SULTAN CITY COUNCIL

AGENDA ITEM COVER SHEET

ITEM NO: Action A-2

DATE: May 24, 2007

SUBJECT: Set Open Public Appeal Meeting for the George 6-Plex Townhouse Development

CONTACT PERSON: Rick Cisar, Director of Community Development

ISSUE:

The issue before the City Council is to set a Public Meeting to consider an Appeal by Ray E. and Belinda Kay George in accordance with SMC 2.26.150 (Attachment 1).

SUMMARY:

The Hearing Examiner conducted an Open Record Hearing on April 24, 2007 for the Ray E. and Belinda Kay George 6-plex Townhouse Development on High Avenue. The Hearing Examiner's Report and Recommendation dated May 4th, 2007, approved the project with 6 Conditions. However, Condition 5 of the Report and Recommendation included a requirement that the Level-of-Service (LOS) for Police Services be in place prior to approval of occupancy of the units.

The George's, submitted as part of their Application, a Development Agreement (Attachmment 2) to provided for Police Services consistent with other developments recently approved by the City Council. The George's, like the other developers, would agree to pay their prorated share for Police Services based on the density of the project. The George's are therefore appealing this Condition as Recommended by the Hearing Examiner.

Sultan Municipal Code (SMC) Section 2.26.150 requires scheduling an Open Public Meeting for the City Council to consider the Appeal no sooner than 21 nor longer than 35 calendar days from the date the Appeal was filed. The next available City Council Meeting to consider this Appeal is June 14, 2007.

FISCAL IMPACT:

Staff time in preparing Public Notices and Reports for Appeal Meeting.

RECOMMENDED ACTION

Motion to set June 14, 2007 at 6:00 p.m. to conduct Appeal Public Meeting for the George 6-Plex Townhouse Development in accordance with SMC 2.26.150.

COUNCIL ACTION:

DATE:

Attachments:

1. SMC 2.26.150
2. George's Developer Agreement

City of Sultan

NOTICE OF APPEAL MEETING GEORGE 6-PLEX TOWNHOUSE DEVELOPMENT

CONDITIONAL USE PERMIT AND BOUNDARY LINE ADJUSTMENT

Thursday JUNE 14, 2007
6:00 p.m. or soon thereafter
City Council Chambers
319 Main Street Sultan, Washington

The City of Sultan City Council will conduct a Public Meeting on June 14, 2007 at 6:00 p.m. or soon thereafter, to consider an Appeal of the Hearing Examiner's Recommendations (pursuant to Sultan Municipal Code 2.26.140) by Ray E. and Belinda Kay George of the Hearing Examiner's May 9, 2007 Recommendation for the George 6-plex Townhouse Development, Conditional Use Permit, and Boundary Line Adjustment.

The City Council shall have the right and ability, based exclusively on the record that was presented before the Hearing Examiner, to concur with the findings and conclusions of the Hearing Examiner and affirm the Hearing Examiner's Decision, remand the matter to the Hearing Examiner for further proceedings in accordance with the City Council's findings and conclusions, or the City Council may determine to hear the Appeal at a Public Hearing or a Closed Record Hearing.

Deadline for submission of written comments on the Appeal to the City of Sultan City Clerk is 5:00 p.m. June 7, 2007.

ADA Notice: Accommodations for persons with disabilities will be provided upon advance request. Please arrange one week prior to the Public Hearing by calling City Hall at (360) 793-2231.

Publish: June 1, 2007

CC Applicant
Hearing Examiner
Parties of Record

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 recontinued 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.

ATTACHMENT 2

AFTER RECORDING
PLEASE RETURN TO:

_____

_____

_____

DEVELOPER AGREEMENT TO ESTABLISH CONCURRENCY

This Developer Agreement to Establish Concurrency is voluntarily made between The George's (hereinafter "Developer") and the City of Sultan, Washington (hereinafter "City") to establish concurrency of a conditional use permit assigned processing number CUP06-004 and named George 6-plex Townhouse Development.

WHEREAS, Chapter 16.108 Sultan Municipal Code establishes Levels of Service for certain public services and establishes a concurrency management system;

WHEREAS, under Section 16.108.060 prohibits development approval is an adopted level of services fails as a consequence of development;

WHEREAS, the City's hearing examiner has found and ruled that the City currently has a failure in its level of service for Police;

WHEREAS, Sultan Municipal Code 16.108.060 C permits a finding of concurrency when:

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

WHEREAS, Developer wishes to voluntarily enter into this Developer Agreement to Establish Concurrency to aid in obtaining preliminary plat approval at this time;

NOW, THEREFORE, it is agreed between Developer and city as follows:

1. Developer commitment to satisfy impacts of development. Developer's condition use permit proposes the creation of multiple family units). City, for planning purposes assigns a population of 2.7 to each lot/unit for a total population impact of 17. City has an adopted level of service for police of 2.6 officers per 1000 population. Developer's impact requires a contribution for .0442 of an officer.

ATTACHMENT 2

City estimates the annual cost of an officer to be $110,878. Developer therefore agrees to pay a cash contribution to City of $4,901, consisting of 4% of the first year annual cost of an officer and an additional $,334 to serve as a contribution to a reserve for future years of service. 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.

2. City's acceptance. City agrees to accept the contributions detailed above and for any cash contributions will place them in a separate fund. Cash contributions made will be used within six (6) years of payment to City or they will be refunded to Developer. City staff agree to issue a revised concurrency determination finding concurrency based upon this agreement and to support that determination in further proceedings before the hearing examiner and any appeal of a hearing examiner determination.

3. Effect of Level of Service change. Should City reduce or eliminate a Level of Service requirement prior to the conveyance occurring or the cash contribution being made, Developer's obligation under this agreement shall be adjusted or eliminated consistent with the reduction or elimination of the Level of Service. If however, a Level of Service is reduced or eliminated after the conveyance occurs or the cash contribution has been made, there shall be no return of the conveyed property or the cash contribution. If the Level of Service is increased prior to the conveyance occurring or the cash contribution being made, Developer's obligation under this agreement shall not be increased, and Developer shall be deemed to vest under the terms of this agreement.

4. Recordation. At the option of the City, City may cause a certified copy of this agreement, or a memorandum of this agreement to be recorded with the records of the Auditor of Snohomish County.

5. Enforcement. Besides any remedy City may have to enforce the terms of this agreement in court, Developer specifically agrees that City shall have no obligation to issue a building permit unless required cash contributions are made and City shall have no obligation to accept any final plat until the required deed for conveyance of park land has been delivered with irrevocable instructions allowing its recordation.

6. Complete Agreement. This is a complete agreement and all prior discussions and agreements are merged into this agreement.

7. Voluntary Agreement. Developer represents that he voluntarily and intentionally enters into this agreement to the goal of receiving preliminary plat or other development approval at this time.

DATED this _____ day of _____, _____.

DATED this _____ day of _____, _____.

CITY OF SULTAN

By_____
BEN TOLSON, MAYOR

DEVELOPER

By Belinda Kay George
BELINDA KAY AND RAY E GEORGE

Attest:

By_____
LAURA KOENIG, City Clerk

Approved as to form:

By_____
THOM H. GRAAFSTRA, City Attorney

STATE OF WASHINGTON)
)ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

DATED this _____ day of _____, 2007.

_____

_____
[Legibly print name of notary]
Notary Public in and for the State of
Washington, residing at _____
My Commission expires:_____