

**Transcription: Excerpt June 4, 2003 Council Discussion
Re Final Plat Approval of Gary Broughton's 8-lot Formal Plat**

Rowe Okay. Item #4, Broughton Manor formal plat, final acceptance. Who's got the info on that?

Cisar *[unintelligible]*, Mayor, I did provide a cover sheet for the council's information, a copy of the original staff report that was prepared for this particular subdivision plat. You do have on page 5 the recommendation that the city council *[unintelligible]* approve the plat at that time. There's also *[unintelligible]* conditions imposed upon the development. I did provide, in addition to that, some correspondence from myself to Mr. Broughton regarding what steps are necessary to complete the final plat process. On pages 6 and 7 and page 8 is my last correspondence, correspondence to Mr. Broughton regarding an inspection of the improvements that were made. To give you some background, the plat was approved July 30, 1998. It's on page 5 *[unintelligible]*. On July 26th, about a year later, 1999, the city approved the construction drawings for the project, in which you saw basically utilities for the site, a private roadway easement to the property, as well as a *[unintelligible]* for 4th Street. Since that time there's been no activity until the recent correspondence between myself and this developer. The plat, preliminary plat is indicated in the staff report is out for five years. If you look at our current subdivision regulations, that relates back to three years, which is an old requirement we haven't updated that just yet. If you have a chance to look at the statute that gives a developer five years. That five years is coming to a close on July 30th of this year so Mr. Broughton wants to get that plat completed. Based on all the conditions that have been met by the developer, we are recommending that the council approve the finally plat.

Rowe Okay. I would entertain a **motion** for discussion purposes.

Criswell I'll make the motion.

Rowe For what?

Criswell **That we accept the plat.**

McPherson I'll second it for discussion purposes.

Porter We're discussing the Broughton Manor formal plat.

Champeaux Rick? Can you answer me a question on page two? Item two, issues that concern impact on public services, under schools. Did the Sultan School District, as agreed to *[unintelligible]* offer of \$500 per lot to offset the impacts associated with the proposed project?

Cisar Um-hm.

Champeaux The City current has no formal impact, fee mitigation agreement with the school district and is using the SEPA authority to impose impact fees?

Champeaux What the heck are we talking about?

Cisar Pardon?

Champeaux What are we talking about?

Cisar What they did at that time, they negotiated the impact fees, school impact fee, as part of the approval process.

Champeaux This is back in '98?

Cisar '98.

Champeaux This is what we're looking at? This is back in '98?

Cisar So the impact fee for schools will be \$500 a lot. The park fee would be \$300, which is our current rate. The traffic impact is \$1,373, which is a little than our current \$1,873. Those are due and payable at the time of sale of the lot as opposed to building code(?).

Champeaux You're saying back in 1998, the city did not have an agreement to collect impact fees for --

Cisar That's correct. It's the school district, *[unintelligible]* SEPA told them to do that.

Criswell I, I kind of object to that 20-foot road going back there, myself.

[several voices mumbling.]

Criswell Was that a legal road in 19--19--87 or whatever it is?

Cisar If you go back, if you back, you go back to the record, it was approved as a private 20-foot wide private drive. Council approved it -- *[simultaneous comments]*

Criswell -- back the, you probably could, but I think we've changed that since then, *[unintelligible]*?

Male There was no code ever that allowed that.

McPherson I'm back to see *[unintelligible]* the road, and that's the truth.

Graafstra Let me interject. This is a preliminary plat that had been approved. There was an opportunity at that time to appeal on it, if the preliminary plat at that time contained conditions that were not lawful, were improper. When there's no appeal, the terms of the preliminary plat become what's characterized as the law *[sounds like, "that pays"???*]. So whether it was a lawful condition or not at the time, it became lawful by the absence of an appeal of the preliminary plat. So let's just get (sic) that on.

Criswell So none of this was appealed?

Graafstra None of it was appealed.

Criswell So then it's a moot question, then?

