

SULTAN CITY COUNCIL

AGENDA ITEM COVER SHEET

ITEM NO: George 6 Plex Public Meeting

DATE: August 23, 2007

SUBJECT: Conduct a Closed Record and Public Appeal Hearing for the George 6-Plex Townhouse Development. Consider an Appeal of a Hearing Examiner's Recommendation.

CONTACT PERSON: Rick Cisan,  Director of Community Development

ISSUE:

The issue before the City Council is to conduct a Closed Record Hearing and Public Appeal Hearing to consider the Hearing Examiner's Recommendations (Attachment 1) for the George 6-plex Townhouse Development and the Appeal by Ray E. and Belinda Kay George (Attachment 2) in accordance with SMC 2.26.150. (C, D, E, and F) (Attachment 3).

STAFF RECOMMENDATION:

1. Conduct the Closed Record Hearing on the George 6-plex Townhouse Development and Public Appeal Hearing on the Hearing Examiner's Recommendation and Appeal by Ray E. and Belinda Kay George of Condition 5 of the Report and Recommendation of the Hearing Examiner, requiring that the Level-of-Service (LOS) for Police Services be met prior to approval of occupancy of the units.
2. At the conclusion of the Closed Record and Public Appeal Hearing direct City Staff to prepare a Resolution providing for the Council's Decision and setting forth the findings and conclusions of the Council in support of its Decision.

SUMMARY:

The two considerations before the City Council are:

1. Conduct a Closed Recorded Hearing, under SMC16.120.050 and consider the May 4, 2007 Recommendation of the Hearing Examiner to approve the project with 6 Conditions as described on pages 29 and 30 of the report; and
2. Conduct a Public Appeal Hearing to consider the appeal of Condition 5 of the Hearing Examiner's Recommendation requiring the Level-of-Service for Police Services be in place prior to occupancy of the units proposed to be constructed by the George's.

CLOSED RECORD HEARING:

The actions the City Council may take at the Closed Record Hearing are:

1. Reject the Hearing Examiner's Recommendation, make new findings and conclusions and disapprove the application:
2. Approval of the development and affirming the Recommendation of the Hearing Examiner including the 6 Conditions of approval; or
3. Approval of the development, again supporting the Hearing Examiner's Recommendation with the exception of Condition 5 (Level-of-Service for Police) and approving the George's Appeal and directing City Staff to prepare new findings and conclusions to support Council decision for the Police Level-of-Service.
4. The Council may remand the development back to the Hearing Examiner for further proceedings in accordance with the City Council's findings and conclusions.

Actions taken by the City Council on the development will be formalized in a Resolution prepared by the City Attorney and presented to the Council for adoption at the next regular meeting.

PUBLIC APPEAL HEARING:

The actions the City Council may take at the Public Appeal Hearing are: to grant or deny the appeal.

At the conclusion of the Public Hearing, the Council shall enter its decision which shall set forth the findings and conclusions of the Council in support of its decision. The Council may adopt any or all of the findings or conclusions of the Hearing Examiner which support the Council's decision. The Council may: 1) affirm the decision of the Hearing Examiner, 2) reverse the decision of the Hearing Examiner either wholly or in part, or 3) may remand the matter to the Hearing Examiner for further proceedings in accordance with the Council's findings and conclusions.

The Council's decision shall be reduced to writing and entered into the record of the proceedings within 15-days of the conclusion of the hearing. Copies of the decision shall be mailed to all parties of record. (Ord. 550, 1990).

BACKGROUND:

The Hearing Examiner conducted an Open Record Hearing on April 24, 2007 for the Ray E. and Belinda Kay George 6-plex Townhouse Development on High Avenue. The Hearing Examiner's Report and Recommendation dated May 4th, 2007, approved the project with 6 Conditions as described on pages 29 and 30 of the report as shown below:

EXCERPTS FROM HEARING EXAMINER'S REPORT:

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. **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. **This Conditional Use Permit applies only to Parcel A as adjusted by the companion Boundary Line Adjustment.**
3. **Exhibits 2 – 4 constitute the approved site plans for this Conditional Use Permit. Minor revisions to approved Conditional Use Permit Site Plans may be approved administratively by DCD (Director of Community Development).**
4. ³² **Prior to issuance of construction permits:**
 - A. An ingress, egress, utilities, and landscaping easement must be approved by the City and recorded encumbering that portion of Parcel B used as access and landscaping as depicted on Exhibit 2. (Essentially the easterly 40 feet of Parcel B plus that area associated with the turnaround and its landscaping.) The easement shall provide that the owner(s) of Parcel A are responsible for all construction, planting, maintenance, and replacement of the driveway, sidewalk, and landscaping within that easement. Further, the easement shall provide that the existing house and shed on Parcel A may remain within the easement, but that in the event of their destruction or removal, any and all new construction on Parcel B must occur outside of the easement in full compliance with then-applicable City codes, including setback requirements.
 - B. The existing easement encumbering the westerly 40 feet of present Parcel B shall be extinguished.

³² (Hearing Examiner's Footnote) Numbering error corrected June 18, 2007: This and subsequent conditions incremented by one.

- C. If the existing shed on Parcel B is to remain, then the developer must demonstrate by clear and convincing evidence that the proposed access road can be safely constructed without causing damage to the existing structure. If the developer is unable to do so, then the existing shed must be removed or relocated.
- D. The developer must show an additional hydrant on the construction plans, located in the general vicinity of the south side of the proposed parking/turnaround area.
- E. The landscape plan shall be revised to provide not less than two species of trees.

5. 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 1.N).
- 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. The neighboring properties shall be protected from erosion in accordance with the Department of Ecology Stormwater Management Manual for Puget Sound Basin. Erosion and sediment control devices shall be in place before construction commences.

- 6. (1) Prior to issuance of a certificate of occupancy and/or occupancy of the 6-plex, a combination of developer agreements and public funds, including additional tax adoptions (such as an increased real estate excise tax and a B & O tax), other funding sources (such as potential developer loans to advance the receipt of payment of needed funds), and monies contributed by the proposed development for its impacts on the LOS, shall put in place the required public services for police concurrent with the development impacts, and provide appropriate strategies for the six years from the time of development to achieve the necessary police LOS as now established or as subsequently revised; or**

(2) The alternative, the police services LOS in existence at the time of final building permit inspections shall be met before approval for occupancy is granted.

7. To ensure stormwater runoff does not negatively impact off-site properties, all surface water runoff from impervious surfaces shall be managed in accordance with the Puget Sound Stormwater Management Manual. All surface water runoff from impervious surfaces shall be infiltrated, conveyed to an approved detention facility, or otherwise treated to protect water quality.

DISCUSSION:

Sultan Municipal Code (SMC) Section 2.26.150 requires scheduling an Open Public Meeting for the City Council to consider the Appeal no sooner than 21-days nor longer than 35-calendar days from the date the Appeal was filed. The City Council scheduled this Appeal for an Open Public Meeting on June 11, 2007.

On June 11, 2007 the City Council conducted the Public Meeting on the Appeal and thereafter by motion, set June 28, 2007 at 6:00 p.m. to conduct the Closed Record Hearing and Public Hearing on the Appeal for the George 6-plex Townhouse Development.

This Section 2.26.150 pre-dates regulatory reform (1995) adopted by State Law which allows one Open Record Hearing in front of the Hearing Examiner and one Closed Record Hearing in front of the City Council. Due to regulatory reform, the only legally defensible action was to consolidate the Appeal with the Hearing Examiner's Recommendation.

State Law prohibits more than two hearings. One of which, must be an Open Record Hearing. The second permitted meeting, may be a Closed Record Hearing.

The Closed Record Hearing Schedule for this evening provides the City Council with the one Closed Record Hearing as permitted by State Law.

Police Level-of-Service:

Condition 5 of the Report and Recommendation of the Hearing Examiner includes basically two requirements for the Level-of-Service (LOS) for Police Services:

1. The existing Level-of-Service for Police be in place prior to approval of occupancy of the units; or
2. The City has in place a strategic plan or financial plan that will achieve the necessary police LOS within 6 years of occupancy of the units.

This Recommendation is inconsistent with City Council's previous actions in approving six development projects and accepting the Developer's offer of a cash contribution to meet concurrency for Police Services. These actions by the City Council changed the conditions of approval for each of the projects, including findings and conclusions, to support the City Council's interpretation of SMC 16.108.060 C (Attachment 5).

Therefore, the George's submitted, as part of their Application, a Developer's Agreement (Attachment 4) to provided for Police Services, consistent with other developments recently approved by the City Council. The George's, like the other Developers, agree to pay their prorated share for Police Services based on density of the project. The George's are therefore appealing Condition #5 as Recommended by the Hearing Examiner.

In April of 2007, Friends of Governmental Responsibility, Integrity, and Truth and Loretta Storm filed a Land Use Petition (LUPA) in Superior Court regarding the City's approval of the Vodnick Lane PUD and the acceptance of the Developer's Agreement to meet Police LOS. On Friday July 13, 2007 Snohomish County Superior Court dismissed the LUPA Appeal filed by Friends of Governmental Responsibility, Integrity, and Truth and Loretta Storm (Attachment 6). The Court determined the Appealants did not have standing, meaning the Court found that no genuine issue of material fact exist for the Court to hear the case.

The City will not receive the contribution if the Council reduces or eliminates Police Levels-of-Service prior to occupancy, as provided for in the Development Agreement (Attachment 4).

On February 22, 2007 by Resolution 07-01A, the City Council approved the Vodnick Lane PUD and accepted the Developer's prorated share offer for Police Services.

The impact of the Hearing Examiner's Recommendation on the development proposal may limit the ability of the applicants to obtain financial commitments for the construction of their projects. That is, no occupancy will be permitted until the Police LOS is in place. However, the current approach of accepting the voluntary agreement for Police LOS has not affected the developers ability to obtain project financing.

FISCAL IMPACT:

Project Approval:

The fiscal impact of approving the development will result in approximately \$140,340.00 in associated permit and impact fees for the construction of the 6-townhouse units. In addition, the developer's will provide a cash contribution of \$4,901.00 to assist the City in providing additional Police Services including an additional \$1,334.00 to a reserve fund for future years of Police Service.

