

# SULTAN CITY COUNCIL

## AGENDA ITEM COVER SHEET

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**ITEM NO:**

Vodnick Lane Appeal, Public Meeting and Closed Record Hearing

**DATE:**

February 8, 2007

**SUBJECT:**

APPEAL/CLOSED RECORD HEARING

Hearing Examiner Recommendation Condition of Approval Number 17 and related Findings and Conclusions : Brickyard Properties, LLC 23 Lot Planned Unit Development and Plat (Vodnick Lane) File Number No. RAFPPUD05-004 (Appeal Request, Hearing Examiner Recommendation, Staff Report, and Plat Map attached).

**CONTACT PERSON:**

Rick Cisar, Director of Community Development

**SUMMARY:**

The Hearing Examiner held an Open Record Hearing on May 15, 2006, and a Remand Hearing on November 9, 2006 for the Preliminary Planned Unit Development Subdivision (Vodnick Lane) File Number RAFPPUD05-004.

Based on the Findings of Fact, Principles of Law, Discussion and Conclusions, the testimony and evidence submitted at the Hearing, the Hearing Examiner's site visit, the Hearing Examiner RECOMMENDS that the Preliminary Planned Unit Development Subdivision (Vodnick Lane) File Number RAFPPUD05-004 be Approved subject to the 25 conditions as outlined on pages 28 through 31 of the Hearing Examiner's November 17, 2006 Recommendation.

The Applicant, Brick Yard Properties, LLC on, December 7, 2006 submitted an Appeal Request to the Hearing Examiner's Condition of approval #17 (Level of Service (LOS) Police Services) on page 30 of the Hearing Examiner's Recommendation. As noted in the Appeal, this Condition is inconsistent with prior determinations made by the City Council in the attached Resolutions Numbers. 06-06, 06-07 06-09A, and 06-11 A.

**ALTERNATIVES:  
& ACTIONS:**

The City Council, in considering the Vodnick Lane Development and Appeal Request, has the option to:

- (1) Approve the Hearing Examiner's Recommendation,; or
- (2) Approve the project with the Applicants Appeal Request (page 2 of Appeal); or

- (3) Approve the request based on the Council's own set of Findings and Conclusions; or
- (4) Deny the request based on the Council's own set of Findings and Conclusions.

To assist the City Council in their evaluation of this project and the Recommendations, Staff has attached the following:

- (a) The November 2, 2006 Staff Report that provides a project Overview and site plan.
- (b) The Hearing Examiner's November 17, 2006 Recommendation with 25 Conditions.
- (c) The Applicant, Brick Yard Properties, LLC Appeal Request dated December 7, 2006.
- (d) Resolutions Numbers. 06-06, 06-07, 06-09A, and 06-11A.
- (e) Comments received from Parties of Record who received notice of the Filing of the Appeal .

**Analysis of  
Alternatives:**

- 1. Alternative 1 would Approve the project but, in this case imposed a Condition by the Hearing Examiner to adopt the following languages
- 2. Alternative 2 would Approve the project with a Condition that the Developer provide a "Voluntary Agreement for Police Services" and agree to fund their proportionate share (16%) of the cost of one police officer for one year (Resolution 01-07B). This Alternative is consistent with City's Council's previous Action and Approvals for the Steen Park Subdivision, Cascade Breeze Subdivision, Skoglund Estates Planned Unit Development, and the AJ's Place Binding Site Plan. (Resolution's 06-06, 06-07, 06-09A, and 06-11A). While this provides a one year solution, the Council would need to fund additional police services out of the City's General Fund Budget.
- 3. Alternative 3 would Approve the Project with the City Council establishing their own set of Findings and Conclusions based on the Hearing Examiner's Public Hearing Record and the City's Council's Appeal Hearing Record.
- 4. Alternative 4 would Deny the Project with the City Council establishing their own set of Findings and Conclusions based on the Hearing Examiner's Public Hearing Record and the City's Council's Appeal Hearing Record.

Staff has prepared two Resolutions for Alternates 1 and 2. Resolution Number 01-07A accepting the Hearing Examiner's Recommendation with 25 Conditions and Resolution 01-07B approving the Hearing

Examiner's Recommendation with 25 Conditions and a revised Condition Number 17 addressing Police Level of Service (LOS). These Resolutions can be considered by the City Council under the Action Items of the Agenda.

**FISCAL IMPACT:**

Processing of the Appeal Request and the potential revenues to fund an incremental share (16%) of Police Officer Position for one year.

**STAFF  
RECOMMENDATION**

In consideration of City Council's previous actions, Approve Resolution 07- 01 B under Action Item A-2 which provides for the Approval of the Preliminary Planned Unit Development Subdivision (Vodnick Lane) with Conditions 1 through 16 and 18 through 25 as Recommended by the Hearing Examiner and a new Condition 17 to read as follows:" The Applicant offers to execute a Developer Agreement to pay Applicant's incremental share for a Police Officer consistent with Resolutions 06-06, 06-07, 06-09A, and 06-11A.

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**COUNCIL ACTION:**

**DATE:**

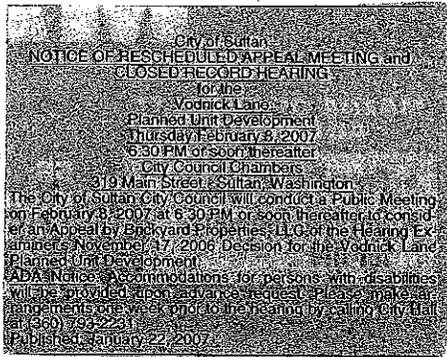
- ATTACHMENTS:**
1. November 2, 2006 Staff Report and Recommendations
  2. November 17, 2006 Hearing Examiner Recommendation
  3. December 5, 2006 Applicants Appeal of Hearing Examiners Decision
  4. Resolutions Numbers 06-06, 06-07, 06-09A, and 06-11A
  5. Comments received from Parties of Record on the Appeal Request
    - a. Comments received from Ron Kraut, January 3, 2007; and
    - b. Comments 2-letters from Josie Fallgatter received January 4, 2007
    - c. Comments from Ron Kraut, dated January 31, 2007 and received February 1, 2007,
    - d. Comments received from Josie Fallgatter dated and received February 1, 2007

# Affidavit of Publication

STATE OF WASHINGTON,  
COUNTY OF SNOHOMISH

} S.S.

The undersigned, being first duly sworn on oath deposes and says that she is Principal Clerk of THE HERALD, a daily newspaper printed and published in the City of Everett, County of Snohomish, and State of Washington; that said newspaper is a newspaper of general circulation in said County and State; that said newspaper has been approved as a legal newspaper by order of the Superior Court of Snohomish County and that the notice



Rescheduled Appeal Meeting and

Closed Record Hearing

Vodnick Lane

a printed copy of which is hereunto attached, was published in said newspaper proper and not in supplementary form, in the regular and entire edition of said paper on the following days and times, namely:

January 22, 2007

and that said newspaper was regularly distributed to its subscribers during all of said period.

*Jody Kohl*

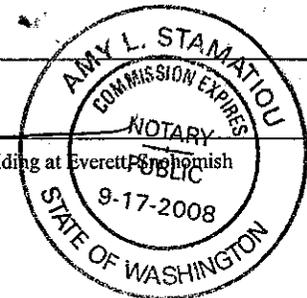
Principal Clerk

Subscribed and sworn to before me this

22nd

day of January, 2007

*Amy L. Stamatou*  
Notary Public in and for the State of Washington, residing at Everett, Snohomish County.



*Note: Accepts recommendation (Galt on concurrency), and approves for 23 lots in a PUD with conditions as proposed by Hearing Examiner.*

**CITY OF SULTAN  
Sultan, Washington**

**RESOLUTION NO. 07-01 A**

**A RESOLUTION OF THE CITY OF SULTAN  
ACCEPTING THE HEARING EXAMINER'S  
RECOMMENDATION AND APPROVING THE  
BRICKYARD PROPERTIES, LLC PRELIMINARY  
PUD SUBDIVISION APPLICATION FOR A 23 LOT  
PLANNED UNIT DEVELOPMENT (VODNICK  
LANE) ON CONDITIONS AS STATED BY THE  
HEARING EXAMINER**

**WHEREAS** Brickyard Properties, LLC filed an application for approval of Vodnick Land, a 23 lot Planned Unit Development (PUD) subdivision for single family development;

**WHEREAS** an open record hearing occurred before the City's Hearing Examiner on November 9, 2006 on a resubmitted application, the City Hearing Examiner issued a Recommendation dated November 17, 2006, and the applicant by letter dated December 5, 2006 appealed the Recommendation and requested a closed record hearing;

**WHEREAS** the application came before the City Council for a closed record hearing and appeal by the applicant on the "Recommendation" on January \_\_\_\_\_, 2007;

**WHEREAS** the City Council has determined based upon the law and the facts to accept the Hearing Examiner's findings of fact and to accept the Hearing Examiner's Conclusions of Law and recommended conditions and to deny the appeal but to otherwise grant approval of the preliminary plat and PUD;

**NOW, THEREFORE:**

The City Council accepts the "Recommendation" of the Hearing Examiner dated November 17, 2006 and approves the Preliminary PUD Subdivision of 23 lots for Vodnick Lane on the Conditions as modified by the Hearing Examiner in the Recommendation.

**PASSED BY THE** Sultan City Council and **APPROVED** by the Mayor this day of \_\_\_\_\_ 2007.

**CITY OF SULTAN**

By \_\_\_\_\_  
Ben Tolson, Mayor

Attest:

By \_\_\_\_\_  
Laura Koenig, City Clerk

By \_\_\_\_\_  
Council Member Flower

By \_\_\_\_\_  
Council Member Champeaux

By \_\_\_\_\_  
Council Member Blair

By \_\_\_\_\_  
Council Member Slawson

By \_\_\_\_\_  
Council Member Boyd

By \_\_\_\_\_  
Council Member Seehuus

By \_\_\_\_\_  
Council Member Wiediger

*Note: Accepts recommendation, but with revised findings on concurrency consistent with the prior applications, approves for 23 lots in a PD with DCD's condition on Police.*

**CITY OF SULTAN  
Sultan, Washington**

**RESOLUTION NO. 07-01 B**

**A RESOLUTION OF THE CITY OF SULTAN  
ACCEPTING THE HEARING EXAMINER'S  
RECOMMENDATION AS REVISED IN THIS  
RESOLUTION AND APPROVING THE  
BRICKYARD PROPERTIES, LLC PRELIMINARY  
PUD SUBDIVISION APPLICATION FOR A 23  
LOT PLANNED UNIT DEVELOPMENT  
(VODNICK LANE) ON THE CONDITIONS SET  
OUT BY THE HEARING EXAMINER, EXCEPT  
CONDITION 17**

**WHEREAS** Brickyard Properties, LLC filed an application for approval of Vodnick Lane, a 23 lot Planned Unit Development (PUD) subdivision for single family development;

**WHEREAS** an open record hearing occurred before the City's Hearing Examiner on November 9, 2006 on a resubmitted application, the City Hearing Examiner issued a Recommendation dated November 17, 2006, and the applicant by letter dated December 5, 2006 appealed the Recommendation and requested a closed record hearing;

**WHEREAS** the application came before the City Council for a closed record hearing and appeal by the applicant on the "Recommendation" on January \_\_\_\_\_, 2007;

**WHEREAS** the City Council has determined based upon the law and the facts to accept the Hearing Examiner's findings of fact in part, to accept the Hearing Examiner's Conclusions of Law in part, to accept the Hearing Examiner's Conditions of Approval in part, and to accept as revised herein the Hearing Examiner's recommendation and approve the application;

**NOW, THEREFORE:**

**A.** The City Council accepts the Recommendation of the Hearing Examiner dated November 17, 2006, as further revised by this Resolution and approves the Planned Unit Development (PUD) subdivision for single-family development for 23 lots for Vodnick

Lane on the conditions set out in the Recommendation, except Condition 17, which is revised herein.

**B.** Commencing at page 2 of the Hearing Examiner's Recommendation the Examiner made 29 Findings of Fact. The Council adopts the Hearing Examiner's Findings of Fact. Based upon the evidence in the record and judicial notice the Council makes the following additional Finding of Fact:

Applicant offered at the open record hearing a developer agreement to pay the developer's pro rata share for one year of the cost of a police officer to mitigate the impacts of this development. Thereafter, the revenues from real estate taxes on the increased value of the property will be available to the City's general fund.

**C.** Beginning at page 16 of the Hearing Examiner's Recommendation are 30 Conclusions of Law. The Council adopts Conclusions of Law 1-14, 28, 29, except 29 -d, and 30. The Council rejects Conclusions of Law 15-27 and 29-d and makes the following Conclusions of Law and Conditions:

1. The City's existing level of service for police is below the adopted LOS in the comprehensive plan. The LOS failure for police, however, was not caused by this proposed development, and further reduction in the LOS caused by this proposed development is modest by comparison to the existing deficiency.
2. The Council takes notice of the recommendations in the Prothman Report accepted by the Council and Ordinance 900-06. The City has adopted a utility tax applicable to its municipal utilities and a utility tax on cable television service. Other funding sources include potential developer loans to advance the receipt of payment of needed funds, and monies contributed by proposed development for their impacts on the LOS. The proposed development also will increase the assessed value of the property, bringing more real property tax revenues to the City. A combination of developer agreements and public funds will put in place the required public services for police concurrent with development impacts, and provide appropriate strategies for the six years from the time of development to achieve the necessary police LOS as now established or as subsequently revised.
3. The Council takes notice of the Applicant's offer at the open record hearing to deliver to the City a Developer Agreement to pay Applicant's incremental share for a police officer for one year.
4. Based upon the foregoing, this proposed development is deemed concurrent for police. The Conditions of Approval should include

Condition 15 as proposed by the Director of Community Development and not as required by the hearing examiner.

**PASSED BY THE** Sultan City Council and **APPROVED** by the Mayor this \_\_\_\_ day of \_\_\_\_\_ 2007.

**CITY OF SULTAN**

By \_\_\_\_\_  
Ben Tolson, Mayor

Attest:

By \_\_\_\_\_  
Laura Koenig, City Clerk

By \_\_\_\_\_  
Council Member Flower

By \_\_\_\_\_  
Council Member Champeaux

By \_\_\_\_\_  
Council Member Blair

By \_\_\_\_\_  
Council Member Slawson

By \_\_\_\_\_  
Council Member Boyd

By \_\_\_\_\_  
Council Member Seehuus

By \_\_\_\_\_  
Council Member Wiediger

**City of Sultan  
Staff Report and Recommendation  
To the Hearing Examiner  
November 2, 2006**

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**Vodnick Lane PUD and Plat Remanded/Amended Application  
File Number RAFP-PUD 05-004**

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**I. Application Information and Process**

a. Request

The Applicant requests Approval to develop 23-single-family residences on approximately 4.77 acres as a Planned Unit Development (PUD) Single-Family (PUD-SF) overlay. The project is zoned Moderate Density Residential (MD).

b. Applicant

Brickyard Properties L.L.C.  
16030 Juanita-Woodinville Way NE  
Bothell, WA 98011  
Phone: 425-775-4581  
Attn: Daniel Roupe

c. Engineer/Surveyor

Group Four, Inc.  
16030 Juanita-Woodinville Way NE  
Bothell, WA 98011  
Phone: 425-775-4581  
Attn: Steven M. Anderson

- d. Wetland Biologist  
The Jay Group, Inc.  
1927 5<sup>th</sup> Street  
Marysville, WA 98270  
Phone: 360-659-8159  
Attn: Kyle Legare
- e. Parcel Numbers  
280832-001-023-00 and 280832-001-017-00
- f. Project Description  
The proposed project is a PUD for a detached single-family development of 23-homes. The development is comprised of two parcels, totaling 4.77 acres. The site contains no critical areas. One existing single-family residence, with associated outbuildings, exists on-site at this time. All existing structures will be removed.
- g. Location  
The site address is 13924 Sultan Basin Road, which is located on the west side of Sultan Basin Road, approximately 2,400 feet north of U.S. Highway 2. The site is south of and abutting the plat of Eagle Ridge. The site is located in a portion of Section 32, Township 28 N, Range 8 E, W.M., in Snohomish County, Washington.
- h. Existing Site and Surrounding Land Uses  
The site measures approximately 164 feet, in a north-south direction, by 1,268 feet in an east-west direction. The site is generally flat, sloping from the west to the east, with the steepest slope being approximately 7%. There is an existing single-family residence with outbuildings, all of which will be removed during construction. Immediately abutting this site, to the north and the west, is the detached single-family plat of Eagle Ridge. To the south is a site zoned High Density, a portion of which is currently occupied by a Church. The site contains no critical areas (wetlands), as noted in the letter, dated July 13, 2005, from Kyle Legare of The Jay Group, Inc., the Applicant's wetland biologist.
- i. Utilities, Fire, and School Districts  
Water Source: City of Sultan  
Sewer Service: City of Sultan  
Fire District: Snohomish County Fire Protection District No. 5  
School District: Sultan School District No. 311
- j. Related Permits and Reviews  
Development of the site will require building, grading, fill, stormwater and demolition permits, in addition to PUD and Plat Approval. Permits by other agencies may also be required.

k. Procedure for PUD Approval

The City's regulations for Planned Unit Developments (PUDs), Chapter 16.10 of the Sultan Municipal Code (SMC), require that PUD Approval be processed pursuant to Chapter 16.120 SMC, with review done by the City Planner, with input from the City Engineer, Public Works Director, and the Building Official. In accordance with SMC 16.10.080, PUDs are reviewed by the Hearing Examiner, who then makes a Recommendation to City Council.

After receipt of the Hearing Examiner's Recommendation, the City Council will hold a Closed Record Hearing and make the final decision, in accordance with SMC 16.10.090.

Following Council Preliminary PUD Approval, the Applicant is required to file an application for Final PUD approval within twelve (12) months, in accordance with SMC 16.10.150 and 160.

l. Procedure for Plat Approval

The City's Subdivision Regulations, Chapter 16.28 SMC, provide the standards and process for Preliminary Plat Review. In accordance with SMC 16.28.330, the Hearing Examiner shall hold a Public Hearing, make written findings and make a recommendation to the City Council. The City Council may either, approve, disapprove, or return the proposed subdivision for modification at a closed record hearing following the Hearing Examiner's Recommendation, in accordance with SMC 16.28.340. Council Approval of a Preliminary Plat is valid for up to five (5) years, in accordance with SMC 16.28.350.

m. Review Criteria

The review criteria for preliminary plats are set forth within SMC 16.28.330(A):

The Hearing Examiner shall consider and review the proposed plat with regard to:

1. Its conformance to the general purposes of the Comprehensive Plan and Planning Standards and Specifications, as adopted by the laws of the State of Washington and the City of Sultan;
2. Whether appropriate provisions are made for: drainage ways, streets, alleys, other public ways, water supplies and sanitary wastes, transit stops, parks and recreation, playgrounds, schools and school grounds;
3. The physical characteristics of the subdivision site; and may disapprove because of flood, inundation or swamp conditions. It may require construction of protective improvements as a Condition of Approval; and
4. All other relevant facts to determine whether the public use and interest will be served by the subdivision.

"The [PUD] district is an alternative to conventional land use regulations, combining use, density and site plan considerations into a single process." [SMC 16.10.010(A)]  
The PUD is an "overlay zone", applied "only after a site-specific and project-specific review." [SMC 16.10.020 and .010(A), respectively]

The general review criteria for a PUD are set forth in SMC 16.10.090(B):

“The Hearing Examiner Recommendation shall include, at a minimum, findings and conclusions regarding the preliminary PUD’s compliance with the criteria for location and approval for the particular type of preliminary PUD listed in SMC 16.10.100 (retail PUDs) or SMC 16.10.110 (residential PUDs). A preliminary PUD shall be recommended for approval if, together with reasonable modifications or conditions, the project is determined to comply with the requirements of these sections. A preliminary PUD shall be recommended for denial if, even with reasonable modifications or conditions, the project is determined to not comply with the requirements of these sections.”

n. Application History

The Application for Preliminary PUD was originally filed with the City of Sultan on September 9, 2005. A public hearing was held on May 15, 2006 before the Hearing Examiner. The Hearing Examiner issued his decision on June 15, 2006, recommending to the City Council that the application be denied.

On September 14, 2006 the Sultan City Council held a Closed Record Hearing and passed Resolution No. 06-12 remanding the application back to the Hearing Examiner. Consequently, this application is subject to the PUD Code amended by Ordinance 917-06, adopted in April of 2006.

## II. Land Use and Zoning

a. Zoning

The site is zoned Moderate Density Residential (MD). Single-family detached homes and PUDs in the MD zone are subject to the zoning requirements contained in SMC 16.12.020.

b. Density

Gross density is proposed to be approximately 4.8 dwelling units per acre (23 homes over 4.77 acres).

c. Lot Size and Coverage

The Applicant proposes lot sizes that range from 4,420 sf to 5,284 sf, with an average lot size of about 4,517 sf. The Applicant has indicated that the lot coverage will not exceed 35%, per Sultan Municipal Code. The proposed minimum lot width is approximately 40 feet. The above lot sizes, widths, and coverages comply with SMC 16.12.030, as amended by Ordinance 917-06.

d. Front Yard Setbacks

The Applicant proposes a variation in front yard setbacks at 20 feet and 30 feet as shown on the September 27, 2006 Preliminary Plat exhibit

e. Side Yard Setbacks

The Applicant proposes typical side yard setbacks of 5 feet, with the second side yard setback on a corner lot to be 10 feet.

f. Rear Yard Setbacks:

The Applicant proposes 10-foot rear yard setbacks, a reduction from the standard 20-foot rear yard setback. Per SMC 16.10.120(B) (1) (a), the minimum rear yard requirement is intended to provide privacy for the outdoor area behind the dwelling unit. Where physical elements such as fences, screens, or open spaces are provided, rear yard setbacks may be reduced to 10 feet.