Graafstra It's a moot question. If they satisfied the conditions that were imposed in 1998, whether they were the correct conditions or not, they're the conditions we have to abide by. *[See end note #1].*

Raney And, Thom, the question -- or conditions are those that are listed in the council *[unintelligible]* on July 30, 1998?

Graafstra Those would be in the conditions that are listed in those minutes, yes.

Raney And that's *[train whistle blows as it passes city hall]*?

Graafstra That is correct. Plus, whatever the requirements of the city code were at that time, except to the extent that they're modified by these conditions.

Everett Is there a specific city ordinance you're referring to *[unintelligible]* plat? Or is this a state law? What is the *[unintelligible]*?

Graafstra That's state law.

Everett Do you know the citation?

Graafstra You vest under case law at the time of the application. But once you vest, you get it approved, that approval's got illegalities in it or whatever, it's still the law of the case. The people that are opposed to it, their opportunity is to appeal at that time. If they don't appeal, what those conditions are -- and those become the lawful conditions associated with that plat.

Raney So the fact that this doesn't meet minimum current standards and we recreate some of the same problems that we've all said we don't ever want to have again, doesn't matter?

Graafstra Doesn't matter.

Raney And this was clearly....

Graafstra Blame the council in 1998 or the adjoining property owners for failing to appeal *[See note #2].* But we're stuck with it. So long as they've satisfied those conditions.

[There is a significant amount of hallway and ambient noise during this discussion, making transcription of some statements -- especially short, mumbled ones -- impossible.]

Raney *[unintelligible]* make some sense.

Criswell *[unintelligible]* look at it.

Raney Does any *[unintelligible]* vote?

Criswell Yeah.

Raney *[unintelligible]*, Mr. Kraut? Can I pass this to Mr. Kraut??

Ron Kraut No, I -- if it says *[unintelligible]* of the road, I guess that's a condition of the plat.

Graafstra Condition #1 says, as part of it, "and a 20-foot wide private drive A."

Jerry Lehman What staff member said that was legal for our code to approve that?

Graafstra The council said it in its action at that time. I don't know what they did *[unintelligible]* --

Jerry Lehman But didn't they have staff recommendations?

[simultaneous comments]

Jerry Lehman If we recommend a 20-foot road?

Criswell I think you're out of order.

Jerry Lehman Oh, I'm sorry.

Graafstra Council packet includes a planning department staff report. Staff doesn't indicate there was a *[unintelligible]*.

Storm There was a staff report.

Rowe It was about the time Hans Korve was working. *[unintelligible, then long pause ensues]*.

Everett *[unintelligible]* council planners?

Ron Kraut Council was supposed to *[unintelligible]* their findings in 1998.

Rowe Okay. So if we're locked in as to what we've done then, what options do we have?

Raney Were there written council findings?

Porter The Planning Commission recommended preliminary plat approval then.

Raney Thom? Does it require that there be *written* council findings?

Male *{I think this is Jerry Lehman}* It's supposed to be approved by the engineer. Who **was** the mayor?

Rowe That was before my time. *[See end note #3]*

Graafstra 58.17 *[unintelligible]* that there will be findings. That's the platting *[unintelligible]*. I have -- I don't have any idea whether there are separate findings that were made as a result of the council action in 1998.

Raney *[unintelligible]*?

Graafstra But, but again, if there was an obligation to do written findings and they weren't done at that point, that was a legal requirement that could have been appealed at that time. *[see note #4]* That wasn't done. So the action that was taken, whether it was lawful or not, was the action that was taken. It was not appealed, and it became the law as a result of a lack of an appeal.

Jerry Lehman Our code requires that written findings --

Rowe You're out of order. *[bangs his gavel]* Okay. I think Thom pretty well put it on the table. We don't have a lot of options.

Raney I guess I don't know how does the -- how does the public *not know* that the job wasn't done?

Male Hm?

Graafstra They participate in the process. They observe the process. It's the same thing now. If the hearing examiner issues a decision and if he doesn't include findings of facts and conclusions of law, they can appeal the hearing examiner's decision.

Raney This is exactly why we went with the hearing examiner form. So we would get away from this.