Project Denial:

The fiscal impact of not approving the development will result in a loss of \$140,340.00 in associated permit and impact fees and \$6,235.00 in cash contribution for Police Services. In additional, the City may incur legal expenses in defending this action since the Applicant has submitted a Developer's Agreement to provide for Police Services consistent with 6 approved developments.

RECOMMENDED ACTION:

Conduct the Closed Record and Public Appeal Hearing on the George 6 Plex Townhouse Development and Appeal of Condition 5 of the Hearing Examiner's Report and Recommendation requiring that the Level-of-Service (LOS) for Police Services be in place prior to approval of occupancy of the units and thereafter direct City Staff to prepare for the September 13, 2007 City Council Meeting, a Resolution including Council's finding and conclusions:

1. Approving the George 6-Plex Townhouse Development and affirming the May 4, 2007 Recommendation of the Hearing Examiner which requires the Level-of-Service for Police Services be in place prior to occupancy of the units; or
 2. Approving the George 6-plex Town House Development supporting the May 4, 2007 Recommendation of the Hearing Examiner except his findings and conclusions concerning Police Level-of-Service and Condition 5; or
 3. Remanding the development back to the Hearing Examiner for further proceedings in accordance with the City Council's finding and conclusions.
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COUNCIL ACTION:

DATE:

ATTACHMENTS:

1. Hearing Examiner's Recommendation dated May 4, 2007
2. Appeal Notice from Ray & Kay George
3. SMC Code Section 2.26.150 (C, D, E, and F)
4. Development Agreement – Police Services
5. SMC Code Section 16.108.060 (c)
6. Memo from Deborah Knight, City Administrator dated July 24, 2007 regarding the Vodnick – LUPA Appeal dismissed by the Court

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

RECOMMENDATION

FILE NUMBERS: CUP06-004 and BLA06-004

APPLICANT: Ray E. & Belinda Kay George

TYPE OF CASE: Consolidated: 1) Conditional Use Permit to construct a 6-plex dwelling; and 2) Boundary Line Adjustment between the two parcels which comprise the property¹

STAFF RECOMMENDATION: Approve subject to conditions

SUMMARY OF RECOMMENDATION: APPROVE Boundary Line Adjustment; APPROVE Conditional Use Permit subject to conditions (revised)

DATE OF RECOMMENDATION: May 4, 2007

INTRODUCTION

Ray E. & Belinda Kay George (George), 1304 Skywall Drive, Sultan, Washington 98294, seek Conditional Use Permit (CUP) approval to construct a 6-plex dwelling and a Boundary Line Adjustment (BLA) between the two parcels which comprise the property. George filed the Master Land Use Application on September 30, 2006. (Exhibits 1 and 1.A²) The Sultan Department of Community Development (DCD) deemed the application complete on October 4, 2006. (Exhibit 1.Q)

The subject property is located at 701 High Avenue.

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

¹ The Staff Report (Exhibit 1) and other record documents (e.g.: Exhibit 1Q) refer to a Variance application under File No. V06-002. That portion of the proposal is actually a request for relief from driveway width requirements within the City's adopted Design Standards, not a Variance request. The request and the regulatory framework within which it must be processed are discussed in the body of this Recommendation.

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.

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The Examiner held an open record hearing on April 24, 2007. DCD and George gave notice of the hearing as required by the Sultan Municipal Code (SMC). (Exhibit 6)

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

- Exhibit 1: Departmental Staff Report with Attachments 1.A – 1.Q
- Exhibit 2: Site development plan
- Exhibit 3: Building elevations and cross-section
- Exhibit 4: Floor plans and illustrative photograph
- Exhibit 5: Letter, Miller to DCD, received January 22, 2007
- Exhibit 6: Hearing notice documentation
- Exhibit 7: Water Availability Renewal, April 24, 2007
- Exhibit 8: Sewer Availability Renewal, April 24, 2007
- Exhibit 9: Corrected Exhibit 1 pages 9 and 10

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

- Exhibit 10: Design Review Board minutes of October 26, 2006³
- Exhibit 11: Concurrency Certificate, April 20, 2007⁴
- Exhibit 12: Council Resolution No. 07-02A⁵
- Exhibit 13: Letter regarding concurrency agreement, May 1, 2007

The hearing record closed on May 1 with receipt of Exhibits 10 - 13.

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.

³ The record was left open for a copy of the Design Review Board's minutes for the meeting at which it approved the George application. At the time of the hearing, the Examiner believed that date was September 27, 2006, based upon a statement in the DCD Staff Report. (Exhibit 1, pp. 2 and 3) It turns out that date was incorrect. The proper minutes have been entered into the record.

⁴ Testimony at hearing indicated that the Concurrency Certificate was dated April 22, 2007. It turns out it was dated April 20, 2007.

⁵ Testimony at hearing referred to this document as Resolution No. 06-12. It turns out that testimony was incorrect.

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ISSUES

Does the application meet applicable criteria for CUP and BLA approval? Does the application meet concurrency requirements of Chapter 16.108 SMC?

FINDINGS OF FACT

1. George owns two parcels which together form a rectangle having approximately 156 feet of frontage on the north side of High Avenue and a depth of approximately 626 feet. The dividing line between the two parcels is roughly 233 feet north of and parallel with High Avenue. The north parcel (Parcel A) contains approximately 1.3 acres; the south parcel (Parcel B) contains approximately 0.8 acres. Legal access to Parcel A is via an easement which encumbers the westerly 40 feet of Parcel B. (Exhibits 1, 1.P, and 2) Parcel A is presently vacant; Parcel B contains an older single-family residence and detached shed. (Exhibit 2 and testimony⁶)

The consolidated application contains two requests. First, George proposes to shift approximately 3,783 square feet from Parcel B to Parcel A by sliding the common boundary south some 30 feet to align with a jog in the west property line. Parcel A will then contain approximately 1.4 acres and Parcel B will contain approximately 0.7 acres. (Exhibit 1.P)

Second, George proposes to construct a 6-plex residential dwelling on Parcel A, the access to which would be via a new easement which would encumber the easterly 30 feet of Parcel B.⁷ (George does not propose to use the existing westerly easement.) (Exhibit 2 and testimony) The requested CUP is intended to apply only to Parcel A. (Testimony)

2. The entire site slopes gradually to the north. Two shallow swales running from southeast to northwest are located on the south and north ends of the site. A portion of the northerly swale is within the 100-year floodplain of the Sultan River. Site vegetation consists of native grasses, red alder, Himalayan blackberry, and creeping buttercup. Creeping buttercup is only present within the swales, which are considered non-wetland because of the presence of non-hydric soils. Abutting properties to the east and west are currently being utilized for single-family use. Sultan High School's athletic fields and perimeter road bound the site to the north and High Avenue bounds the entire site to the south. (Exhibits 1.C, 1.H, 1.J, 1.N, and 2)

⁶ Exhibit 1.B incorrectly states that the entire site is vacant.

⁷ Prior to filing the present application, George contemplated a 20 dwelling unit development on the subject property. Some documents in the record date to that time period. That proposal never came to hearing. (Testimony)

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3. The entire site is designated Moderate Development (10 dwelling units per acre) on the adopted Comprehensive Plan; the entire site is zoned Moderate Density (MD). (Exhibit 1) The MD zone permits both attached dwellings “(townhouses, patio homes)” and multiple-family dwellings as Conditional Uses.⁸ [SMC 16.12.020(D)(3) and (5), respectively]
4. The Table of Dimensional and Density requirements for the MD zone (contained in SMC 16.12.020) includes the following requirements for attached dwellings and multiple-family dwellings:

Requirement	Attached Dwelling	Multiple-family dwelling
Maximum density	8.0 units/acre	10.0 units per acre
Minimum site area ⁹	20,000 SF	25,500 SF ¹⁰
Minimum lot width	100 feet	100 feet
Minimum lot depth	100 feet	100 feet
Front setback ¹¹	15 feet	25 feet
Side setback – each	15 feet	10 feet
Rear setback	15 feet	30 feet
Maximum building height	30 feet	30 feet
Maximum lot coverage	40%	40%

5. The City’s adopted Design Standards include the following definition and requirement: “Multi Family Access Road – A privately owned street that will provide ingress and egress for traffic movement within a multi-family development which is 5 dwelling units or more. The entrance shall be 60-foot wide and a length of no less than 30-feet [then] can be narrowed to two 12-foot paved travel lanes plus a visitor parking area (calculation not determined at this time).” [Design Standards § 4.04.12]

⁸ “Townhouse or rowhouse’ means a dwelling unit exclusively for occupancy by one family, no portion of which lies vertically under or over any portion of an adjacent unit, is two or more stories, and which is attached to one or more other dwelling units by common walls which may be located on side lot lines.” [SMC 16.150.200(11)] The SMC does not define the term “patio home”.

⁹ Footnote 2 to the Table states that lot area, width, and depth requirements plus setback requirements pertain to the entire building, not to each unit within the building.

¹⁰ Calculated pursuant to Table instructions for a six unit building.

