

EXCERPTS OF STATE LAW RE SUBDIVISIONS & G.R.I.T REVIEW/OPINION (specifically related to G. Broughton's 8-lot Formal Plat)

[\(Jump to G.R.I.T. conclusions/opinion\)](#)

RCW 58.17.033

Proposed division of land -- Consideration of application for preliminary plat or short plat approval -- Requirements defined by local ordinance.

- (1) A proposed division of land, as defined in **RCW 58.17.020**, shall be considered under the subdivision or short subdivision ordinance, and zoning or other land use control ordinances, in effect on the land at the time a fully completed application for preliminary plat approval of the subdivision, or short plat approval of the short subdivision, has been submitted to the appropriate county, city, or town official.
- (2) The requirements for a fully completed application shall be defined by local ordinance.

RCW 58.17.020

Definitions.

As used in this chapter, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

- (1) "Subdivision" is the division or redivision of land into five or more lots, tracts, parcels, sites, or divisions for the purpose of sale, lease, or transfer of ownership, except as provided in subsection (6) of this section.

RCW 58.17.100

Review of preliminary plats by planning commission or agency -- Recommendation -- Change by legislative body -- Procedure -- Approval.

[G.R.I.T. Note: Although Sultan now uses a hearing examiner to approve/recommend to council (the legislative body), at the time of approval of the Gary Broughton formal plat, the PLANNING COMMISSION was the approval body. Therefore, this section applies. It also may be of interest to newer residents who are still trying to "get their feet" on the approval processes in Sultan.]

If a city, town or county has established a planning commission or planning agency in accordance with state law or local charter, such commission or agency shall review all preliminary plats and make recommendations thereon to the city, town or county legislative body to assure conformance of the proposed subdivision to the general purposes of the comprehensive plan and to planning standards and specifications as adopted by the city, town or county. Reports of the planning commission or agency shall be advisory only: PROVIDED, That the legislative body of the city, town or county may, by ordinance, assign to such commission or agency, or any department official or group of officials, such administrative functions, powers and duties as may be appropriate, including the holding of hearings, and recommendations for approval or disapproval of preliminary plats of proposed subdivisions.

Such recommendation shall be submitted to the legislative body not later than fourteen days following action by the hearing body. Upon receipt of the recommendation on any preliminary plat the legislative body shall at its next public meeting set the date for the public meeting where it shall consider the recommendations of the hearing body and may adopt or reject the recommendations of such hearing body based on the record established at the public hearing. If, after considering the matter at a public meeting, the legislative body deems a change in the planning commission's or planning agency's recommendation approving or disapproving any preliminary plat is necessary, the legislative body shall adopt its own recommendations and approve or disapprove the preliminary plat.

Every decision or recommendation made under this section shall be in writing and shall include findings of fact and conclusions to support the decision or recommendation.

A record of all public meetings and public hearings shall be kept by the appropriate city, town or county authority and shall be open to public inspection.

Sole authority to approve final plats, and to adopt or amend platting ordinances shall reside in the legislative bodies.

RCW 58.17.130

Bond in lieu of actual construction of improvements prior to approval of final plat -- Bond or security to assure successful operation of improvements.

Local regulations shall provide that in lieu of the completion of the **actual construction** of any required improvements prior to the approval of a final plat, the city, town, or county legislative body may accept a bond, in an amount and with surety and conditions satisfactory to it, or other secure method, providing for and securing to the municipality the actual construction and installation of such improvements within a period specified by the city, town, or county legislative body and expressed in the bonds. In addition, local regulations may provide for methods of security, including the posting of a bond securing to the municipality the successful operation of improvements for an appropriate period of time up to two years after final approval. The municipality is hereby granted the power to enforce bonds authorized under this section by all appropriate legal and equitable remedies. Such local regulations may provide that the improvements such as structures, sewers, and water systems shall be designed and certified by or under the supervision of a registered civil engineer prior to the acceptance of such improvements.

[G.R.I.T. note: Based on our review of the file and the old Sultan development codes, we believe the bond requirement was never met. Unless the installation of water and sewer hook-ups satisfies the "actual construction" criteria]

RCW 58.17.140

Time limitation for approval or disapproval of plats -- Extensions.

Preliminary plats of any proposed subdivision and dedication shall be approved, disapproved, or returned to the applicant for modification or correction within ninety days from date of filing thereof unless the applicant consents to an extension of such time period or the ninety day limitation is extended to include up to twenty-one days as specified under RCW 58.17.095(3): PROVIDED, That if an environmental impact statement is required as provided in RCW 43.21C.030, the ninety day period shall not include the time spent preparing and circulating the environmental impact statement by the local government agency. Final plats and short plats shall be approved, disapproved, or returned to the applicant within thirty days from the date of filing thereof, unless the applicant consents to an extension of such time period. A final plat meeting all requirements of this chapter shall be submitted to the legislative body of the city, town, or county for approval within five years of the date of preliminary plat approval. **Nothing contained in this section shall act to prevent any city, town, or county from adopting by ordinance procedures which would allow extensions of time that may or may not contain additional or altered conditions and requirements.**

[G.R.I.T. NOTE: 58.17.140 is a key statute. It was cited by Jim McDaniel, PLS for Harmsen & Associates (in his Sept. 18, 2001 letter to B&H's Paul Ingraham [sic]) as the defining time limit during which a preliminary plat remains in effect after approval by the legislative body, in this case, the Council. (See also our file on a 2000 discussion on allowed modifications and timelines on preliminary plats, between then-City Administrator Roy Bysegger, Planner Lara Thomas, Noel Higa (applicant/consultant for developer/owner Ron Bennett) and city attorney Grant Weed.)