The Preliminary Site Plan indicates ten-foot rear setbacks. Lots 1-16 and lot 18 will have a 15-foot open space/trail Tract adjacent to the rear portion of the lot, in addition to the proposed 10-foot rear yard setback. The existing fence along the north property line will be retained.

g. Comprehensive Plan Designation

The site is designated "Moderate Density Residential" by the City of Sultan Comprehensive Plan. The proposed use of the site as single-family residential, at a density of approximately 4.8 dwelling units per acre, is consistent with the Comprehensive Plan.

h. Off-Street Parking Requirements

The minimum number of required off-street parking spaces shall be determined by the table in SMC 16.60.140. Single-family dwelling units are required to provide two (2) off-street parking spaces per dwelling unit. At 23 units, this project requires a minimum of 46 off-street parking spaces. The applicant states off-street parking spaces could be provided in each dwelling unit's driveway and garage.

i. Recreation and Open Space

SMC 16.72.040 requires recreation areas in the amount of 75 square feet per person. Also, in developments with 23 units, two recreation areas, with a minimum of 2,000 square feet, are required (SMC 16.72.050). The Vodnick Lane PUD is required to provide 6,900 square feet of recreation area, based on 4 people per residence. The PUD actually provides 43,414 square feet. The Vodnick Lane PUD, as proposed, with 23 units, proposes four recreation facilities, thus exceeding the SMC mandated minimum. The applicant proposes a playground area, trail and multi-purpose court in Tract 999. In addition, a picnic area is proposed for Tract 998.

All PUDs are required to provide open space in the amount of 20% of the gross land area of the site, per SMC 16.10.140. A minimum of 15% of the gross area must be "useable open space." The percentage of gross area counted toward the open space requirement is limited for "buffer open space" (2%) "constrained open space" (2%) and "unusable detention open space" (5%). Any amount of "conservation open space" may also be used to meet the minimum required open space. This project is required to have 3.63 acres of open space.

The Applicant has identified 20.96% of the gross site area as permanent and usable open space. This area exceeds the SMC mandated minimum area, thus this requirement is met.

### **III. Wetlands, Streams and Steep Slopes**

Within the City of Sultan, wetlands and streams are subject to regulations per SMC 16.80 and steep slopes are subject to SMC 16.68.

a. Wetlands & Streams

There are no wetlands or streams on-site.

b. Steep Slopes

There are no steep slopes (in excess of 25%) on-site.

### **IV. Water, Sewer, and Stormwater Management**

a. Water Availability

According to SMC 16.10.070(C) (8), as stated in RCW 19.27.097, new developments must show evidence of adequate water availability. The City of Sultan Public Works Department issued a letter, dated August 10, 2006, stating water is available to the site.

b. Sanitary Sewer Availability

According to SMC 16.10.070(C) (7) new developments must show evidence of sewer availability. The City of Sultan Public Works Department issued a letter, dated August 10, 2006, stating sanitary sewer is available to the site.

c. Storm Water Management

Per SMC 16.92.010, the City of Sultan adopts the most recent Department of Ecology Stormwater Management Manual for the Puget Sound basin. The applicant proposes one detention vault in the eastern portion of the site, adjacent to Sultan Basin Road.

### **V. Traffic and Circulation**

a. Lot Access

Access to the proposed 23 lot PUD will be primarily from Sultan Basin Road, via the proposed internal roads, consisting of 139<sup>th</sup> St. SE, Road B, and a private road in Tract 997. Road B connects to Kessler Drive in the Eagle Ridge subdivision and provides through circulation and a secondary access point to the proposed Vodnick Lane PUD.

b. Street Standards

Sultan Design Standards typically require a 60-foot right-of-way, two travel lanes, parking on both sides, planter strips, 5-foot sidewalks on both sides and street trees. The applicant proposes a modified road section on 139<sup>th</sup> St. SE, consisting of 41 feet of right-of-way, 28 feet of pavement and curb, a 3-foot planter and a 5-foot sidewalk on the north side only. The south side of 139<sup>th</sup> St. SE will be finished with a temporary thickened edge. This will allow for expansion of 139<sup>th</sup> St. SE to the south, with a full 60-foot right-of-way, with standard improvements, upon the development of the property to the south. The City of Sultan has previously approved this type of "half-street" section in the plat of Sky Harbor, immediately south and east of the proposed application. For Road B, which connects to Eagle Ridge, the applicant proposes a standard 60-foot right-of-way, consisting of two travel lanes with parking on both sides (totaling 36 feet from curb to curb), a 3-foot planter, and a 5-foot sidewalk on both sides. Street tree planting will be in accordance with Sultan Municipal Code. Trees shall, at a minimum, be planted at a rate of one (1) tree per 20 lineal feet of road frontage on Sultan Basin Road, 139<sup>th</sup> St. SE, and Road B.

c. Non-motorized Access

SMC 16.10.110 states that a PUD-SF must be located to connect to existing off-site pedestrian and bicycle circulation system to facilitate non-motorized access. The applicant proposes to provide a trail and sidewalk system that will connect to Sultan Basin Road, and to the sidewalk system in the plat of Eagle Ridge to the north.

d. Traffic Impacts

According to SMC 16.112.020, the Owner/Developer is required to pay impact fees and offset impacts to the City's street system. According to the *Traffic Analysis Report*, submitted by Gibson Traffic Consultants, dated September 8, 2005 and updated on September 25, 2006, the new development will generate 22 new pm peak hour trips on City streets, resulting in \$1,837.00 per lot, or a total of \$40,414.00 in mitigation fees to the City. Miscellaneous traffic impact fees, concerning the realignment improvement for US-2/Sultan Basin Road, are also addressed in the *Traffic Analysis Report*, which results in additional mitigation fees of \$225.46 per lot, or a total of \$4,960.09.

e. Transit

Transit service is currently available at the Park and Ride Lot near the intersection of US 2 and Sultan Basin Road, approximately six-tenths of a mile from the site along US 2. The City of Sultan has contacted Community Transit to requested development of a route extension north on Sultan Basin Road. At this time, Community Transit has not made any commitment and it is expected that expansion of transit service will be partially dependent on the Sultan Basin Road area having a sufficient population to sustain transit ridership. The relocation and signalization of the intersection of Sultan Basin Road and US 2 is scheduled for completion this year, and will provide safe and improved access for Community Transit vehicles to neighborhoods located north of US 2. On the Skoglund Estates application earlier this year, the City Council stated

that it believed the Skoglund Estates site met the question of "sufficient proximity" to transit.

The City Council, in Resolution No. 06-12 requested the Hearing Examiner to consider their previous actions and interpretation with regards to Location Criteria for Transit for the Vodnick Lane Preliminary Plat and Planned Unit Development.

Since Skoglund Estates is located north of Vodnick Lane, on Sultan Basin Road, staff can only conclude that Vodnick Lane will meet the "sufficient proximity" test for transit, as well.

## VI. Other Issues

### a. Utilities

All utilities are available at the site to serve the development.

### b. School Impacts

Sultan Elementary, Middle and High schools are located approximately 4-5 miles away from the site. Per SMC 16.116.030(A) and (B), the City shall collect School Impact Fees *"from any applicant seeking land use permit approval and/or a building permit from the City for any residential development activity within the City limits."*

Applicant has acknowledged that School Impact Fees shall be paid to the City in accordance with Chapter 16.116 SMC. Current School impact fees are \$1,673.00 per lot. Based on 22 "new" lots, the current total School Impact fee would be \$36,806.00.

### c. Park and Recreation Impacts

Per SMC 16.112, the developer is required to pay Park and Recreation Impact Fees to offset the project's impact on the City's recreation facilities. The Applicant has acknowledged that Park and Recreation Impact Fees shall be paid to the City in accordance with Chapter 16.112 SMC. Current Park impact fees are \$3,415.00 per lot. Based on 22 "new" lots, the current total Park Impact fee would be \$75,130.00.

### d. Fire Hydrants

No fire hydrants are shown on the proposed site plan. Hydrants and hydrant spacing shall be in conformance with the City of Sultan 2004 Water and sewer Engineering Standards per the City's Engineer Recommendations.

### e. Concurrency Requirements

SMC section 16.108.010 states that property owners must meet the Concurrency provisions of the Comprehensive Plan as required in RCW 36.70A.70. This ensures that adequate public facilities are available and will be able to support the development's impact. Facilities subject to this review are:

- Roadways
- Potable Water
- Wastewater
- Police Protection
- Parks and Recreation

In accordance with SMC 16.108.050 Certificate of Concurrency, and SMC 16.108.060 Standards for Concurrency, the City of Sultan shall review applications for development and issue a Certificate of Concurrency provided that the development does not lower the existing Level of Service (LOS) of public facilities and services below that adopted by the Comprehensive Plan. A project shall be deemed concurrent if:

1. The necessary public facilities and services are in place at the time the Development Approval is issued;
2. The Development Permit is issued subject to conditions that ensure that the necessary public facilities will be in place concurrent with the impacts of the development; or
3. The necessary public facilities are guaranteed in an enforceable Development Agreement.

“Concurrent with development” means that facilities are in place at the time of development or that a financial commitment is in place to complement needed improvements within six years of the time of development.

- Arterial Roadways  
The 2004 Comprehensive Plan LOS is B for identified intersections.

In accordance with SMC 16.112, the Applicant is required to pay Traffic Impact Fees to offset traffic impacts associated with the development. Traffic related improvements scheduled to meet and maintain the City’s adopted LOS concurrent with development are planned under the adopted 6-year Capital Facilities Plan.

- Other Roadways  
The 2004 Comprehensive Plan LOS is B for local streets.

In accordance with Chapter 16.112 SMC, the applicant is required to pay Traffic Impact Fees to offset traffic impacts associated with the development. Traffic related improvements scheduled to meet and maintain the City’s adopted LOS concurrent with development are planned under the adopted 6-year Capital Facilities Plan.

- **Potable Water**  
 The 2005 Water System Plan LOS is 350 gallons of supply per equivalent residential unit. The City currently has a 20-year projected surplus of 249,560 gallons supply.  
 On August 10, 2006, the City issued a letter of Water Availability. System improvements may be required of the Applicant to connect to the City water system. Water system improvements scheduled to maintain the City's adopted LOS concurrent with development are planned under the adopted 6-year Capital Facilities Plan.
  
- **Wastewater**  
 The 2006 General Sewer Plan LOS is 67 gallons per day per capita. The City currently has wastewater capacity for this plat.  
 On August 10, 2006, the City issued a letter of Sewer Availability. System improvements may be required of the applicant to connect to the City sewer system. Wastewater system improvements scheduled to maintain the City's adopted LOS concurrent with development are planned under the adopted 6-year Capital Facilities Plan.
  
- **Police**  
 The 2004 Comprehensive Plan LOS is 2.6 Uniformed Officers per 1,000 residents. The City has eight (8) uniformed officers (one of which is a newly funded position that was recently approved by the City Council). The current deficit is 3.54 Uniformed Officers, which is based on the City of Sultan's Office of Financial Management (OFM) July 1, 2006 population of 4, 440. Police Services are funded through the City's General Fund and other sources. Increased tax revenue associated with the development will work towards offsetting incremental increases of police services as needed to accommodate the City's population. Police service improvements scheduled to maintain the City's adopted LOS concurrent with development are planned under the adopted 6-year Capital Facilities Plan. In order to maintain an acceptable level of service for police the applicant is providing a development agreement to guarantee the LOS for police services.

The City Council, in the plat of Skoglund Estates, has determined that if the applicant for a subdivision enters into a Developer Agreement to Establish Concurrency, the application can be deemed Concurrent as it relates to Police Services. The applicant has provided such an Agreement, committing to pay \$22,749.36 to the City of Sultan to mitigate their impacts on the Police Level of Service.

The City Council in Resolution No. 06-12 requested the Hearing Examiner to consider their previous actions and interpretations with regards to Police Level of Service (LOS). Previous actions have involved: Steen Park, Cascade Breeze, Skoglund Estates and AJ's Place.

- **Parks and Recreation**

The 2004 Comprehensive Plan LOS is 42.6 acres per 1,000 residents. The City's 2006 estimated population is 4,440. The current acreage of parks, recreation, and open space land stands at 198.16 acres. These facts result in a ratio of 44.6 acres of parks, recreation, and open space, which exceeds the current LOS. The City has 9.02 acres of excess parks, recreation, and open space lands.

In accordance with Chapter 16.112 SMC, the Applicant is required to pay Recreation Impact Fees to offset recreation related impacts associated with this development. Fees will be paid as noted above. Parks and recreation improvements scheduled to maintain the City's adopted LOS concurrent with development are planned under the adopted 6-year Capital Facilities Plan.

#### **Certificate of Concurrency**

The proposed Vodnick Lane Preliminary PUD will not lower the existing Level of Service (LOS) of public facilities and services or the impacts of the development will be mitigated by payment of mitigation fees as noted above. Consequently, Staff has determined that this application is concurrent and further, that this Staff Report shall serve as the Certificate of Concurrency.

### **VII. SEPA**

SEPA, under RCW 43.21C, requires Governmental Agencies to consider the environmental impacts of a proposal before making decisions. An Environmental Checklist was submitted to the City on September 6, 2005. A Determination of Non-Significance (DNS) was issued with an appeal period that expired on April 24, 2006. No appeals were filed prior to that date. The SEPA official determined no additional review was required for the Remanded/Amended application.

### **VIII. Public Notice**

As required by the City's Subdivision and Public Hearing Regulations (SMC 16.28.300 and SMC 16.124.010), Notice of the Preliminary Plat and PUD Application has been posted, published and mailed. Notice of Public Hearing was posted, mailed and published October 10, 2006.

### **IX. Conclusion**

Staff concludes that the proposed Vodnick Lane PUD, with the Conditions in Section X below, meets the criteria for Preliminary Plats in accordance with SMC 16.28.330(A) and for Preliminary single-family residential PUDs, in accordance with SMC 16.10.110(B).

- a. The proposed Preliminary PUD and Plat is found to be in conformance with the general purposes of the Comprehensive Plan and planning standards and specifications as adopted by the laws of the State of Washington and the City of Sultan.
- b. The proposed Preliminary PUD and Plat makes appropriate provisions for public health, safety, and general welfare, and for open spaces, drainage ways, streets, other public ways, water supply and sanitary wastes, transit, parks and recreation, playgrounds, schools and school grounds. Street improvements and utilities should be developed in compliance with the conditions listed below.
- c. The proposed modifications to the development standards, as conditioned herein, are consistent with the provisions of SMC 16.10.120.
- d. The location of the preliminary PUD and plat is consistent with the location criteria of SMC 16.10.110(B)(2), including:
  - Being greater than 2 acres.
  - Located on an arterial street such that transportation facilities can provide direct access to the development.
  - Located so that it can connect to the off-site pedestrian and bicycle circulation system.
  - Transit is available in sufficient proximity to the site to facilitate transit access to the PUD.
  - Located in relation to utilities such that the development will not result in higher public costs.
  - Located so that the PUD will have access to schools, parks and open space.
- e. The design of the preliminary PUD and Plat, as conditioned herein, takes into account the relationship of the site to the surrounding areas. The Conditions listed below are essential to ensure that the street frontages and perimeter of the site are designed in a manner compatible with the surrounding neighborhood.
- f. The physical characteristics of the site have been reviewed. Conditions are recommended to ensure that the new structures and improvements are built in compliance with the regulations of the Sultan Municipal Code.
- g. The proposed Preliminary PUD and Plat will serve the public use and interest by developing land consistent with the goals and policies of the Comprehensive Plan and compatible with adjacent land uses, and by providing an extension of public roads and services.

## **X. Staff Recommendation**

Staff recommends that the Hearing Examiner recommend to the City Council APPROVAL WITH CONDITIONS of the Vodnick Lane Preliminary PUD and Plat with the Conditions listed below:

**Preliminary Plat and General PUD Design—**

1. The general configuration, lot shapes and sizes, setbacks, site density, and areas of open space shall be as indicated on the site plan resubmitted September 28, 2006 (Exhibit 1, attached hereto), subject to these Conditions of Approval. In addition, the application shall generally comply with the House Plans submitted September 9<sup>th</sup>, 2005. Revisions to approved preliminary Planned Unit Developments are regulated by SMC 16.10.160(D) and (E); while revisions to approved preliminary subdivisions are regulated by SMC 16.28.360. The final PUD map shall be recorded as an amendment to the underlying zoning following Final PUD approval.
2. In accordance with SMC 16.28.340, the Developer shall prepare a Developer Agreement subject to approval of the City. The agreement shall specify the requirements for construction of all infrastructure improvements, including plan submittals, inspections, bonding, private improvements, right-of-way improvements and facilities associated with the PUD, including improvements to all common areas. Site construction drawings shall be designed consistent with the conditions of approval. Site work shall not begin until City approval of the Developer Agreement has been obtained.
3. The Developer shall establish a Home Owners' Association to assume responsibility for maintenance of common areas. The Home Owners' Association shall be recorded with the plat. The wording and Conditions of the Home Owners' Association shall be subject to City approval prior to Final Plat.
4. The Developer shall maintain the landscaping, open space improvements, drainage facilities, private streets and other common areas within the site for a two-year period following acceptance of installation by the City of Sultan. Such maintenance shall be secured with a performance bond filed with the City. Subsequent to the two-year period, maintenance responsibility shall be passed to the Homeowners' Association.

**Setbacks—**

5. Per SMC 16.10.120(B) (1) (a), physical elements such as fences, screens, or open space shall be provided, to accommodate rear yard setback reductions from 20 feet to 10 feet.
6. The Developer shall meet privacy requirements of SMC 16.10.120(B) (1) (a) through placement or screening of windows or service yard requirements of SMC 16.10.120(B)(1)(c) to reduce side yard setbacks from 10 feet to 5 feet.

**Off-Street Parking—**

7. In accordance with SMC 16.60.140, the minimum number of required off-street parking spaces for single-family dwelling units is two.

**Recreation and Open Space--**

8. The Developer shall provide on-site recreation areas, each with a minimum size of 2,000 square feet, in accordance with SMC 16.72.040 and 16.72.050.

**Water--**

9. The Developer is responsible for any necessary improvements to the City's water system in order to provide adequate water to the site. Construction and materials shall conform to the City of Sultan 2004 Water and Sewer Engineering Standards.

**Sewer --**

10. The Developer is responsible for any necessary improvements to the City's sewer system in order to provide sewer service to the site. Construction and materials shall conform to the City of Sultan 2004 Water and Sewer Engineering Standards.

**Surface Water Management--**

11. The Developer shall inspect weekly, maintain and repair all temporary and permanent erosion and sediment control BMPs to assure continued performance. During wet weather construction, access roads and on-site utilities shall be phased to minimize open soil exposure. These requirements shall be in force until such time as the complete construction of plat improvements has been accepted by the City of Sultan for plat recording.

Temporary storm water management facilities shall be constructed before any significant amount of site grading commences.

**Transportation--**

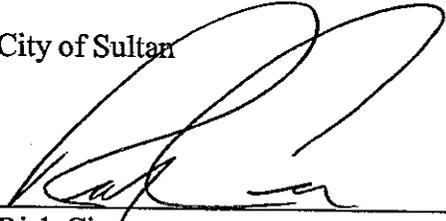
12. Street trees shall be planted every 20 lineal feet along Sultan Basin Road, Road B, the Private Road, Tract 997, and 139<sup>th</sup> Street S.E.
13. Final street design, including paving, sidewalks, frontage improvements, parking, and emergency access must be approved by the City Engineer prior to construction.
14. Street lighting shall be required on all streets and roads within the development. Prior to lighting installation, the Developer shall submit a detailed lighting plan that depicts continuous street illumination throughout the PUD, to the City Engineer, for review and approval, pursuant to SMC 16.10.120(B)(4)(a).

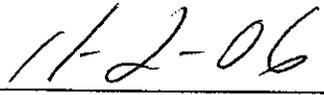
**Other--**

15. In order to maintain an acceptable Level of Service (LOS) for Police Services, the Developer shall provide a voluntary Development Agreement to guarantee the LOS for Police Services. An acceptable agreement has been submitted by the Developer and is attached hereto as Exhibit 2.
16. Fire hydrant locations shall be designated and shown on the plat engineering plans.

17. The Developer shall demonstrate sufficient water flow from the proposed fire hydrants for review and approval by the City Engineer and Fire District prior to the issuance of occupancy permits.
18. All utilities shall be placed underground.
19. Prior to construction, the Developer shall prepare a Construction Storm Water Pollution Prevention Plan for approval by the City Engineer and the Department of Ecology. The Developer shall provide a copy of the Department of Ecology, Construction Stormwater General Permit, issued for this project.
20. During construction, the Developer shall ensure that trucks are cleaned before leaving the site. The applicant shall provide street cleaning of Sultan Basin Road during site clearing, grading and filling and shall promptly clean up any dirt, mud or other material deposited on public streets and shall be responsible for cleaning storm drains in public streets that are impacted by the construction.
21. All site improvements, including streets, sidewalks, bicycle lanes, frontage improvements, drainage improvements, open space landscaping and improvements, and other common area improvements shall be completed prior to Final Plat, with the exception of the final paving of streets. Alternatively, the City may approve a financial bond or assurance for items not completed prior to Final Plat.
22. The existing house and structures shall be moved, demolished, or otherwise modified so that they are in compliance with the Sultan Municipal Code, prior to City of Sultan acceptance of plat construction for recording.
23. Traffic, Parks and Recreation, and School Impact Fees and their administrative processing costs, shall be paid in accordance with Chapters 16.112 and 16.116 SMC.

City of Sultan

  
\_\_\_\_\_  
Rick Cisar  
Director of Community Development

  
\_\_\_\_\_  
Date

**EXHIBITS:**

- a. *1- Site Plan, re-submitted September 28, 2006*
- b. *2- Level of Service Agreement for Police, dated August 16, 2006*
- c. *3- Traffic Report, revised September 25, 2006*
- d. *4- Water and Sewer Availability Letter, dated August 10, 2006*

**BEFORE the HEARING EXAMINER of the  
CITY of SULTAN**

**RECOMMENDATION**

FILE NUMBER: RAFPUD05-004

APPLICANT: Brickyard Properties, LLC

TYPE OF CASE: Preliminary Planned Unit Development subdivision (*Vodnick Lane*)

STAFF RECOMMENDATION: Approve subject to conditions

SUMMARY OF RECOMMENDATION: APPROVE subject to conditions (revised)

DATE OF RECOMMENDATION: November 17, 2006

**INTRODUCTION**

Brickyard Properties, LLC (Brickyard), C/o Dan Roupe, 16030 Juanita-Woodinville Way NE, Bothell, Washington 98011, seeks preliminary approval for *Vodnick Lane*, a 23 lot Planned Unit Development (PUD) subdivision for single-family development. Brickyard filed the preliminary PUD subdivision application on September 28, 2006. <sup>1</sup> (Exhibits 23a – 23d <sup>2</sup>) The Sultan Department of Community Development (DCD) deemed the application complete effective October 3, 2006. (Exhibit 24)

The subject property is located at 13924 Sultan Basin Road, on the west side of the road just north of the Hillcrest Baptist Church.