¹¹ The front setback for both Parcels A and B would be measured from their south lot lines. [SMC 16.150.120(26)]

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The Design Standards define a residential driveway as one serving a single dwelling. [Design Standards § 4.04.2] By definition, a commercial driveway is one “not meeting the definition of residential.” [Design Standards § 4.04.3] The minimum and maximum permissible widths for a commercial driveway are 12 feet and 35 feet, respectively. [Design Standards § 4.04.6.b]

The Council may modify the Design Standards when “in the public interest”. [Design Standards § 1.06] George requests and DCD supports an interpretation of the Design Standards which would allow for a reduced driveway entrance width. (Exhibits 1.O and 1, respectively)

6. “Residential developments of less than 10 dwelling units are exempt from the requirements” of Chapter 16.72 SMC regarding provision of recreation facilities and open space. [SMC 16.72.020]
7. The proposed 6-plex will face east on Parcel A, be located 18 feet north of the adjusted south line, 30 feet east of the west line, not less than 45 feet from the east line, and nearly 300 feet from the north property line. The building will be well south of the floodplain limit. A 24 foot wide drive with five foot wide sidewalk, located within a 30 foot wide access easement, will cross the east edge of Parcel B to access Parcel A. A vehicle turnaround will straddle the (new) common line between Parcels A and B. (Exhibit 2)

Each of the dwelling units meets the “townhouse” definition: No dwelling unit is above or below any part of any other, they are two or more stories tall, and the six are connected to one another by common walls. The central four units will be three stories tall with a two-stall, tandem parking garage occupying most of the ground floor. The two end units will be two stories tall with a double car garage occupying about one-half of the first floor. The building will have a gable roof system and a combination of horizontal and shingle siding.¹² Building design can best be described as modern Craftsman. (Exhibits 3 and 4) George has previously built a two-unit building at 509 Alder using the same plans as will be used for each pair of middle units on this site. (Exhibit 4 {photograph} and testimony)

8. The proposed site plan (Exhibit 2) meets all landscaping requirements of Chapter 16.104 SMC with but one exception: “two varying tree species must be proposed in order to satisfy the minimum landscaping requirements” and only one specie is called out on the plan. (Exhibit 1) George agrees to provide an additional tree specie. (Testimony)

¹² Maximum building height, measured in accordance with SMC 16.150.080(7) will be less than 29 feet. (Exhibit 3)

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9. This proposal is subject to Design Review Board (DRB) review under Chapter 2.20 SMC if it is multiple-family housing.¹³ The DRB approved the plans on October 26, 2006, but requested that additional "characteristic lighting" be added to the site plans. (Exhibit 10) George stated that additional lighting would be provided. (Testimony)
10. George has valid, current water and sewer availability letters from the City. (Exhibits 1.F, 1.G, 7, and 8)
11. The site's soils are underlain by sandy, gravelly deposits. Collected storm water runoff will be infiltrated on-site. (Exhibit 1.H)
12. George will be obligated to pay impact fees for parks, traffic, and schools. Impact fees for parks and traffic are "determined and paid ... at the time of issuance of a building permit for the development." [SMC 16.112.020] Impact fees for schools "shall be paid to the city prior to building permit issuance, based upon the fee schedule in place at the time of building permit application." [SMC 16.116.030(B)] Therefore, all three fees are based on fee schedules in effect when building permit applications are filed, not the fee schedules now in effect.
13. Sultan's State Environmental Policy Act (SEPA) Responsible Official issued a threshold Determination of Nonsignificance (DNS) for the proposed 6-plex on January 19, 2007. (Exhibit 1.K) The DNS was not appealed. (Exhibit 1)

¹³ 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 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.

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14. DCD recommends approval of the BLA without conditions and approval of the CUP with conditions. (Exhibits 1 and 9¹⁴) George does not object 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*. In fact, both believe that it is a good infill project. Storm questions whether the driveway will have sufficient sight distance because of parked cars along High Avenue. Fallgatter challenges the application's compliance with Chapter 16.108 SMC, Concurrency Management System. Specifically, she argues that adopted Level of Service (LOS) standards for police services would be violated by the proposed development. (Testimony)

The one couple (Miller) who submitted written comments live across High Avenue from the southwest corner of Parcel B (more or less). Miller opposes the proposal for 10 reasons: Traffic on High Avenue would increase; new neighbors might bring drug traffic with them; police and aid calls would increase; noise would increase; trash and abandoned vehicles might be left in the area; townhouses would decrease property values; privacy and quality of life would decrease; domestic animals population would increase; sewer and water use would increase; and the driveway "would be directly across from our home." (Exhibit 5; quote from p. 3, ¶ 10)

Concurrency

16. The currently adopted LOS standard is 2.6 uniformed officers per 1,000 population. (Exhibit 11; See also 2004 Comprehensive Plan, Appendix B, p. 2.74) (The LOS standard in the prior 1994 Comprehensive Plan was two police vehicles per 1,000 population. (2004 Comprehensive Plan, Appendix B, pp. 2.74 and 2.75))
17. The City conducted the inventory which formed the basis of the currently adopted LOS standard in 2003. It used an estimated 2003 population of 3,814 to develop that standard.¹⁵ (2004 Comprehensive Plan, Appendix B, p. 2.75) The City had 10 full-time uniformed officers in 2003. (2004 Comprehensive Plan, Appendix F, pp. 214 – 215) The ratio of uniformed officers to population in 2003 when the LOS inventory was conducted, based on the population number used, was 2.6 officers per 1,000 population. (2004 Comprehensive Plan, Appendix B, p. 2.74)

¹⁴ Exhibit 9 revises some of the recommended conditions.

¹⁵ The basis for that 2003 population estimate is not in the record before the Examiner. The LOS standard, being a legislatively adopted policy decision by the Council, may not be reconsidered, altered, or challenged in the context of this project permit application. [See RCW 36.70B.030, quoted in part in the Principles of Law section, below.]

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18. The City's July 1, 2006, estimated population is 4,440. (Exhibit 11) The City presently has nine (9) full-time uniformed officers. (*Id.*) The current police services LOS based on the July, 2006, population estimate, is thus 2.03 uniformed officers per 1,000 population.

A significant number of residential developments have been approved by the City Council but not yet built. Among those "pipeline" developments are: *Vodnick Lane* with 23 single-family dwellings, *AJ's Place* with 40 single family dwellings, *Skoglund Estates* with 48 single family lots, *Steen Park* with 18 single family lots, *Cascade breeze Estates* with 30 single family lots, *Timber Ridge Estates* with 85 single family lots, and *Denali Ridge* with 15 single family lots. Those seven pipeline developments, when built out, will add 259 single family residences to the City. (Official notice) If each new dwelling had an average population of 2.7 persons,¹⁶ those developments would add 699 residents to the City.

19. George presented a draft "Developer Agreement to Establish Concurrency" (the Police Services Agreement).¹⁷ The Police Services Agreement is predicated on an estimated population within the proposed 6-plex of 17 and an annual cost to the City for a police officer of \$110,878.¹⁸ Based on the adopted police services LOS of 2.6 uniformed officers per 1,000 population, the Police Services Agreement calculates that 0.0442 of a uniformed police officer would be needed to provide 2.6 police officers per 1,000 population for the 17 residents of the proposed 6-plex. George then offers to contribute \$4,901.00 (erroneously stated to be 16% of the first year's cost of a uniformed officer¹⁹) plus \$1,334.00 "as a contribution to a reserve for future years of service." (Exhibit 1.D)

The Police Services Agreement proposes that the fee be paid on a unit-by-unit basis when building permits are issued. The Police Services Agreement also provides that: if the Council lowers the police services LOS standard before payments are made, the obligation shall be commensurately lowered; if the Council raises the police services LOS standard before payments are made, the obligation shall not be raised; and if the Council lowers or eliminates the police services LOS standard after payments are made, no refund(s) shall be required. (Exhibit 1.D)

¹⁶ 2.7 persons per household is the number used by George in his "Developer Agreement to Establish Concurrency." (Exhibit 1.D) Since DCD supports acceptance of that Agreement, it is appropriate to accept that number as representing a reasonable average per household population figure for Sultan.

¹⁷ The Police Services Agreement is textually identical to that offered on April 25, 2006, by the *Skoglund Estates* applicant and a number of subsequent applicants.

¹⁸ Whether this sum accurately represents the 2007 cost of one uniformed police officer cannot be determined from the hearing record. The figure was generated and used in 2006 and likely does not accurately reflect 2007 costs unless the police officers received no increase in pay and all indirect costs remain unchanged.

¹⁹ In fact, 16% of the cost of a uniformed officer for one year is \$17,741.00. The 16% figure is the same as calculated by the *Twin Rivers Ranch Estates* developer for his subdivision which was projected to add 60 residents to the City. DCD states that "It appears that the Applicant did not change the percent from the sample agreement they were provided." (Exhibit 13)

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20. DCD issued a Certificate of Concurrency (the Certificate) on April 20, 2007, for George's 6-plex. (Exhibit 11) The Certificate states that the "current deficit is 2.54 Uniformed Officers", based on the July 1, 2006, population estimate. (Exhibit 11, p. 2)

The City Council, in the plat of Skoglund Estates, has determined that if the applicant for a subdivision enters into a Developer Agreement to Establish Concurrency, the application can be deemed concurrent as it relates to Police Services. The applicant has provided such an Agreement, committing to pay \$6,235 to the City of Sultan to mitigate their impacts on the Police Level of Service.

(Exhibit 11, p. 2)²⁰

21. The Certificate states that "Police service improvements scheduled to maintain the City's adopted LOS concurrent with development are planned under the adopted 6-year Capital Facilities Plan." (Exhibit 11, p. 2) The latest adopted Capital Facilities Plan (CFP) is Appendix D to the 2004 Comprehensive Plan, dated November 22, 2004. (Official notice) The discussion of the Police Department in the CFP mentions a new station, but does not address staffing (not unexpected since staffing is not a capital facility). (2004 Comprehensive Plan, Appendix D, p. VIII-19) The Certificate mis-characterizes the CFP.

The City placed a levy on the November, 2006, ballot to raise funds to hire additional police officers. The levy was defeated. (Official notice)

22. On June 8, 2006, the Council passed Resolution Nos. 06-06 and 06-07, approving the *Steen Park* and *Cascade Breeze Estates* applications, respectively. Both Resolutions contain identical language regarding the police services LOS issue:

4. The City's existing Level of Service for police is below the adopted LOS in the Comprehensive Plan. The LOS failure for police, however, was not caused by this proposed Development, and the further reduction in the LOS

²⁰ DCD states in the following paragraph in the Certificate that in "Resolution No. 06-12" the Council requested that the Examiner consider its actions in the "Steen Park, Cascade Breeze, Skoglund Estates and AJ's Place, Vodnick Lane and Twin Rivers Ranch Estates" applications. (Exhibit 11, p. 2) This statement in the Certificate contains two errors. First, Resolution No. 06-12 pertains to *Vodnick Lane* and could not have mentioned *Twin Rivers Ranch Estates* as that application had yet to come before the Council at that time. Second, Resolution No. 06-12 remanded *Vodnick Lane* to the Examiner for further hearing; the Council's action approving *Vodnick Lane* occurred in Resolution No. 06-14 which mentions only *Skoglund Estates*, not any of the other projects listed by DCD in the Certificate. The Certificate implies a breadth of Council action not supported by the documents enacted by the Council.