Graafstra That's correct.

Raney But there's no requirement that if those findings aren't available, that still doesn't matter. Because that wasn't done, it doesn't matter that it wasn't done, because it never mattered.

Graafstra At the time, it would have mattered. In other words, if they didn't do it right in 1998, within the 20- or 30-day period of July 30, 1998, somebody considered themselves an aggrieved party, could have appealed and find--filed an action under the Land Use Petition Act. They didn't.

Raney Is - is it --

Graafstra Because they didn't, this decision was finalized.

Raney Then I guess what I would ask, is that the city ask the developer to do the right thing *[see end note #5]*. To pay the right mitigation fees, to build the roads that are correct so we don't end up with another parking public health and safety issue. And while we may have to

pass this -- which it looks like we do -- I still think it's a reasonable thing to sit down and ask, "Why not do this right?"

Criswell You can ask that.

Raney It's, it's, it's, it's an issue that's a very -- that's a very -- In town right now there's already enough problems and we don't need to add to that. And we may have some ability to negotiate with something else that the developer may or may not want in another area or project, to go and say, "How can we work this out?"

Rowe *[unintelligible]*.

Criswell As, as far as that street go[es], I look at these lot sizes. Boy, I'm don't know where he's going to put a bigger street in there.

Raney Well, it would be less lots.

Champeaux And he could just give you that?

Raney Well, that's the thing I'm saying, Bruce, is that, yeah, why would you do that except to do the right thing?

Champeaux Well, I can see him doing the right thing, but at the price of decreasing the number of lots, I think we're...

Criswell *[unintelligible]*.

Champeaux -- we're not going to get that. No reasonable person in here would do it. *[See end note #5 again]* Yes, you make the lots a little bit smaller and therefore, increase the driveway size, but not the number of lots. I don't think any *[unintelligible]* would do that.

Raney Is it about building a city so that we have houses that have good resale value and something that's, that's appropriate, or is it about the number of lots *[unintelligible]*? I guess that's the difference.

Criswell You're going to find that a builder's going to do that, he's going to do that anyway.

Raney Do what anyway?

Criswell That the builder's going to build a place...*[long pause]* for the right way, if -- he's going to get that *[unintelligible]*. If he's going to put in lots that size, that's the size lots he's going to put in. Now, I'm, my personal opinion is, I have, I have an acre over on First Street. Well, I could probably get five lots on it, but I sure as hell wouldn't put five lots on it. I just wouldn't do that. That's me. This is what the man asked for. This is what the council gave him.

Raney Right. But it's not built yet, and there's still time to do it right. Even though the law says - - the law says what's the minimum. It doesn't say --

Criswell What you want, Mark, is one house on forty acres like you have.

Raney That is not true, Rob. I want houses built that we won't be embarrassed to have our own kids in.

Criswell I, I don't like these streets, any more than you do. This was what they agreed to. If he wants to do that, that's up to him. And we can't, we can't -- I'm not going to ask him to do that. And he's got to do that out of his own conscience.

Raney As a representative of the city and the citizens, I think it's within our purview to do that, to ask for something to be done right. And I don't think there's much argument that that's an inadequate road and it's not built yet. And we're asking for trouble. And we've got a chance to do that right thing as a council.

Rowe I think the road has been built. I believe --
[simultaneous comments]

Cisar The easement is in, yes.

Male The easement is in.

Criswell I think the entryway has, but I don't think the --

Cisar The entry and the easement is paved. All the utilities are in. The sidewalk is in, too.

Champeaux Sidewalk's are in?

Cisar Yeah. *[unintelligible]*.

McPherson The council is supposed to sign the final plat, and there's no place on here where we sign this.

Rowe You weren't on the council then.

McPherson Today. This is today's. And that's, uh...number 16.28.400.

Criswell Just sign it on the back there. Sign it anywhere.

[an unintelligible comments and some chuckling]

McPherson Well, it is, isn't it?

Criswell Sign it anywhere. It's not a big thing.