The Sultan Hearing Examiner (Examiner) viewed the subject property on May 15, 2006.

The Examiner held an open record hearing on November 9, 2006. DCD and Brickyard gave notice of the hearing as required by the Sultan Municipal Code (SMC). (Exhibit 26)

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<sup>1</sup> See Finding 1, below, for a brief history of this application.

<sup>2</sup> Exhibit citations are provided for the reader's benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner's Recommendation is based upon all documents in the record.

The action taken herein and the requirements, limitations and/or conditions recommended for imposition by this recommendation are, to the best of the Examiner's knowledge or belief, only such as are lawful and within the authority of the Examiner to take and recommend pursuant to applicable law and policy.

### ISSUES

Does the application meet applicable criteria for preliminary subdivision and preliminary PUD approval?  
Does the application meet concurrency requirements of Chapter 16.108 SMC?

### FINDINGS OF FACT

1. The *Vodnick Lane* application was originally filed in September, 2005, under file number FPPUD05-004. The Examiner held an open record hearing on that application on May 15, 2006. On June 15, 2006, the Examiner issued a Recommendation that the application be returned to Brickyard for correction for three reasons: 1) It did not meet minimum site area requirements to which it was vested; 2) It failed to meet the PUD transit facilitation requirement; and 3) It did not comply with concurrency requirements for police services. (Exhibit 16)

On August 7, 2006, Brickyard submitted a letter to the City asking the Council to remand the application and asking that "the Hearing Examiner consider this application 'refiled', upon resubmittal for the purposes of vesting." (Exhibit 17) On September 14, 2006, the Council passed Resolution No. 06-12 remanding *Vodnick Lane* to the Examiner. Paragraph 4 of that Resolution provides the following guidance to the Examiner:

The City Council request [*sic*] the Hearing Examiner to consider their previous actions and interpretations with regards to (1) Police Level of Service (LOS) and (2) Location criteria for Transit as provided for in their decision on the Skoglund Estates Preliminary Plat and Planned Unit Development."

(Exhibit 22, p. 2) Brickyard formally resubmitted the application on September 28, 2006. (Exhibits 23a - 23d) The resubmitted application was assigned file number RAFPPUD05-004 and became vested on October 3, 2006. (Exhibit 24) This Recommendation addresses the resubmitted application.

2. The *Vodnick Lane* site is a long, narrow, rectangular parcel. The site has about 164 feet of frontage on the west side of Sultan Basin Road and a depth of about 1,268 feet. Thus, its length:width ratio is approximately 8:1. The site contains 4.77 acres. A single family residence and barn are located near the site's Sultan Basin Road frontage. (Exhibit 23a)

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3. The *Vodnick Lane* site is bordered on the north and west by single family residential subdivisions: *Eagle Ridge* and *The Plateau*. A storm water detention tract and the rear yards of six lots in *The Plateau* border the eastern third of the site; an open space tract and six rear yards in *Eagle Ridge* border the remainder of the north property line. A short public street stub abuts the north property line, providing access to Kessler Drive to the north. Two rear yards border the west end of the site. An undeveloped acreage tract (referred to as the Bethany Terrace property) borders the south side of the site. Approximately the eastern 460 feet of the Bethany Terrace property consists of a 40 foot wide panhandle, to the south of which lies the Hillcrest Baptist Church.

Several recently approved residential developments are located in the vicinity. The *Steen Park* clustered subdivision (Council Resolution No. 06-06, June 8, 2006) lies across Sultan Basin Road from the site. (Exhibits 23 and 23a and testimony) The *Timber Ridge Estates* PUD subdivision is one parcel removed to the south of *Steen Park* (Council Resolution No. 05-17). The *Cascade Breeze Estates* clustered subdivision (Council Resolution No. 06-07, June 8, 2006) lies diagonally southwest of the site, west of the Bethany Terrace property. The *Skoglund Estates* PUD subdivision lies about one-half mile (as the crow flies) to the northeast, north of 138<sup>th</sup> Street SE and east of Sultan Basin Road (Council Resolution No. 06-09A, June 29, 2006). (Official notice)

4. The site is relatively flat: topographic relief amounts to only about 20 feet; the Sultan Basin Road frontage is the site's low point. The majority of the site is a pasture. Scattered stands of medium-sized trees and brush are found on the site; most of the trees are at the west end of the site. The site contains no environmentally sensitive areas nor does any part of it lie within a designated flood plain. (Exhibits 1.H, 2, 8, and 23)
5. The Comprehensive Plan designation and zoning of the site is Moderate Density Residential (MD). Properties to the north and west are similarly designated and zoned. The Bethany Terrace and Hillcrest Baptist Church properties to the south are designated and zoned High Density residential (HD). (Exhibit 23 and official notice)
6. Brickyard proposes to construct a "3/4 section" public street (139<sup>th</sup> Street SE) within a 41 foot wide right-of-way running west along the south property line to a 60 foot wide right-of-way extension of the road stub from the north (Road B). (The design will provide 28 feet of pavement with full curb, gutter, planting strip, and sidewalk on the north and an open ditch section on the south. The pavement crown will occur 20 feet south of the north curb line, facilitating construction of a full-width public street using the Bethany Terrace panhandle when that property develops.) A private road (Tract 997), terminating with a hammerhead turn-around, constructed within a 34 foot wide private right-of-way will extend west from the 139<sup>th</sup> Street SE/Road B intersection to the west property line. Storm water detention facilities will be located along the Sultan Basin Road frontage (Tract 999) and will discharge into the Sultan Basin Road drainage system. Twenty-three narrow and deep (average size = 41 feet x 108 feet) lots will be arrayed along the north side of the east-west street; the westerly five lots (Proposed Lots 19 - 23) will be served by the Tract 997 private road.

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Average lot size will be 4,517 square feet (SF). Three feet is proposed to be dedicated for widening Sultan Basin Road along the site's frontage. Sidewalks are proposed along the Sultan Basin Road frontage, the north side of both the public and private east-west streets, and on both sides of Road B. (Exhibits 1.B.1 and 23a)

A variety of two-story, 1,600 – 3,600 SF houses are proposed for the residential lots. All have gable roof lines and exhibit traditional or neo-craftsman designs. (Exhibits 10 and 11)

7. The SMC requires recreation areas in the amount of 75 SF per person in any residential development [SMC 16.72.040]; in developments with 21 to 50 dwelling units, two recreation areas each with a minimum of 2,000 SF are required [SMC 16.72.040(C) and .050]. *Vodnick Lane*, as proposed with 23 three-bedroom dwelling units, would require two recreation areas totaling 6,900 SF. Brickyard proposes four recreation facilities that exceed the area required by SMC 16.72.040: A picnic area (Tract 998) and a playground area, a multi-purpose court, and a trail running along the north property line east of Road B (Tract 999). Total recreational area as proposed is 43,414 SF. (Exhibits 1.B.3 and 23a)

All PUDs are required to provide open space in the amount of 20% of the gross land area of the site. [SMC 16.10.140] A minimum of 15% of the gross area must be "useable open space." The percentage of gross area counted toward the open space requirement is limited for "buffer open space" (2%), "constrained open space" (2%), and "unusable detention open space" (5%). Any amount of "conservation open space" may also be used to meet the minimum required open space. *Vodnick Lane* is required to have 0.95 acres of open space, of which 0.72 acres must be usable. Brickyard proposes to reserve 1.00 acre (20.89%) of the site for open space of which the entire amount will be useable. (Exhibit 23 and 23a)

8. Sultan Basin Road is a designated minor arterial. (Comprehensive Plan, p. 197) It is a two lane road which has been widened in the vicinity of recent developments to provide a center two-way left-turn lane. The two-way left turn lane begins just south of the Hillcrest Baptist Church entrance and extends north past the *Vodnick Lane* site.

No sidewalks or separated walkways currently exist between *Vodnick Lane* and SR 2. A project to relocate a short distance to the east and signalize the Sultan Basin Road/SR 2 intersection is nearing completion. That project has been expanded to include construction of a pedestrian walk along the east edge of the Road from SR 2 north to tie in with the *Timber Ridge Estates* frontage improvements. *Timber Ridge Estates* is now under construction. The Sultan Basin Road project is expected to open to traffic by mid-December, 2006. (Exhibits 1.C, 15, and 23c and testimony) It is approximately 2,375 feet (0.45 miles) from the *Vodnick Lane* site to SR 2 following the new alignment.

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9. The posted speed limit on Sultan Basin Road is 35 miles per hour (mph). Sight distance analyses are performed for design speed which is 5 mph greater than the posted speed limit. Two separate sight distance calculations are made for each direction at an intersection: Stopping sight distance and intersection sight distance. Stopping sight distance is a safety issue: The distance required for a vehicle to stop after seeing a two foot high object in the street. Intersection sight distance is a traffic flow/capacity issue: The distance required for a vehicle entering from the minor street to accelerate and complete a left turn without causing more than 30% of the vehicles on the major street to have to slow down. For a design speed of 40 mph, stopping sight distance is 305 feet and intersection sight distance is 441 feet. (Exhibits 9, 15, and 23c and testimony)

The configuration of Sultan Basin Road to the north provides well more than the required amounts for both stopping and intersection sight distances. (A tree and utility pole may have to be trimmed/relocated.) However, a vertical curve to the south of the *Vodnick Lane* sight restricts sight distance to the south. The *Timber Ridge Estates* development was conditioned on a correction to the Sultan Basin Road vertical curvature because it, too, did not meet the required sight distances. (Exhibits 15 and 23c and testimony)

That flattening of the Sultan Basin Road vertical curve for *Timber Ridge Estates* will negatively affect sight distance to the south for *Vodnick Lane*. The present street profile provides 380 feet of stopping sight distance and 410 feet of intersection sight distance for *Vodnick Lane*. However, after Sultan Basin Road is regraded as proposed, *Vodnick Lane* will have 345 feet of stopping sight distance and 375 feet of intersection sight distance. (Exhibits 15 and 23c) Stopping sight distance, but not intersection sight distance will be met.

Five percent of *Vodnick Lane* traffic is projected to use Sultan Basin Road to and from the north. In the morning peak traffic hour, no vehicles are predicted to make a left turn outbound from *Vodnick Lane*. In the afternoon peak traffic hour, only one vehicle is predicted to make that left turn. (Exhibit 23c, Figs 2A and 3A) The existing two-way left-turn lane provides a safe refuge for left turning vehicles so that they would not impede north-bound traffic flow. (Exhibits 9, 15, 23c, 28, and 29)

10. Traffic volumes on Sultan Basin Road were measured in 2005 to be less than 2,700 vehicles per day on average (ADT). With the traffic from new developments, including *Vodnick Lane*, Sultan Basin Road is projected to handle less than 5,000 ADT. The Level of Service (LOS) standard for Sultan Basin Road equates to 6,200 ADT. (Exhibit 23c)
11. *Vodnick Lane* has a valid commitment for both City potable water and sewer service. (Exhibit 23d)
12. Section 16.10.110 SMC contains criteria for location of residential PUDs: "A preliminary residential PUD shall only be approved if, with reasonable modification and/or conditions, the city finds that the proposed preliminary PUD complies with the following criteria for location, use, and design, for each of the identified types of PUDs." [SMC 16.10.110, emphasis added]

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The criteria for single-family residential PUDs (PUD-SFs) are contained in SMC 16.10.110(B). Subsection (2) sets forth "Other Location Criteria." That Subsection in turn contains six subsections which set locational criteria for single-family residential PUDs: Subsection (2)(a) requires PUDs of more than 10 acres or 40 dwelling units to be located on an arterial or collector street; Subsection (2)(b) requires the total site area to be at least two acres; Subsection (2)(c) requires the PUD site to be "located such that it can connect to an existing off-site pedestrian and bicycle circulation system to facilitate non-motor vehicle access to the PUD-SF"; Subsection (2)(d) reads as follows: "Transit is available in sufficient proximity to the site to facilitate transit access to the PUD-SF"; Subsection (2)(e) requires the PUD location to not necessitate any extraordinary expenditure of public funds for infrastructure; Subsection (2)(f) simply requires equity with non-PUD developments in access to schools, parks, etc..

*Eagle Ridge* and *The Plateau* contain established sidewalks systems to which Road B will connect.

Community Transit (CT) runs bus service along SR 2 to Gold Bar. The nearest CT park and ride lot/bus stop is on the south side of SR 2 between 10<sup>th</sup> and 11<sup>th</sup> Streets, about 1,500 feet west of the new Sultan Basin Road/SR 2 intersection. (Exhibits 1.C and 23a and Comprehensive Plan, pp. 201 and 202) *Vodnick Lane* residents interested in using CT's bus service could drive south on Sultan Basin Road and west on SR 2, or walk or bicycle that same route. (Exhibit 23 and testimony)

The City has asked CT to expand its bus service to include a run up Sultan Basin Road. CT has made no commitment to do so. The City expects "that expansion of transit service will be partially dependent on the Sultan Basin Road area having sufficient population to sustain transit ridership." (Exhibit 23, p. 7)

13. Traffic and park impact fees "shall be determined and paid to the designated city of Sultan official at the time of issuance of a building permit for the development." [SMC 16.112.020(B)] School impact fees "shall be paid to the city prior to building permit issuance, based on the fee schedule in place at the time of building permit application." [SMC 16.116.030(B)] Therefore, all three fees are based on fee schedules in effect when building permit applications are filed, not the fee schedules now in effect.
14. Sultan's State Environmental Policy Act (SEPA) Responsible Official issued a threshold Determination of Nonsignificance (DNS) for *Vodnick Lane* on April 10, 2006. (Exhibit 1.J) No appeal was filed in response to issuance of the DNS. (Testimony) The Responsible Official determined that no additional review was required for the resubmitted application. (Exhibit 23 and testimony)
15. DCD recommends approval of *Vodnick Lane* subject to 23 conditions. (Exhibit 23, pp. 12 - 15) Brickyard has no objection to any of the recommended conditions. (Testimony)

Concurrency

Police Services

16. The currently adopted LOS standard is 2.6 uniformed officers per 1,000 population. (Exhibit 1.D; See also 2004 Comprehensive Plan, Appendix B, p. 2.74) (The LOS standard in the prior 1994 Comprehensive Plan was two police vehicles per 1,000 population. (2004 Comprehensive Plan, Appendix B, pp. 2.74 and 2.75))
17. The City conducted the inventory which formed the basis of the currently adopted LOS standard in 2003. It used an estimated 2003 population of 3,814 to develop that standard.<sup>3</sup> (2004 Comprehensive Plan, Appendix B, p. 2.75) The City had 10 full-time uniformed officers in 2003. (2004 Comprehensive Plan, Appendix F, pp. 214 – 215) The ratio of uniformed officers to population in 2003 when the LOS inventory was conducted, based on the population number used, was 2.6 officers per 1,000 population. (2004 Comprehensive Plan, Appendix B, p. 2.74)
18. The City's July 1, 2006, estimated population is 4,440. (Exhibit 23, p. 10) The City presently has eight (8) full-time uniformed officers with one newly budgeted position vacant. (*Id.*) The current police services LOS is thus 1.8 uniformed officers per 1,000 population. The City needs 12 (11.54) uniformed officers to meet the established LOS for its 2005 estimated population. (Exhibit 23, p. 10)
19. The latest adopted Capital Facilities Plan (CFP) is Appendix D to the 2004 Comprehensive Plan, dated November 22, 2004. (Official notice) The discussion of the Police Department in the CFP mentions a new station, but does not address staffing (not unexpected since staffing is not a capital facility). (2004 Comprehensive Plan, Appendix D, p. VIII-19)
20. Brickyard has offered a "Developer Agreement to Establish Concurrency" (Brickyard Agreement). (Exhibit 23b) The Brickyard Agreement offers to fund 16%<sup>4</sup> (\$17,873.36) of the cost of one police officer for one year and make a one-time contribution of \$4,876.00 for future police officer costs. "This contribution shall be divided equally among the lots/units approved, and shall be paid on a lot by lot/unit by unit basis as building permits are issued." (Exhibit 23b, p. 1, ¶ 1) The Brickyard Agreement further provides that if the City reduces or eliminates the police services LOS requirement before payments are made, then the remaining payments shall be correspondingly

<sup>3</sup> The basis for that 2003 population estimate is not in the record before the Examiner. According to Exhibit 1.D, the Washington State Office of Financial Management, Forecasting Division, (OFM), estimated Sultan's April 1, 2003, population to be 4,095. The LOS standard, being a legislatively adopted policy decision by the Council, may not be reconsidered, altered, or challenged in the context of this project permit application. [See RCW 36.70B.030, quoted in part in the Principles of Law section, below.]

<sup>4</sup> The Brickyard Agreement actually says "0.16%". However, calculation using the numbers contained in the Agreement confirms that a scrivener's error occurred: The "%" sign was appended to the result "0.16," which itself represents 16%, thus erroneously dividing the result by 100.

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reduced or eliminated, but that if the City increases the LOS standard before payments are made, the payments shall be vested under the current LOS standard. (Exhibit 23b, p. 2, ¶ 3)

21. The Examiner takes official notice that the Sultan electorate defeated a proposed police services levy at the November 7, 2006, general election.

Parks, Recreation, and Open Space

22. The currently adopted LOS standard is 42.6 acres of parks, recreation, and open space facilities per 1,000 population. (Exhibit 1.D; see also 2004 Comprehensive Plan, Appendix B, p. 2.75) (The LOS standard in the prior 1994 Comprehensive Plan was 5.0 acres of City park land per 1,000 population. (2004 Comprehensive Plan, Appendix B, p. 2.75))
23. The City's July 1, 2006, estimated population is 4,440. (Exhibit 23, p. 10) The current acreage of parks, recreation, and open space lands stands at 198.16 and the current ratio of parks, recreation, and open space lands to population (based upon the record in this hearing) stands at 44.6 acres per 1,000 population. The City has 9.02 excess acres of park, recreation, and open space lands above the established LOS for its 2005 estimated population. (Exhibit 23, p. 11)

Concurrency Certificate

24. DCD incorporated the required Certificate of Concurrency (the Certificate) into its November 2, 2006, Staff Report for *Vodnick Lane*. (Exhibit 23) The Certificate states that all services subject to the concurrency requirement are concurrent, contingent upon acceptance of the Brickyard Agreement. (Exhibit 23, pp. 8 – 11)

Recent Council Actions

25. On June 8, 2006, the Council passed Resolution Nos. 06-06 and 06-07, approving the *Steen Park* and *Cascade Breeze Estates* applications, respectively. Both Resolutions contain identical language regarding the police services LOS issue:
  4. The City's existing Level of Service for police is below the adopted LOS in the Comprehensive Plan. The LOS failure for police, however, was not caused by this proposed Development, and the further reduction in the LOS caused by this proposed Development is modest by comparison to the existing deficiency.
  5. The Council takes notice of the Recommendations in the Prothman Report accepted by the Council and Ordinance 900-06. The City has adopted a utility tax applicable to its municipal utilities and has received Recommendations for additional tax adoptions, including a utility tax on cable television service, an increased real estate excise tax, and a B & O tax. Other funding sources could include potential developer loans to advance the

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receipt of payment of needed funds, and monies contributed by proposed development for their impacts on the LOS. A combination of developer agreements and public funds will put in place the required public services for police concurrent with the development impacts, and provide appropriate strategies for the six years from the time of development to achieve the necessary police LOS as now established or as subsequently revised.

6. The Council takes notice of the Applicant's offer at the Closed Record Hearing to deliver to the City a Developer Agreement to pay Applicant's incremental share for a police officer for one year.
7. Based upon the foregoing, this proposed Development is deemed concurrent.

Neither resolution requires submittal of an executed Police Services Agreement. (Official notice)

26. On June 29, 2006, the Council passed Resolution No. 06-09A approving the *Skoglund Estates* PUD subdivision. That Resolution states as follows regarding PUD locational criteria and police services LOS:

2. ... Based upon the evidence in the record and judicial notice the Council makes the following additional Findings of Fact:

18. Community Transit routes 270, 271 and 271 service the Sultan Park & Ride on US 2 east of 10<sup>th</sup> Street approximately 1.0 mile from the site.<sup>5</sup> Service is provided through the City and to and from Everett via Snohomish and Monroe. Development of the type herein will facilitate and increase the prospect of a direct route along Sultan Basin Road. The Council finds that the site is in sufficient proximity in light of these facts to be approved as a PUD.

...

20. Applicant offered at the open record hearing a developer agreement to pay the developer's pro rata share for one year of the cost of a police officer to mitigate the impacts of this development. Thereafter, the revenues from real

<sup>5</sup> Examiner's note: According to scale maps contained within the Comprehensive Plan, the southern end of the body of the *Skoglund Estates* site, which is to be connected to 138<sup>th</sup> Street SE only by a pedestrian path, is 1.3 road miles from the park and ride lot, following the new Sultan Basin Road alignment. Street mileage will be slightly over 1.5 miles along Sultan Basin Road and 132<sup>nd</sup> Street SE.

estate taxes on the increased value of the property will be available to the City's general fund.

3. ... The Council ... makes the following Conclusions of Law and Conditions:

Conclusions of Law and Conditions:

3. The City's existing level of service for police is below the adopted LOS in the comprehensive plan. The LOS failure for police, however, was not caused by this proposed development, and further reduction in the LOS caused by this proposed development is modest by comparison to the existing deficiency.