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caused by this proposed Development is modest by comparison to the existing deficiency.

5. The Council takes notice of the Recommendations in the Prothman Report accepted by the Council and Ordinance 900-06. The City has adopted a utility tax applicable to its municipal utilities and has received Recommendations for additional tax adoptions, including a utility tax on cable television service, an increased real estate excise tax, and a B & O tax. Other funding sources could include potential developer loans to advance the receipt of payment of needed funds, and monies contributed by proposed development for their impacts on the LOS. A combination of developer agreements and public funds will put in place the required public services for police concurrent with the development impacts, and provide appropriate strategies for the six years from the time of development to achieve the necessary police LOS as now established or as subsequently revised.
6. The Council takes notice of the Applicant's offer at the Closed Record Hearing to deliver to the City a Developer Agreement to pay Applicant's incremental share for a police officer for one year.
7. Based upon the foregoing, this proposed Development is deemed concurrent.

(Official notice)

23. On June 29, 2006, the Council passed Resolution No. 06-09A approving the *Skoglund Estates* Planned Unit Development application. Council Conclusions of Law in that Resolution are substantively identical with the above-quoted provisions of Resolution Nos. 06-06 and 06-07. (Official notice)
24. On September 14, 2006, the Council passed Resolution No. 06-12 remanding the *Vodnick Lane* Planned Unit Development application. The Council subsequently approved *Vodnick Lane* by Resolution No. 06-14. Council Conclusions of Law in that Resolution are substantively identical with the above-quoted provisions of Resolution Nos. 06-06 and 06-07. (Official notice)
25. On February 22, 2007, the Council passed Resolution No. 07-02A denying the *Twin Rivers Ranch Estates* Planned Unit Development application. The paragraphs in Section A of that Resolution are substantively identical with the above-quoted provisions of Resolution Nos. 06-06 and 06-07. (Exhibit 12)
26. Any Conclusion deemed to be a Finding of Fact is hereby adopted as such.

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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]

BLAs are normally an administrative process. [SMC 21.02.060] However, SMC 21.02.050(E) requires that the Examiner be the "decision maker when the BLA is in conjunction with a concurrent application requiring a decision by the examiner."

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 review criteria for BLAs are set forth at SMC 21.02.050:

In reviewing the proposed boundary line adjustment, city staff shall use the following criteria for approval:

- A. That the proposed boundary line adjustment will not violate applicable zoning code requirements and the zoning of the properties for which the BLA is requested shall not change zoning districts;
- B. That the proposed boundary line adjustment will not detrimentally affect access, design or other public safety and welfare concerns. The evaluation of detrimental

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effect may include review by the department of public works, or any other agency or department with expertise;

C. The proposed BLA will not cause boundary lines to bisect on-site sewage disposal systems, prevent adequate access to water supplies or obstruct fire lanes. The proposed BLA will not create new access, which is unsafe or detrimental to the existing road system because of sight distance, grade, road geometry or other safety concerns as determined by public works;

D. If within a formal subdivision, that the proposed boundary line adjustment will not violate the conditions of preliminary approval or the city's subdivision ordinances;

E. This section shall not apply to BLAs that are reviewed concurrently with a permit of land use action requiring a decision by the hearing examiner, or reviewed concurrently with a building permit for a multiple-family residential project. The BLA application shall not be considered complete until the concurrent application is complete. The hearing examiner shall act as the BLA decision maker when the BLA is in conjunction with a concurrent application requiring a decision by the examiner. The examiner shall only apply the review criteria in this chapter in determining if a BLA may be approved. Frontage improvements may be required for the area subject to the BLA and the concurrent application;

F. The proposed BLA will not create narrow strips of land less than the minimum lot width of the underlying zone that connects the original lot area with new area added by the BLA. This subsection shall not preclude BLAs that create or modify access panhandles;

G. The proposed BLA will not cause any existing lot that conforms to lot area or lot width requirements to become substandard;

H. The proposed BLA will not increase the nonconformity of substandard lots, except that adjustments between two or more legally substandard lots may increase nonconformity as long as the cumulative reduction in lot area or lot width is 10 percent or less; and

I. The proposed BLA will not result in lots without building areas when building areas existed before the adjustment.

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

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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]

Chapter 16.108 SMC, Concurrency Management System

Chapter 16.108 SMC was adopted by Ordinance No. 630 in 1995. It has not been amended since its adoption. The following sections within Chapter 16.108 SMC are particularly relevant to the present case:

16.108.010 Purpose.

The purpose and intent of this chapter of the unified development code is to provide a regulatory mechanism to ensure that a property owner meets the concurrency provisions of the comprehensive plan for development purposes as required in RCW 36.70A.070. This regulatory mechanism will ensure that adequate public facilities at acceptable levels of service are available to support the development's impact.

16.108.020 Exemptions.

Any development categorically exempt from threshold determination and EIS requirements as stated in the State Environmental Policy Act (SEPA), Chapter 197-11 WAC.

16.108.040 Nonbinding determinations.

A. A nonbinding concurrency determination shall be made at the time of a request for a land use amendment or rezone. Any nonbinding concurrency determination, whether requested as part of an application for development, is a determination of what public facilities and services are available at the date of inquiry, but does not reserve capacity for that development.

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B. An applicant requesting a development action by the city shall provide all information required by the city in order for a nonbinding concurrency determination to be made on the proposed project. Such required information shall include any additional information required by the building and zoning official in order to make a concurrency determination. The concurrency determination shall become a part of the staff recommendation regarding the requested development action.

C. A nonbinding concurrency determination may be received prior to a request for development action or approval by submitting a request and any applicable fee to the building and zoning official. Information required to make this determination is the same as that cited in SMC 16.108.030(B).

16.108.050 Certificate of concurrency.

A. A certificate of concurrency shall be issued for a development approval, and remain in effect for the same period of time as the development approval with which it is issued. If the development approval does not have an expiration date, the certificate of concurrency shall be valid for 12 months.

B. A certificate of concurrency may be accorded the same terms and conditions as the underlying development approval. If a development approval shall be extended, the certificate of concurrency shall also be extended.

C. A certificate of concurrency may be extended to remain in effect for the life of each subsequent development approval for the same parcel, as long as the applicant obtains a subsequent development approval prior to the expiration of the earlier development approval.

D. A certificate of concurrency runs with the land, is valid only for the subsequent development approvals for the same parcel, and is transferable to new owners of the original parcel for which it was issued.

E. A certificate of concurrency shall expire if the underlying development approval expires or is revoked by the city.

16.108.060 Standards for concurrency.

The city of Sultan shall review applications for development, and a development approval will be issued only if the proposed development does not lower the existing level of service (LOS) of public facilities and services below the adopted LOS in the comprehensive plan. A project shall be deemed concurrent if one of the following standards is met:

A. The necessary public facilities and services are in place at the time the development approval is issued; or

B. The development permit is issued subject to the condition that the necessary public facilities and services will be in place concurrent with the impacts of development; or

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

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“Concurrent with the development” shall mean that improvements or strategy are in place at the time of the development or that a financial commitment is in place to complete the improvements or strategies within six years of the time of the development.

16.108.070 Facilities and services subject to concurrency.

A concurrency test shall be made of the following public facilities and services for which level of service standards have been established in the comprehensive plan:

- A. Roadways;
- B. Potable water;
- C. Wastewater;
- D. Police protection;
- E. Parks and recreation.

16.108.120 Concurrency determination – Police protection.

A. The city of Sultan will provide level of service (LOS) information as set forth in the city of Sultan comprehensive plan.

B. If the LOS information indicates that the proposed project would not result in a LOS failure, the concurrency determination would be that adequate facility capacity at acceptable LOSs was available at the date of application or inquiry.

C. If the LOS information indicates that the proposed project would result in a LOS failure, the concurrency determination would be that adequate facility capacity at acceptable levels of service was not available at the date of application or inquiry.

16.108.130 Concurrency determination – Parks and recreation.

A. The city of Sultan will provide level of service (LOS) information as set forth in the city of Sultan comprehensive plan.

B. If the LOS information indicates that the proposed project would not result in a LOS failure, the concurrency determination would be that adequate facility capacity at acceptable LOSs was available at the date of application or inquiry.

C. If the LOS information indicates that the proposed project would result in a LOS failure, the concurrency determination would be that adequate facility capacity at acceptable levels of service was not available at the date of application or inquiry.

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

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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 October 4, 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. George's proposal contains two components for which the Examiner is charged to provide a Recommendation to the City Council: The BLA and the CUP. Each component is subject to different review criteria. It is therefore appropriate that each be addressed separately. The CUP depends upon approval of the BLA: If the BLA is not approved, the 6-plex would straddle the common boundary between Parcels A and B. (Such a situation would not be a problem if the entire property were being developed as one parcel. However, George has stated that the CUP is intended to apply only to Parcel A.) Therefore, analysis of the proposal must begin with the BLA.
2. The request to relax the driveway width requirement is not a Variance application as has been suggested by both DCD and George. It is, rather, a request to have the Council exercise its authority under the Design Standards to reduce the driveway width. The Design Standards procedures do not require the Examiner to hold a hearing or make a recommendation to the Council. Therefore, the Examiner will not evaluate that portion of the proposal against zoning Variance criteria. Rather, a few brief observations will be provided to assist the Council in its deliberations.

The proposed 6-plex is actually a six-unit townhouse (as defined by the Unified Development Code) composed of attached, side-by-side dwellings, not a six-unit multiple-family development. Therefore, the multiple-family access standards do not apply in the first place. (See Conclusion 16, below.)²¹ It is the commercial access standard which applies: The curb cut may be 24 feet wide (plus

²¹ If the proposal is a multiple-family development, then the 18 foot front setback depicted on Exhibit 2 would violate zoning requirements and the site plan would have to be rejected, thus requiring denial of the CUP.