McPherson It's supposed to be. It's right there.

Graafstra Well, look, the question that's before you is whether you accept this preliminary plat because the conditions of its approval have been satisfied. IF you accept it, our code does indicate that the final plat map's supposed to be signed by the council. I'm not exactly sure why this structure (sic) should apply to that, but if you want to do it, that's fine.

Everett State law requires that. Council's signatures.

Graafstra That's fine.

[unintelligible comments]

Male Then it doesn't get recorded, we get sued.

[simultaneous comments, some chuckling]

Graafstra It's two different maps. There's a preliminary plat map, which was approved in 1998 with certain terms and conditions. The final plat map is the map we're talking about will be produced and presented for signature after the council accepts -- if it accepts the final plat -- because the conditions of 1998 have been satisfied.

Rowe Okay.

Everett *[unintelligible]*. It says here if the final plat is found to be in correct form and the matters shown thereon are sufficient, the building and zoning official shall obtain the signature of the city engineer on the mylar of the plat map, and will schedule final consideration of the plat map before the council. Each formal plat map will be accompanied by a title report showing the names of all persons, firms and corporations whose consent is necessary to dedicate land for public use. Did we do that?

Criswell We didn't have to do that.

Graafstra I'm not the staff person that put this on. I don't know whether there's a title report.

Rowe But there again, they still *[unintelligible; something about the law]*.

Graafstra No, they still have to satisfy the *[unintelligible]*.

[long pause]

Rowe So what condition do we have to satisfy the...?

Graafstra In order to get final plat acceptance, they have to satisfy the conditions of the preliminary plat. And there are certain procedural things that they have to do within the five-year timeframe. I believe our code, among other things, requires that there be evidence of title, which is typically established through some type of title report. They then prepare a final plat map, a mylar and some copies, and those then come back for signature.

[long pause]

Porter Has that been...has that been done? *[unintelligible]*?

Cisar We've got a copy of the proposed final plat.

Porter But I mean does it *[unintelligible]*?

Cisar Prior to the final and you will get all the final documents.

Graafstra I presume there's still going to have to be a maintenance bond which is also going to have to be --

Cisar We do have a maintenance bond. All fees have been paid.

Rowe So all the fees have been *[unintelligible]*?

[long pause]

Graafstra I'm not sure I can answer what, what I just did. They have a preliminary plat, and they want to get final plat approval, "A", they satisfy all the conditions of the preliminary plat approval, and then procedurally, they come back to the council for final approval. And after finding that the final plat is *[unintelligible]*, part of that is they're supposed to submit a title report. After the council makes a finding that the final plat has been completed, the required improvements have been completed, then they submit a guarantee -- that would be the maintenance bond that's referenced there -- and when that happens, then the council signs off on the final plat and it goes and it's recorded.

Criswell And they've met all the requirements?

Graafstra Well, I guess, maybe they didn't submit a title report so *[unintelligible]* deferred action tonight because there's not a title report.

Jerry Lehman Doesn't the building official and the engineer have to sign it? That's what the code says.

Rowe *[bangs his gavel]*

Jerry Lehman Prior to final plat.

Rowe Jay?

Graafstra They may have. I have no idea. I mean, I see the staff report. I don't know if there's a mylar that's been presented, or not.

[simultaneous comments, the Broughton's say they have a mylar with them; Jerry Lehman makes another comment about the plat requirement for an engineer's signature, Rowe taps gavel and tells him he's out of order.]

Rowe Okay. Have you guys seen the mylar around?

Cisar We got the mylar, yeah.

Jerry Lehman Is it signed?

Rowe Jay, I'm not going to tell you again --

Champeaux *[unintelligible]* shut up. You want to go stand in the corner? C'mon. *[simultaneous comments]*

Rowe 'Cause you guys are disrupting the meeting. Now, we have the mylar.

Cisar We don't sign the mylar until after council *[unintelligible]*.

Porter I don't think we have any choice in the matter if we don't want to get sued, as Thom said awhile ago. And if everything's in order. *[unintelligible]*.

