

SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET

ITEM NO: Consent C 3

DATE: February 22, 2007

SUBJECT: Council Minutes

CONTACT PERSON: Laura Koenig, City Clerk

SUMMARY: Attached are the minutes of the February 8, 2007 Public meeting and Closed Record Hearing on the Twin Rivers PUD as on file in the office of the City Clerk.

RECOMMENDED ACTION: Approve as submitted.

MOTION: Move to accept the consent agenda as presented.

COUNCIL ACTION:

DATE:

CITY OF SULTAN COUNCIL MEETING – February 8, 2007

PUBLIC HEARINGS:

Twin Rivers Planned Unit Development: The Public meeting and Closed Record Hearing on the Twin Rivers PUD was called to order by Mayor Tolson.

Councilmembers present: Champeaux, Wiediger, Slawson, Seehuus, Flower, Blair and Boyd
There were no objections to the Council participation.

Mayor Tolson and Councilmember Wiediger disclosed that ex-parte communication was received from the Heydricks through an e-mail sent on February 1, 2007. The other Councilmembers either did not receive the e-mail or did not read it.

Staff:

Rick Cisar, Director of Community Development presented the following staff report and submitted the following exhibits for the record;

1. Affidavit of Publication for the February 8, 2007 meeting.
2. Staff report dated February 8, 2007
3. November 20, 2006 Staff Report and Recommendations
4. December 27, 2006 Hearing Examiner Recommendation
5. January 4, 2007 Applicants Appeal of Hearing Examiners Decision
6. Resolution Numbers 06-09A (Skoglund Estates PUD)
7. Comments received from Parties of Record on the Appeal Request:
8. Ron Kraut letter dated January 31, 2007 received February 1, 2007.
9. Christopher J Knapp, Applicant's Brief dated January 30, 2007 received January 31, 2007.
10. Josie Fallgatter letter dated February 1, 2006 received February 1, 2007.
11. E-mail from Heydricks dated February 1, 2007 received February 1, 2007

The Hearing Examiner held a Consolidated Open Record Hearing on November 30, 2006 for (1) Preliminary Planned Unit Development Subdivision (Twin Rivers Ranch Estates) File Number RAFPPUD05-006 and (2) a Shoreline Management Act Substantial Development Permit for the subdivision File Number SMP06-001. 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 denial of the Twin Rivers Ranch Estates Planned Unit Development, that the Twin Rivers Ranch Estates preliminary subdivision be returned to the applicant for modification as necessary to meet approval criteria and to demonstrate compliance with Chapter 16.108 SMC, Concurrency Management System, regarding police services and parks and recreation, and the Substantial Development Permit (SDP) be denied without prejudice.

The Hearing Examiner report includes the following conclusion number 2 on page 25 which supports his recommendation: In summary, Twin Rivers Ranch Estates still does not meet a fair reading of two of the PUD locational criteria, fails to meet the PUD usable open space requirement, and fails to meet two SCSMP Regulations for Recreational uses and three Public Access Element policies. Therefore, the PUD and SDP cannot be approved. Without the PUD, the preliminary subdivision cannot be approved. But a subdivision which did not rely upon the PUD provisions could be approved. And such a subdivision could be designed to comply with SCSMP requirements for approval of a SDP. Further, a condition could be crafted to assure compliance with the requirements of the Concurrency Management System. Therefore, outright denial of those elements of the application other than the PUD would be inappropriate.

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This conclusion identifies the following issues;

Issue 1. Two locational criteria for PUD's are not met. Conclusions 4 -8, pages 26 -42.

One of the PUD-SF locational criteria under challenge in this application is that relating to transit facilitation. [SMC 16.10.110(B)(2)(d)] 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 PUD's. Had the Council intended that PUD's could be located anywhere in the City, it would not have enacted restrictive location criteria. Those criteria must be given meaning.

This same issue arose during the Skoglund Estates case. The Examiner's recommendation in that case includes 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 PUD's. 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 criterion of SMC 16.10.110(B)(2)(d). No PUD approval may be granted for such a site.

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

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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.

5. 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. (Official notice, Resolution No. 06-09A)

Unfortunately, the Council's Skoglund Estates Resolution offers little explanatory rationale for its decision. (See Conclusion 14, ¶ 2, below.) And the distance it cites is incorrect. Therefore, the Skoglund Estates Resolution cannot easily be applied to other applications, nor is it legally binding in any event.

