# SULTAN CITY COUNCIL

## AGENDA ITEM COVER SHEET

**ITEM NO:** **CLOSED RECORD HEARING**

**DATE:** May 24, 2007

**SUBJECT:** **CLOSED RECORD HEARING**
Hearing Examiner Recommendation: Conditional Use Permit to construct a Mini-Lube (with a small restaurant attached) on the site of Hoot Owl Mini-Mart.

**CONTACT PERSON:** Rick Cis[illegible] Director of Community Development

**SUMMARY:**

**THIS IS A CLOSED RECORD HEARING. CITY COUNCIL'S DECISION IS BASED ON THE OPEN RECORD HEARING. NO NEW TESTIMONY OR INFORMATION IS PERMITTED.**

The Hearing Examiner held an Open Record Hearing on April 24, 2007 and considered a request for the Hoot Owl Mini Lube File Number CUP 06-005. 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** to **GRANT** a Conditional Use Permit to construct a Mini-Lube subject to the **5 Conditions on Page 13** of the attached Recommendation.

**HEARING EXAMINER ISSUES/RESPONSES:**

1. Does the Application meet applicable criteria for CUP Approval?

Hearing Examiner on page 10, Conclusion 7. The mini-lube proposal meets or can be conditioned to meet all CUP criteria. The requested CUP should be approved.

2. Does the proposal meet off-street parking requirements?

Hearing Examiner Findings of Fact page 5, when all uses on the site are considered as a whole, sufficient off-street parking spaces are proposed/ available.

3. Does the proposal meet flood proofing requirements?

Hearing Examiner On page 13, Condition of Approval 2. The entire building including the service bay area, shall have its lowest floor level elevated 1.6 feet or more above the base flood elevation as required by SMC 17.08.110(B)(2).

**CITIZEN COMMENTS**
**ISSUES/RESPONSES:**

Two citizens who testified during the Public Hearing (Fallgatter and Storm) do not oppose the project per se. They are, however, concerned about the potential pollution from flooding of the lube pits, adequacy of off street parking, and Main Street Access.

1. Flooding service bays floors will be raised 1.6 feet or more above base flood elevation (Hearing Examiner Condition of Approval 2 on Page 13).

2. Sufficient off-street parking are proposed or available (Hearing Examiner Findings of Fact, Page 5).

3. The access from Main Street should not create the pedestrian/vechicular conflicts that would arise from access to Main Street (Hearing Examiner Conclusion 3, page 9). Access to Main Street is restricted to ingress only.

**FISCAL IMPACT:**

None at this time.

**RECOMMENDATION**
**ACTIONS AND MOTIONS:**

A motion to close the Closed Record Hearing. Thereafter, consider Acceptance of the Hearing Examiner's Report and Approval of Conditional Use Permit, to construct a Mini-Lube (with small restaurant attached) on site of the Hoot Owl Mini-Mart, under Action Item Number 7, Resolution 07-11.

**COUNCIL ACTION:**

**DATE:**

**ATTACHMENTS:**

1. Hearing Examiner's Recommendation dated May 4, 2007
2. Staff Report dated March 13, 2007
3. Site Plan and Building Elevations dated October 24, 2005
4. Resolution No. 07-11

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

# RECOMMENDATION

| | |
|---|---|
| FILE NUMBER: | CUP06-005 |
| APPLICANT: | Chris Damianidis |
| TYPE OF CASE: | Conditional Use Permit to construct a Mini-Lube (with small restaurant attached) on the site of the Hoot Owl Mini-Mart |
| STAFF RECOMMENDATION: | Approve subject to conditions |
| SUMMARY OF RECOMMENDATION: | GRANT subject to conditions (revised) |
| DATE OF RECOMMENDATION: | May 4, 2007 |

## INTRODUCTION

Chris Damianidis (Damianidis), 601 Stevens Avenue, Sultan, Washington 98294, seeks Conditional Use Permit (CUP) approval to construct a Mini-Lube (with small restaurant attached) on the site of the Hoot Owl Mini-Mart. Damianidis filed the Master Land Use Application on October 11, 2006. [1] (Exhibit 1.A [2]) The Sultan Department of Community Development (DCD) deemed the application complete as of December 26, 2006. (Exhibit 1)

The subject property is located at 601 – 613 Stevens Avenue (SR 2) in downtown Sultan.

The Sultan Hearing Examiner (Examiner) viewed the subject property on April 24, 2007.

The Examiner held an open record hearing on April 24, 2007. DCD and Damianidis gave notice of the hearing as required by the Sultan Municipal Code (SMC).

---

1 Although the CUP application was not officially filed until late 2006, Damianidis began planning the project several years ago. It was discussed, at least in general, conceptual terms, with the Planning Commission in 2004 and was developed sufficiently to be presented to the Design Review Board in late 2005. (Testimony)

2 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 following exhibits were entered into the hearing record during the hearing:

| | |
|---|---|
| Exhibit 1: | Departmental Staff Report with Attachments 1.A – 1.K |
| Exhibit 2: | Site Plan package (5 sheets) |
| Exhibit 3: | Landscape plans and building elevations (6 sheets) |
| Exhibit 5: | Sultan Ordinance No. 852-04 |

The Examiner held the hearing record open through close of business on May 1, 2007, for submittal of:

| | |
|---|---|
| Exhibit 4: | Design Review Board minutes of February 9, 2006 |
| Exhibit 6: | Current water availability letter dated April 24, 2007 |
| Exhibit 7: | Current sewer availability letter dated April 24, 2007 |
| Exhibit 8: | Memorandum regarding permissibility of un-floodproofed lube pits within a 100 year flood plain dated May 1, 2007 |

The record closed on May 1, 2007, with submittal of Exhibits 4 and 6 - 8.

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 CUP approval? Does the proposal meet off-street parking requirements? Does the proposal meet floodproofing requirements?

## FINDINGS OF FACT

1. The subject property is a rectangle bordered on the north by Main Street, on the south by SR 2 (a.k.a. Stevens Avenue), on the west by 6th Street, and on the east by a building containing a combination single family residence (facing Main Street) and antiques store (facing SR 2). The site is 100 feet in north-south dimension and approximately 280 feet in east-west dimension and encompasses approximately 0.64 acres. The site contains (going from west to east) the Hoot Owl market (with fuel dispensing pump islands) , a multi-bay car wash, and the Trackside Pizza & Subs restaurant (located in the far southeast corner of the site). A portion of the restaurant and all seven of its parking spaces are located within the SR 2 right-of-way. (Exhibit 2)

Damianidis proposes to demolish the restaurant building and construct a two-bay mini-lube facility, small attached restaurant (not drive-in), and three parking stalls, all on about the east 25% of the site. (Exhibits 2 and 3 and testimony)

2. The subject property is zoned Urban Center (UC). (Exhibit 1, p. 5) "Retail food establishments (all types except drive-in restaurants)" are a permitted use in the UC zone. [SMC 16.12.040(B)(3)(o)] The restaurant portion of Damianidis' proposal is thus a permitted use; a CUP is not required.

The City Council enacted Ordinance No. 852-04 in part to add "Restricted Automobile Related Trade Facilities" as a conditional use in the UC zone. (Exhibit 5 [3]) The term "Restricted Automobile Related Trade Facilities" includes "Lube and Oil Service Facilities." (Exhibit 5, § 2) The mini-lube portion of Damianidis' proposal is thus a Conditional Use; a CUP is required.

Three special performance standards are included in Ordinance No. 852-04 for Restricted Automobile Related Trade Facilities:

A. Properties shall have frontage and direct vehicular access to State Highway No. 2. Access to Main Street may be permitted if the applicant mitigates potential vehicular and pedestrian conflicts.
B. The use does not inflict upon the surrounding permitted land uses in the district smoke/odors (1), glare/heat (2), noise (3), vibration (4), or liquid and solid wastes (5), and water pollution detrimental to the health, welfare, or safety of the public occupying or visiting such areas.
C. The design of buildings and related improvements shall employ design standards to support and maintain the commercial character and intent of the area.

(Exhibit 5, § 2) Section 3 of Ordinance No. 852-04 concurrently amended the Table of Dimensional and Density Requirements contained in SMC 16.12.040 to provide as follows for Lube and Oil Service uses: No density limit; 5,000 square foot minimum lot area; 50 foot minimum lot width [4]; 100 foot minimum lot depth; 25 foot minimum front setback; 20 foot total side setback; 25 foot rear setback; 30 foot maximum building height; and 25% maximum lot coverage. (Exhibit 5, § 3)

---

3 Ordinance No. 852-04 was passed September 22, 2004, published November 26, 2004, and became effective on or about December 1, 2004. (Exhibit 5) Through an administrative oversight, Ordinance No. 852-04 was not provided to the City's code codifier/publisher. (Testimony) Therefore, currently published copies of the SMC do not reflect the content of Ordinance No. 852-04.