Rowe Okay. So a motion's on the table to accept it, right?

Deveraux Yes.

Rowe Okay. Is there any more discussion on it? Perry? You want to go first?

McPherson Nope. Go ahead. I abstain.

Rowe Jim?

Up Yes.

Rowe Jeff?

Everett No.

Rowe Mark?

Raney No.

Rowe Brennan?

Deveraux Abstain.

Rowe Bruce?

Champeaux No.

Rowe Rob?

Criswell Aye.

Rowe Dusty?

Boucher Abstain.

Rowe Got one "aye" and a whole bunch of no's.

[simultaneous comments, discussion]

Rowe Okay. Moving along to the next issue....

Porter Two aye's, three no's, and [unintelligible]?

Deveraux Yeah. Two aye's, three no's and two abstained.

Rowe Who [unintelligible] the aye? Rob? And who was the other one?

Porter Me

Rowe Oh. Sorry about that, Jim. Two aye's, three no's, two abstain.

Criswell I [unintelligible] see if we can bring this back to try again. I mean, it's crazy. Ask Laura to go through the reports, is that right? Is that what we wait for now?

Rowe I guess... Okay, moving along to the next item.

ENDNOTES:

1. *There are several problems with this plat, not the least of which is a rather glaring traffic/safety issue due to inadequate access and road widths. My question to Mr. Graafstra is this: If the city is legally bound to approve a formal plat because of conditions approved and imposed by a council in 1998, would such approval leave the city open to potential litigation in the event that a death or serious accident occurring because of that approval? For example, if the council had approved a plat based on building codes which were later proven to be injurious to the health and safety of either the plat residents or population at large, as in the case of a flammable building material or inadequate fire protection facilities -- AND -- the council approved, with full knowledge of that hazard, a five-year-old formal plat that included conditions proven in case precedence to be hazardous, is the council still bound to approve that plat, with full knowledge of a proven and potential safety concern?*

2. *The "adjoining property owners" were, mostly, other Broughton's.*

3. *Mayor Rowe was on the 1998 council.*

4. **Council written findings and facts and decision must accompany final approval. This has not yet been done. We submit the following statutes and case law to support our position.:**

- **Benchmark Land Company v. City of Battle Ground**, March 1999, 94 Wn. App. 537, Supreme Court Docket 70659-0, July 11, 2002: This case held that oral considerations are not binding. The July 30, 1998 Council meeting discussion was oral, and no council written decision was issued.
- **RCW 58.17.195**, Approval of plat or short plat -- Written finding of conformity with applicable land use controls. No plat or short plat may be approved unless the city, town, or county makes a formal written finding of fact that the proposed subdivision or proposed short subdivision is in conformity with any applicable zoning ordinance or other land use controls which may exist.
- **RCW 58.17.100**...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.

The above RCW's are echoed in SMC 16.28.340.

5. **"DOING THE RIGHT THING":** *Residents may recall Gary Broughton's appeal of School, Traffic and Park impact fees (Total \$3,810) in January, 2003 (see our Broughton webpage). The justification for waiving these fees was because "the city didn't tell me" he needed to rebuild a demolished house within a one-year period (a city-requested action) in order to avoid paying the impact fees on the rebuilt house. This, despite the fact that Mr. Broughton is an experienced developer and his brother, Robert Broughton, was mayor during the time the house was demolished and the clock starting ticking. Mr. Broughton is hardly likely to revise his plat, despite the "rightness" and benefits to a community in which he and his entire family have lived*

in, and have led, for many decades. This is NOT a development of which Mr. Broughton should boast or be proud. An interesting bit of intelligence that bears philosophically (but carries no legal ramifications) on this issue, and Raney's request that Gary Broughton "do the right thing," is the financial situation of Susan and Gary Broughton. They share significant financial benefits from an estate, a portion of which includes property holdings on Rice Road (either sold within the last year or still owned) in excess of \$5.5 million, and financial interest in Telacon. "Doing the right thing" means leaving a community legacy that Gary Broughton, and his other family members, can be proud of.