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curb returns) as proposed – the same width as the internal driveway system. Paving is reduced and traffic flow would be more intuitive.

The Examiner would urge the Council to rule that George's proposal is a six-unit single-family attached townhouse²² and that the commercial driveway standard applies.²³ In the alternative, the Examiner would urge the Council to exercise its authority under § 1.06 of the Design Standards to grant a modification to allow a 24 foot wide driveway curb cut (plus curb returns) as it did in the *AJ's Place* townhouse project last year. If the Council takes this course of action, then the CUP cannot be approved as proposed, however, because the proposed front setback for the 6-plex on Parcel A would violate zoning standards.

3. In summary, the Examiner concludes that: The BLA proposal meets applicable standards and may be approved; the Council should rule that George's proposal is a six-unit single-family attached townhouse to which the commercial driveway standard, not the multiple-family driveway standard, applies; the CUP meets applicable standards (only if it is considered to be a townhouse) and may be approved, but changes need to be made to the recommended conditions of approval; and the Police Services Agreement does not comply with the requirements of Chapter 16.108 SMC, but a method is available by which compliance may be obtained.
4. The Conclusions in this decision are grouped by topic only for the reader's convenience. Such groupings do not indicate any limitation of applicability to the decision as a whole.
5. Any Finding of Fact deemed to be a Conclusion is hereby adopted as such.

Boundary Line Adjustment

6. The proposal complies with BLA Criterion A. The two parcels will each continue to meet all zoning bulk regulations after the adjustment.
7. The proposal complies with BLA Criterion B. The adjustment *per se* will not affect access to Parcel A as the adjustment does not propose removal or alteration of the existing 40 foot wide westerly easement. Whether that easement should remain in existence is a question better addressed during consideration of the proposed CUP which would create another access easement for Parcel A on the east side of Parcel B.

²² If townhouses are not "single-family attached" housing, then what is?

²³ If the Council makes this ruling, then the DRB would be without jurisdiction to review the project.

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8. The proposal complies with BLA Criterion C. No known on-site sewage disposal systems exist on either parcel. (Exhibit 1) The BLA *per se* does not affect utility access. No fire lanes exist that could be obstructed. The BLA does not create new access.
9. BLA Criterion D is not applicable: The subject property does not lie within a subdivision.²⁴
10. BLA Criterion E requires that the Examiner be the "decision maker when the BLA is in conjunction with a concurrent application requiring a decision by the examiner." [SMC 21.02.050(E)] Where the Examiner's authority in the concurrent application (a CUP in this case) is required to take the form of a Recommendation to the City Council, it is only logical that the Examiner's action on the companion BLA take the same form.
11. The proposal complies with BLA Criterion F. The proposed BLA does not create any narrow strips of land.
12. The proposal complies with BLA Criterion G. As noted in Conclusion 6, above, the proposed BLA results in two parcels each meeting all zoning regulations. No substandard lot will be created.
13. BLA Criterion H is not applicable. Neither existing parcel is a substandard lot.
14. The proposal complies with BLA Criterion I. Parcels A and B each presently have buildable area outside the designated floodplain; each will continue to have buildable area outside the designated floodplain after the BLA.
15. The requested BLA complies with all applicable criteria. The BLA should, therefore, be approved regardless of the outcome of the associated CUP and Design Standards relaxation. Upon approval by the City Council, the next step for George would be to record the BLA (Exhibit 1.P) within the time limits imposed by SMC 21.02.080.

Conditional Use Permit

16. As noted in Conclusion 2, above, the proposed site plan (Exhibit 2) complies with zoning setback requirements if the proposal is a townhouse development but not if the proposal is a multiple-family development. The Examiner concludes that the proposal fully meets the definition of townhouse as set forth in the SMC. All townhouses are multiple-family housing, but not all multiple-family

²⁴ DCD has mis-read this criterion. The criterion does not relate to whether the BLA is "being processed concurrently with a formal sub-division [*sic*] application." (Exhibit 1, p. 3, ¶ II.B.d) Rather, the criterion relates to whether the BLA property lies within a subdivision for which preliminary approval has been granted; the criterion requires that a BLA within a subdivision "not violate the conditions of preliminary [subdivision] approval or the city's subdivision ordinances". [SMC 21.02.050(D)]

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housing is composed of townhouses. Townhouses are essentially a subset of multiple-family housing. Where a subset of a general category is assigned special bulk regulations by the SMC, those special regulations rather than the general regulations apply. (The specific always prevails over the general.)

The Examiner's evaluation of the CUP is predicated on the proposal being a townhouse development, not a multiple-family development. That being the case, no relaxation of the Design Standards would even be necessary.

17. The CUP proposal meets Criterion A. The concerns raised by Miller fall largely under this criterion. Miller's unsupported assertions that a six-unit townhouse will bring drug traffic and trash into the neighborhood and/or will reduce property values are completely without any foundation in fact. Those assertions amount to generalized fears: Land use decisions may not be based upon the personal preferences or "general fears" of those who may currently live in the neighborhood of the property under consideration. [*Department of Corrections v. Kennewick*, 86 Wn. App. 521, 937 P.2d 1119 (1997); *Indian Trail Prop. Ass'n. v. Spokane*, 76 Wn. App. 430, 439, 886 P.2d 209 (1994); *Maranatha Mining v. Pierce County*, 59 Wn. App. 795, 805, 801 P.2d. 985 (1990); *Woodcrest Investments v. Skagit County*, 39 Wn. App. 622, 628, 694 P.2d 705 (1985)]

The proposed 6-plex will increase traffic in the neighborhood, will increase noise, will increase police and aid calls, will decrease privacy, may increase the number of pets in the neighborhood, and will use more water and sewer service (at least to the same extent that any six new houses would do so). But the neighbors must remember that the Council legislatively designated and zoned this area for development at up to 10 dwelling units per acre, a density higher than that proposed by George for Parcel A. That legislative designation has implications of exactly the type listed above: Higher density development almost of necessity means higher traffic volumes, etc. That legislative designation may not be challenged in the context of this proceeding.

The driveway for the proposed 6-plex will not be directly opposite the Miller residence at 512 High Avenue; it will located in a new easement along the east edge of Parcel B on the opposite side of the property from the Miller residence.²⁵

18. The CUP proposal meets Criterion B if it is a townhouse development. If it is a multiple-family development, then the front setback of the proposed building is seven feet too close to the south line of Parcel A.

²⁵ The existing 40 foot wide easement, which is not proposed to be used, is more or less directly opposite from 512 High Avenue.

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The proposal has a minor shortcoming with respect to landscaping: Only one specie of tree has been proposed to be planted rather than the two species required by code. That shortcoming is easily remedied by a condition.

19. The CUP proposal can be conditioned to meet Criterion C. The proposal is not wholly contained on Parcel A: Its driveway access and associated landscape screening together with a vehicular turnaround encumber portions of Parcel B. Since those elements of the proposal are critical to both the functional integrity and code compliance of the proposed 6-plex, they must be legally protected from actions by the owner of Parcel B.²⁶

That required protection may be accomplished in either of two ways: Creating a binding easement across Parcel B encompassing the drive and its associated landscaping for the benefit of Parcel A or changing the BLA to make Parcel A a "panhandle" lot where the panhandle would be configured to include the drive, turnaround, and landscaping. The existing house and shed on Parcel B²⁷ intrude into the landscape strip along the access drive. The creation of a panhandle and/or addition of an easement along the east side of the property covering the drive and landscaping would reduce the usable width of Parcel B by another 40 feet, thus leaving the usable width of Parcel B at around 70 feet ($151' - 40' - 40' = 71'$).

Given those factors, the proposal would not be compatible with future development unless the existing westerly easement is extinguished, a replacement 40 foot wide access, utility, and landscaping easement is created along the east edge of Parcel B, and language is included within that easement document providing that the existing house and shed may remain in the easement but that any new or replacement structures on Parcel B must be located outside of the easement in full compliance with then-applicable setback requirements.

As far as sight distance along High Avenue at the driveway intersection is concerned, parked cars along a street always have the potential to block visibility at any driveway or street intersection. The responsibility to regulate parking along City streets rests with Public Works, not the Georges.

Building design has been reviewed and approved by the DRB.²⁸

²⁶ The fact the George presently owns both Parcels A and B is immaterial to this issue. The two parcels are legally separate building lots. George may sell either or both at any time. George may sell them to different purchasers. Therefore, this Recommendation and the Council's subsequent Decision must factor in the possibility that two different parties will own Parcels A and B at some time in the future.

²⁷ Which appeared unoccupied at the time of the Examiner's site visit.

²⁸ Since the Examiner believes that the proposal is a townhouse composed of attached single-family dwellings, DRB design review was not required.

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20. The CUP proposal meets Criterion D. The proposed density is well within the maximum envisioned by the Comprehensive Plan regardless of whether the 6-plex is considered a townhouse or multiple-family development.
21. The CUP proposal can be conditioned to meet Criterion E. The easement-related items mentioned above need to be added to the conditions to meet this criterion.
22. The CUP proposal meets or can be conditioned to meet all criteria. The CUP should be approved subject to appropriate conditions.
23. The recommended conditions of approval as set forth in Exhibit 1, as amended by Exhibit 9, 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 George agree that Exhibits 2 - 4 constitute the plans which should be approved. Reference to those exhibits will be incorporated into a new Condition 1.
 - B. Since George intends that the CUP apply only to Parcel A, approval of the CUP should very clearly state that limitation.
 - C. Recommended Condition B, as amended, contains two requirements to be met before CUP approval: Approval of the BLA and approval of the Design Standards relaxation. The Examiner concurs that those items need to be resolved before approval of the CUP. The Examiner will Recommend that the Council approve the BLA and dismiss the Design Standards request. If the Council concurs, then those items do not need to be listed as conditions as they will have occurred when the Council takes its action on the consolidated application.
 - D. Based on Conclusion 19, above, Recommended Conditions C.b and C.d need to be merged, clarified, and strengthened.
 - E. Revised Recommended Condition C.d contains language which would not be in the public interest. The part of the condition requiring a landscaping easement is acceptable; the part which does not assign responsibility for the maintenance and replacement of landscaping within that easement squarely on the owner of Parcel A is unacceptable. As written, the condition would require the City to approve an easement which placed that burden on the

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subservient easement tenant, the owner of Parcel B. The landscaping is required because of the 6-plex; the 6-plex owner(s) must be responsible for it.