4 The Ordinance actually says minimum lot width is "05". Given that the Ordinance states the minimum lot width for auto parts sales as "30" and the minimum lot width for automobile service facilities as "50," the Examiner concludes that the "05" figure is a scrivener's error.

3. The proposed building will cover approximately 1,704 square feet (SF) of the site. [5] The restaurant will occupy an approximate 15' x 32' area (480 SF including a shared use rest room) at the east end of the building. The mini-lube will include an approximate 11' x 32' (352 SF) office and storage area abutting the restaurant, together with an approximate 30' x 28' (840 SF) two-bay lube area with underground lube pits, for a total of approximately 1,192 SF. (Exhibits 2 and 3)

   The building will be 25 feet north of the south property line, five feet west of the east property line, not less than 43 feet south of the north property line, and more than 200 feet east of the west property line. (Exhibit 2) The building meets all required setbacks.

4. The proposed design has the main building entrances on the south facing SR 2. A paved walkway will enter the site from Main street, allowing pedestrian access to the rear (north) door of the mini-lube and east side door of the restaurant, as well as to both front (south) entrances (by following a walkway around the east side of the building). The building will be flat roofed, brown masonry block, topped off at a height of 19 feet with a cornice. Suspended awnings will shelter both the north and south side entrances. Dark green trim is proposed. (Exhibit 3)

5. Vehicular circulation for the mini-lube is from north to south. A 14 foot wide driveway is proposed to enter the site from Main Street; no egress to Main Street will be allowed. More than 45 feet of queue space is available north of each of the two mini-lube bay entrances. Vehicles will exit the mini-lube to the south and immediately turn west into the existing circulation area of the car wash and market. (Exhibit 3)

6. Seven off-street parking stalls are required for the combined mini-lube/restaurant use: one for the restaurant and six for the mini-lube. [6] The proposed site plan includes three off-street parking spaces

---

[5] Three source documents contain building dimensions or scale drawings: Exhibits 1.F, 2, and 3. Very minor dimensional differences exist among the three. The differences are so small as to be negligible and immaterial. The dimensions given here do not exclude walls. Thus, they represent an area larger than the useable internal floor areas.

[6] DCD's consultant testified that only five parking spaces are required. Conservatively calculated, both the restaurant and mini-lube would normally require one off-street parking stall for every 200 SF of gross floor area. [SMC 16.60.140] The restaurant would thus require 2.4 parking spaces and the mini-lube an additional 6 spaces, for a total of 8.4 spaces. However, SMC 16.60.110 provides that the off-street parking requirements for certain uses "are reduced by 50 percent when they are proposed to be located in the UC zoning district." The City staff's position on required off-street parking for the Damianidis proposal is based on the belief that the 50% reduction applies to the entire project. (Testimony by staff consultant)

Section 16.60.110 states that the purpose of the 50% reduction is to "encourag[e] the development of activity nodes that require less of a reliance on the private automobile." It goes on to note that "front and side setbacks are not required for retail trade, personal service, and business service establishments and offices, night clubs, and health clubs." It then

(Footnote continued on next page.)

adjacent to the new building; if the lube bays are also counted (as if they were a garage), then the plan proposes five on-site parking spaces adjacent to or within the mini-lube and restaurant.

The plan retains the seven spaces located within the SR 2 right-of-way, although none of them may be counted against the required off-street spaces as they are located on-street. (Exhibits 2 and 3)

The Hoot Owl market and gas pump islands presently provide approximately 13 off-street parking spaces. (Exhibit 2) A grocery store is a sub-category of Retail Trade Establishments. [SMC 16.12.040(B)(3)(h)] Grocery stores normally require one parking stall for every 150 SF of gross floor area. The market covers approximately 3,200 SF (excluding an exterior stairwell). Thus, with the 50% reduction, it would under current code require five off-street parking spaces: 3,200 SF ÷ 150 = 10.6 x 50% = 5.3 ≈ 5 spaces. [7] Gasoline pump islands do not require off-street parking spaces. [SMC 16.60.140, Auto Service Station entry]

All required off-street parking spaces must generally "be located on the same lot or parcel of land they are intended to serve." [SMC 16.60.060] The entire Hoot Owl complex is essentially one lot for development purposes.

When all uses on the site are considered as a whole, sufficient off-street parking spaces are proposed/available.

---

provides that off-street parking for those listed uses "as well as hotels and bed and breakfast inns/guesthouses … are reduced by 50 percent when they are proposed to be located in the UC zoning district."

The 50% off-street parking reduction language is clear and unambiguous: It applies only to those uses specifically listed in SMC 16.60.110. Restaurants are a sub-category of Retail Trade Establishments. [SMC 16.12.040(B)(3)(o)] Retail Trade Establishments are one of the listed uses in SMC 16.60.110. The 50% reduction thus applies to the restaurant portion of the building.

The 50% reduction does not apply to the mini-lube for any or all of three reasons. First, a mini-lube is a Restricted Automobile Related Trade Facility, a category separate from and different from any of the categories and uses listed in SMC 16.60.110. Second, front and side yard setbacks are required for a mini-lube facility in the UC zone, thus distinguishing it from the listed uses which benefit from the reduction. Third, by definition, a mini-lube does nothing to "require less of a reliance on the private automobile": It's purpose is to service private automobiles; pedestrians do not frequent mini-lube facilities.

The Staff's application of the off-street parking reduction provisions of the SMC is inconsistent with a careful reading of the applicable provisions.

7 Fractional results "equal to or greater than one-half shall be interpreted as one off-street parking space." [SMC 16.60.140]

7. Damianidis proposes extensive landscaping around the new building. The walkway from Main Street will pass under an arbor. A patio will be located south of the restaurant. Shrubs and trees will be planted around the building and its Main Street entry. (Exhibit 3)

8. Storm water runoff will be infiltrated into on-site soils beneath the parking and circulation area. (Exhibits 1.E and 2)

9. Currently valid water and sewer service availability letters have been issued. [8] (Exhibits 6 and 7)

10. The subject property lies within the delineated flood plain of the Sultan River for the base flood (the so-called 100 year flood). The calculated base flood level across the subject property is 115 feet NGVD. (Exhibit 1.F, p. 4) Present site elevation is approximately 113 feet NGVD. (Exhibit 2) City regulations require the building to be floodproofed to elevation 116.7 feet NGVD. (Exhibit 1.F, p. 4) The proposed site plan does not reflect the required floodproofing: The plans show a 113.5 foot floor elevation. (Exhibit 2) Damianidis' agent (Cavassa) testified that the restaurant and mini-lube office portions of the building would be raised for floodproofing, but that the lube bays would not be floodproofed. (Testimony) Thus, the pits beneath the lube bays as proposed would flood during a flood having an elevation above 113.5 NGVD.

    Cavassa stated that after a flood which inundated the pits, they would be pumped out into one of the on-site catch basins. The water would pass through the drain system's oil-water separator before entering the infiltration beds. Cavassa suggested that the mini-lube would need "good housekeeping" measures during operation to minimize potential petroleum contamination and that an operations and maintenance manual should be developed for the mini-lube. (Testimony)

11. Un-floodproofed lube pits are not allowed within the designated floodplain. (Exhibit 8)

12. This proposal is subject to Design Review Board (DRB) review under Chapter 2.20 SMC. [9] The DRB reviewed the proposal at two meetings: December 15, 2005, and February 9, 2006. (Exhibits 1.K and 4 [10]) The DRB approved revised plans at the February 9, 2006, meeting. (Exhibit 4)

---

8 Exhibits 1.C and 1.D are water and sewer availability letters issued on June 16, 2006. Each contains the following statement: "Failure to submit a complete application within 45 days will result in the cancellation of this commitment letter." (Exhibits 1.C and 1.D, ¶ 2) The 45th day after June 16, 2006, was July 31, 2006. The application was filed nearly three months after that date. The utility commitments were, by their own wording, null and void before the application was ever filed. When the Examiner pointed this out to the hearing participants, DCD offered to provide new utility commitment letters. Thus, the record was left open for submittal of Exhibits 6 and 7.

9 As the Examiner has noted in prior Recommendations, the SMC contains an apparent conflict between Chapters 21.04 and 2.20 SMC. Chapter 21.04 SMC, "Conditional Use Permits," was adopted by Ordinance No. 690-98, effective August 10, 1998. Section 21.04.050(C) requires "building and site design as approved by the design review committee" for all

(Footnote continued on next page.)

