

SULTAN CITY COUNCIL

AGENDA ITEM COVER SHEET

ITEM NUMBER: Consent C-2

DATE: October 25, 2007

SUBJECT: Set Open Public Appeal Meeting for the Greens Estates
Planned Unit Development and Preliminary Plat Application

CONTACT PERSON: Rick Cisar, Director of Community Development 

ISSUE:

The issue before the City Council is to set a Public Meeting to consider an Appeal by Sultan 144 LLC for the Greens Estates Planned Unit Development and Preliminary Plat in accordance with SMC 2.26.140. (Attachment 1).

SUMMARY:

The Hearing Examiner conducted an Open Record Hearing on September 11, 2007 for the Sultan 144 LLC Greens Estates Planned Unit Development and Preliminary Plat Application located at the southeast corner of Sultan Basin Road and 132nd Street S.E. The Hearing Examiner's Report and Recommendation dated September 19, 2007, recommended Denial of the Planned Unit Development; RETURN preliminary subdivision for modification (Recommendation includes revised conditions of approval in case the Council disagrees with the reason for Denial of the Planned Unit Development). The Examiner's Finding 10, demonstrates compliance with all locational criteria within SMC 16.10.110(2) except subsection (d), the "transit facilitation" criteria. (Attachment 2).

Sultan 144 LLC filed a Motion on October 12, 2007 for Reconsideration on the "transit facilitation" criterion with the Examiner. The Examiner on October 4, 2007 issued an Order denying the request for reconsideration and reaffirmed the Recommendation as issued on September 19, 2007.

Sultan Municipal Code (SMC) Section 2.26.150 requires scheduling an Open Public Appeal 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 next available City Council Meeting to consider this Appeal is November 8, 2007.

FISCAL IMPACT:

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

RECOMMENDED ACTION

Motion to set November 8, 2007 at 6:30 p.m. to conduct an Open Public Appeal Meeting for the Green's Estates Planned Unit Development and Preliminary Plat Application.

COUNCIL ACTION:

DATE:

ATTACHMENTS:

Attachment 1 SMC 2.26.140

Attachment 2 SMC 16.10.110 B.2. subsection (d)

mental conditions, either existing or potentially arising from the proposed improvement;

D. All decisions or recommendations of the hearing examiner are subject to reconsideration, unless reconsideration is waived. Reconsideration is waived unless within seven calendar days of the date of mailing of the decision or recommendation, the applicant, the city or a party of record submits a written request for reconsideration in accordance with rules issued by the hearing examiner. Pending reconsideration by the hearing examiner, a decision or recommendation shall not be deemed final for the purpose of commencement of the period of time in which to commence an appeal. If reconsideration is waived because no timely request for reconsideration is made, the initial decision or recommendation of the hearing examiner, subject to any right of appeal, shall be deemed final as of the eighth calendar day after the date of mailing of the decision or recommendation. If a timely request for reconsideration is made, the hearing examiner shall grant or deny reconsideration within 10 calendar days of the date of receipt of the request for reconsideration. All periods of time provided for in this code for filing an appeal of a hearing examiner's decision, or for council consideration of a hearing examiner's recommendation, shall commence to run from the later of the eighth calendar day after mailing of the hearing examiner's decision or recommendation or the date of the hearing examiner's order granting or denying reconsideration.

E. All fees associated with the reconsideration shall be set by council resolution.

F. A statement of the date the decision will become final unless appealed, together with a description of the appeal procedure. (Ord. 764-01; Ord. 550, 1990)

2.26.130 Notice of examiner's decision.

Not later than three working days following the rendering of a written decision, copies thereof shall be mailed to the applicant and to other parties of record in the case. "Parties of record" shall include the applicant and all other persons who specifically request notice of decision by signing a register provided for such purpose at the public hearing, or otherwise provide written request for such notice. (Ord. 550, 1990)

2.26.140 Appeal from examiner's decision.

A. The grounds for filing an appeal of an examiner's decision shall be limited to the following:

1. Newly discovered evidence which is material to the examiner's decision and which

could not reasonably have been produced at the examiner's hearing;

2. The examiner exceeded his jurisdiction;

3. The examiner failed to follow the applicable procedure in reaching his decision;

4. The examiner committed an error of law or misinterpreted the applicable zoning ordinance, comprehensive plan, provisions of the city's code or other city or state law or regulation; or

5. The examiner's findings and conclusions are not supported by the record.

B. 1. Where the examiner's decision is final and conclusive with right of appeal to the council, any such appeal shall be filed by the applicant, a department of the city, or other aggrieved person or agency with the city clerk/treasurer within 10 calendar days following the rendering of the examiner's decision pursuant to SMC 2.26.120. In computing the time in which to file an appeal with the council, the date the examiner's decision is rendered shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday or a legal holiday.

