. Although invalidity prevents the City from approving new development applications that require a certificate of concurrency, the City may not refuse to accept those new development applications unless a moratorium is adopted.
6. A comment letter from Master Builders Association of King and Snohomish Counties ("MBA") was received on February 26, 2008, and indicated that the City was in "a unique circumstance in which a moratorium may not be needed." But further noted that "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." MBA offered the assistance of their staff and members "in order to complete the plan in a timely manner."
7. [may want to add reference to additional public testimony here ...]

**CITY OF SULTAN COUNCIL MEETING – March 13, 2008**

Mayor Eslick: Did a ride along with the Police Chief and is impressed with the way the police are handling the kids and the adults that are causing problems. The kids hanging out on the corner do have an impact on economic development as people who see them are discouraged from wanting to move here or start a business. The City will continue to research ordinances and methods to deter the kids from hanging around. City Staff are working on a joint grant application with Gold Bar to do a business survey. This will be a federal grant of \$50,000 for a Retail Economic Development Strategy.

**HEARINGS:****Ordinance 981-08 Land Use Moratorium:**

The Public Hearing on Ordinance 981-08 to impose a Land Use Moratorium was called to order by Mayor Eslick. There were no objections to the Council participation.

Staff: Andy Lane, Special Council for the City.

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 determination 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 on September 6, 2007.

The difference between a moratorium and invalidity without moratorium is that under a moratorium, the City may not accept certain development applications as defined in the ordinance. Under invalidity without a moratorium, the City may accept applications and process those applications to the point where a certificate of concurrency is required for approval, but the City cannot approve those applications.

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.

Those applications that do not require a certificate of concurrency will not be impacted by the moratorium and there will be no impact to projects that have vested.

**Discussion:**

Discussion was held regarding the impact to smaller projects and vested projects, the potential for the GMA Board to invalidate the development regulations, length of the moratorium and the need to adopt a time line for completion of the compliance issues.

**Public Input:**

Keith Arndt: Asked how a moratorium differs from the de facto moratorium?

Andy Lane advised the difference is that without a moratorium the City can accept applications but would not be able to approve them and with the moratorium they would not be allowed to accept applications.

Kay George: Feels any type of moratorium is a like putting up a closed for business sign. The City has enough issues with wetlands and slopes already and this will discourage developers and make them go somewhere else.

**CITY OF SULTAN COUNCIL MEETING – March 13, 2008**

Peter Arkinson, representing the Hammer property: Provided a proposed revision to the ordinance for the Council to consider that would list those projects that have been approved and are vested. To say a moratorium will be put in place and only last six months is unrealistic as they have a tendency to be renewed. He represents the Hammer property and they have received preliminary plat approval and the engineering plans are under review. He feels they are vested but the ordinance is not clear as to which applications will not be accepted such as sewer and water connections. It does not help the City or people who want to open a business if it is not clear who can develop.

Bart Dalmasso Asked if the hearings board decision can be appealed. (Yes). Feels the City is being blackmailed by the Board and should shorten the moratorium if possible. Sales in Sultan have dropped considerably. Duvall put a moratorium on for two years for sewers and after it was lifted building boomed. He suggested the City look at 9 lot short plat provisions and that might be a solution for the city.

Jean Roberts: Supports the moratorium. It has taken years to get to this point and they have heard about the capital facility problems and how the City was not following the rules. They have had a lot of time to study and correct the problems and it is time do it right.

On a motion by Councilmember Flower, seconded by Councilmember Blair the public hearing was closed.

**Executive Session:** On a motion by Councilmember Flower, seconded by Councilmember Wiediger, the Council adjourned to executive session for twenty five minutes to discuss potential litigation and personnel. All ayes.

**Staff:**

**Grants:** Donna Murphy provided an update on the volunteer program and advised that people are calling to help with block watch and cleaning. The city has been advised that \$500,000 has been allocated by the State for the wastewater treatment plant project.

**Police:** Chief Hawkins advised that the Police are addressing the juvenile problems and are doing it through presence first and if that doesn't work, they will enforce ordinances. They are working with the School District to develop an emergency rapid responder program and to put a resource officer in the schools in September.