13. Sultan's State Environmental Policy Act (SEPA) Responsible Official issued a threshold Determination of Nonsignificance (DNS) for Damianidis' proposal on January 19, 2007. (Exhibit 1.G) The DNS was not appealed. (Exhibit 1)

14. DCD recommends approval subject to conditions. (Exhibit 1) Damianidis has no objection to any of the recommended conditions. (Testimony)

15. The two citizens who testified during the hearing (Fallgatter and Storm) do not oppose the project *per se*. They are, however, concerned about potential petroleum pollution from flooding of the lube pits, adequacy of off-street parking, and the Main Street driveway access. (Testimony)

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

## PRINCIPLES OF LAW

Authority

CUPs require a pre-decision open record hearing following which the hearing body forwards a recommendation to the Sultan City Council (Council) for final action. [SMC 16.120.050 and 21.04.030] The Examiner is charged with the responsibility and authority to conduct the required open record hearing. [SMC 16.120.050]

---

CUP applications. Chapter 2.20 SMC, "Design Review Board and Process," was adopted by Ordinance No. 727-00, effective March 22, 2000, as a replacement for former Ordinance No. 686-98. Section 2.20.060 SMC establishes the DRB's scope of authority: "The design review board shall review all development in urban center (UC), highway-oriented development (HOD), economic development (ED) zoning districts, multifamily developments and neighborhood commercial developments in residential zones." Ordinance No. 727-00 contains a "Repealer" section: "Any and all other ordinances or parts of ordinances of the City of Sultan inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency." Since Ordinance No. 727-00 is more recent than Ordinance No. 690-98, any provisions in the latter which are inconsistent with the provisions of the former have been repealed.

Section 21.04.050(C) SMC is partly inconsistent with SMC 2.20.060: It purports to require DRB review of any CUP anywhere in the City. Section 2.20.060 SMC does not authorize DRB review of developments in residential zones with but two exceptions: multifamily and neighborhood commercial developments. The conflict does not affect this proposal located within the UC zoning district.

[10] The Staff Report cites Exhibit 1.K as the DRB's approval recommendation. (Exhibit 1, p. 5) Exhibit 1.K is the minutes of the DRB's first meeting. In fact, the DRB declined to approve the proposal at its first meeting. (Exhibit 1.K)

Review Criteria
The review criteria for CUPs are set forth at SMC 21.04.050:

A. The proposed conditional use will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity of the proposed conditional use or in the district in which the subject property is situated;

B. The proposed conditional use shall meet or exceed the performance standards that are required in the district it will occupy;

C. The proposed conditional use shall be compatible generally with the surrounding land uses in terms of traffic and pedestrian circulation, building and site design as approved by the Design Review Committee;

D. The proposed conditional use shall be consistent with the goals and policies of the Comprehensive Land Use Policy Plan;

E. All measures have been taken to minimize possible adverse impacts, which the proposed use may have on the area in which it is located.

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]

Vested Rights
The vested rights doctrine applies to CUP applications:

> Washington does adhere to the minority rule that a landowner obtains a vested right to develop land when he or she makes a timely and complete building permit application that complies with the applicable zoning and building ordinances in effect on the date of the application. Our vested rights rule also has been applied to building permits, conditional use permits, a grading permit, and a [shoreline management] substantial development permit.

[*Norco Construction v. King County*, 97 Wn.2d 680, 684, 649 P.2d 103 (1982), citations omitted] Therefore, this CUP application is vested to the regulations as they existed on December 26, 2006.

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. Only the mini-lube requires a CUP. Therefore, only the mini-lube is the subject of this permit process. The restaurant will not be addressed as it is a permitted use.

2. The proposed mini-lube meets Criterion A. There simply is no evidence that the proposal will harm the surrounding area. (The issue of Main Street access will be addressed in Conclusion 3.)

3. The proposed mini-lube meets Criterion B. Each requirement in Ordinance No. 852-04, § 2, is met by the proposed site plan. The site fronts on and has access to SR 2. The access from Main Street should not create the pedestrian/vehicular conflicts that would arise from access to Main Street: It seems more likely that vehicular danger to pedestrians would be greater when exiting a business than when entering, if only because when entering the motorist has been driving parallel to the sidewalk and can see who is on it.

A mini-lube may create some noise, but no evidence suggests that it would be such as to harm the public.

The oil wastes stored in the lube-bays could pollute surface waters during a flood, if the service area were not floodproofed. The proposal does not contemplate floodproofing of that portion of the facility. However, according to Exhibit 8, that portion of the facility must be floodproofed along with the rest of the building. If the floor of the service bay is raised to 1.6 feet above base flood level, then flood waters will never get into the lube pits during the base flood.

The proposed building design has been found by the DRB to be compatible with the desired character of the UC district.

4. The proposed mini-lube meets Criterion C. The specific standards applicable to Restricted Automobile Related Trade Facilities duplicate this criterion and render it moot for this use.

5. The proposed mini-lube meets Criterion D. The proposal will reinforce the other uses on the Hoot Owl site and reinforce the downtown's economic base.

6. The proposed mini-lube meets Criterion E. When floodproofing requirements are added to the proposal, it can fairly be said that all measures have been taken to minimize adverse impacts.

7. The mini-lube proposal meets or can be conditioned to meet all CUP criteria; the requested CUP should be approved.

8. The proposal passes the consistency test: The proposed use is allowed by applicable zoning, density is not relevant as this is a non-residential use, and adequate utility services are available.

9. The recommended conditions of approval as set forth in Exhibit 1 are reasonable, supported by the evidence, and capable of accomplishment with the following exceptions:

   A. A CUP embodies the concept of approval of a specific development proposal. A CUP evaluation is based upon the specific development plans submitted by the applicant. It is appropriate, therefore, that the conditions of approval clearly identify the plans which are being approved. The DCD recommendation as drafted does not do so. Both DCD and Damianidis agree that Exhibits 2 and 3 constitute the plans which should be approved. Reference to those exhibits will be incorporated into a new Condition 1.

   B. A condition must be added to make clear that the entire building, including the service area, must be floodproofed by raising the first floor to above base flood level.

C. Recommended Condition 2.c incorrectly states Damianidis' traffic impact mitigation fee obligation. Impact fees for traffic are "determined and paid … at the time of issuance of a building permit for the development." [SMC 16.112.020] Therefore, it is impossible and incorrect to specify a traffic impact mitigation fee amount. The condition is unnecessary.

D. The temporal element of Recommended Condition 2.d is incorrect. By being grouped under the heading "Prior to Building Permit Issuance and commencement of construction," it requires treatment of surface water runoff before any construction commences. It is fairly obvious from the language of the condition that it was intended to apply to the operation of the completed facility. The condition will be made stand-alone to correct the problem.

E. A few minor, non-substantive structure, grammar, and/or punctuation revisions to Recommended Conditions 2.a and 2.b will improve parallel construction, clarity, and flow within the conditions. Such changes will be made.

Among such changes will be replacement of the word "applicant" with "developer" wherever it appears. A CUP runs with the land. In order to avoid any potential argument that the word "applicant" refers only to the original applicant for CUP approval as opposed to also referring to subsequent successors and assigns, the Examiner prefers to use the word "developer."

10. 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** that the Council **GRANT** a Conditional Use Permit to construct a Mini-Lube **SUBJECT TO THE ATTACHED CONDITIONS.**

Recommendation issued May 4, 2007.

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

## NOTICE OF RIGHT OF RECONSIDERATION

This Recommendation, dated May 4, 2007, 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 May 14, 2007 (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 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."

# CONDITIONS OF APPROVAL
## CUP06-005
## Damianidis/Hoot Owl Mini-Lube

This Conditional Use Permit is subject to compliance with all applicable provisions, requirements, and standards of the Sultan Municipal Code, standards adopted pursuant thereto, and the following special conditions:

1. Exhibits 2 and 3 constitute the approved site plans and landscape plan for this Conditional Use Permit. Minor revisions to approved Conditional Use Permit Site Plans may be approved administratively by DCD.

2. The entire building, including the service bay area, shall have its lowest floor elevated 1.6 feet or more above the base flood elevation as required by SMC 17.08.110(B)(2).

3. The developer shall adhere to all applicable codes, standards, and regulations in effect at the time of development, including but not limited to, the Sultan Municipal Code, the Stormwater Management Manual, the Uniform Building Code, and the Uniform Fire Code, as adopted by the City. The developer is responsible for obtaining any necessary State and Federal permits/approvals required for completion of the project.

4. Prior to Building Permit Issuance and commencement of construction:

   A. The developer shall demonstrate that the proposed use for that lot conforms to all requirements of the Sultan Municipal Code and other standards and specifications that apply. Additionally, the developer shall apply to the development of this site all recommendations presented in the geotechnical engineering evaluation prepared for this proposal. (Exhibit J)

   B. Construction Plans must be approved by the City of Sultan. The plans shall include, but not be limited to, storm drainage, potable water, sanitary sewer, roads, and other utilities to comply with the requirements of the Unified Development Code.