2. Appeals filed with the city clerk/treasurer shall be in writing, shall contain a detailed statement of grounds for appeal and the facts upon which the appeal is based, and shall be accompanied by a fee of \$50.00; provided, that such appeal fee shall not be charged to a department of the city or to other than the first appellant. All council proceedings shall be limited to those matters expressly raised in a timely written appeal or appeals.

3. The timely filing of an appeal shall stay the effective date of the examiner's decision until such time as the appeal is adjudicated by the council or withdrawn.

C. 1. If the appeal is to the council, the timely filing of an appeal shall stay the effective date of the examiner's decision until such time as the appeal is adjudicated or withdrawn.

2. Within seven calendar days following the timely filing of an appeal with the city clerk/treasurer, notice thereof and of the date, time and place for council consideration shall be mailed by the clerk's office to the applicant, to the examiner and to all other parties of record. Such notice shall additionally indicate the deadline for submittal of written comments as prescribed in SMC 2.26.150.

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.

16.10.110

h. Signs. The requirements of Chapter 22.06 SMC shall apply to a PUD-PCvR. All signs in a PUD-PCvR shall conform to a master sign plan that shall be considered and approved with the development plan.

i. Landscaping. The requirements of Chapter 16.04 SMC shall apply to a PUD-PCvR, as a minimum; provided, that additional landscaping may be required to mitigate impacts to adjacent uses and to meet the compatibility criteria for approval from this section. (Ord. 793-02 § 1)

16.10.110 Criteria for location and approval – Residential PUDs.

A preliminary residential PUD shall only be approved if, with reasonable modification and/or conditions, the city finds that the proposed preliminary PUD complies with the following criteria for location, use, and design, for each of the identified types of PUDs.

A. PUD-Multifamily (PUD-MF).

1. Comprehensive Plan. The proposed preliminary PUD-MF must be located in an area that has been identified as appropriate for multifamily development in the comprehensive plan, residential policies or an adopted subarea plan or neighborhood plan.

2. Design Criteria and Density Limitations. Multifamily dwellings may be permitted in any PUD-MF, including any approved density increases or bonuses; provided further, the hearing examiner and city council will determine the maximum number of multifamily units allowed in any PUD-MF in consideration of the location criteria. Multifamily PUDs may also be permitted as part of a mixed-use development, in conjunction with an activity center, such as one of the planned retail center PUDs described in SMC 16.10.100.

3. Other Location Criteria.

a. The site is located on one or more arterial or collector streets and the site is also located with respect to major streets and highways or other transportation facilities such that these streets and transportation facilities can provide direct access to the homes. Street types are defined in the city of Sultan design standards and specifications. If the site is located on a corner, access will be encouraged to be from the minor arterial or collector and not from a principal arterial if it is found that such access reduces potential traffic conflicts and carrying capacities on the principal arterial.

b. The total area of the PUD-MF is a minimum of two acres.

c. The site is located such that it can connect to an existing off-site pedestrian and/or bicycle circulation system to facilitate non-motor vehicle access to the PUD-MF.

d. Transit is available in sufficient proximity to the site to facilitate transit access to the PUD-MF.

e. The PUD-MF is located in relation to public services, sanitary sewers, water lines, fiber optic conduits, storm and surface drainage systems, and other utility systems and installations such that neither extension nor enlargement of such systems resulting in higher net public cost or earlier incursion of public costs will be required.

f. The PUD-MF is located with respect to schools, parks, playgrounds, and other public facilities such that the PUD will have access to these facilities in the same degree as would development in a form generally permitted by the underlying zoning in the area.

g. As an alternative to subsections (A)(3)(e) and (f) of this section, the developers of the PUD-MF can:

i. Provide private utilities, facilities or services approved by the public agencies which would normally provide such utilities, facilities or services as substituting on an equivalent basis and assure their satisfactory continuing operation and maintenance; or

ii. Make provision, acceptable to the city, for offsetting any added net public cost or early commitment of public funds necessitated by such development; or

iii. Demonstrate, to the satisfaction of the city, that the anticipated increases in public revenue from the PUD-MF will more than adequately cover any anticipated increase in public costs for installation, operation, and maintenance.

