



JEFFERSON COUNTY

DEPARTMENT OF COMMUNITY DEVELOPMENT

621 Sheridan Street

Port Townsend, WA 98368

Al Scalf, Director

CODE INTERPRETATION

This interpretation is made according to Ordinance No. 05-0828-98 Jefferson County Procedures & Criteria to Clarify Land Use Regulations Ordinance, and under Jefferson County Code Chapter 18.40 Article VI Unified Development Code Interpretation. The purpose of these code sections are to allow Community Development to address conflicting or ambiguous wording, clarify the scope and applicability of specific provisions of the land use regulations, interpret the intent of a regulation, or take action regarding conflicts between local land use code and State or Federal law or Court decisions, including informing the public and applicants.

Date: June 7, 2010

Subject: **Substitute Senate Bill 6544**
A Washington State Legislature Bill to extend preliminary plat approval from five to seven years

Requestor: Jefferson County Department of Community Development

Issue: Current Jefferson County Code 18.35 Land Divisions limit preliminary Long Subdivisions approval to five years, while Subdivision Ordinance No. 04-0526-92 (applicable only to Port Ludlow Associates) limits the same to three years. Both codes will be in conflict with RCW 58.17 effective June 10, 2010 due to passage of new legislation under SSB 6544 which extends preliminary subdivision approval from five to seven years for long plats.

RELEVANT LAW, CODE, PLANS, ORDINANCES OR POLICIES:

This interpretation is made according to JCC 18.40 Article VI Unified Development Code Interpretation and Ordinance No. 05-0828-98 Jefferson County Procedures & Criteria to Clarify Land Use Regulations Ordinance. In making an interpretation of the provisions of Jefferson County's land use regulations, the Director shall consider the following:

- a) The applicable provisions of the subject land use regulation(s), including its purpose and context;
- b) The implications of the interpretation for development within the county as a whole, including the precedent the interpretation will set for other applicants; and
- c) The applicable provisions of the Jefferson County Comprehensive Plan and other relevant ordinances and policies;
- d) The consistency of the interpretation with other local, state and federal land use regulations, if any.

Jefferson County Code Chapter 18.35 Land Divisions

On December 18, 2000, the Board of County Commissioners adopted the Unified Development Code (UDC) as the set of implementing regulations for the Jefferson County Comprehensive Plan. Section Seven (7) of the UDC was Land Divisions. The effective date of the UDC was January 16, 2001. Upon codification, the UDC became Title 18 of the Jefferson County Code (JCC). Section 7 Land Divisions then became Chapter 18.35 of the JCC. JCC 18.35.390(3) states, "Applications for final plat approval shall be submitted within five years of the date of the preliminary plat approval."

Subdivision Ordinance No. 04-0526-92

The Subdivision Ordinance No. 04-0526-92 was adopted May 26, 1992 as the County's land use law governing the division of land throughout Jefferson County. In December 2000, the Unified Development Code was adopted, replacing Subdivision Ordinance No. 04-0526-92 with Jefferson County Code (JCC) Chapter 18.35 Land Divisions. Subdivision Ordinance No. 04-0526-92 now only applies to property owned by Port Ludlow Associates (PLA) as required under their Development Agreement with the County (Resolution No. 42-00) and adopted May 8, 2000. Section 6.212 Expiration of Subdivision Ordinance No. 04-0526-92 states, "Approval of a preliminary long plat shall expire unless the final long plat is submitted in proper form for final approval within thirty-six (36) months, unless an extension is granted by the Board..."

Comprehensive Plan Goal & Policy:

Applicable Comprehensive Plan Goals & Policies are as follows

GOAL:

LNG 1.0 Ensure consistency between the Growth Management Act, the County-wide Planning Policy, this Comprehensive Plan, land use and zoning maps, the Unified Development Code, Western Washington Growth Management Hearings Board decisions, other related policies and regulations, and all land use, environmental and development decisions and approvals.

POLICIES:

LNP 1.2 Acknowledge and protect the rights of private property owners in preparing land use, development, and environmental regulations, prohibit arbitrary and discriminatory actions, and preserve reasonable uses for regulated properties.

RCW 58.17.020 Definitions

The Revised Code of Washington (RCW) 58.17.020 Definitions, defines the following:

- 1) "Subdivision" is the division or re-division 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.
- 2) "Plat" is a map or representation of a subdivision, thereon the division of a tract or parcel of land into lots, blocks, streets and alleys or other divisions and dedications.
- 6) "Short Subdivision" is the division or re-division of land into four or fewer lots, tracts, parcels sites or divisions for the purpose of sale, lease, or transfer of ownership: PROVIDED, that the legislative authority of any city or town may by local ordinance increase the number of lots, tracts, parcels to be regulated as short subdivisions to a maximum of nine.

