

SULTAN CITY COUNCIL

AGENDA ITEM COVER SHEET

ITEM NO: 6:00 PM Study Session with Hearing Examiner

DATE: March 22, 2007

SUBJECT: Study Session with John Galt, Hearing Examiner

CONTACT PERSON: Rick Cisar, Director of Community Development

SUMMARY: Mr. John Galt, the City's Hearing Examiner, has been invited to review his 2006 Annual Report with the City Council. The attached report includes the Open Record Hearing Activity for 2006 and also a Discussion of Issues regarding Police and Parks Concurrency and Planned Unit Development locational criteria relating to the connection to an off-site pedestrian system and transit facilitation.

Discussions with Mr. Galt may not include any projects which are currently under review by the City including developments that have been considered by the City Council and remanded back to the Hearing Examiner for additional review. These projects include the Dan Ramirez, Twin Rivers Ranch Estates, Barry Hammer Bankruptcy Estate, Hammer PUD, and the Greens Estates PUD.

City Attorney, Thom Graafstra will also be attending the Study Session to assist the City Council in determining other appropriate issues the Council may discuss with the Hearing Examiner.

The study session will provide an excellent opportunity for the City Council and Hearing Examiner to discuss the issues and concerns that both the Council and Examiner have raised during their reviews and consideration of the various development proposals that have taken place throughout the year. Staff recommends the Council establish an annual study session with the Hearing Examiner to review his annual report.

FISCAL IMPACT: None

RECOMMENDED ACTION: Conduct Study Session and thereafter consider establishing an annual study session with the Hearing Examiner.

COUNCIL ACTION:

DATE:

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MEMORANDUM

To: Sultan City Council
Mayor Ben Tolson

CC: Deborah Knight, City Administrator
✓Rick Cisar, City Planner

From: John E. Galt, Hearing Examiner

Date: January 19, 2007

Subject: Annual Report for 2006

The Sultan Municipal Code does not require an annual report from the Hearing Examiner to the City Council. Nevertheless, I believe that a short summary of the matters which I have heard as your Hearing Examiner during 2006 would be interesting, if not beneficial, to you. I, therefore, present this brief report. The report is divided into two parts: Hearing Activity and Discussion of Issues. I would be pleased to meet with the Council at a time of mutual convenience.

Hearing Activity

I conducted 10 land use hearings, involving 22 applications in seven projects, for the City of Sultan during 2006. All of the projects heard in 2006 involved consolidated applications: *Cascade Breeze Estates* was a cluster subdivision which required a preliminary subdivision/conditional use permit combination; *Steen Park* was also a cluster subdivision which required a preliminary subdivision/conditional use permit combination, but it also required a plat modification for a longer than standard cul-de-sac; *Skoglund Estates*, *Hammer PUD*, and *Vodnick Lane* were preliminary subdivision/planned unit development (PUD) combinations; *AJ's Place* was a binding site plan with a conditional use permit for condominium townhouses; and *Twin Rivers Ranch Estates* was a preliminary subdivision/PUD combination with a Shoreline Management substantial development permit included. I heard the *AJ's Place*, *Vodnick Lane*, and *Twin Rivers Ranch Estates* cases twice because of remands from the Council. Each case is listed on the attached table in chronological order of hearing.

By comparison, I conducted six land use hearings, involving nine applications, in 2005 and heard only four cases in 2004.

Abbreviations are mostly self-explanatory: Okw/c = approve subject to conditions; Return = return to the applicant for modification (an action allowed by state law in subdivision cases); DWOP = deny without prejudice (an equivalent to the "return" action for non-subdivision cases)..

Discussion of Issues

The Council is well aware of the difficulties we have experienced this year regarding concurrency and PUD locational criteria.

I remain convinced that a difference exists between the purpose of Chapter 16.108 SMC, Concurrency Management System, and the purpose of Chapter 16.112 SMC, Development Impact Fees. As presently enacted, I believe the former sets a Level of Service "floor" which if not met bars development until guarantees are in place that it will be met, while the latter is a "pay-as-you-go" Growth Management Act impact fee ordinance. Citizens first began challenging compliance with Chapter 16.108 SMC with the first case heard this year; those challenges continued with every case heard during the year.