**CONSENT AGENDA:**

The following items are incorporated into the consent and approved by a single motion of the Council. On a motion by Councilmember Blair, seconded by Councilmember Weidiger, the consent agenda was approved as amended. Champeaux – aye; Wiediger – aye, abstained on the minutes; Davenport-Smith - aye; Flower – aye; Blair – aye; Doornek – aye, abstained on the minutes.

- 1) Approval of the minutes of the February 28, 2008 regular Council Meeting as on file in the Office of the City Clerk.
- 2) Approval of the minutes of the February 28, 2008 Greens PUD Closed Record Hearing as on file in the Office of the City Clerk.
- 3) Approval of the minutes of the January 24, 2008 Public Hearing and February 28, 2008 continued Public Hearing on the Stormwater Utility as on file in the Office of the City Clerk.

**SULTAN PLANNING BOARD MEETING  
319 MAIN STREET  
March 19, 2008**

The meeting was called to order at 6:34 p.m. by Chairperson Latimore.

Planning Board members Present: Kurt Latimore, Jeff Cofer, Charles Van Pelt, and Scott Zaffram. Absent: George Schmidt.

Council members Present: Mayor Eslick, Steve Slawson, Sarah Davenport-Smith, Ron Wiediger, Bruce Champeaux. Absent: Jim Flower, Kristina Blair, Dale Doornek.

Staff Present: City Administrator Deborah Knight, and Planning Board Secretary Tami Pevey.

Consultants Present: Interim Planner Brad Collins; Reid Shockey and Eric Ireland, Perteet Engineering; Land Use Attorney Andy Lane.

**PUBLIC HEARING**

**Ordinance 981-08 Land Use Moratorium**

PB Chair Latimore advised the public there would be three opportunities to comment this evening. He then opened the public hearing at 6:35 p.m. and read the rules for the hearing. No objections from the public or board members present.

Administrator Knight stated the issue before the 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 SMC 16.28.050 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.

Administrator Knight explained that they would 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. The findings will be based

on the record from March 13, 2008 and this evening's public hearings. She explained the moratorium prevents the City from accepting certain development applications as defined in the moratorium and the public hearings were required by state law because the council already passed the moratorium. She explained it would be stopping applicants before the building occurred, but wouldn't stop those already in place.

PB Chair Latimore opened the floor to public comment at 6:43 p.m. No comment, so the public hearing was then closed at 6:45 p.m.

PB Van Pelt asked how long the moratorium will be in place. Administrator Knight explained the moratorium is for 6 months to meet the schedule for the comprehensive plan. It must be renewed every 6 months and she anticipated the city will need it until the end of the year.

The public hearing concluded at 6:50 p.m.

### **PUBLIC COMMENTS**

Keith Arndt, 33331 332<sup>nd</sup> St SE: hoped comments would be heard by entire assemblage at 7:00 p.m.; requesting to be heard later regarding this issue. (Discussion held about the issue). Mr. Arndt chose to wait.

### **COMMITTEE REPORTS AND STAFF PRESENTATIONS**

#### **Recommendation to City Council to amend the 2004 Comprehensive Plan.**

The issue before the Planning Board is to make a recommendation to the City Council on a proposed amendment to the 2004 Comprehensive Plan to:

1. Delete the proposed roadway connection of Dyer Road and Skywall Drive as identified as roadway number 28 (T-28) on the transportation plan map
2. Maintain the proposed sewer pipeline extension in both Dyer Road and Skywall Drive, including the proposed pump station (number 4) as shown on the Sewer Utility Map as required by the State Growth Management Act.

Administrator Knight explained they held public hearings in February and March and are now making a recommendation to the City Council. PB Van Pelt asked if Dyer/Skywall would form an LID to install sewer; Administration Knight stated that would be a council decision, but there was no intention at this time. PB Latimore confirmed the issue was

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.

ORDINANCE NO 981 - 08

7

{00648826.DOC;3.2} [DRAFT REVISED: 3/6/08]

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

- (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

ORDINANCE NO 981 – 08

9

{00648826.DOC;3.2} [DRAFT REVISED: 3/6/08]