5. All surface water runoff from impervious surfaces shall be infiltrated, conveyed to an approved detention facility, or otherwise treated to protect water quality.

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

# RECOMMENDATION

| | |
|---|---|
| FILE NUMBER: | CUP06-005 |
| APPLICANT: | Chris Damianidis |
| TYPE OF CASE: | Conditional Use Permit to construct a Mini-Lube (with small restaurant attached) on the site of the Hoot Owl Mini-Mart |
| STAFF RECOMMENDATION: | Approve subject to conditions |
| SUMMARY OF RECOMMENDATION: | GRANT subject to conditions (revised) |
| DATE OF RECOMMENDATION: | May 4, 2007 |

## INTRODUCTION

Chris Damianidis (Damianidis), 601 Stevens Avenue, Sultan, Washington 98294, seeks Conditional Use Permit (CUP) approval to construct a Mini-Lube (with small restaurant attached) on the site of the Hoot Owl Mini-Mart. Damianidis filed the Master Land Use Application on October 11, 2006. [1] (Exhibit 1.A [2]) The Sultan Department of Community Development (DCD) deemed the application complete as of December 26, 2006. (Exhibit 1)

The subject property is located at 601 – 613 Stevens Avenue (SR 2) in downtown Sultan.

The Sultan Hearing Examiner (Examiner) viewed the subject property on April 24, 2007.

The Examiner held an open record hearing on April 24, 2007. DCD and Damianidis gave notice of the hearing as required by the Sultan Municipal Code (SMC).

---

1 Although the CUP application was not officially filed until late 2006, Damianidis began planning the project several years ago. It was discussed, at least in general, conceptual terms, with the Planning Commission in 2004 and was developed sufficiently to be presented to the Design Review Board in late 2005. (Testimony)

2 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 following exhibits were entered into the hearing record during the hearing:

| | |
|---|---|
| Exhibit 1: | Departmental Staff Report with Attachments 1.A – 1.K |
| Exhibit 2: | Site Plan package (5 sheets) |
| Exhibit 3: | Landscape plans and building elevations (6 sheets) |
| Exhibit 5: | Sultan Ordinance No. 852-04 |

The Examiner held the hearing record open through close of business on May 1, 2007, for submittal of:

| | |
|---|---|
| Exhibit 4: | Design Review Board minutes of February 9, 2006 |
| Exhibit 6: | Current water availability letter dated April 24, 2007 |
| Exhibit 7: | Current sewer availability letter dated April 24, 2007 |
| Exhibit 8: | Memorandum regarding permissibility of un-floodproofed lube pits within a 100 year flood plain dated May 1, 2007 |

The record closed on May 1, 2007, with submittal of Exhibits 4 and 6 - 8.

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 CUP approval? Does the proposal meet off-street parking requirements? Does the proposal meet floodproofing requirements?

## FINDINGS OF FACT

1. The subject property is a rectangle bordered on the north by Main Street, on the south by SR 2 (a.k.a. Stevens Avenue), on the west by 6th Street, and on the east by a building containing a combination single family residence (facing Main Street) and antiques store (facing SR 2). The site is 100 feet in north-south dimension and approximately 280 feet in east-west dimension and encompasses approximately 0.64 acres. The site contains (going from west to east) the Hoot Owl market (with fuel dispensing pump islands) , a multi-bay car wash, and the Trackside Pizza & Subs restaurant (located in the far southeast corner of the site). A portion of the restaurant and all seven of its parking spaces are located within the SR 2 right-of-way. (Exhibit 2)

Damianidis proposes to demolish the restaurant building and construct a two-bay mini-lube facility, small attached restaurant (not drive-in), and three parking stalls, all on about the east 25% of the site. (Exhibits 2 and 3 and testimony)

2. The subject property is zoned Urban Center (UC). (Exhibit 1, p. 5) "Retail food establishments (all types except drive-in restaurants)" are a permitted use in the UC zone. [SMC 16.12.040(B)(3)(o)] The restaurant portion of Damianidis' proposal is thus a permitted use; a CUP is not required.

The City Council enacted Ordinance No. 852-04 in part to add "Restricted Automobile Related Trade Facilities" as a conditional use in the UC zone. (Exhibit 5 [3]) The term "Restricted Automobile Related Trade Facilities" includes "Lube and Oil Service Facilities." (Exhibit 5, § 2) The mini-lube portion of Damianidis' proposal is thus a Conditional Use; a CUP is required.

Three special performance standards are included in Ordinance No. 852-04 for Restricted Automobile Related Trade Facilities:

A. Properties shall have frontage and direct vehicular access to State Highway No. 2. Access to Main Street may be permitted if the applicant mitigates potential vehicular and pedestrian conflicts.
B. The use does not inflict upon the surrounding permitted land uses in the district smoke/odors (1), glare/heat (2), noise (3), vibration (4), or liquid and solid wastes (5), and water pollution detrimental to the health, welfare, or safety of the public occupying or visiting such areas.
C. The design of buildings and related improvements shall employ design standards to support and maintain the commercial character and intent of the area.

(Exhibit 5, § 2) Section 3 of Ordinance No. 852-04 concurrently amended the Table of Dimensional and Density Requirements contained in SMC 16.12.040 to provide as follows for Lube and Oil Service uses: No density limit; 5,000 square foot minimum lot area; 50 foot minimum lot width [4]; 100 foot minimum lot depth; 25 foot minimum front setback; 20 foot total side setback; 25 foot rear setback; 30 foot maximum building height; and 25% maximum lot coverage. (Exhibit 5, § 3)

---

3 Ordinance No. 852-04 was passed September 22, 2004, published November 26, 2004, and became effective on or about December 1, 2004. (Exhibit 5) Through an administrative oversight, Ordinance No. 852-04 was not provided to the City's code codifier/publisher. (Testimony) Therefore, currently published copies of the SMC do not reflect the content of Ordinance No. 852-04.

4 The Ordinance actually says minimum lot width is "05". Given that the Ordinance states the minimum lot width for auto parts sales as "30" and the minimum lot width for automobile service facilities as "50," the Examiner concludes that the "05" figure is a scrivener's error.

3. The proposed building will cover approximately 1,704 square feet (SF) of the site. [5] The restaurant will occupy an approximate 15' x 32' area (480 SF including a shared use rest room) at the east end of the building. The mini-lube will include an approximate 11' x 32' (352 SF) office and storage area abutting the restaurant, together with an approximate 30' x 28' (840 SF) two-bay lube area with underground lube pits, for a total of approximately 1,192 SF. (Exhibits 2 and 3)

   The building will be 25 feet north of the south property line, five feet west of the east property line, not less than 43 feet south of the north property line, and more than 200 feet east of the west property line. (Exhibit 2) The building meets all required setbacks.

4. The proposed design has the main building entrances on the south facing SR 2. A paved walkway will enter the site from Main street, allowing pedestrian access to the rear (north) door of the mini-lube and east side door of the restaurant, as well as to both front (south) entrances (by following a walkway around the east side of the building). The building will be flat roofed, brown masonry block, topped off at a height of 19 feet with a cornice. Suspended awnings will shelter both the north and south side entrances. Dark green trim is proposed. (Exhibit 3)

5. Vehicular circulation for the mini-lube is from north to south. A 14 foot wide driveway is proposed to enter the site from Main Street; no egress to Main Street will be allowed. More than 45 feet of queue space is available north of each of the two mini-lube bay entrances. Vehicles will exit the mini-lube to the south and immediately turn west into the existing circulation area of the car wash and market. (Exhibit 3)

6. Seven off-street parking stalls are required for the combined mini-lube/restaurant use: one for the restaurant and six for the mini-lube. [6] The proposed site plan includes three off-street parking spaces

---

[5] Three source documents contain building dimensions or scale drawings: Exhibits 1.F, 2, and 3. Very minor dimensional differences exist among the three. The differences are so small as to be negligible and immaterial. The dimensions given here do not exclude walls. Thus, they represent an area larger than the useable internal floor areas.

[6] DCD's consultant testified that only five parking spaces are required. Conservatively calculated, both the restaurant and mini-lube would normally require one off-street parking stall for every 200 SF of gross floor area. [SMC 16.60.140] The restaurant would thus require 2.4 parking spaces and the mini-lube an additional 6 spaces, for a total of 8.4 spaces. However, SMC 16.60.110 provides that the off-street parking requirements for certain uses "are reduced by 50 percent when they are proposed to be located in the UC zoning district." The City staff's position on required off-street parking for the Damianidis proposal is based on the belief that the 50% reduction applies to the entire project. (Testimony by staff consultant)

Section 16.60.110 states that the purpose of the 50% reduction is to "encourag[e] the development of activity nodes that require less of a reliance on the private automobile." It goes on to note that "front and side setbacks are not required for retail trade, personal service, and business service establishments and offices, night clubs, and health clubs." It then

(Footnote continued on next page.)

adjacent to the new building; if the lube bays are also counted (as if they were a garage), then the plan proposes five on-site parking spaces adjacent to or within the mini-lube and restaurant.