- F. The temporal element of Recommended Condition D.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.
- G. The easement which encumbers the westerly 40 feet of Parcel B needs to be extinguished so that Parcel B will be reasonably available for development.
- H. A few minor, non-substantive structure, grammar, and/or punctuation revisions to Revised Recommended Conditions C.a, C.c, D.a, and D.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."

- 24. The proposal passes the consistency test: Townhouse (or multiple-family, for that matter) development is allowed by the applicable zoning, the proposed density is within the permitted range, and adequate utility services are available.

Concurrency²⁹

- 25. CUP applications are development permits. [SMC 16.120.050] The proposed 6-plex is not categorically exempt from SEPA threshold determination requirements. (Exhibit 1.K) Therefore, the proposed 6-plex is subject to the concurrency requirements of Chapter 16.108 SMC. [SMC 16.108.020]

²⁹ Resolution Nos. 06-06, 06-07, 06-09A, 06-12, 06-14, and 07-02A do not establish precedent for this or future cases. The analysis which follows has benefited from the Council's holdings in those Resolutions, but does not agree in full with the Resolutions' holdings. Those Resolutions imposed no concurrency conditions on any of the developments. (Each Resolution "takes notice" of an applicant offer to provide a developer agreement for an "incremental share for a police officer for one year." None of the Resolutions, however, imposes any such requirement on the application.) Those Resolutions do not explain how or why the Examiner's analysis of Chapter 16.108 SMC is incorrect; they simply state without analytical support that compliance is present.

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26. DCD's concurrency determination is to be considered part of its recommendation to the Examiner. [SMC 16.108.040(B)] The Examiner can not recommend and the Council can not approve a development application which does not demonstrate compliance with the concurrency requirements of Chapter 16.108 SMC. [SMC 16.108.060]
27. Section 16.108.060 SMC states that development approval is to be granted "only if the proposed development does not lower the existing level of service (LOS) of public facilities and services below the adopted LOS in the comprehensive plan." But what happens where the existing LOS is already below the established standard? Or where the LOS may fall below the standard when previously approved residential projects are developed? May a development be approved because it is not the one which "broke" the LOS standard?

Common sense must be applied in interpreting the quoted code language. One could argue that the section holds that only the one project which would "break" the standard could not be approved, but that all subsequent proposals could be approved since they were not the project which lowered the LOS below the established standard – they simply made it even lower.

Such an interpretation makes no sense. The only reasonable interpretation of the quoted language is that developments may not be approved either if they would themselves cause the LOS to fall below the established standard or if the LOS is already below that standard.

28. The concurrency process of Chapter 16.108 SMC is wholly separate from and independent of the impact fee process of Chapter 16.112 SMC. The former seeks to assure that established LOSs are maintained; the latter requires developers to pay a share of the costs of facilities required by new development. The latter is a Growth Management Act (GMA) impact fee program adopted by the City pursuant to Chapter 36.70A RCW, GMA, and "RCW 82.02.050 et sequitur". [SMC 16.112.010, ¶ 1] The latter is not subject to the fee limitations associated with RCW 82.02.020; but it is subject to the definitional limitations of RCW 82.02.090: No impact fees may be collected for police services as such services are not defined as "public facilities."
29. Chapter 16.108 SMC does not impose an impermissible cost on developers. In fact, it doesn't necessarily impose any cost on developers. Rather, it establishes a threshold condition which must now exist in the community, be conditioned to exist concurrent with the impacts of the development, or be funded to exist concurrent with the impacts of the development in order for any development approval to be granted. If that threshold condition (LOS at or above the established level) exists when the development approval is granted, then SMC 16.108.060(A) is met and the development is

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deemed concurrent.³⁰ If the required LOS is not present, then SMC 16.108.060 provides two alternative mechanisms by which a development may still be found to be concurrent.

Subsection (B) addresses the situation where the LOS standard would not be met but a condition is imposed requiring that the LOS standard be met at the time development impacts occur. Such a condition would not necessarily mean that a developer would have to make any financial contribution towards solving the LOS deficiency. Rather, it would simply not allow development impacts until the standards were met.

For residential developments, significant development impacts really begin to occur when dwellings are completed and occupied. Therefore, a condition requiring that the LOS standard be met when each dwelling is approved for occupancy (every residential building permit is subject to a Final Inspection before occupancy may legally occur) would fulfill Subsection (B). This requirement would have to appear on the face of the building permit as a legal notification to prospective purchasers (since one could build a house and be unable to occupy it if the LOS standard were not met at that time). The LOS standard to be met should be that in existence at the time the development is occurring, not that in existence currently. (This is analogous to impact fees which do not vest.)

Subsection (C) addresses the situation where the LOS standard would not be met but the developer enters into a binding agreement with the City to provide the necessary resources to raise the LOS to meet or exceed the established LOS within six years. This is an option in which the typical developer would likely be committing more than his/her fair share. But "latecomers" agreements are available for just such situations.³¹ And, the developer always has the option to wait until the City makes the necessary commitments to raise the LOS.

30. According to SMC 16.108.070, .120, and .130, the LOS standards for police services are the standards as set in the 2004 Comprehensive Plan: 2.6 uniformed officers per 1,000 population.

³⁰ To read this subsection as one prior applicant has suggested (the LOS must meet the standard for only the one day on which the Council will act on the proposal) is simply illogical and makes a mockery of the entire concurrency system chapter. If such was the true intent of the Council when it enacted Chapter 16.108 SMC, the Council will have to so declare on its own initiative: The Examiner declines to even suggest that such an interpretation might have been intended.

³¹ In fact, developers frequently extend water and sewer lines to serve a development. The cost of getting those lines to the development site often is above and beyond a roughly proportional cost. But the developer usually does not want to await the extension of those lines by the City, so it offers to fund them now and enter into a "latecomers" agreement by which, over time, at least some of its excess investment costs may be returned when others connect to the lines for which it has paid.

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The Council in adopting the LOS standards in the 2004 Comprehensive Plan without exception used the 2003 actual LOS ratios/levels as the standards that have to be met in the future. The text in Appendix B of the 2004 Comprehensive Plan does not explain why the 2003 actual levels were chosen as the standards for the future. As adopted, those standards effectively mean that any reduction in police staffing below that in place in 2003 would drop (actually has dropped) the City below its established LOS. As the City has grown, additional officers would have of necessity been needed to maintain the LOS above the standard: Even 1 additional resident would have lowered the LOS below the standard.

Whether that was the Council's intent when it adopted the 2004 Comprehensive Plan is unknown. (Legislative intent is not relevant where the enactment is clear and unambiguous on its face.) Whether the Council even realized the effect of the standards it was adopting is equally unknown. Even if the Council were to change the standards now, new standards could not legally be applied in the review of the proposed 6-plex because of the vested rights doctrine: The application must be reviewed against the regulations which existed on October 4, 2006, the date the application was deemed complete. Further, an applicant may not "selectively waive" some old regulations while retaining a vested right to others. [*East County Reclamation Co. v. Bjornsen*, 125 Wn. App. 432, 105 P.3d 94 (2005)]

31. A concurrency recommendation or certificate must be based upon facts. Those facts must include the (estimated) population of the City at the time of the application for which concurrency is sought, the number of residents expected to be added by the proposed development, and the amount of the affected service then available in the community (For example, the number of uniformed officers in the police department; the total acreage of parks, recreation, and open space using the same methodology as used in the 2003 inventory.) Given those facts, LOS for each required service area may be calculated. Without those facts, LOS cannot be calculated. If the LOS cannot be calculated, then no favorable conclusion is possible regarding concurrency.
32. The present LOS for police services is far below the standard established within the 2004 Comprehensive Plan. Additional residential development within the City will only serve to further lower the LOS.
33. DCD erred in concluding that proposed 6-plex meets the concurrency standard for police services.
34. The Police Services Agreement simply does not guarantee that the police services LOS will meet the established standard when the development occurs – or even six years later. The concept underlying the offered agreement suffers from several shortcomings. First, even if fully funded all at once, the Police Services Agreement would fund only 4% of the cost of one police officer for one year. The City cannot hire 4% of a person. Even if it could, the LOS would still be woefully below the established standard – and would fall back again after the one year of funding ended.

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Second, the Police Services Agreement calls for the funds to be paid as each building permit is issued. Based on the proposed six new dwelling units and the total offered mitigation of \$6,235.00, the City would receive \$1,039.17 each time a residential building permit was issued for the proposed 6-plex. Such a small stream of cash would not allow even 4% of a police officer to be hired.

Even if all the offered funds were paid at one time, it would take 25 proposed 6-plex-sized developments to fund just one police officer ($4\% \times 25 = 100\%$), and that one officer would not raise the police services LOS to the established standard. In fact, it would take 63.5 proposed 6-plex-sized developments, all developed at essentially the same time, to raise the LOS to the established standard. But that simple equation (1 officer funded by the fees from 25 developments yields 2.54 officers after 63.5 6-plexes) fails to account for the fact that those 63.5 proposed 6-plex-sized developments would themselves raise the City's population by some 1,029 people (2.7 persons per household, the number stated in the Police Services Agreement), thus lowering the LOS again. In fact, all a program such as offered by George does is hold the LOS at its current level as new houses are added to the community – and then only if development occurs fast enough that the payments for fractional officers can be combined to actually hire a police officer.

This concept simply is not what the SMC requires. The Council may certainly change the SMC requirement if it wishes. But in the meantime, the code is what controls – and even if the code were changed today, that change would not apply to any subdivision application filed in a complete fashion before the change became effective.

