SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET

ITEM NO: Public Hearing Amending Sultan Municipal Code Title 16 Chapter 16.18 Nonconformances

DATE: August 23, 2007

ISSUE:
The issue before the City Council is to conduct a Public Hearing on proposed revisions to the Sultan Unified Development Code Chapter 16.18 Nonconformances as Recommended by the Planning Board.

SUBJECT:

Consideration of proposed revisions, as recommended by the Planning Board, to the Sultan Unified Developmnet Code Title 16 Chapter 16.18 Nonconformances Section 16.18.060, Extension or Enlargement of Nonconforming Situations

CONTACT PERSON:
Rick Cisar, Director of Community Development

STAFF RECOMMENDATION:

Conduct the Public Hearing on the proposed Amendment to Chapter 16.18 Nonconformance, Section 16.18.060, Extension or enlargement of Nonconforming Situations, and Section 16.18.070 Nonconformance - Repair, Maintenance, and Construction, and thereafter:

1. Close the Public Hearing and inconsideration of the public comments, written information received and the Planning Board Recommendation schedule Ordinance 955-07 for Action at the September 13, 2007 City Council Meeting.

2. Close the Public Hearing and inconsideration of the public comments and written information received at the Public Hearing, defer discussion and action on Ordinance 955 -07 to the September 13, 2007 City Council Meeting.

3. Continue the Public Hearing to the September 13, 2007 City Council Meeting to allow for additional public conmment.

BACKGROUND:

In September of 2006, Mr. Warren Jerden of Sky Valley Automotive (609 Main Street) discussed with the Planning Board a proposed plan to expand his existing automotive repair business.

City Staff explained at that meeting that an Amendment to the Nonconforming Use provisions of our current code would be necessary for the proposed expansion. Currently only single-family uses are allowed to expand. Commerical, industrial, and multi-family Nonconforming situations are not allowed to expand.

Mr. Jerden's Attorney, Mr.Gary W. Brandstetter, submitted a letter dated January 31, 2007 (Exhibit A) proposing revisions to the City's Nonconforming Use Regulations that would allow for the expansion of the Sky Valley Auto, as well as other nonconforming situations within the City. In response to Mr. Jerden's request, City Staff, in conjuction with the City Attorney, (1) prepared a Draft Ordinance to provide for the Code Amendment (Exhibit D) Note this Ordinance 955-07 incorporates all the recommendations of the Planning Board, (2) completed the Environmental Review of the proposed revisions, and (3) coordinated the review of the code change with the State Department of Community Trade and Economic Development.

PLANNING BOARD RECOMMENDATION AND SUMMARY:

The Sultan Planning Board conducted a Public Hearing on May 1, 2007 to consider the Code Change and thereafter held additional discussions at the May 15, 2007, June 5, 2007, and June 26, 2007 Meetings to consider additional Amendments to the Ordinance in preparing its Final Recommendation to the City Council. The Minutes of the Planning Board Meetings on May 15, June 5, and June 26th for this Code Amendment are included as attachments (Exhibit F).

The Planning Board's Recommendation as proposed in Ordinance 955-07 would change Sections 16.18.060 Extension or Enlargements of Nonconforming situations and Section 16.18.070 Repair, Maintenance, and Construction to allow expansion of nonconforming uses.

The proposed change would affect for example, two auto-oriented businesses in the downtown Urban Center (UC Zone) and all other nonconforming situations throughout the community generally constructed prior to the adoption of the Unified Development Code in 1995. The nature and extent of these nonconforming situations primarily involve existing single-family residential uses in the Urban Center, Highway-Oriented Development, and Economic Development Zoning Districts. Other nonconforming situations involve building setbacks and parking . Nonconforming businesses in the above Zoning Districts would be allowed to expand by 50%. For example, a 2,000 sq. ft. building could expand an additional 1,000 sq. ft. if all other code provisions, such as parking and setbacks are met (Exhibit H - Zoning Map).

The proposed change would also allow damaged nonconforming uses to be rebuilt to their same size and square footage. The overall impact is to assist business owners who want to remain in their current nonconforming location. The off setting benefit to the community is property improvement, business retention, and job creation.

PLANNING BOARD DISCUSSION SUMMARY AND RECOMMENDED REVISIONS TO DRAFT ORDINANCE:

PLANNING BOARD MEETING - MAY 15, 2007:

The Planning Board on May 15, 2007 conducted a Public Hearing to review and consider the Draft Ordinance prepared by City Staff. The Ordinance proposed to allow expansion of commercial uses by 50% through a Conditional Use Process and increase the repair and replacement cost from 25% to 75%. That is, a nonconforming building which is damaged could be reparied and maintained providing the damage did not exceed 75% of the appraised valuation. If the valve was exceeded the building/use would be required to conform to the current zoning regulations. The Board, after closing the Hearing and after discussion, requested City Staff to amend the Ordinance to increase the repair and replacement cost to 100% of the apprasied valuation, provide criteria for the Condition Use Process to allow for the 50% expansion and define pedestrian friendly (Attachment F).

PLANNING BOARD MEETING - JUNE 5, 2007:

The Planning Board considered a Recommendation from the City Attorney advising the Members that a Conditional Use Procees for the expansion of Nonconformances would cause conceptable and legal problems and significant code revisions. The Attorney's Recommendation was an Administrative Process with an Appeal to the Hearing Examiner. The Board also reviewed the 100% replacement cost and suggested City Staff consider language that is based on square footage of the existing structure. City Staff was also requested to revise the Ordinance to provide for an Administrative Process with review criteria (Attachment F).

PLANNING BOARD MEETING - JUNE 26, 2007:

The Planning Board considered a revised Ordinance prepared by City Staff that allowed for (1) the expansion of nonconforming uses by 50% of the existing floor area, (2) the Administrative Review of expansions of nonconforming uses by City Staff in consideration of the evaluation criteria, and (3) allowing a damaged nonconforming structure to be repaired or replaced to to its orginial square footage or size. Thereafter, the Planning Board, by a unanimous vote, forwarded their recommendation to the City Council (Attachment F).

CURRENT CODE REQUIREMENTS:

Under the SMC 16.18.060 (Exhibit B), Nonconforming single-family detached residences may be enlarged or replaced with a similar structure of a larger size providing the enlargement does not increase the extent of the existing nonconformities with respect to setbacks and parking. All other nonconforming uses (e.g. commercial, industrial, etc.) may not be enlarged or replaced with a similar structure of a larger size.

REQUESTED REVISIONS TO CURRENT CODE REQUIREMENT:

The proposed Code Amendment to Section 16.18.060 would treat single-family nonconforming uses and other nonconforming uses equally under the Code by (1) allowing other nonconforming uses to enlarge the structure with a limitation on the increase of the size of structure by not more than 50% of the size of the existing building and (2) require all other code provisions such as setbacks and parking be met.

The proposed change to Section 16.18.070 Repair, Maintenance and Construction affect only commercial uses. This change would allow a damaged nonconforming structure to be reparied or replaced to the existing square footage and size of the existing structure prior to the damage.

Code Comparasion Analysis:
City Staff has researched the Municipal Research and Service Center of Washington (MRSC) Website in order to provide the City Council with a comparative analysis of the nonconforming use provisions of other Cities. The Codes reviewed included the communities of Monroe, Snohomish, Duvall, Everett, Arlington, Lake Stevens, Marysville, Burlington, and Mount Vernon. The code analysis considered the expansion provisions and the percentage of repalcement value.

City	Expansion Allowed	% of Value Used for Rplcmnt
Monroe	**No**	**50%**
Snohomish	**Yes**	**75%**
City	**Expansion Allowed**	**% of Value Used for Rplcmnt**
Duvall	**No**	**50%**
Everett	**Yes by 50% if Evaluation Criteria are met.**	**100%**
Arlington	**No**	**50%**
Lake Stevens	**No**	**50%**
Marysville	**Yes but not more 150% of existing area by CUP**	
Burlington	**No**	**50%**
Mount Vernon	**Yes, by special permission of City Council and Recommendation by Plannning Commission**	**100%**

The code provisions of the cities surveyed vary in their application of the requirements and standards for Nonconforming Uses. The communities of Snohomish, Everett, Marysville, and Mount Vernon provide for expansions of Nonconforming Uses provided the expansion meets the setbacks, height, lot coverage, and open space requirements as well as specfic criteria established for nonconforming uses (Exhibit G).

EXHIBIT G

City of Everett Criteria for Expansion of nonconforming use or building. (Administrative Decision on expansions less than 25%, Hearing Examiner decision on expansion over 25%).

A. Where this chapter provides for the change of a nonconforming use or the expansion of a nonconforming use or building, the following evaluation criteria shall be considered in the evaluation of such proposal:

1. The impact of traffic generated by the proposed use on the surrounding area, pedestrian circulation and public safety, and the proposal's ability to mitigate potential impacts.
2. The site has sufficient area to provide for off-street parking, landscaping and screening from adjacent uses.
3. Provides a service to the general area.
4. The adequacy of streets, utilities, and public services to accommodate the proposed use.
5. Compatibility of the proposed use or building to surrounding properties, especially as it relates to size, height, location and setback of buildings.
6. The number, size, and location of signs and lighting, especially as they relate to more sensitive land uses.
7. The landscaping, buffering and screening of parking, loading, and storage areas.
8. The generation of nuisance irritants such as noise, smoke, odor, glare visual blight or other undesirable environmental impacts.
9. Consistency with the goals and policies of the Everett general plan and the purpose of the zone in which it is located.
10. Consistency with the environmental policies as stipulated in the city's SEPA ordinance.
11. Compliance with other provisions of this title, other city, state and federal regulations.