6. In a Recommendation dated November 17, 2006, the Examiner considered the Council's Skoglund Estates decision when considering the remanded Vodnick Lane application, RAFFPUD05-004, a single family residential PUD subdivision located less than three-fifths of a mile north of SR 2 on the Sultan Basin Road. The Examiner concluded as follows:

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).

(Vodnick Lane Recommendation, November 17, 2006, Conclusion 7)

7. The location of Twin Rivers Ranch Estates presents a slightly different set of circumstances than either the Skoglund Estates or Vodnick Lane sites. Twin Rivers Ranch Estates is probably about one-half mile from the nearest transit stop. Were distance alone the determining factor, the site would meet the criterion given the Council's interpretation. However, the walking route to that transit stop is along the presently unimproved shoulder of an industrial road of substandard width and condition after which one must cross a bridge on SR 2 which lacks pedestrian facilities. Twin Rivers Ranch Estates does not "facilitate transit access" and does not meet the criterion of SMC 16.10.110(B)(2)(d) given current conditions.

Ramirez's offer to construct a five foot wide paved pathway along Foundry Road will provide a safe access from the subdivision to Cemetery Road. The route from that point on along SR 2 to the transit stop lacks safe walking conditions. Without a safe means of accessing the transit facilities, one simply cannot conclude that the proposed PUD facilitates transit usage. To so conclude would be tantamount to encouraging people to walk along SR 2, which the evidence in this hearing record shows to be an unsafe practice.

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The Examiner recognizes that this conclusion differs from that reached by the Examiner in the remanded Vodnick Lane where transit users will also have to walk along SR 2 to reach the transit stop. More evidence of the poor walking conditions along SR 2 exists in the present record: No pedestrian path exists along SR 2. (Exhibit 53 and testimony) That additional evidence supports a different conclusion. If it were to be argued that the Examiner should have taken official notice in Vodnick Lane of the obvious poor walking conditions along SR 2, then the Examiner admits to not having done so and concludes that he is not compelled to make the same error again.

8. The other PUD locational criterion under challenge in this case is compliance with SMC 16.10.110(B)(2)(c). 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 which are eligible for PUD's. Had the Council intended that PUD's could be located anywhere in the City, it would not have enacted restrictive location criteria. Those criteria must be given meaning.

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 open record hearing 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.

Twin Rivers Ranch Estates does not meet the Subsection (B)(2)(c) criterion. Its sidewalks, even with the offered paved pathway along Foundry Road, will provide no direct connection to any sidewalks or established bicycle system. No PUD approval may be granted for such a site.

Issue 2. The PUD fails to meet the usable open space requirements. Conclusion 9, page 30: The usable open space does not meet the areal requirement of SMC16.10.140: 49,929 SF is less than 55,923 SF. The proposal cannot be approved until the usable open space has been increased to meet the PUD standard.

Issue 3. The development fails to meet two Shore line Management Program regulations for Recreational uses and three Public Access Element Policies. Conclusion 18 (last paragraph) page 43.

Most of the regulations pertaining to roads simply are not applicable as they refer to road construction projects *per se*, not to streets within a subdivision. The location of the parking for the public shoreline access parcels does not comply with General Regulations 10 and 11: The record contains no evidence that the parking area is to be landscaped; the "path" from the parking area to the shoreline would not be particularly safe or convenient. A visitor to the proposed public park

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would park his/her vehicle along Skywall Drive, walk across Skywall Drive, walk along the sidewalk of the internal plat street for some 260 feet, and then along a 10 foot wide path between Proposed Lots 18 and 19 to reach Tract 998. This is not a good plan; it offers too many opportunities for park visitors to disturb the tranquility of the Twin Rivers Ranch Estates residents. This problem is not so much Ramirez's as it is a problem with the MDNS. To develop a decent public park along the shoreline of the Skykomish River, a sufficiently sized parking area would be required within or immediately adjacent to the park land. Yet to do so here would require Ramirez to drop at least two if not more of the proposed lots. One can easily imagine that the economics of the project would begin to fail at that point. Unfortunately, the MDNS mitigation measure requires a public park along the shoreline, the MDNS was not appealed, and the mitigation measure is now binding on all participants in this proceeding. That binding SEPA requirement, however, does not eliminate the need for safe and effective parking for the required park. The proposal meets all Roads regulations except as noted above.