4. The Council takes notice of the recommendations in the Prothman Report accepted by the Council and Ordinance 900-06. The City has adopted a utility tax applicable to its municipal utilities and has received recommendations for additional tax options, including a utility tax on cable television service, an increased real estate excise tax, and a B & O tax. Other funding sources include potential developer loans to advance the receipt of payment of needed funds, and monies contributed by proposed development for their impacts on the LOS. A combination of developer agreements and public funds will put in place the required public services for police concurrent with development impacts, and provide appropriate strategies for the six years from the time of development to achieve the necessary police LOS as now established or as subsequently revised.

5. The Council takes notice of the Applicant's offer at the open record hearing to deliver to the City a Developer Agreement to pay Applicant's incremental share for a police officer for one year.

6. Based upon the foregoing, this proposed development is deemed concurrent.

Based upon finding of fact 18, this application satisfies the locational requirements for a PUD.

Resolution No. 06-09A does not require submittal of an executed Police Services Agreement.  
(Exhibit 32)

Other Matters

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27. Three participants in the original May 15, 2006, hearing raised objections to various aspects of the proposal:

A. Josie Fallgatter (Fallgatter) questioned whether the application meets applicable PUD criteria. She did not believe that the proposal meets the purpose provisions of SMC 16.10.030(B): "to provide for greater flexibility in residential design ..., to encourage provision of affordable housing and to allow for a limited amount of increased residential density ...." She believed that the proposal does not meet the "transit facilitation" requirement mentioned earlier. Finally, she argued that the Table of Dimensional and Density Requirements for the MD zone contained in the version of SMC 16.12.020(C) to which the original application was vested required each lot in a PUD to be not less than 300 feet wide and contain not less than five acres. In the alternative, if the five acre requirement was read to establish a minimum PUD site size, she argued that it superseded the two acre minimum PUD site size set forth at SMC 16.10.110(B)(2)(b). Since the *Vodnick Lane* site is only 4.77 acres, she argued that it was ineligible for a PUD overlay. (Exhibit 14 and testimony)

Ordinance No. 917-06, effective on or about April 24, 2006, corrected the conflict between SMC 16.12.020(C) and SMC 16.10.110(B)(2)(b): Both now allow PUDs to be proposed on sites of two acres or more. (Exhibit 30)

B. Ron Kraut (Kraut) believed that the submitted traffic study (Exhibit 1.C) does not contain all required elements and that the Sultan Basin Road LOS will drop below the established standard with all the new development in the area. (Exhibit 13)

Kraut's objection was addressed in the Examiner's original Recommendation. (Exhibit 16) It will not be further addressed here.

C. Loretta Storm (Storm) questioned the efficacy of a hammerhead turn-around at the west end of Tract 997 on the grounds that it will hard for large trucks (such as the City's garbage trucks) to negotiate. She was concerned that a tree and utility pole along the property's Sultan Basin Road frontage will impede sight distance to the north. Finally, she also questioned compliance with the "transit facilitation" requirement given that no sidewalks exist along Sultan Basin Road between the site and SR 2. She believes that that segment of Sultan Basin Road is very dangerous for pedestrians. (Testimony)

28. The owner of *Eagle Ridge* Lot 106 (Everett), located generally north of proposed Lots 12 and 13, submitted a letter containing seven concerns: Will the proposal affect *Eagle Ridge's* stormwater control system? (Issues 1 and 2); open space should be in larger parcels (Issue 3); the proposed trail could be beneficial or a nuisance (Issue 4); adequacy of the proposed streets (Issue 5); affect on property values (Issue 6); and Does the proposal comply with all legal requirements? (Issue 7). (Exhibit 31)

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29. Any Conclusion deemed to be a Finding of Fact is hereby adopted as such.

## PRINCIPLES OF LAW

### Authority

Preliminary subdivision and preliminary PUD applications require a pre-decision open record hearing before the Examiner who forwards a recommendation to the Sultan City Council (Council) for final action. [SMC 16.10.080, 16.28.320 - .340, and 16.120.050]

### Review Criteria

The review criteria for preliminary subdivisions are set forth within SMC 16.28.330(A):

- A. The Hearing Examiner shall ... consider and review the proposed plat with regard to:
1. Its conformance to the general purposes of the Comprehensive Plan and Planning Standards and Specifications as adopted by the laws of the State of Washington and the City of Sultan;
  2. Whether appropriate provisions are made ... for: drainage ways, streets, alleys, other public ways, water supplies and sanitary wastes, transit stops, parks and recreation, playgrounds, schools and schoolgrounds;
  3. The physical characteristics of the subdivision site and may disapprove because of flood, inundation or swamp conditions. It may require construction of protective improvements as a Condition of Approval; and
  4. all other relevant facts to determine whether the public use and interest will be served by the ... subdivision.

"The [PUD] district is an alternative to conventional land use regulations, combining use, density and site plan considerations into a single process." [SMC 16.10.010(A)] The PUD is an "overlay zone", applied "only after a site-specific and project-specific review." [SMC 16.10.020 and .010(A), respectively]

The SMC provides for both Retail Center PUDs and several types of Residential PUDs. [SMC 16.10.030] The general review criteria for PUDs are set forth at SMC 16.10.090(B):

The hearing examiner recommendation shall include, at a minimum, findings and conclusions regarding the preliminary PUD's compliance with the criteria for location and approval for the particular type of preliminary PUD listed in SMC 16.10.100 (retail PUDs), SMC 16.10.110 (residential PUDs). A preliminary PUD shall be recommended for approval if, together with reasonable modifications or conditions, the project is determined to comply with the requirements of these sections. A preliminary PUD shall be recommended for denial if, even with reasonable modifications or conditions, the project is determined to not comply with the requirements of these sections.

The Local Project Review Act [Chapter 36.70B RCW] establishes a mandatory “consistency” review for “project permits”, a term defined by the Act to include “building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances, site-specific rezones authorized by a comprehensive plan or subarea plan”. [RCW 36.70B.020(4)]

(1) Fundamental land use planning choices made in adopted comprehensive plans and development regulations shall serve as the foundation for project review. The review of a proposed project’s consistency with applicable development regulations or, in the absence of applicable regulations the adopted comprehensive plan, under RCW 36.70B.040 shall incorporate the determinations under this section.

(2) During project review, a local government or any subsequent reviewing body shall determine whether the items listed in this subsection are defined in the development regulations applicable to the proposed project or, in the absence of applicable regulations the adopted comprehensive plan. At a minimum, such applicable regulations or plans shall be determinative of the:

- (a) Type of land use permitted at the site, including uses that may be allowed under certain circumstances, such as planned unit developments and conditional and special uses, if the criteria for their approval have been satisfied;
- (b) Density of residential development in urban growth areas; and
- (c) Availability and adequacy of public facilities identified in the comprehensive plan, if the plan or development regulations provide for funding of these facilities as required by [the Growth Management Act].

[RCW 36.70B.030]

Chapter 16.108 SMC, Concurrency Management System

Chapter 16.108 SMC was adopted by Ordinance No. 630 in 1995. It has not been amended since its adoption. The following sections within Chapter 16.108 SMC are particularly relevant to the present case:

**16.108.010 Purpose.**

The purpose and intent of this chapter of the unified development code is to provide a regulatory mechanism to ensure that a property owner meets the concurrency provisions of the comprehensive plan for development purposes as required in RCW 36.70A.070. This regulatory mechanism will ensure that adequate public facilities at acceptable levels of service are available to support the development’s impact.

**16.108.020 Exemptions.**

Any development categorically exempt from threshold determination and EIS requirements as stated in the State Environmental Policy Act (SEPA), Chapter 197-11 WAC.

**16.108.040 Nonbinding determinations.**

A. A nonbinding concurrency determination shall be made at the time of a request for a land use amendment or rezone. Any nonbinding concurrency determination, whether requested as part of an application for development, is a determination of what public facilities and services are available at the date of inquiry, but does not reserve capacity for that development.

B. An applicant requesting a development action by the city shall provide all information required by the city in order for a nonbinding concurrency determination to be made on the proposed project. Such required information shall include any additional information required by the building and zoning official in order to make a concurrency determination. The concurrency determination shall become a part of the staff recommendation regarding the requested development action.

C. A nonbinding concurrency determination may be received prior to a request for development action or approval by submitting a request and any applicable fee to the building and zoning official. Information required to make this determination is the same as that cited in SMC 16.108.030(B).

**16.108.050 Certificate of concurrency.**

A. A certificate of concurrency shall be issued for a development approval, and remain in effect for the same period of time as the development approval with which it is issued. If the development approval does not have an expiration date, the certificate of concurrency shall be valid for 12 months.

B. A certificate of concurrency may be accorded the same terms and conditions as the underlying development approval. If a development approval shall be extended, the certificate of concurrency shall also be extended.

C. A certificate of concurrency may be extended to remain in effect for the life of each subsequent development approval for the same parcel, as long as the applicant obtains a subsequent development approval prior to the expiration of the earlier development approval.

D. A certificate of concurrency runs with the land, is valid only for the subsequent development approvals for the same parcel, and is transferable to new owners of the original parcel for which it was issued.

E. A certificate of concurrency shall expire if the underlying development approval expires or is revoked by the city.

**16.108.060 Standards for concurrency.**

The city of Sultan shall review applications for development, and a development approval will be issued only if the proposed development does not lower the existing level of service

(LOS) of public facilities and services below the adopted LOS in the comprehensive plan. A project shall be deemed concurrent if one of the following standards is met:

A. The necessary public facilities and services are in place at the time the development approval is issued; or

B. The development permit is issued subject to the condition that the necessary public facilities and services will be in place concurrent with the impacts of development; or

C. The necessary public facilities and services are guaranteed in an enforceable development agreement to be in place concurrent with the development.

“Concurrent with the development” shall mean that improvements or strategy are in place at the time of the development or that a financial commitment is in place to complete the improvements or strategies within six years of the time of the development.

**16.108.070 Facilities and services subject to concurrency.**

A concurrency test shall be made of the following public facilities and services for which level of service standards have been established in the comprehensive plan:

A. Roadways;

B. Potable water;

C. Wastewater;

D. Police protection;

E. Parks and recreation.

**16.108.120 Concurrency determination – Police protection.**

A. The city of Sultan will provide level of service (LOS) information as set forth in the city of Sultan comprehensive plan.

B. If the LOS information indicates that the proposed project would not result in a LOS failure, the concurrency determination would be that adequate facility capacity at acceptable LOSs was available at the date of application or inquiry.

C. If the LOS information indicates that the proposed project would result in a LOS failure, the concurrency determination would be that adequate facility capacity at acceptable levels of service was not available at the date of application or inquiry.

**16.108.130 Concurrency determination – Parks and recreation.**

A. The city of Sultan will provide level of service (LOS) information as set forth in the city of Sultan comprehensive plan.

B. If the LOS information indicates that the proposed project would not result in a LOS failure, the concurrency determination would be that adequate facility capacity at acceptable LOSs was available at the date of application or inquiry.

C. If the LOS information indicates that the proposed project would result in a LOS failure, the concurrency determination would be that adequate facility capacity at acceptable levels of service was not available at the date of application or inquiry.

### Vested Rights

Subdivision and short subdivision applications are governed by a statutory vesting rule: such applications "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 ... has been submitted ...." [RCW 58.17.033; see also SMC 16.28.480]

*Vodnick Lane* was resubmitted on September 28, 2006; the resubmitted application was deemed complete as of October 3, 2006. The latter date becomes the new *Vodnick Lane* vesting date.

### Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof.

### Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

## CONCLUSIONS

1. *Vodnick Lane* presents multiple issues requiring resolution: the merits of the proposal; compliance with the codified concurrency management system; adequacy of the recommended conditions; and, to the extent not addressed elsewhere or previously, the citizen objections.

All of those issues, except for compliance with the PUD transit locational criterion and police services LOS concurrency, were decided in favor of application approval in the Examiner's first Recommendation. (Exhibit 16) The Conclusions associated with most of those issues will be repeated here solely for completeness.

2. In summary, *Vodnick Lane* now meets the requirements for approval. Further, a condition can be crafted to assure compliance with the requirements of the Concurrency Management System.
3. Each major topic will be addressed separately in the following Conclusions. The Conclusions will focus on those criteria which have been challenged. The Conclusions in this decision are grouped by topic only for the reader's convenience. Such groupings do not indicate any limitation of applicability to the decision as a whole.

### Preliminary Subdivision and PUD Requirements

4. A PUD application intertwined with a preliminary subdivision application, as is *Vodnick Lane*, are subject to the same vesting provisions as apply to the subdivision application. [*Schneider Homes v. City of Kent*, 87 Wn. App. 774, 942 P.2d 1096 (1997)] Applicants may not select which regulations to which they wish to be vested. [*East County Reclamation Co. v. Bjornsen*, 125 Wn. App. 432, 105

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P.3d 94 (2005)] The current, resubmitted *Vodnick Lane* application is vested to those PUD regulations which were in effect as of October 3, 2006.

5. The only PUD-SF locational criteria under challenge in this application is that relating to transit facilitation. [SMC 16.10.110(B)(2)(d)] This same issue arose during the *Skoglund Estates* case. The Examiner's Recommendation in that case included the following Conclusions:

18. The locational criteria of SMC 16.10.110 are mandatory: A PUD which does not meet all criteria applicable to its type of PUD can not be approved.
19. Compliance with the transit facilitation criterion of SMC 16.10.110(B)(2)(d) is mandatory for single-family residential PUDs. *Skoglund Estates* is a single-family residential PUD proposal.
20. The transit facilitation criterion of SMC 16.10.110(B)(2)(d) is subjective in nature. It does not establish a measurable "bright line" for what constitutes "sufficient proximity" to "facilitate transit access".
21. What is "sufficient proximity" to "facilitate transit access"? *Skoglund Estates* is at least 1.5 miles from the nearest transit line (using existing and/or proposed streets and pedestrian paths – not as the crow flies). Is that "sufficient proximity"?

Two aspects of transit access must be considered. First is pedestrian access to a transit stop. Common sense dictates that Americans will not walk 1.5 miles through the rain to reach a bus stop – not if they have any other choice. A PUD located 1.5 miles from the nearest transit line does not have "sufficient proximity" to "facilitate transit access" for pedestrians.

The second aspect is vehicular travel to a park-and-ride location. If the standard is read to include this aspect, it becomes totally meaningless and would not provide locational discrimination for any site in Sultan: One can drive from anywhere in Sultan to a transit park-and-ride lot. Thus, every site in Sultan would meet the criterion. But if the Council intended that every site in Sultan would be eligible for a single-family PUD, why would it even establish the criterion? One must conclude that the Council did not intend for every site in Sultan to be eligible for a single-family PUD and that this criterion was established to filter out unacceptable sites.

22. A site which is 1.5 miles from the nearest transit line does not have "sufficient proximity" to "facilitate transit access" and does not meet the

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criterion of SMC 16.10.110(B)(2)(d). No PUD approval may be granted for such a site.<sup>6</sup>

Summary

23. The *Skoglund Estates* site does not meet the mandatory locational criterion of SMC 16.10.110(B)(2)(d). No condition can be imposed which would alleviate the problem: The site can not be physically moved closer to the transit facilities; O'Brien is in no position to direct Community Transit to establish a bus line on Sultan Basin Road. Therefore, *Skoglund Estates* may not be approved as a single-family PUD; that portion of the application must be denied.

6. The Council disagreed with the portion of the Examiner's *Skoglund Estates* Recommendation quoted above. Basically, the Council concluded that being located one mile from the nearest transit route or park and ride lot met the code criterion even where no pedestrian walkway or sidewalk existed between the development site and the transit facilities. (Exhibit 32)

Unfortunately, the Council's *Skoglund Estates* Resolution offers little explanatory rationale for its decision. And the distance it cites is incorrect. Therefore, it cannot easily be applied to other applications.

7. The location of *Vodnick Lane* presents a somewhat similar set of circumstances to the *Skoglund Estates* site, but with a few important differences. *Vodnick Lane* is about three-fifths of a mile from the nearest transit stop, rather than over a mile. The walking route to that transit stop will be along the now-under-construction pedestrian pathway along the shoulder of Sultan Basin Road. This pedestrian path is a major changed circumstance since the first hearing. The Examiner is willing to concede that a site located three-fifths of a mile from a transit stop, connected to the transit stop by a pedestrian pathway, minimally meets the "sufficient proximity" to "facilitate transit access" test. *Vodnick Lane* now meets the criterion of SMC 16.10.110(B)(2)(d).

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<sup>6</sup> (Examiner's Note: This footnote was in the *Skoglund Estates* Recommendation and is simply repeated here to make the quote complete.) This is the third PUD application considered since the Council adopted new PUD standards and procedures in 2002. The first was *Stratford Place* (PUD04-001, Recommendation issued February 1, 2005). The nearest transit route to *Stratford Place* was on High Street, approximately 200 feet from the site. Such close proximity unquestionably met the transit facilitation criterion.

The second was *Timber Ridge Estates* (FPPUD04-002, Recommendation Revised after Reconsideration issued May 23, 2005), approved by the Council in mid-2005 (Resolution No. 05-17). *Timber Ridge* is located on the east side of Sultan Basin Road approximately one-quarter mile north of SR 2. Although the transit facilitation criterion was not an issue in that application, the Examiner would have concluded that one-quarter mile was close enough to meet the criterion.

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8. Although not challenged in this case, compliance with SMC 16.10.110(B)(2)(c) needs to be addressed as it did become an issue in the *Twin Rivers Ranch Estates* case whose recommendation came out shortly after the original *Vodnick Lane* Recommendation. The location criteria of SMC 16.10.110(B)(2) are designed (for the most part) to help limit the places within the City which are eligible for PUDs. Had the Council intended that PUDs could be located anywhere in the City, it would not have enacted restrictive location criteria. Those criteria must be given meaning.<sup>7</sup>

The criterion in SMC 16.10.110(B)(2)(c) contains three key elements. First, a site must be able to connect to a pedestrian and bicycle system. Second, that system must be in existence when the evaluation is performed; a proposed or potential system will not meet the "existing" restriction of the criterion. Third, the connection must be to a "circulation system," a term which is undefined in the code. DCD's Director testified during the *Twin Rivers Ranch Estates* hearing on May 18, 2006, that even an unimproved street shoulder would meet the criterion. Were that in fact the case, the criterion would be meaningless: Every site with any public street access connects to at least an unimproved shoulder. Thus, every site in the City would meet the criterion, rendering the criterion useless. The Council included the criterion to limit potential PUD sites; that purpose must be preserved in any interpretation of the criterion. The idea that an unimproved shoulder would qualify as a pedestrian and bicycle circulation system stretches the meaning of "system" beyond the breaking point.

*Vodnick Lane* meets the Subsection (B)(2)(c) criterion. Its trail and sidewalks provide a direct connection to the sidewalks within *Eagle Ridge* and *The Plateau*. Nothing in the SMC requires that the circulation system go to the city center.

9. *Vodnick Lane* meets the performance standards for a single-family residential PUD. A PUD need not provide affordable housing to meet code requirements as suggested by Fallgatter. Affordable housing is but one of several objectives of the PUD process. Another objective is to simply provide greater flexibility. Brickyard has certainly taken advantage of that objective with the narrow lots. Anyone who has had any experience with urban design will quickly realize that the *Vodnick Lane* site offers extremely little opportunity for design flexibility because of its extreme length to width ratio.

The 300 foot lot width and two acre lot minimum of SMC 16.12.020(C) cannot rationally be read to apply to individual lots within a PUD. They only make sense when applied to the parcel for which a PUD is proposed.

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<sup>7</sup> Locational criterion (B)(2)(f) offers an instructive contrast. It was expressly written so as to not limit potential PUD sites: So long as a site has access to public services equal to that of a standard development, the criterion is met. The language of Subsection (B)(2)(f) clearly demonstrates a difference of intent on the part of the Council. It wrote that criterion to be non-limiting while all the others in Subsection (B)(2) are intended to limit.

The prior argument about minimum PUD parcel size is moot in light of Ordinance No. 917-06 and the application's new vesting date. *Vodnick Lane* exceeds the two acre lot area minimum.

Everett's concerns are without foundation in fact. *Vodnick Lane*'s stormwater management system does not propose to tie into *Eagle Ridge*'s system. PUD design limitations caused by the site's length:width ratio have been addressed. The Homeowners' Association will be responsible for maintenance of all the open space facilities, including the trail. The 28 feet of pavement in the "3/4 section" 139<sup>th</sup> Street SE will be sufficiently wide to allow parking along one side. (Exhibit 29) The proposal does meet all applicable code requirements.

10. The preponderance of the evidence shows that the proposed subdivision, conditioned as set forth herein, would conform with the general purposes of the comprehensive plan and with the applicable regulations of the zoning code and other land use controls.
11. The preponderance of the evidence shows that the proposed subdivision, conditioned as set forth herein, makes appropriate provisions for those items enumerated within SMC 16.28.330(A); and serves the public use and interest. The proposed subdivision does not generate a requirement for alleys.

Storm's concern about the hammerhead turn-around is not supported by any evidence in the record. No one has suggested that the turn-around is not allowed under the adopted Design Standards. No City official has expressed any concern about ability to provide City services to the houses along Tract 997. The application review process and open record hearing process are precisely where staff should make such concerns known. That staff has not done so must be read, absent more, as an indication that it accepts the proposed design.

12. None of the bases for denial set forth within SMC 16.28.330(A)(3) are present in the instant case.
13. *Vodnick Lane* meets the criteria for preliminary subdivision and PUD approval.

CFO

Concurrency<sup>8</sup>

14. Subdivision PUD applications are development permits. [SMC 16.120.050] *Vodnick Lane* is not categorically exempt from SEPA threshold determination requirements. (Exhibit 1.J) Therefore, *Vodnick Lane* is subject to the concurrency requirements of Chapter 16.108 SMC. [SMC 16.108.020]
15. DCD's concurrency determination is to be considered part of its recommendation to the Examiner. [SMC 16.108.040(B)] The Examiner can not recommend and the Council can not approve a development application which does not demonstrate compliance with the concurrency requirements of Chapter 16.108 SMC. [SMC 16.108.060]
16. Section 16.108.060 SMC states that development approval is to be granted "only if the proposed development does not lower the existing level of service (LOS) of public facilities and services below the adopted LOS in the comprehensive plan." But what happens where the existing LOS is already below the established standard? May a development be approved because it is not the one which "broke" the LOS standard?