City of Marysville Criteria for expansion of a Nonconforming Use as a Conditional uses. (Administrative Approval by Staff appealed to Hearing Examiner)

The department shall have authority to grant conditional use permits referred to in this chapter. The procedures used by the department shall comply with Chapter 19.52 MMC. The department shall apply the following criteria:

(1) A nonconforming use or structure should not result in a lack of compatibility with existing and potential uses in the immediate area.

(2) Adverse impacts of a nonconforming use or structure must be mitigated by site design elements such as landscaping, provision for parking, elimination of outside storage, and general visual improvement of the property.

(3) Adequate provisions must be made for public improvements such as sewer, water, drainage, pedestrian circulation, and vehicle circulation, both on-site and off-site.

(4) Concerns of adjacent property owners and the general public must be properly considered.

City of Mount Vernon - Approval or denial of application – Standards for expansion of Nonconforming Use (Planning Commission Recommendation to City Council.)

The City Council may approve a permit to enlarge, expand, or reconstruct a nonconforming building or use only after considering the following:
A. The effect of such enlargement, expansion, or reconstruction on the appearance and use of the area, which might be affected;
B. The effect of the granting of such permit on traffic patterns in the area;
C. The adequacy of parking facilities afforded or to be afforded;
D. The effect on adjacent and nearby property or the economic effect of the proposed expansion, alteration or reconstruction on both the applicant and the owners of property in the vicinity.

Comprehensive Plan Goals:
The Comprehesive Plan does not specifically address the issue of Nonconforming Uses, Section 3 Implementation
Task 62:, page 67 recommends the following implementing measure: Designate downtown Sultan-for mixed-use office, commercial, and residential uses to maximize local services and the historical pedestrian-oriented village center.

Urban Center Zone Requirements: 16.12.040 Urban Center (UC) Zone.
A. General Description of Character and Intent of the Zone. This zoning district encompasses downtown Sultan and is proposed to include high density residential, commercial, office, and other central business district functions to provide a full range of pedestrian-oriented activities and urban services. This zone does not include highway-oriented activities that would be counter-productive in terms of trying to establish a pedestrian-oriented, close-knit urban center.

The Urban Center zone however does provide for the following Conditional Uses which are Automoblie related uses:
D. Conditional Uses.
1. Personal Service Establishments;
    a. Drive-in banks;
2. Seasonal parking facility;
3. Restricted Limited Manufacturing Uses. Restricted limited manufacturing uses involving the processing or fabrication of commodities or products subject to all of the following restrictions, development and performance standards:
    a. All manufacturing activities including storage and warehousing shall be confined to enclosed buildings on the property.
    b. The use does not inflict upon the surrounding permitted land uses in the district smoke/odors, glare/heat, noise, vibration, or liquid and solid wastes, and water pollution detrimental to the health, welfare, or safety of the public occupying or visiting such areas.

c. The design of buildings and related improvements shall employ design standards to support and maintain the commercial character and intent of the area and the following uses, which were adopted by the City Council in September of 2004.

4. Restricted Automobile Related Trade Facilities. Restricted Automobile Related Trade Facilities uses involving Retail Auto Parts Sales, Automobile Service Stations, Car Washes, Lube and Oil Service Facilities, and Minor Repair and Servicing conducted inside a building subject to all of the following restrictions, development, and performance standards:

a.Properties shall have frontage and direct vehicular access to State Highway No. 2. Access to Main Street maybe permitted if the applicant mitigates potential vehicular and pedestrian conflicts.

b.The use does not inflict upon the surrounding permitted land uses in the district smoke/odors (1), glare/heat (2), noise (3), vibration (4), or liquid and solid wastes (5), and water pollution detrimental to the health, welfare, or safety of the public occupying or visiting such areas.

c.The design of buildings and related improvements shall employ design standards to support and maintain the commercial character and intent of the area (Exhibit C).

ANALYSIS:

The jurdisdictions that provide for the expansion of Nonconforming uses have established criteria to evaluate the request on the surrounding area, including by way of example, traffic impacts, pedestrian circulation, utilities, parking, noise, outdoor storage, signs, and any required public improvements. One criteria used by the City of Everett asks if the expansion "Provides a Public Service." Impacts identified through this process must be mitigated by site design elements.

The evalutation criteria provides a valuable tool and safeguards to ensure that non-conforming use expansions are required to mitigate any impacts identified through the review process. Those applications or expansions that can not sucessfully mitigate their impacts will fail to meet the approval requirements.

The review and approval process of the jurisdictions also varied with (1) Administrative Approvals by City Staff which are appealable to the Hearing Examiner, (2) Hearing Examiner Review and Final Decision, or (3) Planning Board Review and Recommendation to the City Council for Final Approval.

In consideration of review and approval processes, the Sultan City Council is currently considering amendments to their present quasi-judical role. Subsequently, if a review process is established for nonconformances, that process can be incorporated into and coordinated with our current code revisions.

ATTACHMENTS:

Exhibit A	January 31, 2007 letter from Mr. Gary W. Brandstetter, Attorney
Exhibit B	Chapter 16.18 Nonconformance
Exhibit C	Ordinance 852.04 allowing Automotive Repair in the Urban Center (UC) Zone
Exhibit D	Draft Ordinance 955-07 providing for expansion of Nonconforming Uses as Recommended by the Planning Board
Exhibit E	Memo from Craig Bruner, Building Official, regarding nonconforming situations in Sultan, dated January 31, 2007
Exhibit F	Planning Board Meeting Minutes from May 15, June 5, and June 26.
Exhibit G	City survey of requirements and standards for nonconforming uses
Exhibit H	Zoning Map

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January 31, 2007

Rick Cezar, Director of Community Development
City of Sultan
319 Main Street
P.O. Box 1199
Sultan, Washington 98294-1199

Re: Amending Sultan's Non-Conforming Use Regulations

Dear Mr. Cezar:

This office has been contacted by Warren Jerden of Sky Valley Auto. Based on my contacts with Mr. Jerden, I am aware that Sultan Municipal Code (SMC) Section 16.18.060 contains a provision which recognizes that non-conforming uses exist, but prohibits any alteration or expansion of any except residential non-conforming uses. Many municipalities have non-conforming use and/or structure regulations which regulate, but do not prohibit, alteration or expansion of non-conforming uses. Moreover, there are many very good and important reasons for regulating, but not prohibiting, non-conforming uses. That is especially true in Sultan where there are so many non-conforming uses as a result of what is relatively recent comprehensive zoning action.

First of all, as you recognize, the fact that a use is non-conforming simply means that it existed before a code provision made it a use which was not allowed outright in a particular zoning classification. A house built in 1920, for example, which is located in an area which was zoned commercial in 1960 is non-conforming. It is still a legal use because it was legal before the zoning category made it illegal to locate a new residence in a commercial zone. But more importantly, the structure still has a lot of utility. It can continue to be used as a home or it could be converted to a business use. The point is that legal non-conforming uses can significantly contribute to the economic well-being of a community, particularly as the community transitions from one zoning category to another in a specific area.

For example, for several years the established residential neighborhood around the Courthouse and County Administration Building in Everett has been transitioning from residential use, permitted by earlier zoning, to office and commercial uses which are the only uses promoted by more recent zoning. Accordingly, there are still a large number of homes which are occupied

EXHIBIT A

as residences. But gradually over the years more and more of these homes have been purchased and converted to office use. Oftentimes the owner of a former residence which has been converted to a business use secures options to purchase and/or rights of first refusal on adjoining residential properties so that, when they come up for sale, they can also be purchased. After several residential properties are acquired over time, the residences are all torn down and a new commercial building erected. This transition process takes time, but legal non-conforming uses are a vital component of the transition process.

For these and other reasons, many municipalities have non-conforming use and structure provisions which regulate, but do not prohibit, restoration and expansion of legal non-conforming uses. In contrast, the current Sultan Municipal Code is quite restrictive and could be economically counter-productive. Accordingly, I would like to suggest that the City of Sultan consider an amendment to its non-conforming use and structure regulations.

My suggestions would not require a "rezone" or any change in either the classification or uses permitted in any of Sultan's zones. All my proposed provision would do is allow existing legal non-conforming uses to not only continue, but also to be restored and/or expanded under certain circumstances. Since legal non-conforming uses are constitutionally "vested," that is, they cannot be declared illegal and stopped because that would constitute a "taking" of property without just compensation, it only makes sense to have such continued uses be as vital and contributory to a community's economic well being as possible. In some cases, that may require allowing a legal non-conforming use to expand lest it die, be abandoned and, perhaps, become a blight on the community landscape before someone is available to purchase it, possibly acquire additional property and then redevelop with a permitted use.

At this point, I would like to point out that Warren Jerden and Sky Valley Auto are in a situation which suggests that the regulated expansion of their non-conforming use and structure would be well advised. In particular, the Sky Valley Auto garage and parking area are on 3 of 6 lots previously owned by Bernard and Verleen Swanson. Commercial vehicular car repair was run by the Swanson family for 26 years, from 1968 to 1994. The use was entirely legal under then existing (and/or non-existing) zoning. In 1994, Warren Jerden bought the Swansons' 6 lots and has continued operation of the car repair garage. In addition to the 3 lots used for the garage and its parking lot, both the Swanson family and the Jerdens have owned 3 adjoining lots which have never been developed or used for any purpose which is permitted under the current zoning. Nevertheless, a curb cut was included for these vacant lots when the City put the curb in 13 years ago.