Conclusion 20 page 33:

The fourth review step requires consistency with the applicable Shoreline Use Element Policies. [SCSMP, p. C-3] The Shoreline Use Element Policies are contained in Section D of the SCSMP. They cover a wide range of topics. Many of the 66 policies contained in that Section simply don't apply to this type of development. However, compliance with three of the Public Access Element Policies is dubious. The design, size, and location of this proposed public access does not seem to properly reflect Policies 1 (protect private rights of adjacent owners), 3 (assure public safety in the design of public access), and 5 (the type of access should be appropriate to its location). The MDNS requirement that Tracts 997, 998, and 999 be dedicated to the City as park land has not been followed up with any planning as to how to properly develop that land for safe, effective park use.

Issue 4. The development fails to meet the concurrency LOS for Police Services.

Conclusions 32-37 pages 37-43.

32. 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.

33. DCD erred in concluding that Twin Rivers Ranch Estates meets the concurrency standard for police services.

34. The Police Services 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 Police Services 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 Police Services Agreement calls for the funds to be paid as each building permit is issued. Based on the proposed 21 new dwelling units and the total offered mitigation of \$23,506.00, the City would receive \$1,119.33 each time a residential building permit was issued

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for Twin Rivers Ranch Estates. 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 Twin Rivers Ranch Estates-sized developments to fund just one police officer (16% x 6 = 96%), and that one officer would not raise the police services LOS to the established standard. In fact, it would take 24 Twin Rivers Ranch Estates-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 Twin Rivers Ranch Estates-sized subdivisions would themselves raise the City's population by some 1,490 people (2.7 persons per household, the number stated in the Police Services Agreement), thus lowering the LOS again. In fact, all a program such as offered by Ramirez 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.

Furthermore, such incremental funding arguably would run afoul of the RCW 82.02.090 prohibition against collecting impact fees for police services. If Chapter 16.108 SMC is read as the Examiner believes it has to be, no such conflict would exist as the chapter would not be charging an impact fee.

35. 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 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).

36. 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).

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37. 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 35, above, or compliance with a condition as suggested in Conclusion 36, above.

Mr. Christopher J. Knapp, Anderson Hunter Law Firm P.S., on behalf of the applicant, Mr. Dan Ramirez on January 5, 2007 submitted an Appeal Request to the Hearing Examiner's Recommendation of December 27, 2006. As noted in the Appeal, the applicant believes the Hearing Examiner erred in concluding that the site does not meet the mandatory locational criterion of SMC 16.10.110(B)2) (c) or (d), and that the site does not meet the usable open space requirements of SMC 16.10.140. The Hearing Examiner further erred in concluding that the application fails to meet the Snohomish County Shoreline Management Permit (SCSMP) Regulations for Recreational Uses and three Public Access Element Policies. Further, with regard to police services, the Hearing Examiner failed to follow the Council's prior direction on acceptance of mitigation under a Police Services Agreement that was approved as part of the Skoglund Estates Planned Unit Development (PUD) (Resolution Number 06-09A).

The purpose of the Appeal is to insure the applicant preserve their rights. The timely filing of the appeal shall stay the effective date of the Hearing Examiner's decision until such time as the appeal is adjudicated by the Council or withdrawn.

The City Council, in considering the Twin River Ranch Estates Development and Appeal Request, has the option to:

- (1) Approve the Hearing Examiner's Recommendation, or
- (2) Approve the project with the Applicant's Appeal Request to adopt the Hearing Examiner's finding and conclusions that support approval of the project, reverse the Hearing Examiner's decision to the extent that it calls for denial or remand of the project, and approve the Planned Unit Development (PUD) and Substantial Development Permit SDP Applications (last paragraph on page 2 of Appeal); or
- (3) Approve the request based on the Council's own set of Findings and Conclusions; or Deny the request based on the Council's own set of Findings and Conclusions.
- (4) Deny the request based on the Council's own set of findings and conclusions.

Applicant:

Christopher Knapp, representative for the Applicant Dan Ramirez, briefly discussed the Applicant's Brief on the Closed Record Appeal Hearing that was submitted as part of the record. The matter was brought before the Council previously with a request that the matter be remanded back to the Hearing Examiner for corrections. The City has approved other PUD's and plats that have the same issues that were raised by the Hearing Examiner in regards to level of service for parks and police and transit issues. They are requesting the same treatment in regards to the transit issue as was given to the Vodnick Lane plat. The applicant is proposing a pedestrian and bicycle pathway and the Hearing Examiner was in error in his statement that there were no pedestrian/bike path along Highway 2. The open space requirement has been met and the set back from the river is larger then the required 50 foot buffer. The agreements for park and police

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levels of service are similar to other plats. The Hearing Examiner was arbitrary in his ruling on the Shoreline application.