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

35. The City has no “strategy in place” to increase police staffing. The electorate defeated its latest proposed strategy. The discussion in Resolution Nos. 06-06, 06-07, 06-09A, and 07-02A regarding possible additional taxes that could or might be adopted to raise revenue is a strategy, but it is not in place. Utility and cable taxes have been adopted. But the record is devoid of any data that would support the notion that those taxes will enable the City to raise the Police Level of Service to meet the adopted standard. However, that Council discussion (that additional tax revenues coupled with developer funds could raise the LOS to meet the standard) could be converted into a condition which could read as follows:

Prior to approval of the Final plat, a combination of developer agreements and public funds, including additional tax adoptions (such as a utility tax on cable television service, an increased real estate excise tax, and a B & O tax), other funding sources (such as potential developer loans to advance the receipt of payment of needed

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funds), and monies contributed by the proposed development for its impacts on the LOS, shall put in place the required public services for police concurrent with the development impacts, and provide appropriate strategies for the six years from the time of development to achieve the necessary police LOS as now established or as subsequently revised.

Such a condition would meet the requirement of SMC 16.108.060(C).

36. Approval could also be conditioned such that the police services LOS in existence at the time of final building permit inspections had to be met before approval for occupancy could be granted. Such a condition would meet the requirement of SMC 16.108.060(B).
37. Under the present circumstances, the best Concurrency solution would be to impose an "either - or" condition: Require compliance with a condition as suggested in Conclusion 35, above, or compliance with a condition as suggested in Conclusion 36, above. Unfortunately, the Police Services Agreement does neither.

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**:

- I. That the Council **APPROVE** the requested Boundary Line Adjustment and require that Exhibit 1.P or its equivalent be recorded within the time period allowed by code.
- II. That the Council either:
 - A. **Rule** that the proposed 6-plex is a single-family attached development and **that the commercial driveway standard applies; or, in the alternative,**
 - B. Exercise its authority under § 1.06 of the Design Standards to **grant a modification to allow a 24 foot wide driveway curb cut (plus curb returns).**
- III. That the Council **APPROVE** a Conditional Use Permit for the proposed 6-plex on Parcel A **SUBJECT TO THE ATTACHED CONDITIONS**, but **ONLY** if it concludes that the proposal is a townhouse. If the Council concludes that the proposal is multiple-family housing, then the Council should **DENY** the Conditional Use Permit or condition it upon compliance with the required front setback.

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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."

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CONDITIONS OF APPROVAL
CUP06-004
George 6-Plex Townhouses

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. 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. This Conditional Use Permit applies only to Parcel A as adjusted by the companion Boundary Line Adjustment.
3. Exhibits 2 – 4 constitute the approved site plans for this Conditional Use Permit. Minor revisions to approved Conditional Use Permit Site Plans may be approved administratively by DCD.
3. Prior to issuance of construction permits:
 - A. An ingress, egress, utilities, and landscaping easement must be approved by the City and recorded encumbering that portion of Parcel B used as access and landscaping as depicted on Exhibit 2. (Essentially the easterly 40 feet of Parcel B plus that area associated with the turnaround and its landscaping.) The easement shall provide that the owner(s) of Parcel A are responsible for all construction, planting, maintenance, and replacement of the driveway, sidewalk, and landscaping within that easement. Further, the easement shall provide that the existing house and shed on Parcel A may remain within the easement, but that in the event of their destruction or removal, any and all new construction on Parcel B must occur outside of the easement in full compliance with then-applicable City codes, including setback requirements.
 - B. The existing easement encumbering the westerly 40 feet of present Parcel B shall be extinguished.
 - C. If the existing shed on Parcel B is to remain, then the developer must demonstrate by clear and convincing evidence that the proposed access road can be safely constructed without causing damage to the existing structure. If the developer is unable to do so, then the existing shed must be removed or relocated.

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RE: CUP06-004 & BLA06-004 (George)

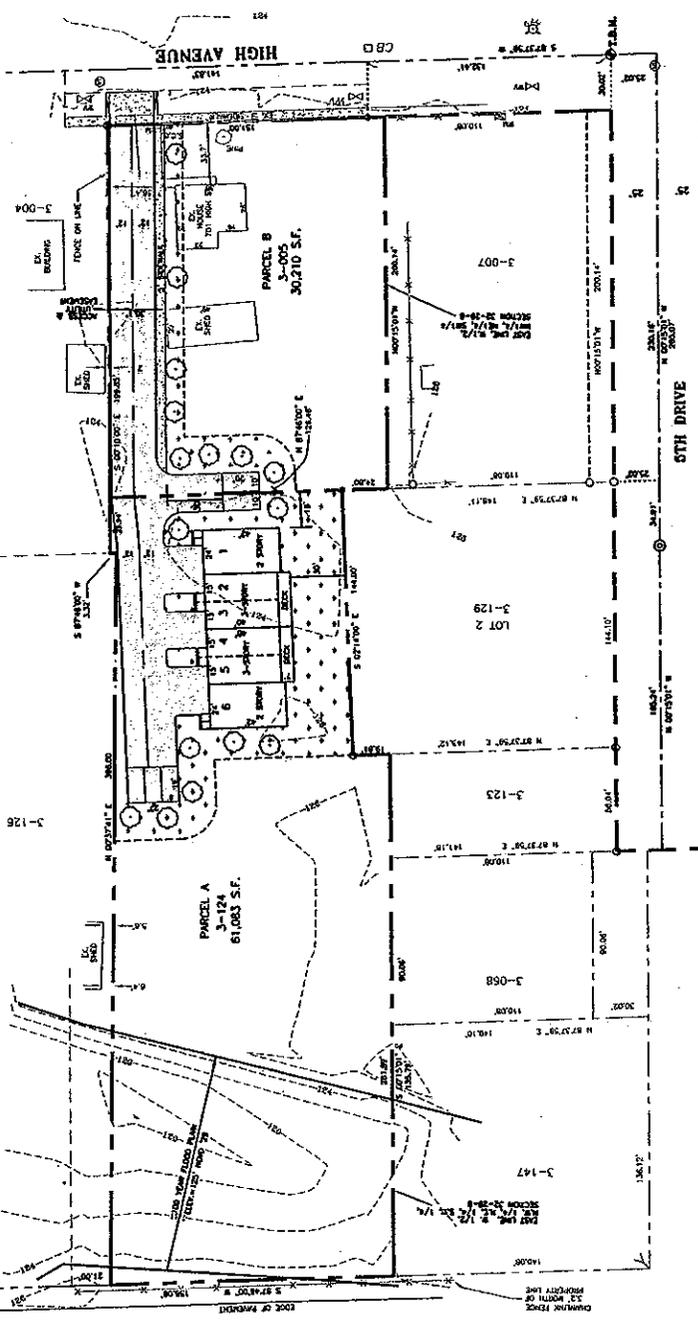
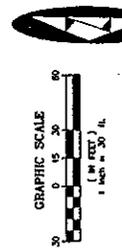
May 4, 2007

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- D. The developer must show an additional hydrant on the construction plans, located in the general vicinity of the south side of the proposed parking/turnaround area.
 - E. The landscape plan shall be revised to provide not less than two species of trees.
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 1.N)
 - 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. The neighboring properties shall be protected from erosion in accordance with the Department of Ecology Stormwater Management Manual for Puget Sound Basin. Erosion and sediment control devices shall be in place before construction commences.
5. Prior to issuance of a certificate of occupancy and/or occupancy of the 6-plex, a combination of developer agreements and public funds, including additional tax adoptions (such as an increased real estate excise tax and a B & O tax), other funding sources (such as potential developer loans to advance the receipt of payment of needed funds), and monies contributed by the proposed development for its impacts on the LOS, shall put in place the required public services for police concurrent with the development impacts, and provide appropriate strategies for the six years from the time of development to achieve the necessary police LOS as now established or as subsequently revised; or, in the alternative, the police services LOS in existence at the time of final building permit inspections shall be met before approval for occupancy is granted.
6. To ensure stormwater runoff does not negatively impact off-site properties, all surface water runoff from impervious surfaces shall be managed in accordance with the Puget Sound Stormwater Management Manual. All surface water runoff from impervious surfaces shall be infiltrated, conveyed to an approved detention facility, or otherwise treated to protect water quality.



A PORTION OF THE E. 1/2 OF THE N.W. 1/4 OF THE N.E. 1/4 OF THE S.W. 1/4 SECTION 32, TOWN 28 NORTH, RANGE 8 EAST, W.M.



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SITE & LANDSCAPING PLAN
SCALE: 1" = 30'

GENERAL NOTES:

1. All work to be done in accordance with the specifications and drawings.
2. All work to be done in accordance with the specifications and drawings.
3. All work to be done in accordance with the specifications and drawings.

DESIGNED BY: [Name]
CHECKED BY: [Name]
DATE: [Date]

OWNER/DEVELOPER:
BELINDA MARY GEORGE
1380 773-7285

DESIGNED BY:
DATE:
CHECKED BY:
DRAWN BY:
SCALE:

PROJECT:
A SIX-UNIT RESIDENTIAL
TOWNHOUSES
HIGH STREET DEVELOPMENT

OWNER/DEVELOPER:
BELINDA MARY GEORGE
1380 773-7285

LEGAL DESCRIPTION:
A PORTION OF THE E. 1/2 OF THE N.W. 1/4 OF THE N.E. 1/4 OF THE S.W. 1/4 SECTION 32, TOWN 28 NORTH, RANGE 8 EAST, W.M. CONTAINING PARCELS 3-124, 3-007, AND LOT 2, 3-129.

PARCEL NUMBERS:
3-124, 3-007, 3-129

ZONING:
R-1

OWNER:
Belinda Mary George

DESIGNER:
[Name]

DATE:
[Date]

CHECKED BY:
[Name]

DRAWN BY:
[Name]

SCALE:
1" = 30'

**CITY OF SULTAN
NOTICE OF RESCHEDULED
APPEAL/PUBLIC HEARING/CLOSED RECORD
HEARING GEORGE 6-PLEX TOWNHOUSE
DEVELOPMENT
CONDITIONAL USE PERMIT AND BOUNDARY LINE
ADJUSTMENT**

**Thursday August 23, 2007
6:00 PM or soon thereafter
City Council Chambers
319 Main Street Sultan, Washington**

The City of Sultan City Council will conduct a Appeal/Public Hearing/Closed Record Hearing on August 23, 2007 at 6:00 PM or soon thereafter to consider an Appeal of the Hearing Examiner's Recommendations (pursuant to Sultan Municipal Code (SMC) 2.26.140 and 2.26.150) by Ray E. and Belinda Kay George of the Hearings Examiner's May 9, 2007 Recommendation for the George 6-plex Townhouse Development Conditional Use Permit and Boundary Line Adjustment.