The Sultan City Council approved the Gary. Broughton 8-lot formal plat at its July 30, 1998 meeting. According to the old City's code under which this plat was approved [section 16.10.010(1)(b)(v)(e) and the new Sultan code 16.28.390], this plat expired in three years. CITATION FOLLOWS: *"If the applicant has failed to complete his or her Plat within three (3) years from the date of preliminary plat approval and has failed to request and receive extensions of the preliminary plat approval, the preliminary plat approval shall lapse."* Any preliminary plat extensions are granted by Council approval, at the request of the platlor, as follows: *"Approval of preliminary plat shall be effective for three (3) years from the date of approval unless extended by the applicant as provided for herein. Upon written application therefor by the applicant or his successor, and filed with the City at least thirty (3) days prior to the expiration of approval, the council shall extend approval for not more than one (1) additional two-(2-) year period, if in the opinion of the Council, the applicant has attempted in good faith to submit the final plat within the three-(3-)year period in accordance with preliminary plat approval procedures contained herein."*

G.R.I.T. CONCLUSION & OPINION

It is our contention that this preliminary plat lapsed July 30, 2001. There was no request from Gary Broughton in the file requesting an extension, neither was there any vote in council to grant one. Because of the language contained above in 58.17.140, which allows greater specificity (i.e., weight), in interpreting local ordinances relative to time limits and extensions, it's my belief that the City's more specific code should prevail. And Sultan's Hearing Examiner John Galt has supported this premise in previous land use decisions. The citation, "Nothing contained in this section shall act to prevent any city, town, or county from adopting by ordinance procedures which would allow extensions of time that may or may not **contain additional or altered conditions and requirements**" is the prevailing citation. Support for this opinion is supported, albeit in a somewhat backdoor manner, by arguing that if the three-year time limit in Sultan's old code (16.10.010) was statutorily conflicted, why was the newer SMC (circa 4/01) section 16.28.390 *Preliminary plat lapse* not revised for consistency with 58.17.140?

A myriad of problems remain with this plat, just a few of which are listed below.

- Apparently no building permits were issued (nothing was in the file).
- Because no building permits were issued, no impact fees were paid (code states payment upon issuance, although the Planning Commission's and Council's recommendations were to pay impact fee at the time of sale of the dwelling. Sultan's old code 16.13.020 states fees shall be paid at the time of issuance of a building permit, while 16.13.60 states it shall be due at time of issuance of an occupancy permit. This same discrepancy exists in current Sultan code.
- Impact fees were approved by council (Item #6), as follows: "All mitigation fees for each lot shall be paid at the time of the first sale of each individual lot." At the time of preliminary plat approval, those fees were only \$500 for schools, \$1,373 for traffic and \$300 for parks, versus current fees of \$1,673, 1,837 and \$300, respectively. **This reflects \$6,112 less than current fees.**
- Apparently no bond was issued (per code 16.08.030(3)(a)(1&2)) (No documentation was in the file.)
- Apparently no water/sewer hook-up fees were paid and/or permits for hook-ups were issued.
- 20-foot illegal access road: Old code 16.10.010 (page 16.10 - 9) states minimum access for either a city-maintained or private roadway shall be "sufficiently improved for automobile travel having right-of-way width as set for in the following table," and gives a 60-foot width for +4 lots. The code states "The maximum number of lots that may be served by a private road shall be four (4) [lots] unless modification is granted by the council. Neither the Planning Commission nor the council made no such modification. They simply ignored this minimum width requirement by "mitigating" its inadequacies by approving a second private drive on the southern border of the plat which "need not be paved." Interestingly, one wonders about the *future use* of this "private drive" being set aside for this formal plat. If you look closely at the plat maps, you will see that 2-028/2-062, located at the southeastern corner of Gary Broughton's formal plat, which also appears to be owned by Gary and Susan Broughton, is land-locked. It is wedged between the Sultan High School parking lot and Gary and Bob's parents, Marilyn and Roger Broughton, whose property fronts 4th Street. But it looks as if future access to 4th Street could perhaps be achieved by utilizing the private, unpaved access area stipulated for use of buyers of lots 5-8 of the Broughton 8-lot formal plat.
- Despite Jim McDaniel's 9/18/01 letter to Paul Ingraham of Berryman & Henigar (page 2), even though the 6/11/98 city staff report states that a five-year period is allowed for revision of a preliminary plat, the Sultan UDC explicitly states a three-year maximum. And this error seems to have been recognized during time of council consideration, because that condition was removed before giving their approval.

Time does not permit further analyzing of this file, but the documents are here for others to scrutinize.