

SULTAN PLANNING BOARD AGENDA ITEM COVER SHEET

ITEM NO: A-2

DATE: April 1, 2008

SUBJECT: First Reading Ordinance No. 982-08; Amending Ordinance No. 981-08.

CONTACT PERSON: Deborah Knight, City Administrator

ISSUE:

The issue before the City Council is to authorize the Mayor to sign Ordinance No. 982-08 an ordinance to amend Ordinance No. 981-08 for the purpose of formally incorporating supplemental findings of fact based on public comments received during Council and Planning Board deliberations and moratorium public hearings on March 13, 2008 and March 19, 2008.

STAFF RECOMMENDATION:

Authorize the Mayor to sign Ordinance No. 982-08 (Attachment B) an ordinance to amend Ordinance No. 981-08 incorporating supplemental findings of fact in support of the city's temporary 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.

PLANNING BOARD RECOMMENDATION:

Accept the Findings of Fact to supplement Ordinance No. 981-08.

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 sixty days of its adoption, whether or not the governing body received a recommendation on the matter from the planning commission or department.

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.

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 during Council and Planning Board deliberations and moratorium public hearings on March 13, 2008 and March 19, 2008.

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 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.”

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, 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 C).

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. No one provided comment during the hearing. (Attachment D)

A moratorium, interim zoning map, interim zoning ordinance, or interim official control adopted under this section 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.

A public hearing must 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 the public hearing, the moratorium will be effective for a period of six months from the effective date of the Ordinance.

DISCUSSION:

The supplemental findings of fact provide an analysis of how the moratorium supports the goals of the Washington State Growth Management Act. Decisions on appeals of moratoria in other cities indicate this type of analysis is important.

These findings clearly state the City Council's intent to uphold and comply with the Growth Management Act to preserve the public health, safety, and welfare of City residents, and the City budget, and to prevent certain development approvals in the City until the appropriate planning and legislative action can be completed.

RECOMMENDED ACTION:

Authorize the Mayor to sign Ordinance No. 982-08 an ordinance to amend Ordinance No. 981-08 incorporating supplemental findings of fact in support of the city's temporary land use 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.

ATTACHMENTS:

- A – Ordinance 981-08
 - B – Ordinance 982-08
 - C – March 13, 2008 City Council Public Hearing Minutes
 - D – March 19, 2008 Planning Board Public Hearing Minutes
 - E – April 1, 2008 Planning Board recommendation
-

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:

- (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

CITY OF SULTAN

Sultan, Washington

ORDINANCE NO 982-08

AN ORDINANCE OF THE CITY OF SULTAN, WASHINGTON AMENDING ORDINANCE NO. 981-08; INCORPORATING SUPPLEMENTAL FINDINGS OF FACT IN SUPPORT OF THE CITY'S 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, pursuant to RCW 36.70A.390, 35A.63.220, and other lawful authority the Sultan City Council ("Council") conducted a public hearing on March 13, 2008, for the purpose of receiving and considering public testimony regarding Ordinance No. 981-08; and

WHEREAS, the Sultan City Council adopted Ordinance No. 981-08 on March 13, 2008 for the purpose of imposing a moratorium on the acceptance 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 ;and

WHEREAS, the Sultan Planning Board considered supplemental findings of fact in support of Ordinance No. 981-08 and held public hearing on March 19, 2008;and

WHEREAS, at the conclusion of the March 19, 2008 public hearing, the Planning Board considered the moratorium at its April 1, 2008 meeting and recommended the City Council formally adopt numerous supplemental findings of fact in support of Ordinance No. 981-08; and

WHEREAS, based upon public comments received during the public hearings and subsequent Council and Planning Board deliberations, the City Council desires to amend Ordinance No. 981-08 for the purpose of formally incorporating the Council's supplemental findings;

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

Section 1. Amendment of Section 1 of Ordinance No. 981-08. Section 1 of Ordinance No. 981-08 is hereby amended in its entirety 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.

(a) Findings. The Sultan City Council hereby makes the following findings in support of the moratorium imposed by this ordinance:

- i) The City has formally considered the Growth Management Hearings Board Final Decision and Order in *Fallgatter IX* invalidating the CFP on September 6, 2007; and
- ii) The GMA planning goals enumerated at RCW 36.70A.020 as evidenced by, *inter alia*, the Supplemental Findings attached hereto as Exhibit A and incorporated herein by this reference as if set forth in full.

Section 2. Addition of Exhibit A to Ordinance No. 981-08. Ordinance No. 981-08 is hereby amended by the addition of Exhibit A hereto, which shall be attached to Ordinance No 981-08 and incorporated therein as if set forth in full.

Section 3. 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 4. Effective date. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the City and shall take effect and be in full force five (5) days after publication.

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

Exhibit A
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 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.”