Common sense must be applied in interpreting the quoted code language. One could argue that the section holds that only the one project which would "break" the standard could not be approved, but that all subsequent proposals could be approved since they were not the project which lowered the LOS below the established standard – they simply made it even lower.

Such an interpretation makes no sense. The only reasonable interpretation of the quoted language is that developments may not be approved either if they would themselves cause the LOS to fall below the established standard or if the LOS is already below that standard.

17. The concurrency process of Chapter 16.108 SMC is wholly separate from and independent of the impact fee process of Chapter 16.112 SMC. The former seeks to assure that established LOSs are maintained; the latter requires developers to pay a share of the costs of facilities required by new development. The latter is a Growth Management Act (GMA) impact fee program adopted by the City pursuant to Chapter 36.70A RCW, GMA, and "RCW 82.02.050 et sequitur". [SMC 16.112.010, ¶ 1] The latter is not subject to the fee limitations associated with RCW 82.02.020.

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<sup>8</sup> The Examiner concludes that Resolution Nos. 06-06, 06-07, and 06-09A do not establish precedent for this or future cases. The analysis which follows has benefited from the Council's holdings in those Resolutions, but does not agree in full with the Resolutions' holdings. Those Resolutions imposed no concurrency conditions on development. (Conclusion 6 in the first two and Conclusion 5 in the third Resolution "takes notice" of an applicant offer to provide a developer agreement for an "incremental share for a police officer for one year." None of the three Resolutions, however, imposes any such requirement on the application.)

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18. Chapter 16.108 SMC does not impose an impermissible cost on developers. In fact, it doesn't impose any cost on developers. Rather, it establishes a threshold condition which must exist in the community for any development to go forward. If that threshold condition (LOS at or above the established levels) is not present, then SMC 16.108.060 SMC provides two alternative mechanisms by which a development may be found to be concurrent.

Subsection (A) addresses the situation where the LOS will still be above the established standard even after the population associated with the proposal is added to the City's population. For example, if the police services LOS is 2.6 uniformed officers per 1,000 population, the current LOS were 8.2 uniformed officers per 1,000 population, and the LOS after addition of the residents in a proposed development were 8.1 uniformed officers per 1,000 population, then the proposal would be concurrent: The resultant LOS would still be greater than the adopted standard. In such a case, nothing is required.

To read this subsection as one former applicant suggested (the LOS must meet the standard for only the one day on which the Council will act on the proposal) is simply illogical and makes a mockery of the entire concurrency system chapter. If such was the true intent of the Council when it enacted Chapter 16.108 SMC, the Council will have to so declare on its own initiative: The Examiner declines to even suggest that such an interpretation might have been intended.

Subsection (B) addresses the situation where the LOS standard would not be met but a firm commitment/funded plan is already in place which will raise the LOS to above the standard within six years. In that case, approval is to be conditioned on the LOS meeting the standard within six years. The key code requirement here is that the commitment/plan must be funded and in place. This subsection does not require the developer to participate in any way in raising the LOS to meet the standard.

Subsection (C) addresses the situation where the LOS standard would not be met but the developer enters into a binding agreement with the City to provide the necessary resources to raise the LOS to meet or exceed the established LOS within six years. This is an option in which the typical developer would likely be committing more than his/her fair share. But "latecomers" agreements are available for just such situations. And, the developer always has the option to wait until the City makes the necessary commitments to raise the LOS.

19. According to SMC 16.108.070, .120, and .130, the LOS standards for police services and parks, recreation, and open space are the standards as set in the 2004 Comprehensive Plan: 2.6 uniformed officers per 1,000 population and 42.6 acres per 1,000 population, respectively.

The Council in adopting the LOS standards in the 2004 Comprehensive Plan without exception used the 2003 actual LOS ratios/levels as the standards that have to be met in the future. The text in Appendix B of the 2004 Comprehensive Plan does not explain why the 2003 actual levels were

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chosen as the standards for the future. As adopted, those standards effectively mean that any reduction in police staffing below that in place in 2003 would drop (actually has dropped) the City below its established LOS. As the City has grown, additional officers would have of necessity been needed to maintain the LOS above the standard: Even 1 additional resident would have lowered the LOS below the standard. The same holds true for park, recreation, and open space lands.

Whether that was the Council's intent when it adopted the 2004 Comprehensive Plan is unknown. (Legislative intent is not relevant where the enactment is clear and unambiguous on its face.) Whether the Council even realized the effect of the standards it was adopting is equally unknown. Even if the Council were to change the standards now, new standards could not legally be applied in the review of *Vodnick Lane* because of the vested rights statute: The application must be reviewed against the regulations which existed on October 3, 2006, the date the application was deemed complete. Further, an applicant may not "selectively waive" some old regulations while retaining a vested right to others. [*East County Reclamation Co. v. Bjornsen*, 125 Wn. App. 432, 105 P.3d 94 (2005)]

20. A concurrency recommendation or certificate must be based upon facts. Those facts must include the (estimated) population of the City at the time of the application for which concurrency is sought, the number of residents expected to be added by the proposed development, and the amount of the affected service then available in the community (For example, the number of uniformed officers in the police department; the total acreage of parks, recreation, and open space using the same methodology as used in the 2003 inventory.) Given those facts, LOS for each required service area may be calculated. Without those facts, LOS cannot be calculated. If the LOS cannot be calculated, then no favorable conclusion is possible regarding concurrency.
21. DCD's position on Concurrency has ebbed and flowed throughout the series of subdivision hearings this year. For example, in the *Hammer PUD* hearing held on May 10, 2006, DCD argued that a developer agreement was necessary in order to insure that the police service LOS was met. It abandoned that position during the first *Vodnick Lane* hearing on May 15, 2006. However, three days later on May 18, 2006, DCD again argued that a developer agreement was necessary during the *Twin Rivers Ranch Estates* open record hearing. Such inconsistency demonstrates why the Examiner has not been able to rely on the staff for guidance during these contentious hearings.

Police Services

22. The present LOS for police services is far below the standard established within the 2004 Comprehensive Plan. Additional residential development within the City will only serve to further lower the LOS.
23. DCD erred in concluding that *Vodnick Lane* meets the concurrency standard for police services.

24. The Brickyard Agreement simply does not guarantee that the police services LOS will meet the established standard when the development occurs – or even six years later. The concept underlying the offered agreement suffers from several shortcomings. First, even if fully funded all at once, the Brickyard Agreement would fund only 16% of the cost of one police officer for one year. The City cannot hire 16% of a person. Even if it could, the LOS would still be woefully below the established standard – and would fall back again after the one year of funding ended.

Second, the Brickyard Agreement calls for the funds to be paid as each building permit is issued. Based on the proposed 23 dwelling units and the total offered mitigation of \$22,749.36, the City would receive \$989.10 each time a residential building permit was issued for *Vodnick Lane*. Such a small stream of cash would not allow even 16% of a police officer to be hired.

Even if all the offered funds were paid at one time, it would take slightly more than six *Vodnick Lane*-sized developments to fund just one police officer ( $16\% \times 6 = 96\%$ ), and that one officer would not raise the police services LOS to the established standard. In fact, it would take 24 *Vodnick Lane*-sized subdivisions, all developed at essentially the same time, to raise the LOS to the established standard. But that simple equation (1 officer funded by the fees from 6 subdivisions yields 4 officers after 24 subdivisions) fails to account for the fact that those 24 *Vodnick Lane*-sized subdivisions would themselves raise the City's population by some 1,490 people (2.7 persons per household, the number stated in the Brickyard Agreement), thus lowering the LOS again. In fact, all a program such as offered by Brickyard does is hold the LOS at its current level as new houses are added to the community – and then only if development occurs fast enough that the payments for fractional officers can be combined to actually hire a police officer.

This concept simply is not what the SMC requires. The Council may certainly change the SMC requirement if it wishes. But in the meantime, the code is what controls – and even if the code were changed today, that change would not apply to any subdivision application filed in a complete fashion before the change became effective.

25. The City has no “strategy in place” to increase police staffing. The electorate defeated its latest proposed strategy. The discussion in Conclusion 5 of Resolution Nos. 06-06 and 06-07 and Conclusion 4 of resolution No. 06-09A regarding possible additional taxes that could or might be adopted to raise revenue is a strategy, but it is not in place. However, that Council discussion (that additional tax revenues coupled with developer funds could raise the LOS to meet the standard) could be converted into a condition which could read as follows:

Prior to approval of the Final plat, a combination of developer agreements and public funds, including additional tax adoptions (such as a utility tax on cable television service, an increased real estate excise tax, and a B & O tax), other funding sources (such as potential developer loans to advance the receipt of payment of needed funds), and monies contributed by the proposed development for its impacts on the

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November 17, 2006

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LOS, shall put in place the required public services for police concurrent with the development impacts, and provide appropriate strategies for the six years from the time of development to achieve the necessary police LOS as now established or as subsequently revised.

Such a condition would meet the requirement of SMC 16.108.060(C).

26. Approval could also be conditioned such that the police services LOS in existence at the time of final building permit inspections had to be met before approval for occupancy could be granted. Such a condition would meet the requirement of SMC 16.108.060(B).
27. Under the present circumstances, the best Concurrency solution would be to impose an "either - or" condition: Require compliance with a condition as suggested in Conclusion 25, above, or compliance with a condition as suggested in Conclusion 26, above. Such a condition will be recommended.

Parks, Recreation, and Open Space

28. The City is presently concurrent with respect to parks, recreation, and open space based upon the evidence in this hearing record.

Recommended Conditions Analysis

29. The recommended conditions of approval as set forth in Exhibit 23 are reasonable, supported by the evidence, and capable of accomplishment with the following exceptions:
  - A. Recommended Condition 1 contains incorrect and missing exhibit numbers. The current preliminary plat is Exhibit 23a, not Exhibit 1. The "House Plans" are Exhibits 10 and 11. In addition, the supporting street and utility plans in Exhibit 1.B.1 and the recreation plans in Exhibit 1.B.3 need to be included. Those corrections will be made.
  - B. The second paragraph of recommended Condition 11 would be better as a separate condition.
  - C. Street trees are required only on the north side of 139<sup>th</sup> Street SE, the side which will be finished to urban standards, and only along the length of the site's frontage on Sultan Basin Road. As written, Recommended Condition 12 could be read to require street trees on both sides of 139<sup>th</sup> Street SE and the entirety of Sultan Basin Road. Clarifying language will be recommended.
  - D. Recommended Condition 15 will be revised to comport with Conclusions 25 – 27, above.
  - E. The transit facilitation requirement will not be met until the pedestrian walkway has been completed from *Timber Ridge Estates* to SR 2. A condition to that effect needs to be added to assure compliance with PUD locational requirements.

- F. A few minor, non-substantive structure, grammar, and/or punctuation revisions to Recommended Conditions 1, 5, 11, and 12 will improve parallel construction, clarity, and flow within the conditions. Such changes will be made.
30. Any Finding of Fact deemed to be a Conclusion is hereby adopted as such.

### RECOMMENDATION

Based upon the preceding Findings of Fact and Conclusions, the testimony and evidence submitted at the open record hearing, and the Examiner's site view, the Examiner **RECOMMENDS APPROVAL** of the proposed preliminary subdivision and planned unit development of ! **SUBJECT TO THE ATTACHED CONDITIONS.**

Recommendation issued November 17, 2006.

\s\ John E. Galt (Signed original in official file)  
John E. Galt,  
Hearing Examiner

### NOTICE OF RIGHT OF RECONSIDERATION

This Recommendation, dated November 17, 2006, is subject to the right of reconsideration pursuant to SMC 2.26.120(D). Reconsideration may be requested by the applicant, a party of record, or the City. Reconsideration requests must be filed in writing with the City Clerk/Treasurer not later than 5:00 p.m., local time, on November 27, 2006 (which is the tenth calendar day after the date of mailing of this Decision). Any reconsideration request shall specify the error of law or fact, procedural error, or new evidence which could not have been reasonably available at the time of the hearing conducted by the Examiner which forms the basis of the request. Any reconsideration request shall also specify the relief requested. See SMC 2.26.120(D) and 16.120.110 for additional information and requirements regarding reconsideration.

### NOTICE OF COUNCIL CONSIDERATION

This Recommendation becomes final as of the eleventh calendar day after the date of mailing of the Recommendation unless reconsideration is timely requested. If reconsideration is timely requested, the Examiner's order granting or denying reconsideration becomes the Examiner's final recommendation. The Examiner's final recommendation will be considered by the Sultan City Council in accordance with the

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November 17, 2006  
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procedures of SMC 2.26.120(D) and Title 16 SMC. Please contact the Department of Community Development for information regarding the scheduling of Council consideration of this Recommendation. Please have the applicant's name and City file number available when you contact the city.

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation."

**RECOMMENDED CONDITIONS OF APPROVAL**  
**RAFFPUD05-004**  
**(*Vodnick Lane*)**

This Preliminary Subdivision and Planned Unit Development are subject to compliance with all applicable provisions, requirements, and standards of the Sultan Municipal Code, standards adopted pursuant thereto, and the following special conditions:

**Preliminary Plat and General PUD Design--**

1. The general configuration, lot shapes and sizes, setbacks, site density, and areas of open space, streets, utilities, recreation areas, and house designs shall be as indicated on Exhibits 1.B.1, 1.B.3, 10, 11, and 23a, subject to these Conditions of Approval. Revisions to approved preliminary Planned Unit Developments are regulated by SMC 16.10.160(D) and (E); revisions to approved preliminary subdivisions are regulated by SMC 16.28.360. The final PUD map shall be recorded as an amendment to the underlying zoning following Final PUD approval.
2. In accordance with SMC 16.28.340, the Developer shall prepare a Developer Agreement subject to approval of the City. The agreement shall specify the requirements for construction of all infrastructure improvements, including plan submittals, inspections, bonding, private improvements, right-of-way improvements and facilities associated with the PUD, including improvements to all common areas. Site construction drawings shall be designed consistent with the conditions of approval. Site work shall not begin until City approval of the Developer Agreement has been obtained.
3. The Developer shall establish a Home Owners' Association to assume responsibility for maintenance of common areas. The Home Owners' Association shall be recorded with the plat. The wording and Conditions of the Home Owners' Association shall be subject to City approval prior to Final Plat.
4. The Developer shall maintain the landscaping, open space improvements, drainage facilities, private streets and other common areas within the site for a two-year period following acceptance of installation by the City of Sultan. Such maintenance shall be secured with a performance bond filed with the City. Subsequent to the two-year period, maintenance responsibility shall be passed to the Homeowners' Association.

**Setbacks--**

5. In accordance with SMC 16.10.120(B)(1)(a), physical elements such as fences, screens, or open space shall be provided to accommodate rear yard setback reductions from 20 feet to 10 feet.
6. The Developer shall meet privacy requirements of SMC 16.10.120(B)(1)(a) through placement or screening of windows or service yard requirements of SMC 16.10.120(B)(1)(c) to reduce side yard setbacks from 10 feet to 5 feet.

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**Off-Street Parking–**

7. In accordance with SMC 16.60.140, the minimum number of required off-street parking spaces for single-family dwelling units is two.

**Recreation and Open Space–**

8. The Developer shall provide on-site recreation areas, each with a minimum size of 2,000 square feet, in accordance with SMC 16.72.040 and 16.72.050.

**Water–**

9. The Developer is responsible for any necessary improvements to the City's water system in order to provide adequate water to the site. Construction and materials shall conform to the City of Sultan 2004 Water and Sewer Engineering Standards.

**Sewer –**

10. The Developer is responsible for any necessary improvements to the City's sewer system in order to provide sewer service to the site. Construction and materials shall conform to the City of Sultan 2004 Water and Sewer Engineering Standards.

**Surface Water Management–**

11. The Developer shall inspect weekly, maintain, and repair all temporary and permanent erosion and sediment control BMPs to assure continued performance. During wet weather construction, access roads and on-site utilities shall be phased to minimize open soil exposure. These requirements shall be in force until such time as the complete construction of plat improvements has been accepted by the City of Sultan for plat recording.
12. Temporary storm water management facilities shall be constructed before any significant amount of site grading commences.

**Transportation–**

13. Street trees shall be planted every 20 lineal feet along the site's frontage on Sultan Basin Road, Road B, the Private Road (Tract 997) and the north side of 139<sup>th</sup> Street S.E.
14. Final street design, including paving, sidewalks, frontage improvements, parking, and emergency access must be approved by the City Engineer prior to construction.
15. Street lighting shall be required on all streets and roads within the development. Prior to lighting installation, the Developer shall submit a detailed lighting plan that depicts continuous street illumination throughout the PUD, to the City Engineer, for review and approval, pursuant to SMC 16.10.120(B)(4)(a).

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RE: RAFFPUD05-004 (*Vodnick Lane*)

November 17, 2006

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16. The pedestrian walkway shall have been completed from *Timber Ridge Estates* south to SR 2 prior to final plat approval.

**Other-**

17. Prior to final plat approval, a combination of developer agreements and public funds, including additional tax adoptions (such as a utility tax on cable television service, an increased real estate excise tax, and a B & O tax), other funding sources (such as potential developer loans to advance the receipt of payment of needed funds), and monies contributed by the proposed development for its impacts on the LOS, shall put in place the required public services for police concurrent with the development impacts, and provide appropriate strategies for the six years from the time of development to achieve the necessary police LOS as now established or as subsequently revised; or, in the alternative, the police services LOS in existence at the time of final building permit inspections shall be met before approval for occupancy is granted.
18. Fire hydrant locations shall be designated and shown on the plat engineering plans.
19. The Developer shall demonstrate sufficient water flow from the proposed fire hydrants for review and approval by the City Engineer and Fire District prior to the issuance of occupancy permits.
20. All utilities shall be placed underground.
21. Prior to construction, the Developer shall prepare a Construction Storm Water Pollution Prevention Plan for approval by the City Engineer and the Department of Ecology. The Developer shall provide a copy of the Department of Ecology, Construction Stormwater General Permit, issued for this project.
22. During construction, the Developer shall ensure that trucks are cleaned before leaving the site. The applicant shall provide street cleaning of Sultan Basin Road during site clearing, grading and filling and shall promptly clean up any dirt, mud or other material deposited on public streets and shall be responsible for cleaning storm drains in public streets that are impacted by the construction.
23. All site improvements, including streets, sidewalks, bicycle lanes, frontage improvements, drainage improvements, open space landscaping and improvements, and other common area improvements shall be completed prior to Final Plat, with the exception of the final paving of streets. Alternatively, the City may approve a financial bond or assurance for items not completed prior to Final Plat.
24. The existing house and structures shall be moved, demolished, or otherwise modified so that they are in compliance with the Sultan Municipal Code, prior to City of Sultan acceptance of plat construction for recording.

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25. Traffic, Parks and Recreation, and School Impact Fees and their administrative processing costs, shall be paid in accordance with Chapters 16.112 and 16.116 SMC.

16030 Juanita-Woodinville Way NE  
Bothell, Washington 98011  
FAX (206) 362-3819  
(425) 775-4581 • (206) 362-4244  
e-mail: info@grp4.com

RECEIVED  
DEC 07 2006  
BY: *[Signature]*

December 5, 2006

City Council  
City of Sultan  
PO Box 1199  
Sultan, WA 98294-1199

Dear Council:

**APPEAL OF (OR RESPONSE TO) CONDITION OF APPROVAL #17 (AND RELATED FINDINGS AND CONCLUSIONS) ATTACHED TO HEARING EXAMINER DECISION RELATED TO APPLICATION AS DESCRIBED BELOW.**

**File Number:** RAFPUD05-004  
**Applicant:** Brickyard Properties, LLC  
**Type of Case:** 23 Lot Planned Unit Development and Plat (Vodnick Lane)

The undersigned is the President of Group Four, Inc. and a representative of Brickyard Properties, LLC, hereinafter referred to as the "Appellant-Applicant". The Appellant-Applicant does hereby appeal the recommendation of the Hearing Examiner regarding its recommended Condition of Approval 17 and the related Findings under paragraphs 16-21, 26 and related Conclusions under paragraphs 22-27 leading to or resulting in the recommended Condition of Approval 17.

This Appeal is filed under and pursuant to SMC 2.26.140(A)(4) and (5). This Appeal is filed based upon the belief of the Appellant-Applicant that no other recourse to challenge the Hearing Examiner's recommended Condition of Approval 17 is available under the applicable City Municipal Code, although SMC 2.26.140 contemplates that the decision being appealed from is a "final and conclusive decision." (Alternatively, since the decision of the Hearing Examiner is solely in the form of a Recommendation, as long as no waiver of any of the rights of the Appellant-Applicant occurs, the Applicant is also willing to treat this letter as a response to Condition of Approval 17.)

Condition of Approval 17 specifically provides as follows:

*Prior to final plat approval, a combination of developer agreements and public funds, including additional tax adoptions (such as utility tax on cable television service, an increased real estate excise tax, and a B & O tax), other funding sources (such as potential developer loans to advance the receipt of payment of needed funds), and monies contributed by the proposed development for its impacts on the LOS, shall put in place the required public services for police concurrent with the development impacts, and provide appropriate strategies for the six years from the time of development to achieve the necessary police LOS as now established or as subsequently revised; or, in the alternative, the police services LOS in existence at the time of final building permit inspections shall be met before approval for occupancy is granted.*

This Condition of Approval (and the related Findings and Conclusions) is inconsistent with prior City Council determinations on the issue of police concurrency as evidenced by Resolution Nos. 06-06, 06-07 and 06-09A, the content of which are hereby incorporated herein as though fully set forth. (In addition, the Appellant-Applicant incorporates the appeal submissions of the Appellant-Applicant of Resolution 06-09A as though fully set forth herein.)

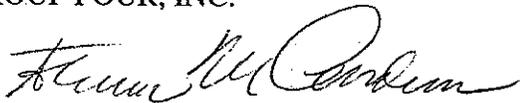
Specifically, the Appellant-Applicant in this matter seeks the same treatment accorded the Applicants named in each of the above described Resolutions regarding the Council's Findings and Conditions of Approval related to police concurrency.