Mr. Gibson, project engineer, advised that they have carefully followed the City Staff recommendations and interpretations of the codes. The application has been changed based on the direction provided by staff and the City Council. Foundry Drive has been realigned, parking for the parks as been provided and the setbacks from the river have been increased. The project will improve the railroad crossing and the tax revenue from the homes will fund the necessary police services.

Public Comment

Andy Coe: Has reviewed the application and it appears to be a positive project that will fix the railroad crossing and walkway. Is a fisherman and this will give public access to the river and will bring sewer into the area which will be better for the environment.

Ron Kraut: Asked if the public meeting and a closed record hearing have the same set of rules. The rules for public meeting allow written comments but the closed record hearing does not allow appeal statements. The public hearing notice states that the council will conduct a public meeting. The Staff report provides alternatives and actions but none are consistent with the code requirements. The Council must concur with the Hearing Examiner decision, remand the matter back to the Hearing Examiner or hear the appeal at a public hearing.

Kerry Ourada: There was a statement made that the Council should follow past actions but the Hearing Examiner says that decisions in past are not the basis for decisions in the future. The Hearing Examiner says he made mistake with the Vodnick Lane PUD on the transportation issue and transit. The area is not safe to walk to public transportation. The park being dedicated to the city will be half under water during a flood. The application has been rejected twice. The density and placement of the project is not good for Sultan. The level of service has not been met and this will not add enough money to provide service and it should be rejected.

Josie Fallgatter: Is not an opponent of the project but is a proponent for the City of Sultan to follow state and city codes. The City council is the decision maker and they have the option of setting a public hearing on the matter per their code. The brief submitted by the applicant has factual errors. Code sections are not correctly cited and it says the Vodnick Lane project has been approved and it has not been approved yet. The City has a liability if citizens are injured walking along a dark road. There are locational criteria for PUDs and requirements for pedestrian access to transit. In the resolutions proposed, the language is the same as the applicants brief on the closed record hearing. How did they get the language before the packet was provided to the public? It appears that someone on staff provided the applicant the resolution prior to the meeting. The City is not to be a proponent for applicant and should be concerned for the public.

Gerry Gibson: Mr. Ramirez has a right to do what he wants on his property and has chosen to build houses but he also has a right to protect his property. The project is out of character for the neighborhood. The park area will flood. Parking is provided for river access and this is a popular area to fish however there is plenty of access on the north side of the river. There was a petition signed by the residents stating they don't want the access to the river due to problems with trespassing. Should limit access to residents if the park is allowed. Requested permission to

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play tape from the hearing (Chris Knapp objected to the playing). The tape provided testimony from Al Holt objecting to having the park in the area due to public using his land for river access. There are rules and regulations to follow and some can be waived but others are mandatory such as the parks and level of service. Developer agreements don't pay their way. There is not enough parking for the residents and the fisherman and who will provide enforcement of parking violations and trespass. Transit access is a problem and does not meet code requirements. There is no resolution to deny the application

Loretta Storm: It is not logical to follow the Hearing Examiner recommendation. Equal treatment does not counter mistakes of the past. The resolution may create legal issues. The applicant has been warned by Romac Industries that there is a noise problem in the area. The location of the pedestrian facility on US 2 is dangerous. The City has relocated a bus stop on the highway due to deaths at a bus stop.

Ron Gibson: Dan Ramirez worked on the Romac noise problem and he will be closer to them now. The Hearing Examiner did a good job and was very thorough and he hopes that the Council has read his report. The Hearing Examiner turned the application down and even after the staff and Hearing Examiner helped the applicant, it was turned down again. The Council will probably pass the resolution to approve and that is why the citizens don't trust the city.

Applicant Response

Chris Knapp: There are strong emotions over the project and he stresses to his clients to follow the codes but that is hard to do in this case as the Hearing Examiner has created a moving target and did not follow the city rules. The Hearing Examiner ignored concurrency, did not properly calculate open space, refused to follow the council directive on level of service requirements and did not follow any guidelines on the shoreline permit application.

Council

Councilmembers discussed the level of service requirements, calculation of open spaces, parking space requirements for the park, and access to the river.

Staff advised that open space is calculated differently for PUDs. The location of the park parking on Skywall Drive is safer for the pedestrians but they will have to walk between the residences.

On a motion by Councilmember Seehuus, seconded by Councilmember Slawson, the public meeting was closed. All ayes.

Benjamin Tolson, Mayor

Laura J. Koenig, City Clerk