The plan retains the seven spaces located within the SR 2 right-of-way, although none of them may be counted against the required off-street spaces as they are located on-street. (Exhibits 2 and 3)

The Hoot Owl market and gas pump islands presently provide approximately 13 off-street parking spaces. (Exhibit 2) A grocery store is a sub-category of Retail Trade Establishments. [SMC 16.12.040(B)(3)(h)] Grocery stores normally require one parking stall for every 150 SF of gross floor area. The market covers approximately 3,200 SF (excluding an exterior stairwell). Thus, with the 50% reduction, it would under current code require five off-street parking spaces: 3,200 SF ÷ 150 = 10.6 x 50% = 5.3 ≈ 5 spaces. [7] Gasoline pump islands do not require off-street parking spaces. [SMC 16.60.140, Auto Service Station entry]

All required off-street parking spaces must generally "be located on the same lot or parcel of land they are intended to serve." [SMC 16.60.060] The entire Hoot Owl complex is essentially one lot for development purposes.

When all uses on the site are considered as a whole, sufficient off-street parking spaces are proposed/available.

---

provides that off-street parking for those listed uses "as well as hotels and bed and breakfast inns/guesthouses … are reduced by 50 percent when they are proposed to be located in the UC zoning district."

The 50% off-street parking reduction language is clear and unambiguous: It applies only to those uses specifically listed in SMC 16.60.110. Restaurants are a sub-category of Retail Trade Establishments. [SMC 16.12.040(B)(3)(o)] Retail Trade Establishments are one of the listed uses in SMC 16.60.110. The 50% reduction thus applies to the restaurant portion of the building.

The 50% reduction does not apply to the mini-lube for any or all of three reasons. First, a mini-lube is a Restricted Automobile Related Trade Facility, a category separate from and different from any of the categories and uses listed in SMC 16.60.110. Second, front and side yard setbacks are required for a mini-lube facility in the UC zone, thus distinguishing it from the listed uses which benefit from the reduction. Third, by definition, a mini-lube does nothing to "require less of a reliance on the private automobile": It's purpose is to service private automobiles; pedestrians do not frequent mini-lube facilities.

The Staff's application of the off-street parking reduction provisions of the SMC is inconsistent with a careful reading of the applicable provisions.

[7] Fractional results "equal to or greater than one-half shall be interpreted as one off-street parking space." [SMC 16.60.140]

7. Damianidis proposes extensive landscaping around the new building. The walkway from Main Street will pass under an arbor. A patio will be located south of the restaurant. Shrubs and trees will be planted around the building and its Main Street entry. (Exhibit 3)

8. Storm water runoff will be infiltrated into on-site soils beneath the parking and circulation area. (Exhibits 1.E and 2)

9. Currently valid water and sewer service availability letters have been issued. [8] (Exhibits 6 and 7)

10. The subject property lies within the delineated flood plain of the Sultan River for the base flood (the so-called 100 year flood). The calculated base flood level across the subject property is 115 feet NGVD. (Exhibit 1.F, p. 4) Present site elevation is approximately 113 feet NGVD. (Exhibit 2) City regulations require the building to be floodproofed to elevation 116.7 feet NGVD. (Exhibit 1.F, p. 4) The proposed site plan does not reflect the required floodproofing: The plans show a 113.5 foot floor elevation. (Exhibit 2) Damianidis' agent (Cavassa) testified that the restaurant and mini-lube office portions of the building would be raised for floodproofing, but that the lube bays would not be floodproofed. (Testimony) Thus, the pits beneath the lube bays as proposed would flood during a flood having an elevation above 113.5 NGVD.

    Cavassa stated that after a flood which inundated the pits, they would be pumped out into one of the on-site catch basins. The water would pass through the drain system's oil-water separator before entering the infiltration beds. Cavassa suggested that the mini-lube would need "good housekeeping" measures during operation to minimize potential petroleum contamination and that an operations and maintenance manual should be developed for the mini-lube. (Testimony)

11. Un-floodproofed lube pits are not allowed within the designated floodplain. (Exhibit 8)

12. This proposal is subject to Design Review Board (DRB) review under Chapter 2.20 SMC. [9] The DRB reviewed the proposal at two meetings: December 15, 2005, and February 9, 2006. (Exhibits 1.K and 4 [10]) The DRB approved revised plans at the February 9, 2006, meeting. (Exhibit 4)

---

[8] Exhibits 1.C and 1.D are water and sewer availability letters issued on June 16, 2006. Each contains the following statement: "Failure to submit a complete application within 45 days will result in the cancellation of this commitment letter." (Exhibits 1.C and 1.D, ¶ 2) The 45th day after June 16, 2006, was July 31, 2006. The application was filed nearly three months after that date. The utility commitments were, by their own wording, null and void before the application was ever filed. When the Examiner pointed this out to the hearing participants, DCD offered to provide new utility commitment letters. Thus, the record was left open for submittal of Exhibits 6 and 7.

[9] As the Examiner has noted in prior Recommendations, the SMC contains an apparent conflict between Chapters 21.04 and 2.20 SMC. Chapter 21.04 SMC, "Conditional Use Permits," was adopted by Ordinance No. 690-98, effective August 10, 1998. Section 21.04.050(C) requires "building and site design as approved by the design review committee" for all

(Footnote continued on next page.)

13. Sultan's State Environmental Policy Act (SEPA) Responsible Official issued a threshold Determination of Nonsignificance (DNS) for Damianidis' proposal on January 19, 2007. (Exhibit 1.G) The DNS was not appealed. (Exhibit 1)

14. DCD recommends approval subject to conditions. (Exhibit 1) Damianidis has no objection to any of the recommended conditions. (Testimony)

15. The two citizens who testified during the hearing (Fallgatter and Storm) do not oppose the project *per se*. They are, however, concerned about potential petroleum pollution from flooding of the lube pits, adequacy of off-street parking, and the Main Street driveway access. (Testimony)

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

## PRINCIPLES OF LAW

Authority

CUPs require a pre-decision open record hearing following which the hearing body forwards a recommendation to the Sultan City Council (Council) for final action. [SMC 16.120.050 and 21.04.030] The Examiner is charged with the responsibility and authority to conduct the required open record hearing. [SMC 16.120.050]

---

CUP applications. Chapter 2.20 SMC, "Design Review Board and Process," was adopted by Ordinance No. 727-00, effective March 22, 2000, as a replacement for former Ordinance No. 686-98. Section 2.20.060 SMC establishes the DRB's scope of authority: "The design review board shall review all development in urban center (UC), highway-oriented development (HOD), economic development (ED) zoning districts, multifamily developments and neighborhood commercial developments in residential zones." Ordinance No. 727-00 contains a "Repealer" section: "Any and all other ordinances or parts of ordinances of the City of Sultan inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency." Since Ordinance No. 727-00 is more recent than Ordinance No. 690-98, any provisions in the latter which are inconsistent with the provisions of the former have been repealed.

Section 21.04.050(C) SMC is partly inconsistent with SMC 2.20.060: It purports to require DRB review of any CUP anywhere in the City. Section 2.20.060 SMC does not authorize DRB review of developments in residential zones with but two exceptions: multifamily and neighborhood commercial developments. The conflict does not affect this proposal located within the UC zoning district.

10 The Staff Report cites Exhibit 1.K as the DRB's approval recommendation. (Exhibit 1, p. 5) Exhibit 1.K is the minutes of the DRB's first meeting. In fact, the DRB declined to approve the proposal at its first meeting. (Exhibit 1.K)

Review Criteria
The review criteria for CUPs are set forth at SMC 21.04.050:

A. The proposed conditional use will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity of the proposed conditional use or in the district in which the subject property is situated;

B. The proposed conditional use shall meet or exceed the performance standards that are required in the district it will occupy;

C. The proposed conditional use shall be compatible generally with the surrounding land uses in terms of traffic and pedestrian circulation, building and site design as approved by the Design Review Committee;

D. The proposed conditional use shall be consistent with the goals and policies of the Comprehensive Land Use Policy Plan;

E. All measures have been taken to minimize possible adverse impacts, which the proposed use may have on the area in which it is located.

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]

Vested Rights
The vested rights doctrine applies to CUP applications:

> Washington does adhere to the minority rule that a landowner obtains a vested right to develop land when he or she makes a timely and complete building permit application that complies with the applicable zoning and building ordinances in effect on the date of the application. Our vested rights rule also has been applied to building permits, conditional use permits, a grading permit, and a [shoreline management] substantial development permit.