In the open record hearing before the Hearing Examiner, the Appellant-Applicant offered to execute a Developer Agreement to pay Appellant-Applicant's incremental share for a police officer for one year. Therefore, the Appellant-Applicant seeks a determination of police concurrency based upon that offer and its acceptance or approval by the City Council.

Other than Condition of Approval 17, the Appellant-Applicant accepts the remaining Conditions of Approval and joins in the Hearing Examiner's Recommendation of Approval, subject to the recommended Conditions of Approval contained in his recommendation, issued November 17, 2006.

Sincerely,

GROUP FOUR, INC.



Steven M. Anderson  
President

Enclosed \$50.00 check for appeal, per SMC 2.26.240(B)(2)

**CITY OF SULTAN  
Sultan, Washington**

**RESOLUTION NO. 06-06**

**A RESOLUTION OF THE CITY OF SULTAN  
APPROVING STEEN PARK PRELIMINARY  
SUBDIVISION, PLAT MODIFICATION TO ALLOW  
A LONGER THAN STANDARD CUL-DE-SAC AND  
CONDITIONAL USE PERMIT TO CLUSTER THE  
LOTS**

**WHEREAS** Cascade Breeze, Inc. filed an application for approval of the Steen Park Preliminary Subdivision, Plat Modification to allow a longer than standard cul-de-sac and Conditional Use Permit to cluster the lots;

**WHEREAS** an Open Record Hearing occurred before the City's Hearing Examiner on April 12, 2006;

**WHEREAS** the Hearing Examiner made a Recommendation dated April 18, 2006;

**WHEREAS** City staff sought reconsideration of the Hearing Examiner's Decision as it pertains to issues relating to concurrency;

**WHEREAS** the Hearing Examiner Denied Reconsideration;

**WHEREAS** the Application came before the City Council for a Closed Record Hearing on May 11, 2006;

**WHEREAS** the City Council has determined based upon the law and the facts to accept the Hearing Examiner's Recommendation in part and to reject the Hearing Examiner's Recommendation in part;

**NOW, THEREFORE:**

1. The City Council grants Preliminary Subdivision Approval for Steen Park, a Plat Modification to allow a longer than standard cul-de-sac and Conditional Use Permit Approval to cluster the lots in accordance with the Findings of Fact and Conclusions and the Recommended Conditions of Approval set out in the Appendix beginning at page 14 of the Hearing Examiner's Recommendation.

2. Commencing at page 3 of the Hearing Examiner's Recommendation, the Hearing Examiner made 13 Findings of Fact. The Council adopts the Hearing Examiner's Findings of Fact. The Council also takes judicial notice of, and makes the following additional Findings of Fact:

14. Subsequent to the Open Record Hearing in this matter on April 12, 2006, the City Council enacted Ordinance 922-06 annexing 35 acres adjoining the City's Water Treatment Plant to the City and designating said property for public use, including public parks. This property is suitable for public park use, and should be counted in the land available as public park in the City. The addition of this acreage provides sufficient additional public park facilities in the City so that the City's level of service for parks is still met, notwithstanding this Application.
15. Applicant offered at the Closed Record Hearing a Developer Agreement to pay the Developer's pro rata share for one year of the cost of a police officer to mitigate the impacts of this development. Thereafter, the revenues from real estate taxes on the increased value of the property will be available to the City's General Fund.

3. Commencing at page 9 of the Hearing Examiner's Recommendation, the Hearing Examiner made 19 Conclusions of Law. The City Council adopts the Hearing Examiner's first two Conclusions of Law and rejects the balance of the Hearing Examiner's Conclusions of Law. The City Council enters its own Conclusions of Law reading as follows:

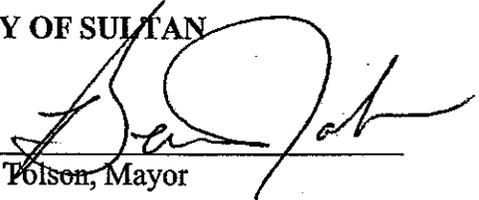
3. Based upon Finding of Fact 14 above, this proposed Development does not lower the existing Level of Service for parks below the adopted LOS in the Comprehensive Plan.
4. The City's existing Level of Service for police is below the adopted LOS in the Comprehensive Plan. The LOS failure for police, however, was not caused by this proposed Development, and the further reduction in the LOS caused by this proposed Development is modest by comparison to the existing deficiency.
5. The Council takes notice of the Recommendations in the Prothman Report accepted by the Council and Ordinance 900-06. The City has adopted a utility tax applicable to its municipal utilities and has received Recommendations for additional tax adoptions, including a utility tax on cable television service, an increased real estate excise tax, and a B & O tax. Other funding sources could include potential developer loans to advance the receipt of payment of needed funds, and monies contributed by proposed development for their impacts on the LOS. A combination of developer agreements and public funds will put in place the required public services for police concurrent with the development impacts, and provide appropriate strategies for the six years from the time of development to achieve the necessary police LOS as now established or as subsequently revised.

6. The Council takes notice of the Applicant's offer at the Closed Record Hearing to deliver to the City a Developer Agreement to pay Applicant's incremental share for a police officer for one year.

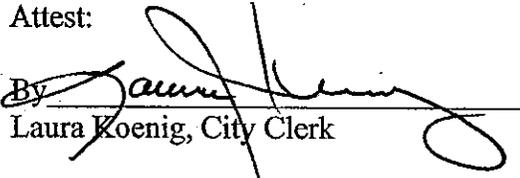
7. Based upon the foregoing, this proposed Development is deemed concurrent.

**PASSED BY THE** Sultan City Council and **APPROVED** by the Mayor this 8th day of June 2006.

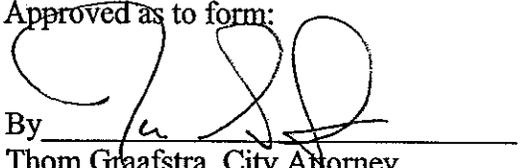
CITY OF SULTAN

By   
Ben Tolson, Mayor

Attest:

By   
Laura Koenig, City Clerk

Approved as to form:

By   
Thom Graafstra, City Attorney

**CITY OF SULTAN  
Sultan, Washington**

**RESOLUTION NO: 06-07**

**A RESOLUTION OF THE CITY OF SULTAN  
APPROVING CASCADE BREEZE ESTATES  
PRELIMINARY SUBDIVISION AND TO ALLOW A  
CONDITIONAL USE PERMIT TO CLUSTER THE  
LOTS**

**WHEREAS** Cascade Breeze, Inc. filed an Application for approval of the Cascade Breeze Estates Preliminary Subdivision, and for a Conditional Use Permit to cluster the lots;

**WHEREAS** an Open Record Hearing occurred before the City's Hearing Examiner on April 12, 2006;

**WHEREAS** the Hearing Examiner made a Recommendation dated April 18, 2006;

**WHEREAS** City Staff sought Reconsideration of the Hearing Examiner's decision as it pertains to issues relating to concurrency;

**WHEREAS** the Hearing Examiner Denied Reconsideration;

**WHEREAS** the Application came before the City Council for a Closed Record Hearing on May 11, 2006;

**WHEREAS** the City Council has determined based upon the law and the facts to accept the Hearing Examiner's Recommendation in part and to reject the Hearing Examiner's Recommendation in part;

**NOW, THEREFORE:**

1. The City Council grants Preliminary Subdivision Approval for Cascade Breeze Estates, and Conditional Use Permit Approval to cluster the lots in accordance with the Findings of Fact and Conclusions and the Recommended Conditions of Approval set out in the Appendix beginning at page 14 of the Hearing Examiner's Recommendation.

2. Commencing at page 3 of the Hearing Examiner's Recommendation, the Hearing Examiner made 13 Findings of Fact. The Council adopts the Hearing Examiner's Findings of Fact. The Council also takes judicial notice of, and makes the following additional Findings of Fact:

14. Subsequent to the Open Record Hearing in this matter on April 12, 2006, the City Council enacted Ordinance 922-06 annexing 35 acres adjoining the City's Water Treatment Plant to the City and designating said property for public use, including public parks. This property is suitable for public park use, and should be counted in the land available as public park in the City. The addition of this acreage provides sufficient additional public park facilities in the City so that the City's level of service for parks is still met, notwithstanding this Application.
15. Applicant offered at the Closed Record Hearing a Developer Agreement to pay the Developer's pro rata share for one year of the cost of a police officer to mitigate the impacts of this development. Thereafter, the revenues from real estate taxes on the increased value of the property will be available to the City's General Fund.

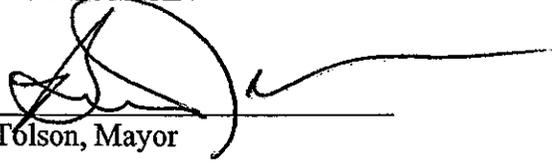
3. Commencing at page 9 of the Hearing Examiner's Recommendation, the Hearing Examiner made 19 Conclusions of Law. The City Council adopts the Hearing Examiner's first two Conclusions of Law and rejects the balance of the Hearing Examiner's Conclusions of Law. The City Council enters its own Conclusions of Law reading as follows:

3. Based upon Finding of Fact 14 above, this proposed development does not lower the existing Level of Service for parks below the adopted LOS in the comprehensive plan.
4. The City's existing Level of Service for police is below the adopted LOS in the Comprehensive Plan. The LOS failure for police, however, was not caused by this proposed development, and the further reduction in the LOS caused by this proposed development is modest by comparison to the existing deficiency.
5. The Council takes notice of the Recommendations in the Prothman Report accepted by the Council and Ordinance 900-06. The City has adopted a Utility Tax applicable to its Municipal Utilities and has received recommendations for additional tax adoptions, including a utility tax on cable television service, an increased real estate excise tax, and a B & O tax. Other funding sources could include potential developer loans to advance the receipt of payment of needed funds, and monies contributed by proposed development for their impacts on the LOS. A combination of developer agreements and public funds will put in place the required public services for police concurrent with the development impacts, and provide appropriate strategies for the six years from the time of development to achieve the necessary police LOS as now established or as subsequently revised.

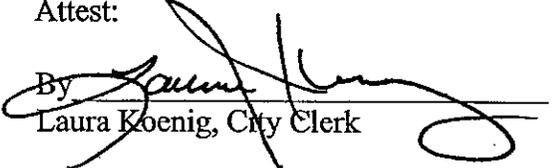
6. The Council takes notice of the Applicant's offer at the Closed Record Hearing to deliver to the City a Developer Agreement to pay Applicant's incremental share for a police officer for one year.
7. Based upon the foregoing, this Proposed Development is deemed concurrent.

**PASSED BY THE** Sultan City Council and **APPROVED** by the Mayor this 8<sup>th</sup> day of June 2006.

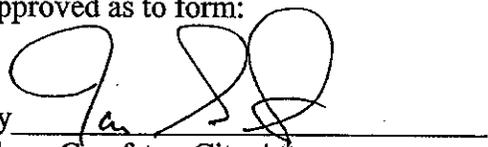
**CITY OF SULTAN**

By   
Ben Tolson, Mayor

Attest:

By   
Laura Koenig, City Clerk

Approved as to form:

By   
Thom Graafstra, City Attorney

**CITY OF SULTAN  
Sultan, Washington**

**RESOLUTION NO. 06-09A**

**A RESOLUTION OF THE CITY OF SULTAN  
REJECTING THE HEARING EXAMINER'S  
RECOMMENDATION AND APPROVING THE  
SKOGLUND ESTATES PRELIMINARY PLAT  
AND PLANNED UNIT DEVELOPMENT AND  
PRELIMINARY PLAT APPLICATION**

**WHEREAS** Sultan 144 LLC filed an application for approval of the Skoglund Estates Preliminary Plat and Planned Unit Development and Preliminary Plat Application;

**WHEREAS** an open record hearing occurred before the City's Hearing Examiner on April 25, 2006;

**WHEREAS** the Hearing Examiner made a recommendation dated May 2, 2006;

**WHEREAS** Sultan 144 LLC sought reconsideration of the Hearing Examiner's decision as it pertains to issues relating to concurrency;

**WHEREAS** the Hearing Examiner denied reconsideration on May 15, 2006;

**WHEREAS** Sultan City Staff by Memorandum dated May 18, 2006 advised the City Council that the Staff did not agree with the Hearing Examiner's interpretation of SMC 16.10.110(B)(2.)(d.);

**WHEREAS** Applicant, Sultan 144 LLC, filed an Appeal of the Hearing Examiner's Decision Denying Motion for Reconsideration to the City Council dated May 25, 2006,

**WHEREAS** the application came before the City Council for a closed record hearing on June 15, 2006;

**WHEREAS** the City Council has determined based upon the law and the facts to accept the Hearing Examiner's findings of fact in part, to reject the Hearing Examiner's Conclusions of Law, and to reject the Hearing Examiner's recommendation and approve the application;

**NOW, THEREFORE:**

1. The City Council rejects the recommendation of the Hearing Examiner and approves the Preliminary Plat and Planned Unit Development of Skoglund Estates With Conditions as set out in the Staff Report dated April 17, 2006, pages 11-17, and as modified below.

2. Commencing at page 3 of the Hearing Examiner's Recommendation, the Hearing Examiner made 20 Findings of Fact. The Council adopts the Hearing Examiner's Findings of Fact 1-17. Finding of Fact 18 is rejected. Based upon the evidence in the record and judicial notice the Council makes the following additional Findings of Fact:

18. Community Transit routes 270, 271 and 271 service the Sultan Park & Ride on US 2 east of 10<sup>th</sup> Street approximately 1.0 mile from the site. Service is provided through the City and to and from Everett via Snohomish and Monroe. Development of the type herein will facilitate and increase the prospect of a direct route along Sultan Basin Road. The Council finds that the site is in sufficient proximity in light of these facts to be approved as a PUD.

19. Subsequent to the open record hearing in this matter on April 25, 2006, the City Council enacted Ordinance 922-06 annexing 35 acres adjoining the City's water treatment plant to the City and designating said property for public use, including public parks. This property is suitable for public park use, and should be counted in the land available as public park in the City. The addition of this acreage provides sufficient additional public park facilities in the City so that the City's level of service for parks is still met, notwithstanding this application.

20. Applicant offered at the open record hearing a developer agreement to pay the developer's pro rata share for one year of the cost of a police officer to mitigate the impacts of this development. Thereafter, the revenues from real estate taxes on the increased value of the property will be available to the City's general fund.

3. Beginning at page 13 of the Hearing Examiner's Recommendation are 25 Conclusions of Law. The Council rejects all 25 Conclusions of Law and makes the following Conclusions of Law and Conditions:

Conclusions of Law and Conditions:

1. The proposed Preliminary PUD and Plat is found to be in conformance with the general purposes of the Comprehensive Plan and Planning Standards and specifications as adopted by the laws of the State of Washington and the City of Sultan.

2. Based upon Finding of Fact 19 above, this proposed development does not lower the existing level of service for parks below the adopted LOS in the comprehensive plan.
3. The City's existing level of service for police is below the adopted LOS in the comprehensive plan. The LOS failure for police, however, was not caused by this proposed development, and further reduction in the LOS caused by this proposed development is modest by comparison to the existing deficiency.
4. The Council takes notice of the recommendations in the Prothman Report accepted by the Council and Ordinance 900-06. The City has adopted a utility tax applicable to its municipal utilities and has received recommendations for additional tax options, including a utility tax on cable television service, an increased real estate excise tax, and a B & O tax. Other funding sources include potential developer loans to advance the receipt of payment of needed funds, and monies contributed by proposed development for their impacts on the LOS. A combination of developer agreements and public funds will put in place the required public services for police concurrent with development impacts, and provide appropriate strategies for the six years from the time of development to achieve the necessary police LOS as now established or as subsequently revised.
5. The Council takes notice of the Applicant's offer at the open record hearing to deliver to the City a Developer Agreement to pay Applicant's incremental share for a police officer for one year.
6. Based upon the foregoing, this proposed development is deemed concurrent.
7. Based upon finding of fact 18, this application satisfies the locational requirements for a PUD.
8. The Council accepts Conditions 1 through 40 beginning at page 11 of the Staff Report, with the following modifications:
  - a. The word "shall" will replace the word "should" in Conditions 15, 17, and 19.
  - b. The word "shall will replace the word "may" in Condition 20.
  - c. Condition 30 is amended to include the word "frontage" between the words "subdivision" and "and".
  - d. Condition 35 is deleted.

CSZ

**PASSED BY THE** Sultan City Council and **APPROVED** by the Mayor this 29<sup>th</sup> day of June, 2006.

**CITY OF SULTAN**

By \_\_\_\_\_  
Ben Tolson, Mayor

Attest:

By \_\_\_\_\_  
Laura Koenig, City Clerk

**CITY OF SULTAN  
Sultan, Washington**

**RESOLUTION NO. 06-11 A**

**A RESOLUTION OF THE CITY OF SULTAN  
ACCEPTING THE HEARING EXAMINER'S  
RECOMMENDATION AS REVISED IN THIS  
RESOLUTION AND APPROVING THE AJ'S  
PLACE PRELIMINARY BINDING SITE PLAN  
AND CONDITIONAL USE PERMIT FOR 40 UNITS  
AND GRANTING A MODIFICATION TO THE  
DESIGN STANDARDS TO ALLOW A 24 FOOT  
WIDE DRIVEWAY CURB CUT (PLUS CURB  
RETURNS) FOR BOTH DRIVEWAYS**

**WHEREAS** Sultan Real Property Investments, LLC filed an application for approval of the AJ's Place Preliminary Binding Site Plan and Conditional Use Permit;

**WHEREAS** an open record hearing occurred before the City's Hearing Examiner on May 8, 2006, denying the application at that time, and the application was remanded to the hearing examiner by the City Council and a remand hearing occurred on July 10, 2006, with the Hearing Examiner making a "Recommendation Revised on Remand" dated July 12, 2006;

**WHEREAS** the application came before the City Council for a closed record hearing and appeal by the applicant on the "Recommendation Revised on Remand" on August 10, 2006;

**WHEREAS** the City Council has determined based upon the law and the facts to accept the Hearing Examiner's findings of fact in part, to accept the Hearing Examiner's Conclusions of Law in part, and to and to accept as revised herein the Hearing Examiner's recommendation and approve the application;

**NOW, THEREFORE:**

**A.** The City Council accepts the Recommendation Revised on Remand of the Hearing Examiner dated July 12, 2006, as further revised by this Resolution and approves the Preliminary Binding Site Plan and Conditional Use Permit for 40 dwelling units and grants modification of the City's design standards to allow a 24 foot wide driveway curb cut (plus curb returns) for the two driveways on the conditions set out in the Recommendation Revised on Remand by the Hearing Examiner.

**B.** Commencing at page 2 of the Hearing Examiner's Recommendation Revised on Remand, the Hearing Examiner made 30 Findings of Fact. The Council adopts the

Hearing Examiner's Findings of Fact 1-16, 25- 29 and 30. Findings of Fact 17 to 24 are rejected. Based upon the evidence in the record and judicial notice the Council makes the following Findings of Fact:

1. On April 25, 2006, the City Council enacted Ordinance 922-06 annexing 35 acres adjoining the City's water treatment plant to the City and designating said property for public use, including public parks. This property is suitable for public park use, and should be counted in the land available as public park in the City. The addition of this acreage provides sufficient additional public park facilities in the City so that the City's level of service for parks is still met, notwithstanding this application.

2. Applicant offered at the open record hearing a developer agreement to pay the developer's pro rata share for one year of the cost of a police officer to mitigate the impacts of this development. Thereafter, the revenues from real estate taxes on the increased value of the property will be available to the City's general fund.

C. Beginning at page 16 of the Hearing Examiner's Recommendation Revised on Remand are 40 Conclusions of Law. The Council adopts Conclusions of Law 1-4, 6-16, 30-40. The Council rejects Conclusions of Law 5, and 17-29 and makes the following Conclusions of Law and Conditions:

1. The proposed Preliminary Binding Site Plan and Conditional Use Permit are found to be in conformance with the general purposes of the Comprehensive Plan and Planning Standards and specifications as adopted by the laws of the State of Washington and the City of Sultan.

2. The proposal meets BSP Criterion 2. DRB review has occurred, and the DRB recommends approval. The better driveway design allows for 40 units, through a 24 foot driveway curb cut (plus curb returns) and driveway. As such a modification in the design standards should be granted.

3. Based upon Findings of Fact 25-29, incorporated above, this proposed development does not lower the existing level of service for parks below the adopted LOS in the comprehensive plan.

4. The City's existing level of service for police is below the adopted LOS in the comprehensive plan. The LOS failure for police, however, was not caused by this proposed development, and further reduction in the LOS caused by this proposed development is modest by comparison to the existing deficiency.

5. The Council takes notice of the recommendations in the Prothman Report accepted by the Council and Ordinance 900-06. The City has

adopted a utility tax applicable to its municipal utilities and has received recommendations for additional tax options, including a utility tax on cable television service, an increased real estate excise tax, and a B & O tax. Other funding sources include potential developer loans to advance the receipt of payment of needed funds, and monies contributed by proposed development for their impacts on the LOS. A combination of developer agreements and public funds will put in place the required public services for police concurrent with development impacts, and provide appropriate strategies for the six years from the time of development to achieve the necessary police LOS as now established or as subsequently revised.

6. The Council takes notice of the Applicant's offer at the open record hearing to deliver to the City a Developer Agreement to pay Applicant's incremental share for a police officer for one year.

7. Based upon the foregoing, this proposed development is deemed concurrent for police.

**PASSED BY THE** Sultan City Council and **APPROVED** by the Mayor this 24th day of August, 2006.

CITY OF SULTAN

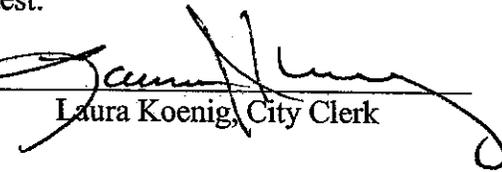
By



Ben Tolson, Mayor

Attest:

By



Laura Koenig, City Clerk

604

**From:** Cohobanger@aol.com [mailto:Cohobanger@aol.com]  
**Sent:** Wednesday, January 03, 2007 8:46 PM  
**To:** laura.koenig@ci.sultan.wa.us  
**Cc:** rick.cisar@ci.sultan.wa.us; deborah.knight@ci.sultan.wa.us; jrose62@juno.com  
**Subject:** Appeal Meeting Vodnick Lane Planned Unit Development (comments for the record)

January 3, 2007

Dear Sultan City Council,

Please take these comments into the record regarding The "Appeal Meeting Vodnick Lane Planned Unit Development" scheduled for Thursday January 11, 2007. Based upon the reasons cited below I ask that this Appeal Meeting be canceled in the hope of saving the applicant and the Sultan Taxpayer both time and money in continued appeal costs.