The current zoning of the property was adopted in 1995. That zoning made the use for which Warren Jerden's property was developed and for which it has now been beneficially used for 38 years a legal non-conforming use. Warren's 29 year old adult son, Shawn, now works for and

with his father and is himself a four year resident of Startup. In order for the business to support two households, it is necessary to expand it.

Warren has had plans designed to add approximately half again as many square feet to the existing business in order to accommodate the additional business which he and his son together have generated by being proficient at what they do. If expansion of their non-conforming use is not permitted, they may need to move to another site. While it is possible that another site could be located in Sultan, it is also possible that, in order to assure success of a new location, Warren and his son might be compelled to purchase or lease property somewhere where there is more traffic and more exposure, such as Monroe. That would be one less auto repair facility in Sultan, forcing people in Sultan to take their business to Monroe and/or other locations. There would, of course, also be a commensurate drop in revenue not only from Warren and his son's business, but also from other businesses where people would shop in town while their vehicle was being serviced.

For all the above reasons, I would like to suggest that the City consider adopting some code amendments which would allow restoration and expansion of non-residential non-conforming uses and structures. For example:

16.18.060 Extension or Enlargement of Non-Conforming Situations.

A. Except as specifically provided in this section, no person may engage in any activity that causes an increase in the extent of non-conformity of a non-conforming situation. In particular, physical alteration of structures or the placement of new structures on open land is unlawful if such activity results in:

1. ***More than a*** ~~An~~ ***50%*** increase in the total amount of space devoted to a non-conforming use; or

2. Greater non-conformity with respect to dimensional restrictions such as setback requirements, height limitations, density requirements or other regulations such as parking requirements.

B. Subject to §§(D) of this section, a non-conforming use may be extended throughout any portion of a completed building that, when the use was made non-conforming by this unified development code, was manifestly designed or arranged to accommodate such use. However, a non-conforming use may not be extended to additional buildings or to land outside the original building ***if the result would be more than a 50% increase in the size of the use at the time it became non-conforming.***

C. A non-conforming use of open land may not be extended to cover more ***than 150% of the*** land that was occupied by that use when it became non-conforming.

[No changes to §§ D, E or F]

16.18.070 Nonconformances -- Repair, maintenance and construction.

[No change to § A.]

B. If a structure located on a lot where a non-conforming situation exists is damaged to an extent that the costs of repair or replacement would exceed ~~25~~ ***75%*** of the appraised valuation of the damaged structure, then the damaged structure may be repaired or replaced only in accordance with a permit issued pursuant to this unified development code. This section does not apply to structures used for single-family detached residential purposes, which structures may be reconstructed pursuant to a permit just as they may be enlarged or replaced.

[No changes to § C or D.]

As you can see, these proposed amendments would ***regulate***, but not prohibit, expansion of non-conforming uses. These proposed amendments would allow an existing non-conforming use or structure to be increased by up to half of the existing space it is currently using. Thus the non-conforming use or structure could not be doubled in size, but it could be expanded by 50% of its current size. This would avoid the necessity for a successful non-conforming business to leave town in order to meet an increasing demand while not adversely affecting existing zoning.

For example, if a business were so successful that it needed to double in size, it would also be in a position to move to a new location. But if some expansion is needed in order to meet demand, but the demand is not such that the business could be doubled, it might force an owner to abandon his business at that location before it is economically feasible to do so. Moreover, unless the existing owner moves to a location at least five miles away -- which would be adverse to the City -- he would not simply sell his non-conforming business to a smaller competitor for whom the existing facilities would be adequate. Therefore, by regulating expansion to 50% of existing size, the benefits of transitioning are maintained while the dysfunction of promoting non-conformity is avoided.

Your consideration of this proposal is appreciated. Please advise as to how I can be of further assistance in moving this matter forward.

Yours very truly,

Gary W. Brandstetter
GWB/g

c: Warren Jerden

Chapter 16.18

NONCONFORMANCES

Sections:

16.18.010 Nonconformances – Continuance.
16.18.020 Nonconformances – Lots smaller than required minimums.
16.18.030 Nonconforming lots – Setbacks.
16.18.040 Nonconforming lots – Applicability.
16.18.050 Nonconformances – Adjoining lots.
16.18.051 Nonconforming accessory dwelling units.
16.18.060 Extension or enlargement of nonconforming situations.
16.18.070 Nonconformances – Repair, maintenance, and construction.
16.18.080 Change in use of property where a nonconforming situation exists.
16.18.090 Abandonment and discontinuance of nonconforming situations.
16.18.100 Completion of nonconforming projects.

16.18.010 Nonconformances – Continuance.

Unless otherwise specifically provided in this unified development code, nonconforming situations that were otherwise lawful on the effective date of this code may be continued. (Ord. 715-00; Ord. 630 § 2 [16.06.160(A)], 1995)

16.18.020 Nonconformances – Lots smaller than required minimums.

When a nonconforming lot can be used in conformity with all of the requirements applicable to the intended use, except that the lot is smaller than the required minimums set forth in the dimensional and density requirements for each zoning district, then the lot may be used as proposed just as if it were conforming. (Ord. 715-00; Ord. 630 § 2[16.06.160(B)], 1995)

16.18.030 Nonconforming lots – Setbacks.

When the use proposed for a nonconforming lot is one that is conforming in all other respects, but the applicable setback requirements cannot reasonably be complied with, then the zoning official may allow variances from the applicable setback requirements if he/she finds that:

A. The property cannot reasonably be developed for the use proposed without such deviations;

B. These deviations are necessitated by the size or shape of the nonconforming lot;

C. The property can be developed as proposed without any significantly adverse impact on surrounding properties or the public health or safety; and

D. Compliance with applicable building setback requirements is not reasonably possible if a building that serves the minimal needs of the use proposed for the nonconforming lot cannot practicably be constructed and located on the lot in conformity with such setback requirements. However, financial hardship does not constitute grounds for finding that compliance is not reasonably possible. (Ord. 715-00; Ord. 630 § 2[16.06.160(C)], 1995)

16.18.040 Nonconforming lots – Applicability.

This chapter applies only to undeveloped nonconforming lots. A lot is undeveloped if it has no substantial structures upon it. (Ord. 715-00; Ord. 630 § 2 [16.06.160(D)], 1995)

16.18.050 Nonconformances – Adjoining lots.

If, on the date this unified development code becomes effective, an undeveloped nonconforming lot adjoins and has continuous frontage with one or more other undeveloped lots under the same ownership, then neither the owner of the nonconforming lot nor his successors in interest may take advantage of the provisions of this chapter. This requirement shall not apply to a nonconforming lot if a majority of the developed lots located on either side of the street where such lot is located and within 500 feet of such lot are also nonconforming. The intent of this chapter is to require nonconforming lots to be combined with other undeveloped lots to create conforming lots under the circumstances specified herein, but not to require such combination when that would be out of character with the way the neighborhood has previously been developed. (Ord. 715-00; Ord. 630 § 2[16.06.160(E)], 1995)

16.18.051 Nonconforming accessory dwelling units.

A. Commencing on October 1, 2003, a registration period of six months, ending April 1, 2004, at 5:00 p.m. is hereby established for the registration of legal nonconforming and illegal detached and attached accessory dwelling units (ADU). No fees shall be charged for such registration. Accessory dwelling unit (ADU) is defined in SMC 16.150.010(6)(a). Upon receipt of the registration, the city shall develop a schedule for the inspection of such accessory dwelling units to determine compliance with the State Building and Fire Codes. An

development code, was manifestly designed or arranged to accommodate such use. However, a nonconforming use may not be extended to additional buildings or to land outside the original building.

C. A nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming.

D. The volume, intensity, or frequency of use of property where a nonconforming situation exists may be increased, and the equipment or processes used at a location where a nonconforming situation exists may be changed, if these or similar changes amount only to changes in the degree of activity rather than changes in kind and no violations of other requirements of this section occur.

E. Notwithstanding subsection (A) of this section, any structure used for single-family detached residential purposes and maintained as a nonconforming use may be enlarged or replaced with a similar structure of a larger size, so long as the enlargement or replacement does not create new nonconformities or increase the extent of existing nonconformities with respect to such matters as setback and parking requirements.

F. Notwithstanding subsection (A) of this section, whenever: (1) there exists a lot with one or more structures on it; and (2) a change in use that does not involve any enlargement of a structure is proposed for such lot; and (3) the off-street parking or loading requirements of this code that would be applicable as a result of the proposed change cannot be satisfied on such lot because there is not sufficient area available on the lot that can practicably be used for off-street parking or loading, then the proposed use shall not be regarded as resulting in an impermissible extension or enlargement of a nonconforming situation. However, the applicant shall be required to comply with all applicable off-street parking and loading requirements that can be satisfied without acquiring additional land, and shall also be required to obtain satellite off-street parking if: (1) parking requirements cannot be satisfied on the lot with respect to which the permit is required; and (2) such off-street satellite parking is available within 500 feet of the site said satellite parking area is intended to serve, measured from property line to property line. If such off-street satellite parking is not reasonably available at the time the permit is granted, then the permit recipient shall be required to obtain it if and when it does become reasonably available. This requirement shall be a continuing condition of the permit. (Ord. 715-00; Ord. 630 § 2 [16.06.160(F)], 1995)

16.18.070 Nonconformances – Repair, maintenance, and construction.

A. Minor repairs to and routine maintenance of property where nonconforming situations exist are permitted and encouraged. Major renovation, i.e., work estimated to cost more than 25 percent of the appraised valuation of the structure to be renovated, may be done only in accordance with a permit issued pursuant to this unified development code.