[*Norco Construction v. King County*, 97 Wn.2d 680, 684, 649 P.2d 103 (1982), citations omitted] Therefore, this CUP application is vested to the regulations as they existed on December 26, 2006.

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. Only the mini-lube requires a CUP. Therefore, only the mini-lube is the subject of this permit process. The restaurant will not be addressed as it is a permitted use.

2. The proposed mini-lube meets Criterion A. There simply is no evidence that the proposal will harm the surrounding area. (The issue of Main Street access will be addressed in Conclusion 3.)

3. The proposed mini-lube meets Criterion B. Each requirement in Ordinance No. 852-04, § 2, is met by the proposed site plan. The site fronts on and has access to SR 2. The access from Main Street should not create the pedestrian/vehicular conflicts that would arise from access to Main Street: It seems more likely that vehicular danger to pedestrians would be greater when exiting a business than when entering, if only because when entering the motorist has been driving parallel to the sidewalk and can see who is on it.

A mini-lube may create some noise, but no evidence suggests that it would be such as to harm the public.

The oil wastes stored in the lube-bays could pollute surface waters during a flood, if the service area were not floodproofed. The proposal does not contemplate floodproofing of that portion of the facility. However, according to Exhibit 8, that portion of the facility must be floodproofed along with the rest of the building. If the floor of the service bay is raised to 1.6 feet above base flood level, then flood waters will never get into the lube pits during the base flood.

The proposed building design has been found by the DRB to be compatible with the desired character of the UC district.

4. The proposed mini-lube meets Criterion C. The specific standards applicable to Restricted Automobile Related Trade Facilities duplicate this criterion and render it moot for this use.

5. The proposed mini-lube meets Criterion D. The proposal will reinforce the other uses on the Hoot Owl site and reinforce the downtown's economic base.

6. The proposed mini-lube meets Criterion E. When floodproofing requirements are added to the proposal, it can fairly be said that all measures have been taken to minimize adverse impacts.

7. The mini-lube proposal meets or can be conditioned to meet all CUP criteria; the requested CUP should be approved.

8. The proposal passes the consistency test: The proposed use is allowed by applicable zoning, density is not relevant as this is a non-residential use, and adequate utility services are available.

9. The recommended conditions of approval as set forth in Exhibit 1 are reasonable, supported by the evidence, and capable of accomplishment with the following exceptions:

   A. A CUP embodies the concept of approval of a specific development proposal. A CUP evaluation is based upon the specific development plans submitted by the applicant. It is appropriate, therefore, that the conditions of approval clearly identify the plans which are being approved. The DCD recommendation as drafted does not do so. Both DCD and Damianidis agree that Exhibits 2 and 3 constitute the plans which should be approved. Reference to those exhibits will be incorporated into a new Condition 1.

   B. A condition must be added to make clear that the entire building, including the service area, must be floodproofed by raising the first floor to above base flood level.

C. Recommended Condition 2.c incorrectly states Damianidis' traffic impact mitigation fee obligation. Impact fees for traffic are "determined and paid … at the time of issuance of a building permit for the development." [SMC 16.112.020] Therefore, it is impossible and incorrect to specify a traffic impact mitigation fee amount. The condition is unnecessary.

D. The temporal element of Recommended Condition 2.d is incorrect. By being grouped under the heading "Prior to Building Permit Issuance and commencement of construction," it requires treatment of surface water runoff before any construction commences. It is fairly obvious from the language of the condition that it was intended to apply to the operation of the completed facility. The condition will be made stand-alone to correct the problem.

E. A few minor, non-substantive structure, grammar, and/or punctuation revisions to Recommended Conditions 2.a and 2.b will improve parallel construction, clarity, and flow within the conditions. Such changes will be made.

Among such changes will be replacement of the word "applicant" with "developer" wherever it appears. A CUP runs with the land. In order to avoid any potential argument that the word "applicant" refers only to the original applicant for CUP approval as opposed to also referring to subsequent successors and assigns, the Examiner prefers to use the word "developer."

10. 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** that the Council **GRANT** a Conditional Use Permit to construct a Mini-Lube **SUBJECT TO THE ATTACHED CONDITIONS.**

Recommendation issued May 4, 2007.

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

## NOTICE OF RIGHT OF RECONSIDERATION

This Recommendation, dated May 4, 2007, 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 May 14, 2007 (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 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."

# CONDITIONS OF APPROVAL
CUP06-005
**Damianidis/Hoot Owl Mini-Lube**

This Conditional Use Permit is subject to compliance with all applicable provisions, requirements, and standards of the Sultan Municipal Code, standards adopted pursuant thereto, and the following special conditions:

1. Exhibits 2 and 3 constitute the approved site plans and landscape plan for this Conditional Use Permit. Minor revisions to approved Conditional Use Permit Site Plans may be approved administratively by DCD.

2. The entire building, including the service bay area, shall have its lowest floor elevated 1.6 feet or more above the base flood elevation as required by SMC 17.08.110(B)(2).

3. The developer shall adhere to all applicable codes, standards, and regulations in effect at the time of development, including but not limited to, the Sultan Municipal Code, the Stormwater Management Manual, the Uniform Building Code, and the Uniform Fire Code, as adopted by the City. The developer is responsible for obtaining any necessary State and Federal permits/approvals required for completion of the project.

4. Prior to Building Permit Issuance and commencement of construction:

   A. The developer shall demonstrate that the proposed use for that lot conforms to all requirements of the Sultan Municipal Code and other standards and specifications that apply. Additionally, the developer shall apply to the development of this site all recommendations presented in the geotechnical engineering evaluation prepared for this proposal. (Exhibit J)

   B. Construction Plans must be approved by the City of Sultan. The plans shall include, but not be limited to, storm drainage, potable water, sanitary sewer, roads, and other utilities to comply with the requirements of the Unified Development Code.

5. All surface water runoff from impervious surfaces shall be infiltrated, conveyed to an approved detention facility, or otherwise treated to protect water quality.

# City of Sultan

## STAFF REPORT AND RECOMMENDATION

## TO THE HEARING EXAMINER

**March 13, 2007**

**Approval of an Application for a Conditional Use Permit**
**613 West Stevens Avenue (SR-2) Sultan, WA**
**File Number No. CUP06-005**


| Section | | Page |
|---|---|---|
| I. | APPLICATION INFORMATION AND PROCESS | 1 |
| II. | CONDITIONAL USE PERMIT CRITERIA | 3 |
| III. | DESIGN REVIEW REQUIREMENTS | 5 |
| IV. | LAND USE & ZONING | 5 |
| V. | WATER, SEWER AND STORMWATER MANAGEMENT | 5 |
| VI. | TRAFFIC AND CIRCULATION | 6 |
| VII. | CRITICAL AREAS | 6 |
| VIII. | OTHER ISSUES | 6 |
| IX. | SEPA | 6 |
| X. | PUBLIC NOTICE | 6 |
| XI. | CONCLUSION | 7 |
| XII. | STAFF RECOMMENDATION | 7 |
| XIII. | LIST OF EXHIBITS | 9 |


## I. APPLICATION INFORMATION AND PROCESS

A. Request: The applicant requests approval of Conditional Use Permit (CUP) 06-005 for the development of two-bay Express-Lube service together with a restaurant. The subject property is located on .64 acres on the Hoot Owl premises located at 613 West Stevens Avenue. The address is 613 Stevens Avenue, Sultan WA.

B. Owner/Applicant:

Owner:
John Damianidis
123 East Main Street
Monroe, WA 98272

Applicant:
Chris Damianidis
Hoot Owl Mini Mart
601 Stevens Avenue
Sultan, WA 98294

C. Contact:

Cavassa & Associates, Inc.
321 N. Lewis Street / P.O. Box 298
Monroe, WA 98272

D. Engineer/Surveyor:

Engineer
Cavassa & Associates, Inc.
321 N. Lewis St. / P.O. Box 298
Monroe, WA 98272

Surveyor
Harmsen & Associates, Inc.
16778 – 146th St. SE, Suite 104
Monroe, WA 98272

E. Wetland Biologists: N/A

F. City Planners:

Rick Cisar
City Administrator/Planner
319 Main Street, Suite 200
PO Box 1199
Sultan, WA 98294

Jason Moore
Consultant to City of Sultan
319 Main Street, Suite 200
PO Box 1199
Sultan, WA 98294

1. Parcel Numbers: 005862-006-001-01, 005862-006-001-02, 005862-006-003-00, 005862-006-005-00, 005862-006-006-00

G. Application History: The Master Land Use Application for a conditional use permit was received on October 11, 2006 (see **Exhibit A**). City staff declared the application complete on December 26, 2006.