#### Notice of appeal flaw #1

The Notice of Appeal Meeting *and/or* Hearing issued in this matter does not cite any statute or code from the Sultan Municipal Code to define the governing process by which the "Appeal Meeting" *and/or* "Hearing" is being noticed, advertised, conducted or by which it may be appealed. I ask that the council please define in writing the codified process to which they will adhere in conducting the scheduled proceedings. Please also define the codified process by which a recommendation of a Hearing Examiner may be appealed as though it were a final decision. I have been unable to find any such statute or process within the adopted Sultan Municipal Code.

Based upon the letter of appeal, it appears the proceedings will be conducted within the guidelines of SMC 2.26. If this is true, the notice of appeal meeting incorrectly advises- *"The public meeting of the above entitled appeal will be limited to the consideration of the matters contained within the appeal request of the applicant dated December 5, 2006"*.

Should the council allow this Appeal Meeting to take place utilizing the fatally flawed notice, the public's right to comment will be compromised and damaged because the criteria for *consideration* within the notice is inconsistent with and more restrictive than the criteria for *consideration* as defined and required in the controlling code [SMC 2.26.150(A)]. The notice of appeal wrongly informs the public that only one issue may be considered by the council, that issue being *"the matters contained within the appeal request of the applicant"*.

In actuality, the controlling code [SMC 2.26.150(A)]. requires four specific issues be addressed at the public meeting- *"The council shall consider (1) the matter based upon the record before the examiner, (2) the examiner's decision, (3) the written appeal statement and (4) any written comments received by the council before closure of the city clerk/treasurer's office seven days prior to the public meeting date set for council consideration."*

#### Notice of appeal flaw #2

The "NOTICE OF APPEAL MEETING" advertises in two different paragraphs a "**Public Meeting**" scheduled to take place at 319 Main Street on January 11, 2007 at 6:00 PM. Later in the same "NOTICE OF APPEAL MEETING" the public is notified that accommodations for disabled should be arranged "one week prior to the **Hearing** by calling City Hall"

The significance of the difference between a Public **Hearing** and **Public Meeting** cannot be disregarded. SMC 16.124 dictates the requirements of Public Hearing notification. If the event scheduled at 319 Main Street on January 11, 2007 at 6:00 PM is indeed a Public Hearing, its Public

Notice is fatally flawed since no location of the proposal is given, inherently damaging and restricting the public's ability to comment pursuant to SMC 16.124(c). It requires- "All hearing notices required by this section shall include the date, time, and place of the public hearing, *and a description of the location of the proposal in the form of either a vicinity location sketch or a written description, other than a legal description.*" (Ord. 821-03 § 2; Ord. 785-02 § 3; Ord. 630 § 2[16.09.010], 1995)

**Appeal fee and controlling statute misrepresented by Appellant**

In the letter of appeal request dated December 5, 2006, the appellant writes "Enclosed \$50.00 check for appeal, per SMC2.26.240(B)(2)".

The cited statute "SMC2.26.240(B)(2)" does not exist under Sultan Municipal Code. I therefore ask that the appellant be charged the appeal fee as adopted in the 2006 City of Sultan Fee Schedule of either \$1,000.00 or \$2,000.00, plus associated public notice and direct cost fees as required in the aforementioned fee schedule.

Thank you,  
Ron Kraut  
1303 9th Street  
Sultan WA 98294

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August 3, 2006

RECEIVED

Laura Koenig, City Clerk  
City of Sultan  
319 Main Street  
Sultan, WA 98294

JAN 04 2007  
CITY OF SULTAN  
FINANCE DEPT.

Laura,

This letter is in regards to the Appeal Meeting for the Vodnick Lane development application.

Once again the City is simply not following its own Municipal Code. Why has the City Staff once again been allowed to blatantly ignore the City code in the processing of this application?

- Pursuant to SMC 16.10.090 and SMC 16.120.050 appeal is to Superior Court, not the City Council. At this point there is nothing to appeal; Council must first make a decision. Vodnick Lanes is proposed as a PUD and as such the process for approval or denial is stated in SMC 16.10.090, which is attached to this letter for easy reference. This is the same process for which the City received comment during the Skogland Estates PUD Meeting/Closed Record Hearing. Why has the City not corrected their procedures to follow the code?
- The Hearing Examiner in a rather lengthy footnote beginning on the first page of his recommendation outlines the events whereby City Staff processed this application during the moratorium imposed on PUD applications by the Council last year.

Once again the City Council is being asked to approve a development application that does not meet the criteria set forth in City code.

- This application does not meet the criteria for PUD's pursuant to SMC 16.10.110(B)(2)(b) which requires a 5 acre site for PUD's. (This project vested prior to the 2006 PUD code amendment). See Hearing Examiner's Conclusion No. 4; pp. 17, 18.
- This application does not meet the locational requirements for PUD's with respect to transit access. See Hearing Examiner's Conclusion No.'s 5, 6; pp. 18-20.
- This project has no current water and sewer commitment letters. See Hearing Examiner's Conclusion No. 8; p. 21.
- This project does not meet the concurrency requirements of City code. See Hearing Examiner's Conclusions No. 2-21; pp. 21-25.

The Hearing Examiner states on page 21, "The Examiner can not recommend and the Council can not approve a development application which does not demonstrate compliance with the concurrency requirements of Chapter 16.108 SMC." This holds

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true for the entirety of SMC 16. How can the City Council approve a development application that does not comply with City code?

The Hearing Examiner further notes on page 24, "DCD's position on Concurrency has ebbed and flowed throughout the series of hearings this Spring. ... Such inconsistency demonstrates why the Examiner has not been able to rely on the staff for guidance during these contentious hearings." The Council has been put into a no-win situation with this development application, however, whether or not the Council has previously approved development applications based on "guidance" by staff, it does not establish a legal precedent for continuing to make erroneous decisions.

Finally, the Hearing Examiner's repeated references to City staff's inconsistent and inequitable treatment of applications in terms of recommended conditions are very troubling. Why is this development application exempt from the condition of a developer agreement to fund police services when the applications before and after were conditioned on such an agreement?

Thank you,

Josie Fallgatter  
13231 Trout Farm Rd.  
Sultan, WA 98294

## SULTAN MUNICIPAL CODE

### **16.10.090 Authority to approve, condition or deny preliminary PUD.**

A. The hearing examiner may recommend approval, denial or approval with modifications or conditions deemed reasonable and necessary to protect the public interest, mitigate impacts of the proposed development, and to ensure compliance with the standards and criteria of this chapter and the policies of the comprehensive plan.

B. The hearing examiner recommendation shall include, at a minimum, findings and conclusions regarding the preliminary PUD's compliance with the criteria for location and approval for the particular type of preliminary PUD listed in SMC 16.10.100 (retail PUDs), SMC 16.10.110 (residential PUDs). A preliminary PUD shall be recommended for approval if, together with reasonable modifications or conditions, the project is determined to comply with the requirements of these sections. A preliminary PUD shall be recommended for denial if, even with reasonable modifications or conditions, the project is determined to not comply with the requirements of these sections.

C. After receipt of a hearing examiner recommendation on the preliminary PUD pursuant to Chapter 2.26 SMC, the city council shall conduct a closed record hearing at which it shall consider the findings, conclusions, and recommendation of the hearing examiner. The hearing examiner recommendation notwithstanding, the city council shall have the right and ability, based exclusively on the record that was presented before the hearing examiner, to agree or disagree with the findings, conclusions and recommendation of the hearing examiner and shall further have the right and ability, based upon the record that was presented to the hearing examiner, to make such additional or different findings and conclusions that the city council believes are supported by evidence in that record.

D. Any decision of the city council on the preliminary PUD shall be final and no further local administrative appeal shall be permitted. This preliminary PUD decision of the city council may be appealed to superior court, pursuant to the requirements of Chapter 36.70C RCW and SMC 16.120.050. (Ord. 793-02 § 1)

RECEIVED

JAN 04 2007  
CITY OF SULTAN  
FINANCE DEPT.

January 3, 2006

Laura Koenig, City Clerk  
City of Sultan  
319 Main Street  
Sultan, WA 98294

Laura,

This letter concerns the second Appeal Meeting for the Vodnick Lane development application, which is scheduled for Thursday, January 11, 2007.

This Appeal Meeting once again seems to be misplaced, and contrary to both the Sultan Municipal Code and State law. This Appeal Meeting should be cancelled in order for the City Council to follow the City's adopted procedures and conduct the required closed record hearing and render a proper decision on the application.

Additionally, I seek an answer from the City as to why it continues to allow City Staff to violate the City's adopted procedures by 1) failing to identify proper processes and procedures to development applicants, and 2) erroneously submitting appeals of hearing examiner recommendations regarding subdivision and PUD applications to the City Council. Please submit into the record for this appeal request my letter of August 3, 2006 regarding the first improper appeal of the Hearing Examiner's first recommendation on the Vodnick Lane PUD application, which raised these very same concerns.

**A. APPEAL IS UNTIMELY:**

1. For the second time this year, the City has allowed this same applicant to disregard adopted procedure, and appeal the Hearing Examiner's recommendation to the City Council. The process as outlined in SMC 16.10.090 and SMC 16.120.050 provides that the City Council renders a final decision after holding a closed record hearing, wherein it considers "the findings, conclusions, and recommendation of the hearing examiner." These procedures allow for appeal of the City Council's final decision to Superior Court pursuant to RCW 36.70C and SMC 16.120.050. This appeal is untimely because no final decision has been rendered for this development application.

Any appeal is untimely until a final decision has been made. It is not within the duties of the hearing examiner to render final decisions on subdivision

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applications. The City Council renders the final decisions on subdivision applications, including those for Planned Unit Developments. The Appellant-Applicant, in his Appeal Request dated December 5, 2006 acknowledges proper procedure is not being followed when he states, "SMC 2.26.140 contemplates that the decision being appealed from is a 'final and conclusive decision.'"

2. Furthermore, if the matters contained within the Appeal Request of the Appellant-Applicant were in fact ripe for appeal to the City Council pursuant to SMC 2.26.140, this appeal is itself untimely. SMC 2.26.140B.1. requires that "any such appeal shall be filed by the applicant...with the city clerk/treasurer within 10 calendar days following the rendering of the examiner's decision pursuant to SMC 2.26.120." The Appeal Request was received by the City on the 20th day following the date of the hearing examiner's recommendation, which was November 17, 2006.

**B. THERE ARE NO STATED GROUNDS FOR APPEAL:**

1. Appeals filed with the city clerk/treasurer are required to "contain a detailed statement of grounds for appeal and the facts upon which the appeal is based." [SMC 2.26.140B.2.] The Appellant-Applicant has stated no grounds for filing an appeal of a hearing examiner's decision consistent with SMC 2.26.140 (assuming, of course, that the HE had in fact made a decision rather than a recommendation). The basis of this appeal is the Appellant-Applicant's belief "that no other recourse to challenge the Hearing Examiner's recommended Condition of Approval is available under the applicable City Municipal Code." The Appellant-Applicant's belief that he has no other recourse does not satisfy the requirements of SMC 2.26.140 which provides:

A. The grounds for filing an appeal of an examiner's decision shall be limited to the following:

1. Newly discovered evidence which is material to the examiner's decision and which could not reasonably have been produced at the examiner's hearing;
2. The examiner exceeded his jurisdiction;
3. The examiner failed to follow the applicable procedure in reaching his decision;
4. The examiner committed an error of law or misinterpreted the applicable zoning ordinance, comprehensive plan, provisions of the city's code or other city or state law or regulation; or
5. The examiner's findings and conclusions are not supported by the record.

This Appeal Request does not provide any newly discovered evidence which couldn't have been produced for the open record hearing. Furthermore, this Appeal Request does not allege that the hearing examiner exceeded his jurisdiction, failed to follow applicable procedure, committed an error of law, or that his decision was not supported by the record.

C. APPEAL REQUEST VIOLATES PROCESS:

1. The notice for this Appeal Meeting is misleading to parties of interest and the public as it is termed variously an "Appeal Meeting," a "Public Meeting," and a "Hearing." Which is it? Which procedures apply?
2. The notice for this Appeal Meeting is misleading to parties of interest and the public because the Appellant-Applicant, in his uncertainty over whether or not an appeal prior to a final decision is proper, has attempted to preserve his rights by proposing an alternative to appeal which is to "treat this letter as a response to Condition of Approval 17." The public notice fails to inform the public that the Appeal Request may in fact be merely the Appellant-Applicant's response to one of the hearing examiner's conditions for approval.
3. As there is nothing to appeal at this point this Appeal Request serves only to allow the Appellant-Applicant to respond to the hearing examiner's Condition of Approval 17 and to sidestep the Council's duty to make a final decision "based exclusively on the record that was presented before the hearing examiner" [SMC 16.10.090C.]. Proceeding with this Appeal Meeting before the City Council thereby taints the record upon which the Council is required to make a decision.

D. APPEAL REQUEST LACKS MERIT:

1. If the attempted Appeal Request was not fatally flawed for all the procedural reasons previously enumerated, it would still fail on its merits. The hearing examiner has been clear that the City's attempts to circumvent the City's adopted Concurrency Management System do not satisfy the requirements codified in SMC 16.108. This is set forth in great detail on pages 21-25 of the Hearing Examiner's Recommendation of November 17, 2006 in Conclusions 14-27. Among the conclusions of the hearing examiner is Conclusion 15 which contains the definitive statement, "The Examiner can not recommend and the Council can not approve a development application which does not demonstrate compliance with the concurrency requirements of Chapter 16.108 SMC. [SMC 16.108.060]" and Conclusion 23 which states, "DCD erred in concluding that *Vodnick Lane* meets the concurrency standard for police services."

Based on the evidence in the record established before the hearing examiner, the concept proposed in the Brickyard Agreement, to fund a portion of a police officer for one year simply does not satisfy the requirements of the City's Concurrency Management System ordinance. The shortcomings of this scheme are explained in the Hearing Examiner's Conclusion 24.

2. The Council's erroneous approval of previous development applications does not establish precedence for approval of subsequent development applications. Case law is clear on this point. In *Chelan County v. Nykreim* the court, citing *Mercer Island v. Steinmann* stated:

"The governmental zoning power may not be forfeited by the action of local officers in disregard of the statute and the ordinance. The public has an interest in zoning that cannot thus be set at naught. The plaintiff landowner is presumed to have known of the invalidity of the exception and to have acted at his peril."

Id. at 483 (quoting *V.F. Zahodiakin Eng'g Corp. v. Zoning Bd.*, 8 N.J. 386, 396, 86 A.2d 127 (1952)). In short, the court concluded that the doctrine of equitable estoppel "will not be applied where its application would interfere with the discharge of governmental duties or where the officials on whose conduct estoppel is sought to be predicated acted beyond their power." *City of Mercer Island*, 9 Wn. App. at 481.

The City cannot abdicate its duty to enforce its own development regulations because it has failed to do so in the past, or because the Director of Community Development has acted beyond his power.

3. The Mayor and Council have expressed the fear that developers will sue if they do not adhere to the same decision they made before. It is not an arbitrary or capricious act to refuse to make the same decision as before, when the evidence is clear that to do so would be erroneous. The Hearing Examiner alludes to this in footnote 8 on page 21 of his Recommendation. The previous resolutions (Res. 06-06, 06-07 & 06-09A) passed by the Council do not impose concurrency conditions on development. Therefore they set no precedent which must be followed in this case.

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D. CONCLUSION:

For all of the reasons articulated above, it is clear that this Appeal Request is improper and should not be allowed to proceed to the City Council in this manner. This second appeal of the Hearing Examiner's second recommendation for denial of the Vodnick Lane development proposal is a glaring example of the break down that has occurred in the City's planning and development department. This is as great a source of frustration to the public as it seems to be to the Hearing Examiner and as it must be to the developers, none of whom can find coherency in the City's processes or in the enforcement of the City's codes.

As this is not the first time the City has failed to follow its legally adopted project review procedures, it must once again be asked why has the City not corrected the problem which is causing or allowing the City and/or applicants to circumvent due process? Again, why has the Director of Community Development once again been allowed to blatantly ignore the City code in the processing of this application?

Thank you,

Josie Fallgatter  
13231 Trout Farm Rd.  
Sultan, WA 98294

January 31, 2007  
Sultan City Council  
319 Main Street  
Sultan, Washington  
98294

RECEIVED  
FEB 01 2007  
BY: *sk*

Dear Sultan City Council,

Please take these comments into the record regarding the "APPEAL MEETING AND CLOSED RECORD HEARING TWIN RIVERS RANCH ESTATES". And the "RESCHEDULED APPEAL MEETING and CLOSED RECORD HEARING for the VODNICK LANE PLANNED UNIT DEVELOPMENT". Pursuant to SMC 2.26.150(A) The council shall consider "any written comments received by the council before closure of the city clerk/treasurer's office seven days prior to the public meeting date set for council consideration".

It will become clear in the following discussion that city staff has misapplied SMC 2.26 in accommodating these appeal meeting requests. Both of these appeal meetings center around the misrepresentation of the actions of the Hearing Examiner in regard to the review of Planned Unit Development applications within the City of Sultan. The point of contention in these appeal meetings differs. One of the appeals incorrectly challenges an Examiners decision when in fact a *recommendation* not a decision has been rendered. The other improperly challenges Examiners recommendations by attempting to use an appeal process that is not applicable. Based upon the reasons cited below I ask that this proceeding be canceled in the hope of saving the applicant and the Sultan Taxpayer both time and money in continued appeal costs

#### **Ramirez Notice Summary**

"The City of Sultan City Council will conduct a public meeting on February 8, 2007 at 6:00 PM or soon thereafter to consider an Appeal of the Hearing Examiners recommendations (pursuant to Sultan Municipal Code 2.26.140)...and a Closed Record Hearing (pursuant to SMC 16.10.090) of the Hearings Examiners December 27, 2006 recommendation..."

#### **Vodnick Notice Summary**

"The City of Sultan City Council will conduct a public meeting on February 8, 2007 at 6:30 PM or soon thereafter to consider an Appeal of the Hearing Examiner November 17, 2006 decision for the Vodnick Lane Planned Unit Development."

#### **Issues**

1. The Sultan Municipal Code 2.26.140 delegates to the city council no authority to hear an appeal of an Examiner recommendation. The controlling text does not reference recommendations only decisions.
2. Recommendations from the Examiner are not decisions and are not final and conclusive, pursuant to SMC 2.26.140. Decisions must be final and conclusive to establish right of appeal. Right of appeal to the council or to superior court is not established in the record. Such right must be established pursuant to SMC 2.26.140 B. 1 and 2.26.140 D.

3. Sultan Municipal Code prohibits the Hearing Examiner from rendering decisions regarding Planned Unit Developments. Only the City Council is vested with such authority pursuant to SMC 16.10.020, SMC 16.128.030 and 16.10.090. Pursuant to SMC 2.26.140 no final and conclusive decision exists and consequently nor does any right of appeal.

4. The applicants appeal statement is inadmissible for consideration in this closed record hearing pursuant to SMC 16.10.090 C. The advertised closed record hearing pursuant to SMC 16.10.090 and public meeting pursuant to SMC 2.26.140 cannot be conducted concurrently with respect to the same PUD. To do so would create incompatible procedural criteria, considerational criteria, and decisional criteria resulting in an unlawful record before the council.

5. Under RCW 35A.63.170 the city council has no authority to concurrently review this Hearing Examiners recommendation as though it were (1) a final and conclusive administrative decision with right of appeal to the city council and (2) as a recommendation to the council who must then render a decision based upon the recommendation and record before the examiner.

6. Procedures for appeal not provided to participants pursuant to RCW 36.70B.130. Notice of decision not provided to participants. A local government shall provide a notice of decision that includes procedures for administrative appeal if any, to those who submitted substantive comments on the application.

#### **Discussion Issue 1**

The implication of this notice is that Sultan Municipal Code 2.26.140 in some way has legal authority with respect to the appeal of recommendations issued by Sultan's Hearing Examiner. It does not. The word recommendation is not scribed within the statute. The statute applies only to appeal from examiner's decision(s). A thorough review of SMC 2.26 reveals the word recommendation is not found in the referenced and controlling code 2.26.140. Contrastingly the word decision is utilized on multiple occasions within the code. Words have meanings; no reasonable person would conclude that there could have been any intent by the authors of the section titled "Appeal from examiner's decision" for it to apply to recommendations. Had that been the authors intent, they would have likely titled it "Appeal from examiners recommendations", they did not. The intent is clear and unambiguous, 2.26.140 applies only to decisions, not recommendations of the Hearing Examiner.

#### **Discussion Issue 2**

*The examiners recommendations or decisions in these matters are not final and conclusive.* If they were, city staff would not have scheduled for February Eighth the closed record hearing to consider the Examiners Recommendations pursuant to SMC 16.10.090.

The notice does not indicate which statute or authority was utilized to establish that the city council has the legal authority to consider this matter. The code cited by the city to be the controlling statute in this matter contemplates two options for the consideration of appeals of hearing examiner decisions. The appeals of decisions made by the Sultan Hearing Examiner may be heard by Snohomish County Superior Court or by the Sultan City Council. (As noted above the notice for one of these matters advertises "an Appeal of the hearing examiners

recommendations" inconsistent with verbiage of the cited controlling statute). The two possible alternatives are cited below.