B. If a structure located on a lot where a nonconforming situation exists is damaged to an extent that the costs of repair or replacement would exceed 25 percent of the appraised valuation of the damaged structure, then the damaged structure may be repaired or replaced only in accordance with a permit issued pursuant to this unified development code. This section does not apply to structures used for single-family detached residential purposes, which structures may be reconstructed pursuant to a permit just as they may be enlarged or replaced.

C. For purposes of subsections (A) and (B) of this section:

1. The "cost" of renovation or repair or replacement shall mean the fair market value of the materials and services necessary to accomplish such renovation, repair, or replacement.

2. The "cost" of renovation or repair or replacement shall mean the total cost of all such intended work, and no person may seek to avoid the intent of subsections (A) or (B) of this section by doing such work incrementally. An itemized appraisal of the work shall be prepared by an independent professional and provided to the city by the applicant.

3. The "appraised valuation" shall mean either the appraised valuation for property tax purposes, updated as necessary by the increase in the consumer price index since the date of the last valuation, or the valuation determined by a professionally recognized property appraiser.

D. The building and zoning official shall issue a permit authorized by this section if it finds that, in completing the renovation, repair or replacement work:

1. No violation of subsection (B) of this section will occur;

2. The permittee will comply to the extent reasonably possible with all provisions of this code applicable to the existing use (except that the permittee shall not lose his or her right to continue a nonconforming use); and

Mere financial hardship caused by the cost of meeting such requirements as paved parking does not constitute grounds for finding that compliance is not reasonably possible. And, in no case may an applicant be given permission pursuant to this section to construct a building or add to an existing building if additional nonconformities would thereby be created. (Ord. 715-00; Ord. 630 § 2 [16.06.160(H)], 1995)

16.18.090 Abandonment and discontinuance of nonconforming situations.

A. If the principal activity on property where a nonconforming situation other than a nonconforming use exists is discontinued for a consecutive period of 180 calendar days, then that property may thereafter be used only in conformity with all of the current regulations. A permit may be issued if the council finds that eliminating a particular nonconformity is not reasonably possible (i.e., cannot be accomplished without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation). The permit shall specify which nonconformities need not be corrected.

B. For purposes of determining whether a right to continue a nonconforming situation is lost pursuant to this section, all of the buildings, activities, and operations maintained on a lot are generally to be considered as a whole. For example, the failure to rent one apartment in a nonconforming apartment building for 180 calendar days shall not result in a loss of the right to rent that apartment or space thereafter, so long as the apartment building as a whole is continuously maintained. But if a nonconforming use is maintained in conjunction with a conforming use, discontinuance of a nonconforming use for the required period shall terminate the right to maintain it thereafter. (Ord. 715-00; Ord. 630 § 2[16.06.160(I)], 1995)

16.18.100 Completion of nonconforming projects.

A. All nonconforming projects on which construction was begun before the effective date of this code, as well as all nonconforming projects that are at least 10 percent completed in terms of the total expected cost of the project (excluding land acquisition) on the effective date of this code may be completed in accordance with the terms of their permits, so long as these permits were validly issued and remain unrevoked and unexpired. If a development is designed to be completed in stages, this section shall apply only to the particular phase under construction.

B. Except as provided in subsection (A) of this section, all work on any nonconforming project shall cease on the effective date of this code, and all permits previously issued for work on nonconforming projects may begin or may be continued only pursuant to a permit issued in accordance with this section for the type of development proposed. The city council shall order the issuance of such a permit if it finds that the applicant has in good faith made substantial expenditures or incurred substantial binding obligations or otherwise changed his position in some substantial way in reasonable reliance on the code as it existed before the effective date of this code and, thereby, would be unreasonably prejudiced if not allowed to complete his project as proposed. In considering whether these findings may be made, the city council shall be guided by the following, as well as other relevant considerations:

1. All expenditures made to obtain or pursuant to a validly issued and unrevoked development permit shall be considered as evidence of reasonable reliance on the code that existed before this code became effective.

2. Except as provided in subsection (B)(1) of this section, no expenditures made more than three years before the effective date of this code may be considered as evidence of reasonable reliance on the law that existed before this code became effective.

3. To the extent that expenditures are recoverable with a reasonable effort, a party shall not be considered prejudiced by having made those expenditures. For example, a party shall not be considered prejudiced by having made some expenditure to acquire a potential development site if the property obtained is approximately as valuable under the new classification as it was under the old, for the expenditure can be recovered by a resale of the property.

4. To the extent that a nonconforming project can be made conforming and that expenditures made or obligations incurred can be effectively utilized in the completion of a conforming project, a party shall not be considered prejudiced by having made such expenditures.

5. An expenditure shall be considered substantial if it is equal to 10 percent or more of the total estimated cost of the proposed project (excluding land acquisition).

CITY OF SULTAN
Sultan, Washington

Ordinance 852-04

AN ORDINANCE OF THE CITY OF SULTAN CITY COUNCIL AMENDING SMC 16.12.040 URBAN CENTER ZONE BY DELETING FUNERAL HOMES/ MORTUARIES AS A PERMITTED USE, AND 16.12.040 D BY ADDING RESTRICTIVE AUTOMOBILE-RELATED RETAIL TRADE FACILITIES USES AS A CONDITIONAL USE.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SULTAN DO ORDAIN AS FOLLOWS:

Section 1. SMC 16.12.040 B. Permitted Uses, is hereby amended by deleting, 4. Personal Service Establishments, L. Funeral Homes/Mortuaries as a permitted use.

Section 2. SMC 16.12.040 D. is hereby amended to add a Subsection 4 to read as follows:

1. Restricted Automobile Related Trade Facilities.
   Restricted Automobile Related Trade Facilities uses involving Retail Auto Parts Sales, Automobile Service Stations, Car Washes, Lube and Oil Service Facilities, and Minor Repair and Servicing conducted inside a building subject to all of the following restrictions, development, and performance standards:

A. Properties shall have frontage and direct vehicular access to State Highway No. 2. Access to Main Street maybe permitted if the applicant mitigates potential vehicular and pedestrian conflicts.

B. The use does not inflict upon the surrounding permitted land uses in the district smoke/odors (1), glare/heat (2), noise (3), vibration (4), or liquid and solid wastes (5), and water pollution detrimental to the health, welfare, or safety of the public occupying or visiting such areas.

C. The design of buildings and related improvements shall employ design standards to support and maintain the commercial character and intent of the area.

Section 3. SMC 16.12.040 Table of Dimensional and Density Requirements is hereby amended to add to "Uses as a Conditional Use, Restricted Automobile Related Trade Facilities". **(1) Retail Auto Parts Sales**: Units/Acre--, Area 3,500 sq. ft: width 30: depth 100: front 25: Each side 0: rear 15: max. bldg. Height 30 ft; maximum lot coverage 80%. **(2) Automobile Service Station/Car Washes/ Lube and Oil Service** *Units/Acre--, Area 5,000 sq. ft, width 05 depth, 100 front 25 total side yards 20rear 25 max. bldg height 30ft maximum lot coverage 25%.* **(3) Automobile Minor Repair and Service Facilities**[3] *Units/Acre--, 5,000 sq. ft. width 50depth 100 front 25 Each Side 25 rear 25 max bldg. Height 30 Max lot coverage 25%. Footnotes also shall be added to this entry indicating the following performance standards.*

3

EXHIBIT C

1. Air pollution shall meet the ambient air quality standards specified by the Puget Sound Air Pollution Control Agency and all air contaminants therein.
2. All operations producing intense heat or glare shall be performed within an enclosure so as to completely obscure such operation from view from any point of the property line.
3. The maximum noise levels as measured at property line shall be those set forth in Chapter 173-60 WAC, titled "Maximum Environmental Levels".
4. No use shall cause earth vibration or concussions detectable without the aide of instruments beyond its property lot lines.
5. Liquid and solid wastes shall be disposed of on a regular basis in keeping with the best operating standards of the industry and in compliance with the regulations and requirements of local, regional, state or federal agencies having jurisdiction in waste disposal and environmental health and safety.

Section 4: Repealer: 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.

Section 5: Severability: If any provisions of this Ordinance or its application to any person or circumstance are held invalid, the remainder of the Ordinance or applications of the provisions of the ordinance to other person or circumstances is not affected.

Section 6. Effective Date: This Ordinance shall be in full force and effective 5-(five) days after publications as required by law.

Regularly adopted by the Sultan City Council this 22nd day of September, 2004.