H. Procedures for Conditional Use Permit Approval: Per SMC 21.04.030 "...The Hearing Examiner will review applications for conditional use permits and the recommendations will be passed to the city council for final action. The Hearing Examiner may recommend to the city council denial, approval, or approval with conditions. Conditional use applicants must adhere to all applicable public notification requirements. Denial of conditional use permit applications is not appealable. All conditional use permits are subject to design review procedures...."

I. Location: The subject property is located on .64 acres on the Hoot Owl premises located at 613 West Stevens Avenue. The address is 613 Stevens Avenue, Sultan WA.

J. Existing Site and Surrounding Land Uses: The site measures approximately 100 feet by 280 feet. The parcel is mostly flat, and contains slopes less than 2 percent. State Route 2 borders the site to the south. A single-family home and antique store borders the site to the east. 6th Street borders the property to the west and Main Street borders the property to the north. The site is currently developed. An existing market and carwash exist on the west ¾ of the property. A restaurant currently exists in the area of this proposed development. This restaurant will be demolished. There is an area in the north corner of the proposed building area that is currently grass covered.

K. 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 #311 |

L. Related Permits and Reviews: Development of the site will require driveway improvements, utility, right-of-way, and building permits. Design review required for application approval per SMC 2.20.060 & SMC 21.04.030. The Design Review board has met with the applicant and his consultants on December 15, 2005 and again on February 9, 2006. The Design Review Board approved the project at the February 9, 2006 meeting.

## II. CONDITIONAL USE PERMIT CRITERIA

**21.04.050 Criteria (for approval of a conditional use permit)**

The following criteria shall apply in granting a conditional use permit:

A. The proposed conditional use will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity of the proposed conditional use or in the district in which the subject property is situated;

B. The proposed conditional use shall meet or exceed the performance standards that are required in the district it will occupy;

C. The proposed conditional use shall be compatible generally with the surrounding land uses in terms of traffic and pedestrian circulation, building and site design as approved by the design review committee;

D. The proposed conditional use shall be consistent with the goals and policies of the comprehensive land use policy plan;

E. All measures have been taken to minimize the possible adverse impacts, which the proposed use may have on the area in which it is located. (Ord. 690-98)

**Applicant's response to the required criteria:**

A. As shown on the applicant's landscape site plan, tree and shrub plantings are proposed on the north, east and south property lines, and also around the new proposed buildings, providing a buffer for neighboring properties. There will be one new driveway constructed to the north of the proposed Mini-Lube building and restaurant. With the "downsizing" of the existing restaurant by 1,000 SF and the addition of the calculation of trips for the proposed new Mini-Lube facility, the traffic report states that the two new buildings will only add one additional PM peak-hour trip to the existing condition so no level of service analysis is required. (see **Exhibit B**).

B. The applicant has shown that this project complies with applicable design performance standards of the Urban Center zone. The proposal is consistent with the following goals of the Comprehensive Plan:

**2.4 Land Use:**

Manage growth potentials: The project is proposed on land that is already utilized by a convenience store, gas station and car wash.

Create an effective land use management process: the proposed project is compatible with the surrounding properties.

**2.5 Economics:**

Develop a sound fiscal base: These new commercial businesses will offer employment opportunities to Sultan residents and will add to the City's tax base.

Increase local economic opportunities: Both businesses are small and the owner does reside within the city.

C. The proposed project is sited in an area of existing commercial services and is an extension to an already existing commercial use. One new access is proposed. A new 5' sidewalk is proposed to the south of the project site as well as a new pedestrian arbor entry located to the north of the site with a lighted walking path to the proposed businesses. The buildings have been approved by the Design Review Board (see **Exhibit K**).

D. As addressed in item B above, the proposal is consistent with the standards of the Urban Center zone and the goals and policies of the Comprehensive Plan.

E. As discussed in items A, B, C and D of this section, the applicant has attempted to minimize the potential impacts of this proposal on the surrounding environment and properties.

**Staff Comments**

A. The proposed development of two structures, landscape plan, and minor projected traffic impacts do not appear to "be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity" of the site. Per the Gibson Traffic memorandum, it is required that the applicant pays the City $1,837 per new PM peak-hour trip in traffic impact fees (see **Exhibit B**). Staff determines that the proposed development meets the requirements of this section.

B. The applicant has submitted a civil site plan by Cavassa & Associates, Inc. and a landscape plan by Kovach Architects. Staff has determined that the civil site plan meets the applicable requirements of SMC 16.12.040, 16.56, 21.04 and Ordinance 852-04. It has also been determined that the landscape plan submitted meets the applicable requirements of SMC 16.104. Setbacks and lot dimensions satisfy the standards set for the Urban Center zone.

C. As the site is located between existing commercial uses and single-family development, the impacts of the proposed development appear to be minor. Staff considers the proposed land use to be compatible with surrounding uses. The compatibility of buildings and site design shall be ultimately determined by the design review board, which met with the applicant and his consultants on December 15, 2005 and again on February 9, 2006. The Design Review Board approved the project at the February 9, 2006 meeting. Staff determines that the proposed development meets the requirements of this section.

D. The applicant's proposal meets applicable design standards and reflects the Comprehensive Plan goals that pertain to the proposed development. The comprehensive plan designation for this site is Urban Center. Staff determines that the applicant's proposed Conditional Use is acceptable as it is allowed by the zoning designation established by the Sultan Municipal Code. Staff determines that the proposed development meets the requirements of this section.

E. With consideration given to items A, B, C, and D above, staff believes that the applicant has taken appropriate measures to minimize adverse impacts to the area in which the site is located. Staff determines that the proposed development meets the requirements of this section.

## III. DESIGN REVIEW REQUIREMENTS

The design review board shall review this project based on the following: SMC 21.04.030 states "All conditional use permits are subject to design review procedures." Additionally, SMC 2.20.060 states "The design review board shall review all development in urban center (UC), highway-oriented development (HOD), economic development (ED) zoning districts, multifamily developments and neighborhood commercial developments in residential zones." The Design Review Board met with the applicant and his consultants on December 15, 2005 and again on February 9, 2006. The Design Review Board approved the project at the February 9, 2006 meeting. (see **Exhibit K**).

## IV. LAND USE & ZONING

A. Zoning: The site is zoned Urban Center. Per Ordinance 852-04 the proposed use is allowed as a conditional use.

B. Comprehensive Plan Designation: Urban Center.

C. Dimensional Requirements: The proposed development does appear to meet all requirements set forth in SMC 16.12.040 and Ordinance 852-04. Specifically, the site design meets all of the restrictions, development and performance standards as required by SMC 16.12.040(D). All other requirements of the aforementioned chapter are also met by the applicant's proposal.

D. Off-Street Parking Requirements: Per the requirements of SMC 16.60.140, the minimum number of required off-street parking spaces for retail commercial establishments; drive-in or fast food restaurant is 1 space per 400 square feet of gross floor area and Auto repair/maintenance/Tire replacement is 1 space per 200 feet of gross floor area. The applicant proposes to construct 3 new parking stalls including 1 handicapped space for the Mini-Lube Facility. Because the restaurant is a remodel, there are already seven existing parking spaces that will remain for a total of ten off-street spaces to be provided onsite (8 off-street spaces required by code).

E. Recreation and Open Space: The applicant is not required to pay any impact fees for impacts to parks. SMC 16.72.020 pertains to housing developments only. No open space or recreational facilities are required for this proposal.

F. Landscaping: The landscape plan submitted by the applicant proposes a landscape design that exceeds the minimum requirements of SMC 16.104. Applicable location requirements set by SMC 16.104 Article IV are also met by the proposals.

## V. WATER, SEWER AND STORMWATER MANAGEMENT

A. Water Availability: City of Sultan Public Works staff has determined that the public water system "is capable of and will supply water to" the subject parcel (see **Exhibit C**). Improvements to the existing water system, to be performed by the developer or owner of the property, may be necessary to provide water service to the site.

B. Sanitary Sewer Availability: City of Sultan Public Works staff has determined that the public sewer system "is capable of and will supply sewer service to" the subject parcel (see **Exhibit D**). Improvements to the existing sewer system, to be performed by the developer or owner of the property, may be necessary to provide sewer service to the site.

C. Storm water Management: The applicant has submitted a preliminary storm drainage analysis and design that proposes to manage on-site storm water runoff to be infiltrated in an underground infiltration bed located beneath the proposed parking areas. Prior to the issuance of a building permit, City engineering staff will review the storm drainage plan (see **Exhibit E**).

## VI. TRAFFIC AND CIRCULATION

The applicant proposes to use the existing access off of Main St. Traffic impact fees to offset impacts generated by the development are required to be paid by the applicant prior to building permit issuance as a condition of approval. Refer to the preliminary traffic report prepared for this proposal (see **Exhibit B**).

## VII. CRITICAL AREAS

There are no critical areas located on or adjacent to the project site.