Given the problems experienced during 2006 with interpretation and implementation of Chapter 16.108 SMC, I urge the Council to legislatively clarify its intent and application at the earliest opportunity: Statutory vesting provisions in state law require subdivision applications to be evaluated against the regulations in effect when a complete application is filed. The longer this ordinance goes without clarification, the more applications will be caught up in its provisions.

Trouble interpreting and implementing several PUD locational criteria characterized all of 2006's PUD applications. The stumbling blocks were the locational criteria in SMC 16.10.110(B)(2), especially subsections (2)(c) and (2)(d) relating to connection to an off-site pedestrian system and transit facilitation. My Recommendations throughout the year dealt with those provisions in depth; I will not repeat those analyses here. I would only point out that, as written, the criteria evidence a legislative intent to limit or restrict the location of PUDs within Sultan to only places meeting the locational criteria. Yet, Staff's interpretation, to slightly simplify, is that PUDs can be located anywhere in the City. The adopted code language is inconsistent with that interpretation.

I respectfully ask that the code be amended to make your intent in these matters clear.

On a different matter, I bring to your attention the fact that in the land division regulations chapter of the Unified Development Code, Chapter 16.28 SMC, the only "Minimum requirements and improvement standards" are found within the short subdivision portion of the chapter (at SMC 16.28.230) and the only modification procedures are likewise found within the short subdivision portion of the chapter (SMC 16.28.240). The subdivision portion of the chapter contains no parallel standards or procedures.

The provisions of SMC 16.28.230, however, apparently apply to all types of land divisions, not just short subdivisions: The right-of-way width requirements include an entry for "5 or more dwelling units" – short

subdivisions in Sultan are limited by ordinance to four or fewer lots. [SMC 16.28.020] It makes no sense that the City would set development standards for small land divisions (short subdivisions) without setting development standards for large land divisions (subdivisions).

And it likewise makes no sense to establish a procedure, complete with detailed review criteria, by which an applicant for a short subdivision may seek relief from development standards because of "extraordinary conditions" without having an equivalent procedure for subdivisions.

I believe that this is a result of an organizational "glitch" in Chapter 16.28 SMC. I urge you to review this structural problem and clarify the City's intent.

Finally, I ask that you legislatively clarify and "clean up" code provisions relating to the nature and effect of the Examiner's actions. The table in SMC 16.120.080 lists decision making authority for a wide range of land use permits. For each action in which the Hearing Examiner is assigned the responsibility to conduct the public hearing, an "X" appears in the "Council Action" column. I (and I believe Staff and the City Attorney) have always understood that "X" to mean that the Council reserved to itself the final decision making authority and, therefore, that my action was to take the form of a Recommendation to the Council.

However, Chapter 2.26 SMC, Hearing Examiner, consistently uses the word "decision" when referring to the Examiner's action – it never mentions a "recommendation." It also provides guidance for filing an appeal from the Examiner's decision to the Council. The opening phrase of SMC 2.26.140(B)(1) ("Where the examiner's decision is final and conclusive with right of appeal to the council") seems to imply that some Examiner actions are other than final with right of appeal to the Council. But the rest of the chapter does not follow up on that notion.

The provisions in Chapter 2.26 SMC were enacted in 1990 (Ordinance No. 550) whereas the table in SMC 16.120.050 was last amended in 2001 (Ordinance No. 770-01). Every code amendment ordinance adopted by Sultan which I have seen contains a generic repealer clause: Any provisions elsewhere within the SMC in conflict with the new amendment are automatically repealed. If Ordinance No. 770-01 contained such a clause, it would have automatically repealed all other provisions regarding the effect of an Examiner action. But since the "X"s in the table do not specifically indicate what they stand for, the ultimate meaning and intent of the code is unclear.

I respectfully ask that the Council legislatively clarify the nature of the Examiner's action for each type of case assigned under code to the Examiner. I have no interest, preference, or comment regarding whether all or some Examiner actions should be Recommendations to the Council, final Decisions with right of appeal to the Council, or final Decisions with right of appeal to Superior Court. (State law controls appeals from City decisions regarding Shoreline Management Act permits and also limits the number of open record hearings and appeals which may be held.) Those are policy decisions within the Council's purview.