CITY OF SULTAN

By_____
Benjamin R. Tolson, Mayor

Attest:

By_____
Laura Koenig, City Clerk

Approved as to form:

By_____
Thom H. Graafstra, City Attorney

Published: November 26, 2004

Revised 9-14-04 RC

CITY OF SULTAN
ORDINANCE NO. 955 -07

AN ORDINANCE OF THE CITY OF SULTAN, WASHINGTON ADDRESSING NONCONFORMANCES BY AMENDING CHAPTER 16.18 NONCONFORMANCES SECTION 16.80.060 EXTENSION OR ENLARGEMENT OF NON-CONFORMING SITUATIONS BY PROVIDING FOR THE EXTENSION OR ENLARGEMENT OF A NONCONFORMING SITUATIONS BY NOT MORE THAN 50% OF THE TOTAL SPACE DEVOTED TO A NON-CONFORMING USE AND ESTABLISHING EVALUATION CRITERIA FOR EXTENSIONS OR ENLARGEMENTS AND SECTION 16.18.O70 NONCONFROMANCES—REPAIR, MAINTENANCE AND CONSTRUCTION, SUBSECTION B BY ALLOWING A DAMAGED NONCONFORMING STRUCTURE TO BE REPLACED TO ITS EXISTING SIZE AND SQUARE FOOTAGE AND BY REPEALING SMC 21.04.020 B..

WHEREAS, the City of Sultan has received a request to amend SMC Chapter 16.18 Nonconformances to provide for the enlargement of a commercial use in the Urban Center (UC) zoning district; and

WHEREAS, SMC Chapter 16.18.060 E provides for the enlargement of Single-Family uses within all zoning districts of Sultan, and

WHEREAS, SMC 21.04.020 currently subjects expanding nonconforming uses to the conditional use permits requirements of Chapter 21.04 SMC;

WHEREAS, the proposed amendment would allow the City to regulate the enlargement of nonconforming uses in all zones under similar provisions and requirements to those established for nonconforming single-family uses within the City and consolidate provisions to deal with expanding nonconforming uses.

NOW, THEREFORE, IT IS ORDAINED BY THE CITY COUNCIL OF THE CITY OF SULTAN AS FOLLOWS:

Section 1. SMC Chapter 16.18 NONCONFORMANCES, Section 16.18.060, Extension or Enlargement of Non-Conforming Situations, is hereby amended to read as follows:

16.18.060 Extension or enlargement of nonconforming situations.

A. Except as specifically provided in this section, no person may engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation. In

EXHIBIT D

particular, physical alteration of structures or the placement of new structures on open land is unlawful if such activity results in:

1. More than a 50% increase in the total amount of space devoted to a nonconforming use; or

2. Greater nonconformity with respect to dimensional restrictions such as setback requirements, height limitations, density requirements, or other regulations such as parking requirements.

B. Subject to subsection (D) and (E) of this section, a nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this unified development code, was manifestly designed or arranged to accommodate such use. However, a nonconforming use may not be extended to additional buildings or to land outside the original building if the result would be more than a 50% increase in the size of the total amount of space devoted to the nonconforming use at the time it became non-conforming.

C. Subject to subsection (D) of this section, a nonconforming use of open land may not be extended to cover more land than 150% of the land that was occupied by that use when it became nonconforming.

D. The Director of Community Development in considering an application for any extension or expansion of a nonconforming use under subsections B or C shall process the application as provided for in Exhibit A and consider the following additional criteria when evaluating the application to determine if an application can meet the criteria and be approved and mitigate potential impacts on surrounding properties. :

1. The impact of traffic generated by the proposed use on the surrounding area, pedestrian circulation and public safety, and the proposal's ability to mitigate potential impacts.

2. The site has sufficient area to provide for off-street parking, landscaping and screening from adjacent uses.

3. The adequacy of streets, sidewalks. utilities, and public services to accommodate the proposed use.

4. The landscaping, buffering and screening of parking, loading, and storage areas mitigates the impacts on surrounding properties.

5. The generation of nuisance irritants such as noise, smoke, odor, glare visual blight or other undesirable environmental impacts.

6. Consistent with the Design Guidelines and standards, and community vision as expressed in the City's Comprehensive Plan

Application of these criteria shall be an administrative determination of the Director of Community Development subject to a right of appeal to the Hearing Examiner.

E.. The volume, intensity, or frequency of use of property where a nonconforming situation exists may be increased, and the equipment or processes used at a location

where a nonconforming situation exists may be changed, if these or similar changes amount only to changes in the degree of activity rather than changes in kind and no violations of other requirements of this section occur.

F. Notwithstanding subsection (A) of this section, any structure used for single-family detached residential purposes and maintained as a nonconforming use may be enlarged or replaced with a similar structure of a larger size, so long as the enlargement or replacement does not create new nonconformities or increase the extent of existing nonconformities with respect to such matters as setback and parking requirements.

G. Notwithstanding subsection (A) of this section, whenever: (1) there exists a lot with one or more structures on it; and (2) a change in use that does not involve any enlargement of a structure is proposed for such lot; and (3) the off-street parking or loading requirements of this code that would be applicable as a result of the proposed change cannot be satisfied on such lot because there is not sufficient area available on the lot that can practicably be used for off-street parking or loading, then the proposed use shall not be regarded as resulting in an impermissible extension or enlargement of a nonconforming situation. However, the applicant shall be required to comply with all applicable off-street parking and loading requirements that can be satisfied without acquiring additional land, and shall also be required to obtain satellite off-street parking if: (1) parking requirements cannot be satisfied on the lot with respect to which the permit is required; and (2) such off-street satellite parking is available within 500 feet of the site said satellite parking area is intended to serve, measured from property line to property line. If such off-street satellite parking is not reasonably available at the time the permit is granted, then the permit recipient shall be required to obtain it if and when it does become reasonably available. This requirement shall be a continuing condition of the permit.

Section 2. SMC CHAPTER 16.18 NONCONFORMANCES, Section 16.18.070, Nonconformances--Repair, maintenance and construction, subsection (B.) is hereby amended to read as follows:

B. If a structure located on a lot where a nonconforming situation exists is damaged the damaged structure may be repaired or replaced only in accordance with a permit issued pursuant to this unified development code. However, the repaired or replaced structure shall not exceed the square footage or size of the existing structure prior being damaged. This section does not apply to structures used for single-family detached residential purposes, which structures may be reconstructed pursuant to a permit just as they may be enlarged or replaced.

Section 3. SMC 21.04.020 B is hereby repealed.

Section 3 Repealer: Any and all other ordinance or parts of ordinances of the City of Sultan inconsistent with the provisions or this ordinance are hereby repealed to the extent of such inconsistency.

Section 4 Severability: If any provisions of this ordinance or its application to any person or circumstance are held invalid, the remainder of the ordinance or applications of the provisions of the ordinance to other person or circumstances is not affected.

Section 5. Effective Date: This ordinance shall be in full force and effect five days after publication as required by law.

Passed by the City Council and approved by the Mayor this _____ day of _____, 2007.

City of Sultan

By:_____
Benjamin Tolson, Mayor

Attest:

By: _____
Laura Koenig, City Clerk

Approved as to form:

By: _____
Thom H. Graafstra, City Attorney

City of Sultan

1-31-07

Building Department Comments

The question has been raised regarding the number of and the types of nonconforming situations we have in the City.

There are two basic types of nonconformities:
Nonconforming uses, and then just about everything else that does not meet the current development standards, lot size, setback, off street parking and so forth. Without actually do a definitive study I can say nearly every property fronting on Main street has some form of nonconforming situation.

Of the preexisting nonconforming uses in our Urban Center the two most prevalent are the residential uses, and the automobile repair and service facilities.
The single-family detached residential uses are given special dispensation per 16.18.060, and can be replaced and even enlarged.

There are two auto repair and services in the urban center 609 Main, and 809 Main that have over the last ten years made serious inquires into expanding their operations.
Given the overall number of applications to expand a nonconforming use has historically been very low I see no significant change to our down town core if this code (16.18) where to be modified to allow some economic growth. Although I doubt if this code change would be used be a half a dozen property owners throughout the entire City over the next 10 years, it does level the playing field. Commercial property owners would then have equal standing with single-family detached residential property owners, and this just seems innately fair to me.

Craig Bruner
Craig Bruner

319 Main Street, Suite 200 • P.O. Box 1199 • Sultan Washington 98294
City Hall (360) 793-2231 • Fax (360) 793-3344

EXHIBIT E

Exhibit F

Sultan Planning Board Meeting

May 15, 2007

The meeting was called to order at 7:01 pm by Chairperson Van Pelt.

Planning Board members Present: Sarah Davenport-Smith, Jeff Cofer, and Charles Van Pelt.

Staff Present: Community Development Director Rick Cisar, Public Works Director Connie Dunn, City Administrator Deborah Knight, and Planning Commission Secretary Tami Pevey.

Public Comment

Debbie Kopple – Requesting overview of information regarding public hearing.

Josie Fallgatter – Thank you to Perteet and Eric Irelan for work done on transportation plan. Good start to needs, hoping for same with costs.

Changes to Agenda

Commissioner Latimore requested switching the agenda order to have the public hearing first. Commissioner Latimore moved to accept the change, seconded by Commissioner Davenport Smith; all board members in favor.

PUBLIC HEARING:

Commissioner Latimore read procedural remarks to crowd for public hearing – No objections from citizens regarding board members involvement. Commissioner Cofer stated no conflicts directly. No objections from crowd. All board members were in agreement to stay objective.

Rick Cisar placed an affidavit of publication, rescheduled notice, staff report, and agenda into record. He then gave an overhead presentation reviewing items based on the agenda item cover sheet. Single family attached uses being addressed in regards to commercial, industrial, multi family uses. Reviewed the action options with the planning board; reviewed the background history regarding the request. All review requirements completed with no comments from outside agencies. Recommendation to change replacement cost in non conforming uses in Urban Center Zone from 25% to 75% from the petitioner. Building Official advised doesn't affect many businesses, rare. The Building Official is also recommending expanding 50% of square footage.