## VIII. OTHER ISSUES

A. School Impacts: Commercial projects are exempt from school impact fees per SMC 16.116.140

B. Park & Recreation Impacts: Commercial projects are exempt from parks and recreation impact fees per SMC 16.112.020.

## IX. SEPA

The applicant submitted a SEPA checklist for this project on October 11, 2006 (see **Exhibit F**). Following a review of the checklist and additional information on file with the City of Sultan, staff issued a threshold determination (Determination of Nonsignificance) on January 19, 2007, in accordance with WAC 197-11-340 (see **Exhibit G**). The comment period expired on February 2, 2007. No comments were received. The appeal period expired on February 16, 2007. No appeals were received.

## X. PUBLIC NOTICE

A. As required by SMC 21.04.030, the applicant has fulfilled all applicable public notification requirements to date. Notice of Public Hearing has not been mailed at the time of this staff report, but is to be mailed per SMC requirements. Notice of application was mailed and posted as follows:

Mailed Notice: The applicant provided an *Affidavit of Mailing* to the City of Sultan for both the Notice of Application and Notice of SEPA Determination. It is indicated in the affidavit that Notices of Application and Notices of SEPA Determination were mailed to property

owners within 500-feet of the proposed project site on January 22, 2007. Refer to (see **Exhibit H**).

Posted Notice: An *Affidavit of Installation of Markers & Posting of Public Information Sign(s)* was submitted by the applicant, stating that two "Proposed Land Use Action" signs and two "Notice of Applications" signs were posted on January 22, 2007 as required by SMC 21.04.030 (see **Exhibit I**).

## XI. CONCLUSION

Staff concludes that this conditional use permit meets the criteria for approval with conditions (see section XII below) in accordance with SMC 21.04.50.

A. The proposed development of two structures, landscape plan, civil site plan and minor projected traffic impacts do not appear to "be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity" of the site. Staff determines that the proposed development meets the requirements of this section.

B. Staff has determined that the applicant has submitted a landscape plan by Kovach Architects. Staff determined that this landscape plan meets the applicable requirements of SMC 16.104. Staff determined that the landscape plantings as shown on the submitted landscape plan would not be detrimental to the adjacent single-family residence or existing commercial businesses in the immediate vicinity. Setbacks and lot dimensions satisfy the standards set for the Urban Center zone.

C. Staff determined that the impacts of the proposed development on surrounding land uses are not significant. Staff considers the proposed land use to be compatible with surrounding uses. The compatibility of buildings and site design shall be ultimately determined by the design review board, who met with the client and his consultants on December 15, 2005 and again on February 9, 2006. The Design Review Board approved the project at the February 9, 2006 meeting. Staff determines that the proposed development meets the requirements of this section.

D. The applicant's proposal reflects the Comprehensive Plan goals that pertain to the proposed development. Staff determines that the applicant's proposal meets the applicable standards set by the Sultan Municipal Code. The proposed development will serve the public use and interest by developing land consistent with the goals and policies of the Comprehensive Plan.

E. Staff believes that the applicant has taken appropriate measures to minimize adverse impacts to the area in which the site is located. Staff determines that the proposed development meets the requirements of this section.

## XII. STAFF RECOMMENDATION

Staff recommends that the Hearing Examiner recommend to the City Council **APPROVAL WITH CONDITIONS** this Conditional Use Permit with conditions listed below:

This conditional use is subject to compliance with all applicable provisions, requirements, and standards of the Sultan Municipal Code, standards adopted pursuant thereto, and the following special conditions:

1. The Applicant/Developer shall adhere to all applicable codes, standards, and regulations in effect at the time of development, including but not limited to, the Sultan Municipal Code, the Stormwater Management Manual, the Uniform Building Code, and the

Uniform Fire Code, as adopted by the City. The applicant is responsible for obtaining any necessary State and Federal permits/approvals required for completion of the project.

2. Prior to Building Permit Issuance and commencement of construction:

   a. The applicant shall demonstrate that the proposed use for that lot conforms to all requirements of the Sultan Municipal Code and other standards and specifications that apply. Additionally, the applicant shall apply to the development of this site all recommendations presented in the geotechnical engineering evaluation prepared for this proposal (see **Exhibit J**).

   b. Construction Plans must be approved by the City of Sultan. The plans shall include, but not be limited to storm drainage, potable water, sanitary sewer, roads and other utilities to comply with the requirements of the Unified Development Code.

   c. Traffic Mitigation fees in the amount of $1,837 shall be paid prior to the issuance of any building permits as required in SMC 16.112 (see **Exhibit B**).

   d. All surface water runoff from impervious surfaces shall be infiltrated, conveyed to an approved detention facility, or otherwise treated to protect water quality.

March 13, 2007

Jason Moore, Contract Planner
City of Sultan

## XIII. LIST OF EXHIBITS

A. *Master Land Use Application.* Prepared by Cavassa & Associates, Inc., Sept. 28, 2006
B. *Preliminary Traffic Memorandum.* Prepared by Gibson Traffic Consultants, August 10, 2006
C. *Water Availability for 6th and Main.* Prepared by City of Sultan, June 16, 2004
D. *Sewer Availability for 6th and Main.* Prepared by City of Sultan, June 16, 2006
E. *Full Drainage Report.* Prepared by Cavassa & Associates, Inc., October 5, 2006
F. *SEPA Checklist.* Submitted by Paul Cavassa, October 10, 2006
G. *Environmental DNS.* Issued by City of Sultan, January 19, 2007
H. *Affidavit of Mailing.* Prepared by The City of Sultan, January 22, 2007
I. *Affidavit of Installation of Markers and Posting of Public Information Sign(s).* Prepared by Chris Damianidis, January 22, 2007
J. *Geotechnical Engineering Evaluation.* Prepared by Cavassa & Associates, Inc., No Date Listed on Report
K. *Design Review Board Recommendation,* February 9, 2006

# CITY OF SULTAN
**Sultan, Washington**

## RESOLUTION NO. 07-11

## A RESOLUTION OF THE CITY OF SULTAN APPROVING THE CHRIS DAMIANIDIS CONDITIONAL USE PERMIT TO CONSTRUCT MINI-LUBE CITY OF SULTAN FILE NUMBER NO. CUP06-005

**WHEREAS,** Chris Damianidis submitted an Application to the City of Sultan on October 11,2006 for Approval of a Condition Use Permit (CUP) to construct a mini-lube with small restaurant attached; and

**WHEREAS,** the City Planner issued a letter of complete Application to Paul Cavassa, project engineer, on December 29, 2006; and

**WHEREAS,** the Responsible Official for the City issued a Determination of Non-Significance (DNS) for the proposal on January 19, 2007 and no appeals to that Threshold Determination were received by the City; and

**WHEREAS**, The Planning Staff, on March 13, 2007 issued a Staff Report and recommendation of approval with conditions for the Hoot Owl Min Lube proposal; and

**WHEREAS**, The Design Review Board conducted a meetings on December 15, 2005 and again on February 9, 2006 to review the Hoot Owl Min-Lube Conditional Use Application and recommend approval of the project: and

**WHEREAS,** the Hearing Examiner conducted an Open Record Public Hearing on the proposal on April 24, 2007; and

**WHEREAS,** the Hearing Examiner on April 24, 2007 made Findings of Fact and Conclusions based upon, the testimony and evidence submitted at the open record hearing and the Examiner's site view, and issued a recommendation to approve the Conditional Use Permit to construct a Mini-Lube subject to 5 conditions; and

**WHEREAS,** the City Council at a regular meeting held on May 24, 2007 accepted the Hearings Examiner's report and recommendation, including the Findings of Fact and Conclusions, and Approved the Conditional Use Application Number CUP06-005 with the 5-Conditions recommend by the Hearing Examiner; and

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SULTAN, WASHINGTON AS FOLLOWS:**

**Section 1.** The City Council adopts the Hearing Examiner's Findings of Fact and Conclusions of Law and finds that the Damianidis/Hoot Owl Mini-Lube Conditional Use application satisfies the provisions of SMC Chapter 21.04.050..

**Section 2.** The Hearing Examiner's Recommendation contained five conditions, which are adopted as the conditions of approval..

**Section 3.** The Applicant, Chris Damianidis finds the conditions of approval for their Conditional Use Permit File Number Cup06-005 acceptable and did not request reconsideration of the Hearings Examiner's recommendation.

**Section 4.** The Conditional Use Permit for Chris Damianidis,, CUP05-006 is **Approved** subject to the conditions imposed.

**PASSED** by the City Council and **APPROVED** by the Mayor this _____ day of _____, 2004.

**CITY OF SULTAN**

By_____
Ben Tolson, MAYOR

Attest:

By_____
LAURA KOENIG, CITY CLERK

Approved as to form:

By_____
THOM GRAAFSTRA, CITY ATTORNEY