SULTAN CITY COUNCIL

AGENDA ITEM COVER SHEET

ITEM NUMBER: **A-4**
AJ's Place Conditional Use Permit (CUP) Appeal/Extension

DATE: August 9, 2007

SUBJECT:
Appeal/Request for a two (2) year renewal for the AJ's Place Conditional Use Permit (CUP) Approved on August 24, 2007.

CONTACT PERSON: Rick Cisar, Director of Community Development

ISSUE:
The issue before the City Council is to consider a two (2) year Conditional Use Permit (CUP) renewal for the AJ"S Place 40-Unit Townhouse/Condominium project.

ACTION REQUESTED:
City Staff is requesting the City Council to grant a two (2) year Conditional Use Permit renewal for the AJ"S Place Conditional Use Permit.

SUMMARY:
City Staff received the attached letter dated June 21, 2007 from Dennis Jordon (Attachment 1) requesting a two (2) year extension for the A J's Place Conditional Use Permit, CUP File Number BSP05-001.

Mr. Jordon indicates in his letter that filling of the property, which is located in flood plain fringe, will require approval from the National Oceanic and Atmospheric Administration (NOAA) in addition to the Federal Emergency Management Administration (FEMA).

However, what in the past was an Administrative Process through FEMA now requires National Oceanic and Atmospheric Administration (NOAA) approval, which is complicated, and an uncertain process. Further, it appears that the AJ'S Place Development is a "test case" for this process.

In addition to the NOAA Approval, the financing plan for the project is having difficulties finding comparables in Sultan. Those that do exist do not have sufficient fair market value to justify the loan to construct the units. Therefore in consideration of these issues the Developer has requested a two (2) year extension for the Conditional Use Permit.

BACKGROUND:
AJ's Place is a 40 Unit Townhouse/Condominium Project located one block north of High Street at 918 - 1st Street. This project was Approved by Resolution Number 06-11A on August 24, 2006 (Attachment 2). Sultan Municipal Code SMC Section 21.04.060 Expiration and Renewal, (Attachment 3) provides for a one (1) year expiration of Conditional Use Permits unless Building Permits for the project are obtained during that one year period.

In consideration of the Approval of the project by the City Council, all required Engineering/Construction Drawings have been submitted by the Developer and Approved by the City Engineer. In addition, the Building Official has completed the plan checks for the buildings within the project.

FISCAL IMPACT:
City Staff time in processing this request.

RECOMMENDATION ACTION:
In consideration of the request from Mr. Jordon and the Approval Requirements of NOAA, which were not known at the time of the original application, Approve a two (2) year renewal for the AJ's Place Conditional Use Permit.

RECOMMENDED MOTION:
Motion to Approve a two (2) year renewal for the AJ'S Place Conditional Use Permit do to the Approval Requirements of NOAA which were not known at the time of the original application.

COUNCIL ACTION:

DATE:

Attachment 1 - June 21, 2007 Letter from Mr. Dennis Jordon, Attorney
Attachment 2 - SMC Section 21.04.060

LAW OFFICES OF
DENNIS JORDAN & ASSOCIATES, INC., P.S.
A PROFESSIONAL SERVICES CORPORATION
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June 21, 2007

RECEIVED
JUN 22 2007
BY:

TRANSMITTED VIA FAX 360 793-3344

Rick Cisar
Director of Community Development
City of Sultan
P.O. Box 1199
Sultan, WA 98294-1199

RE: AJ's Place
File No. BSP05-001

Dear Mr. Cisar,

As you suggested, I am writing this letter on behalf of Sultan Real Property Investments, LLC, owner of AJ's Place (File Number BSP05-001). (As you know, I am one of the members of the aforementioned LLC.) The CUP for this project is set to expire on August 24, 2007. We have been unable to start construction yet and need an extension to the CUP as is authorized by Chapter 21.04.060 SMC. We would request a two- year extension as the problems that we have that need to be resolved prior to the start of construction may take that long to resolve.

The first problem is related to FEMA. Since we are filling flood plain fringe, we need to get the permission of FEMA to do so. Unfortunately, unknown to us at the time that the approvals for the project were going through the City, there was a lawsuit in Federal court that challenged the ability of FEMA to approve such requests without first seeking approval from NOA. As a result NOA's approval is now required. What was a simple administrative process through FEMA is now a complicated, uncertain process with this project being the first to go before NOA and, therefore, the "test case."