F1

Code comparison completed in regards to other cities and facts included in staff report. Reviewed various cities to include Everett, Marysville, & Mount Vernon as these cities require evaluation criteria be met. While reviewing the current comp Mr. Cisar stated the plan does not address non conforming uses except for Section 3 implementation. He reviewed the Urban Center Zone ideal intent and explained the requirements address several issues, but does not address the issue of non conforming use expansions.

He gave alternative options to the planning board as addressed in the staff report.

Commissioner Schmidt – asked how the changes would be addressed in Sultan; administrative role for compliance?

Rick Cisar – Could be staff administrative review; could be required to be hearing examiner process. Not done now; administratively for single family uses.

Commissioner Cofer – currently expansion of non conforming use is not allowed.

Rick Cisar – yes, for single family, but not commercial industrial.

Deborah Knight – could have both processes; should non conforming uses have same process as conforming, or different uses?

Commissioner Latimore opened the floor to public comment.

Gary Branstedder – author of letter in packet; Apologized to public who attended two weeks ago as continued due to unknown date and had previous engagement. Allow or disallow, establish criteria if allowed, and set up process for non conforming uses administratively or through hearing examiner. He is here to address that Mr. Jerden cannot explain at all as it is not allowed. Suggesting that expansion on some level should be allows. He reviewed his letter in regards to reasons for regulating expansion, but allowing. Gave example of Everett south of courthouse transitioning; explained situation of business owner with no current options. 50% the norm; two cities allow 100%; suggestion 75% is more realistic.

Warren Jerden – owner of Sky Valley Automotive; bought property 15 years ago. He bought the property next door 9 years ago to expand. Attempted to expand, but not allowed. Picture provided to show how it changes and cleans building; gives false front to get cars off street and repairs done inside. The business has been operating for 38 years since prior owner Swanson's. Able for citizens to get cars fixed and shop in town while waiting.

Debbie Kopple, 13722 Roesler Rd, Sultan – represent the chamber of commerce, also placing emails into record from other chamber members approving the expansion. Don't feel at this time that town is business friendly. She explained that in an

F2

automobile society, Sultan in independent transportation dependent. Bulk of population does not reside in downtown. Need to be able to address issues in town locally. Need to focus on what we want to keep in, not just what we want to keep out. Stated was very confused by non conforming legal issues. Her perspective needs to help people like Mr. Jerden who has invested time, business, and money in our community. Meeting needs of community or wouldn't be able to expand. Want to support the process and procedures, but make it aesthetically pleasing to design review board. Need to increase sales tax base and encourage business, but also meet needs of population. Referred to Monroe Main Street and downtown restructuring process. Not welcoming to businesses, need to make it explainable to businesses.

Josie Fallgatter, 13231 Trout Farm Rd – Last meeting initial hearing postponed, has applicant paid for this to be brought before you. What are you here for? Here to plan for how city is going to grow. Pedestrian friendly downtown, automotive uses restricted. She asked if Larry's Auto was a conditional use that was non-conforming as well. Suggest going back to comp plan and amend first. Then look at design review standards to see if it implements comp plan. City has not done that yet. They lost a legal battle and are currently under remand to review regulations. Design Review board has no "teeth". She is confused by Brandstander's letter regarding 150% and how to regulate it. Suggest looking at Hearing examiner role in development regulations. Suggest not administrative, hearing examiner role. Strong qualifications and feel he should be left with that task. Mr. Jerden is a nice man; board is not here to pick and choose. What is downtown vision plan? Is it pedestrian friendly? Job is to look at Policy and vision of city and implement those.

Kate Roesler – current business owner; board has larger picture than that. Need to fill empty Main Street before pedestrian friendly. Anchor store in other cities as automotive when changed to pedestrian friendly.....

Bart Dalmasso – local business owner and resident; and sees this as a possible punishment to a successful businessman as he is being denied the right to expand his business. Consensus of opinion among business owners is city doesn't care. Choice is to expand or move business out of town. If there were more businesses here the city wouldn't be facing an increase in utility fees. Downtown will cease to exist as business center as flooding and not conducive to expansion. Will move east and up on the hill. In favor of proposed changes to ensure business stays as need the tax dollars.

Brian Kopple; owner of Sultan Chiropractic Center – feels needs to be shades of gray here; Went from no comp plan to "village Sultan" view. Has to be common sense brought to this and simplification brought to this so it can be developed. Best interest of community as well as business people.

Commissioner Latimore requested additional staff comments.

Cisar responded to questions as follows: yes the fees have been paid by the applicant; we do have design standards that have been adopted and utilized. Not specific to sky Valley automotive, but broader than that affecting all zones; option available.

Commissioner Davenport-Smith was wondering with changes to comp plan would we be able to incorporate changes that would apply to situation like this.

Rick Cisar – Silent to comp plan addressing non conforming uses.

Commissioner Davenport-Smith – Something would not be pedestrian friendly, but interpretation.

Deborah Knight – criteria come into play here; if you want to move forward with looking at non-conforming uses but in compliance with comp plan need criteria. 3rd staff alternative, talk in general about where you want to look at. Explained this is more than a one touch item. Can give general direction tonight, but there may be 3 to 5 meetings before a recommendation is reached. Fallgatter correct and need to review all, but will take time

Commissioner Van Pelt – seems almost tragic that this gentleman is being dragged through this process. Couldn't we do it any quicker?

Rick Cisar – Process wise staff could come back with modifications to draft ordinance and apply criteria and process for review if direction board wants to take.

Commissioner Latimore – advised there would be an opportunity to add discussion and questions.

Pat Fox, 13908 339th Av SE - Making changes to the code encourage other non conforming uses, permit other non-conforming, or just address current. Do percentages have something to do with discouraging rebuilding?

Rick Cisar – reconstruction exceed 25%, have to conform. Encourage reconstruction you place it higher. Letter from building inspector (exhibit e) foresees no significant changes.

Josie Fallgatter – On 75% of assessed value not requiring a permit; would they not pay fees and have inspection? Also like to know code sight in SMC for design review standards.

Donna Marshall, 11724 trout farm rd, mgr of coastal community bank – what does pedestrian friendly mean? If car breaks down, walk to car to get it fixed isn't that pedestrian friendly?

Gary Branstedder – non-conforming use legal when built, but zone changes make it illegal; won't create more non-conforming uses. Value is percentage of assessed

F4

value. Assessed values are not actual values; 10% or more than assessed value to sell. 100,000 assessed, more than 25,000 in repairs puts business out of place; Suggests 75% as in between average and 100%. Think that Cisar correct looking at comp plan doesn't say you can't have expansion or repair of non conforming uses. Not in violation of comp plan. Suggestion or proposal already went through state with no objections.

Cisar – correct.

Gary Branstedder – I don't think it needs to be quite a big a process as DK suggests. Needs a process he can apply under. Staff has done a tremendous job setting up the criteria to pick from.

Josie Fallgatter – Re-ask questions; 75% of assessed value not requiring a permit, will they be allowed to build without a permit, will they exempt from impact fees and inspections? She explained that the nuisance ordinance was before the board earlier. If they can catch while being built they don't need to go back and address it later. 150% lot coverage; area is being covered, not the value. Where in the SMC is the design review standards codified.

_____ (WHO) Settle the issue before us quickly, then go back to comp plan and make changes. Suggest a variance or something else quickly. Don't see how having auto parts store isn't pedestrian friendly. Maybe need to review inception of ideas.

Bart – allowing expansion would be pedestrian friendly would get cars off sidewalk. 25% to 50% could go to legal battle as taking away without just cause; comp plan can only be revised once a year.

_____ (WHO) something immediate future, instead of comp plan changes.

Gary Branstedder – can't do that, not legal.

Commissioner Cofer made a motion to close the public hearing; seconded by Commissioner Latimore. Public hearing closed.

STAFF DISCUSSION

Commissioner Latimore – Two parts: maintenance and repair; expansion.

Commissioner Cofer – thinks 75% valuation for maintenance and repair more acceptable. Lean toward 50% as board member, but as property owner 75% is more functional. Don't have luxury yet of picking and choosing what businesses occupy our downtown corridor. As we travel towards our goals both personally and as a community. Anticipate obstacles as we evolve as a city. Legal non conformance with planning board and council allowed once per business. 75% permitted by special

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permission, criteria with review by design review board. This business meets aesthetic appeal, and meets criteria.

Commissioner Davenport-Smith – agree with Commissioner Cofer; I'm not married to 50% or 75%, not enough education yet to make decision. Whether or not in compliance with plan, but "pedestrian friendly" rub; is it defined in code?

Rick Cisar – Not defined.

Commissioner Davenport-Smith – could define what it means to ensure expansion of non conforming use; would we still have issue?

Rick Cisar – comp plan silent; can develop criteria defining what pedestrian friendly means. Everett and Marysville criteria could work.

Commissioner Van Pelt – do talk of pedestrian friendly?

Rick Cisar – mitigate impacts based on developed in hand. Downtown area still has automobiles; Horse in stable years ago; Taking car to stable for repair, almost same type of use.

Deborah Knight – pedestrian friendly; you may still get a petition in front of GMA board. Comp plan addresses pedestrian friendly, but doesn't address non-conforming; criteria to advance desire to pedestrian friendly. Can you make change today quickly, and then change comp plan. No; everything grows from comp plan. Looking at review to comp plan to address business not welcome look. State law is written this way.