RCW 58.17.140 Time limitation for approval or disapproval of plats — Extensions

RCW 58.17.140 currently reads: "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."

RCW 58.17.170 Written approval of subdivision — Original of final plat to be filed — Copies

RCW 58.17.170 currently reads: “When the legislative body of the city, town or county finds that the subdivision proposed for final plat approval conforms to all terms of the preliminary plat approval, and that said subdivision meets the requirements of this chapter, other applicable state laws, and any local ordinances adopted under this chapter which were in effect at the time of preliminary plat approval, it shall suitably inscribe and execute its written approval on the face of the plat. The original of said final plat shall be filed for record with the county auditor. One reproducible copy shall be furnished to the city, town or county engineer. One paper copy shall be filed with the county assessor. Paper copies shall be provided to such other agencies as may be required by ordinance. Any lots in a final plat filed for record shall be a valid land use notwithstanding any change in zoning laws for a period of five years from the date of filing. A subdivision shall be governed by the terms of approval of the final plat, and the statutes, ordinances, and regulations in effect at the time of approval under RCW 58.17.150 (1) and (3) for a period of five years after final plat approval unless the legislative body finds that a change in conditions creates a serious threat to the public health or safety in the subdivision.

FINDINGS OF FACT:

- (1) On March 17, 2010, Governor Gregoire signed into law Substitute Senate Bill (SSB) 6544 which extends the expiration of preliminary plat approval from five years to seven years. SB 6544 was unanimously passed by both the State Senate and House on February 16 and 28, 2010 respectively, to become effective as State law on June 10, 2010.
- (2) The only sections of the RCW affected by SSB 6544 are RCW 58.17.140 & 170. New text for RCW 58.17.140 reads, “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))~~ seven years of the date of preliminary plat approval.” New text for RCW 58.17.170 reads, “Any lots in a final filed for record shall be valid land use notwithstanding any change in zoning laws for a period of ~~((five))~~ seven years from the date of filing. A subdivision shall be governed by the terms of approval of the final plat, and the statues, ordinances, and regulations in effect at the time of approval under RCW 58.17.150 (1) and (3) for a period of ~~((five))~~ seven years after the final plat approval unless the legislative body finds that a change in conditions creates a serious threat to the public health or safety in the subdivision.”
- (3) NEW SECTION SEC. 3 of SSB 6455 states, “Sections 1 and 2 of this act expire December 31, 2014.” The act will expire on December 31, 2014, at which time, presumably, the five-year time period will be reinstated.
- (4) Final Bill Report on SSB 6544 stipulates that the act applies only “for applications to form five or more lots,” that is, does not apply to short subdivisions of fewer than five lots. Also, the definition of “plat” in RCW 58.17.020(2) does not include subdivisions of less than five lots.
- (5) Local regulations must be consistent with State law, in this case RCW 58.17.

(6) On March 24, 2010 the UDC Administrator instructed staff to draft the subject code interpretation to inform applicants of conflicts between local land use code and State or Federal law or Court decisions and to insure consistency with State law.

(7) Currently, there are four (4) plats that this legislation will affect. Also listed is when preliminary approval will expire once SSB 6544 takes effect:

- Olympic Terrace Division II Phase 2 – SUB05-00003 (expires 6/28/2012)
- Discovery Bay Golf Club PRRD – SUB05-00022 (expires 10/23/2013)
- Ludlow Cove II – SUB07-00038 (expires 9/16/2015)
- PAM Port Townsend One – SUB08-00029 (expires 11/5/2016)

CONCLUSION:

As of June 10, 2010 provisions of the Jefferson County Code, JCC 18.35.390(3) and Section 6.212 of Jefferson County Subdivision Ordinance No. 04-0526-92 will be inconsistent with RCW 58.17.140 & 170. Those codes should be amended to reflect the changes to the RCW enacted by SSB 6544.

DECISION:

Any and all subdivisions within Jefferson County of five (5) lots or greater granted preliminary plat approval before December 31, 2014 and that have not expired prior to June 10, 2010 shall be granted a seven year expiration period from the date of preliminary plat approval in which to accomplish final plat approval. This code interpretation becomes effective immediately upon signing and becomes ineffective on December 31, 2014.

APPEAL:

JCC 18.40.390 & Section 6 of Ordinance No. 05-0828-98 - Jefferson County Procedures & Criteria to Clarify Land Use Regulations Ordinance, outline the appeal process available to any person or entity aggrieved by this interpretation.

Dated this 7th of June, 2010

Al Scalf, DCD Director