To avoid a year long and expensive process for NOA approval, we need to demonstrate "no net loss of flood plain." That may require us to find property that sits above the flood plain that we can grade below flood plain to meet the "no net loss" criteria. We are looking and have some prospects but nothing firmed up yet. We are also looking at other alternatives with our biologist and engineer.

In addition, another problem that we have encountered is our financing for the construction. Even aside from the FEMA issue needing to be resolved, our construction loan is subject to appraisal. There are virtually no comparables in Sultan for this kind of a project. Those that do exist do not

Attachment 1

have sufficient fair market value to justify the loan that is needed in this case to construct the units, pay the fees and costs required by the City and still make any profit. In fact, given the existing appraisals and the costs that we have in hand, we would need to pay buyers to close on the units. Essentially, we need some additional time to let market values catch up with costs.

In light of the above, I would therefore request a two-year extension to our CUP per the authority of Chapter 21.04.060 SMC. The above clearly demonstrates "extraordinary circumstances or conditions not known or foreseeable at the time the original application for a conditional use permit was granted" (Chapter 21.04.060 SMC).

Please advise if you need additional information from me to facilitate approval of that extension. Please bring this matter before the City Council at your earliest opportunity so that they have ample time to grant the extension/renewal prior to the August 24, 2007 expiration date. We note that no public hearing is required for them to take action but would like to be notified when this will be before them so that we may attend said meeting.

Sincerely,

Dennis Jordan

notification requirements. Denial of conditional use permit applications is not appealable. All conditional use permits are subject to design review procedures. (Ord. 690-98)

21.04.050 Criteria.

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)

21.04.052 Additional criteria for single-family detached dwelling (clustered).

The following additional criteria apply to allow single-family detached dwelling(s) (clustered):

A. The density on the property may not be greater than but should match the density for single-family detached dwellings;

B. Where urban density goals are to be achieved, but critical areas can be adequately protected, dimensional requirements for lot size, lot width, front and rear yard setbacks may be decreased by no more than 20 percent;

C. As a result of the design of the subdivision, a minimum of 20 percent of the net land area of continuous, publicly accessible open space such as stream or wetland and associated buffers, a ravine, bluff or other unique topographic feature, or conservation area is preserved;

D. As a result of the dwellings and any subdivision, the availability of housing to all economic segments of the population is increased, and housing density variety is preserved throughout the community. (Ord. 780-02 § 16)

21.04.054 Additional criteria for duplexes or two-family dwellings.

The following additional criteria apply to allow duplexes or two-family dwellings:

A. Only one other duplex or multifamily use may exist within 300 feet of the proposed use and there must be at least a 100-foot separation (building to building) between the uses.

B. The proposed dwelling has been designed to be harmonious with the neighborhood and is constructed to provide the appearance of a single-family unit by, for example, altering the location of the front doors and windows; garages and access to garages; parking; landscaping and fencing; utilities and mailbox locations; building heights consistent with surrounding properties; exterior colors and materials; and differing setbacks, all of which are confirmed by a site plan. (Ord. 780-02 § 17)

21.04.060 Expiration and renewal.

A conditional use permit shall automatically expire one year after a notice of decision approving the permit is issued unless a building permit conforming to plans for which the CUP was granted is obtained within that period of time. A conditional use permit shall automatically expire unless substantial construction of the proposed development is completed within two years from the date a notice of decision approving the permit is issued. The planning commission or city council, on appeal, may authorize longer periods for a conditional use permit if appropriate for the project. The planning commission or city council, on appeal, may grant a single renewal of the conditional use permit if the party seeking the renewal can demonstrate extraordinary circumstances or conditions not known or foreseeable at the time the original application for a conditional use permit was granted, which would not warrant such a renewal. No public hearing is required for a renewal of a conditional use permit. (Ord. 690-98)

21.04.070 Revocation of permit.

A. The planning commission may revoke or modify a conditional use permit. Such revocation or modification shall be made on any one or more of the following grounds:

1. That the approval was obtained by deception, fraud, or other intentional and misleading representations;

2. That the use for which such approval was granted has been abandoned;

Attachment 2