Commissioner Latimore – Think Everett has it right in regards to repair. If substantially destroyed, should be allowed to repair. Building codes much tighter now; Feels reasonable to allow; 100% with code driven costs that would exceed that. Expansion of uses, Title 21 of code, 21.04.020 (b) addresses expansion. Is that obsolete?

Rick Cisar – current code provision.

Commissioner Latimore – this code places it down to criteria board puts in place. Don't feel need further criteria other than what's in place. Conditional use permit process has element of non conforming uses wishes to expand. Just need to establish criteria.

Deborah Knight – can issue conditional use permit for non-conforming use if there is criteria in place. They would add an additional section for non conforming use expansion. Need to describe pedestrian friendly element. Need to be careful about taking straight across from other cities as based on their comp plan.

Commissioner Latimore – Maintenance and repair, expand. Maintenance repair, okay.

Commissioner Van Pelt – 75% or 100%, open.

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Commissioner Schmidt – 100% repair; 75% expand. Criteria needed on pedestrian friendly.

Commissioner Cofer - # of vehicles per $ amount generated; Separates high traffic volume retail, from lower traffic volume.

Commissioner Schmidt – too complicated.

Warren Jerden – liquor store pedestrian friendly based on traffic.

Rick Cisar – direct staff to repairs 100%; expansion 50% to equal 150%; define pedestrian friendly; criteria for non-conforming.

Commissioner Schmidt – outline of sequence of events to keep everything in place.

Commissioner Latimore opened the floor again to public comment.

Donna Marshall – A jiffy lube is coming into town back to back, what's the difference?

Rick Cisar – allowed.

Donna Marshall – back to back?

Rick Cisar – ingress from main, but no egress.

5 minute break approved by commissioners

Resume at 8:59 p.m.

Committee Reports and Staff Presentations

Transportation Plan Update –

Rick Cisar introduced Eric Irelan with Perteet giving third update. Public meeting and open house held today. Most important is to develop understanding of impacts. Graph summarizes development. 1500 employees in city currently; 500 employees in growth. Population growth projected as bedroom community. Estimates that 2400 homes built until 2025. City divided into 23 transportation analysis zones to include UGA. Growth between 2000-2006 via building permits. Traffic forecast model developed. 2007 average week day traffic volumes reviewed via map H-3. Highest volume street is 4th street; 3200 vehicles 10% p.m. peak; Sultan Basin Rd, then 8th Street. Level of service and rating from A to F; just A, B right now. Question posed is how long it takes to get from one point to another. Traffic congestion major complaint. Provided traffic trip

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SULTAN PLANNING BOARD MEETING
City of Sultan, Council Chambers – 319 Main Street

MINUTES
June 5, 2007

CALL TO ORDER
The meeting was called to order at 7:02 ½ p.m. by Chairperson Latimore.

Planning Board members Present: Kurt Latimore, Sarah Davenport Smith, Charles Van Pelt, Jeff Cofer, and George Schmidt.

Staff Present: City Administrator Deborah Knight, Community Development Director Rick Cisar, Public Works Director Connie Dunn, and Planning Commission Secretary Tami Pevey.

PUBLIC COMMENTS
No public comment.

CHANGES TO THE AGENDA
No changes to agenda

COMMITTEE REPORTS AND STAFF PRESENTATIONS
None at this time

ACTION ITEMS:

Approval of the May 1, 2007 and May 15, 2007 Minutes

Commissioner Schmidt abstains as he didn't receive packet until last night; requesting a week in advance since the minutes are long.

Commissioner Latimore tabled approval of minutes until later in the meeting.

Recommended Amendments to SMC Title 16, Chapter 16.18 Nonconformance, Section 16.18.060 Extension or Enlargement of Nonconforming situations and Section 16.18.070 Nonconformance – Repair, Maintenance, and Construction

Community Development Director Rick Cisar reviewed comments given by City Attorney addressed in a two page document handed to the planning commissioners before the meeting.

The City Attorney advised the members that the conditional use process would cause conceptual and legal problems and significant code revisions. The code would need to provide for a conditional use, which it currently does not. His recommendation was an administrative process with an appeal to the hearing examiner.

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Mr. Cisar also reviewed the City of Everett policy and gave recommendations as outlined in a two page document. He then reviewed Exhibit A, Administrative review and public notice process as well as Exhibit B, conditional use review process, as provided in the agenda packet.

He then reviewed the seven issues before the board this evening as provided and the four staff recommendations on how to proceed.

COMMISSIONER COFER: Requested an opportunity to read the packet in detail and fully understand before making a decision.

COMMISSIONER SCHMIDT: also requesting more time to read and unclear on city attorney's recommendations.

RICK CISAR: Only change is administrative process versus conditional use ..

COMMISSIONER DAVENPORT-SMITH: Exhibit A is that the process Thom Graafstra recommending.

RICK CISAR: Administrative review.

COMMISSIONER DAVENPORT-SMITH: Right now?

RICK CISAR: No, this is a suggestion with a few additional steps compared to a short plat process; we attempted to gain consistency to other administrative processes.

DEBORAH KNIGHT: Two options: Send non-conforming use applications through staff process; staff presentation tonight includes appeal to the hearing examiner. The second process would send the process straight to the hearing examiner and the hearing examiner would make the decision or recommendation to forward to the city council. The city attorney is recommending not using the tool of a conditional use as many issues and problems spring forward with this issue.

COMMISSIONER VAN PELT: What do most small cities use?

RICK CISAR: City of Everett uses both processes; 25% administrative, over 25% hearing examiner. Our current process allows single family attached administratively with no public notice.

DEBORAH KNIGHT: Difference between administrative and hearing examiner removes it from the political process as hearing examiner acts a neutral third party. Hearing examiner also removes some authority from the planning board to give recommendations.

COMMISSIONER LATIMORE: Last meeting suggested conditional use process as it seemed to fit. Administrative process presented this evening makes sense.

COMMISSIONER COFER: The administrative process would allow some more timely interaction so that corrections or revisions can be made.

RICK CISAR: Hearing examiner would review staff report and from applicant to make determination.

COMMISSIONER VAN PELT: Applicant or public has the opportunity to appeal?

RICK CISAR: Both.

COMMISSIONER COFER: Multiple opportunities.

RICK CISAR: Appeals after hearing examiner, and after council can go to superior court.

COMMISSIONER LATIMORE: Administrative process makes sense personally. 16.18 B, cost of repair or replacement exceeds 100%. Permit issued pursuant to UDC; don't feel that is clear enough; In accordance with Section 1.D instead.

RICK CISAR: Rebuild would go back through administrative process?

COMMISSIONER LATIMORE: if exceeded 100%.

COMMISSIONER COFER: If total loss should go back through administrative process to allow public opportunity to review non conforming use.

UNKNOWN: questioning basis of valuation.

COMMISSIONER LATIMORE: Reviewed valuation versus square footage. If building requires repairs, destroyed, they do so subject to normal permitting. It's only if they need to go beyond 100%. There are often code driven changes that are different now that could be easy to exceed that threshold. Discussed costs associated with code increases were discussed in the past. Process doesn't restrict timely demolition to make the area safe. Don't want to bar cleanup of the site due to the process.

RICK CISAR: Insurance prevents changes until determination of damage and cost to repair; would exercise precautions to make it safe.

COMMISSIONER LATIMORE: This process wouldn't prevent that?

RICK CISAR: No.

COMMISSIONER LATIMORE: Statement added as timely exercise of this decision, can't wait 12 years.

RICK CISAR: Current standard 12 months.

COMMISSIONER LATIMORE: Would maintain non conforming status for 12 months or as extended by permits. Would Snohomish County Assessor appraisal be used?

RICK CISAR: Private appraisal.

UNKNOWN: Assessor, traditionally basis used.

RICK CISAR: Current code allows county assessor or private appraisal.

COMMISSIONER COFER: Should be read as administrative process in play when improvements would exceed 100% of valuation at time of loss.

UNKNOWN: Should allow for code updates.

COMMISSIONER COFER: Leaning toward square foot formula to consider costs as they can be extraordinary to original value.

UNKNOWN:

COMMISSIONER COFER: Good point.

COMMISSIONER LATIMORE: Can increase setbacks.

RICK CISAR: Read appraisal process currently listed in current code.

DEBORAH KNIGHT: Which section?

RICK CISAR: 16.18.070, non conforming repair maintenance or construction.

COMMISSIONER LATIMORE: Square footage is good; requesting thought from Rick Cisar.

RICK CISAR: Can modify that section.

COMMISSIONER LATIMORE: works for him.

COMMISSIONER DAVENPORT-SMITH: If we use square footage in this section and don't use it in other parts of code, would that conflict?

RICK CISAR: The only time we use this section is on non-conformance issues.

COMMISSIONER LATIMORE: Input from board?

COMMISSIONER COFER: Looking at going with administrative process for permitting the expansion of non-conforming use up to 150% of the original square footage. On repair and maintenance the rebuilding of a total loss non-conforming uses up to 100% of the tax value of the property.

COMMISSIONER COFER: How can you assess loss of square footage?

Jeff Kirkman: Deals with condominium repair; state law states exceed 5% of the property must have a permit and value comes from the assessor. Assessed value does not go on the cost. The assessed value is based on land, current conditions, and current economic conditions. The assessed value is very close to market value.

UNKNOWN: Not true, sell more than assessed value.

Debate among citizens and board members present at meeting on how to figure 100% valuation.

COMMISSIONER COFER: Replacement of a total non conforming use is allowed regardless of value.