All Council hearings conducted pursuant to Section 2.26.150 shall be de novo and shall be limited to those matters raised in the appeal. The Council shall consider the appeal based upon the record before the Hearing Examiner and all written and oral testimony presented at the Council hearing. All testimony at any public hearing shall be taken under oath.

At the conclusion of the Appeal/Public Hearing/Closed Record Hearing, the Council shall enter its decision which shall set forth the findings and conclusions of the Council in support of its decision. The Council may adopt any or all of the findings or conclusions of the Hearing Examiner which support the Council's decision. The Council may affirm the decision of the Hearing Examiner, reverse the decision of the Hearing Examiner either wholly or in part, or may remand the matter to the Hearing Examiner for further proceedings in accordance with the Council's findings and conclusions.

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

Publish: August 9, 2007

cc: Applicant
Hearing Examiner
Parties-of-Record

A-2

D. Where the examiner's decision is final and conclusive, with right of appeal to court, the procedures for appeal are as set out in the underlying ordinance or statute governing the land use permit or other quasi-judicial hearing. (Ord. 550, 1990)

2.26.150 Council consideration.

A. An examiner's decision which has been timely appealed pursuant to SMC 2.26.140 shall come on for council consideration in open public meeting no sooner than 21 nor longer than 35 calendar days from the date the appeal was filed. The council shall consider the matter based upon the record before the examiner, the examiner's decision, the written appeal statement and any written comments received by the council before closure of the city clerk/treasurer's office seven days prior to the public meeting date set for council consideration.

B. At the public meeting, the council may concur with the findings and conclusions of the examiner and affirm the examiner's decision; remand the matter to the examiner for further proceedings in accordance with the council's findings and conclusions; or the council may determine to hear the appeal at public hearing. In those instances in which the council affirms the examiner's decision or remands the matter to the examiner, the council's decision shall be reduced to writing and entered into the record of the proceeding within 15 days of the public meeting. Copies of the decision shall be mailed to all parties of record.

C. In those instances in which the council determines to conduct a public hearing, notice of the hearing shall be given by publication in the city newspaper no less than 10 days prior to the date set for the hearing and written notice shall also be given by the council by mail to all parties of record before the hearing examiner.

D. All council hearings conducted pursuant to this section shall be de novo and shall be limited to those matters raised in the appeal. The council shall consider the appeal based upon the record before the examiner and all written and oral testimony presented at the council hearing. All testimony at any public hearing shall be taken under oath.

E. At the conclusion of the public hearing, the council shall enter its decision which shall set forth the findings and conclusions of the council in support of its decision. The council may adopt any or all of the findings or conclusions of the examiner which support the council's decision. The council may affirm the decision of the examiner, reverse the decision of the examiner either wholly or in

part, or may remand the matter to the examiner for further proceedings in accordance with the council's findings and conclusions.

F. The council's decision shall be reduced to writing and entered into the record of the proceedings within 15 days of the conclusion of the hearing. Copies of the decision shall be mailed to all parties of record. (Ord. 550, 1990)

2.26.160 Effect of council action.

The council's decision to affirm an examiner's decision or remand a matter to the examiner pursuant to SMC 2.26.150(B), or the council's decision after public hearing on an appeal, shall be final and conclusive with right of appeal to the Superior Court of Snohomish County by writ of certiorari, writ of prohibition or writ of mandamus within 15 calendar days of the council's decision. The cost of transcription of all records ordered certified by the court for such review shall be borne by the applicant for the writ. (Ord. 550, 1990)

2.26.180 Local improvement district assessment roll hearings.

A. As authorized by RCW 35.44.070, the city council hereby provides for delegating, whenever directed by majority vote of the city council, the duty of conducting public hearings for the purpose of considering and making recommendations on final assessment rolls and the individual assessments upon property within local improvement districts to a hearing examiner appointed under this section, and the hearing examiner is directed to conduct such hearings and make those recommendations when thus authorized by the city council.

B. All objections to the confirmation of the assessment roll shall be in writing and identify the property, be signed by the owners and clearly state the grounds of the objection. Objections not made within the time and in the manner prescribed and as required by law shall be conclusively presumed to have been waived.

C. The hearing examiner shall conduct the hearing to be commenced at the time and place designated by the city council, cause an adequate record to be made of the proceedings, and make written findings, conclusions and recommendations to the city council following the completion of such hearings, which may be continued and recontinued as provided by law whenever deemed proper by the hearing examiner, and the city council shall either adopt or reject the recommendations of the hearing examiner.

**AFTER RECORDING
PLEASE RETURN TO:**

**DEVELOPER AGREEMENT
TO ESTABLISH CONCURRENCY**

This Developer Agreement to Establish Concurrency is voluntarily made between The Georges (hereinafter "Developer") and the City of Sultan, Washington (hereinafter "City") to establish concurrency of a preliminary plat assigned processing number _____ and named George b-plex.

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

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

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

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

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

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

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

1. Developer commitment to satisfy impacts of development. Developer's preliminary plat proposes the creation of 6 ~~single family lots (or multiple family units)~~. City, for planning purposes assigns a population of 2.7 to each lot/unit for a total population impact of 17 people. City has adopted level of service for police of 2.6 officers per 1000 population. Developer's impact requires a contribution for .0442 of an officer. City estimates the annual cost of an officer to be \$110,878. Developer therefore agrees to pay a cash contribution to City of \$4,901, consisting of 16% of the first year annual cost of an officer and an additional \$1,334 to serve as a contribution to a reserve for future years of service. This contribution shall be divided equally among the lots/units approved, and shall be paid on a lot by lot/unit by unit basis as building permits are issued.

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

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

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

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

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

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

16.108.060 Standards for concurrency.

The city of Sultan shall review applications for development, and a development approval will be issued only if the proposed development does not lower the existing level of service (LOS) of public facilities and services below the adopted LOS in the comprehensive plan. A project shall be deemed concurrent if one of the following standards is met:

A. The necessary public facilities and services are in place at the time the development approval is issued; or

B. The development permit is issued subject to the condition that the necessary public facilities and services will be in place concurrent with the impacts of development; or

C. The necessary public facilities and services are guaranteed in an enforceable development agreement to be in place concurrent with the development. "Concurrent with the development" shall mean that improvements or strategy are in place at the time of the development or that a financial commitment is in place to complete the improvements or strategies within six years of the time of the development. (Ord. 630 § 2[16.12.060], 1995)

16.108.070 Facilities and services subject to concurrency.

A concurrency test shall be made of the following public facilities and services for which level of service standards have been established in the comprehensive plan:

- A. Roadways;
- B. Potable water;
- C. Wastewater;
- D. Police protection;
- E. Parks and recreation. (Ord. 630 § 2 [16.12.070], 1995)

16.108.080 Concurrency determination - Arterial roadways.

A. The city of Sultan will provide existing and adopted level of service (LOS) information as set forth in the city of Sultan comprehensive plan. The proposed development will be analyzed to determine additional trips generated using standards from the Institute of Transportation Engineers.

If this preliminary LOS analysis indicates a LOS failure, the developer may:

- 1. Accept the level of service information as set forth in the comprehensive plan; or
- 2. Prepare a more detailed Highway Capacity Analysis, as outlined in the Highway Capacity Manual, Special Report 20 (1985) or other traffic analysis following procedures outlined by the

Washington State Department of Transportation (WSDOT).

This more detailed study may include demand management strategies to accommodate the impacts of the proposed development such as increased public transportation service and ride-sharing programs.

B. If the developer chooses to do a more detailed analysis as described in subsection (A)(2) of this section, the building and zoning official will:

- 1. Meet with the developer to review and accept or deny the more detailed highway capacity analysis methodology;
- 2. Review the completed alternative analysis for accuracy and appropriate application of methodology;
- 3. If the alternative methodology, after review and acceptance by the building and zoning official, indicates an acceptable LOS where the comprehensive plan indicates a LOS failure, the alternative methodology will be used, based on a binding or enforceable development agreement. (Ord. 630 § 2[16.12.080], 1995)

16.108.090 Concurrency determination - All other roadways.

The developer shall prepare a traffic study. The level of detail and scope of a traffic study may vary with the size, complexity and location of the proposed development. A traffic study shall be a thorough review of the immediate and long-range effects of the proposed development on the city's transportation system.

A. The traffic study shall include the following basic data:

- 1. Provide a site plan drawn to appropriate scale of the proposal showing the road system, rights-of-way, type of roads, access points and other features of significance in the road system;
- 2. Vicinity map showing transportation routes to be impacted by the development;
- 3. Type of dwelling units proposed (single-family, multiple-family, attached, detached, etc.) and trip generation rates for the development. In cases of activity other than residential, the same type of information will be required (commercial, industrial, etc.);
- 4. Volume of traffic expressed in terms of average daily traffic on the roadway network that can reasonably be expected to be used by existing traffic and traffic from the development expressed in terms of current average daily traffic along with directional distribution (D factor), peak hour

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Memo

To: Mayor Ben Tolson
From: Deborah Knight, City Administrator
CC: City Council
City Staff
Date: 7/24/2007
Re: Vodnick – Land Use Petition Act (LUPA) appeal was dismissed by the Court

On Friday, July 13, 2007, the Snohomish County Superior Court dismissed the LUPA appeal filed by Friends of Responsible Governmental Responsibility, Integrity and Truth; and Loretta Storm (petitioners) against the City of Sultan; Group Four and the Vodnick's (respondents). The LUPA appeal was dismissed for lack of standing.

This means that the court found that no genuine issue of material fact exist for the court to hear the case.