4. Compatibility Criteria/Mitigation of Impacts on Adjacent Uses.

a. The design and layout of a PUD-MF shall take into account the relationship of the site to the surrounding areas. The perimeter of the PUD shall be so designed as to minimize any undesirable impact of the PUD on adjacent properties.

b. Setbacks from the property line of the PUD-MF shall be comparable to, or compatible with, those of the existing development of adjacent properties or, if adjacent properties are undeveloped, the type of development which may be permitted.

c. Access/egress routes for traffic do not have to use minor or local access streets in residential neighborhood neighborhoods.

d. The site is of sufficient size to generally mitigate impacts of the proposed residential uses within the PUD-MF site itself, including the provision of adequate screening, setbacks, and other buffers.

e. The impacts from light and glare can be mitigated on-site through lighting design and location and/or screening and separation, so that the off-site impacts of light and glare are generally consistent with the light and glare impacts from existing adjacent uses.

f. Noise impacts from the PUD-MF can be mitigated on-site such that state noise standards can be met.

g. The PUD-MF is designed and located so as not to substantially interfere with the operation and use of existing parks and schools in the vicinity of the site.

h. Building scale in the PUD-MF shall not exceed the requirements of the development standards in SMC 16.10.120.

5. Permitted Uses. The following uses shall be permitted in a PUD-MF: all permitted residential, accessory, and conditional uses listed in the MD residential zoning district, SMC 16.12.020.

6. Development Standards. PUD-MF, PUD-SF, and PUD-MHP shall be governed by the development standards of the underlying residential and manufactured home park zoning districts, as may be modified as described in SMC 16.10.120. Multifamily PUDs shall also be eligible for density increases as described in SMC 16.10.120.

B. PUD-Single-Family (PUD-SF).

1. Comprehensive Plan. The proposed preliminary PUD-SF must be located in an area that has been identified as appropriate for single-family development in the comprehensive plan, residential policies or an adopted subarea plan or neighborhood plan.

2. Other Location Criteria.

a. The site is located on one or more arterial or collector streets and the site is also located with respect to major streets and highways or other transportation facilities such that these streets and transportation facilities can provide direct access to the homes, if the development is more than 10 acres, or 40 units. Street types are defined in the city of Sultan design standards and specifications. If the site is located on a corner, access will be encouraged to be from the minor arterial or collector and not from a principal arterial if it is found that such access reduces potential traffic conflicts and carrying capacities on the principal arterial.

b. The total area of the PUD-SF is a minimum of two acres.

c. The site is located such that it can connect to an existing off-site pedestrian and bicycle circulation system to facilitate non-motor vehicle access to the PUD-SF.

d. Transit is available in sufficient proximity to the site to facilitate transit access to the PUD-SF.

e. The PUD-SF is located in relation to public services, sanitary sewers, water lines, fiber optic conduits, storm and surface drainage systems, and other utility systems and installations such that neither extension nor enlargement of such systems resulting in higher net public cost or earlier incursion of public costs will be required.

f. The PUD-SF is located with respect to schools, parks, playgrounds, and other public facilities such that the PUD will have access to these facilities in the same degree as would development in a form generally permitted by the underlying zoning in the area.

g. As an alternative to subsections (B)(2)(e) and (f) of this section, the developers of the PUD-SF can:

i. Provide private utilities, facilities or services approved by the public agencies which would normally provide such utilities, facilities or services as substituting on an equivalent basis and assure their satisfactory continuing operation and maintenance; or

ii. Make provision, acceptable to the city, for offsetting any added net public cost or early commitment of public funds necessitated by such development; or

iii. Demonstrate, to the satisfaction of the city, that the anticipated increases in public revenue from the PUD-SF will more than adequately cover any anticipated increase in public costs for installation, operation, and maintenance.

h. Multifamily dwellings may be permitted in a single-family PUD; provided, the total number of units does not exceed 20 percent of the approved PUD density, including any approved density increases or bonuses, and is located in an area identified for "scattered multifamily within a single-family" on the comprehensive plan map, and has a minimum development size of 10 acres, and meets the other location criteria. Only one "scattered multifamily within a single-family" development may occur where identified on the comprehensive plan map.