COMMISSIONER LATIMORE: Could exceed 100% of the number. Another scenario is repair and maintenance which would allow it to refresh and spruce up forever.

COMMISSIONER COFER: Wonder what the valuation really has to do with this.

COMMISSIONER LATIMORE: It's just seeking to control the extent; if you have a total loss it's removing the non-conforming use.

COMMISSIONER COFER: Decided to not disallow the use based on loss or replacement value.

RICK CISAR: Not relevant anymore up to it to 100%; if lower to 25% then would force applicant to explain anything higher.

COMMISSIONER LATIMORE: I am hearing administrative process; that we're not sure on how to deal with the repair piece. Sounded like expansion was okay; and on repairs it may just be based on square footage or language about replacing. I think we need to come back to that next time.

COMMISSIONER VAN PELT: Think it needs to be carefully looked at. If you don't know what the base structure is worth, 100% tips the scale.

COMMISSIONER LATIMORE: Want to allow a wholly damaged building to reconstruct; allow staff to come back with recommendations. Form of administrative process where that is used.

RICK CISAR: Will also add language of 12 months on a rebuild as discussed.

All board members in agreement.

MINUTE REVIEW:

Sultan Planning Board Meeting

June 26, 2007

The meeting was called to order at 7:02 pm by Chairperson Latimore.

Planning Board members Present: Kurt Latimore, Sarah Davenport-Smith, Jeff Cofer. Absent: George Schmidt, and Charles Van Pelt

Staff Present: Community Development Director Rick Cisar, City Administrator Deborah Knight, and Planning Commission Secretary Tami Pevey.

PUBLIC COMMENTS

None given.

CHANGES TO AGENDA

Discussion amongst members about George and Charles absence.

Motion by Commissioner Latimore, second by Commissioner Cofer to excuse the absence of Commissioner's Van Pelt and Schmidt. All in agreement.

COMMITTEE REPORTS AND STAFF PRESENTATIONS

Transportation Plan Update including Impact Fee Analysis and annual Transportation Improvement Plan (TIP).

Eric Ireland from Perteet presented the current draft of the TIP to board members and explaining key elements. He complimented Connie Dunn for the idea of connecting Highway 2 and First Street via on and off ramp. Mr. Ireland advised the board that chapter 6 is a new addition required by the state. Chapter 7 includes project cost estimates, which were previously missing. He explained that to date there has been eight public meetings, two open houses, and four presentations before the planning board. The financial revenue forecast still needs to be completed. He anticipated coming back to the July 4th meeting.

Commissioner Davenport Smith requested clarification on the projects listed on page 35 and if they had been prioritized.

Ireland explained the format of the table is system capacity projects, and system enhancement projects; two different sets of projects that compliment each other. It is a short term and long term look, there is no ranking that is presented in this document of those projects.

Administrator Knight recommended putting ranking of projects in the Capital Facilities Element. Just making sure that the projects on this list are ones the city can afford to build.

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Eric Ireland added that at some point the state might want to prevent left hand turn crossings and this could be a way to address that.

Public Works Director Dunn added they had also talked about the intersection at 8th and Main Street, and the state was considering it for a roundabout. The State will be here Thursday night at the council meeting. Suggested it would be something to look at in future transportation plans.

Eric Ireland stated at the July 17th meeting he will be coming back with the completed financial chapter and have recommendations for traffic impact fees.

Development Director Cisar recommended back to TIP for Administrator Knight to give an update.

Administrator Knight gave an update on the progress but was just about ready. Felt they were right on schedule and will be back in front of the planning commission at their next meeting, but they are very close to being done.

ACTION – APPROVAL

1. ***Approval of May 1, 2007; May 15, 2007; and June 5, 2007 minutes.***

   On a motion by Commissioner Davenport Smith, second by Commissioner Cofer the minutes were approved; All in favor.

2. ***Recommended Amendments to SMC Title 16, Chapter 16.18 Nonconformance, section 16.18.060 Extension or Enlargement of Nonconforming situations and Section 16.18.070 Nonconformance – Repair, Maintenance, and Construction.***

   Development Director Cisar referred to the June 5, 2007 meeting and recommended deleting 100% cost and add the following language "However, the repaired or replaced structure shall not exceed the square footage or size of the existing structure prior to being damaged except as provided in SMC 16.18.060". He explained that if you have a nonconformance use that is destroyed, it can be replaced to the existing square footage. However, if you want to expand you would need to follow the process through the hearing examiner. Explained there will be another public hearing before the city council, then a first and second reading before final council approval.

   Commissioner Latimore clarified that a business could replace, and could expand.

   Development Director Cisar stated yes.

   Motion by Commissioner Cofer, second by Commission Davenport Smith to forward their recommendation to the council; all in favor.

3. ***Changes to Planning Board's July Meeting Schedule.***

   Development Director Cisar updated the commission that the word had gotten out to the public regarding the change of the July agenda.

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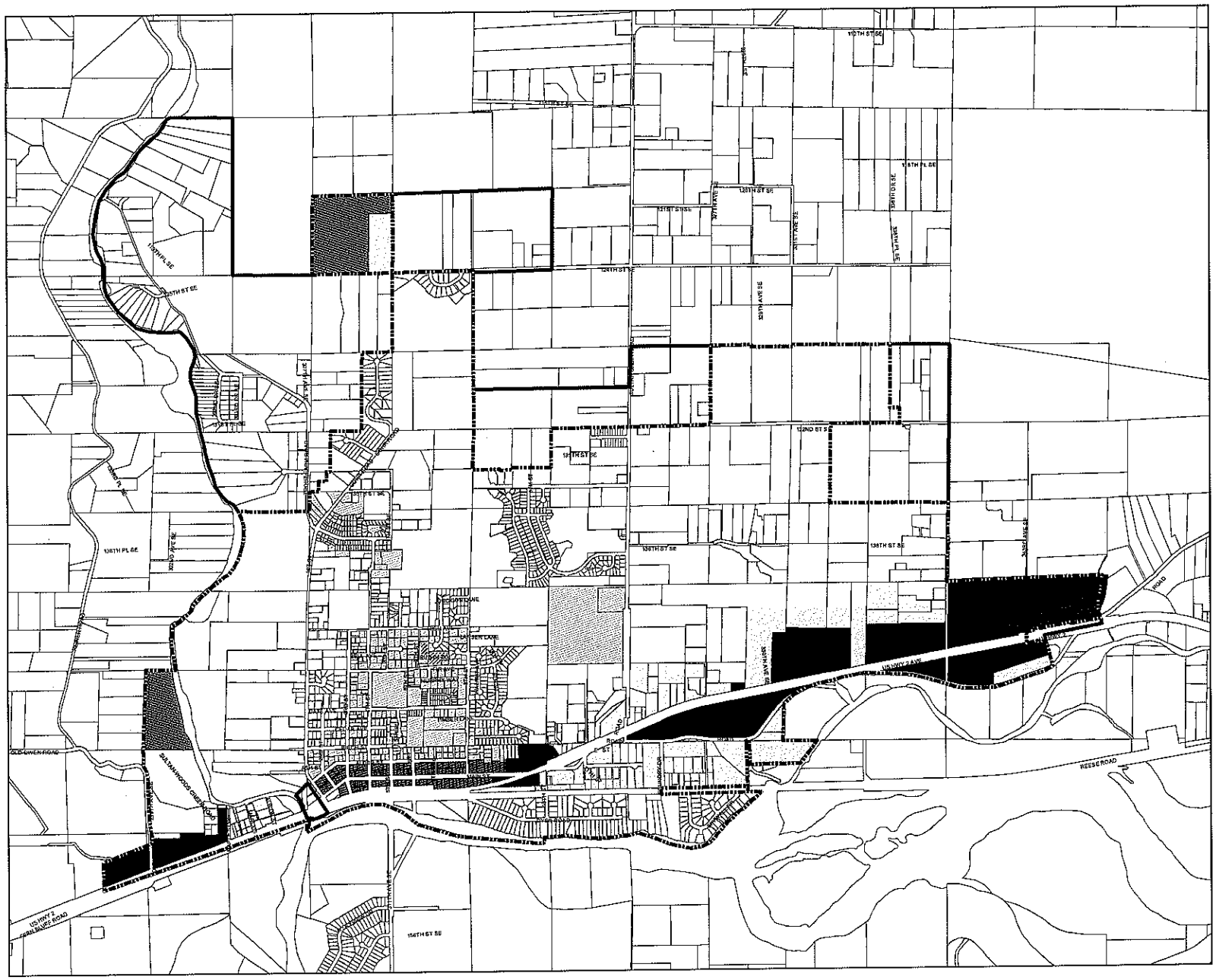
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City of Sultan
WASHINGTON
FUTURE LAND USE
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City Boundary
UGA Boundary
Zoning & Land Use
Low/Moderate Density
Moderate Density
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Economic Development
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UGA Boundary -Adopted: December 21, 2005
-Effective Date: February 1, 2006
All non-zoning data, including parcel information, easements, city limits, and stream locations, is from the Snohomish County Assessor (2005), Snohomish County Planning and Development Services (2005), or other sources, has not been verified, and is subject to change. No warranty is made concerning the accuracy, currency, or completeness of data depicted on this map.
MAP DATE: AUGUST 2007
P:\Mapping\Maps_Generated\Sultan\Projects\Planning\Zoning\Landuse_Feb2006\FutureLandUse_Update_8_2007.mxd
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Exhibit H