**SULTAN
HEARING EXAMINER DECISIONS - 2006**

| File Number Decision Date | Applicant Name Project Name | Case Type Acreage | Decision No. of Lots |
|--|--|------------------------------------|---------------------------------------|
| FPCUP05-002 04/18/2006 | Cascade Breeze, Inc. <i>Cascade Breeze Estates</i> | Pre Plt 9.35 | Return 30.00 |
| FPCUP05-002 04/18/2006 | Cascade Breeze, Inc. <i>Cascade Breeze Estates</i> | CUP 9.35 | Return 30.00 |
| FPCUP05-003 04/18/2006 | Cascade Breeze, Inc. <i>Steen Park</i> | Pre Plt 5.00 | Return 18.00 |
| FPCUP05-003 04/18/2006 | Cascade Breeze, Inc. <i>Steen Park</i> | Plt Mod 5.00 | Return 18.00 |
| 04/18/2006 | Cascade Breeze, Inc. <i>Steen Park</i> | CUP 5.00 | Return 18.00 |
| FPPUD05-005 05/02/2006 | Sultan 144 LLC <i>Skoglund Estates</i> | PUD 21.84 | Deny 48.00 |
| FPPUD05-005 05/02/2006 | Sultan 144 LLC <i>Skoglund Estates</i> | Pre Plt 21.84 | Return 48.00 |
| BSP05-001 05/12/2006 | Sultan Real Property Investments, LLC <i>AJ's Place</i> | BSP 5.70 | DWOP 39.00 |
| BSP05-001 05/12/2006 | Sultan Real Property Investments, LLC <i>AJ's Place</i> | CUP 5.70 | DWOP 39.00 |
| FPPUD05-002 06/15/2006 | Barry Hammer Bankruptcy Estate <i>Hammer PUD</i> | PUD 18.20 | Dw/oP 72.00 |
| FPPUD05-002 06/15/2006 | Barry Hammer Bankruptcy Estate <i>Hammer PUD</i> | Pre Plt 34.00 | Return 72.00 |
| FPPUD05-004 06/15/2006 | Brickyard Properties, LLC <i>Vodnick Lane</i> | PrePlt 4.77 | Return 23.00 |
| FPPUD05-004 06/15/2006 | Brickyard Properties, LLC <i>Vodnick Lane</i> | PUD 4.77 | Deny 23.00 |
| FPPUD05-006 06/19/2006 | Dan Ramirez <i>Twin Rivers Ranch Estates</i> | PUD 8.56 | Deny 22.00 |
| FPPUD05-006 06/19/2006 | Dan Ramirez <i>Twin Rivers Ranch Estates</i> | Pre Plt 8.56 | Return 22.00 |
| BSP05-001 (Remand) 07/12/2006 | Sultan Real Property Investments, LLC <i>AJ's Place</i> | BSP 5.70 | OKw/c 40.00 |
| BSP05-001 (Remand) 07/12/2006 | Sultan Real Property Investments, LLC <i>AJ's Place</i> | CUP 5.70 | OKw/c 40.00 |
| RAFFPUD05-004 11/17/2006 | Brickyard Properties, Inc. <i>Vodnick Lane</i> | Pre Plt 4.77 | OKw/c 23.00 |
| RAFFPUD05-004 11/17/2006 | Brickyard Properties, Inc. <i>Vodnick Lane</i> | PUD 4.77 | OKw/c 23.00 |
| RAFFPUD05-006 12/27/2006 | Dan Ramirez <i>Twin Rivers Ranch Estates</i> | Pre Plt 8.56 | Return 22.00 |
| RAFFPUD05-006 12/27/2006 | Dan Ramirez <i>Twin Rivers Ranch Estates</i> | PUD 8.56 | Deny 22.00 |

SULTAN
HEARING EXAMINER DECISIONS - 2006

| File Number Decision Date | Applicant Name Project Name | Case Type Acreage | Decision No. of Lots |
|--|---|------------------------------------|---------------------------------------|
| SMP06-001 12/27/2006 | Dan Ramirez <i>Twin Rivers Ranch Estates</i> | SDP 8.56 | Dw/oP 22.00 |