SMC 2.26.140 B. 1. *Where the examiner's decision is final and conclusive* with right of appeal to the council, any such appeal shall be filed by the applicant, a department of the city, or other aggrieved person or agency with the city clerk/treasurer within 10 calendar days following the rendering of the examiner's decision pursuant to SMC 2.26.120

Or

2.26.140 D. *Where the examiner's decision is final and conclusive*, with right of appeal to court, the procedures for appeal are as set out in the underlying ordinance or statute governing the land use permit or other quasi-judicial hearing. (Ord. 550, 1990)

### Discussion Issue 3

The Examiner cannot issue a decision regarding a PUD application due to the requirements imposed by SMC 16.128.030(A). Any PUD approval triggers a zoning map change pursuant to SMC 16.10.020. Therefore it is impossible for the Examiners decision or recommendation to the council in this matter to be considered a final and conclusive decision, there can be no decision until such time that the council decides upon the proposed zoning map change. Per SMC 16.128.030(A). Every proposed amendment to the unified development code, including changes in the zoning district maps or boundaries, shall be referred to the city council. Per SMC 16.10.020 The PUD, once approved, shall constitute an "overlay" zone and shall be labeled as such on the official zoning map of the city of Sultan. For each property that receives a PUD approval, the zoning map shall also identify a "fallback" underlying zone,....The overlay PUD shall be identified within parentheses " ( )" on the official zoning map of the city of Sultan.

### Discussion Issue 4

The applicants appeal statement cannot be considered in the closed record hearing nor should the appeal statement impact the council's decision pursuant to SMC 16.10.090 C. The scheduled Closed Record Hearing (pursuant to SMC 16.10.090) in this matter imposes upon the council very specific requirements with respect to what criteria they may consider and what conclusions they may reach. Those criteria and conclusions are very different than those required of the public meeting (pursuant to SMC 2.26.140) regarding the appeal. The public meeting (pursuant to SMC 2.26.150 B) will require the council to consider (1) the matter based upon the record before the examiner, (2) the examiner's decision, (3) the written appeal statement and (4) any written comments received by the council before closure of the city clerk/treasurer's office seven days prior to the public meeting. The council's decision shall then result in one of the following three options (1) affirm the examiners decision, (2) remand the matter back to the examiner, or (3) hear the appeal at public hearing at a later date pursuant to notice requirements of SMC 2.26.150(C).

In stark contrast the "Closed Record Hearing (pursuant to SMC 16.10.090)" will require of the Council to conduct a closed record hearing at which it shall consider the (1) findings, (2) conclusions, and (3) recommendation of the hearing examiner. The hearing examiner recommendation notwithstanding, the city council shall have the right and ability, based exclusively on the record that was presented before the hearing examiner to (1) agree or (2) disagree with the findings, conclusions and recommendation of the hearing examiner and (3)

shall further have the right and ability, based upon the record that was presented to the hearing examiner, to make such additional or different findings and conclusions that the city council believes are supported by evidence in that record.

The *meeting* provides for an open record meeting. In contrast the *hearing* requires a closed record hearing. The *meeting* requires the council to affirm or remand the examiner's "decision" or schedule an appeal hearing. In contrast the *hearing* requires the council to agree or disagree with the examiner's findings, conclusions and "recommendation" or based exclusively on the record before the examiner reach different findings and conclusions. Both result in binding decisions by the council with right of appeal to superior court.

The caveat here is that the PUD code does require consideration of the examiners recommendation pursuant to SMC 16.10.090 C. The problem is the city has processed the examiners recommendation as though it were a decision pursuant to 2.26.140. In doing so the council now cannot properly consider and process the recommendation pursuant to SMC 16.10.090. The corrupted appeal process as enacted by the city in this matter has resulted in a procedural impossibility inherently corrupting the record and process beyond the point of legality should the advertised appeal meeting take place.

**SMC 16.10.090 C.** After receipt of a hearing examiner recommendation on the preliminary PUD pursuant to Chapter 2.26 SMC, the city council shall conduct a closed record hearing at which it shall consider the findings, conclusions, and recommendation of the hearing examiner. The hearing examiner recommendation notwithstanding, the city council shall have the right and ability, based exclusively on the record that was presented before the hearing examiner, to agree or disagree with the findings, conclusions and recommendation of the hearing examiner and shall further have the right and ability, based upon the record that was presented to the hearing examiner, to make such additional or different findings and conclusions that the city council believes are supported by evidence in that record.

#### **Discussion Issue 5**

Under RCW 35A.63.170 The City must elect whether it reviews a hearing examiner's decision as a recommendation or whether it considers the hearing examiner's decision as an appellate body . A similar scheme applies to counties under RCW 36.70.970. Under that provision if a county legislative body elects to review the examiner's findings for evidence in an appellate capacity, it may not make factual findings.

See State ex rel. Lige & Wm.B. Dickson Co. v. Pierce County, 65 Wn. App. 614, 618, 829 P.2d 217, review denied, 120 Wn.2d 1008 (1992).

**Hearing Examiner's Decision - Review by Council - Hybrid Review - Validity.** A county legislative authority may not define its powers in such a way as to incorporate aspects of both alternatives set forth in former 36.70.970 for reviewing a hearing examiner's decision in a land use dispute (i.e., as a recommended decision or as an administrative decision appealable to the legislative authority).

See 92 Wn. App. 838, EAST FORK HILLS v. CLARK COUNTY[No. 22072-5-II. Division Two. October 23, 1998.]

Hearing Examiner's Decision - Review by Council - Scope. When a county, under RCW 36.70.970, has adopted the hearing examiner system for deciding land use disputes whereby a hearing examiner's decision is given the effect of an administrative decision appealable within a specified time to the county's legislative authority, the legislative authority's review of a hearing examiner's decision is confined solely to the record that was made before the hearing examiner. Under such system, the legislative authority must sustain the hearing examiner's findings of fact that are supported by substantial evidence in tile record.

See 92 Wn. App. 838, EAST FORK HILLS v. CLARK COUNTY[No. 22072-5-II. Division Two. October 23, 1998.]

#### Discussion Issue 6

In the Examiners Notice of Recommendation to the council there is no reference to a process by which the Examiners Recommendation may be appealed. There is however reference to a "Right of Reconsideration" and to "Council Consideration". In the section titled "Notice of Right of Reconsideration" the Examiner issues advisement regarding SMC 16.120.110 as a source for additional information and requirements regarding reconsideration. SMC 16.120.110 C explains that each decision or notice shall contain a statement concerning rights to contest or appeal the decision or notice. The Recommendation issued by the examiner does provide a method by which it may be contested, that method is explained as the *right of reconsideration*.

Clearly there is no explanation by the Examiner of a process by which to appeal the recommendation to the council as though it were a decision. It is not a decision. Since there was no decision issued by the Examiner pursuant to SMC 2.26.140 B. 1 and 2.26.140 D, there is no requirement to define an appeal process pursuant to RCW 36.70B.130 in the Examiners Recommendation; as I have explained ad nauseam, no such process exists nor is it allowable. The City is in error in its decision to allow an appeal of an Examiners recommendation

Please note that the city's notice of appeal meeting for Vodnick indicates that consideration of an appeal of an Examiner's decision will occur.

If it is still the city's position that a decision was issued by the Examiner, please provide now the "Notice of Decision" and "procedures for administrative appeal, if any" that the city failed to provide for Vodnick pursuant to RCW 36.70B.130.

#### Conclusion

The city has clearly misapplied its code. Failure to prevent the appeal meetings in these matters will result in the corruption of the record before the council. Should the scheduled appeal meetings take place before the council irreparable damage will occur.

Thank you,

Ron Kraut

1303 9 Street



Sultan Wa

98294

## References

### Chapter 2.26

### HEARING EXAMINER

Sections:

2.26.010 Purpose.

2.26.020 Creation of hearing examiner position.

2.26.030 Appointment.

2.26.040 Qualifications.

2.26.050 Removal.

2.26.060 Freedom from improper influence.

2.26.070 Conflict of interest.

2.26.080 Rules.

2.26.090 Duties of the examiner – Applications.

2.26.100 Reports of city departments.

2.26.110 Public hearing.

2.26.120 Examiner's decision.

2.26.130 Notice of examiner's decision.

2.26.140 Appeal from examiner's decision.

2.26.150 Council consideration.

2.26.160 Effect of council action.

2.26.180 Local improvement district assessment roll hearings.

2.26.010 Purpose.

The purpose of this chapter is to establish a system of land use regulatory hearings which will satisfy the following basic needs:

A. A more prompt opportunity for a hearing and decision on alleged violations of land use regulations, and such other regulations as may be assigned to the hearing examiner;

B. To provide an efficient and effective system for deciding variances and appeals from administrative decisions;

C. To help ensure procedural due process and appearance of fairness by holding such hearings before a neutral party, competent in the fields of land use and procedural requirements. (Ord. 550, 1990)

2.26.020 Creation of hearing examiner position.

Pursuant to Chapter 35A.63 RCW, the office of hearing examiner, hereinafter referred to as examiner, is created. All land use matters of a quasi-judicial nature, not requiring a modification of any ordinance or legislation shall be referred to the examiner who shall interpret, review and implement land use regulations in accordance with the procedures set forth herein. (Ord. 701, 1999; Ord. 550, 1990)

2.26.030 Appointment.

The hearing examiner shall be appointed by the mayor from a list of qualified persons approved by the council. The compensation of the hearing examiner shall be approved by the council as with other professional and consultant positions. (Ord. 701, 1999; Ord. 550, 1990)

#### 2.26.040 Qualifications.

Examiners shall be appointed solely with regard to their qualifications for the duties of their office and will have such training and experience as will qualify them to conduct administrative or quasi-judicial hearings on regulatory enactments and to discharge the other functions conferred upon them. Examiners shall hold no other elective or appointive office of position in the city of Sultan. (Ord. 550, 1990)

#### 2.26.050 Removal.

An examiner may be removed from office for cause by the mayor with concurrent majority vote of the city council. (Ord. 550, 1990)

#### 2.26.060 Freedom from improper influence.

No person, including city officials, elected or appointed, shall attempt to influence an examiner in any matter pending before him, except at a public hearing duly called for such purpose, or to interfere with an examiner in the performance of his duties in any other way; provided, that this section shall not prohibit the city's attorney from rendering legal service to the examiner upon request. (Ord. 550, 1990)

#### 2.26.070 Conflict of interest.

No examiner shall conduct or participate in any hearing, decision or recommendation in which the examiner has a direct or indirect substantial financial or familial interest or concerning which the examiner has had substantial prehearing contacts with proponents or opponents. Nor, on appeal from an examiner's decision, shall any member of the council who has such an interest or has had such contacts participate in consideration thereof. (Ord. 550, 1990)

#### 2.26.080 Rules.

The examiner shall have the power to prescribe rules for the scheduling and conduct of hearings and other procedural matters related to the duties of his office. Such rules may provide for cross-examination of witnesses. (Ord. 550, 1990)

#### 2.26.090 Duties of the examiner – Applications.

The examiner shall receive and examine available information, conduct public hearings, prepare a record thereof, and enter findings of fact and conclusions based upon those facts, which conclusions shall represent the final action on the application unless appeal, as specified in this section, for the following types of applications:

A. Denials of conditional use permits;

B. Denials of variance;

C. Appeals on short plats and subdivisions;

D. Appeals from administrative determination of the city's land use regulation codes;

E. The examiner is empowered to act in lieu of the board of adjustment, and such other officials, boards or commissions as may be assigned. Whenever existing ordinances, codes or policies authorize or direct the board of adjustment, or other officials, boards or commissions to undertake certain activities which the examiner has been assigned, such ordinances, codes or policies shall be construed to refer to the examiner.

F. The hearing examiner is empowered consistent with SMC 2.26.120(D) and rules adopted by the hearing examiner to reconsider decisions or recommendations of the hearing examiner. (Ord. 764-01; Ord. 550, 1990)

#### 2.26.100 Reports of city departments.

On any land use issue coming before the examiner, the building official shall coordinate and assemble the reviews of other city's departments, governmental agencies, and other interested parties and shall prepare a report summarizing the factors involved and the planning commission/city council findings and recommendations. At least seven calendar days prior to the scheduled hearing, the report shall be filed with the examiner and copies thereof shall be mailed to the applicant and made available for public inspection. Copies thereof shall be provided to interested parties upon payment of reproduction costs. In the event that information to be provided by the applicant or other parties outside of city control has not been provided in sufficient time for filing seven days in advance of the hearing, the examiner may reschedule the hearing and notify interested parties. (Ord. 550, 1990)

#### 2.26.110 Public hearing.

A. Before rendering a decision or recommendation on any application, the examiner shall hold at least one public hearing thereon.

B. Notice of the time and place of the public hearing shall be given as provided in the ordinance governing the application. If none is specifically set forth, such notice shall be given no less than 10 days before the public hearing.

C. The examiner shall have the power to prescribe rules and regulations for the conduct of hearings under this chapter and also to administer oaths, and preserve order. (Ord. 821-03 § 1; Ord. 550, 1990)

#### 2.26.120 Examiner's decision.

The examiner shall render a written decision within 10 working days of the conclusion of a hearing, unless a longer period is agreed to in writing by the applicant. The decision shall include at least the following:

A. Findings of fact and conclusions of law based upon and supported by the record;

B. A decision on the applicant to grant, deny or grant with such conditions, modification and restrictions as the examiner finds reasonable to make the application compatible with its environment, zoning ordinance, comprehensive plan, other official policies and objectives, and land use regulatory enactments. Examples of the kinds of conditions, modifications and restrictions which may be imposed include, but are not limited to, additional setbacks, screenings in the form of fencing or landscaping, easements, dedications or additional right-of-way and performance bonds;

C. No application for a variance shall be granted unless the examiner finds:

1. The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the property on behalf of which their application was filed is located; and

2. That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated; and

3. That such variance is necessary:

a. Because of special circumstances set forth in the findings relating to size, shape, topography, location or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located; and

b. Because for reasons set forth in the findings, the variance as approved would contribute significantly to the improvement of environmental conditions, either existing or potentially arising from the proposed improvement;

D. All decisions or recommendations of the hearing examiner are subject to reconsideration, unless reconsideration is waived. Reconsideration is waived unless within seven calendar days of the date of mailing of the decision or recommendation, the applicant, the city or a party of record submits a written request for reconsideration in accordance with rules issued by the hearing examiner. Pending reconsideration by the hearing examiner, a decision or recommendation shall not be deemed final for the purpose of commencement of the period of time in which to commence an appeal. If reconsideration is waived because no timely request for reconsideration is made, the initial decision or recommendation of the hearing examiner, subject to any right of appeal, shall be deemed final as of the eighth calendar day after the date of mailing of the decision or recommendation. If a timely request for reconsideration is made, the hearing examiner shall grant or deny reconsideration within 10 calendar days of the date of receipt of the request for reconsideration. All periods of time provided for in this code for filing an appeal of a hearing examiner's decision, or for council consideration of a hearing examiner's recommendation, shall commence to run from the later of the eighth calendar day after mailing of the hearing examiner's decision or recommendation or the date of the hearing examiner's order granting or denying reconsideration.

E. All fees associated with the reconsideration shall be set by council resolution.

F. A statement of the date the decision will become final unless appealed, together with a description of the appeal procedure. (Ord. 764-01; Ord. 550, 1990)

#### 2.26.130 Notice of examiner's decision.

Not later than three working days following the rendering of a written decision, copies thereof shall be mailed to the applicant and to other parties of record in the case. "Parties of record" shall include the applicant and all other persons who specifically request notice of decision by signing a register provided for such purpose at the public hearing, or otherwise provide written request for such notice. (Ord. 550, 1990)

#### 2.26.140 Appeal from examiner's decision.

A. The grounds for filing an appeal of an examiner's decision shall be limited to the following:

1. Newly discovered evidence which is material to the examiner's decision and which could not reasonably have been produced at the examiner's hearing;

2. The examiner exceeded his jurisdiction;

3. The examiner failed to follow the applicable procedure in reaching his decision;

4. The examiner committed an error of law or misinterpreted the applicable zoning ordinance, comprehensive plan, provisions of the city's code or other city or state law or regulation; or

5. The examiner's findings and conclusions are not supported by the record.

B. 1. Where the examiner's decision is final and conclusive with right of appeal to the council, any such appeal shall be filed by the applicant, a department of the city, or other aggrieved person or agency with the city clerk/treasurer within 10 calendar days following the rendering of the examiner's decision pursuant to SMC 2.26.120. In computing the time in which to file an appeal with the council, the date the examiner's decision is rendered shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday or a legal holiday.

2. Appeals filed with the city clerk/treasurer shall be in writing, shall contain a detailed statement of grounds for appeal and the facts upon which the appeal is based, and shall be

accompanied by a fee of \$50.00; provided, that such appeal fee shall not be charged to a department of the city or to other than the first appellant. All council proceedings shall be limited to those matters expressly raised in a timely written appeal or appeals.

3. The timely filing of an appeal shall stay the effective date of the examiner's decision until such time as the appeal is adjudicated by the council or withdrawn.

C. 1. If the appeal is to the council, the timely filing of an appeal shall stay the effective date of the examiner's decision until such time as the appeal is adjudicated or withdrawn.

2. Within seven calendar days following the timely filing of an appeal with the city clerk/treasurer, notice thereof and of the date, time and place for council consideration shall be mailed by the clerk's office to the applicant, to the examiner and to all other parties of record. Such notice shall additionally indicate the deadline for submittal of written comments as prescribed in SMC 2.26.150.

D. Where the examiner's decision is final and conclusive, with right of appeal to court, the procedures for appeal are as set out in the underlying ordinance or statute governing the land use permit or other quasi-judicial hearing. (Ord. 550, 1990)

#### 2.26.150 Council consideration.

A. An examiner's decision which has been timely appealed pursuant to SMC 2.26.140 shall come on for council consideration in open public meeting no sooner than 21 nor longer than 35 calendar days from the date the appeal was filed. The council shall consider the matter based upon the record before the examiner, the examiner's decision, the written appeal statement and any written comments received by the council before closure of the city clerk/treasurer's office seven days prior to the public meeting date set for council consideration.

B. At the public meeting, the council may concur with the findings and conclusions of the examiner and affirm the examiner's decision; remand the matter to the examiner for further proceedings in accordance with the council's findings and conclusions; or the council may determine to hear the appeal at public hearing. In those instances in which the council affirms the examiner's decision or remands the matter to the examiner, the council's decision shall be reduced to writing and entered into the record of the proceeding within 15 days of the public meeting. Copies of the decision shall be mailed to all parties of record.

C. In those instances in which the council determines to conduct a public hearing, notice of the hearing shall be given by publication in the city newspaper no less than 10 days prior to the date set for the hearing and written notice shall also be given by the council by mail to all parties of record before the hearing examiner.

D. All council hearings conducted pursuant to this section shall be de novo and shall be limited to those matters raised in the appeal. The council shall consider the appeal based upon the record before the examiner and all written and oral testimony presented at the council hearing. All testimony at any public hearing shall be taken under oath.

E. At the conclusion of the public hearing, the council shall enter its decision which shall set forth the findings and conclusions of the council in support of its decision. The council may adopt any or all of the findings or conclusions of the examiner which support the council's decision. The council may affirm the decision of the examiner, reverse the decision of the examiner either wholly or in part, or may remand the matter to the examiner for further proceedings in accordance with the council's findings and conclusions.

F. The council's decision shall be reduced to writing and entered into the record of the proceedings within 15 days of the conclusion of the hearing. Copies of the decision shall be mailed to all parties of record. (Ord. 550, 1990)

#### 2.26.160 Effect of council action.

The council's decision to affirm an examiner's decision or remand a matter to the examiner pursuant to SMC 2.26.150(B), or the council's decision after public hearing on an appeal, shall be final and conclusive with right of appeal to the Superior Court of Snohomish County by writ of certiorari, writ of prohibition or writ of mandamus within 15 calendar days of the council's decision. The cost of transcription of all records ordered certified by the court for such review shall be borne by the applicant for the writ. (Ord. 550, 1990)

2.26.180 Local improvement district assessment roll hearings.

A. As authorized by RCW 35.44.070, the city council hereby provides for delegating, whenever directed by majority vote of the city council, the duty of conducting public hearings for the purpose of considering and making recommendations on final assessment rolls and the individual assessments upon property within local improvement districts to a hearing examiner appointed under this section, and the hearing examiner is directed to conduct such hearings and make those recommendations when thus authorized by the city council.

B. All objections to the confirmation of the assessment roll shall be in writing and identify the property, be signed by the owners and clearly state the grounds of the objection. Objections not made within the time and in the manner prescribed and as required by law shall be conclusively presumed to have been waived.

C. The hearing examiner shall conduct the hearing to be commenced at the time and place designated by the city council, cause an adequate record to be made of the proceedings, and make written findings, conclusions and recommendations to the city council following the completion of such hearings, which may be continued and reconvened as provided by law whenever deemed proper by the hearing examiner, and the city council shall either adopt or reject the recommendations of the hearing examiner.

D. The recommendations of the hearing examiner shall be that the city council correct, revise, lower, change or modify the roll or any part thereof, or set aside the roll in order for the assessment to be made de novo, or that the city council adopt or correct the roll or take other action on the roll as appropriate, including confirmation of the roll without change. The recommendations of the hearing examiner shall be filed with the city clerk and be open to public inspection. All persons whose names appear upon the recommended assessment roll who timely filed written objections to their assessments shall receive mailed written notification of their recommended assessments.

E. Any persons who shall have timely filed objections to their assessments may appeal the recommendations of the hearing examiner regarding their properties to the city council by filing written notice of such appeal with the city clerk within 10 calendar days after the date of mailing of the hearing examiner's recommendations.

F. The appeal shall be based exclusively upon the record made before the hearing examiner and shall be considered by the city council at a public meeting. No new evidence may be presented. Arguments on appeal shall be either oral or written as the city council may order.

G. The city council shall adopt or reject the recommendations of the hearing examiner at a public meeting, after considering any appeals, and shall act by ordinance in confirming the final assessment roll.

H. Any appeal from a decision of the city council regarding any assessment may be made to the superior court within the time and in the manner provided by law.

I. The procedures set forth in this section are independent of and alternative to any other hearing or review processes heretofore or hereafter established by the city, and shall govern the conduct and review of final assessment hearings conducted before hearing examiners and related proceedings when authorized by the city council. (Ord. 775-01 § 1)